

Part III

Administrative, Procedural, and Miscellaneous

26 C.F.R. 601.601: Rules and regulations.

(Also Part I, §§ 61, 451, 671; 1.61-1; 1.451-1; 1.671-1.)

Rev. Proc. 2003-14

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor under which the Internal Revenue Service will treat an Indian tribe as the grantor and owner of a trust for the receipt of gaming revenues under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701-2721) (IGRA) for the benefit of minors or legal incompetents. In addition, under this revenue procedure, beneficiaries of an IGRA trust will not be required to include amounts in gross income when transferred to, or earned by, the IGRA trust under the economic benefit doctrine. Rather, beneficiaries will include amounts in income when actually or constructively received.

SECTION 2. BACKGROUND

.01 Indian tribes and their members have requested guidance on determining the taxable years in which beneficiaries must include in gross income amounts transferred to, or earned by, an IGRA trust. In addition, Indian tribes have requested guidance about the situations in which a tribe will be considered the grantor and owner of an IGRA trust.

.02 Under § 451 of the Internal Revenue Code (Code) and §§ 1.451-1(a) and 1.451-2 of the Income Tax Regulations, a taxpayer using the cash receipts and disbursements method of accounting must include gains, profits, and income in gross income for the taxable year in which those items are actually or constructively received. In addition, under the economic benefit doctrine, a taxpayer using the cash receipts and disbursements method of accounting must include in gross income currently any financial or economic benefit derived from the absolute right to receive property in the future that has been irrevocably and unconditionally set aside for the taxpayer in a trust or fund. Sproull v. Commissioner, 16 T.C. 244 (1951), aff'd per curiam, 194 F.2d 541 (6th Cir. 1952); Pulsifer v. Commissioner, 64 T.C. 245 (1975).

.03 Section 671 provides that, where it is specified under subpart E, part I, subchapter J, chapter 1, subtitle A of the Code (“subpart E”) that the grantor or another person shall be treated as the owner of any portion of a trust, there shall be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust that are attributable to that

portion of the trust to the extent that such items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual. Section 672 provides definitions and rules for purposes of subpart E. Subpart E and the accompanying regulations define the circumstances under which a grantor is treated as the owner of all or a portion of a subpart E trust.

.04 IGRA provides rules regarding the conduct of class II and class III gaming on Indian lands within an Indian tribe's jurisdiction and an Indian tribe's use of revenues from that gaming. Under IGRA, net revenues from any class II and class III gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if: (A) the Indian tribe has prepared a plan to allocate revenues to authorized uses; (B) the Secretary of the Interior approves the plan as adequate; (C) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are disbursed to the parents or legal guardians of the minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare of the minors or other legally incompetent persons under a plan approved by the Secretary of the Interior and the governing body of the Indian tribe; and (D) the per capita payments are subject to federal taxation and the Indian tribe notifies members of that tax liability when payments are made. Section 11(b)(3) and (d)(1)(A) of IGRA, 25 U.S.C. § 2710(b)(3) and (d)(1)(A).

SECTION 3. SCOPE

This revenue procedure applies to each Indian tribe, each IGRA trust, and each beneficiary of an IGRA trust.

SECTION 4. DEFINITIONS

For purposes of this revenue procedure:

.01 Indian tribe. The term "Indian tribe" has the same meaning as in 25 U.S.C. § 2703(5).

.02 IGRA trust. An "IGRA trust" is a trust that an Indian tribe establishes under IGRA to receive and invest per capita payments for its members who are minors or legal incompetents pending distribution of the trust assets to those members after they attain the age of majority or cease to be legal incompetents.

.03 Minor and legal incompetent. The terms "minor" and "legal incompetent" have the same meaning as in 25 C.F.R. § 290.2 (relating to review of Indian tribal revenue allocation plans adopted under IGRA).

.04 Per capita payment. The term "per capita payment" has the same meaning as in 25 C.F.R. § 290.2, but in no event shall the term include compensation for services.

SECTION 5. APPLICATION

.01 In general. For any period in which all of the requirements of section 5.02 of this revenue procedure are met:

(1) The Indian tribe that establishes (or has established) an IGRA trust will be treated as the grantor and owner of the trust under subpart E, and

(2) The beneficiaries of an IGRA trust will not be required to include per capita payments received by the trust, and any earnings on the per capita payments, in gross income until the taxable year that the beneficiaries actually or constructively receive the amounts under § 451 and the regulations thereunder.

.02 Requirements for IGRA trusts.

(1) The Indian tribe has complied with the requirements of § 11(b)(3) of IGRA, 25 U.S.C. § 2710(b)(3), regarding the disbursement of per capita payments to members of the Indian tribe.

(2) All contributions to the trust are per capita payments disbursed under a revenue allocation plan that complies with the requirements of § 11(b)(3) of IGRA, 25 U.S.C. § 2710(b)(3).

(3) All beneficiaries of the trust are members of the Indian tribe that establishes the trust.

