DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Dear

I write in response to your inquiry of February 12, 2018, addressed to the President of the United States, Donald J. Trump. Your inquiry was forwarded to this office for a response.

In your correspondence, you express concern with the application of the tax imposed under §1(g) of the Internal Revenue Code (Code) on a child's unearned income (kiddie tax) to tribal gaming revenues distributed as per capita payments to a child who is a member of the tribe and the conclusion reached in the Chief Counsel's Advice, CCA 201729001, 2017 WL3120353. In that advice, the Internal Revenue Service determined that the tribal gaming revenues distributed as per capita payment pursuant to the tribe's revenue allocation plan to (or on behalf of) a child (as defined in § 1(g)(2)), who is a member of that tribe are "unearned income" under § 1(g)(4).[1]

Our conclusion was based on the statutory provisions contained in §§ 1(g) and 911(d) of the Code, as well as § 1.1(i)-1T of the temporary Income Tax Regulations.

Section 1(g)(1) provides that in the case of a child to whom § 1(g) applies, the tax imposed by § 1 is equal to the greater of the (A) the tax imposed by §1 without regard to §1(g), or (B) the sum of (i) the tax that would be imposed by § 1 if the taxable income of the child for the taxable year were reduced by the child's net unearned income plus (ii) the child's share of the allocable parental tax.

Section 1(g)(3)(A) defines the term "allocable parental tax" to mean the excess of (i) the tax that would be imposed by § 1 on the parent's taxable income if that income included the net unearned income of all children of the parent to whom § 1(g) applies over (ii) the tax imposed by § 1 on the parent without regard to § 1(g).

[1] References to sections in this letter refer to sections of the Internal Revenue Code of 1986.

Section 1(g)(3)(B) provides that a child's share of any allocable parental tax of a parent equals an amount that bears the same ratio to the total allocable parental tax as the child's net unearned income bears to the aggregate net unearned income of all children the parent to whom § 1(g) applies.

Section 1(g)(4) defines net unearned income as the excess of the portion of the adjusted gross income for the taxable year that is not attributable to earned income as defined in § 911(d)(2) over the sum of the amounts described in § 1(g)(4)(A)(ii)(I) and (II).

Section 911(d)(2)(A) states that the term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for personal services actually rendered.

Section 1.1(i)-1T, Q&A 6 of the temporary Income Tax Regulations provides that net unearned income is the excess of the portion of the gross income for the taxable year that is not "earned income" as defined in § 911(d)(2) (income that is not attributable to wages, salaries, or other amounts received as compensation for personal services) over the sum of the standard deduction provided for under § 63(c)(5)(A), plus the greater of (A) $500 (adjusted for inflation after 1988) or (B) the amount of allowable itemized deductions that are directly connected with the production of unearned income.[2]

The per capita payments of distributed tribal gaming revenues do not meet the definition of "earned income" under § 911(d)(2). Consequently, these payments cannot be considered earned income for purposes of § 1(g)(4)(A).

In your correspondence, you refer to a "safe harbor position" in support of the assertion that the appropriate classification of per capita payments of distributed tribal gaming revenues to minor members of a tribe is "non-SE earned income." However, neither the statutory language nor the legislative history of the relevant statutory provisions support this assertion. In fact, the legislative history of § 1(g) indicates that the Congress had carefully considered whether certain sources of a child's unearned income would be subject to the tax imposed under §1(g). See S. Rep. No. 99-313, at 800-803 (1986). The final language of the enacted law did not include language that would have taxed a child's unearned income from non-parental sources at the child's marginal rates and not the parent's rate. Instead, the Conference Report to the Tax Reform Act of 1986 makes clear that the kiddie tax applies to "all net unearned income of a child under 14 years of age regardless of the source of the assets creating the

[2] These temporary regulations were issued prior to the time that § 1(i) was redesignated as current § 1(g) by § 11101(d)(2) of the Omnibus Budget Reconciliation Act of 1990. Pub. L. No. 101-508, 104 Stat. 1388.

child's net unearned income." See H.R. Rep. No. 99-426, at II-767 – II-769 (1986) (Conf. Rep.)

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Section 2.04 of Rev. Proc. 2018-1, 2018-1 I.R.B. 1, 9 (Jan. 2, 2018). If you have any additional questions, please contact me or at .

Sincerely,

William A. Jackson
Branch Chief, Branch 5
(Income Tax & Accounting)