

Rev. Rul. 60-96, 1960-1 C.B. 18, 1960 WL 13007 (IRS RRU)

Internal Revenue Service (I.R.S.)

Revenue Ruling

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Income directly derived from a homestead allotted to a member of the Cherokee Indian tribe under the provisions of the Act of July 1, 1902, Public Law 241, 32 Stat. 716, is, by the terms of section 13 of that Act, exempt from tax during the time such homestead is held by the original allottee, provided that such income is received by him or for his account.

The principle announced in the opinion of the Attorney General, 34 Op.A.G. 275, identified as T.D. 3570, C.B. III-1, 85 (1924), which has been modified by judicial decision, will not be followed to the extent that it holds that income from the homestead tract is exempt from tax to the Cherokee allottee for a period of only 21 years from the date of its selection.

The Internal Revenue Service has reconsidered the question of the period of nontaxability of homestead allotments held by Cherokee Indians, as set forth in Treasury Decision 3570, C.B. III-1, 85 (1924). In doing so, as is to be done in all cases involving interpretation of Indian treaties or statutes, weight has been given to the admonition of the Supreme Court of the United States in *Squire v. Horton Capoeman, et ux*, 351 U.S. 1, Ct. D. 1796, C.B. 1956-1, 605, that the courts will apply a presumption in favor of the Indians.

In Treasury Decision 3570, relative to tax-exempt lands allotted to individual members of the Five Civilized Tribes of Indians (among which are included the Cherokee), it is held that under the provisions of section 13 of the Act of July 1, 1902, Public Law 241, 57th Cong., 32 Stat. 716, there is exempt from tax to each Cherokee allottee a homestead tract while held by him, but not to exceed 21 years from the date of selection. It is further held therein that so long as the land is tax exempt, the income therefrom is also tax exempt.

Section 13 of that Act, which provided for the allotment of lands of the Cherokee Indian Nation, provides as follows:

SECTION 13. Each member of said tribe shall, at the time of the selection of his allotment, designate as a homestead out of said allotment land equal in value to forty acres of the average allotable lands of the Cherokee Nation, as nearly as may be, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the certificate of allotment. Separate certificate shall issue for said homestead. *During the time said homestead is held by the allottee the same shall be nontaxable and shall not be liable for any debt contracted by the owner thereof while so held by him.* [Italics supplied.]

In [\*Board of Commissioners of Tulsa County, Oklahoma v. United States\*, 94 Fed. \(2d\) 450](#), action was brought by the Government to recover from Tulsa County, Oklahoma, taxes which the county had exacted from a Cherokee allottee upon lands located there which were exempt from all taxation under the Act of July 1, 1902. The court held in its decision that Cherokee homesteads acquired under that Act are nontaxable as long as they are held by the allottee.

Treasury Decision 3570, *supra*, construes the phrase, 'not exceeding twenty-one years from the date of the certificate of allotment,' as used in that Act as a limitation to the period of nontaxability. A reconsideration of section 13, *supra*, leads to the conclusions that the 21-year limitation provided in that section applies only to the period during which the land held by the allottee shall be inalienable and that the allottee's homestead is nontaxable during the entire time it is held by the allottee. The position in Treasury Decision 3570 that the income from such homestead during the period of exemption is nontaxable will continue to be followed, but in accordance with the decision in *Squire v. Horton Capoeman*, *supra*, and [Revenue Ruling 56-342, C.B. 1956-2, 20](#), the exemption will be limited to income directly derived from the homestead, which is received by or for the allottee.

The word 'allottee' in the first sentence of section 13, *supra*, wherein the restrictions against alienation are limited to 'the lifetime of the allottee,' must mean the 'original allottee.' When used two sentences later in the provision, 'During the time said homestead is held by the allottee the same shall be nontaxable,' it should be given the same meaning. Furthermore, section 19 of the Act of April 26, 1906, Public Law 129, 59th Cong., 34 Stat. 137, provides, in pertinent part, with respect to allotted lands of the Five Civilized Tribes, 'That all lands upon which restrictions are removed shall be subject to taxation, and the other lands shall be exempt from taxation *as long as the title remains in the original allottee.*' [Italics supplied.] It is therefore concluded that the exemption afforded Cherokee homestead allotments under the Act of July 1, 1902, applies only while they are held by the original allottees.

Accordingly, it is held that income directly derived from a homestead allotted to a member of the Cherokee Indian tribe under the provisions of July 1, 1902, is, by the terms of section 13 of that Act, exempt from tax during the time such homestead is held by the original allottee, provided that such income is received by him or for his account.

The principle announced in the opinion of the Attorney General, 34 Op.A.G. 275, (1926) identified as Treasury Decision 3570, *supra*, which has been modified by judicial decision, will not be followed to the extent that it holds that the income from the homestead tract is tax exempt to the Cherokee allottee for a period not to exceed 21 years from the date of its selection.

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