Rev. Rul. 58-320, 1958-1 C.B. 24, 1958 WL 10631 (IRS RRU)

Internal Revenue Service (I.R.S.)

Revenue Ruling

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(Also Section 1402; 1.1402(a)-1.)

In the absence of an applicable exemption provision in a treaty or agreement with the Indian tribe concerned or in some Act of Congress dealing with its affairs, income directly derived by a member of an Indian tribe from unallotted Indian tribal lands cultivated by him under an arrangement with the tribe is includible in the gross income of the recipient. If such income is derived from the taxpayer's 'trade or business' and if it is not within the exclusions specified in section 1402(a) of the Self-Employment Contributions Act of 1954, it is includible in computing his net earnings from self-employment under that section.

Advice has been requested regarding the taxability of income directly derived from unallotted Indian tribal lands.

The taxpayer, an Indian, is the patent holder of certain allotted and restricted Indian lands held by the United States, as trustee, in accordance with section 5 of the General Allotment Act of 1887, 24 Stat. 388, as amended, 25 U.S.C. 348. His income is chiefly derived from farming. In addition to farming the lands allotted to him, the taxpayer cultivates unallotted Indian tribal lands which are assigned to him by the tribe for a nominal fee.

Revenue Ruling 56-342, C.B. 1956-2, 20, based on the decision of the Supreme Court of the United States in *Squire* v. *Horton Capoeman et ux*, 351 U.S. 1, Ct. D. 1796, C.B. 1956-1, 605, holds that income held in trust for or received by the patent holder which is derived directly from allotted and restricted Indians lands while such lands are held by the United States, as trustee, in accordance with section 5 of the General Allotment Act, *supra*, is exempt from Federal income tax. Some of the types of exempt income according to that Revenue Ruling are rentals (including crop rentals), royalties, proceeds from the sales of natural resources, income from the sale of crops, and income from the use of the land for grazing purposes.

The afore-mentioned types of income are nontaxable only to the extent that they are directly derived from allotteed lands held in trust for the taxpayer under that Act. In that regard it is noteworthy that the Supreme Court in the *Capoeman* decision found in section 6 of the General Allotment Act a congressional intent that lands held in trust under section 5 be exempt from tax. The Court had observed earlier in its opinion:

We agree with the Government that Indians are citizens and that in ordinary affairs of life, not governed by treaties or remedial legislation, they are subject to the payment of income taxes as are other citizens. We also agree that to be valid, exemptions to tax laws should be clearly expressed.

Where there is no applicable exemption provision in a treaty or in legislation dealing with the tribe from whose lands he derives income, a member of an Indian tribe, though entitled to exemption in respect of income derived from lands held in trust under section 5 of the General Allotment Act, cannot treat other income derived from unallotted tribal lands as also exempt.

Accordingly, in the absence of an applicable exemption provision in a treaty or agreement with the Indian tribe concerned or in some Act of Congress dealing with its affairs, income directly derived by a member of an Indian Tribe from unallotted Indian tribal lands cultivated by him under an arrangement with the tribe is includible in the gross income of the recipient. If such income is derived from the taxpayer's 'trade or business' as defined in section 1402(c) of the Self Employment Contributions Act of 1954 (chapter 2, subtitle A, Internal Revenue Code of 1954) and if it is not within the exclusions specified in section 1402(a) of that Act, it is includible in computing his net earnings from self employment under the latter section.

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