

CRS Report for Congress

Federal Income Taxation of Indian Tribes and Members

October 26, 2007

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Prepared for Members and
Committees of Congress

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Summary

Generally, Indian tribes are exempt from federal income taxation. This exemption extends to income earned by federally chartered — but not state-chartered — tribal corporations. On the other hand, individual tribal members are not exempt from federal income taxation. However, there are two Indian-specific tax exemptions available for individual tribal members: (1) income derived directly from restricted lands and (2) income derived from treaty fishing-rights activity. Finally, while the income of Indian tribes may be exempt from tax, Indian tribes are still generally subject to withholding and employment tax obligations.

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Federal Income Taxation of Indian Tribes and Members

This report provides an overview of federal taxation of Indian tribes and individual tribal members. Generally, Indian tribes are exempt from federal income taxation. This exemption generally extends to tribal corporations chartered under federal law, but does not extend to tribal corporations chartered under state law. On the other hand, the income of individual tribal members is not generally exempt from federal income taxation, though there are some Indian-specific exemptions available for some of their income. Finally, while the income of Indian tribes may be exempt from tax, Indian tribes are generally still subject to withholding and employment tax obligations.

General Tax Status of Indian Tribes and Other Tribal Entities

The income of an Indian tribe is generally exempt from federal taxation, regardless of the location where the income was earned.¹ The Internal Revenue Service (IRS) appears to base this conclusion on the theory that Congress did not designate Indian tribes as taxable entities within Section 11 of the Internal Revenue Code (IRC).² This exemption extends to income generated by tribal corporations federally chartered under Section 17 of the Indian Reorganization Act of 1934 (IRA)³ or Section 3 of the Oklahoma Indian Welfare Act.⁴ Nonetheless, the IRS has indicated that the exemption does not extend to tribal corporations chartered under state law.⁵ It should be noted that the tax status of corporations chartered under tribal

¹ Rev. Rul. 67-284, 1967-2 C.B. 55 (“Income tax statutes do not tax Indian tribes. The tribe is not a taxable entity.”); Rev. Rul. 94-16, 1994-1 C.B. 19 (“Because an Indian tribe is not a taxable entity, any income earned by an unincorporated tribe, regardless of the location of the business activities that produced the income, is not subject to federal income tax.”).

² Mark J. Cowan, *Leaving Money on the Table(s): An Examination of Federal Income Tax Policy Towards Indian Tribes*, 6 Fla. Tax Rev. 347, 355 (2004). *See also* I.R.C. § 11 (imposing a tax on corporations and associations).

³ 25 U.S.C. § 477. *See also* Rev. Rul. 81-295, 1981-2 C.B. 15; Rev. Rul. 94-16, 1994-1 C.B. 19.

⁴ 25 U.S.C. § 503. *See also* Rev. Rul. 94-65, 1994-2 C.B. 14.

⁵ Rev. Rul. 94-16, 1994-1 C.B. 19 (“[...] a corporation organized by an Indian tribe under state law is not the same as an Indian tribal corporation organized under section 17 of the IRA and does not share the same tax status as the Indian tribe for federal income tax purposes.”). *See also* *Moline Properties v. Comm’r*, 319 U.S. 436 (1943) (holding that
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laws is uncertain, and as the date of this report, the IRS has yet to issue any formal guidance on the issue.⁶ Similarly, the tax status of tribal limited liability companies⁷ (LLCs) is also uncertain.⁸

General Tax Status of Individual Indians

Individual Indians are generally subject to federal income taxes. This conclusion is based on the expansive breadth of the language imposing the federal income tax on individuals.⁹ Furthermore, the reach of the federal income tax extends over all income from whatever source it may be derived, unless specifically exempted by law.¹⁰ An individual's status as an Indian or his status as a tribal member alone has no bearing on whether the individual's income is subject to federal taxation,¹¹ absent a statute or treaty provision evincing a clear intent from Congress to exempt.¹²

This said, there are two significant Indian-exclusive exemptions from federal income taxes: income derived directly from allotted restricted lands that are held in trust by the United States government¹³ and income derived from treaty fishing

⁵ (...continued)

unless the corporate entity is a sham or there is some necessity to disregard the corporate form to prevent fraud on the tax statutes, corporations should be recognized as a separate taxable entities from the owners, and owners who opt for the benefits of incorporation must accept the disadvantages in tax liability).

⁶ See Simplification of Entity Classification Rules [T.D. 8697], 61 Fed. Reg. 66584, 66585-66586 (December 18, 1996).

