



# COLORADO

Department of Revenue

Taxation Division

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PLR 25-006

November 25, 2025

XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
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Via Electronic Mail: XXXXXXXXXXX

Re: Electing Settlement Trust's Taxable Income and Withholding of Distributions

Dear XXXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXX ("Taxpayer"), to the Colorado Department of Revenue ("Department") pursuant to 1 CCR 201-1, Rule 24-35-103.5. This letter is the Department's private letter ruling. This ruling is binding on the Department to the extent set forth in 1 CCR 201-1, Rule 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

### Issues

1. Whether Taxpayer may take into account the deduction allowed by section 661(a) of the Internal Revenue Code in computing its Colorado income tax.
2. Whether Taxpayer is required to withhold from the income to be distributed to any nonresident beneficiaries insofar as the beneficiaries' share of net income from the rental of its building in Colorado.

### Conclusions

1. Taxpayer may not take the section 661(a) deduction into account in computing its Colorado income tax.
2. Taxpayer is not required to withhold tax on nonresident beneficiaries' distributive shares of net income from the rental of its building in Colorado.

### Background<sup>1</sup>

Taxpayer is established as an Alaska Native Settlement Trust, a special type of irrevocable trust authorized by the federal Alaska Native Claims Settlement Act of 1971 (ANCSA).<sup>2</sup> The main purpose of

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<sup>1</sup> Paragraph (4)(b)(ii) of 1 CCR 201-1, Rule 24-35-103.5 requires the request for a private letter ruling to include a statement of facts. This section generally recites the statement of facts provided in the initial request or in any supplement or amendment thereto, which is not an indication that the Department found such facts relevant to its analysis. Some relevant facts may be redacted or omitted to ensure confidentiality as required by section 24-35-103.5(5), C.R.S. The terms used in this section to describe the factual background are generally those of the requester.

<sup>2</sup> 43 U.S.C. § 1601 et seq.

Taxpayer is to generate business income through strategic portfolio investments and maintenance of other business assets, resulting in distribution payments from trust income to its direct beneficiaries. The beneficiaries are all shareholders of an urban Alaska Native Corporation headquartered and administered in its home state of Alaska.

Taxpayer's business activity in Colorado is limited to the rental of a commercial building it owns in the state. The property is under a long-term triple net lease with a single tenant. Taxpayer does not have employees nor employ subcontractors in Colorado and does not regularly or methodically have personnel travel to Colorado to perform any duties related to its property.

ANCSA is remedial Indian legislation enacted by the United States Congress pursuant to its plenary authority under the Commerce Clause of the United States Constitution. ANCSA required local Alaska Native groups to incorporate in order to receive the land and settlement funds specified in ANCSA. Because these Alaska Native Corporations did not always meet the practical needs of Alaska Natives, Congress enacted Section 39 of ANCSA (43 U.S.C. sec. 1629(e)) to authorize Alaska Native Corporations to create "Alaska Native Settlement Trusts" as an alternate vehicle to hold and invest ANCSA settlement funds and to hold ANCSA land in perpetuity. The formation of these Settlement Trusts is exclusively allowed to Alaska Native Corporations.

Section 641(a) of the Internal Revenue Code generally imposes tax on a trust's taxable income. However, section 661 provides that amounts to be distributed may be deducted in computing a trust's taxable income. Additionally, section 662 requires that amounts deducted pursuant to section 661 shall generally be added to beneficiaries' gross incomes.

However, section 646 permits any Settlement Trust to elect out of the deduction allowed by section 661. Taxpayer made its section 646 election in 2002 with the filing of its first Form 1041-N, known as the U.S. Income Tax Return for Electing Alaska Native Settlement Trusts. This same form is filed annually to report all items of income and deduction and to compute and pay federal income tax.

