

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.601: Rules and regulations.

(Also Part I, §§ 61, 451, 671; 1.61-1; 1.451-1; 1.671-1.)

Rev. Proc. 2011-56

SECTION 1. PURPOSE AND CHANGES

.01 Purpose.

(1) This revenue procedure clarifies, modifies, and supersedes Rev. Proc. 2003-14, 2003-1 C.B. 319, which provides a safe harbor under which the Internal Revenue Service treats an Indian tribe as the grantor and owner of a trust for the receipt of gaming revenues under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701-2721) (IGRA) for the benefit of minors or legal incompetents. Under the safe harbor, beneficiaries of an IGRA trust are not required to include amounts in gross income under the economic benefit doctrine when transferred to, or earned by, the IGRA trust, but must include trust distributions in income when actually or constructively received.

(2) Rev. Proc. 2003-14 requested public comments. In response to those comments, this revenue procedure revises sections 5.02(5), 5.02(6), 5.02(8)(a), 5.02(8)(b), and 5.02(8)(e) of Rev. Proc. 2003-14, and adds a new section 5.02(9).

.02 Changes.

(1) Section 6 of Rev. Proc. 2003-14 added to Rev. Proc. 2003-3, 2003-1 C.B. 113, certain areas under § 451 and §§ 671-679 of the Internal Revenue Code in which the Service will not issue ruling or determination letters concerning IGRA trusts. Guidance superseding Rev. Proc. 2003-3 incorporates these no-rule areas. See sections 4.01(34), 4.01(41), 5.08, and 5.10 of Rev. Proc. 2011-3, 2011-1 I.R.B. 111, and its successors. Therefore, section 6 of Rev. Proc. 2003-14 is obsolete.

(2) Section 5.02(5) removes the references to federal and local trust law because the validity of trusts is governed by state or tribal law.

(3) Section 5.02(6) clarifies that an IGRA trust must be an ordinary trust for purposes of the federal tax laws.

(4) Section 5.02(8)(a) expressly allows a trust instrument to provide that the distributions to or for the benefit of minors or legal incompetents at the discretion of the trustee must comply with the requirements of 25 U.S.C. § 2710(b)(3) and 25 CFR § 290.12(b)(3).

(5) Section 5.02(8)(b) removes the term “contractual” because the rights created under an IGRA trust instrument are not contractual.

(6) Section 5.02(8)(e) expands the class of persons who may receive a deceased beneficiary’s share of the trust to include persons who receive property or interests under the beneficiary’s will or trust, or in accordance with state or tribal intestacy law.

(7) Section 5.02(9) expressly allows a trust instrument to provide for trust distributions at a specified age or ages or upon the occurrence or nonoccurrence of a

specified event or events.

SECTION 2. BACKGROUND

.01 Indian tribes and their members have requested guidance on determining the taxable years in which beneficiaries must include in gross income amounts transferred to, or earned by, an IGRA trust, and under what circumstances a tribe will be considered the grantor and owner of an IGRA trust.

.02 Under § 451 and §§ 1.451-1(a) and 1.451-2 of the Income Tax Regulations, a taxpayer using the cash receipts and disbursements method of accounting must include gains, profits, and income in gross income for the taxable year in which those items are actually or constructively received. In addition, under the economic benefit doctrine, a taxpayer using the cash receipts and disbursements method of accounting must include in gross income currently any financial or economic benefit derived from the absolute right to receive property in the future that has been irrevocably and unconditionally set aside for the taxpayer in a trust or fund. *Sprull v. Commissioner*, 16 T.C. 244 (1951), *aff'd per curiam*, 194 F.2d 541 (6th Cir. 1952); *Pulsifer v. Commissioner*, 64 T.C. 245 (1975).

.03 Section 671 provides that, when specified under subpart E, part 1, subchapter J, chapter 1, subtitle A (subpart E) that a grantor or another person is treated as the owner of any portion of a trust, then the taxable income and credits of the grantor or other person includes the items of income, deductions, and credits of the trust attributable to that portion of the trust to the extent that these items are included in computing an individual's taxable income or credits.

.04 IGRA provides rules regarding the conduct of class II and class III gaming on

Indian lands within an Indian tribe's jurisdiction and an Indian tribe's use of revenues from that gaming. Under IGRA, an Indian tribe may use net revenues from any class II and class III gaming activities it conducts or licenses to make *per capita* payments to members of the Indian tribe only if: (1) the Indian tribe has prepared a plan to allocate revenues to authorized uses; (2) the Secretary of the Interior approves the plan as adequate; (3) the interests of minors and other legally incompetent persons who are entitled to receive any of the *per capita* payments are protected and preserved and the *per capita* payments are disbursed to the parents or legal guardians of the minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare of the minors or other legally incompetent persons under a plan approved by the Secretary of the Interior and the governing body of the Indian tribe; and (4) the *per capita* payments are subject to federal taxation and the Indian tribe notifies members of that tax liability when payments are made. Section 11(b)(3) and (d)(1)(A) of IGRA, 25 U.S.C. § 2710(b)(3) and (d)(1)(A).

SECTION 3. SCOPE

This revenue procedure applies to Indian tribes, IGRA trusts, and beneficiaries of IGRA trusts.

