



Income Tax Guide for Native American Individuals and Sole Proprietors

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Introduction

Federally recognized Indian tribal governments aren't subject to federal income tax but they must pay employment tax on wages paid to employees. Members of a federally recognized Indian tribe are subject to federal income and employment tax and the provisions of the Internal Revenue Code (IRC), like other United States citizens.

Determinations on taxability must be based on a review of the IRC, treaties and case law. Rev. Rul. 67-284, 1967-2 C.B. 55 states there is no provision in the IRC exempting amounts received by an "individual" from federal income tax solely on the grounds that the individual is a member of a federally recognized Indian tribe. In addition to the exemptions enjoyed by other U.S. Citizens, individual Indians may enjoy exemptions that derive plainly from treaties or agreements with the Indian tribes concerned, or some act of Congress dealing with their affairs.

This publication:

- Discusses the taxability of common income types,
- Provides resources for more information, and
- Provides guidance on reporting income on the individual's federal income tax return and the correct terminology to use to identify the income source on the return. These identifiers help ensure that income is correctly interpreted during the return processing.

Earned Income and Investment Income

Wages/Self-Employment Income

In most situations, members of federally recognized tribes who work for an employer or who are self-employed are subject to federal income taxes on wages and self-employment income earned. The amount received from an employer (Form W-2 wages) is reported on the "wages" line of the individual's tax return, while self-employment income is reported on Schedule C, Profit or Loss From Business. They are subject to both income and FICA tax (including self-employment tax). Generally, your employer must:

- Withhold the employee's share of taxes under the Federal Insurance Contributions Act (FICA),
- Withhold federal income tax from employees' wages, and
- Pay federal employment taxes on wages paid to employees.

Note: IRC Section 7873 provides an exemption for income earned from the exercise of treaty-based fishing rights.

Tip Income

Tip income is fully taxable, regardless of the source, and tips reported to the employer must be included on the employee's Form W-2, Wage and Tax Statement. If an employee receives \$20 or more a month in cash tips, they must report 100% of those tips to the employer through a written report. Cash tips include tips paid by cash, check, debit card and credit card. The written report should include tips paid to the employee for charge customers, tips received directly from customers and tips received from other employees under any tip sharing arrangement. Tips not reported to the employer must be shown separately on the employee's Form 1040, U.S. Individual Income Tax Return, and Form 4137, Social Security and Medicare Tax on Unreported Tip Income, must be attached.

For more information read [Publication 531](#), Reporting Tip Income, [Publication 3148](#), Tips on Tips - A Guide to Tip Income Reporting for Employees Who Receive Tip Income, and [Publication 1244](#), Employee's Daily Record of Tips and Report of Tips to Employer.

Passive Income

All forms of passive income are taxable unless excludable by law. There are two kinds of passive activities:

1. Trade or business activities in which you do not materially participate during the year, and
2. Rental activities.

See [Publication 925](#), Passive Activity and At-Risk Rules, for more information.

Investment Income

Income earned from investments, including interest, dividends, royalties, annuities and capital gains, is generally includible in gross income and is taxable.

Almost everything you own and use for personal or investment purposes is a capital asset. Examples are your home, household furnishings and stocks or bonds. When you sell a capital asset, the difference between the amounts you sell it for and your basis, which is usually what you paid for it, is a capital gain or a capital loss.

This must be distinguished from income earned from the use of restricted individual allotments that are held in trust by the U.S. government. There is a limited exception from tax for income directly derived from allotted land held in trust. See ["Income Exempt from Federal Taxes"](#) for additional information.

All income earned from reinvestments (regardless of whether the reinvested money was taxable or nontaxable) is generally includible in gross income subject to federal income tax.

The following table provides information on the most common types of earned and investment income.

Type of Income	Taxable	Where Reported	Reference
Wages received as an employee, Form W-2	Yes	"Wages, salaries, tips" line on Form 1040	Rev. Rul. 67-284, 1967-2 C.B. 55
Tips from casinos and other sources – reported to the employer	Yes	"Wages, salaries, tips" line on Form 1040	Publication 531 , Reporting Tip Income
Tips from casinos and other sources – not reported to the employer	Yes	Form 4137, attach to Form 1040	Employee must file Form 4137 if cash and charge tips totaling \$20 or more in a calendar month were not reported to the employer. The \$20 rule applies separately to the tips received while working for each employer and not to the total received. Also, must file if Form W-2, box 8 shows allocated tips that must be reported as income.