### Discussion

Colorado imposes a tax on the federal taxable income "of every individual, estate, and trust" subject to certain limitations, additions, and subtractions.<sup>3</sup> For the purposes of Colorado income tax, federal taxable income is "determined pursuant to section 63 of the internal revenue code . . . ."<sup>4</sup> Section 63 of the Internal Revenue Code defines taxable income as "gross income minus the deductions allowed by [Chapter 1 of the IRC] . . . ."<sup>5</sup> Generally, section 661 allows that amounts distributed to trust beneficiaries may be deducted in computing a trust's taxable income.<sup>6</sup> Additionally, section 662 requires that amounts deducted by the trust pursuant to section 661 shall generally be added to beneficiaries' gross incomes.<sup>7</sup>

#### **Taxpayer may not take the section 661(a) deduction into account in computing its Colorado income tax.**

Taxpayer is established as a Settlement Trust pursuant to 43 U.S.C. sec 1629e. A Settlement Trust differs from other trusts in that section 646 of the Internal Revenue Code permits any Settlement Trust to elect out of the deduction allowed by section 661—becoming thereby an "electing Settlement Trust."<sup>8</sup> Section 646(g) provides that "the taxable income of an electing Settlement Trust shall be determined

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<sup>3</sup> Section 39-22-104(1.7)(c), C.R.S.

<sup>4</sup> *Id.*

<sup>5</sup> 26 U.S.C. sec. 63(a).

<sup>6</sup> 26 U.S.C. sec. 661(a).

<sup>7</sup> 26 U.S.C. sec. 662(a).

<sup>8</sup> 26 U.S.C. sec. 646(a), sec. 646(c)(1), sec 646(g), and sec. 646(h)(1).

under section 641(b) without regard to any deduction under section 651 or 661.”<sup>9</sup>

Taxpayer elected out of the deduction allowed by section 661 with the filing of its first Form 1041-N in 2002. It became, at that point, an electing Settlement Trust. As an electing Settlement Trust, Taxpayer’s distributions to beneficiaries are not deducted from its federal taxable income. Consequently, Taxpayer may not take the section 661(a) deduction into account in computing its Colorado income tax—which must be filed at the trust entity level.<sup>10</sup>

**Taxpayer is not required to withhold tax on beneficiaries’ distributive shares of net income from the rental of Taxpayer’s building in Colorado.**

Generally, to facilitate the collection and payment of the tax, Colorado law requires fiduciaries of estates and trusts with a nonresident beneficiary which receives net income from real or tangible personal property within Colorado to withhold tax upon the beneficiary’s share of said income.<sup>11</sup> The tax imposed upon nonresident individuals is apportioned in the ratio of Colorado nonresident federal adjusted gross income to total federal adjusted gross income.<sup>12</sup> However, section 646(e) of the Internal Revenue Code generally provides that amounts distributed by an electing Settlement Trust are excludable from a beneficiary’s gross income.<sup>13</sup> Because amounts distributed by Taxpayer are excludable from beneficiaries’ gross income, beneficiaries will have no Colorado-sourced income with respect to Taxpayer’s income from its property in Colorado. Therefore, Taxpayer is not required to withhold from the income to be distributed to any nonresident beneficiaries insofar as the beneficiaries’ share of net income from the rental of its building in Colorado.

**Miscellaneous**

This ruling is premised on the assumption that Taxpayer has completely and accurately disclosed all material facts, that all representations are true and complete, and that Taxpayer has otherwise complied with the requirements of section 24-35-103.5, C.R.S., and the rules promulgated pursuant thereto. The Department reserves the right, among others, to independently evaluate Taxpayer’s facts, representations, and assumptions. The ruling is null and void if any such fact, representation, or assumption is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is binding on the Department, and is subject to modification or revocation, in accordance with 1 CCR 201-1, Rule 24-35-103.5.

Thank you for your request.

Sincerely,

Office of Tax Policy  
Colorado Department of Revenue

**This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.**

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<sup>9</sup> 26 U.S.C. sec. 646(g). Section 641(b) provides that “[the] taxable income of an estate or trust shall be computed in the same manner as in the case of an individual . . . [and] shall be computed on such taxable income and shall be paid by the fiduciary.” 26 U.S.C. 641(b).

<sup>10</sup> See section 39-22-104(1.7)(c), C.R.S.

<sup>11</sup> Section 39-22-601(4), C.R.S.

<sup>12</sup> Section 39-22-109(1), C.R.S.

<sup>13</sup> 26 USC sec. 646(e).