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## GENERAL MEMORANDUM 12-112

### IRS: Per Capita Payments from Proceeds of Certain Settlements of Indian Tribal Trust Cases Not Taxable

The Internal Revenue Service (IRS) in Notice 2012-60 (attached) has confirmed that per capita payments from trust accounts resulting from *Cobell v. Salazar* and similar tribal trust administration settlements are excluded from consideration as income for federal tax purposes.

The Notice however, clarifies that if for example, a tribe first places the settlement proceeds in a private bank account to accrue interest and then distributes the entire settlement amount plus the interest earned as per capita payments to tribal members, then the tribal members receiving the per capita payments would continue to exclude the *original* per capita sum they would have received from consideration as taxable income but would still be liable for federal taxes on the portion of the earned interest which they also received.

The Notice also clarifies that this decision is limited to the proceeds of settlements with the (listed) 55 federally recognized tribes that have entered into settlement agreements of tribal trust cases as well as to similar tribal trust case settlements that will be subsequently identified by the IRS. Other per capita distributions are subject to the Per Capita Act (PL 98-64) 97 Stat. 365, 25 U.S.C. § § 117a-117c.

Finally, the IRS indicates that "The federal income tax treatment of other per capita payments made by the Secretary of the Interior or Indian tribes to members of Indian tribes is outside the scope of this notice and may be addressed in future guidance [emphasis added]."

On another issue related to *Cobell* and other tribal trust administration settlements, see our General Memorandum 12-111 (September 7, 2012) regarding treatment of these per capita payments for purposes of eligibility for Social Security Act program benefits.

Please let us know if you would like further information on these developments.

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