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Policy

New Tax Treatment on Per Capita Distributions of Direct Pay Lease Funds

Resources

[Interim Guidance](#)

[Notice 2015-67](#)

[Per Capita Act \(25 U.S.C. §§117a-c\)](#)

The Internal Revenue Service (IRS) has issued [Interim Guidance](#) on the income tax treatment of per capita distributions to tribal members on certain direct pay leases. The Interim Guidance provides clarification on concerns that have been plaguing tribal governments and their members since [Notice 2015-67](#) was released last September. It now instructs IRS employees to apply the same standards set forth in Notice 2015-67 when determining whether per capita distributions of direct pay lease funds are subject to taxation.

Direct pay leases are funds that derive from tribal trust resources that are distributed directly to the tribal lessor and not paid to a tribal trust account. Previously, the guidance provided a narrow scope of what constituted a "trust resource" and did not address funds acquired through direct pay leases.

The IRS will also apply Notice 2015-67 examples of mischaracterized taxable income as nontaxable per capita distributions. For example, per capita distributions to tribal members from Indian gaming activity that are subject to the Indian Gaming Regulatory Act (net gaming revenues).

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