



California Indian Legal Services (CILS) Community Legal Education Self-Help Series

Bishop ♦ Escondido ♦ Eureka ♦ Sacramento

State Income Tax and Native Americans

1. What's in this guide and how can it help me?

If you are Indian, this guide can help you to determine whether your income is “exempt from” (meaning that you do not have to pay) California state income tax.

The general rule is that you do not have to pay state income tax if you **live and also work within your own Tribe's “Indian Country”** (defined on page 2 of this guide).

This guide offers a broad overview of the current laws. Your individual circumstances must be taken into consideration before you can be sure that your income is exempt from state tax, so we cannot guarantee that the information in this guide will apply to your personal situation.

2. What if I have questions about whether my income is exempt, or other tax-related questions?

CILS can help you determine whether your income is exempt from California income tax. If you meet our income and asset guidelines, we may be able to help you for free. If you have questions about this guide or about other tax-related matters, please call your nearest CILS office (contact information for each of our offices is on page 5 of this guide).

3. Do Indians have to pay federal income tax?

Yes, except in very rare situations.

4. Do I have to be a member of a federally-recognized tribe to qualify for an exemption from state income tax?

Nearly all of the people who qualify for the exemption will be enrolled in a federally-recognized tribe. If you are not enrolled in a federally-recognized tribe, you might still be eligible if you received a certain type of income originating directly from your **own** trust allotment.

5. Do I have to pay state income tax?

Some or all of your income may be exempt from California income tax if you meet **both** of the following conditions:

- a. You lived on **your own Tribe's** reservation, or on an Indian trust allotment within **your own Tribe's** jurisdiction (the allotment does not necessarily have to be located on a reservation); and,
- b. You worked or received income within **your own Tribe's** Indian Country.**
(*Like employment income, **per capita payments** from your Tribe's gaming and your Tribe's distributions from the **Revenue Sharing Trust Fund (RSTF)** are exempt from state income tax in certain situations.)

If you meet the above conditions, some or all of your income is likely exempt from state income tax. Review the rest of this guide for more information.

6. What is "Indian Country"?

Indian Country is defined as:

- All land within an Indian reservation.
- All Indian allotments, the Indian titles to which have not been extinguished.
- All dependent Indian communities within the borders of the United States under the jurisdiction of the United States government.

7. What if I lived all year outside of my Tribe's Indian Country?

You must pay state income tax, even if you worked in your Tribe's Indian Country.

8. What if I worked all year outside of my Tribe's Indian Country?

You must pay state income tax, even if you lived in your Tribe's Indian Country.

9. What if I lived or worked in my Tribe's Indian Country for part of the year, and lived or worked outside of my Tribe's Indian Country for part of the year?

The income earned from working within your own Tribe's Indian Country is exempt from state income tax if you were also living within your own Tribe's Indian Country when you earned that income.

You must pay state income tax on any income you earned while not living or not working within your own Tribe's Indian Country.

10. What if I am a member of one Tribe, but I lived or worked in another Tribe's Indian Country?

Unfortunately, if you lived or worked in **another** Tribe's Indian Country (instead of your own Tribe's), then under current law you **do** have to pay state income tax.

The Franchise Tax Board (FTB), the agency that collects California's income tax, interprets federal and state law to mean that California Indians who live or work in another Tribe's Indian Country are **not exempt** from state income tax. A recent decision (March 2010) from the California Court of Appeal, Fourth District affirmed this interpretation.

Thus, if you lived or worked in another Tribe's Indian Country and you claim an exemption from state income tax, you should be aware that the FTB will probably dispute your claim, and may assess penalties and/or interest on unpaid taxes.

11. Do I have to pay state income tax on per capita or RSTF distributions that I received from my Tribe?

Like employment income, if you lived **within** your own Tribe's Indian Country when you received per capita or RSTF payments, that money is **exempt** from state tax. However, if you lived **outside** of your Tribe's Indian Country when you received your per capita or RSTF payments, those payments are likely **not exempt** (see above).

12. I lived outside of California and my Tribe is located in California. Are my per capita or RSTF distributions taxed by California?

No. However, the state in which you lived might tax that income.

13. I lived within my Tribe's Indian Country all year, I earned all my income within my Tribe's Indian Country, and none of my income was withheld for state taxes during the tax year. Do I need to file a state income tax return?

If **all** of your income is **entirely exempt**, there is no absolute requirement to file a state income tax return.

However, the FTB recommends that people whose income is entirely exempt file a state return anyway, documenting their exempt income on Schedule CA (540) as "other income", so that the FTB has a record of the income being claimed as exempt. This may keep the FTB from asking you in the future to explain why no state taxes were paid on that income.

If your income is entirely exempt and you **do not** want to file a state return, we recommend that you at least send a declaration form to the FTB (see last page of this guide), declaring that all of your income was exempt.

14. What if I qualify for an exemption but state income tax was withheld?

If state income tax was withheld from income which should be exempt, then you will need to file a state return in order to get a refund of the tax withheld.

