**Private Letter Ruling**

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| **Ruling Number:** | **P-2000-042** |

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| **Tax Type:** | **Individual Income Tax** |
| **Brief Description:** | **Unearned income received by a Native American Indian from a tribe; subject lives on a reservation.** |
| **Keywords:** |  |
| **Approval Date:** | **08/29/2000** |

**Body:**

Office of Policy & Research

August 29, 2000

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Re: Kansas Income Tax

Dear XXXXX:

Your correspondence of July 26, 2000 has been referred to me for response. Thank you for your inquiry.

Your letter notes you are preparing a return for a Native American Indian who lives on a reservation and received money from the tribe which is included in her federal adjusted gross income. The K-40 instructions state that income earned on a reservation by a Native American Indian who resides on his or her reservation is exempt from Kansas tax. You note that in this situation the income is “unearned” rather than “earned”, even though the money comes from the tribe.

In your letter you indicate you would like a definite yes or no answer to the question: Is unearned income received from a tribal council (or tribe), by a Native American Indian residing on his or her tribal reservation, exempt from Kansas income tax? Please be advise our response is “yes”. The basis for our position is set forth below.

The particular statute which imposes the Kansas income tax is K.S.A. 79-32,110. Subsections (a) and (b) of the statute provides:

(a) *Resident Individuals*. Except as otherwise provided by subsection (a) of K.S.A. 79-3220, and amendments thereto, a tax is hereby imposed upon the Kansas taxable income of every resident individual, which tax shall be computed in accordance with the following tax schedules: [Schedules omitted.]

(b) *Nonresident Individuals*. A tax is hereby imposed upon the Kansas taxable income of every nonresident individual, which tax shall be an amount equal to the tax computed under subsection (a) as if the nonresident were a resident multiplied by the ratio of modified Kansas source income to Kansas adjusted gross income.

The term "Kansas taxable income" is defined by K.S.A. 79-32,116. This statute provides, (in its entirety), that:

The Kansas taxable income of an individual shall be his or her Kansas adjusted gross income less his or her Kansas deductions and Kansas personal exemptions.

The term "Kansas adjusted gross income" is defined by K.S.A. 79-32,117. This statute provides, in part, that:

(a) The Kansas adjusted gross income of an individual means such individual's federal adjusted gross income for the taxable year, [after certain addition and subtraction modifications, including specifically a subtraction modification for]:

(c)(ii) Any amounts received which are included in federal adjusted gross income but which are specifically exempt from Kansas income taxation under the laws of the state of Kansas.

In the case of *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973), the United States Supreme Court held that a member of a tribe who lived on the tribe’s reservation and derived all of her income from sources within the reservation was not subject to state income tax. Since decisions of the United States Supreme Court are the law of the land, this decision has relevance for Kansas. As a result, Kansas has adopted the position that income earned on a reservation by a Native American Indian who resides on his or her reservation is exempt from Kansas tax. The exemption applies to earned or unearned income which is derived from sources within the reservation.

Therefore, in answer to your question: Is unearned income received from a tribal council (or tribe), by a Native American Indian residing on his or her tribal reservation, exempt from Kansas Income Tax? The answer is “yes”.

I trust this information is of assistance. If I can be of further service, please feel free to contact me.

Sincerely,

Jim Weisgerber
Attorney
Tax Specialist

JW:jw

**Date Composed: 09/13/2000 Date Modified: 10/10/2001**