



IRS issues section 415 compensation guidance for Indian tribal members

On November 15, 2013, the Internal Revenue Service (IRS) issued proposed regulations clarifying that compensation received by Indian tribal members for services performed in fishing rights-related activities may be treated as compensation for purposes of applying the limits on qualified plan benefits and contributions. This guidance affects sponsors of, and participants in, employee benefit plans of Indian tribal governments.

Overview

Section 415 of the Internal Revenue Code (Code) limits the annual amount of contributions that may be made for a participant in a [defined contribution plan](#). It also limits the annual amount of benefits that may be paid to a participant in a [defined benefit plan](#).

The IRS section 415 rules require that a participant have compensation that is included in gross income. Under these rules, compensation includes wages, salaries, and fees for personal services performed in the course of employment with the employer maintaining the plan, to the extent that the amounts are includible in gross income. The rules also provide for additional definitions of compensation that automatically satisfy section 415 requirements.

Indian tribal governments and individual tribal members conduct fishing activities to generate revenue, protect critical habitats, and preserve tribal customs and traditions. Various treaties, federal statutes, and Presidential executive orders reserve to Indian tribal members the right to fish both on and off reservations. Income derived from fishing rights-related activities is exempted from both income and employment taxes. Since fishing rights-related income is not subject to income tax, there has been a question as to whether this income is included as compensation for purposes of section 415.

Fishing rights-related activity with respect to Indian tribes includes any activity directly related to:

- Harvesting, processing or transporting fish harvested in the exercise of a recognized fishing right of the tribe; or
- Selling such fish but only if substantially all of such harvesting was performed by members of such tribe.

Proposed regulations

The IRS issued proposed regulations clarifying that certain fishing rights-related income is included in the section 415 definition of compensation and may be contributed to a qualified retirement plan. Income paid to an Indian tribal member as payment for fishing rights-related activities is not to be excluded from the definition of compensation merely because it is not subject to income tax.

Next steps

The IRS has asked the public to submit comments on the proposed rules by February 13, 2014. In the interim, Indian tribal governments that sponsor qualified retirement plans should read the guidance described in this newsletter. Currently, the rules are only proposed, which means they are subject to change when they are finalized. However, the IRS will allow plan sponsors to follow the proposed rules in their current form until they are finalized and will impose any new or more stringent requirements only on a prospective basis.

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Plan sponsors should consult their attorneys about the application of any law to their retirement plans.

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