



**UTE INDIAN TRIBE**  
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January 10, 2022

**RE: Tribal Member Dividend Information**

To Whom it May Concern:

The Ute Indian Tribe of the Uintah and Ouray Reservation ("Tribe") Tribal Business Committee writes to you to clarify that tribal member dividend information should not be used for proof of income. Not only is this inappropriate because dividends are not income for purposes of determining eligibility for services, but it is not clear whether there is a legitimate reason in this instance to seek any income information from tribal members for purposes of determining eligibility for services.

Tribal members' dividends should not be included in calculating income because the dividends are tax exempt under federal law.

**Tax-Exempt Status of Per Capita Payments under Federal Law**

Federal income tax applies to every individual and includes income from whatever source derived, unless an exemption from taxation can be found in a statute. *United States v. Anderson*, 625 F.2d 910, 913 (9th Cir. 1980) (citing Internal Revenue Code and quoting *Comm'r v. Walker*, 326 F.2d 261, 263 (9th Cir. 1964)). The Tribe distributes principal royalty payments from oil and gas income derived from tribal trust land to enrolled tribal members on a per capita basis (hereinafter described as "dividends").

These dividends are tax-exempt and are not counted as income pursuant to two separate statutes. The first, 25 U.S.C. § 1407, expressly exempts distributed per capita payments from Federal or State income taxes. This statute also exempts such funds from being considered as income or utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act. The second statutory exemption is the Ute Partition Act, which exempts principal royalty payments made from tribal oil and gas revenues and distributed per capita to tribal members from inclusion as income for tax purposes. See 25 U.S.C. 677 et seq; see also *Ute Distribution Corp. v. United States*, 938 F.2d 1157, 1159 (10th Cir. 1991) (implicitly finding that distributions to full-blood tribal members of the tribal oil and gas royalties are tax-exempt); *Estate of Poletti*, 34 F.3d 742, 745-48 (9th Cir. 1994) (same).

The law is well settled that tribal members who reside within Indian Country are not subject to State taxation, and this includes State income tax. In *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973), the United States Supreme Court established a per se rule which prohibits states from taxing tribal members in Indian Country absent the express consent of Congress. The Supreme Court clarified that a tribal member must live and work within Indian Country in order to be exempt from state taxation in *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450, 462-465(1995). The Court in Chickasaw Nation reaffirmed the per se rule in McClanahan and held that absent a cession of jurisdiction by the Tribe itself or other federal statutes permitting it, "a state is without power to tax reservation lands and reservation Indians." 515 U.S. at 458, citing *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251, 258 (1992). Accordingly, in the absence of a federal statute which authorizes the inclusion of dividends in income calculations, there is no authority for you or your organization to count dividends as income.

Thank you for your immediate attention to this important matter. Should you have any further questions or concerns, feel free to contact the Tribal Business Committee

On Behalf of the Ute Indian Tribe Business Committee:



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Shaun Chappose  
Business Committee Chairman