⁷ A "limited liability company" is a "company — statutorily authorized in certain states — that is characterized by limited liability, management by members or managers, and limitations on ownership transfers." Black's Law Dictionary 275 (7th ed. 1999).

⁸ See Felix S. Cohen. Handbook of Federal Indian Law 676 (Nell Jessup Newton ed., LexisNexis 1941) (2005) (theorizing that LLCs wholly owned by a tribe may have the same tax-exempt status as the tribe).

⁹ I.R.C. § 1 (tax imposed on all individuals, trusts, and estates).

¹⁰ *Id.* § 61 ("[...]gross income is all income from whatever source derived[...]").

¹¹ *Choteau v. Burnet*, 283 U.S. 691, 694 (1931) (ruling that Osage mineral royalties were subject to federal income tax based on the language of the Osage Allotment Act, 34 Stat. 539. In doing so, the Court noted that the legislation of the allotment era evinced the intent of Congress to gradually impose both the privileges and responsibilities of property ownership to Indians, with one such responsibility being the duty to pay taxes.). See also Rev. Rul. 67-284, 1967-2 C.B. 55.

¹² *Superintendent of Five Civilized Tribes v. Comm'r*, 295 U.S. 418, 420 (1935). See also *Squire v. Capoeman*, 351 U.S. 1, 6 (1956) (reaffirming the proposition that Indians are citizens and, when in the ordinary affairs of life not governed by treaties or remedial legislation, are subject to federal taxation like other citizens unless an exemption to the tax laws is "clearly expressed" by Congress); Rev. Rul. 67-284, 1967-2 C.B. 55.

¹³ *Capoeman*, 351 U.S. at 7-8. See also Rev. Rul. 67-284, 1967-2 C.B. 55; Rev. Rul. 74-13, (continued...)

rights.¹⁴ The first has been developed primarily through case law and IRS revenue rulings. The second exemption is a statutory provision in the Internal Revenue Code.

Exemption For Income Derived Directly From Allotted Lands

Background. Under specific circumstances, Indians enjoy a tax exemption on income derived directly from allotted restricted lands held in trust by the United States government. The leading case on this issue is *Squire v. Capoeman*, which held that the General Allotment Act of 1887 contained language evincing a congressional intent to grant such an exemption.¹⁵

The General Allotment Act of 1887, also commonly called the Dawes Act, authorized the President to allot portions of reservation lands to individual Indians.¹⁶ Title to the allotted lands was to be held in trust by the United States government for a period of 25 years, which the President had the option to extend by executive order.¹⁷ At the end of the trust period, the land would be conveyed to the Indian “in fee, discharged of said trust and free of all charge of incumbrance whatsoever.”¹⁸ Alternatively, the act authorized the Secretary of the Interior (SOI) to issue a patent in fee simple to any allottee “competent” of managing his own affairs, and thereafter “all restrictions as to sale, incumbrance or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent.”¹⁹ Until an Indian was certified as “competent,” which meant capable to manage his affairs as an independent landowner, his allotted land remained in trust, and was therefore “restricted.”²⁰ However, the allotment policy was repudiated by the IRA in 1934.²¹ The IRA prohibited further allotment of tribal land,²² provided that allotted land held in trust would continue in trust until Congress provided otherwise,²³ and authorized the Secretary of the Interior to take land into trust for tribes and tribal members.²⁴ Congress would later apply these provisions to

¹³ (...continued)
1974-1 C.B. 14.

¹⁴ I.R.C. § 7873.

¹⁵ 351 U.S. 1 (1956).

¹⁶ 24 Stat. 388 (February 8, 1887).

¹⁷ 24 Stat. 389 (February 8, 1887).

¹⁸ *Id.*

¹⁹ 34 Stat. 182 (May 8, 1906).

²⁰ 24 Stat. 388 (February 8, 1887); 34 Stat. 182 (May 8, 1906).

²¹ Cohen, *supra*, 1042-1043 (2005).

²² 25 U.S.C. § 461.

²³ 25 U.S.C. § 462.

