The National Congress of American Indians
Resolution #SD-15-067

TITLE: Exclusion of Honoraria for Civic Participation in Tribal Nation Government Activities from Gross Income

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, Native Nations and tribes were independent sovereign nations prior to the formation of the United States and from the First days of the Republic, the United States entered into treaties and agreements with Native Nations and tribes, acknowledging their status as sovereigns; and

WHEREAS, the United States Constitution affirms the status of Native Nations and tribes as sovereigns through the Treaty, Supremacy, and Commerce Clauses, and recognizes Native citizens as “Indians not taxed;” and

WHEREAS, Congress passed Public Law 113-168, the Tribal General Welfare Exclusion Act and the President signed the legislation into law on September 26, 2014; and

WHEREAS, the law confirms that any general welfare benefits that Native Nation governments provide to their members are not included within an individual’s gross income; and

WHEREAS, the law confirms that cash honoraria payments made for “participation in cultural or ceremonial activities for the transmission of tribal culture shall not be treated as compensation for services” and thus, excluded from gross income; and

WHEREAS, civic participation by citizens of Native Nations is essential for Native Nation governments to operate and execute their general welfare responsibilities given their unique structures and communities; and
WHEREAS, it is custom and tradition for numerous Native Nation governments to provide honoraria to their members who engage in civic participation opportunities related to the governmental general welfare operations that are essential for ensuring the transmission and protection of Native culture, history, and long-term viability and health of its citizens and overall community; and

WHEREAS, the United States endorses the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which affirms that, “indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,” and further recognizes that, “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.” In accordance with the UNDRIP principles, the federal government must defer to Native Nations and how they choose to define their own customs, traditions, and ceremonial practices; and

WHEREAS, leading up to the Tribal General Welfare Exclusion Act’s enactment, the legislative history made clear that Congress intended for the Tribal General Welfare Exclusion Act to respond to concerns that the Internal Revenue Service (IRS) may not fully understand the role that general welfare programs play in maintaining tribal culture and tradition, and that these issues should be addressed through government-to-government consultation. Congress intended for the Treasury Tribal Advisory Committee to address these concerns and work with tribes on a government-to-government basis; and

WHEREAS, Native Nations and tribes have their own unique histories, customs, traditions, and relationships with the United States, and accordingly, no one speaks for a Native Nation except for its own leaders through the strength of its people; and

WHEREAS, the IRS has indicated that it believes that stipends and fees provided to Native people by their governments for civic participation activities are compensation for services and, therefore, taxable; and

WHEREAS, the Department of Treasury and IRS have not consulted with Native Nations in the implementation of the Tribal General Welfare Exclusion Act and have sought to interpret the law before establishing the Treasury Tribal Advisory Committee and conducting proper consultation, in a manner offensive to many Native Nations and contrary to Congress’ intent.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) calls on the Treasury Department and IRS to interpret the Tribal General Welfare Exclusion Act to confirm that civic participation honoraria provided by Native Nation and tribal governments to their citizens is not included within an individual’s gross income; and

BE IT FURTHER RESOLVED, that NCAI calls upon Congress to enact legislation, to the extent it is necessary, to confirm that honoraria provided to Native people by Native Nation and tribal governments for their civic participation in governments activities, is not included within the individual’s gross income; and
BE IT FURTHER RESOLVED, that NCAI calls upon the Treasury Department and the IRS to consult with Native Nations and tribes in the development of guidance relating to the agencies’ interpretation of the Tribal General Welfare Exclusion Act and wait to issue any such guidance under after the Treasury Tribal Advisory Committee is established and properly consulted; and

BE IT FURTHER RESOLVED, that NCAI calls upon the White House to request that the Treasury Department and the IRS hold an official consultation session with Native Nation and tribal leaders on the week of November 4, 2015 in Washington, DC, in conjunction with the White House Tribal Nations Conference; 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 Annual Session of the National Congress of American Indians, held at the Town and Country Resort, San Diego, CA, October 18-23, 2015, with a quorum present.

Brian Cladoosby, President

ATTEST:

Aaron Payment, Recording Secretary