

Rev. Rul. 70-116, 1970-1 C.B. 11, 1970 WL 20654 (IRS RRU)

Internal Revenue Service (I.R.S.)

Revenue Ruling

Published: 1970

[26 CFR 1.61-1](#): Gross income.

The headright income from tribal mineral interests held in trust by the United States for a noncompetent Osage Indian is not includible in his gross income; I.T. 1834 revoked.

Advice has been requested whether Osage headright income derived from tribal mineral interests and held in trust by the United States is includible in the gross income of a noncompetent Osage Indian beneficiary.

The taxpayer in this case is an adult Osage Indian who has never received a certificate of competency. He inherited an interest in the Osage tribal trust fund. During the taxable year under consideration, his individual trust account was credited with mineral headright income that was not distributed to him.

Under the Osage Allotment Act of June 28, 1906, 34 Stat. 539, the tribal lands and funds were equally divided among the members of the Osage Tribe. The lands were allotted directly to individuals, subject to the terms of the Act. However, under a proviso contained in section 2 of the Act, the distributions of such lands were subject to the reservation of the entire mineral interest to the Osage Tribe. The mineral interests were evenly divided among the members of the Osage Tribe, then living, through the provision for 'headrights,' which is the term used to describe a right to a share of the distributable income from the minerals plus a reversionary title to a like share of the minerals whenever the mineral trust terminates. Section 4 of the Act requires that royalties derived from minerals extracted from the land be placed in the Treasury of the United States and held in trust for the individual members of the tribe subject to periodic distributions.

In the case of *Hayes* [Big Eagle, et al. v. United States, 300 F.2d 765 \(1962\)](#), the facts were similar to those involved in the instant case. The plaintiffs were all fullblood, noncompetent Osage Indians and the issue was whether mineral headright income derived from royalties and credited by the United States to each plaintiff's individual trust account was includible in his gross income. The United States Court of Claims held that the income involved in that case was not subject to Federal income taxation because certain amendments to the Osage Allotment Act, 45 Stat. 1478, section 1, and 52 Stat. 1034, section 3, contained language that implicitly exempted Osage mineral headright income from Federal income taxation. Accord, *Harry* [Red Eagle, et ux. v. United States, 300 F.2d 772 \(1962\)](#).

Since the relevant facts involved in the instant case are substantially the same as those involved in the *Hayes Big Eagle* case, it is held that the Osage headright income held in trust for the taxpayer by the United States is not includible in his gross income for Federal income tax purposes. However, no implication is intended that noncompetent Indians are generally or presumptively exempt from Federal income tax, in the absence of a specific exemption created by statute, treaty or other authority. See [Squire v. Horton Capoeman, 351 U.S. 1, 6 \(1956\)](#), Ct. D. 1796, C.B. 1956-1, 605; [Federal Power](#)

[Commission v. Tuscarora Indian Nation, 362 U.S. 99, 115-119 \(1962\)](#); and [Rev. Rul. 67-284, C.B. 1967-2, 55](#).

I.T. 1834, C.B. II-2, 62 (1923), which contains a contrary conclusion, is hereby revoked.

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