²⁴ 25 U.S.C. § 465.

non-IRA tribes as well. Currently, land acquired for or by an Indian may be placed in trust²⁵ and the trust period for allotments has been extended indefinitely.²⁶

In *Capoeman*, the issue was whether proceeds from the sale of timber grown on lands allotted pursuant to the General Allotment Act were subject to the federal tax on capital gains.²⁷ The Indians who held the allotment were deemed noncompetent. Moreover, during the tax year in which the income from the timber was realized, the land allotted was still held in trust by the United States government and not subject to either alienation or encumbrance by the Indian allottee.²⁸

The Court concluded that the language in sections 5 and 6 of the General Allotment Act expressed an intent by Congress to exempt from federal taxation all income derived directly from allotted lands still held in trust by the United States government.²⁹ First, the Court agreed with the proposition that tax exemptions must be “clearly expressed.”³⁰ The Court then referenced section 5 of the General Allotment Act, which ordained that, when allotted lands were conveyed to Indians in fee, they be “free of all charge or incumbrance whatsoever.” Though the provision, as the Court conceded, was “not expressly couched in terms of nontaxability,” the Court nonetheless surmised that the term “charges and incumbrances” might well include “taxation.”³¹ Furthermore, the Court cited the language in section 6 stating that “all restrictions as to sale, incumbrance or taxation of said land shall be removed,” and then concluded that the language clearly expressed a congressional intent to exempt the allotted lands from the reach of federal taxation until title to the allotted lands was conveyed to the Indian allottee in fee.³²

In *Capoeman*, the Court ruled that “[t]he literal language of the proviso [of the General Allotment Act] evinces a congressional intent to subject an Indian allotment to all taxes only after a patent in fee is issued to the allottee.”³³ Relying on *Capoeman*, the IRS has published a series of revenue rulings adopting its holding, and in many ways expanding its scope. Though the reach of the *Capoeman* holding is limited to lands allotted under the General Allotment Act of 1887, the IRS has taken the position that the tax exemption not only applies to noncompetent Indians allotted restricted land held under that specific act, but also “land held under acts or treaties

²⁵ 25 U.S.C. § 2202.

²⁶ 25 U.S.C. § 478-1.

²⁷ *Capoeman*, 351 U.S. at 2.

²⁸ *Id.* at 3.

²⁹ Sections 5 and 6 of the General Allotment Act of 1887 were codified in 25 U.S.C. §§ 348, 349.

³⁰ *Capoeman*, 351 U.S. at 6.

³¹ *Id.* at 7-8.

³² *Id.* at 7.

³³ *Id.* at 8.

containing an exception provision similar to the General Allotment Act.”³⁴ In a series of additional rulings, the IRS has also elucidated further contours of this exemption, addressing two specific areas of concern: which lands qualify for the exemption outlined in *Capoeman*, and what types of income derived from allotted lands are exempted.

Lands That Qualify For Tax Exemption. The IRS will recognize the exempt status of restricted lands held under the General Allotment Act of 1887 or lands held under acts or treaties containing an exemption provision similar to the General Allotment Act.³⁵ The IRS applies five “tests” to determine whether income from the land in question will qualify for the exemptions, with the failure of any one of the five tests resulting in a denial of the exemption.³⁶ The tests are whether: “(1) the land in question is held in trust by the United States government; (2) such land is restricted and allotted and is held for an individual noncompetent Indian, and not for a tribe; (3) the income is ‘derived directly’ from the land; (4) the statute, treaty or other authority involved evinces congressional intent that the allotment be used as a means of protecting the Indian until such time as he becomes competent; and (5) the authority in question contains language indicating clear congressional intent that the land, until conveyed in fee simple to the allottee, is not to be subject to taxation.”³⁷

It appears that lands located outside Indian reservations fall under the *Capoeman* exemption since the General Allotment Act authorizes allotments located outside of reservations, and *Capoeman* makes no distinctions between allotted lands located within or outside of reservations.³⁸ *Capoeman* applies to allotments issued pursuant to tribe-specific allotment statutes, regardless of whether the General Allotment Act applies to those allotments or not.³⁹ The exemption for restricted lands also applies to individual trust property which is transferred to a subsequent allottee by gift, devise, or inheritance.⁴⁰ Furthermore, property that had been purchased in an arm’s length transaction, which was then subsequently converted to trust status by the Secretary of the Interior also qualifies for the exemption.⁴¹ However, once the

³⁴ Rev. Rul. 67-284, 1967-2 C.B. 55.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Cohen, *supra* 679 (2005).

