Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4-PLR-109439-00
Date:
April 12, 2001

Re:

Legend
Decedent =

Son =
Date 1 =
Date 2 =
Indian Land Lease =
Organization =
Bank =
Amount 1 =
Amount 2 =

Dear :

This is in response to your letter dated November 22, 2000, and prior correspondence, requesting a ruling that certain property is excluded from Decedent's gross estate for federal estate tax purposes.

On Date 1, Son, a "noncompetent" Native American, died intestate without issue. Son was survived by Decedent, Son's mother. At the time of his death, Son owned the following property: (1) real property allotted to Son and held by the United States as trustee under Section 5 of the General Allotment Act of 1887 (Allotted Land); (2) an Individual Indian Monies Account (IIMA) maintained and administered by the Bureau of Indian Affairs (BIA); (3) an interest bearing bank account, a checking account, and a money market account, all maintained at Bank; and (4) miscellaneous assets not directly derived from the Allotted Land.

Pursuant to a land lease, the Son's allotted land had been leased to Organization. BIA collected monthly rent from Organization and credited Son's IIMA account. With BIA's approval, Son had established an automated transfer procedure, and when each monthly rent payment from the allotted land was deposited in the IIMA account, BIA would issue a check to Bank on behalf of Son. These checks were deposited into the Son's interest bearing account. Son periodically transferred funds from the interest bearing account into his checking account and into his money market account. During the 13 months prior to Son's death, approximately Amount 1 was

transferred by automatic transfer from the IIMA account into the interest bearing account. During this period, the interest bearing account earned approximately Amount 2 in interest.

Under the laws of intestate succession, Son's property passed to Decedent, also a "noncompetent" Native American. On Date 2, Decedent died intestate. Under the laws of intestate succession, her property passes to her three living children and the issue of one predeceased child. The Decedent, except for the property received from Son's estate, owned few assets.

On behalf of the Decedent's estate, you have requested a ruling that the Allotted Land and any property directly derived from the Allotted Land that passed from Son to Decedent is not included in Decedent's gross estate for federal estate tax purposes.

Section 2033 provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

As noted above, Son owned land held by the United States as trustee under the General Allotment Act of 1887 (the 1887 Act). In Squire v. Capoeman, 351 U.S. 1 (1955), the Court held that under the 1887 Act, the proceeds of sale of timber standing on allotted land was exempt from income tax. The Court found that the purpose of the 1887 Act was to ensure that lands subject to the 1887 Act, and income derived from the lands, passed to the recipients preserved and undiluted by taxes. In addition, the Court noted that, notwithstanding the general rule that exemption from tax laws should be clearly expressed, language used in statutes governing Native American's rights should never be construed to their detriment. Squire v. Capoeman, 351 U.S. at 5-7.

In Rev. Rul. 69-164, 1969-1 C.B. 220, the Service concluded, relying on Squire v. Capoeman, that for Federal estate tax purposes, the gross estate of a deceased Native American does not include the value of certain property held under the 1887 Act where the decedent dies before the issuance to him of a patent in fee simple to the land. The revenue ruling lists the following kinds of property as not includible in the gross estate: trust lands acquired either in the original allotment or by inheritance; original and inherited headrights; mineral headright income derived from royalties held in trust by the U.S. Government; and trust fund cash directly derived from allotted lands. See also, Asenap v. United States, et.al., 283 F. Supp. 566 (W.D. Okla 1968). However, trust fund cash not directly derived from allotted lands is not exempt from the Federal estate tax.

As noted above, both Son and Decedent were "noncompetent" Native Americans for purposes of the General Allotment Act of 1887. As a consequence, pursuant to the 1887 Act, Allotted Land was held on their behalf in trust by the United States, and they could not dispose of the property without the approval of the Secretary of the Interior.

Stevens v. Commissioner, 452 F.2d 741, 742 (9th Cir. 1971). As discussed in Rev. Rul. 69-164, the Allotted Land held for Son in trust by the United States under the 1887 Act that Decedent inherited from Son, is not included in Decedent's gross estate. Similarly, under the revenue ruling any cash held in trust by the United States that is directly derived from the allotted land is also not included in the Decedent's gross estate. In addition, any funds held in the interest bearing account and the checking and money market account at Bank that are directly derived from the Allotted Land are not included in Decedent's gross estate.

Except as specifically ruled above, we express no opinion about the federal tax consequences of the transaction described above under any other provisions of the Code.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Associate Chief Counsel
(Passthroughs and Special Industries)

By _____
George Masnik
Chief, Branch 4

Enclosure
Copy for 6110 purposes