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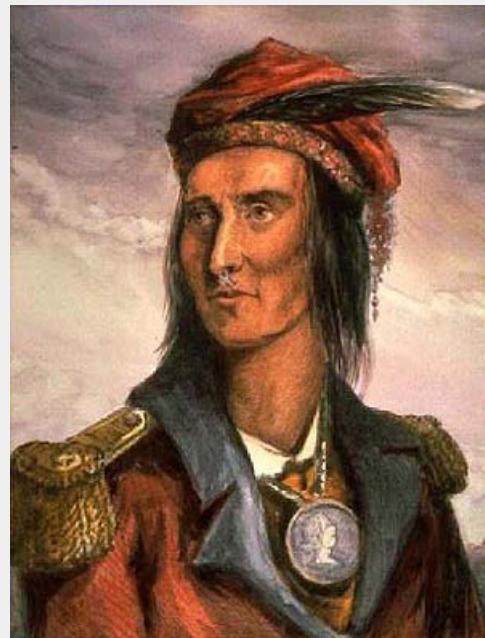
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IRS Wins Fight With Native American Tribe

At times there can be a palpable tension between Native American tribes and the IRS. After all, American Indian tribes are sovereign nations. The U.S. government doesn't tax England or France. It can't tax Indian tribes either.

But there are nevertheless lots of interactions between Native Americans and the IRS. Some of it stems from gaming, which can be quite profitable. The U.S. Supreme Court ruled in [California v. Cabazon Band of Mission Indians](#) that tribes can conduct gaming on Native American lands unhindered by state regulation in states that allow gaming.

A year later, Congress enacted the Indian Gaming Regulatory Act of 1988 (IGRA), creating a regulatory framework for gaming on Indian lands. The National Indian Gaming Commission within the Department of the Interior has oversight. Gaming on Native American lands earned \$26.5 billion in 2011. 236 Native American tribes operate 422 facilities across 28 states. Yet Native American tribes and their wholly owned tribal corporations are not subject to federal income taxes on their earnings.



This 1848 drawing of the famous Chief Tecumseh was based on a sketch made in 1808. (Photo credit: Wikipedia)

Individual members of a tribe, though, are American citizens as well as tribal members, and they **can** be taxed. That can lead to disputes. In a recent court battle, the IRS sought to subpoena banks as it was examining a Florida Indian tribe's financial records. The IRS was conducting an investigation into gambling profits.

Predictably, the Miccosukee Tribe claimed protection under sovereign immunity. Nevertheless, the [11th U.S. Circuit Court of Appeals](#) ruled for the IRS saying the agency **can** subpoena bank records. See [U.S. court panel upholds ruling against Fla. tribe](#). The IRS is investigating whether federal tax withholding and reporting requirements were met for gambling profits distributed to 600 members of the tribe from 2006 to 2009.

Again, the tribe is tax exempt. Yet the tribe must deduct and withhold income taxes from gambling revenues paid to tribal members. According to the case, the tribe failed to comply with its tax obligations from 2000 to 2005. That triggered an IRS investigation into tribal finances from 2006 to 2009.

The tribe refused to hand over the records so the IRS subpoenaed the documents from four banks. In addition to arguing sovereign immunity, the tribe argued that the records would reveal confidential financial information and force them to change their banking practices. The court rejected this argument too, noting that the Miccosukee Tribe gave the information to the banks.

According to the court, the records became the property of the banks, not the tribe. The tribe has previously acknowledged that at least 100 Miccosukee members owe the IRS more than \$25 million in back taxes, penalties and interest. There are other troubles too, including the tribe's suit against its former chairman, Billy Cypress, over an alleged \$26 million in gambling profits allegedly used for his lavish lifestyle. That lawsuit even claims two former U.S. attorneys conspired with Cypress to hide the theft.

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Institute), he can be reached at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.