³⁹ Rev. Rul. 70-116, 1970-1 C.B. 11. *See also* Stevens v. Comm’r, 452 F.2d 741, 744-746 (9th Cir. 1971) (construing Ft. Belknap Allotment Act of March 3, 1921, 41 Stat. 1355); United States v. Hallam, 304 F.2d 620, 622-623 (10th Cir. 1962) (Quapaw allotments pursuant to Act of March 2, 1985, §1, 28 Stat. 876); Big Eagle v. United States, 300 F.2d 765, 770-772 (Ct. Cl. 1962) (taxation of Osage shares of tribal mineral estate under Act of June 28, 1906, 34 Stat. 539); Red Eagle v. United States, 300 F.2d 772 (Ct. Cl. 1962) (same).

⁴⁰ Rev. Rul. 67-284, 1967-2 C.B. 55.

⁴¹ Rev. Rul 74-13, 1974-1 C.B. 14 (adopting the holding of *Stevens*).

restriction on the allotted land is removed, the income derived from the land becomes taxable.⁴²

The Definition of “Derived Directly.” In *Capoeman*, the Court, citing Professor Felix S. Cohen, declared the scope of the tax exemption found in Sections 5 and 6 of the General Allotment Act of 1887 to include income derived directly from restricted lands allotted under the act.⁴³ Because of this language, in order for income to be exempt, the income must “derive directly” from the restricted land. The IRS has enumerated several sources of income that satisfy the “derived directly” test. These sources include, but are not limited to: rentals (including crop rentals), royalties, proceeds from the sale of the natural resources of the land, income from the sale of crops grown upon the land and from the use of the land for grazing purposes, and income from the sale or exchange of cattle or other livestock raised on the land.⁴⁴ The IRS also recognizes that proceeds from the sale of restricted allotted land while the fee title is still held by the government in trust for the Indian are exempt from federal taxation.⁴⁵

Federal appellate courts have also recognized a variety of sources of income that satisfy the “derived directly” test: income from farming and ranching,⁴⁶ bonus income from signing oil and gas leases,⁴⁷ timber harvests,⁴⁸ royalties from mineral deposits,⁴⁹ and rental and sales of chattel from land.⁵⁰ However, courts have also concluded that other sources of income fail the test — namely income from businesses, building rentals, and smokeshops.⁵¹ Furthermore, courts have also rejected exemptions for rental income derived from lands used as a tourist site,⁵² and income derived from the lease of the restricted land to a smokeshop.⁵³ In essence, the courts appear to have delineated the limits of the “derived directly” test by exempting income from taxation only if the income is derived from the land’s natural resources, while taxing income derived from the commercial development of restricted lands.⁵⁴

⁴² *Capoeman*, 351 U.S. at 7-10.

⁴³ *Id.* at 8. (citing Felix S. Cohen, Handbook of Federal Indian Law 265 (1942)).

⁴⁴ Rev. Rul. 67-284, 1967-2 C.B. 55.

⁴⁵ *Id.*

⁴⁶ *Stevens v. Comm’r*, 452 F.2d 741 (9th Cir. 1971).

⁴⁷ *United States v. Daney*, 370 F.2d 791 (10th Cir. 1966).

⁴⁸ *Kirschling v. United States*, 746 F.2d 512 (9th Cir. 1984).

⁴⁹ *Big Eagle v. United States*, 300 F.2d 765 (Ct. Cl. 1962).

⁵⁰ *United States v. Hallam*, 304 F.2d 620 (10th Cir. 1962).

⁵¹ *See Dillon v. United States*, 792 F.2d 849 (9th Cir. 1986); *Critzer v. United States*, 597 F.2d 708 (Ct. Cl. 1979).

⁵² *See Saunooke v. United States*, 806 F.2d 1053 (Fed. Cir. 1986).

⁵³ *See Hale v. United States*, 579 F. Supp. 646 (E.D. Wash. 1984).

⁵⁴ Cohen, *supra* 682-683 (2005) (characterizing the trend to tax income from commercial development as “conceptually muddled” because it creates a disincentive for Indians to put
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Furthermore, income unrelated to the use of restricted property, even when it has some connection to tribal self-sufficiency (such as income from serving in the tribal government) is not exempt from taxation.⁵⁵ Nor are per capita payments derived from tribal restricted lands exempt.⁵⁶

Finally, there is no tax exemption for “reinvestment income,” which is the proceeds of invested income originally derived directly from restricted lands. In *Superintendent of Five Civilized Tribes v. Commissioner (Superintendent)*, an Indian had invested funds derived from a restricted allotment.⁵⁷ The Court held that there was no language which expressly exempted the proceeds of the investment from the federal income tax, and that an exemption cannot be inferred absent a clear intent from Congress.⁵⁸ *Capoeman* further clarified the *Superintendent* holding on the taxability of “reinvestment” income.⁵⁹

