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THE TAX LAWYER

TAXES 10/01/2015

### Marijuana Goes Native American And Tax Free

Native American tribes are poised to move into the lucrative legal marijuana businesses. As a sovereign nation, a [Native American tribe can open a marijuana resort even in a state where pot is illegal](#). With spreading legalization and taxes being levied right and left, tribal tax advantages could also be huge. A Native American tribe in South Dakota [plans to grow and sell marijuana despite state law](#), benefiting from a 2014 [Justice Department decision](#) stopping U.S. attorneys from prosecuting Native American tribes that grow and sell pot on reservations.

The [Associated Press](#) says that the Santee Sioux tribe is the first to grow and sell marijuana in an integrated operation. The small tribe of 400 hopes to use the profits for housing, a clinic, and addiction treatment. President Obama will surely not change his Justice Department's rule, yet the [feds did raid one Native American reservation](#) in July. The situation could be much dicier after the 2016 election.



(Photo credit: OLIVER BERG/AFP/Getty Images)

Any other new President—particularly a Republican—may not be so understanding. New Jersey Gov. Chris Christie has [stated](#) that he will enforce the federal laws against marijuana if he is elected. He has also called taxes from marijuana ‘blood money.’ Yet tribal laws and the sovereign status of tribes is significant. Take gaming.

In 1987’s [California v. Cabazon Band of Mission Indians](#), the Supreme Court ruled that in states permitting gaming, tribes can conduct gaming on Native American lands unhindered by state regulation. A year later, Congress enacted the Indian Gaming Regulatory Act of 1988, creating a regulatory framework for gaming on Indian lands. Today, Native American tribes are looking to expand beyond casinos into marijuana, now legal in 4 states, and legal for medical use in 23.

As governments try to exact on taxes to cash in, the idea of a tax-free ticket to the industry is not lost on Native Americans. Some tribes are considering changes to tribal laws as well as looking at commercial opportunities. California’s Pinoleville Pomo Nation was poised as the [first tribe to grow medical marijuana](#). Federal law still outlaws marijuana, and this too could give Native American tribes big advantages. The Department of Justice has taken notice, issuing [a memorandum](#) that reviewed their policy on marijuana issues as they relate to Native American tribes.

Yet some tribes could move in big just as they did with casinos. Native American tribes are looking at new sources of income. According to the National Indian Gaming Commission, [gaming revenues barely grew](#) from \$27.9 billion in 2012 to \$28 billion in 2013. Gaming on Native American lands earned \$26.5 billion in 2011. 236 Native American tribes operate 422 facilities across 28 states.

Native American tribes and their wholly owned tribal corporations are not subject to federal income taxes on their earnings. Some types of tax-exempt organizations are taxed on some types of income. Tribes are exempt from federal income taxes even when conducting commercial activities. They can form corporations to conduct business and their income remains exempt. Native Americans are U.S. citizens, and unlike their tribes, individuals *are* subject to federal income taxes.

Even exempt tribal income can be taxed when distributed to individual members of the tribe. One of the more complicated provisions of IGRA permits Native American tribes to make per capita distributions of revenue

from gaming activities to tribe members. These per capita distributions are taxed. Some “general welfare” payments to individuals under social benefit programs are *not* taxed.

In general, to be tax-free, payments must be made under a governmental program; be for the promotion of general welfare (*i.e.*, based generally on individual, family or other needs); and not be compensation for services. This General Welfare Exception from income has become increasingly controversial as applied to tribal members and the IRS is being asked to weigh in.

Absent an express authorization from Congress, states do not have the power to tax Native Americans living on a reservation whose income is derived from reservation sources. However, a state *may* tax Native Americans on income (including wages from tribal employment) if they reside in the state but outside the reservation. As with many other tax rules, these rules are becoming more controversial. Expect renewed discussion of these rules and their limits in the future.

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