INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM
April 3, 2000

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CASE MIS No.: TAM-108329-99/CC:DOM:IT&A:B7

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification No:

Years Involved:

Date of Conference:

LEGEND:

A =

Trust =

date 1 =

ISSUE:

Whether per capita payments deposited in the Trust are taxable to minor beneficiaries of the Trust in the year(s) in which the payments are deposited or in a later year.

CONCLUSION:

Minor beneficiaries of the Trust are in receipt of an economic benefit when the per capita payments are deposited in the Trust by A. Therefore, under § 61 of the Internal Revenue Code, the payments are includible in the gross income of the minor beneficiaries in the year they are deposited.

FACTS:

A is a federally recognized Indian tribe. A conducts gaming operations on tribal lands pursuant to its self-determination powers and pursuant to federal common law and the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 et seq. ("IGRA"), enacted by Congress in 1988. IGRA was enacted to provide a statutory basis for the operation of gaming by Indian tribes enabling tribes to achieve economic development, tribal self-sufficiency, and a strong government.

Section 2710(b)(3) of IGRA provides that net revenues from any class II gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if (A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by section 2710(b)(2)(B); (B) the plan is approved by the Secretary of the Interior as adequate, particularly with respect to uses described in section 2710(b)(2)(B)(i) or (iii); (C) 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 guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary of the Interior and the governing body of the Indian tribe; and (D) the per capita payments are subject to federal taxation and the tribes notify members of such tax liability when payments are made.

In the instant situation, A does not have an approved plan for per capita payments of its gaming revenues, nor does A have any ordinances or other rules governing the determination of any aspect of per capita payments. The amount of per capita payments and who will receive the payments are determined by A's governing council.

A created the Trust on date 1. Section 1 of the Trust Agreement provides that (A) A relinquishes all power to alter, amend, or revoke the agreement in whole or in part; (B) the significance of the irrevocability of this Trust Agreement has been fully explained to A by legal counsel; (C) A intends to sever permanently any control over assets transferred to the Trust and understands that from and after the creation of this trust A will have no control over the administration or disposition of the assets contained in the Trust; and (D) the provisions of section 1 will apply to the initial contribution, as well as to any subsequent contributions.

Section 3 of the Trust provides that the purpose of the trust is to create and hold a sum of cash or cash equivalents for the benefit of the minor children enrolled in A with a lump sum distribution to be made to each minor on or before December 31 in the year in which the minor attains the age of 18. There can be no prior invasion of principal or income. Therefore, a lump sum distribution will consist of principal contributions, any addition to principal, and any growth or accumulations determined on a pro rata basis. In the event that any minor beneficiary dies before attaining the age of 18, the balance in the minor's account will be distributed to the minor's estate. Section 7 of the Trust provides that no interest in income or principal is assignable by, or available to anyone having a claim against, a minor beneficiary before actual payment to the minor.

LAW AND ANALYSIS:

Section 61 defines gross income as income from whatever source derived.

Section 451(a) and § 1.451-1(a) of the Income Tax Regulations provide generally that gains, profits, and income are includible in gross income for the taxable year in which they are actually or constructively received by a taxpayer using the cash receipts and disbursements method of accounting.

Under § 1.451-2(a), income is constructively received by a taxpayer in the taxable year during which it is credited to a taxpayer's account set apart, or otherwise made available so the taxpayer may draw upon it at any time, or so that the taxpayer could have drawn upon it during the taxable year if notice of intention to withdraw had been given. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions.

The doctrine of constructive receipt requires a cash basis taxpayer to recognize income when the taxpayer has an unqualified, vested right to receive immediate payment. Ross v. Commissioner, 169 F.2d. 483, 490 (1st Cir. 1948); Amend v. Commissioner, 13 T.C. 178, 185 (1949). In this case, the minor beneficiaries of the Trust are not in constructive receipt of per capita payments deposited in the Trust because they do not have an unqualified, vested right to receive immediate payment of per capita payments deposited in the Trust or income earned by the Trust.

In addition to the doctrine of constructive receipt, the facts of the case must be analyzed under the economic benefit doctrine. In Sproull v. Commissioner, 16 T.C. 244 (1951), aff'd per curiam, 194 F.2d 541 (6th Cir. 1952), the court held that an amount placed in trust to be paid out to the taxpayer in later years conferred an economic benefit on the taxpayer in the year the trust was funded. In that case, the taxpayer, a corporation president, voluntarily decreased his compensation. In a later year, when the corporation was sound financially, a trust was set up by the board of directors for the benefit of the taxpayer. In determining that funding the trust conferred an economic benefit on the taxpayer in the year the trust was established, the court noted that the employer had made an irrevocable transfer to the trust, the employer had relinquished all control, the taxpayer had an absolute right to the funds that were to be applied for his sole benefit, the funds were beyond the reach of the employer's creditors, the taxpayer's right to the funds was not contingent, and there were no restrictions on the taxpayer's right to assign or otherwise dispose of his interest.

The economic benefit doctrine also has been applied to require inclusion in income of prize winnings when they are irrevocably placed in a fund to be paid to the winner at a later date. See Pulsifer v. Commissioner, 64 T.C. 245 (1975); Anastasio v. Commissioner, 67 T.C. 814 (1977); Rev. Rul. 62-74, 1962-1 C.B. 68; and Rev. Rul. 67-203, 1967-1 C.B. 105. See, also, Anastasio for the proposition that the mere absence of a right to assign does not prevent a taxpayer from receiving an economic benefit.

Finally, Rev. Rul. 83-25, 1983-1 C.B. 116, holds that a minor received the economic benefit of a trust when it was established by court order to receive damages awarded to the minor as a result of a personal injury suit. Under the terms of the trust, the trustee was authorized to distribute funds necessary for the health, education, support, or maintenance of the minor. The trust was not subject to revocation by the minor, but was subject to amendment, modification, or revocation by the court. The trust was to terminate upon the minor reaching the age of 21, at which time the trust would distribute all of its property to him. If the minor died before reaching the age of 21 the trust property would pass to the minor's estate.

In the instant case, the minor beneficiaries of the Trust are in receipt of an economic benefit when the per capita payments are deposited in the Trust by A. Therefore, under § 61, the payments are includible in the gross income of the minor beneficiaries in the year they are deposited.

CAVEAT(S)

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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