



TAX EXEMPT AND  
GOVERNMENT ENTITIES DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
Office of Indian Tribal Governments  
600 17<sup>th</sup> Street, Mailstop 450S  
Denver, CO 80202



September 6, 2012

Dear Tribal Leaders:

I am writing to inform you that the Treasury Department and the Internal Revenue Service (the "IRS") have issued the enclosed notice (the "Notice"): **Per Capita Payments from Proceeds of Settlements of Indian Tribal Trust Cases**. The Notice concludes that per capita payments made from certain settlement funds are not subject to Federal income tax.

The following link takes you to our webpage on IRS.gov where further information is available: <http://www.irs.gov/govt/tribes/index.html>.

As you know, your tribe is among the class of tribes that has entered into settlement agreements with the United States settling claims that the Department of the Interior and the Department of the Treasury mismanaged monetary assets and natural resources held in trust. As such, your tribe is listed in the Appendix of the Notice.

The taxation of per capita payments made from the settlement funds is an important issue in Indian Country, and I wanted to communicate the news directly to you due to your tribe's involvement in the litigation.

Sincerely,

Christie J. Jacobs  
Director, Indian Tribal Governments Office

RECEIVED

SEP 17 2012

NPTEC  
RACH

## Per Capita Payments from Proceeds of Settlements of Indian Tribal Trust Cases

Notice 2012-60

### PURPOSE

This notice provides guidance concerning the federal income tax treatment of per capita payments that members of Indian tribes receive from proceeds of certain settlements of tribal trust cases between the United States and those Indian tribes.

### BACKGROUND

The United States has entered into settlement agreements with the federally recognized Indian tribes listed in the Appendix to this notice, settling litigation in which the tribes allege that the Department of the Interior and the Department of the Treasury mismanaged monetary assets and natural resources the United States holds in trust for the benefit of the tribes ("Tribal Trust cases"). Upon receiving the settlement proceeds, the tribes will dismiss their claims with prejudice. See Press Release, U.S. Department of Justice, Attorney General Holder and Secretary Salazar Announce \$1 Billion Settlement of Tribal Trust Accounting and Management Lawsuits Filed by More Than 40 Tribes (April 11, 2012) at <http://www.justice.gov/opa/pr/2012/April/12-aq-460.html>. The United States foresees the possibility of future substantially similar settlements of substantially similar claims brought by other federally recognized Indian tribes.

Most of the Indian tribes that have reached Tribal Trust case settlements with the United States have directed that the settlement proceeds be transferred to accounts at private banks or other third-party institutions, where the proceeds will be invested until the tribes use the funds for various purposes, which may include making per capita payments to their members. Other Indian tribes have directed that all or part of the settlement proceeds be paid into a trust account established or maintained by the

the tribe.

The Indian Tribal Judgment Funds Use or Distribution Act, 25 U.S.C. §§ 1401 through 1408, concerns the distribution of certain judgment funds to Indian tribes. Under 25 U.S.C. § 117b(a), funds distributed under 25 U.S.C. § 117a are subject to the provisions of 25 U.S.C. § 1407. Under 25 U.S.C. § 1407, the funds described in that section, and all interest and investment income accrued on the funds while held in trust, are not subject to federal income taxes. See also H.R. Rep. No. 98-230 at 3 (1983), which provides that per capita distributions of tribal trust revenue “shall be subject to the provisions of [25 U.S.C. § 1407] with respect to tax exemptions.”

To determine the federal income tax treatment of per capita payments from Tribal Trust case settlement proceeds, “the test is not whether the action was one in tort or contract, but rather the question to be asked is ‘In lieu of what were the damages awarded?’” See *Raytheon Production Corp. v. Commissioner*, 144 F.2d 110, 113 (1<sup>st</sup> Cir. 1944), *affg* 1 T.C. 952 (1943). The fact that a suit ends in a compromise settlement does not change the nature of the recovery; the determining factor is the nature of the underlying claim. *Raytheon Production Corp.* at 114. Therefore, although the United States admits no liability in the Tribal Trust cases, *Raytheon Production Corp.* requires an examination of the underlying *claims* asserted by the tribes. The Tribal Trust case settlements described in this notice resolve claims, in relevant part, that the Department of the Interior and the Department of the Treasury mismanaged trust accounts, lands, and natural resources. The tribes assert that, absent this mismanagement of their trust funds and resources, their government-administered trust fund accounts would have substantially larger balances. See 25 C.F.R. §§ 115.002 and 115.702 (which define the trust fund accounts maintained and held by the Secretary of the Interior for federally recognized tribes and the types of payments that must be accepted into the trust account, which include those resulting from use of trust lands or restricted fee lands or

case settlements that are described in this notice and that the United States has entered into with the Indian tribes listed in the Appendix to this notice or to proceeds of Tribal Trust case settlements that are subsequently identified as being subject to this notice on the Indian Tribal Governments page on the Internal Revenue Service website, [www.irs.gov](http://www.irs.gov). The federal income tax treatment of other per capita payments made by the Secretary of the Interior or Indian tribes to members of Indian tribes is outside the scope of this notice and may be addressed in future guidance.

