



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

OFFICE OF THE CHIEF COUNSEL

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Attention:

Dear \_\_\_\_\_ :

This letter responds to your request for specific information regarding the taxation of specific settlement proceeds dated September 19, 2017.

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. 2018-1, 2018-1 I.R.B. 1 (updated annually). We can provide you with the following general information which might be relevant.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2018-1, § 2.04, 2018-1 IRB 9 (Jan. 2, 2018).

Generally, Indian tribes are not taxable entities under the income tax provisions of the Internal Revenue Code. Rev. Rul. 94-16 (citing Rev. Rul. 67-284). However, as discussed below, tribal members are subject to federal income tax like other citizens of the United States.

Internal Revenue Code (IRC) § 61 provides that, except as otherwise provided by law, gross income means all income from whatever source derived. Under IRC § 61, Congress intends to tax all gains and undeniable accessions to wealth, clearly realized, over which taxpayers have complete dominion. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955). Citizens of the United States generally are taxed on income unless the income is specifically excluded. *Specking v. Comm'r*, 117 T.C. 95, 101-102 (2001), *aff'd sub nom. Haessly v. Comm'r*, 68 Fed. Appx. 44 (9th Cir. 2003), *aff'd sub nom. Umbach v. Comm'r*, 357 F.3d 1108 (10th Cir. 2003). Exclusions from income are

construed narrowly and taxpayers must bring themselves within the clear scope of the exclusion. *Comm'r v. Schleier*, 515 U.S. 323, 328 (1995).

### ***Squire v. Capoeman***

Indians are U.S. citizens subject to the requirement to pay income taxes. *Squire v. Capoeman*, 351 U.S. 1 (1956) (*Squire*). An exemption of individual Indians from the payment of tax must derive plainly from treaties, agreements with the Indian tribes concerned, or an act of Congress. *Id.*; Rev. Rul. 67-284 (discussed further *infra*).

*Squire* addressed whether the gain from the sale of timber from restricted allotted land held in trust<sup>1</sup> for a “noncompetent” Indian<sup>2</sup> under the General Allotment Act was subject to federal income tax. Section 6 of the General Allotment Act authorized the Department of the Interior (DOI) to issue a patent in fee simple to any allottee competent of managing his own affairs. *Squire* at 7. Afterwards, all restrictions on taxation of that allotted land are removed. *Id.* The Court concluded the language of section 6 of the General Allotment Act reflected “a congressional intent to subject an Indian allotment to all taxes only after a patent in fee is issued to the allottee.” *Id.* at 8. Until then the restricted allotted land is not subject to taxes. *Id.* The Court held income directly derived from restricted allotted land is not subject to tax but reinvestment income (income derived from investment of surplus income from land, *i.e.*, income on income) is subject to tax. *Id.* at 9.

### ***Rev. Rul. 67-284***

Absent a provision in a treaty or statute to the contrary, income directly derived by a member of an Indian tribe from unallotted Indian tribal lands is subject to Federal income tax. Under Rev. Rul. 67-284, the Service will recognize the exempt status of income received by an enrolled member of an Indian tribe where 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;<sup>3</sup>

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<sup>1</sup> Allotted land is either “trust land” or “restricted land” but the two terms are functionally the same. See *U.S. v. Ramsey*, 271 U.S. 467, 470 (1926); *U.S. v. Pelican*, 232 U.S. 442, 447 (1914); see also Cohen’s Handbook of Federal Indian Law § 16.03[1] (Nell Jessup Newton ed., 2012): “Allotment is a term of art in Indian law, describing either a parcel of land owned by the United States in trust for an Indian (“trust” allotment) or owned by an Indian subject to a restriction on alienation in the United States or its officials (“restricted” allotment). . . . In practice [DOI] has treated the two forms of tenure [restricted and trust] identically for virtually all purposes.” (footnotes with citations omitted).

<sup>2</sup> “A noncompetent Indian is one who holds allotted lands only under a trust patent and may not dispose of his property without the approval of the Secretary of [DOI].” *Stevens v. Comm’r*, 452 F.2d 741, 742 n.1 (9th Cir. 1971).

<sup>3</sup> Rev. Rul. 67-284 states the following are directly derived from the land: rentals (including crop rentals), royalties, proceeds from the sale of the natural resources of the land, income from the sale of crops grown upon the land and

- (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.

Rev. Rul. 67-284. 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.

