

Revenue Ruling 59-354

SECTION 61. - GROSS INCOME DEFINED

26 CFR 1.61-2: Compensation for services, including fees, commissions, and similar items.

(Also Sections 3121, 3306, 3401; 31.3121(a)-1, 31.3306(b)-1, 31.3401(a)-1.)

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Although includible in gross income under section 61 of the Internal Revenue Code of 1954, amounts paid to members of Indian tribal councils for services performed by them as council members do not constitute "wages" for the purposes of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act and the collection of income tax at source on wages.

Amounts paid to other salaried employees of such Indian councils and to employees of private tribal business enterprises constitute "wages" subject to the Federal employment taxes, including the withholding of income tax under section 3402 of the Internal Revenue Code of 1954.

Advice has been requested whether the salaries of members of Indian tribal councils are subject to Federal income tax and Federal employment taxes and whether the tribal councils are liable for the withholding and payment of such taxes.

The constitution and bylaws of the various Indian tribes provide that the members of the council are elected from among the full tribal membership; that their duties include representing the tribe in business dealings with the United States Government and the public generally; that the council is a policy determining group; and that the members also have some duties to perform in legislative and executive capacities for the tribe. Their duties appear to be similar to the duties of a city council.

Section 61(a) of the Internal Revenue Code of 1954 defines the term "gross income" to include "income derived from any source whatever."

Exemption from the payment of Federal income tax may not be implied and, if exemption of Indians from the payment of such tax exists, it must derive plainly from the Federal tax statutes or from treaties or agreements with the Indian tribes concerned or some Act of Congress dealing with their affairs. See Revenue Ruling 54-456, Cumulative Bulletin 1954-2, 49. Accordingly, Indians are required to include in gross income all income they receive which has not been specifically exempted in some manner from Federal income tax.

There is no provision in the Federal income tax laws which would exempt Indians, as such, from income taxation. Accordingly, unless income of an Indian derived from a particular source is otherwise exempt, such income will be subject to tax in his hands the same as it would be in the hands of any other taxpayer. Similarly, all remuneration received by an Indian for services performed as an employee for his employer which constitutes "wages," as that term is defined in the Federal employment tax statutes, is subject to the taxes imposed by such statutes.

Where a business enterprise of an Indian tribe is organized and operated by the tribe itself, such enterprise is considered a private tribal activity and services performed in its employ constitute employment. In this connection, see Revenue Ruling 56-110, Cumulative Bulletin 1956-1, 488.

A review of many court decisions and legislative enactments pertaining to Indian tribes indicates that the powers vested in any tribe or tribal council by existing law, within the meaning of section 16 of the Wheeler-Howard Act, 25 U.S.C. 476, precludes a conclusion that services performed by members of such councils in their capacities as council members constitute employment for Federal employment tax purposes. Accordingly, it is held that the amounts paid to members of tribal councils for services performed by them as council members do not constitute "wages" for purposes of the Federal Insurance Contributions Act, Federal Unemployment Tax Act and the collection of income tax at source on wages (chapters 21, 23 and 24, respectively, Subtitle C, Internal Revenue Code of 1954).

It is held further that services performed by other salaried employees of tribal councils and by employees of tribal business enterprises constitute employment and their wages are subject to the Federal employment taxes, including the withholding of income tax under section 3402 of the Code. The tribal councils are responsible for the withholding of taxes where applicable and for the payment of any taxes owing with respect to the wages paid to such employees.