Resolutions Committee Recommendation
Resolution #: AK-21-018
Title: Urging the Treasury Tribal Advisory Committee to Exercise Oversight Over IRS Auditing and Tax Collecting Activity in Indian Country

Comments:
This resolution calls on Congress to expand authority and scope of the Treasury Tribal Advisory Committee (TTAC) to (1) to exercise oversight over the Internal Revenue Service and its auditing, examining, and tax collecting activities in Indian Country; (2) establish an Audit Oversight Subcommittee to provide a standing mechanism to ensure that this important responsibility is consistently executed; and (3) report on a regular basis to Indian tribal governments and to Congress the results of its findings regarding IRS activities in Indian Country. AK-21-018 calls on Congress to provide funding for the TTAC to do such expanded work.

Recommendations:
The Resolutions Committee recognizes the issue(s) raised in this resolution and recommends that it be considered by the Litigation and Governance Committee, Taxation Subcommittee to discuss TTAC’s current jurisdiction.

Sponsor a member in good standing (yes/no)?: Y
The National Congress of American Indians
Resolution #AK-21-018

TITLE: Calling on Congress to Expand the Authority and Scope of the Urging the Treasury Tribal Advisory Committee to Exercise Oversight Over IRS Auditing and Tax Collecting Activity in Indian Country

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

WHEREAS, one of the important reasons for enacting the TGWE was to end the practice of Internal Revenue Service ("IRS") audits and examinations of Indians and Indian tribal governments for purposes of assessing income taxes and penalties associated with the distribution of tribal benefits; and

WHEREAS, the IRS auditing activity in Indian Country was fully investigated by the Treasury Department Office of the Inspector General who issued a report in January 2013 that concluded that the Treasury Office of Indian Tribal Governments had conducted 1000 audits of Indians and Indian tribal governments over a 10 year period to detect “fraud and abuse” but had “not developed specific performance objectives or measures” to be able to determine success—(see https://www.treasury.gov/tigta/auditreports/2013reports/201310018fr.pdf); and
WHEREAS, Congress responded to the IRS auditing, investigation and taxation of tribal
government benefits by suspending all audits and examinations of Indians and Indian tribal
governments relating to general welfare benefits until such time as the TTAC conducts the training
of IRS agents as required under the law (TGWE § 4(a)); and

WHEREAS, the IRS has reported that audits and examinations of Indian tribal
government benefit programs has been suspended in accordance with the law but there continues to
be reports of such audits occurring as well as continuing audits relating to Indian tribal
government payroll tax and information returns; and

WHEREAS, an important priority for the TTAC is to exercise oversight of the Treasury
Department and the IRS regarding its auditing, examining, and federal tax collecting activities in
Indian Country to protect Indians and Indian tribal governments from unfair, unjust, and unauthorized
Federal government tax collection activities; and

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians
(NCAI) urges Congress to expand the authority and scope of the TTAC to (i) adopt a policy
statement setting forth its intent and plan to exercise oversight over the Internal Revenue Service and
its auditing, examining, and tax collecting activities in Indian Country; (ii) establish an Audit
Oversight Subcommittee to provide a standing mechanism to ensure that this important responsibility
is consistently executed; and (iii) report on a regular basis to Indian tribes the results of its findings regarding IRS activities in Indian Country; and

BE IT FURTHER RESOLVED, if the TTAC determines that the Treasury Department or
Federal law restricts its ability to gather information regarding IRS audit and examination activities
in Indian Country that it shall notify the Congress and federally recognized tribes that an amendment
to Federal law is required; and

BE IT FURTHER RESOLVED, that NCAI urges Congress to provide the necessary
funding for such expanded TTAC work; and

BE IT FURTHER RESOLVED, that the TTAC and its subcommittees shall remain
permanently in effect consistent with the government-to-government relationship established by
treaties, laws, and the trust relationship as set forth in Executive Order 13175; and

BE IT FURTHER RESOLVED, that this resolution be forwarded to the Secretary of the
Treasury, the Treasury Tribal Advisory Committee (TTAC@treasury.gov), regional and national intertribal organizations, including but not limited to
NCAI, United South & Eastern Tribes (USET), California Tribal Chairman’s Association, Native American Finance Officers (NAFOA), the Great Plains Tribal Chairman’s Association, the Midwest Alliance of Sovereign Tribes (MAST), and the Alaska Federation of Natives (AFN); 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 2021 Mid Year Conference of the National Congress of American Indians, held June 20, 2021 - June 24, 2021, with a quorum present.

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Fawn Sharp, President

ATTEST:

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Juana Majel Dixon, Recording Secretary
The National Congress of American Indians
Resolution #AK-21-018

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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, 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

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WHEREAS, the IRS has reported that audits and examinations of tribal government benefit programs has been suspended in accordance with the law but there continues to be reports of such audits occurring as well as continuing audits relating to tribal government payroll tax and information returns; and

WHEREAS, an important priority for the TTAC is to exercise oversight of the Treasury Department and the IRS regarding its auditing, examining, and federal tax collecting activities in Indian Country to protect Indians and Indian tribal governments from unfair, unjust, and unauthorized Federal government tax collection activities.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) urges the Treasury Tribal Advisory Committee to (i) adopt a policy statement setting forth its intent and plan to exercise oversight over the Internal Revenue Service and its auditing, examining, and tax collecting activities in Indian Country; (ii) establish an Audit Oversight Subcommittee to provide a standing mechanism to ensure that this important responsibility is consistently executed; and (iii) report on a regular basis to federally recognized tribal governments and to the Congress the results of its findings regarding IRS activities in Indian Country; and

BE IT FURTHER RESOLVED, if the TTAC determines that the Treasury Department or Federal law restricts its ability to gather information regarding IRS audit and examination activities in Indian Country that it shall notify the Congress and federally recognized tribes that an amendment to Federal law is required; and

BE IT FURTHER RESOLVED, that the TTAC and its subcommittees shall remain permanently in effect consistent with the government-to-government relationship established by treaties, laws, and the trust relationship as set forth in Executive Order 13175; and

BE IT FURTHER RESOLVED, that this resolution be forwarded to the Secretary of the Treasury (tribal.consult@treasury.gov), the Treasury Tribal Advisory Committee (TTAC@treasury.gov), regional and national intertribal organizations, including but not limited to NCAI, United South & Eastern Tribes (USET), California Tribal Chairman’s Association, Native American Finance Officers (NAFOA), the Great Plains Tribal Chairman’s Association, the Midwest Alliance of Sovereign Tribes (MAST), and the Alaska Federation of Natives (AFN); and

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

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Fawn Sharp, President

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Juana Majel Dixon, Recording Secretary