SECTION 4. DEFINITIONS

For purposes of this revenue procedure:

.01 *Indian tribe*. The term "Indian tribe" has the same meaning as in 25 U.S.C. § 2703(5).

.02 *IGRA trust*. An "IGRA trust" is a trust that an Indian tribe establishes under IGRA to receive and invest *per capita* payments for its members who are minors or legal

incompetents pending distribution of the trust assets to those members after they attain the age of majority or cease to be legal incompetents.

.03 *Minor and legal incompetent.* The terms "minor" and "legal incompetent" have the same meaning as in 25 CFR § 290.2 (relating to review of Indian tribal revenue allocation plans adopted under IGRA).

.04 *Per capita payment.* The term "*per capita* payment" has the same meaning as in 25 CFR § 290.2, but does not include compensation for services.

SECTION 5. APPLICATION

.01 *In general.* For any period in which each of the requirements of section 5.02 of this revenue procedure is met:

(1) The Service will treat an Indian tribe that establishes (or has established) an IGRA trust as the grantor and owner of the trust under subpart E, and

(2) The Service will not require beneficiaries of an IGRA trust to include *per capita* payments received by the trust, and any earnings on the *per capita* payments, in gross income until the taxable year that the beneficiaries actually or constructively receive the amounts under § 451 and the regulations thereunder.

.02 *Requirements and Options for IGRA trusts.*

(1) The Indian tribe has complied with the requirements of § 11(b)(3) of IGRA, 25 U.S.C. § 2710(b)(3), regarding the disbursement of *per capita* payments to members of the Indian tribe.

(2) All contributions to the trust are *per capita* payments disbursed under a revenue allocation plan that complies with the requirements of § 11(b)(3) of IGRA, 25 U.S.C. § 2710(b)(3).

(3) Each trust beneficiary is a member of the Indian tribe that establishes the trust.

(4) Each trust beneficiary is a minor or legal incompetent at the time of the establishment of a trust interest for the beneficiary, and all contributions to the trust for that beneficiary are made for the period that the beneficiary is a minor or legal incompetent.

(5) The trust is a valid trust under applicable state or tribal law and all of the material terms and provisions of the trust are enforceable under that law.

(6) The trust satisfies the definition of an ordinary trust in § 301.7701-4(a) of the Procedure and Administration Regulations and the governing trust instrument states that the trust is intended to be a grantor trust, that the Indian tribe is the grantor of the trust (within the meaning of subpart E), and that the trust will be construed accordingly.

(7) The governing trust instrument grants to the Indian tribe a power, an interest, or a combination thereof, described in §§ 673 through 677, that would cause the Indian tribe to be treated as owner of the trust under subpart E.

(8) The governing trust instrument includes the following provisions.

(a) Trust assets are not available to or for the benefit of a beneficiary until the beneficiary ceases to be a minor or legal incompetent, except for distributions for the health, education, or welfare of the beneficiary made at the discretion of the trustee pursuant to the governing trust instrument. The trust instrument may provide that these discretionary distributions are made under a plan approved by the governing body of the Indian tribe meeting the requirements of 25 CFR § 290.12(b)(3) (requiring criteria for

distributions and a dispute resolution process).

(b) Beneficiaries have no preferred claim on, or any beneficial ownership interest in, any assets of the trust; any rights created under the trust instrument are mere unsecured rights of beneficiaries against the Indian tribe; and at all times during the continuance of the trust, the principal and income of the trust are subject to claims of general creditors of the Indian tribe under applicable federal, state, local, and tribal law.

(c) The trustee shall cease payments to or for the benefit of beneficiaries and shall hold the assets of the trust for the benefit of the Indian tribe's general creditors throughout any period during which the trustee believes or has reason to believe that the Indian tribe is unable to pay its debts as they become due, or is subject to a pending insolvency or bankruptcy proceeding.

(d) Amounts payable to or for the benefit of beneficiaries under the governing trust instrument may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution, or other legal or equitable process.

(e) The beneficiary's share will be paid to the Indian tribe if the beneficiary dies while a minor, legal incompetent, or before the conditions for full distribution provided in the governing trust instrument occur. However, the governing trust instrument may provide that the beneficiary's share may be paid pursuant to a valid will or trust of the beneficiary, or to persons who may inherit from the beneficiary under applicable state or tribal intestacy laws.

(9) The trust instrument may provide that after the beneficiary ceases to be a minor or legal incompetent, the trust may make distributions to or for the benefit of the

beneficiary at a specified age or ages or upon the occurrence or nonoccurrence of a specified event or events.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for IGRA trusts established or amended on or after November 14, 2011. Taxpayers may apply this revenue procedure to IGRA trusts established before November 14, 2011, for taxable years for which the period of limitation on refund or credit under § 6511 has not expired.

SECTION 7. TRANSITION RELIEF

The Service will not treat as a taxable event under § 1001 a modification or amendment of an IGRA trust made to come within this revenue procedure.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2003-14 is clarified, modified, and superseded.

DRAFTING INFORMATION

The principal author of this revenue procedure is Christina Glendening of the Office of the Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Glendening at (202) 622-4920 (not a toll-free call).