#### DRAFTING INFORMATION

The principal author of this notice is Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information, please contact Mr. Iskow at (202) 622-4920 (not a toll-free call).

#### **Appendix**

#### **Tribes That Have Entered into Settlement Agreements of Tribal Trust Cases**

1. Assiniboine and Sioux Tribes of the Fort Peck Reservation
2. Bad River Band of Lake Superior Chippewa Indians
3. Blackfeet Tribe of the Blackfeet Indian Reservation
4. Bois Forte Band of Chippewa
5. Cachil Dehe Band of Wintun Indians of the Colusa Rancheria
6. Chippewa Cree Tribe of the Rocky Boy's Reservation
7. Coeur d'Alene Tribe
8. Confederated Salish and Kootenai Tribes
9. Confederated Tribes of Siletz Indians
10. Confederated Tribes of the Colville Reservation
11. Confederated Tribes of the Goshute Reservation
12. Crow Creek Sioux Tribe
13. Eastern Shawnee Tribe of Oklahoma
14. Hualapai Indian Tribe
15. Iowa Tribe of Kansas and Nebraska
16. Kaibab Band of Paiute Indians of Arizona
17. Kickapoo Tribe of Kansas
18. Lac Courte Oreilles Band of Lake Superior Chippewa Indians
19. Lac du Flambeau Band of Lake Superior Chippewa Indians
20. Leech Lake Band of Ojibwe
21. Lower Brule Sioux Tribe
22. Makah Indian Tribe of the Makah Reservation

Social Security Online

# Emergency Message

www.socialsecurity.gov

 

**Identification Number** **EM-12028** **Effective Date:** 06/13/2012

**Intended Audience:** All RCs/ARCs/ADsFOs/TSCs/PSCsOCO/OCO-CSTs/ODARHQ

**Originating Office:** ORDP OISP

**Title:** **Tribal Trust Accounting and Management Settlement**

**Type:** EM - Emergency Messages

**Program:** **Title XVI (SSI); Medicare**

**Link To Reference:** See Reference at the bottom of this EM.

**Retention Date: December 13, 2012**

## A. Purpose of this emergency message

This EM provides instructions about Tribal Trust Accounting and Management Settlement Agreements.

## B. Background on the Tribal Trust Accounting and Management Settlement Agreements

Forty-one American Indian tribes filed lawsuits alleging that the Federal government mismanaged tribal trust accounts. On April 11, 2012, these 41 tribes agreed to settle their cases with the government. Shortly thereafter, three additional tribes agreed to settlements for a total of 44 tribal settlement agreements.

Under these agreements, the government will pay about \$1 billion to the 44 tribes. The amounts paid to individual tribes vary considerably. Some tribes will receive over a hundred million dollars. Under these agreements, each tribe will decide how it will use the settlement funds and whether it will distribute these funds to individual tribe members. Some tribes already distributed settlement funds to their members.

Here is a list of the 44 tribes covered by these agreements.



44 Tribes (2).doc

## C. Policy for income and resource exclusion

For purposes of determining eligibility for Supplemental Security Income (SSI)

and Medicare Part D Extra Help, per capita payments received by individual tribe members under these settlement agreements are excludable from income and resources. Treat these payments as judgment funds as described in SI 00830.830C.1.

#### **D. Documenting the receipt of settlement funds for SSI**

For SSI, if an applicant or recipient reports receipt of a Tribal Trust Accounting and Management Settlement payment, explain that the payment does not affect eligibility for SSI.

Document the allegation on a report of contact (DROC) screen identifying:

- the settlement fund;
- the payment amount;
- the date of receipt; and
- that the Tribal Trust Accounting and Management Settlement payment is excludable from income and resources.

**EXAMPLE** of DROC input: "The recipient reported receipt of \$5,000 from the (name of tribe) Tribal Trust Accounting and Management Settlement on May 10, 2012. This payment is excludable from income and resources."

#### **E. Documenting the receipt of settlement funds for Medicare Part D Extra Help**

If the applicant or beneficiary reports receipt of a settlement payment, explain that the payment does not affect eligibility for Extra Help.

Document the allegation on the MAPS Report of Contact (DWRC) screen identifying:

- the settlement fund;
- the payment amount;
- the date of receipt; and
- that the Tribal Trust Accounting and Management Settlement payment is excludable from income and resources.

#### **F. Reference**

SI 00830.830 Indian Related Exclusions

Direct all program-related and technical questions to your RO support staff or PC OA staff. RO support staff or PC OA staff may refer questions or problems to their Central Office contacts.

