



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ATL-14-023

TITLE: Implementation of H.R. 3043, Tribal General Welfare Exclusion Act by U.S. Department of the Treasury and Internal Revenue Service

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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, 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, 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, through treaties, statutes, executive orders, and other legal agreements and laws, the United States undertook many obligations to our people in exchange for hundreds of millions of acres of our homelands, yet the federal government has not met its solemn obligations to our people and has not fulfilled its treaty and other legal obligations to Indian nations to provide essential services, programs and benefits; and

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

WHEREAS, since 2002, the IRS has been harassing Indian nations by seeking to impose federal income tax on essential government programs and services; and

WHEREAS, H.R. 3043, the Tribal General Welfare Exclusion Act, introduced by Rep. Devin Nunes and developed in consultation with Indian nations across the country, honors and respects the letter and spirit of the United States Constitution, treaties, other current federal law, and Executive Orders regarding the federal government's relationships with Indian nations. Senator Jerry Moran and Senator Heidi Heitkamp introduced S. 1507, the companion bill to H.R. 3043; and Indian nations nation-wide supported H.R. 3043 and S. 1507 and strongly advocated for its passage; and

WHEREAS, the U.S. House of Representatives unanimously passed H.R. 3043 on September 16, 2014; the U.S. Senate unanimously passed H.R. 3043 on September 18, 2014; and President Obama signed H.R. 3043 into law on September 26, 2014; and

WHEREAS, statements contained in the Congressional Record during House passage of H.R. 3043 by Rep. Nunes, the author of H.R. 3043 and a Member of the House Ways and Means Committee, and Rep. Tom Reed and Rep. Ron Kind, co-sponsors of the bill and Members of the House Ways and Means Committee, provide legislative background, context, and congressional intent on H.R. 3043; and

WHEREAS, Senator Ron Wyden, Chairman, Senate Finance Committee, and Senator Jerry Moran and Senator Heidi Heitkamp, the sponsors of the bill in the Senate, made statements and issued a colloquy contained in the Congressional Record during Senate passage of H.R. 3043 that provide legislative background, context, and congressional intent on H.R. 3043; and

WHEREAS, Rep. Nunes' statement in the Congressional Record on September 16, 2014, expressly referenced Revenue Procedure 2014-35 and the law's intent that the IRS not apply the law in any way less favorable than Revenue Procedure 2014-35; the expectation "that the IRS will develop regulations that are no less favorable to tribes than Revenue Procedure 2014-35, including no limitation on a tribe's ability to address community needs and to make benefits available to all eligible tribal members"; and congressional intent that the "IRS will not interpret the statute as requiring individualized determinations of financial need where a tribal government has established a program consistent with the statute;" and

WHEREAS, the colloquy contained in the Congressional Record dated September 17, 2014, among Chairman Wyden, Senator Moran, and Senator Heitkamp expressed the same themes concerning the legislative purpose of the law as Rep. Nunes that "the term general welfare is found in the Preamble to the Constitution, and the power and duty of governments to promote the general welfare is at the core of our service to the people. Indian tribes, through treaties, agreements, and statutes, reserved their original, inherent right to self-government, and Tribal governments are in the best position to determine the general welfare interests of the Indian people;" the IRS should not apply the law "in a manner no less favorable than the safe harbor approach provided for in Revenue Procedure 2014-35"; that the intent of Congress is "to expand rather than restrict the safe harbor provisions in Revenue Procedure 2014-35"; that the IRS shall not take the opportunity upon the law's passage to "retrench, narrow or possibly withdraw Revenue Procedure 2014-35"; that the "purpose of this legislation is to further empower Tribal self-determination"; and that "Tribes, and not the IRS, are in the best position to determine the needs of their members and provide for the general welfare of their Tribal citizens and communities;" and

WHEREAS, H.R. 3043 requires the Treasury Secretary (Secretary) to do the following: (1) establish a Tribal Advisory Committee (Committee) to advise the IRS and Treasury on matters relating to the taxation of Indians; (2) establish and provide training and education for IRS agents and tribal financial officers and the provisions in the new law in consultation with the Committee; (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, Rep. Nunes' statement in the Congressional Record on September 16, 2014, expressly provided congressional intent that the Committee established under the bill address concerns "that the IRS does 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 rather than through tribal or member audits that may deter tribes from preserving culture and tradition or pursuing self-determination" by "working with tribes on a government-to-government basis;" and

