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**From:** [REDACTED]

**Sent:** Tuesday, January 31, 2017 2:00:24 PM

**To:** [REDACTED]

**Cc:**

**Bcc:**

**Subject:** 3402(r) requires income tax withholding from IGRA trust payments

Hi ,

Thanks for asking about the application of Internal Revenue Code (IRC) section 3402(r). Let me know if you have questions about the response below.

Question: Does the income tax withholding requirement of IRC section 3402(r) apply to payments from a trust that satisfies the safe harbor of Rev. Proc. 2011-56?

Answer: Yes.

Rev. Proc. 2011-56 provides a safe harbor for Indian tribes to establish trusts for tribal members who are minors or legally incompetent for the distribution of gaming revenues under the Indian Gaming Regulatory Act (IGRA). Under the safe harbor, beneficiaries of an IGRA trust are not required to include amounts in gross income under the economic benefit doctrine when transferred to, or earned by, the IGRA trust, but must include trust distributions in income when actually or constructively received.

Section 3402(r) provides: "Every person, including an Indian tribe, making a payment to a member of an Indian tribe from the net revenues of [certain] gaming activities conducted or licensed by such tribe shall deduct and withhold from such payment [income taxes]."

This income tax withholding requirement of section 3402(r) applies to amounts paid from a trust that satisfies the safe harbor of Rev. Proc. 2011-56 in the year in which it is included in gross income.

In fact, the income tax withholding requirement of section 3402(r) applies to all payments of revenue from the specified gaming activities, regardless of whether the payment is made from a trust, by an Indian tribe, or by any other payor.

Thanks,