Type of Income	Taxable	Where Reported	Reference
Amounts paid to Indian Tribal Council members	Yes	Appropriate "wages" line on Form 1040	Income is listed on the individual's W-2. Although includible in gross income, these amounts do not constitute "wages" for purposes of: <ul style="list-style-type: none"> • FICA, • FUTA, and • federal income tax withheld. <u>Rev. Rul. 59-354, 1959-2 C. B. 24</u> IRC Section 3121(b)(22)
Amounts paid to Indian Tribal Council members covered by a 218A Agreement	Yes	Appropriate "wages" line on Form 1040	Income is listed on the individual's W-2. Although includible in gross income, these amounts do not constitute "wages" for the purposes of: <ul style="list-style-type: none"> • FUTA, and • federal income tax withheld. <u>Rev. Rul. 59-354, 1959-2 C. B. 24</u> These amounts are wages for FICA purposes. IRC Section 3121(d)(4)
In business for yourself; self-employed	Yes	Form 1040 Schedule C and Schedule SE	<u>Publication 334, Tax Guide for Small Business (For Individuals Who Use Schedule C)</u>
Reinvested "exempt" income	Yes	Form 1040 and any applicable return or schedule based on the character of the investment	Superintendent of Five Civilized Tribes v. Commissioner, 295 U.S. 418 (1935)
Income from trust land leased from the tribe or another Indian (for example, cattle ranching on tribal trust land used under grazing permits)	Yes	Form 1040 and any applicable return or schedule based on the character of the income	Has been held taxable on the ground that the individual Indian has no present or potential ownership interest. Holt v. Commissioner, 364 F.2d 38 (8th Cir. 1966), cert. denied, 386 U.S. 931 (1967)
Income from allotted land that has been removed from trust	Yes	Form 1040 and any applicable return or schedule based on the character of the income	Income earned from the land, or gains derived from sale of the land, is fully taxable once the allotted land is removed from trust. Shepard v. U.S., 162 F. Supp. 313, 315 – 316 (E.D. Wis. 1958)
Income from logging operations on reservation lands held in trust for the tribe	Yes	Form 1040 and any applicable return or schedule based on the character of the income	Fry v. U.S., 557 F.2d 646 (9th Cir. 1977), cert. denied 434, U.S. 1011 (1978)

Distributions

Per Capita Distributions

The distribution of money or other things of value to all members of the tribe that are paid directly from the net revenues of any tribal gaming activity or other sources of income, such as income derived from unallotted common tribal lands is generally taxable and is usually reported by the tribe on Form **1099-MISC**, Miscellaneous Income.

However, per capita distributions made from funds the Secretary of the Interior holds in a tribal trust account are generally excluded from the gross income of the members of the tribe receiving the per capita distributions. See **Notice 2015-67**.

Tribal members report taxable per capita distributions on Form 1040, Schedule 1, Additional Income and Adjustments to Income, on the line item "other income." We suggest you describe the type of income on the blank space on the "other income line" for example, "Indian gaming proceeds," "Indian gaming per capita distribution" or "non-gaming business proceeds." Report any applicable withholding shown on Form 1099-MISC as "federal income tax withheld" on Form 1040.

General Welfare Distributions

General welfare distributions are payments the tribe has set aside for special purposes or programs, such as payments made for social welfare, medical assistance, education, housing or other similar specifically identified needs. **Under the Tribal General Welfare Exclusion Act of 2014, IRC Sections 139D and 139E, Rev. Proc. 2014-35 and Notice 2015-34 such payments are excludable from gross income if certain criteria are met.** Generally, the tribe will not have to issue a Form 1099 for a general welfare payment to individual Indians.

Income Exempt from Federal Taxes

The exclusion of an amount from gross income for federal income and employment tax purposes must derive plainly from treaties or agreements with the Indian tribes concerned, or some act of Congress dealing with their affairs. The following table summarizes the treatment of the most common types of exempt income.

Income	Reference
Per capita payments from funds and the Secretary of the Interior holds in a tribal trust account	25 U.S.C. Section 117b(a) and 25 U.S.C. Section 1407; Notice 2015-67
General welfare doctrine distributions	Payments made under social benefit programs for promotion of the general welfare may be excludable from gross income. See the Tribal General Welfare Exclusion Act of 2014, IRC Section 139E, Notice 2015-34, Rev. Proc. 2014-35
Certain benefit payments	Payments made from funds under both Title II-A of the Economic Opportunity Act of 1964 and Manpower Development and Training Act of 1962 to unemployed and underemployed residents of an Indian reservation. Rev. Rul. 68-38, 1968-1 C. B. 446

Income	Reference
Income derived by Indians from exercise of treaty-based fishing rights	No tax is imposed on income derived by a member of an Indian tribe directly or through a qualified Indian entity or by a qualified Indian entity from a fishing rights-related activity of the tribe. This applies to federal income and self-employment taxes, and to employment taxes, including Social Security, Medicare and unemployment tax. IRC Section 7873
Income derived directly from allotted and restricted Indian lands	<p>Income derived from the land is exempt if:</p> <ol style="list-style-type: none"> (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. <p>All five tests must be met, or the income is taxable.</p> <p>This includes income from certain rentals (including crop rentals), royalties, proceeds of sales of the natural resources of the land, and income from the sale of crops grown on the land and from the use of the land for grazing purposes. Rev. Rul. 67-284, 1967-2 C.B. 55; Rev. Rul. 62-16, 1962-1 C.B. 7; Rev. Rul. 56-342, 1956-2 C.B. 20</p>
Income from allotted lands under certain programs administered by the Stabilization and Conservation Service of the Department of Agriculture or similar programs	<p>The nature of the payment and the program under which it was issued determine taxability. Note: If you receive a Form 1099-G, Certain Government Payments, list the amount on Schedule F with a note that you are a member of a federally recognized tribe and refer to Rev. Rul. 69-289, and then back the amount out of income.</p> <p>If you receive an IRS notice, but do not need to file, respond with the same note. Rev. Rul. 69-289, 1969-1 C.B. 34</p>
Income directly derived from the sale of reindeer or reindeer products by Alaskan natives	The Reindeer Industry Act of 1937 (P.L. 75-413 Chapter 897), P.L. No. 99-514, 100 Stat. 2085, 2873 (Oct. 22, 1986), Section 1709 and Hadley v. U.S. 1993 U.S. Dist. LEXIS 13467 (D. Alaska, 1993)