



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ECWS-10-013

TITLE: Supporting Legislation to Stop Taxation of Tribal Education & Health Benefits

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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, Indian Tribes are governments that pre-date the United States and, through the Indian Commerce Clause and the Treaty Clause, the Constitution of the United States recognizes the status of Indian Tribes as sovereigns; and

WHEREAS, federal agencies have a responsibility to respect the letter and spirit of the United States Constitution, Treaties, current Federal laws, and Executive Orders, regarding the Federal Government's relationship with Tribal Governments; and

WHEREAS, after years of inadequate federal funding for Tribal education and health care, many Tribes in Indian Country have instituted funding programs to provide supplemental education, culture and health care to their Tribal citizens; and

WHEREAS, Indian Tribal Governments have been encouraged to use their tribal enterprises revenues including gaming revenues to provide for the unmet health and education service needs of their members, including education and health care; and

WHEREAS, such funding and programs have taken many forms, including direct health care provided by tribally-funded health care clinics, tribal subsidies for programs the tribe operates under a contract or compact with the Indian Health Service (IHS) and Bureau of Indian Affairs (BIA), health care reimbursement programs that pay for the cost of medically necessary care not covered by IHS, self-insured tribal health plans, group health insurance policies purchased by an Indian tribe to cover tribal members and their dependents, educational expenses including secondary scholarships and universal coverage programs; and

WHEREAS, the Internal Revenue Service (IRS) is auditing the educational and health care benefits provided to individual Tribal citizens by their Tribe through private insurers; and

WHEREAS, Internal Revenue Code Section 61 states that, except as otherwise provided, gross income includes all income from whatever source derived, and the IRS and federal courts have consistently held that payments made under similar social benefit programs for the promotion of general welfare are not includable in gross income; and

WHEREAS, the general welfare doctrine provides common law exclusion for government social welfare programs, the test is based on facts and circumstances and is difficult to apply; and

WHEREAS, statutory language is needed to clarify that educational and health care benefits provided by Indian tribal governments through their federally approved gaming compact General Welfare categories for their members is not subject to income taxation; and

WHEREAS, consistent with the Federal Government's policy of providing health care services to Indians, the "Tribal Health Benefits Clarification Act of 2009" as included in H.R. 3962, the Affordable Health Care for America Act would clarify that neither health care provided by IHS nor medical care or health coverage provided by an Indian tribe to its members is subject to income taxation; and

WHEREAS, the amendment would do so by codifying a statutory exclusion from gross income for the following categories:

- the value of educational services and health services provided by BIA and IHS;
- educational and health services provided by an Indian tribe or tribal organization to a member of an Indian tribe, including the member's spouse or dependents;
- the value of educational and health care benefits provided by an Indian tribe or tribal organization for education and medical care services to a member of an Indian tribe; and
- any other educational, health insurance or other medical services provided by an Indian tribe that supplements, replaces, or substitutes for federal Indian education and health programs; and

WHEREAS, this legislation would apply to educational benefits and health care coverage provided after the date of enactment and also includes language to prohibit the IRS or the courts from assuming or inferring that benefits provided by Indian tribes that are not within the scope of the bill were taxable prior to the legislation's effective date; and

WHEREAS, legislation is needed to protect the non-taxable status of educational and health care benefits provided to tribal members by their Tribe.

NOW THEREFORE BE IT RESOLVED, that NCAI supports legislation to treat Tribal Government educational and health care benefits as an aspect of tribal self-governance and tribal civic life, not personal income to individual tribal members; and

BE IT FURTHER RESOLVED, that NCAI supports legislation such as “Tribal Health Benefits Clarification Act of 2009” as included in H.R. 3962, the Affordable Health Care for America Act to treat tribal government health care and other tribal member benefits as an aspect of tribal self-government and tribal civic life, not personal income to individual tribal members; and

BE IT FURTHER RESOLVED, that NCAI calls on the Secretary of Interior to clarify to the Secretary of Treasury that Tribal Government health insurance and education benefits are appropriate part of providing for the general welfare of the Tribe, and that it is not a per capita distribution; and

BE IT FURTHER RESOLVED, that NCAI calls on the Secretary of Health and Human Services to inform the Secretary of Treasury that Tribal Health insurance and education benefits are Tribal Government expenditures that helps to alleviate the strain on Indian Health Service Resources; and

BE IT FINALLY RESOLVED, that NCAI calls upon the Secretary of Interior and Secretary of Health and Human Services to request that the Secretary of Treasury cease any IRS audits concerning the taxability of Tribal Government health care and education benefits; and

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