



Jennifer Kent
Director

State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
Governor

January 12, 2016

TO: ALL COUNTY WELFARE DIRECTORS Letter No. 16-02
ALL COUNTY ADMINISTRATIVE OFFICERS
ALL COUNTY MEDI-CAL PROGRAM SPECIALISTS/LIAISONS
ALL COUNTY HEALTH EXECUTIVES
ALL COUNTY MENTAL HEALTH DIRECTORS

SUBJECT: American Indian/Alaskan Native Income Exemptions

The purpose of this letter is to inform counties that certain income exemptions apply when an attestation is made by an individual that he or she is an American Indian or Alaskan Native on the Single Streamlined Application (SSApp). These American Indian/Alaskan Native (AI/AN) income exemptions are applicable for Modified Adjusted Gross Income (MAGI) Medi-Cal, but are not applicable to Advance Premium Tax Credits (APTC) and Cost Sharing Reductions (CSR). The SSApp requests information about some, but not all, AI/AN income exemptions on pages 20 and 21, and only AI/AN exempt income information should be provided. The remainder of the exemptions, listed below, should not be included unless specifically requested by the California Healthcare Eligibility Enrollment and Retention System (CalHEERS). No paper verification or affidavits are to be requested unless CalHEERS returns a determination that the individual's income is not e-verified.

Background:

In accordance with the Title 42, Section 435.603(e)(3), Code of Federal Regulations, certain AI/AN income is excluded from MAGI.

- “(3) American Indian/Alaska Native exceptions. The following are excluded from countable income:
- (i) Distributions from Alaska Native Corporations and Settlement Trusts;
 - (ii) Distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior Federal reservation, or otherwise under the supervision of the Secretary of the Interior;
 - (iii) Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from

- (A) Rights of ownership or possession in any lands described in paragraph (e)(3)(ii); or
 - (B) Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;
- (iv) Distributions resulting from real property ownership interest related to natural resources and improvements
- (A) Located on or near a reservation or within the most recent boundaries of a prior Federal reservation; or
 - (B) Resulting from the exercise of federally protected rights relating to such real property ownership interests;
- (v) Payments resulting from ownership interest in or usage rights to items that have unique religious spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable Tribal Law or custom”

Counties shall note that per capita distributions of Indian gaming revenue are countable payments for both MAGI and Non-MAGI individuals.

Questions and Answers:

The following questions and answers have been developed from information provided by the Centers for Medicare and Medicaid Services regarding AI/AN income exemptions.

Q: Are there special rules for calculating MAGI for these individuals?

A: Yes. MAGI is based on a modification of taxable, adjusted gross income reported to the Internal Revenue Service (IRS). Because some types of AI/AN income are non-taxable, this income is excluded when determining eligibility for Medi-Cal and Children’s Health Insurance Program (CHIP). Certain additional types of AI/AN income are excluded when determining eligibility for Medi-Cal and CHIP, even though they might be taxable. This means that MAGI might be slightly higher for the purposes of APTC/CSR than it is for Medi-Cal eligibility.

Q: What types of AI/AN income are generally exempt from MAGI?

A: The following categories of AI/AN income are excluded from MAGI?

- Distributions from Alaska Native Claims Settlement Act (ANCSA) Corporations and Settlement Trusts,
- Distributions from trust/reservation property,
- Income from property and rights related to hunting, fishing and natural resources,
- Income from the sale and use of cultural/ subsistence property,
- Student financial assistance provided by the Bureau of Indian Affairs and/or a Tribe,
- Income that falls within the IRS "General Welfare Doctrine" (see below), and
- Any other income that is non-taxable according to federal law or IRS guidance

Q: Income exempt under the "General Welfare Doctrine" is excluded from MAGI. What is the General Welfare Doctrine?

A: Payments made under social benefit programs for the promotion of general welfare may be excluded from gross income under a concept known as the general welfare doctrine. This applies only to governmental payments out of a welfare fund based upon the recipient's need, and not as compensation for services.

When distributions to tribal members are made equal (per capita) and not based on need, then they do not fall under the general welfare doctrine. Benefits payable regardless of the financial status, health, educational background, or employment status of the recipient may be included in gross income of recipient.

