



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians  
Resolution #ABQ-19-013

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**TITLE: Urging the Secretary of the Treasury to Recognize the Authority of Tribal Governments to Determine the Meaning of “Lavish and Extravagant” and ‘Ceremonial Activities’ for Purposes of the Tribal General Welfare Exclusion Act**

**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 and the United Nations Declaration on the Rights of Indigenous Peoples, 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 U.S. Congress enacted the Tribal General Welfare Exclusion Act of 2014, Pub. L. 113-168, 128 Stat. 1883 (TGWE), which established that benefit payments or services provided by Indian tribal governments to their citizens under a tribal government program would not be subject to federal income taxation so long as the tribal government administers such program under specified guidelines and other restrictions; and

**WHEREAS**, one of the restrictions that must be included in a qualifying tribal government benefit program is that benefits provided are not “lavish or extravagant,” with benefits so categorized subject to income taxation; and

**WHEREAS**, the TGWE established a Tribal Advisory Committee for purposes of advising the Secretary of the Treasury “on matters relating to the taxation of Indians;” and

**WHEREAS**, the TGWE requires that the Secretary of the Treasury shall “in consultation with the Tribal Advisory Committee . . . establish guidelines for what constitutes lavish or extravagant benefits with respect to Indian tribal government programs;” and

**WHEREAS**, the U.S. Tax Code contains only one other reference to “lavish or extravagant” (regarding meal expenses) but has never established a definition and, accordingly, should not start to do so for the benefits provided by Indian tribal governments to their citizens; and

**WHEREAS**, Section 139E(c)(5) of the TGWE provides that benefits provided by tribal governments in connection with “ceremonial activities” shall not be subject to income taxation; and

**WHEREAS**, because of the U.S. government’s treatment of tribal traditions and ceremonial activities many Indian nations do not trust federal agents or agencies as regards releasing information about their traditional practices, ceremonials, and beliefs; and

**WHEREAS**, the U.S. Congress recognized the importance of preserving tribal traditions and ceremonial activities when it enacted the American Indian Religious Freedom Act, Public Law No. 95-341, 92 Stat. 469 (Aug. 11, 1978) to protect said traditions and activities; and

**WHEREAS**, NCAI standing resolution #SPO-16-057, Internal Revenue Service Consultation with Tribes Relating to Ceremonial Activities, called upon the IRS to consult with tribal nations to define “ceremonial activities;” and

**WHEREAS**, Indian tribal governments, and not the Secretary of the Treasury or the Internal Revenue Service, should have the primary authority to define “lavish and extravagant” and “ceremonial activities” for purposes of determining the tax status of tribal government benefits; and

**WHEREAS**, the TGWE requires that any “ambiguities” associated with implementing the TGWE “shall be resolved in favor of Indian tribal governments and deference shall be given to Indian tribal governments for the programs administered and authorized by the tribe to benefit the general welfare of the tribal community;” and

**WHEREAS**, the TGWE reflects Congressional intent that the scope of federal income tax immunity established under the TGWE for tribal government benefits be predicated upon the sovereign authority of an Indian tribal government to determine the nature and level of the benefits it provides to its citizens.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians (NCAI) calls for the Secretary of the Treasury to establish guidelines under the Tribal General Welfare Exclusion Act in a manner that recognizes the exclusive authority of Indian tribal governments to define “lavish and extravagant” and “ceremonial activities” under their tribal benefit programs; and

**BE IT FURTHER RESOLVED**, that NCAI calls upon the Treasury Tribal Advisory Committee to establish a policy position that recommends to the Secretary of the Treasury that Indian tribal governments shall have the exclusive authority to define “lavish and extravagant” and “ceremonial activities” under their tribal general welfare benefit programs; 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 2019 Annual Session of the National Congress of American Indians, held at the Albuquerque Convention Center, October 20-25, 2019, with a quorum present.



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Fawn Sharp, President

**ATTEST:**



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Juana Majel Dixon, Recording Secretary