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Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
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Date:
April 13, 2006

Legend

Community:

Reservation:

X:

Y:

Z:

Locality:

State:

Tribe A:

Tribe B:

Dear :

This is in response to your authorized representative's request for a private letter ruling on behalf of Community and its members. Specifically, you have asked whether certain payments made to Community members will be exempt from federal taxation under the general welfare doctrine, and whether Community will have any information reporting or withholding requirements with respect to such payments.

FACTS:

Community is a federally-recognized Indian tribal government organized and operated under a constitution and bylaws approved by the Secretary of the Interior (Secretary) in 1939 pursuant to the Indian Reorganization Act of 1934, and later amended and approved by the Secretary in 1960. The Community exercises self-governance and sovereign jurisdiction over the Reservation. The Reservation consists of X acres located within and adjacent to Locality in State.

The Community is divided into seven Districts and is composed of members of two tribes, Tribe A and Tribe B. There are approximately Y enrolled members of the Community, and approximately Z members reside within Reservation. The income, assets, educational levels, and housing conditions of Community members and their families residing on Reservation are substantially lower than elsewhere in the greater Locality metropolitan area or within State.

The Community is governed by the Community Council, which is composed of 17 enrolled members of the Community who are at least 25 years old. The Community Council members are elected by the qualified voters of their respective Districts for three-year terms. Each District elects at least one member of the Community Council. More populous Districts elect additional members. Each District may elect a District Council composed of representatives of the villages or settlements within the District. The District Councils serve as advisory boards and perform other administrative duties as assigned by the Community Council.

The Community Council is vested with all of the sovereign legislative powers of the Community. The Community's Constitution empowers the Community Council to promote and protect the health, peace, morals, and general welfare of the Community and its members.

The Community raises revenue to fund its operations through taxation, commercial leases, and gaming activities conducted pursuant to the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701–2721 and 18 U.S.C. §§ 1166 – 1168). The Community also raises revenue through its involvement in farming, industrial parks, recreational facilities, and other economic development activities.

The areas in which the Community administers tribal government programs include housing, education, health care, social services, public safety, and economic development. The Community also administers a variety of federally funded programs.

Although Federal programs provide some housing assistance to Community members,

Federal assistance has not provided all Community members with safe and affordable housing. On the Reservation, much of the housing continues to be substandard, overcrowded or lacking indoor plumbing, electricity, roofs, or floors.

Community members face a number of obstacles in attempting to obtain adequate housing. Such obstacles include below average employment and savings rates and below average educational levels and income. Community members are also adversely affected by various health problems. In addition, construction costs are higher on the Reservation because of the relatively remote location of many home sites and the lack of existing infrastructure. Finally, Community members encounter difficulties in obtaining conventional home financing because of these problems and because of the restricted status of real property on the Reservation imposed by Federal law.

Accordingly, the Community Council established a Housing Assistance Program (Program) to provide housing assistance to qualified Community members based on a needs-based priority system. The Community previously operated a similar housing assistance program that was replaced by the Program in 2003. The purpose of the Program is to expand the supply of safe, decent, and affordable housing within the Reservation for eligible Community members and their families. Each year, the Community Council will decide whether, and to what extent, to fund the Program.

Under the Program, administered by the Community Housing Department, Community members may apply for grants to finance new home construction on the Reservation or for the rehabilitation of existing homes on the Reservation. Other grants are available for home improvements designed to bring homes into compliance with the Community building code or to perform minor repairs. The program also provides for rental assistance for families awaiting more permanent housing.

To ensure that grant funds are used for their intended purpose, funds are not paid directly to Community members. Instead, the funds are paid to the contractor building a new home or performing repairs on an existing home, or to a landlord providing temporary housing. In order for a Community member to qualify for any benefit under the Program, the member's family gross income must be less than the Locality metropolitan statistical median gross income for a household of the same size.

The maximum grant that any Community member may receive under the Program for new home construction is based on United States Department of Housing and Urban Development (HUD) guidelines for total development costs for affordable housing built on Indian reservations throughout the United States. HUD guidelines incorporate the higher than average cost of housing development on the Reservation as compared with other reservations.

Each year each of the Districts on the Reservation will prepare for submission to the Housing Department a prioritized list of Community member applications that the

District has approved for Program grants. The list will be divided between applications that have not been approved by the Housing Department and applications that have been approved by the Housing Department but were not funded in the previous year. The list will also be prioritized according to seven categories: 1) previously approved applications that were not funded in the prior year, 2) elderly and disabled families with very low income, 3) elderly and disabled families with low income, 4) other eligible elderly and disabled families, 5) other families with very low income, 6) other families with low income, and 7) other eligible families. Category 1 families will be prioritized in the same order that they were in the prior year. Families in the other categories will be prioritized according to the severity of the family's housing conditions and need as determined by the District.

The Program requires that if, within 20 years, a Community member conveys a home with respect to which they received a Program grant to any person other than a Community member who would qualify for Program benefits the member must pay a penalty. The penalty is the amount of the grant multiplied by a fraction, the numerator of which is 20 minus the number of years since the grant and the denominator of which is 20. In addition, for 20 years a Community member who has received a Program grant will also be liable for the same penalty if they establish their principal residence outside the Reservation without conveying the home with respect to which they received a Program grant.

