

## Frequently Asked Questions - Tribal Funds - Exempt / Non-Exempt

Trust Accounting - Financial Services



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### **What are exempt and non-exempt funds?**

Funds received by individuals incarcerated with the Department of Corrections are considered “exempt” when the funds are free from obligation and are not subject to state deductions. Funds are considered “non-exempt” when they are subject to the deductions required by state law.

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### **Which Revised Code of Washington (RCW) relates to allowable deductions from incarcerated individuals?**

[RCW 72.09.450](#) authorizes the Department of Corrections to deduct debts owed from non-exempt funds received by incarcerated individuals. [RCW 72.09.480](#) lists the specific deduction items and the allowed percentages per deduction to be taken from non-exempt funds.

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### **What types of tribal funds are exempt from deductions?**

Tribal funds that are exempt from deductions come from:

- Income received by incarcerated individuals from their individual tribal trust contracts (e.g. oil, gas, mining, timber, dam, or water leases),
  - Individual tribal member income from Treaty rights activities,
  - Distributions of tribal government revenues from Treaty rights activities to tribal member populations,
  - Individual tribal member distributions received from a tribal government after lawsuit settlements over tribal lands, or;
  - Funds specifically declared exempt law by the federal government (see Tribal Law Exemption List).
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### **Which tribes operate casinos?**

A list of tribal casinos and their locations can be found on the [Washington State Gambling Commission](#) website.

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### **What types of tribal funds are considered non-exempt from deductions?**

Individual income and tribal government revenue distributions or payments to qualifying tribal members are non-exempt from deduction if the funds are:

- Funds from tribal gaming or casino revenues,
  - Proxy payments (incentive paid for voting in tribal elections), or;
  - Direct revenues from tribal enterprises (e.g. revenue from tribal stores, gas stations, bowling alleys, etc.)
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**Are funds received through the United States Treasury (UST) or Office of the Special Trustee for American Indians (OSTFAI) exempt or non-exempt?**

Exempt. These federal agencies only handle exempt funds related to treaty rights and tribal trusts. Therefore, all funds they distribute are exempt funds.

**Are Canadian First Nation funds exempt or non-exempt?**

Non-exempt. Canadian First Nations are not federally recognized by the United States government so funds they distribute are not exempt from deductions.

**Are foreign funds accepted?**

No. All checks must be drawn in US dollars. Foreign funds are not accepted.

**Can a tribal check contain both exempt and non-exempt funds?**

Yes. To exempt any portion of a tribal check, either the tribal government or tribal entity issuing the check or the incarcerated individual receiving the check must identify and provide documentation showing what percentage of the full amount is exempt and non-exempt. The percentage provided should equal 100% total.

**Are Alaskan Native funds exempt or non-exempt?**

Exempt. Alaskan Native government funds distributed to incarcerated individuals are generally exempt because Alaskan Native governments do not participate in the commercial gaming activities. Proxy payments paid by Alaskan Native governments as an incentive to vote in Alaskan Native community elections are non-exempt.

**What does "per capita" mean to the tribes?**

The term "per capita" is used to describe each individual's portion when a tribal government distributes revenues to qualified individual tribal members. Per capita payments are usually calculated by taking the full amount allotted and dividing it equally among the eligible tribal member population or among a specific category of eligible members (e.g. elders) of the tribe. All funds, including "per capita" derived under the Indian Gaming Regulatory Act are non-exempt and subject to deductions.

**Does the State of Washington use the term "per capita" when differentiating between exempt and non-exempt funds?**

No. The source of the funds being issued is the deciding factor between exempt and non-exempt funds. The term per capita has no effect on the source of the funds.

**Do all tribes distribute checks on the same schedule?**

No. Checks can be distributed monthly, quarterly, or annually depending on each individual Tribal government's policy.

**When an incarcerated individual enters into Departmental custody, do the funds they have automatically become non-exempt?**

No. Funds that are exempt from deductions or debt collection when the individual enters Departmental custody will continue to be exempt from involuntary deductions if proof of exemption is provided.

**What agency form are tribes asked to complete and send in with their checks?**

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[DOC Form 07-011](#).

**What agency policy governs trust accounts for incarcerated individuals?**

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DOC [Policy 200.000](#).

**Who has the burden to prove that funds are exempt?**

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The incarcerated individual or tribe must provide the Department with documentation showing proof of exemption.

**Can the incarcerated individual complete the "Request for Information Regarding Tribal Deposits" form?**

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No. The form must be completed by an authorized government official of the tribe or Alaskan Native government disbursing the funds to the incarcerated individual.

**If funds are not subject to federal income tax, why are deductions taken by the state.**

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[RCW 72.09.480](#) regulates the deductions authorized to be taken from funds received by incarcerated individuals. The only determining factor for deductions is the source of the funds.

**Are federally funded assistance programs, such as student aid or elder care, subject to deductions?**

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Yes. Deductions can be made from federally funded assistance programs if the original source of the funds is non-exempt such as tribal gaming or enterprise revenues. The intent of the distribution is not relevant in determining whether the funds are exempt.

**Is inheritance subject to deductions?**

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Yes. Funds received as an heir to a tribal member are subject to deductions specified in [RCW 72.09.480](#), under Subsection 4.

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**What happens if exempt & non-exempt money has been co-mingled in an incarcerated individuals account?**

To avoid involuntary deductions being taken from exempt funds, the incarcerated individual must provide proof of the exempt funding source.

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**Are source funds cited as from 26 USC 139E Indian General Welfare Benefits considered exempt?**

No. 26 U.S.C. 139E of the U.S. "Internal Revenue Code" excludes general welfare benefits provided to Native Americans from the federal definition of gross income for individual income tax purposes, however, the section does not provide a legal basis to exempt deductions authorized under Washington Law.

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