WHEREAS, Rep. Nunes' same statement in the Congressional Record further states congressional intent that the Committee be comprised of "qualified tribal leaders and in the alternative qualified tribal financial officers" given "such qualified individuals would have intimate knowledge of federal Indian law and policy, as well as the financial and community needs of Indian tribes" and that "[t]hese qualifications would enhance the Department's [Treasury] administration of federal tax policies affecting tribal governments while ensuring that treaty rights and principles of tribal self-governance are properly balanced with federal tax policy;" and

WHEREAS, H.R. 3043 requires that the Secretary suspend all audits and examinations of tribal governments and tribal members and their spouses and dependents regarding an exclusion of a payment or benefit from and tribal government under GWE until the Secretary has provided the required training and education to IRS agents and tribal financial officers in consultation with the Committee; and

WHEREAS, Rep. Tom Reed's statement in the Congressional Record on September 19, 2014, states that, in regard to the provision in the law on the suspension of audits and examinations, "Congress intends that it apply to all payments and benefits from a tribal government to its members for their general welfare and further, that a tribal government may, at its option, waive suspension of its examination" and also states that, in regard to applying the current guidance for prior periods, "Congress expects that the IRS will not challenge arrangements that are consistent with the spirit of the guidance in terms of what payments are eligible and without regard to specific documentation and similar requirements imposed by the guidance;" and

WHEREAS, H.R. 3043 allows the Secretary to waive any interest and penalties imposed under the Internal Revenue Code on any tribal government, tribal member or spouse or dependent of a tribal member, if the interest and penalties relate to excluding a payment or benefit from gross income under GWE.

NOW THEREFORE BE IT RESOLVED, that NCAI expresses its deepest appreciation to the U.S. Congress, especially Rep. Devin Nunes, Senator Jerry Moran, and Senator Heidi Heitkamp, on passage of H.R. 3043 and to President Obama for signing H.R. 3043 into law; and

BE IT FURTHER RESOLVED, that NCAI calls upon the U.S. Congress to act as quickly as possible to engage in government-to-government consultations with Indian nations on the appointment process for Members to the Committee established under H.R. 3043; and

BE IT FURTHER RESOLVED, that NCAI calls upon the Department of Treasury and the IRS to act as quickly as possible to engage in government-to-government consultations with Indian nations pursuant to Executive Orders 13175 and 13647 on the provisions of H.R. 3043 and its implementation, including the appointment process and qualifications for Members to the Committee, the moratorium on audits of Indian tribes and tribal members, the Treaty Canons of Construction and deference to tribal government determinations of the general welfare, religious and cultural issues, the use of custom, tradition, and government practice in establishing programs; and

BE IT FURTHER RESOLVED, that NCAI strongly supports the congressional intent of H.R. 3043 that Members of the Committee be qualified tribal leaders and not outside tax lawyers or outside CPAs; and

BE IT FURTHER RESOLVED, that NCAI calls upon the IRS to immediately suspend all audits and examinations of Indian nations and tribal members and their spouses and dependents regarding an exclusion of a payment or benefit from gross income as set forth under H.R. 3043, if it has not already done so, until the Secretary has provided the required training and education to IRS agents and tribal financial officers in consultation with the Committee set forth under the law and further urges the IRS to act as quickly as possible to engage in government-to-government consultation and collaboration with Indian nations on the required training and education on Indian treaty, trust, and Indian law to IRS agents and tribal financial officers under the law; and

BE IT FURTHER RESOLVED, that the IRS immediately apply the provisions of H.R. 3043 to prior periods and cease challenging payments made or services provided to or on behalf of a tribal member or a spouse or dependent of such tribal member by Indian nations that H.R. 3043 now clarifies as excluded from the definition of gross income; and

BE IT FURTHER RESOLVED, that NCAI calls upon the IRS to immediately waive interest and penalties imposed on Indian nations, tribal members, and spouses and dependents of tribal members if the interest or penalties relate to excluding a payment or benefit from gross income under H.R. 3043; and

BE IT FURTHER RESOLVED, that NCAI Resolutions LNK-12-008 (June 2012), SAC-12-016 (October 2012), REN-13-009 (June 2014), TUL-13-032 (October 2013), and ANC-14-002-B (June 2014) remain in full force and effect; this resolution complements those prior resolutions; and together, the six resolutions shall be the policy of the NCAI unless they are withdrawn by subsequent resolution; and

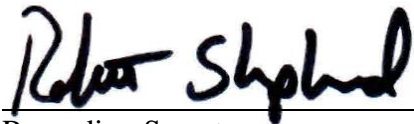
BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Annual Session of the National Congress of American Indians, held at the Hyatt Regency Atlanta, October 26-31, 2014 in Atlanta, Georgia, with a quorum present.


President

ATTEST:


Recording Secretary