



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #SAC-12-043

**TITLE: Requesting Federal Internal Revenue Service Not to Treat as Income Any Payments, or Interest or Investment Income Derived from Such Payments, Directly Made to Tribes or Paid Out as Per Capita Payments to Tribal Citizens Pursuant to Settlements of Tribal Claims for Mismanagement of Assets Held in Trust by the United States for the Benefit of Tribes**

### EXECUTIVE COMMITTEE

**PRESIDENT**  
**Jefferson Keel**  
*Chickasaw Nation*

**FIRST VICE-PRESIDENT**  
**Juana Majel Dixon**  
*Pauma Band of Mission Indians*

**RECORDING SECRETARY**  
**Edward Thomas**  
*Central Council of Tlingit & Haida  
Indian Tribes of Alaska*

**TREASURER**  
**W. Ron Allen**  
*Jamestown S'Klallam Tribe*

### REGIONAL VICE-PRESIDENTS

**ALASKA**  
**Bill Martin**  
*Central Council of Tlingit & Haida  
Indian Tribes of Alaska*

**EASTERN OKLAHOMA**  
**S. Joe Crittenden**  
*Cherokee Nation*

**GREAT PLAINS**  
**Robert Shepherd**  
*Sisseton Wahpeton*

**MIDWEST**  
**Matthew Wesaw**  
*Pokagon Band of Potawatomi*

**NORTHEAST**  
**Lance Gumbs**  
*Shinnecock Indian Nation*

**NORTHWEST**  
**Fawn Sharp**  
*Quinault Indian Nation*

**PACIFIC**  
**Don Arnold**  
*Scotts Valley Band of Pomo Indians*

**ROCKY MOUNTAIN**  
**Scott Russell**  
*Crow Tribe*

**SOUTHEAST**  
**Larry Townsend**  
*Lumbee Tribe*

**SOUTHERN PLAINS**  
**George Thurman**  
*Sac and Fox Nation*

**SOUTHWEST**  
**Joe Garcia**  
*Ohkay Owingeh*

**WESTERN**  
**Ned Norris, Jr**  
*Tohono O'odham Nation*

**EXECUTIVE DIRECTOR**  
**Jacqueline Johnson Pata**  
*Tlingit*

**NCAI HEADQUARTERS**  
1516 P Street, N.W.  
Washington, DC 20005  
202.466.7767  
202.466.7797 fax  
www.ncai.org

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, in recent months, the United States has settled 40 out of approximately 100 claims brought by individual Indian Tribes regarding mismanagement of resources held in trust for the benefit of the Tribe by the United States, with individual settlements generally being in excess of \$10 million and the total of such settlements being \$1 billion; and

**WHEREAS**, the settlement amounts in those cases represent a small fraction of the mismanagement by the United States of trust assets held on behalf of Indian Tribes over the past two centuries, with the settlements coming simply to avoid many years of litigation; and

**WHEREAS**, at the same time, whether such per capita payments would be considered taxable income by the IRS under the Internal Revenue Code has not been clarified; and

**WHEREAS**, in an undated Notice issued by the IRS on September 6, 2012, (IRS Notice 2012-60, entitled "Per Capita Payments from Proceeds of Settlements of Indian Tribal Trust Cases"), the IRS stated that pursuant to Section 1407 of Title 25 of the United States Code, which governs per capita distributions of judgments against the United States in favor of Indian Tribes, "the funds described in that section, and all interest and investment income accrued on the funds while held in trust, are not subject to federal income taxes;" and

**WHEREAS**, Notice 2012-60 goes on to say that if, after distribution of the funds to the Tribe, the Tribe were to invest the funds and receive income from that investment, and then distribute the funds, including the investment income, to Tribal members on a per capita basis, the investment income the Tribe earned. But not the amount of the per capita payment that represented the amount provided by the U.S. in the settlement, would be considered income to the Tribal member; and

**WHEREAS**, the IRS has, in recent months, been looking at whether payments by Tribes to Tribal members for various purposes constitutes “income” under the Internal Revenue Code, including the kind of income mentioned in Notice 2012-60, and whether such “income” can be subject to exclusion from “income” under the so-called “general welfare” policy doctrine; and

**WHEREAS**, Tribal governments have continuously insisted that what they pay out to their citizens from revenues of the Tribal government are not subject to income taxation because Tribes themselves are not subject to federal taxation under the U.S. Constitution and as guaranteed by Treaties with the United States, unless otherwise stated in federal law; and

**WHEREAS**, Tribal citizens are also citizens of the United States, and pursuant to the Citizenship Act of 1924, in which all American Indians residing within the United States were declared by Congress to be U.S. Citizens, the fact that American Indians are now citizens of the United States should not be viewed to interfere with their rights as citizens of their respective Tribal Nations.

**NOW THEREFORE BE IT RESOLVED**, that the NCAI demands that the IRS not treat as income to Tribal citizens any additional amount earned by Tribal governments from amounts awarded to the Tribes by the United States government as a settlement of claims by the Tribe for mismanagement of assets held in trust by the United States for the benefit of the Tribe; and

**BE IT FURTHER RESOLVED**, that the NCAI demands the United States Congress to investigate this issue and, if necessary, enact legislation that will prevent interest or other investment income earned by the Tribe on judgment funds being treated as income by the IRS, if and when such income is distributed to, or used for the benefit of, individual Tribal citizens, and that will further clarify that benefits provided by Tribal governments to their citizens cannot be treated as income to Tribal citizens unless specifically treated as income in federal law; and

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2012 Annual Session of the National Congress of American Indians, held at the Sacramento Convention Center from October 21-26, 2012 in Sacramento, California, with a quorum present.

  
\_\_\_\_\_  
President

**ATTEST:**

  
\_\_\_\_\_  
Recording Secretary