



Internal Revenue Service Attack on Yakama Tribal Trust Per Capita Distributions

Background

In the Treaty of 1855, the Confederated Tribes and Bands of the Yakama Nation ceded more than 10 million acres to the United States in return for a 1.37 million acre reservation used for the “exclusive use and benefit” of the Yakama people. Pursuant to the federal trust responsibility between the United States and the Yakama Nation, the United States has overseen timber extraction on Yakama trust lands for over 50 years. During that period, the IRS has never attempted to tax timber revenues held in trust for the Tribe. Furthermore, IRS has never attempted to tax per capita distributions made from the accounts holding trust timber revenues, until now.

On June 29, 2010, the IRS sent a letter to the Yakama Nation announcing an audit of the Yakama Nation for fiscal year 2008. The audit has subsequently been expanded in scope to include fiscal years 2009, 2010, and 2011. Although the IRS has conceded that the Yakama Nation has complied with all federal tax laws, an outstanding issue raised by the audits is whether trust per capita distributions to Yakama members from trust timber revenues are subject to federal income tax.

On April 18, 2012, the Yakama Nation requested government-to-government consultation with the IRS regarding the expanded audits and new change in policy of taxing per capita distributions. On April 25, 2012 the IRS flatly denied the consultation request and has since demanded compliance with the audit or face litigation, potential taxation penalties, and the taxation of trust per capita distributions for each of our enrolled Yakamas under this new change in IRS policy.

Issue - Yakama Nation Position

The IRS’ attempt to tax tribal trust per capita distributions is a new federal tax burden on the Yakamas without precedent, without support of federal law, and in violation of the Yakama Treaty of 1855.

The Yakama Nation maintains the following arguments in opposition to the taxation of trust per capita payments: (1) various Federal laws provide a tax exemption to trust per capita distributions, including the “Per Capita Act” expressly and specifically exempting such distributions; (2) the IRS is estopped from changing their policy on the taxability of trust per capita distributions given the reliance upon and the administration of the Interior of such distributions without taxation, including a 1957 BIA Regional Solicitor’s letter supporting a tax exemption, and; (3) the Yakama Nation Treaty of 1855 prohibits taxation on trust land and resources. Please refer to Executive Secretary Sanchey Yallup’s written testimony before the Senate Committee on Indian Affairs for complete analysis.

About the Yakama Nation

The Confederated Tribes and Bands of the Yakama Nation is a federally recognized tribe with reserved hunting, fishing, gathering, and other usufructory rights, pursuant to the Treaty of 1855 (12 Stat. 951). The Yakama Nation exercises jurisdiction over the 1.2 million acre Yakama Indian Reservation, which includes thousands of acres of timber resources. The Treaty of 1855 sets forth that the Yakama Nation shall retain exclusive rights to the resources upon their reservation lands, which does not contemplate Federal or State taxation of those resources.