



# NATIONAL CONGRESS OF AMERICAN INDIANS

May 26, 2020

The Honorable Steven Mnuchin  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

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## Re: Tribal Employee and Expenditure Submissions

Dear Secretary Mnuchin:

On behalf of the National Congress of American Indians (NCAI), the oldest, largest and most representative organization comprised of tribal nations and their citizens, I write to urge fair and equitable treatment of tribal nations within the U.S. Department of Treasury's (Treasury) recent call for tribal employment and expenditure submissions, and to demand confidential treatment of any and all data submitted by tribal nations in response to this call for submissions.

### *Fair and Equitable Treatment*

It is concerning that Treasury is drawing a distinction between employees directly employed by a Tribal nation and those employed by a tribal entity. As governments with citizenries under their jurisdiction, federally recognized Indian tribes routinely provide a whole range of governmental services to their citizens, including, but not limited to, health and wellness programming, police and public safety, courts, water and sewer infrastructure, fire protection, schools, sanitation and trash collection, road maintenance, the creation and enforcement of building codes, zoning and land use planning, the regulation of air and water quality, and wildlife management. But even before the current pandemic, Indian tribes have struggled to generate governmental tax sourced revenues to provide these services since states and localities already tax economic activity on tribal lands,<sup>1</sup> since states have been allowed to tax certain transactions occurring on tribal reservations. This inequitable situation all but ensures that an additional tribal tax would cause double taxation and "discourage economic growth." *Bay Mills*, 572 U.S. at 811 (Sotomayor, J., concurring); *see id.* at 807 ("Tribes face a number of barriers to raising revenue in traditional ways"). Despite this, Tribal governments are responsible for funding the same essential government services that United States citizens enjoy from the federal government, and their respective state, and local governments.

As a result, tribal enterprises are responsible for raising revenue to support essential government functions, programs and services. The Supreme Court has recognized that

<sup>1</sup> *See, e.g.*, Montana Budget & Policy Center, *Policy Basics: Taxes in Indian Country, Part 2*, at 4 (Nov. 2017); *Dep't of Taxation & Fin. of N.Y. v. Milhelm Attea & Bros., Inc.*, 512 U.S. 61, 78 (1994) (approving state authority to tax cigarettes sold on the Seneca reservation); *Okla. State Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 507 (1991) (authorizing state tax on sales of goods to nonmembers of Indian Tribes on land held in trust for the Tribe); *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 151-63 (1980) (approving state cigarette and sales taxes on certain on-reservation purchases made by nonmembers of Indian Tribes); *Mashantucket Pequot Tribe v. Town of Ledyard*, 722 F.3d 457, 477 (2d Cir. 2013) (authorizing town's imposition of personal-property tax on gaming devices in tribal casino).

“if Tribes are ever to become more self-sufficient, and fund a more substantial portion of their own governmental functions, commercial enterprises will likely be a central means of achieving that goal.” *Bay Mills*, 572 U.S. at 807 (Sotomayor, J., concurring). So it makes no sense for Treasury to distinguish between employees, or revenues for that matter, directly tied to the Tribal nation and the same with respect to Tribal entities. Congress itself explicitly stated that Tribal government expenditures must also include consideration of expenditures of “a tribally-owned entity of such Tribal government.” NCAI urges Treasury to rethink this approach and give tribal nations the deference to determine their own government expenditures, and to include tribal entity expenditures if they see fit.

Further, we are concerned that this data call permits Alaska Native Corporations to include their corporate employee and expenditures while Tribal governments are excluded from including their entity employees and expenditures. Many tribes have business development entities/corporations that are modeled after the ANCs, and to allow ANCs to identify employees and expenditures given their structure, but to differentiate tribal government employees and expenditures from those of the tribe’s business entities, makes no sense, and treats tribes unfairly. This disparate treatment of Tribal governments vis-à-vis state corporations is not supported by the CARES Act and we ask Treasury to provide an explanation as to the restrictive treatment of Tribal governments.

### ***Confidentiality***

Next, NCAI urges Treasury to provide a written assurance that it will keep confidential all submitted tribal data. Tribal governments are extremely concerned about the confidentiality of their data due to the April 17, 2020 release of their data after submission to the Treasury Department and shared with the Interior Department. This egregious release exposed confidential tribal data to public consumption and raised concerns as to whether Treasury has administrative safeguards to restrict intra and inter-department access to submitted data. The Treasury Department has a trust responsibility to Tribal governments and should accordingly confirm that all tribal data will be treated as confidential, safeguarded, and not shared with other federal departments.

In closing, we thank you for your time and consideration. We welcome any dialogue or discussion on these important matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Allis', with a long horizontal flourish extending to the right.

Kevin Allis  
Chief Executive Officer  
National Congress of American Indians