### ***Indian Tribal Judgment Funds Use or Distribution Act***

The Indian Tribal Judgment Funds Use or Distribution Act, 25 U.S.C. §§ 1401-1408 (Judgment Act), concerns the distribution of certain judgment funds to Indian tribes. All use or distribution of funds appropriated in satisfaction of a judgment of the Indian Claims Commission or the United States Court of Federal Claims in favor of “any Indian tribe, band, group, pueblo, or community (hereinafter referred to as ‘Indian tribe’),” together with any investment income earned thereon, after payment of attorney fees and litigation expenses, shall be made pursuant to the provisions of the Judgment Act. 25 U.S.C. § 1401(a). None of the funds which are distributed per capita or held in trust pursuant to a plan approved under the provisions of the Judgment Act, including all interest and investment income accrued thereon while such funds are so held in trust, are subject to federal income taxes. 25 U.S.C. § 1407. See Notice 2012-60 (numerous notices supersede, modify and supersede, and update Notice 2012-60 to add additional Indian tribes the United States has entered into settlement agreements regarding alleged mismanagement of monetary assets and natural resources held in trust for the benefit of the tribes – e.g., Notice 2017-2).

### ***Per Capita Act***

DOI is responsible for holding in trust certain funds received on behalf of federally recognized Indian tribes (tribal Trust funds). 25 C.F.R. §§ 115.002, 115.700-703. DOI deposits tribal Trust funds into tribal Trust Accounts.<sup>4</sup> 25 C.F.R. §§ 115.002, 115.701. Prior to the enactment of the Per Capita Act, 25 U.S.C. §§ 117a-117c, DOI had the sole authority to make per capita distributions out of tribal Trust Accounts. The Per Capita Act provided Indian tribes the authority to make per capita distributions directly to members of the tribe out of the tribe’s tribal Trust Account. 25 U.S.C. § 117a. Per capita distributions of tribal Trust funds made pursuant to 25 U.S.C. § 117a are subject to the provisions of § 1407 of the Judgment Act. 25 U.S.C. § 117b(a). Thus, per capita distributions from tribal Trust Accounts are generally excluded from the gross income of

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from the use of the land for grazing purposes, and income from the sale or exchange of cattle or other livestock raised on the land.

<sup>4</sup> Tribal Trust Accounts consist of tribal Trust funds not individual Indian funds. 25 C.F.R. §§ 115.002, 115.700-703.

the members of the tribe receiving these per capita distributions. Notice 2015-67<sup>5</sup>; *but see* IRC § 3402(r); 25 U.S.C. §§ 2701-2721; 25 C.F.R. Pt. 290.

### ***Cobell Settlement and the Claims Resolution Act of 2010***

In 1996, a class action suit was filed alleging breach of fiduciary duties by DOI managing individual Indians class members' Individual Indian Money (IIM) trust accounts.<sup>6</sup> *Cobell v. Salazar*, 679 F.3d 909, 913 (D.C. Cir. 2012). The bulk of the trust assets were proceeds of various transactions in land allotted to individual Indians under the General Allotment Act. *Id.* The parties agreed to settle the case. Congress enacted the Claims Resolution Act of 2010 (CRA), 124 Stat. 3064 (Dec. 8, 2010), which authorized, ratified, and confirmed the *Cobell* settlement. CRA § 101(c)(1). CRA § 101(f)(1) provides amounts received pursuant to the *Cobell* settlement are not included in income. If the CRA had not been enacted, it is not clear the extent to which the amounts received under the *Cobell* settlement would have been excluded from income.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2018-1, § 2.04, 2018-1 IRB 9 (Jan. 2, 2018). If you have any additional questions, please contact our office at (202) 317-4541.

Sincerely,

Andrew F. Megosh, Jr.  
Senior Tax Law Specialist  
Office of the Associate Chief Counsel  
(Tax Exempt and Government Entities)  
Exempt Organizations Branch 2

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<sup>5</sup> Distributions from a tribal Trust Account constitute gross income under IRC § 61 to the member of the tribe receiving the distributions if a tribal Trust Account is used to mischaracterize what would otherwise be taxable income as nontaxable per capita distributions – *e.g.*, mischaracterized compensation to tribal members for their services, mischaracterized distributions of business profits, or mischaracterized gaming revenues. Notice 2015-67.

<sup>6</sup> "Individual Indian Money (IIM)" accounts, which are under the control and management of DOI, are accounts for trust funds held by DOI that belong to a person who has an interest in trust assets. 25 C.F.R. §§ 115.002, 115.701. "Trust funds" means money derived from the sale or use of trust lands, restricted fee lands, or trust resources and any other money that the Secretary must accept into trust. 25 C.F.R. §§ 115.002, 115.702-703. "Trust assets" mean trust lands, natural resources, trust funds, or other assets held by the federal government in trust for Indian tribes and individual Indians. 25 C.F.R. §§ 115.002. IIMs are different and distinct from tribal Trust Accounts. *Id.*