

Revenue Ruling 67-284

SECTION 61. - GROSS INCOME DEFINED

26 CFR 1.61-1: Gross income.

1967-2 Cumulative Bulletin 55; Revenue Ruling 67-284

July, 1967

Principles applicable to the Federal income tax treatment of income paid to or on behalf of enrolled members of Indian tribes.

Revenue Ruling 62-16, Cumulative Bulletin 1962-1, 7, modified.

The Internal Revenue Service has been requested to set for the general principles applicable to the Federal income tax treatment of income paid to or on behalf of enrolled members of Indian tribes.

I. General Tax Status of Indians.

There is no provision in the Internal Revenue Code of 1954 which exempts an individual from the payment of Federal income tax solely on the ground that he is an Indian. Therefore, exemption of Indians from the payment of tax must derive plainly from treaties or agreements with the Indian tribes concerned, or some act of Congress dealing with their affairs. See Revenue Ruling 54-456, Cumulative Bulletin 1954-2, 49, and the cases cited therein.

Similarly, in considering the general tax status of Indians, the Supreme Court of the United States in its decision in *Squire v. Capoeman*, cited and discussed below, stated: "We agree with the Government that Indians are citizens and that in ordinary affairs of life, not governed by treaties or remedial legislation, they are subject to the payment of income taxes as are other citizens."

II. Basic Categories of Income.

Two basic categories of income are not subject to Federal income tax, to wit, where a treaty, agreement or act of Congress expressly provides that income is not subject to tax, and where income is derived directly from restricted allotted land held under circumstances discussed below.

The issue in *Squire v. Capoeman*, 351 U.S. 1 (1956), Ct. D. 1796, Cumulative Bulletin 1956-1, 605, was whether the gain from the sale of timber from restricted allotted lands, held in trust for a noncompetent Indian under the General Allotment Act of 1887, 24 Stat. 388, 25 U.S.C. 331 et seq., was subject to Federal income tax. The General Allotment Act had begun a new era in Federal Indian policy whereby tribal lands were to be divided and allotted to members of the tribe. The allotments were to be held in trust by the Government for 25 years or longer if the President deemed an extension desirable and then transferred to the allottee discharged of Government trusteeship "free of all charge or encumbrance whatsoever." The purpose of the act was to protect the Indians' interest and to prepare the Indians to take their place as independent qualified members of the modern body politic.

Section 6 of the act included a proviso authorizing the Secretary of the Interior to issue a patent in fee simple to any allottee competent of managing his own affairs, "and thereafter all restrictions as to sale, encumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent * * *" 25 U.S.C. 349. The Court concluded that the literal language of the proviso evinces a congressional intent to subject an allotment to all taxes only after a patent in fee is issued, and implies that until the patent is issued, the allotment is to be free from all present and future taxes.

In holding that the income in question was not subject to Federal income tax, the Court concluded that to deny exemption would thwart the congressional intent manifested in the Allotment Act of not subjecting to the burdens of taxation proceeds from the allotment until the Indian had been emancipated and had received his title in fee for the land.

It is thus the position of the Service that income derived directly by a noncompetent Indian from allotted and restricted land held under the General Allotment Act or derived directly from land held under acts or treaties containing an exception provision similar to the General Allotment Act is not subject to the Federal income tax. See Revenue Ruling 59-349, Cumulative Bulletin 1959-2, 16, and Revenue Ruling 63-244, Cumulative Bulletin 1963-2, 21.

The Service will therefore recognize the exempt status of income received by an enrolled member of an Indian tribe where each of the following tests are 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 "derived directly" from the land; (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. 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.

III. Exempt Income - Restricted Allotted Land.

Income held by the Court in *Capoeman* to be exempt from tax was categorized as income "derived directly" from the allotted and restricted lands. In Revenue Ruling 56-342, Cumulative Bulletin 1956-2, 20, as amplified by Revenue Ruling 62-16, Cumulative Bulletin 1962- , 7, this holding was interpreted to mean that income exempt under the *Capoeman* decision includes: 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 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. Proceeds from the sale of restricted allotted land while the fee title is still held by the Government in trust for the Indian are also exempt from tax. Revenue Ruling 57-407, Cumulative Bulletin 1957-2, 45.

Income derived from reinvesting income which is exempt under the five tests set forth in section II above is not exempt. To be exempt, income must be directly derived or attributable to the use or exploitation of the allotted land. See *Superintendent of Five Civilized Tribes v. Commissioner*, 295 U.S. 418 (1935), Ct. D. 974, Cumulative Bulletin XIV-1, 158 (1935). Income from a trust allotment rented from another Indian is not exempt. Revenue Ruling 57-523, Cumulative Bulletin 1957-2, 51.

IV. Transfer of Restricted Allotted Land.

Income exempt under the five tests set forth in section II above remains exempt when the allotment is transferred to another noncompetent Indian by gift, devise or inheritance, even though the transferee may be of mixed Indian blood. See Revenue Ruling 57-523 and Revenue Ruling 62-16. Nor does the exemption cease when restricted allotted land is voluntarily exchanged for restricted allotted land of like value, when such exchange is authorized by the Secretary of Interior.

In Revenue Ruling 62-16, it was held that unless otherwise provided by law, income from allotted land is not exempt where the Indian obtains his interest in the exempt land through an arm's length purchase. This position has been reconsidered in view of transactions by Indians regarded as unable to handle their own affairs to make intrafamily transfers of allotments or to assist needy Indians in acquiring small amounts of land where the purchase money consisted of restricted funds. The Service now concludes that income will ordinarily retain its exempt status when restricted allotted land is acquired for the above purposes by Deed Form 5-183b, unless the facts and circumstances clearly show the transfers were not made for such purposes. Revenue Ruling 62-16, Cumulative Bulletin 1962-1, 7, is modified to the extent inconsistent herewith.

Once an Indian has received a fee title to the land, the exempt status of income derived directly therefrom ends. See Revenue Ruling 58-341, Cumulative Bulletin 1958-2, 400, which discusses basis problems where the land is sold subsequent to being conveyed in fee simple to an Indian.

V. Tax Status of Tribes; Tribal Income.

Income tax statutes do not tax Indian tribes. The tribe is not a taxable entity. Tribal income not otherwise exempt from Federal income tax is includible in the gross income of the Indian tribal member when distributed or constructively received by him. See *Choteau v. Commissioner*, 283 U.S. 691 (1931), Ct. D. 352, Cumulative Bulletin X-1, 355 (1931). Amounts paid to tribal council members or officers are subject to income tax. Revenue Ruling 59-354, Cumulative Bulletin 1959-2, 24; *Commissioner v. Walker*, 326 F. (2d) 261 (1964).

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. Revenue Ruling 58-320, Cumulative Bulletin 1958-1, 24; *Bentley L. Holt*, 44 T.C. 686 (1965), affirmed 364 F. (2d) 38 (1966), certiorari denied, 386 U.S. 931 (1967). op of Form 2