Treasury Issues Final Tax Guidance on Per Capita Tribal Payments

The U.S. Department of the Treasury and Internal Revenue Service (IRS) recently issued final guidance regarding per capita distributions made to members of Indian tribes from funds held in trust by the Secretary of the Interior. Developed in response to requests from tribal nations, the guidance concludes that per capita payments to tribal members from such trust accounts generally are not subject to taxation.

“We are providing tribes with important clarity by finalizing

Interior, Justice Departments Announce $940 Million Landmark Settlement with Nationwide Class of Tribes and Tribal Entities

The U.S. Department of Justice and the U.S. Department of the Interior (Interior) recently announced a $940 million proposed settlement with a nationwide class of Native American Tribes and tribal entities that, if approved by the federal district court, would resolve a 25-year-old legal dispute related to contract support costs for tribal agencies. The proposed settlement would address claims that the United States contracted with tribes to run programs but did not pay the full amounts required by law.

“This landmark settlement represents another important step in the Obama Administration’s efforts to turn the page on past challenges in our government-to-government relationship with tribes,” said Interior Secretary Sally Jewell. “Tribal self-determination and self-governance will continue to be our North Star as we navigate a new chapter in this important relationship, and we are committed to fully funding contract support costs so that tribal contracting can be more successful. Congress can and should make this happen. [The] announcement resolves past claims and allows money wrapped up in litigation to be used more productively.”

The proposed settlement, announced by Interior Secretary Jewell, Assistant Secretary for Indian Affairs Kevin Washburn and Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department’s Civil Division, would address claims that the government contracted with tribes and tribal agencies to run Bureau of Indian Affairs (BIA) programs like law enforcement, forest management, fire suppression, road maintenance, housing, federal education and other support programs, but failed to appropriate sufficient funds to pay the costs under the agreements. Native American tribal agencies manage these programs under the Indian Self-Determination Act of 1975.

“The Department of Justice is pleased that the parties have reached an agreement to finally resolve this litigation that has spanned four administrations,” said Principal Deputy Assistant Attorney General Mizer. “This agreement was long in the making – reached only after years of complex negotiations – and both sides can be proud of the result.”

The proposed settlement was filed in U.S. District Court in Albuquerque, NM, and will require court approval. The proposed settlement would resolve the government’s liability and avoid years of tedious contract-by-contract litigation that would require tens of thousands of hours of work by federal and tribal attorneys as well as expert auditors and accountants.

The claims arose because of a mismatch between federal self-determination laws and available appropriations. While the federal government has signed contracts that provided for certain amounts to cover administrative costs of implementing contracts – such as workers’ compensation costs for tribal employees – Congress capped appropriated funds available to pay for these costs. This funding gap was one of the sources of the claims, which were raised in a class action lawsuit filed in 1990.

“Time and again, we have seen that when a tribal government runs a federal program, the program is more successful and more responsive to the tribal community,” said Assistant Secretary Washburn. “[The] proposed settlement, together with President Obama’s request for full, mandatory funding of tribal contract support costs in the future, removes one of the significant obstacles to tribal self-determination and self-governance. Tribes can now be confident that the federal government will pay sufficient costs to allow them to be successful in running federal programs.”

In 2012, the issue reached the Supreme Court, which ultimately agreed with the Tribes that the government was liable for the payments, regardless of whether Congress had appropriated adequate funds. Since 2012, the United States has been negotiating with tribal entities to find a fair and efficient resolution of this dispute and to pay the money owed.

In the president’s fiscal year 2016 budget request to Congress for the Departments of the Interior and Health and Human Services, the administration proposed a long-term solution to this persistent problem: mandatory, non-discretionary funding, beginning in fiscal year 2017, for contract support costs.

The proposed settlement marks another significant effort by the Obama Administration to address long-running litigation concerning federal policy in Indian Country, so that Tribes and the federal government can enjoy a more fruitful and constructive relationship in the future. Since 2010, the Departments of Justice and the Interior have settled the Cobell class action lawsuit, and more than 80 similar lawsuits brought by various American Indian tribes, alleging breach of trust for federal mismanagement of their financial assets and natural resources.
guidance that per capita distributions of tribal trust assets generally are not subject to federal income tax,” said Assistant Secretary for Tax Policy Mark Mazur. “This guidance was informed by extensive consultation with tribal governments, illustrating the value of these discussions to help us better understand the needs of tribal governments.”