Exemption For Income Derived From Treaty Fishing-Rights

Indians whose tribes have negotiated treaty fishing rights with the federal government may have all income derived from those rights exempted from federal taxation.⁶⁰ This statutory tax exemption extends over income derived by individual tribal members or by a “qualified Indian entity” of the tribe, and exempts income derived from that tribe’s “fishing rights-related” activities.⁶¹ To qualify for exemption, the treaty fishing rights must have been recognized by treaty, executive order, or act of Congress as of March 17, 1988.⁶²

“Fishing rights-related” activities include activities that are “directly related” to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of the tribe, or the sale of the harvested fish; but, the exemption applies only if substantially all of the harvesting was performed by tribal members.⁶³ Income

⁵⁴ (...continued)

their land to the profitable use, which appears contrary to federal policy).

⁵⁵ See *Hoptowit v. Comm’r*, 709 F.2d 564 (9th Cir. 1983); *Jourdain v. Comm’r*, 617 F.2d 507 (8th Cir. 1980).

⁵⁶ See *Campbell v. United States*, 164 F.3d 1140, 1142 (8th Cir. 1999).

⁵⁷ *Superintendent of Five Civilized Tribes*, 295 U.S. at 418-420. See also *Capoeman* 351 U.S. at 9 (distinguishing the “reinvestment income” from *Superintendent of Five Civilized Tribes* from the income at issue in *Capoeman*).

⁵⁸ *Id.* at 420.

⁵⁹ *Capoeman*, 351 U.S. at 9 (distinguishing the “reinvestment income” from *Superintendent of Five Civilized Tribes* from the income at issue in *Capoeman*).

⁶⁰ I.R.C. § 7873(a)(1).

⁶¹ *Id.* § 7873(a)(1)(A), (B).

⁶² *Id.* § 7873(b)(2).

⁶³ *Id.* § 7873(b)(1).

that may be related to fishing rights activity, but is merely incidental to it, does not qualify for the tax exemption.⁶⁴

An entity is a “qualified Indian entity” if: (1) such entity is engaged in a fishing rights-related activity of the tribe; (2) all of the equity interest in the entity is owned by qualified Indian tribes,⁶⁵ members of such tribe, or their spouses; (3) except as provided in regulations, in the case of an entity which engages to any extent in any substantial processing or transporting of fish, 90 percent or more of the annual gross receipts of the entity is derived from fishing rights-related activities of one or more qualified Indian tribes each of which owns at least 10 percent of the equity interest in the entity; and (4) substantially all of the management functions of the entity are performed by members of qualified Indian tribes.⁶⁶

Tribal Obligations For Payroll Taxes and Withholding

In general, employers must withhold from their employees’ wages⁶⁷ the amounts owed in federal income tax, pay and withhold Federal Insurance Contribution Act (FICA) taxes, and pay Federal Unemployment Tax Act (FUTA) taxes.

Indian tribes, as employers, are not exempt from these payroll tax obligations. This is because there is no general exemption for wages earned from tribes.⁶⁸ As discussed below, Indian tribes must generally withhold from their employees’ wages the amounts owed in federal income tax, pay and withhold Federal Insurance Contribution Act (FICA) taxes, and pay Federal Unemployment Tax Act (FUTA) taxes.⁶⁹

An exception applies to income earned as a tribal council member. The IRS determined that the Indian Reorganization Act (IRA), which provides the framework for tribal governance, precluded a conclusion that service performed as a council

⁶⁴ See, e.g., *Warbus v. Comm’r*, 110 T.C. 279 (1998) (holding that discharge of indebtedness income did not qualify for a tax exemption even when the original loan financed equipment used for treaty fishing rights activities).

⁶⁵ See I.R.C. § 7873(b)(3)(B) (defining “qualified Indian tribe” as a tribe whose fishing rights are being used by the entity in order to engage in fishing rights related activities.).

⁶⁶ I.R.C. § 7873(b)(3)(A).

⁶⁷ Whether workers are treated as employees, as opposed to independent contractors, for these purposes generally depends on whether they meet the common law definition of “employee.” A person will typically qualify as an employee if the employer has the right to control what the person will do and the manner in which it will be done. See Rev. Rul. 87-41, 1987-1 C.B. 296. See also I.R.C. §§ 3131(d), 3306(I), 3508.

