



## Robert W. Wood

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## Native American Casino And Tax Rules That May Surprise You

### 1. **Federal Law Regulates Indian Gaming.** In

[\*California v. Cabazon Band of Mission Indians\*](#), the Supreme Court ruled 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.



COCONUT CREEK, FL: A dealer works the blackjack table at the Seminole Casino Coconut Creek in Coconut Creek, Florida. (Image credit: Getty Images via @daylife)

**2. Tribes are Tax Exempt.** 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.

**3. The Exemption is Absolute.** 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.

**4. Individual Native Americans are Taxed.** 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.

**5. But Some Payments to Native Americans are Exempt.** 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.

**6. State Taxes are Tricky.** 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.

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax Institute](#)), he can be reached at [Wood@WoodLLP.com](mailto: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.*