The Department of the Interior is responsible for holding in trust certain funds on behalf of federally recognized Indian tribes. Under the Per Capita Act of 1983, tribes are authorized to make per capita distributions from these trust accounts directly to tribal members subject to the approval of the Department of Interior. In September 2012, Treasury and the IRS released guidance on per capita distributions from specific settlements, and have since received requests to address the tax treatment of per capita payments more broadly.

While developing this guidance, Treasury convened listening sessions and other consultations to facilitate a government-to-government dialogue between the federal government and tribes, and to understand key tribal concerns.

This notice supersedes Notice 2014-17, which was interim guidance to allow Indian tribes time to review and provide feedback. The comments and feedback we received informed our final guidance on per capita distributions made by the Secretary of the Interior or an Indian tribe out of a tribal “Trust Account.”

Five Tribal Nations Partner with Interior Department to Reduce Fractionation, Strengthen Tribal Sovereignty in Indian Country

U.S. Deputy Secretary of the Interior Michael Connor recently announced that the Department has signed agreements with five additional tribal nations to implement the Land Buy-Back Program for Tribal Nations (Buy-Back Program), which facilitates the purchase of individual interests in fractionated trust lands and consolidates ownership for the tribe with jurisdiction. The tribal nations are the Cabazon Band of Mission Indians in California; the Fond du Lac Band of Lake Superior Chippewa in Minnesota; the Ponca Tribe of Indians of Oklahoma; Quinault Indian Nation in Washington; and the Shoshone-Bannock Tribes of the Fort Hall Reservation in Idaho.

The Department has thus far entered into agreements with 25 sovereign tribal nations to cooperatively implement the Buy-Back Program. Each agreement is unique in time, scope and responsibilities, based on the expressed interests of the tribe. The agreements outline coordinated strategies to facilitate education about the Buy-Back Program and reach out to owners with fractionated interests in reservation land.

“The Cobell Settlement provided no more than 10 years to implement this program, which helps fulfill President Obama’s commitment to strengthen Native American communities,” said Deputy Secretary Connor. “We will meet this ambitious deadline by giving tribal governments the resources and flexibility to carry out the Program in coordination with tribal priorities. Working closely, we can maximize our ability to provide landowners with the information they need to make informed decisions about their land through this voluntary program.”

Since it began making offers in December 2013, the Program has paid more than $660 million to individual landowners and restored the equivalent of approximately 1.3 million acres of land to tribal governments.

There are approximately 245,000 owners of nearly three million fractional interests across Indian Country who are eligible to participate in the Buy-Back Program.

“The Fond du Lac Band looks forward to working with the Department of the Interior on the Cobell Land Buy-Back Program,” said Fond du Lac Band of Lake Superior Chippewa Chairwoman Karen R. Diver. “Reducing fractionation on our reservation is very important to us and builds on our previous efforts. This program will accelerate the process. The Band will be able to make better resource management decisions, increase economic development and housing opportunities, and strengthen our tribal sovereignty. We have been preparing for this program for the past three years and are excited to partner with the Department of the Interior to continue to solve the problem of land fractionation.”

Cabazon Chairman Douglas Welmas said, “We, the Cabazon government, are very pleased to be working with the federal government through the Cooperative Agreement in order to reclaim our traditional tribal lands as an exercise of our sovereignty.”

“The Shoshone-Bannock Tribes of the Fort Hall reservation have one of the largest problems with fractionated land interests in Indian Country,” stated Fort Hall Business Council Chairman Blaine J. Edmo. “Many of our Indian landowners see little or no economic benefit from these small, undivided interests of land that cannot be utilized due to their highly fractionated states. The Shoshone-Bannock Tribes are committed to a successful Land Back-Back Program. We are here to serve our Indian people, and through our participation we aim to acquire and consolidate land for the preservation, protection and enhancement of our people and reservation community.”