15. How do I claim an exemption from state income tax?

If **all** of your income is exempt, it is your choice whether to file a state income tax return, a declaration of your exempt income, or nothing at all.

If only **some** of your income is exempt and your non-exempt income was low enough that you do not have to file a state return, we recommend that you at least send a declaration to the FTB.

If only **some** of your income is exempt and you are filing a state return, we strongly recommend that you show the exempt income on the state tax forms which are appropriate for your personal situation. Individuals will usually file Form 540 or 540A, along with related forms like Schedule CA (540) to show the exempt income as “other income”.

However, if only **some** of your income is exempt and you do not want to include the exempt income on your state return, you can use the declaration at the end of this guide to tell the FTB that your exempt income is not being included in your return.

Please note that California does not have an approved declaration form – the declaration in this guide was developed by CILS, and we cannot guarantee that it will be accepted in every situation.

If you are submitting a declaration **without** a state return, you should make sure that it is sent to the FTB at the correct mailing address. You can find the right mailing address to use at the FTB’s website, www.ftb.ca.gov, or by calling them toll-free at (800) 852-5711.

⇒ **TIP:** Whether or not you file a state income tax return, you should **keep records** showing that you earned income in your Tribe’s Indian Country while you also lived there, in case you need to prove that your income was exempt. Records that could help you prove employment and residence in Indian Country include:

- W-2s from your employer(s)
- 1099s from your Tribe
- federal tax returns
- home and auto insurance papers
- utility bills
- school records

Keeping such documents is **especially** important for people with exempt income who do not file a state return.

16. Where can I get help with filing a state income tax return?

Contact your nearest CILS office for more information about our available tax assistance, or for referrals to other tax assistance programs.

Those with complicated tax situations or a high level of income should consult with a tax professional for assistance.

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Disclaimer

This information is intended to assist you with your legal problem. Each area of the law is complex and changing. Your case may have special factors that could affect the applicability of this information. CILS does not guarantee that this information is sufficient to resolve your legal problem. If you have any questions, you should seek the advice and counsel of an attorney.

CILS Community Legal Education Self-Help Series

The Community Legal Education Self-Help Series is a project of CILS. The Series' mission is to expand access to legal resources that increase Indian self-sufficiency. This guide is part of our Community Legal Education Series, providing Indians and Indian tribes with user-friendly information and self-help assistance pertaining to their legal status and rights. Community Legal Education Self-Help guides, and more information about CILS and California Indian issues, are available on our website at www.calindian.org.

California Indian Legal Services

Principal Office: 609 South Escondido Blvd., Escondido, CA 92025
Phone: (760) 746-8941, Fax: (760) 746-1815, email: contactCILS@calindian.org

Do you have a legal problem? For assistance, contact your local CILS office:

Bishop: (760) 873-3581, or toll-free at (800) 736-3582
Escondido: (760) 746-8941, or toll-free at (800) 743-8941
Eureka: (707) 443-8397, or toll-free at (800) 347-2402
Sacramento: (916) 978-0960, or toll-free at (800) 829-0284



**DECLARATION OF MEMBER OF INDIAN TRIBE IN SUPPORT OF
CLAIM OF EXEMPTION FROM PAYMENT OF CALIFORNIA STATE INCOME TAX**

I, (print or type name) _____, declare:

1. I am an Indian person and an enrolled member of a federally-recognized Indian Tribe,
(insert name of Tribe) _____ .

2. I resided within my Tribe's Indian Country during the tax year of (insert year) 20_____
for the following period of time:

(list the months during which you lived within your
Tribe's Indian Country; if all year, write "All of 20__") _____ .

3. During the time that I resided within my Tribe's Indian Country in the above tax year,
I earned the following income at a place or places of employment also located within my
Tribe's Indian Country:

(insert the total amount of gross income which you earned
while living and working within your Tribe's Indian Country) \$ _____ .

*(Fill out # 4 **only** if you received tribal per capita or RSTF distributions.)*

4. During the time that I resided within my Tribe's Indian Country in the above tax year,
I received the following amount in per capita or RSTF distributions from my Tribe:

(insert the total amount of gross income which you
received in per capita or RSTF distributions from
your Tribe while living in your Tribe's Indian Country) \$ _____ .

5. My above income in the above tax year was: (check **ONLY ONE** of the following boxes)

- My entire income for the year – I had no other income. Since all of my income was exempt from state tax, I **will not** be filing a state return for this tax year.
- A part of my income for the year – I had other income which was not exempt from state tax, but I did not have enough non-exempt income to require that I file a state return. Therefore, I **will not** be filing a state return for this tax year.
- A part of my income for the year – I had other income which was not exempt from state tax. I had enough non-exempt income to require that I file a state return. I **have not** included my exempt income on my state return.

I declare under penalty of perjury that the statements contained herein are true and correct to the best of my knowledge.

(Print or type your name)

(Sign your name)

(Social Security Number)

(Date)

(Residential Address)

(Mailing Address, if different)