



# CALIFORNIA INDIAN LEGAL SERVICES

BISHOP·ESCONDIDO·EUREKA·SACRAMENTO

Principal Office

609 S. Escondido Blvd., Escondido, CA 92025 ~ Phone: 760.746.8941 ~ Fax: 760.746.1815  
www.calindian.org ~ [contactCILS@calindian.org](mailto:contactCILS@calindian.org)

## TRIBAL ALERT

April 18, 2013

### **FTB: RESERVATION SOURCE INCOME ---- NOT SUBJECT TO TAXATION**

*Tribal leaders please circulate to all members*

The Franchise Tax Board (FTB) has determined that income earned by a tribal member who lives and works on his or her reservation are not subject to state income tax, regardless of the source of the income. The FTB had previously been taxing the income of tribal members whose on reservation income was not from a “tribal source.” The FTB’s practice, which was contrary to established federal law, was brought to the attention of Cynthia Gomez, Tribal Advisor in the Governor’s Office, by the Hoopa Valley Tribe and California Indian Legal Services (CILS.)

Through discussions between the Governor’s Office and FTB, the FTB determined that it would no longer require that tribal member income would need to be from a “tribal source” in order to be tax exempt. The FTB has posted a notice on its website outlining the process for submitting a claim for a refund of income tax that was improperly assessed. Attached is a copy of the FTB webpage. The FTB will be notifying individual tribal members that they are aware of who were improperly assessed. However, the FTB may not be able to notify everyone and so we encourage all tribal members who believe they were improperly taxed on income that they earned on their reservation to contact the FTB as soon as possible even if they do not receive a notice from the FTB. If you have further questions you may contact your local CILS office for assistance.



# Reservation Source Income - Not Subject to Taxation

Tribal members who live on their reservation and who receive income from reservation sources are not subject to state tax on that income.

- [FTB's clarification and recent decision](#)
- [Am I entitled to a refund?](#)
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- [Coming soon - Update to FTB 674 Income Taxation of Native Americans](#)

## FTB's clarification and recent decision

In response to several recent court cases and questions, we examined the issue of whether "reservation source income" should be interpreted as **income paid by any employer** (public or private) and **earned by a tribal member** while that member is physically located within the geographic borders of the reservation, or more narrowly limited to income earned on the reservation and paid only by a tribal payer.

After reviewing legal authority, we determined that income earned for services performed on the reservation by tribal members who live on their tribe's reservation is tax-exempt, whether it is paid by the tribe or by a third party.

## Am I entitled to a refund?

You are entitled to file a claim for refund or credit if you previously reported "reservation source income" as taxable income on your California income tax return within either of these timeframes:

1. Four years from the original due date of the return
2. Four years from the date the return is filed if the return was filed within the "automatic extension" period.

Additionally, you are entitled to file a claim if you made payments within one year of the date you file the claim (known as the "look back" provision).

## How to file a claim for refund

Follow these steps:

1. File an amended return.
2. Indicate at the top of your amended return in red: **RESERVATION SOURCE INCOME**.
3. Include a computation of your claimed refund amount.
4. Mail your amended return and computation to us.

## Where to mail your amended return, claim for refund, and computation

For regular mail, send to:

RESERVATION SOURCE INCOME CLAIM FOR REFUND 347 MS F381  
FRANCHISE TAX BOARD  
PO BOX 1779  
RANCHO CORDOVA CA 95741-1779

For private carrier or overnight delivery service, send to:

FRANCHISE TAX BOARD  
RESERVATION SOURCE INCOME CLAIM FOR REFUND 347 MS F381  
SACRAMENTO CA 94267-0001

## Coming soon - Update to FTB 674 Income Taxation of Native Americans

We will update [FTB 674](#) - Income Taxation of Native Americans to clarify that income earned for services performed on the reservation by tribal members who live on their tribe's reservation is tax-exempt, whether it is paid by the tribe or by a third party.