

Mandatory Topics for Inclusion in the Native American Tax Guide project:

- I. Prepare a report structured to provide both a technical discussion of the issues and the applicable law and regulations, and practical guidance in a highly readable and usable format accessible as a resource for laypeople. The report will address the following issues:
 - a. Issues specific to Native American Farmers and Ranchers' Ability to File Schedule F
 - i. The federal taxability of an individual's farming and ranching income depending on underlying land use rights
 1. For a Federally recognized tribe
 2. For lands allotted under Dawes Act
 3. For lands allotted or assigned under other Congressional Acts
 4. For assignments that are similar to allotments where the law is unclear
 5. For other related land use status specific to Native American producers/landowners, including but not limited to fee simple, forced fee patents, trust land, off-reservation trust land, trust patents, and others.
 - ii. Determine the federal taxability of payments received from the following USDA programs:
 1. Crop Insurance and Disaster Payments
 2. EQIP, CRP and other NRCS administered programs
 3. CCC Loan Deficiency Payments and other FSA programs for which Native Americans are eligible
 4. Other programs identified by the cooperating organization and/or CSREES and RMA as applicable or related to the purpose of the project
 - iii. Options and consequences for how to prepare a Schedule F for informational purposes when none is required by applicable law/regulations; including specific wording and how to attach a statement to both paper and electronic returns, with discussion of the benefits of doing so, making specific reference to USDA and other federally administered program participation requirements
 - iv. Options and consequences for reporting exempt income which has been reported to the IRS via Form 1099 including specific wording and how to attach an explanatory statement to both paper and electronic returns.
 - v. Options and consequences for reporting farming and ranching activity which takes place on exempt and non-exempt lands, including specific recommendations for simple allocation methodologies and supporting documents such as maps. These options and consequences may include what is articulated in Publication 225 and other IRS publications.

- vi. Options and consequences for separating schedule F reporting of farming and ranching activity to create raw products from the schedule C reporting of related value added activities such as processed foods or arts and crafts; including how to file a schedule F when all farm or ranching products are used in the value-added business and specific recommendations for simple allocation methodologies and supporting documents such as calendars. These options and consequences may include what is articulated in Publication 225 and other IRS publications.
 - vii. Discussion of the likely consequences of selling livestock due to a drought or other natural disaster, for exempt and non-exempt producers, with and without federal disaster assistance or a regular crop insurance payment.
 - viii. Review and discuss the “Hobby Loss Rules” in the context of items i-vii above, with emphasis on the need for record keeping and business planning and other financial management tools. Discuss current tax court cases involving profit motive issues for small farms (including T.C. Memo 1998-296), referring the reader to appropriate resources for information on small farm business planning including recordkeeping, marketing plans, cash flow budgets, and other farm financial management tools.
- b. Secondary Tax Issues and Associated Financial Consequences
- i. Interplay of the above issues with the Earned Income Credit (EIC)
 - 1. Discuss the effect on exempt producers of not being able to use income (or loss) from farming or ranching to increase or decrease other earned income for purposes of qualifying for the Earned Income Credit (EIC).
 - 2. Discuss the theory and authority for excluding exempt income from the EIC calculation
 - 3. Discuss examples of exceptions to the general rule that might be appropriate for exempt farming and ranching income, (i.e. the exemption for military personnel).
 - 4. Options and consequences for producers with exempt income relating to providing producers with insight on how to gain more equal footing with non-exempt peers
 - ii. Examine the effects of exemption from taxation on the ability of Native Americans with other taxable income to use farm or ranch losses and the EIC to generate cash in start up or loss years
 - 1. Include discussion comparing the effects of exempt and non-exempt farm losses on cash flow for the first 10 years of operation for a Native American direct market farmer assuming losses in the early years and taxable wages or pension as the primary source of family income, and
 - 2. using other appropriate examples to demonstrate common examples of effects of exemption

- iii. Compare effects of a Net Operating Loss carry-back on loss year cash flow in an exempt and non-exempt situation
 - iv. Discuss effects of exempt income on ability to fund self-employed retirements plans including ability to pay self-employment taxes into the Social Security and Medicare System.
 - 1. Provide options and consequences concerning funding retirement via self-employed plans or social security for producers with exempt income to provide producers with insight on how to gain more equal footing with non-exempt peers.
 - 2. For example, provide a discussion on whether an exempt taxpayer may forgo their exemption and pay voluntarily into social security.
 - v. Other issues that come to the attention of the cooperating organization will be identified, even if such issues can neither be addressed nor resolved within the scope of this project.

- II. For Hopi, Navajo, and Zuni lands/peoples in the ten counties of Coconino, Apache & Navajo in Arizona; San Juan, McKinnley and Cibola in New Mexico; Montezuma, Archuletta and La Plata in Colorado; and San Juan in Utah located in the Four-Corner region of Arizona, New Mexico, Utah and Colorado, for treaty, allotted, restored and purchased trust lands, provide a preliminary cross reference of land ownership types to Federal taxability of income derived from the land by county and Tribe so that local end users can access information most likely to affect them and bypass information that does not apply in their area.
 - a. For lands where legal status and associated taxability of income derived from the land cannot be determined within the allotted funds and time, provide a short overview of the legal research performed and explain why the information could not be definitely resolved within the scope of the project (i.e., time constraints, waiting for documents outside the researcher's control).

- III. Expand project throughout all Federally recognized Tribes in the United States so that full implementation and usefulness can be afforded the "tax guide" for Indian people.
 - a. Within available future funds, RMA and CSREES will revise initial project deliverables to accommodate a larger project scope
 - b. Project expansion will occur beyond the term of the original agreement and may involve new or amended deliverable questions for research
 - c. Broader dissemination and provision of educational opportunities for project deliverables may occur after the project is expanded in Phase III and will be incorporated into an amended cooperating agreement.