



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D. C. 20224

OFFICE OF THE CHIEF COUNSEL

June 10, 2021

Number: **2021-0017**
Release Date: 9/24/2021

CC:EEE:EOET:EO2
GENIN-106745-21

UIL: 61.00-00

Dear _____ :

This letter responds to your letters dated June 6 and September 12, 13, and 15, 2020, requesting information regarding the differences in taxation of the sale of "Trust status" land and "Fee Patent status" land. On May 15, 2020, we issued you a general information letter responding to your letter dated March 31, 2020, about the application of Federal tax law to determine the basis of a fee simple allotment that was received as a trust allotment by gift from the original Indian allottee. I apologize for the delay in responding to your subsequent letters.

We are unable to provide you with a ruling concerning the tax consequences of any specific activities except in accordance with the provisions of Rev. Proc. 2021-1, 2021-1 I.R.B. 1 (updated annually). However, we can provide you with the following general information which might be relevant.

Section 61 of the Internal Revenue Code (IRC) provides that, except as otherwise provided by law, gross income means all income from whatever source derived. Under § 61, gross income generally includes all gains and undeniable accessions to wealth, clearly realized, over which taxpayers have complete dominion. Citizens of the United States generally are taxed on income unless the income is specifically excluded. Exclusions from income are construed narrowly and taxpayers must bring themselves within the clear scope of the exclusion.

Indians are United States citizens subject to the requirement to pay income taxes. An exclusion of individual Indian's income for Federal income tax purposes must derive plainly from treaties, agreements with the Indian tribes concerned, or an act of Congress.

Revenue Ruling 67-284 provides that the income received by an enrolled member of an Indian tribe is not includible in the enrolled member's gross income (and therefore exempt from Federal income tax) if each of the following tests is met:

- (1) The land in question is held in trust by the United States Government;
- (2) Such land is restricted and allotted and is held for an individual noncompetent Indian, and not for a tribe;
- (3) The income is directly derived from the land;
- (4) The statute, treaty or other authority involved evinces congressional intent that the allotment be used as a means of protecting the Indian until such time as he becomes competent; and
- (5) The authority in question contains language indicating clear congressional intent that the land, until conveyed in fee simple to the allottee, is not to be subject to taxation.

If one or more of these five tests is not met, and if the income is not otherwise exempt by law, it is subject to Federal income taxation. Accordingly, once a member of an Indian tribe has received a fee title to the land, the exempt status of income derived directly therefrom ends.¹

This letter has called your attention to certain general principles of the law. It describes well-established interpretations and principles of tax law without applying them to a specific set of facts. This letter is advisory only and has no binding effect with the Internal Revenue Service. If you have any additional questions, please contact our office at

Sincerely,

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¹ See Rev. Rul. 58-341, C.B. 1958-2, 400, which discusses basis issues where the land is sold subsequent to being conveyed in fee simple to an Indian.