LAW:

Section 61(a) of the Internal Revenue Code of 1986 (Code) provides that, except as otherwise provided by law, gross income means all income from whatever source derived. Under section 61, Congress intends to tax all gains or undeniable accessions to wealth, clearly realized, over which taxpayers have complete dominion. Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955). Individual Community members are citizens of the United States and are subject to federal income tax, unless specifically exempted by treaty or statute. See Rev. Rul. 67-284, 1967-2 C.B. 55, *modified on another issue by* Rev. Rul. 74-13, 1974-1 C.B. 14, *amplified by* Rev. Rul. 94-16, 1994-1 C.B. 19, *amplified by* Rev. Rul. 94-65, 1994-2 C.B. 14.

The Internal Revenue Service (IRS) has consistently held that payments to individuals by governmental units under legislatively provided social benefit programs for promotion of the general welfare are excludable from the recipient's gross income ("general welfare exclusion").

Section 7701(a)(40) defines Indian tribal governments as the governing bodies of Indian tribes, bands, communities, villages, or groups of Indians, and recognizes that these bodies exercise governmental functions. In general, where Indian tribal governments act in such capacity to provide general welfare-type benefits of a kind traditionally provided by federal, state or local governmental bodies, as in the instant circumstances,

the federal income tax treatment of such benefits is analogous.

The general welfare exclusion applies only to governmental payments out of a welfare fund based upon the recipients' identified need (which need not necessarily be financial), and not where made as compensation for services. See, e.g., Rev. Rul. 57-102, 1957-1 C.B. 26 (payments to the blind); Rev. Rul. 74-74, 1974-1 C.B. 18 (awards to crime victims or their dependents); Rev. Rul. 74-205, 1974-1 C.B. 20 (HUD replacement housing payments to aid displaced individuals and families); Rev. Rul. 75-271, 1975-2 C.B. 23 (assistance payments for lower income families to acquire homes); Rev. Rul. 76-395, 1976-2 C.B. 16 (home rehabilitation grants to low-income recipients); Rev. Rul. 77-77, 1977-1 C.B. 11 (payments to Indians to stimulate and expand Indian owned economic enterprises); and Rev. Rul. 98-19, 1998-1 C.B. 840 (relocation payments made to flood victims).

In Rev. Rul. 75-271, *supra*, the IRS held that mortgage assistance payments to lower income individuals provided under a governmental housing program designed to assist lower income families in acquiring home ownership and that were based on a consideration of financial need determined under HUD guidelines, were in the nature of general welfare payments, and were excludable from recipient's gross incomes under the general welfare exclusion. In Rev. Rul. 77-77, *supra*, the IRS concluded that grants made under a governmental program designed to meet a legislatively identified need of Indians of various tribes in the United States, were payments in the nature of general welfare, and excludable from recipients' gross incomes.

In the instant circumstances, based on the information submitted and representations made, we conclude that the grants made by the Community under the Program are similar to those benefits previously considered by the IRS in the authorities addressed above, are similarly within the scope of the "general welfare exclusion," and are thus excludable from the gross incomes of recipients for federal income tax purposes. The subject benefits are made by a governmental body, from a governmental welfare fund, pursuant to a legislative enactment, for the promotion of the general welfare, and do not represent either compensation for services or per capita distributions of net revenues from class II or III gaming activities.

Reporting and Withholding Obligations

Section 6041(a) of the Code provides, with exceptions not applicable here, that any person engaged in a trade or business must file an information return with respect to certain payments made in the course of that trade or business to another person aggregating \$600 or more in the calendar year. This filing requirement applies to payments (whether made in cash or property) of salaries, wages, commissions, fees, other forms of compensation for services, and other fixed or determinable gains, profit, or income.

Section 6041(d) of the Code requires persons who are required to make returns under section 6041(a) to furnish to the recipient of the payment a written statement showing the name, address, and identification number of the person making the return and the aggregate amount paid to the recipient that is required to be shown on the return.

Section 1.6041-1(c) of the regulations defines "fixed or determinable income." Income is fixed when it is to be paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained.

Section 6041 of the Code requires the reporting of all "compensations . . . or other fixed or determinable gains, profits, and income." The word "income" as used in section 6041 is not defined by statute or regulation; however, its appearance in the phrase "fixed or determinable gains, profits, and income" indicates that what is referred to is "gross income." Thus, the payments of compensation (and other amounts) required to be reported under section 6041 are those includible in gross income.

Under section 1.6041-1(a)(2), information returns required by section 1.6041-1(a)(1) must be made on Forms 1099 and 1096..

Because "income" under section 6041 of the Code is interpreted to mean only income includible in gross income under section 61, the payments made by the Community under the terms of the Program are not required to be reported under section 6041.

Section 3402(r) extends the withholding provisions to certain taxable payments of Indian casino profits. The grants made by the Community are not taxable payments of casino profits. Accordingly, the Community does not have a withholding requirement under section 3402(r) with respect to the grant amounts.

Accordingly, based on the information submitted and representations made, we conclude that payments to individuals pursuant to the Program, as described above, are in the nature of general welfare and, therefore, are not includible in the members' gross income. Accordingly, the Community is not required to report such payments under section 6041 or to withhold any amounts with respect to such grants..

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by

the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 12.04 of Rev. Proc. 04-1, 2004-1 I.R.B. 7,47. However, when the criteria in section 12.05 of Rev. Proc. 04-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William A. Jackson
Branch Chief, Branch 5
(Income Tax & Accounting)

cc: