



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #SAC-12-052

TITLE: Urging IRS to Immediately Issue Guidance Declaring Trust Per Capita Payments to be Non-Taxable

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, the NCAI adopted Resolution #LNK-12-010 at its 2012 Mid-Year Session in Lincoln, Nebraska calling for the Internal Revenue Service (IRS) to cease unlawful efforts to tax tribal trust per capita payments, which are realized from the utilization of tribal trust resources; and

WHEREAS, such trust per capita payments have always been regarded by the member tribes of the NCAI, the Department of Interior and by the United States Congress as excluded from taxation by federal or state governments pursuant to common law, federal policy and federal statute; and

WHEREAS, Congressional hearings on the IRS's unlawful efforts to tax tribal trust per capita payments were held in the Senate Indian Affairs Committee in June, 2012 and in the House Resources Committee's Subcommittee on Indian and Native Alaskan Affairs in September, 2012, with Committee members on a bi-partisan basis strongly urging the IRS to immediately cease its unlawful efforts to tax tribal trust per capita payments; and

WHEREAS, the IRS witness at the September 14, 2012 House Subcommittee hearing testified that the "legal reasoning" of the Treasury Department's September 2012 Notice of Guidance No. 2012-60 declaring that the per capita distributions of recent tribal trust claim settlements are non-taxable would also apply to trust per capita payments under the 1983 Per Capita Act (Public Law 98-64); and

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Tlingit

NCAI HEADQUARTERS

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

WHEREAS, despite the urging of members of Congress and despite the testimony of the IRS witness at the September 14, 2012 House Subcommittee hearing, the IRS and Treasury Department have taken no action to cease the unlawful effort to tax tribal trust per capita payments and have failed to issue clear and unmistakable guidance that such payments are exempt from federal and state taxation and, in addition, are not to be counted as income or resources for determining eligibility for Social Security Act programs or other federally funded needs-based programs; and

WHEREAS, the NCAI demands that the IRS and the Treasury Department must immediately and unequivocally declare that trust per capita payments are non-taxable.

NOW THEREFORE BE IT RESOLVED, that the NCAI hereby demands that the IRS and the Department of Treasury immediately issue a permanent policy and legal declaration in the form of official guidance stating that tribal trust per capita payments are non-taxable and are subject to the income exclusions set out in the 1983 Per Capita Act; and

BE IT FURTHER RESOLVED, that until such time as the IRS and Treasury Department issue such guidance declaring tribal trust per capita payments to be non-taxable, the NCAI hereby continues its previous requests that the IRS, the Department of Treasury, the Department of Interior and the White House engage in meaningful government-to-government consultations with the NCAI and its member tribes from across the nation directly impacted by the IRS policy action regarding taxability of trust per capita payments as required by Executive Order No. 13175 and IRS internal policies; 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