



# TaxNewsFlash

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## Second Circuit: Income from gravel mined on Indian tribal land, taxable

The U.S. Court of Appeals for the Second Circuit today affirmed a “reviewed opinion” of the U.S. Tax Court concluding that income that the taxpayers earned from selling gravel that was mined from Seneca Nation land was taxable income and was not excluded by treaty or by the General Allotment Act.

The issue was one of first impression in the Second Circuit.

The case is: *Perkins v. Commissioner*, No. 19-2481 (2d Cir. August 12, 2020). Read the Second Circuit’s [decision](#) [PDF 334 KB]

### Summary

The taxpayer husband and wife (an enrolled member of the Seneca Nation) operated a company that sold gravel mined from land belonging to the Senecan Nation of Indians. The taxpayers claimed that income they earned from selling gravel mined from the Seneca Nation land was exempt from tax under the General Allotment Act, the Canandaigua Treaty, and the Treaty of 1842 because the income was derived from Indian land.

The IRS adjusted the taxpayers’ income to include the gravel-related income, and also determined that the taxpayers were liable for additions to tax and penalties under sections 6651(a)(1) and 6662(a). The Tax Court, in a March 2018 reviewed opinion, held that the income earned from selling gravel mined from Seneca Nation land was taxable income that was not excluded by either treaty or by the General Allotment Act. The Tax Court also found the taxpayers were liable for additions to tax under section 6651(a)(1) (failure to timely file), but not for penalties under section 6662(a) (accuracy related) because the IRS did not satisfy the burden of production.

The taxpayers appealed to the Second Circuit, which today issued a decision effectively agreeing with the Tax Court that neither treaty with the Seneca Nation created an exception from federal income tax for income derived from Seneca land. As the Second Circuit noted:

*Although we find the tax exemption contained in [treaty] Article IX is limited to Seneca land, we must determine whether an exemption from taxes on land must extend to [taxpayers'] gravel-mining income since their income "derives" from Seneca land. It does not. There are good reasons to treat income earned on the sale of gravel extracted from Seneca land differently than the real property itself.*

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