



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

June 8, 2017

Control Number: TEGE-04-0617-0015
Expiration Date: June 8, 2019
Impacted IRM: 4.88.1.7.5.1(1) f,
4.88.1.10(3)

MEMORANDUM FOR INDIAN TRIBAL GOVERNMENTS EMPLOYEES

FROM: Christie J. Jacobs */s/Christie J. Jacobs*
Director, Indian Tribal Governments

SUBJECT: Interim Guidance on the Direct Pay of Tribal Lease Funds
(including HEARTH Act leases)

This memo issues guidance on the direct pay of tribal lease funds (including HEARTH Act leases). Please review this directive if questions on this issue arise during examinations.

Purpose: We're issuing this directive to inform and help Indian Tribal Government specialists with examinations.

Background/Source(s) of Authority: [Notice 2015-67](#), 25 CFR, Chapter I, [25 CFR §115](#), [25 CFR §162](#). The Per Capita Act ([25 U.S.C. 117a-117c](#)) authorizes Indian tribes to make per capita distributions to members of the tribe out of funds held in a tribal trust account. Before the enactment of the Per Capita Act, the Department of Interior (DOI) had the sole authority to make per capita distributions out of tribal trust accounts.

Notice 2015-67 provides a general rule that per capita distributions made from funds the Secretary of the Interior holds in a tribal Trust Account are generally excluded from the gross income of the tribal members receiving the per capita distributions. The general rule applies to both per capita distributions DOI makes and those made by Indian tribes.

The Bureau of Indian Affairs (BIA) within DOI manages tribal leases and other contracts on Indian trust lands. Under current BIA regulations, the BIA may approve direct payment to a tribe from the leases and contracts' operators rather than depositing these payments into a DOI-maintained tribal trust account. Funds acquired through these direct pay leases and other contracts (including leases executed by the tribe under tribal regulations approved under [25 USC 415\(h\)](#), "HEARTH Act leases") are derived from tribal trust resources, as defined in [25 CFR § 115.702](#), and authorized by BIA

regulations (e.g., 25 CFR, Chapter I, Subchapter H (Land and Water), 25 CFR, Chapter I, Subchapter I (Energy and Minerals), etc.). These direct pay leases and contracts (including HEARTH Act leases) are approved by the same process or are subject to the same BIA-approved standards as leases and contracts under which the funds are deposited into tribal trust accounts. (Direct pay arrangements are often preferable for both tribes and DOI because they enable faster payments and eliminate the need for DOI to manage the funds.)

Procedural Change:

Don't seek information reporting on per capita distributions of direct pay tribal lease funds (including HEARTH Act leases) that, if paid from the trust, would satisfy Notice 2015-67. Apply the Notice 2015-67 examples of mischaracterized distributions to all per capita distributions, including those from direct pay leases. For example, if a tribe distributes mischaracterized gaming revenues to tribal members, require information reporting and any appropriate withholding for those amounts regardless of whether the distributions are made from a trust account or paid directly.

Effect on Other Documents:

We will incorporate this guidance into IRM 4.88.1.7.5.1, *Nontaxable Distributions and Benefits*, and IRM 4.88.1.10, *Nontaxable Income of Tribal Members*, by June 8, 2019.

Expiration Date:

The earlier of two years from the date of this memo or incorporation into IRM 4.88.1.7.5.1, *Nontaxable Distributions and Benefits*, and IRM 4.88.1.10, *Nontaxable Income of Tribal Members*.

Contact: If you have any questions, please call Christie J. Jacobs, Director, Indian Tribal Governments, at (720) 956-4504.

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