EM-12028 - Tribal Trust Accounting and Management Settlement - 06/13/2012

**DEPARTMENT OF  
PUBLIC HEALTH AND HUMAN SERVICES**



**Brian Schweitzer**  
**GOVERNOR**

**Anna Whiting Sorrell**  
**DIRECTOR**

---

**STATE OF MONTANA**

---

www.dphhs.mt.gov

Human and Community Services Division 111 N Jackson Helena MT 59601 Phone 406-444-1788	Fax 406 444-2547
---	------------------

PO BOX 4210  
HELENA, MT 59604-4210  
(406) 444-5622  
FAX (406) 444-1970

August 1, 2012

**TO:** All ABD Medicaid Policy Manual Holders  
All Family Medicaid Policy Manual Holders  
All TANF Cash Assistance Policy Manual Holders  
All SNAP Policy Manual Holders

**FROM:** Nancy Clark, ABD Medicaid Policy Specialist  
Teri McDonald, Family Medicaid Policy Specialist  
Stephanie Wilkins, TANF Policy Specialist  
Tammy Poppe, SNAP Policy Specialist

**SUBJECT:** Bulletin MA-111b (replaces MA-111 dated 7/1/12)  
Bulletin FMA-68b (replaces FMA-68 dated 7/1/12)  
Bulletin TB- 72  
Bulletin SNAP- 90

**TANF Manual:** Place this bulletin at the beginning of TANF 400 and 500  
**ABD MA Manual:** Place this bulletin between pages 2 and 3 of MA 402-2 and between pages 2 and 3 of MA 501-2  
**FMA Manual:** Place this bulletin between pages 2 and 3 of FMA 402-2 and between pages 2 and 3 of FMA 501-2  
**SNAP Manual:** Place this bulletin at the beginning of SNAP 400 and 500

---

**SUBJECT:** Nez Perce et. al. v. Salazar - Settlement of Tribal Trust Accounting and Management Lawsuits

**REFERENCE:** Medicaid: P.L. 111-5, American Recovery and Reinvestment Act of 2009 (ARRA)  
SNAP: 7CFR 273.9(c)(2)(v); 273.8(c)

**EFFECTIVE DATE:** Immediately upon receipt

**INTRODUCTION:** Nez Perce et al v. Salazar is a lawsuit filed by 41 federally-recognized tribes represented by the Native American Rights Fund (NARF) and consolidated into one case, Nez Perce et al v. Salazar, against the United States Department of the Interior for mismanagement of monetary assets and natural resources held in

trust by the United States. When one of the 41 tribes settles, it is dismissed as a plaintiff in the Nez Perce case.

Of the 41 tribes, five Montana tribes have already received or will be receiving settlements. Tribes can disburse funds to members in any manner they determine, such as Per Capita payments, supportive services, etc.

The 41 tribes are:

1. Assiniboine and Sioux Tribes of the Fort Peck Reservation
2. Bad River Band of Lake Superior Chippewa Indians
3. Blackfeet Tribe
4. Bois Forte Band of Chippewa Indians
5. Cachil Dehe Band of Wintun Indians of Colusa Rancheria
6. Coeur d'Alene Tribe
7. Chippewa Cree Tribe of the Rocky Boy's Reservation
8. Confederated Tribes of the Colville Reservation
9. Confederated Salish and Kootenai Tribes
10. Confederated Tribes of the Siletz Reservation
11. Hualapai Tribe
12. Kaibab Band of Paiute Indians of Arizona
13. Kickapoo Tribe of Kansas
14. Lac du Flambeau Band of Lake Superior Chippewa Indians
15. Leech Lake Band of Ojibwe Indians
16. Makah Tribe of the Makah Reservation
17. Mescalero Apache Nation
18. Minnesota Chippewa Tribe
19. Nez Perce Tribe
20. Nooksack Tribe
21. Northern Cheyenne Tribe
22. Passamaquoddy Tribe of Maine
23. Pawnee Nation
24. Pueblo of Zia
25. Quechan Indian Tribe of the Fort Yuma Reservation
26. Rincon Luiseño Band of Indians
27. Round Valley Tribes
28. Salt River Pima-Maricopa Indian Community
29. Santee Sioux Tribe
30. Shoshone-Bannock Tribes of the Fort Hall Reservation
31. Soboba Band of Luiseño Indians
32. Spirit Lake Dakotah Nation
33. Spokane Tribe
34. Standing Rock Sioux Tribe of the Fort Yates

Reservation

35. Swinomish Tribal Indian Community
36. Te-Moak Tribe of Western Shoshone Indians
37. Tohono O'odham Nation
38. Tulalip Tribe
39. Tule River Tribe
40. Ute Mountain Ute Tribe
41. Ute Tribe of the Uintah and Ouray Rese

**NEW POLICY:**

**Medicaid and TANF:** Payments derived from this settlement are excluded as income in the month received and as a resource thereafter. The first purchase with excluded Native American funds will also retain this exclusion.

**SNAP:** Money disbursed by tribes in ongoing recurring payments is counted as unearned income.

Money disbursed by tribes in the form of a nonrecurring lump-sum payment, the payment is counted as a resource in the month received. Due to expanded categorically eligibility (ECE) policy, SNAP benefits are unaffected because SNAP participants' resources are excluded.

If questions arise due to the way a tribe disburses the payment(s), please contact your Regional Policy Specialist and we will review the matter.

**UPDATED MANUAL MATERIAL WILL BE DISTRIBUTED AS SOON AS POSSIBLE.  
UNTIL THAT TIME, USE THIS BULLETIN AS A GUIDE. IF YOU HAVE ANY QUESTIONS,  
PLEASE CONTACT YOUR REGIONAL POLICY SPECIALIST**