⁶⁸ Rev. Rul. 59-354, 1950-2 C.B. 24.

⁶⁹ *Id.*

member constituted employment for federal tax purposes.⁷⁰ Since income earned as a tribal council member is exempt from tax, there are no withholding or other payroll tax obligations.⁷¹ Income derived from tribal fishing rights is also exempt from the payroll tax requirements.⁷²

Tribal Obligation to Withhold Federal Income Tax. Notwithstanding tribes' immunity from federal income tax, the IRS has nevertheless ruled that tribes must comply with the withholding of taxes owed by their employees.⁷³ Since the wages of tribal employees are generally subject to federal tax obligations, including the obligation to withhold,⁷⁴ the IRS concluded that tribes should have the same administrative obligation to withhold as other employers.⁷⁵ As a result of the IRS ruling, tribes generally do comply with federal income tax withholding requirements.⁷⁶

Federal Insurance Contributions Act. Under FICA,⁷⁷ employers must deduct Social Security and Medicare "contributions" from the wages of their employees.⁷⁸ In addition, the employer must pay an excise tax to fund old-age, survivors, and disability insurance with respect to employed individuals.⁷⁹ Depending on circumstances, state and local governments and their employees may or may not be covered by the Social Security part of FICA. Generally, all state and local employees hired after March 31, 1986, are subject to the hospital insurance (Medicare) portion of FICA.⁸⁰ While Indian tribes are treated as states for certain purposes under the Internal Revenue Code,⁸¹ tribes have been determined not to be "states" for FICA purposes.⁸² This is because, unlike states, there was no express exclusion for tribes within FICA.⁸³ Therefore, tribes are subject to the same FICA obligations as private employers.⁸⁴ However, Indian tribes are exempted from paying

⁷⁰ Rev. Rul. 59-354, 1950-2 C.B. 24. *See also* 25 U.S.C. § 476

⁷¹ Rev. Rul. 59-354, 1950-2 C.B. 24.

⁷² I.R.C. § 7873(a)(2).

⁷³ Rev. Rul. 59-354, 1950-2 C.B. 24.

⁷⁴ I.R.C. § 3402.

⁷⁵ Rev. Rul. 59-354, 1950-2 C.B. 24.

⁷⁶ Cohen, *supra* 686 (2005).

⁷⁷ I.R.C. §§ 3101-3128.

⁷⁸ *Id.* § 3102(a).

⁷⁹ I.R.C. § 3111.

⁸⁰ I.R.C. § 3121(b)(5), (7), 3121(u).

⁸¹ *See* I.R.C. § 7871.

⁸² I.R.S. Priv. Ltr. Rul. 9043066 (October 26, 1990).

⁸³ *Id.*

⁸⁴ *Id.*

FICA taxes for wages derived from treaty fishing rights.⁸⁵ It appears that tribes generally pay into the FICA scheme.⁸⁶

Federal Unemployment Tax Act. FUTA, along with state unemployment systems, funds unemployment benefits for eligible workers.⁸⁷ Under FUTA, only employers pay the unemployment tax, and are liable for the amount owed regardless as to whether the employer pays into a similar state based unemployment plan.⁸⁸ In 1959, the IRS ruled that Indian tribes qualify as employers and must pay the tax for all wages paid to their employees with the exception of compensation paid to tribal council members.⁸⁹ However, this treatment changed under the Community Renewal Tax Relief Act.⁹⁰ Now, recognized tribes are exempt from FUTA if they elect to participate in the State Unemployment Tax Act (SUTA) system.⁹¹ Under this system, tribes can participate by either making contributions or some payment in lieu of contribution to a state unemployment plan.⁹² However, if the tribes choose a form of payment other than making contributions, states have the option to mandate a bond or some other reasonable measure to ensure that the payment will be made.⁹³

⁸⁵ I.R.C. § 3121(a)(21).

⁸⁶ Cohen, *supra* 686 (2005).

⁸⁷ I.R.C. §§ 3301-3311.

⁸⁸ Treas. Reg. § 31.3301-1; I.R.C. § 3301.

⁸⁹ Rev. Rul. 59-354, 1950-2 C.B. 24.

⁹⁰ P.L. 106-554, 114 Stat. 2763 (2000) (codified as amended at I.R.C. § 3306(c)(7)).

⁹¹ I.R.C. § 3309(d).

⁹² *Id.*

⁹³ *Id.*