



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #MSP-15-023

EXECUTIVE COMMITTEE

PRESIDENT
Brian Cladoosby
Swinomish Tribe

FIRST VICE-PRESIDENT
Randy Noka
Narragansett Tribe

RECORDING SECRETARY
Aaron Payment
*Sault Ste. Marie Tribe of Chippewa
Indians of Michigan*

TREASURER
Arlan Melendez
Reno Sparks Indian Colony

REGIONAL VICE- PRESIDENTS

ALASKA
Jerry Isaac
Native Village of Tanacross

EASTERN OKLAHOMA
S. Joe Crittenden
Cherokee Nation

GREAT PLAINS
Leander McDonald
Spirit Lake Nation

MIDWEST
Roger Rader
Pokagon band of Potawatomi

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Fawn Sharp
Quinault Indian Nation

PACIFIC
Rosemary Morillo
Soboba Band of Luiseno Indians

ROCKY MOUNTAIN
Ivan Posey
Shoshone Tribe

SOUTHEAST
Ron Richardson
Haliwa-Saponi Indian Tribe

SOUTHERN PLAINS
Stephen Smith
Kiowa Tribe

SOUTHWEST
Manuel Heart
Ute Mountain Ute Tribe

WESTERN
Len George
Fallon Paiute Shoshone Tribe

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

TITLE: Requesting Treasury Comply with the Tribal General Welfare Exclusion Act, PL 113-168, by Consulting with Indian Tribes on Implementation of the Act and Suspending Audits and Examinations of Tribal General Welfare Programs

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 sovereigns that pre-date the United States, with prior and treaty protected rights to self-government and to our Indian lands; and

WHEREAS, the Constitution of the United States, through the Treaty, Commerce, and Apportionment Clauses and the 14th Amendment, recognizes the sovereign status of Indian Tribes as Native nations established prior to the United States; and

WHEREAS, before the United States, Indian nations were independent sovereigns with complete authority over our lands and our citizens; and

WHEREAS, the Indian Gaming Regulatory Act ("IGRA") acknowledged and confirmed the inherent sovereign powers of Tribal Governments; and

WHEREAS, before the formation of the United States, Indian nations were independent sovereign nations and it is the policy of the United States to support self-determination, self-governance, and self-sufficiency as set forth in the Indian Self-Determination Act of 1975 as amended, the Self-Governance Act, and other federal laws; and

WHEREAS, through treaties, statutes, executive orders, and other legal agreements and laws, the United States undertook many obligations to Native people in exchange for hundreds of millions of acres of homelands, yet the federal government has not sufficiently met these obligations to provide essential services, programs and benefits to Native people; and

WHEREAS, to address shortfalls in federal funds and the corresponding shortage of federal programs and services, many Tribal Nations provide for the general welfare of their people and communities through tribal governmental programs, services, and benefits; and

WHEREAS, since 2002, the Internal Revenue Service (IRS) has been auditing Indian nations by seeking to impose federal income tax on essential government programs and services; and

WHEREAS, in September 2014, the U.S. Congress enacted and President Obama signed into law Public Law 113-168, the Tribal General Welfare Exclusion (GWE) Act, which Congress developed in consultation with Tribal Nations across the country; and

WHEREAS, the GWE Act recognizes that Tribal Nations may provide payments or benefits to their citizenry to promote the general welfare of their community, and that such payments and benefits are free from taxation by state and federal governments; and

WHEREAS, the GWE Act recognizes that Tribal Nations, not the IRS or other offices or bureaus at the Department of the Treasury, are in the best position to determine the needs of their citizens and communities; and

WHEREAS, the GWE Act requires the Treasury Secretary (Secretary) to do the following: (1) establish a Tribal Advisory Committee (Committee) to advise the Treasury Department on matters relating to the taxation of Indians; (2) establish and provide training and education for IRS agents about the new law in consultation with the Committee; and (3) provide training and education for IRS agents on Federal Indian law and the Federal Government's unique legal treaty and trust relationship with tribal governments in consultation with the Committee; and

WHEREAS, the GWE Act requires that the Secretary suspend all audits and examinations of tribal governments and tribal members regarding an exclusion of a payment or benefit from a tribal government until the Secretary has provided the required training and education to IRS agents in consultation with the Committee; and