Q: Is my tribal gaming per capita payment excluded from MAGI?

A: No. Gaming per capita payments are taxable and if paid as a lump sum payment (a single payment, an annual distribution, or a payment that represents two or more of a series of payments), then they are countable only in the month of receipt for MAGI and are not included in projected annual income. If the gaming per capita payments are paid on a monthly basis, they must be included as MAGI current monthly income as well as MAGI projected annual income.

Q: The list of AI/AN income includes distributions and payments from activities on trust property. Does that property have to be located on a reservation for the income to be excluded from MAGI?

A: No. This income is exempt from MAGI so long as it is derived from property that is held in trust by the federal government, subject to federal restrictions, located on an Indian reservation or within the most recent boundaries of a prior federal reservation, or otherwise under the supervision of the Secretary of the Interior.

Q: How are AI/AN income listed on the application or entered into CalHEERS or the Statewide Automated Welfare System, for MAGI Medi-Cal and CHIP?

A: Only taxable income, gross Social Security (taxed and untaxed), untaxed foreign earnings, and gross interest (taxed and untaxed) should be listed or entered into the system for MAGI Medi-Cal and CHIP. Do not include AI/AN income that the IRS exempts from taxation. As indicated above, per capita income from gaming is taxable and should be included on the application and entered into the systems for MAGI and CHIP eligibility.

Specific types of AI/AN Income Excluded from MAGI:

Below are some specific types of AI/AN income that may be excluded from MAGI when determining eligibility for Medi-Cal and CHIP. Please note that these are just examples and that this list is not exhaustive.

Alaska Native Claims Settlement Act (ANCSA) Corporations and settlements trusts:

- Cash distributions from an ANCSA corporation or settlement trust,
- Stock or bonds issued by or acquired from an ANCSA Corporation,
- A partnership interest distributed, and
- Land or an interest in land (including land or an interest in land received from an ANCSA Corporation as a dividend or distribution on stock).

Per capita payments or distributions from trust/reservation property:

- Rents from any such lands and any structures on the land (housing, retail facilities, etc.),
- Royalties or other compensation received from oil and gas production, mineral extraction, timber harvesting, and similar activities,
- Profits or revenues derived from economic activity on the land, such as the operation of motels, retail stores, gas stations, farms and ranches, etc., and;
- Payments from funds held in trust by the Secretary of Interior for an Indian tribe, including interest and investment income accrued while such funds are held in trust and initial purchases made with such funds.

Income derived from property and rights related to hunting, fishing, and natural resources:

- Profits from the sale, lease, or harvest of mineral, timber, and other such resources,
- Income derived from hunting, fishing, gathering, and harvesting fish, wildlife, and plant resources pursuant to federally protected rights, including off reservation rights.

Income from the sale and use of cultural or subsistence property:

- Earnings from ownership interests and usage rights to items that have unique religious, spiritual, traditional, or cultural significance that support subsistence or traditional lifestyle,
- Materials such as the sale of sage or sweetgrass for use in a healing or spiritual ceremony,
- The sale of artwork, pottery, or jewelry with cultural or religious significance,
- Crafts made from fish and wildlife resources taken for personal or family consumption, and
- Proceeds of subsistence fish and game.

Student financial assistance provided by the Bureau of Indian Affairs:

- Student financial assistance provided under programs in Title IV of the Higher Education Act of 1965, and
- Grants from the Bureau of Indian Education's Higher Education program.

Payments which are exempt from federal income taxation under federal statute:

- Per capita shares distributed to Indians pursuant to the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C., Section 1401 et seq.), including interest and investment income earned on Judgment Funds while under administration, and
- Distributions from certain federal settlements, such as the Cobell v. Salazar class action settlement and some payments under the Keepseagle v. Vilsack settlement.

Income excluded under the General Welfare Doctrine:

- Housing assistance,
- Education assistance,
- Programs serving elders and individuals with disabilities,
- Cultural and religious programs,
- Disaster relief, and

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- Payments used to help establish an AI/AN business on or near a reservation.

If you have any questions on this issue, please contact Quanita Channel at (916) 327-0412 or by email at Quanita.Channel@dhcs.ca.gov.

Original Signed By

Sandra Williams, Chief
Medi-Cal Eligibility Division

Enclosure