

**Office of Chief Counsel  
Internal Revenue Service  
Memorandum**

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subject: Gaming Revenues to Minors

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Tribe =  
x =

ISSUE

Are tribal gaming revenues that Tribe distributes as per capita payment pursuant to its revenue allocation plan to (or on behalf of) a child (as defined in § 1(g)(2) of the Internal Revenue Code) who is a member of Tribe “unearned income” under § 1(g)(4)?

CONCLUSION

Tribal gaming revenues that Tribe distributes as per capita payment pursuant to its revenue allocation plan to (or on behalf of) a child (as defined in § 1(g)(2)) who is a member of Tribe are “unearned income” under § 1(g)(4).

## FACTS

Tribe distributes gaming revenues to its members pursuant to its revenue allocation plan, which under the Indian Gaming Regulatory Act<sup>1</sup> are per capita payments and subject to federal income tax. See 25 U.S.C. § 2710(b)(3) which provides that net revenues from any class II 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, among other requirements, the Indian tribe has prepared a plan to allocate revenues to certain uses and the per capita payments are subject to federal taxation and tribes notify members of such tax liability when payments are made. Tribe regularly makes per capita payments of gaming revenue to members of Tribe who are minors of \$x a year.

A tax preparer who has prepared Tribe members' federal income tax returns asserts that these per capita payments of gaming revenues paid to or on behalf of a member of Tribe who is a child are "earned income" for purposes of § 1(g).

## LAW AND ANALYSIS

Section 1(g)(1) provides that in the case of a child to whom § 1(g) applies, the tax imposed by § 1 is equal to the greater of the (A) the tax imposed by § 1 without regard to § 1(g) or (B) the sum of (i) the tax that would be imposed by § 1(g) if the taxable income of the child for the taxable year were reduced by the child's net unearned income plus (ii) the child's share of the allocable parental tax.

Section 1(g)(3)(A) defines the term "allocable parental tax" to mean the excess of (i) the tax that would be imposed by § 1 on the parent's taxable income if that income included the net unearned income of all children of the parent to whom § 1(g) applies over (ii) the tax imposed by § 1 on the parent without regard to § 1(g).

Section 1(g)(3)(B) provides that a child's share of any allocable parental tax of a parent equals an amount that bears the same ratio to the total allocable parental tax as the child's net unearned income bears to the aggregate net unearned income of all children the parent to whom § 1(g) applies.

Section 1(g)(4) defines net unearned income as the excess of the portion of the adjusted gross income for the taxable year that is not attributable to earned income as defined in § 911(d)(2) over the sum of the amounts described in § 1(g)(4)(ii)(I) and (II).

Section 911(d)(2)(A) states that the term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a

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<sup>1</sup> Pub. L. No. 100-497, 102 Stat. 2467 (IGRA).

distribution of earnings or profits rather than a reasonable allowance as compensation for personal services actually rendered.

Section 911(d)(2)(B) states that in the case of a taxpayer actually engaged in a trade or business in which both personal services and capital are material income-producing factors, under regulations prescribed by the Secretary, a reasonable allowance as compensation for personal services actually rendered by the taxpayer, not in excess of 30 percent of his share of the net profits of such trade or business, shall be considered as earned income.

Section 1.1(i)-1T, Q&A 6 of the temporary Income Tax Regulations provides that net unearned income is the excess of the portion of the gross income for the taxable year that is not “earned income” as defined in § 911(d)(2) (income that is not attributable to wages, salaries, or other amounts received as compensation for personal services) over the sum of the standard deduction provided for under § 63(c)(5)(A), plus the greater of (A) \$500 (adjusted for inflation after 1988) or (B) the amount of allowable itemized deductions that are directly connected with the production of unearned income.<sup>2</sup>

Under 25 C.F.R. § 290.2, the term “per capita payment” means the distribution of money or other thing of value to all members of the tribe, or to identified groups of members, which is paid directly from the net revenues of any tribal gaming activity.

A member of Tribe who is a child (as defined in § 1(g)(2)) does not receive the per capita payments of gaming revenues of \$x per year under Tribe’s revenue allocation plan as compensation for personal services rendered or actually rendered under § 911(d)(2)(A) or (B). Rather, a member of Tribe who is a child receives the per capita payment of \$x per year due to his or her status as a member of Tribe, without regard to whether he or she renders personal services. See 25 C.F.R. § 290.2, above, defining the term per capita payments.

Therefore, Tribe’s per capita payments of Tribe’s gaming revenues made pursuant to its revenue allocation plan paid to or on behalf of a child (as defined in § 1(g)(2)) who is a member of Tribe are not earned income of that child under § 911(d)(2)(A) or (B). Consequently, these per capita payments are income that is not attributable to earned income under § 1(g)(4)(A). Section 1(g), § 911, and the temporary and final regulations under those sections do not provide any support for the position that these per capita payments to a member of Tribe who is a child are earned income for purposes of § 1(g).

Please call Suzanne R. Sinno or me at (202) 317-4718 if you have any further questions.

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<sup>2</sup> These temporary regulations were issued prior to the time that §1(i) was redesignated as current § 1(g) by § 11101(d)(2) of the Omnibus Budget Reconciliation Act of 1990. Pub. L. No. 101-508, 104 Stat. 1388.