Ponca Tribe Chairman Earl S. Howe, III, added, “Fractionalization of our tribal lands has become a problem over the years. The Land Buy-Back Program will definitely help this issue for the tribe, and affected tribal members,
which will also help build our land base.”

“The Quinault Indian Reservation was completely allotted, and today, many of those allotments are highly-fractionated,” added Fawn Sharp, President of the Quinault Indian Nation. “We have been committed to dealing with this challenge effectively and efficiently, in a way that will benefit the entire Quinault Nation. We are grateful to the Department of the Interior for making this opportunity available. We hold our lands and resources sacred, and consider it a high priority to consolidate our reservation in a way that maximizes our ability to manage it properly.”

The Buy-Back Program was created to implement the land consolidation component of the Cobell Settlement, which provided $1.9 billion to consolidate fractional land interests across Indian Country. It allows interested individual owners to receive payments for voluntarily selling their land. Interested sellers receive payments directly into their Individual Indian Money (IIM) account, and consolidated interests are immediately transferred to tribal governments and stay in trust for uses benefiting the tribes and their members.

The Department has announced 42 locations where land consolidation activities such as planning, outreach, mapping, mineral evaluations, appraisals or acquisitions are expected to take place through the middle of 2017. These communities represented 83 percent of all outstanding fractional interests across Indian Country.

Landowners can contact the Trust Beneficiary Call Center at (888) 678-6836 or visit their local Office of the Special Trustee for American Indians (OST) to update their contact information, ask questions about their land or purchase offers, and learn about financial planning resources. More information and detailed frequently asked questions are available at www.doi.gov/buybackprogram.

**Secretary Jewell Announces Nation’s Highest Peak’s New Official Native Name**

In recognition of the long history of strong support from Alaska state, tribal and congressional leaders, and in resolution of an official request for a name change pending for 40 years, U.S. Secretary of the Interior Sally Jewell recently announced that the highest mountain in the United States and North America, formerly known as Mount McKinley, will be officially given the traditional Koyukon Athabascan name of Denali.

President Obama endorsed Jewell’s decision to issue a Secretarial Order that officially changes the name. Jewell is granted the authority to make such changes in certain cases per the 1947 federal law that provides for the standardization of geographic names through the U.S. Board on Geographic Names. The name change will be reflected in all federal usage.

“This name change recognizes the sacred status of Denali to many Alaska Natives,” Secretary Jewell said. “The name Denali has been official for use by the State of Alaska since 1975, but even more importantly, the mountain has been known as Denali for generations. With our own sense of reverence for this place, we are officially renaming the mountain Denali in recognition of the traditions of Alaska Natives and the strong support of the people of Alaska.”

Since 1987 and until today, the official name of the mountain in federal publications has been Mount McKinley. The mountain retained the federally authorized name Mount McKinley, even as the name of the national park was changed in 1980 from Mount McKinley National Park into the new (and larger) area named Denali National Park and Preserve under the Alaska National Interest Lands Conservation Act.

“Recognizing the long history and discussion about the name of this iconic American mountain, the time has come to restore the traditional Alaska Native title Denali for this landmark, which holds great significance to the people of Alaska,” said National Park Service Director Jonathan B. Jarvis.

In 1896, a prospector emerged from exploring the mountains of central Alaska and received news that William McKinley had been nominated as a candidate for President of the United States. In a show of support, the prospector declared the tallest peak of the Alaska Range as Mount McKinley, and the name stuck.

For centuries, the mountain that rises more than 20,000 feet above sea level, the tallest on the North American continent, had been known by another name – Denali. McKinley, our 25th President, was tragically assassinated just six months into his second term, but he never set foot in Alaska.

On March 11, 1975, Governor Jay S. Hammond of Alaska requested that the Secretary of the Interior direct the U.S. Board on Geographic Names to officially designate Mount McKinley in Alaska as Denali. This proposal, never withdrawn, is based on a resolution that was passed by the Alaska State Legislature.

Since 1977, the Board, in deference to potential congressional action, had not resolved the proposal for changing the federally recognized geographic name from Mount McKinley to Denali. Secretary Jewell’s recent action finally resolves the March 1975 petition by former Governor Hammond.