(4) Each trust beneficiary is a minor or legal incompetent at the time of the establishment of a trust interest for the beneficiary, and all contributions to the trust with respect to that beneficiary are made for the period that the beneficiary is a minor or legal incompetent.

(5) The trust is a valid trust under applicable federal, state, local, and tribal law and all of the material terms and provisions of the trust are enforceable under those laws.

(6) The governing trust instrument states that the trust is intended to be a grantor trust, that the Indian tribe is the grantor of the trust (within the meaning of subpart E), and that the trust shall be construed accordingly.

(7) The governing trust instrument grants to the Indian tribe a power, an interest, or a combination thereof, described in §§ 673 through 677, that would cause the Indian tribe to be treated as owner of the trust under subpart E.

(8) The governing trust instrument provides that—

(a) trust assets are not available to a beneficiary until the beneficiary attains a specified age or ceases to be a legal incompetent, except for distributions for the health, education, or welfare of the beneficiary made at the sole discretion of the trustee pursuant to the governing trust instrument;

(b) beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the trust; any rights created under the trust instrument shall be mere unsecured contractual rights of beneficiaries against the Indian tribe; and at all times during the continuance of the trust, the principal and income of the trust shall be subject to claims of general creditors of the Indian tribe under applicable federal, state, local, and tribal law;

(c) the trustee shall cease payments to beneficiaries and shall hold the assets of the trust for the benefit of the Indian tribe's general creditors throughout any period

during which the trustee believes or has reason to believe that the Indian tribe is unable to pay its debts as they become due, or is subject to a pending insolvency or bankruptcy proceeding;

(d) amounts payable to beneficiaries under the governing trust instrument may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution or other legal or equitable process; and

(e) the beneficiary's share will be paid to the Indian tribe if the beneficiary dies prior to attaining the specified age or legal competency, or alternatively the beneficiary dies prior to attaining the specified age or legal competency without one or more of the following relatives surviving: a spouse, parent, child, or sibling.

SECTION 6. AMPLIFICATION OF REV. PROC. 2003-3

.01 This revenue procedure amplifies section 4.01 of Rev. Proc. 2003-3, 2003-1 I.R.B., relating to areas in which ruling letters or determination letters will not ordinarily be issued, by adding the following new paragraphs:

Section 451.—General Rule for Taxable Year of Inclusion—The income tax consequences as a result of being a beneficiary of a trust that an Indian tribe (as defined in 25 U.S.C. § 2703(5)) establishes to receive and invest per capita payments for its members who are minors or legal incompetents under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701-2721), if the trust meets the requirements of section 5.02 of Rev. Proc. 2003-14.

Sections 671 through 679.—Grantors and Others Treated as Substantial Owners—Whether an Indian tribe (as defined in 25 U.S.C. § 2703(5)) that establishes a trust to receive and invest per capita payments for its members who are minors or legal incompetents under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701-2721) is the grantor and owner of the trust, if the trust meets the requirements of section 5.02 of Rev. Proc. 2003-14.

.02 This revenue procedure also amplifies section 5 of Rev. Proc. 2003-3, relating to areas in which rulings or determination letters will not be issued until the Service resolves the issue through publication of a revenue ruling, revenue procedure or otherwise, by adding the following new paragraphs:

Section 451.—General Rule for Taxable Year of Inclusion—The income tax consequences as a result of being a beneficiary of a trust that an Indian tribe (as defined in 25 U.S.C. § 2703(5)) establishes to receive and invest per capita payments for its members (regardless of whether they are minors or legal incompetents) under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701-2721) if the trust does not meet the requirements of section 5.02 of Rev. Proc. 2003-14.

Sections 671 through 679.—Grantors and Others Treated as Substantial Owners— Whether an Indian tribe (as defined in 25 U.S.C. § 2703(5)) that establishes a trust to receive and invest per capita payments for its members (regardless of whether they are minors or legal incompetents) under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701-2721) is the grantor and owner of the trust if the trust does not meet the requirements of section 5.02 of Rev. Proc. 2003-14.

SECTION 7. EFFECTIVE DATES

This revenue procedure (except section 6) is effective for taxable years beginning after December 31, 2001. Section 6 of this revenue procedure applies to requests for rulings received or pending in the national office on or after January 6, 2003.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2003-3 is amplified.

REQUEST FOR COMMENTS

The Service requests comments on this revenue procedure and on the application of the economic benefit doctrine to IGRA trusts that are not within the scope of this revenue procedure. Specifically, the Service requests comments concerning the type of trust provisions that preclude the application of the economic benefit doctrine.

Comments should be submitted by April 28, 2003 either to:
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
Attn: CC:PA:T:CRU (CC:ITA:4)
Room 5529

or electronically at: Notice.Comments@irs.counsel.treas.gov (the Service's comments e-mail address). All comments are available for public inspection and copying.

DRAFTING INFORMATION

The principal author of this revenue procedure is Elizabeth Kaye of the Office of the Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Kaye at (202) 622-4920 (not a toll free call).