Larry's Tax Law

Per Capita Distributions from Trust Funds to Indian Tribes and Members - IRS Notice 2014-17

By Larry Brant on 4.9.14 | Posted in Per Capita Distributions

On March 10, 2014, the Internal Revenue Service ("Service") issued Notice 2014?17 ("Notice"). The Notice focuses on the tax treatment of per capita distributions made to members of Indian tribes from funds previously held in trust by the Secretary of the Interior and which were derived from interests in trust lands, trust resources and/or trust assets.

The Department of Interior ("DOI") is responsible for holding these trust funds on behalf of federally-recognized tribes and certain individual Indians who have an interest in trust lands, trust resources, or trust assets. The Office of Special Trustee within the DOI is tasked with the responsibility of managing these funds.

Prior to 1983, the DOI made per capita distributions of the trust funds directly to the members of the tribes. In 1983, pursuant to the Per Capita Act, however, tribes were given authority to receive the trust funds and hold them in tribal trust accounts for subsequent per capita distributions to members. So, now the DOI can distribute the trust funds to the tribes who, in turn, make the per capita distributions to members.

The law appears fairly clear in that per capita distributions of these funds from the DOI to tribal members are excluded from gross income. The issue, following the enactment of the Per Capita Act, is whether per capita distributions received by members from their tribes are likewise excludable from gross income.

In the Notice, the Service concludes, pursuant to 25 USC § 117b(a) and § 1407, per capita distributions from the DOI trust account for the benefit of a tribe are generally excluded from the gross income of the members who subsequently receive the per capita distributions from the tribe's trust account. There is an exception, however, to this rule. If the tribe's trust account is being used to "mischaracterize taxable income as nontaxable per capita distributions," the distributions will be taxable. In other words, based upon the facts and circumstances, if the distributions are, in reality, not per capita distributions to members, they will be taxable. The Notice highlights three situations where distributions were disguised as per capita distributions of trust funds, but were really compensation for tribal member services, profits from tribal business activities, or gaming revenues, all of which are taxable to the members.

For illustrative purposes, the Notice sets forth three examples:

- **In Example 1**, the Service describes the situation where two tribal members manage a federally-recognized tribe's housing authority. In 2011, 2012, and 2013, they each receive a salary and bonus of **X** amount. In 2014, rather than pay a bonus of **X** amount to the two tribal members, the tribe authorizes a distribution out of the trust account to each of them in an amount equal to **X**. The distributions are taxable to the two recipients. They are, in reality, compensation which constitutes taxable income. They do not constitute per capita distributions of the DOI trust funds.

- **In Example 2**, a federally-recognized tribe owns a corporation which operates an information technology business. The corporation's offices are located on land held in trust by the DOI for the benefit of the tribe. The tribe charges the corporation fair market value rent for the offices. The lease, however, provides that the corporation deposit into the tribe's trust account as "additional rent" an amount approximating its net revenues. Thereafter, the tribe distributes to the members per capita an amount equal to the "additional rent." The distributions are taxable to the recipients. They are, in reality, business profits which constitute taxable income.

- **In Example 3**, a federally-recognized tribe owns a corporation which operates a casino on land held in trust by the DOI for the tribe's benefit. Fifty percent (50%) of the corporation's net revenues are distributed to the tribe outside of trust. The remaining 50% of net revenues are placed in the tribe's trust account and labeled "rent" for the corporation's use of the land upon which the casino operates. Thereafter, the tribe distributes the trust funds per capita to its members. The distributions are taxable to the members. They are, in reality, gaming revenues which constitute taxable income.

The Notice is designed to provide interim guidance until the Service issues what is called a "Final Notice." You may submit written comments on or before **September 17, 2014**, to:

Internal Revenue Service

CC:PA:LPD:PR (NOTICE 2014-17)

Room 5203

PO Box 7604

Benjamin Franklin Station

Washington, DC 20044

-or-

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(with "Notice 2014-17" in the subject line)

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