WHEREAS, before the Committee can be established, a charter, according to the Treasury Department's interpretation of the GWE Act, must be developed and adopted by the Department; and

WHEREAS, in December 2014, the Treasury Department held a listening session in Washington, DC, at which tribal leaders requested that Indian Country be consulted on the drafting of a charter for the Committee, and these tribal leaders received indications from agency officials that the Treasury Department would work with Tribal Nations on the charter; and

WHEREAS, in December 2014, the Treasury Department also issued a draft Tribal Consultation Policy, which included statements that the Treasury Department will endeavor to utilize a consultation process that is “accessible and convenient to Tribal participants,” and includes “meaningful, transparent, and accountable dialogue involving the appropriate participants;” and

WHEREAS, the Treasury Department submitted the charter without adequately consulting with Tribal Nations and providing no opportunity for Tribal Nations to review and comment on the language of the charter; and

WHEREAS, Treasury Department officials also indicated that it is not required to appoint tribal leaders for its three positions on the Committee and instead may appoint non-tribal leaders to the Committee; and

WHEREAS, the legislative history of the GWE Act indicates that Congress intended for the Committee appointments to be tribal leaders; and

WHEREAS, the Treasury Department has not indicated whether it will engage in government-to-government consultations with Tribal Nations on the Committee appointment process or other aspects of implementation of the GWE Act; and

WHEREAS, under the GWE Act, IRS examinations were to have been suspended until IRS field agents are adequately trained, and also it further expressly provides deference to tribal government decision-making authority and generally fosters the policy supporting Indian Self-Determination and respect for tribal culture; and

WHEREAS, some Tribal Nations continue to be audited and/or questioned by the IRS on benefits they provide to their members for the General Welfare and that the Treasury Department, including the IRS, has not suspended audits and examinations of these Tribal Nations and their tribal members even though Tribal Nations have indicated these audits and examinations relate to General Welfare; and

WHEREAS, Tribal Nations are concerned that the Treasury Department will continue to implement the GWE Act without meaningfully consulting with Tribal Nations, disregarding Congressional intent behind the law, appoint non-tribal leaders to the Committee, fail to suspend all audits as mandated by the law, and fail to disclose information regarding implementation of the GWE Act; and

WHEREAS, the Federal Advisory Committee Act (FACA) was intended to curb industry-run policy advisory committees and the Unfunded Mandates Reform Act was intended to provide for intergovernmental consultation between the Federal Government and Indian tribal governments without regard to FACA.

NOW THEREFORE BE IT RESOLVED, that NCAI calls upon the Department of Treasury, including the IRS, to be transparent and engage in meaningful government-to-government consultations with Tribal Nations pursuant to Executive Orders 13175 and 13647 regarding the implementation of the GWE Act, including the development and adoption of a charter for the Committee, the appointment process and qualifications for members to the Committee, and the moratorium on audits of Tribal Nations and tribal members; and

BE IT FURTHER RESOLVED, NCAI requests that the Treasury Department appoint only duly elected or appointed tribal leaders and officials to the Committee consistent with the Unfunded Mandates Reform Act; and

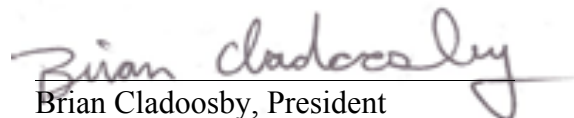
BE IT FURTHER RESOLVED, that NCAI calls upon Congress to enact a technical correction to clarify that: the Federal Advisory Committee Act (which is intended for industry committees) does not apply to the Tribal Government Advisory Committee established by Public Law 113-168 (2014), which is intergovernmental in nature and is intended to reduce unfunded mandates and impositions on tribal governments; and that consultation with Indian tribes shall proceed as required by Executive Order 13175 (2000); and

BE IT FURTHER RESOLVED, that the NCAI calls upon the IRS to immediately suspend all audits and examinations of Tribal Nations and tribal members and their spouses and dependents regarding any exclusions of payments or benefits from gross income as set forth in the GWE Act, until the Secretary has provided the required training and education to IRS agents; 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 2015 Midyear Session of the National Congress of American Indians, held at the St. Paul River Centre, St. Paul, MN, June 28 to July 1, 2015, with a quorum present.


Brian Cladoosby, President

ATTEST:


Aaron Payment, Recording Secretary