Denali National Park & Preserve, where the mountain is located, was established in 1917 and annually sees more than 500,000 visitors to the 6 million acres that now make up the park and preserve. About 1,200 mountaineers attempt to summit the mountain each year; typically about half are successful.
Obama Administration Unveils New Climate Resilience Tools

As part of the Obama Administration’s Climate Data Initiative, U.S. Secretary of the Interior Sally Jewell recently announced a new set of online climate data resources to help Arctic communities with climate change planning, adaptation and management. The new data sets, introduced as part of an online Climate Resilience Toolkit, comprised more than 250 Arctic-related datasets and more than 40 maps, tools, and other resources designed to support climate-resilience efforts in the Arctic.

The U.S. Climate Resilience Toolkit is a website developed by the National Oceanic and Atmospheric Administration (NOAA) and other Federal agencies that will enable decision-makers to take action. The toolkit will boost climate resiliency by using data-driven tools, information and subject-matter expertise. This also offers information from across the Federal government in one easy-to-use location so that Americans are better able to understand the climate-related risks and opportunities impacting their communities, which will enable them to make smarter decisions to improve their resilience.

“Through the release of Arctic-themed climate data, the U.S. is demonstrating its leadership in sharing free and open climate-relevant information, while also encouraging public innovation and partnerships with private sector entities that are interested in leveraging this data,” Secretary Jewell said. “Also, by sharing climate data among nations, we are providing tools that may be useful in increasing resilience measures across national boundaries in the Arctic.”

In tandem with the release of Arctic-specific climate data sets, Jewell joined Assistant Secretary-Indian Affairs Kevin Washburn to announce that the Climate Resilience Toolkit will also be updated with climate impact information specific to tribal nations.

“Rising temperatures, thawing permafrost, melting glaciers and sea ice are having significant impacts on critical infrastructure and traditional livelihoods for tribes in Alaska and across Indian country,” said Assistant Secretary Washburn. “That means climate change not only affects tribal livelihood, but it also affects access to vital resources and the cultural integrity of communities. We are committed to working with tribal leaders to help build more resilient Native communities in the face of a changing climate.”

The online tribal climate resources, developed with support by tribes and other federal agencies like NOAA and the EPA, represent an important outcome from the cross-agency work of the White House Council on Native American Affairs.

The tribal toolkit can be found at http://toolkit.climate.gov/topics/tribal-nations.

U.S. Department of Education Awards More Than $50.4 Million in Grants to Support American Indian Tribally Controlled Colleges, Universities

The U.S. Department of Education recently announced the award of more than $50.4 million in new grants to support American Indian Tribally Controlled Colleges and Universities in a dozen states. Under the Tribally Controlled Colleges and Universities Program, the formula-based grants will help eligible higher education institutions increase their self-sufficiency by providing funds to strengthen their academic quality, management and overall fiscal stability.

“Tribal institutions serve a valuable role for American Indian students,” said William Mendoza, Executive Director, White House Initiative on American Indian and Alaska Native Education. “As accredited institutions, tribal colleges are unique. In addition to functioning in a similar fashion to community colleges or small, public four-year schools, they support the preservation and revitalization of Native languages and serve other cultural needs of their students. They deliver instruction in culturally appropriate ways, thereby promoting tribal culture and academic achievement.”

To qualify for funding, institutions must meet the federal definition of the term “tribally controlled college or university.” That is, they must be formally controlled, or have been formally sanctioned or chartered by the governing body of an Indian tribe or tribes. No more than one institution shall be recognized with respect to any individual tribe.

The Obama Administration is committed to expanding educational opportunities and improving educational outcomes for American Indian and Alaskan Native children. As demonstrated by President Obama’s Executive Order on Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities, the Administration continues to work to improve the programs available at tribal colleges so that Native students are well prepared to compete for the high-skilled, quality jobs of today and tomorrow.

Last year, the President announced the launch of Generation Indigenous (Gen I), a Native youth initiative focused on removing the barriers that stand between Native youth and their opportunities to succeed.

For more information on the White House Initiative on American Indian and Alaska Native Education, visit www.ed.gov/edblogs/whiaiame.