



ITG News

Keeping First Nations Informed

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Alert

Beware of Claims that Gaming Per Capita Payments are not subject to Federal Income Tax

The Internal Revenue Service recently obtained a court injunction against a tax practitioner who made assertions that distributions of net gaming revenue to tribal members were not subject to taxation.

We have been advised of a similar situation that has surfaced in northern California, where another tax practitioner is advising tribal members that their per capita payments are not taxable, and alleging that there is a secret section of law that makes that provision. In some cases, returns have been filed taking this frivolous position.

Distributions of net gaming revenues to tribal members are subject to federal income tax. This requirement is not only part of the Internal Revenue Code, but is also specifically stated in the Indian Gaming Regulatory Act. These distributions, as well as any per capita distributions resulting from the Revenue Sharing Trust Fund, must be reported on Form 1040 as miscellaneous income. Failure to include this income may result in additional tax assessments and penalties against the recipient. The mere fact that the IRS processes a return and issues a refund does not mean that the position taken on such return has been accepted by the IRS. Additional tax assessments and penalties can be made at a later date, and erroneous refunds can be recouped.

We cannot overemphasize the importance of this matter. Please take all reasonable steps to ensure your tribal members are not victimized.

If you have any questions, please contact Indian Tribal Governments Manager Kenneth Voght at 716-686-4860, or via e-mail at tege.itg.schemes@irs.gov.