



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #TUL-13-049

TITLE: Support Equal Treatment of the Social Security Withholding Tax Exemption

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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, the Constitution of the United States, through the Treaty, Commerce, Supremacy, and Apportionment Clauses and the 14th Amendment recognize the sovereign status of Indian tribes as separate nations preceding the establishment of the United States; and

WHEREAS, as constitutionally recognized governments to which the United States owes unique legal treaty and trust obligations, Indian tribes should receive the same benefits of other governments for purposes of federal taxation; and

WHEREAS, Internal Revenue Service (IRS) field agents conducting “routine” examinations of tribal governments are bringing punitive assessments against tribal governments on many issues such as General Welfare and Trust Distributions; and

WHEREAS, most recently the IRS has ruled against a federally recognized Indian Tribe that worked with a state government to cover its public safety employees under the state Public Employees Retirement Association Pension Plan, and the tribe excluded wages paid to tribal public safety employees from the withholding of Social Security taxes, because state employees were exempt from such taxes; and

WHEREAS, the IRS found that while Section 7871 (Indian Tribal Government Tax Status Act) acknowledges that tribes shall be treated as governments for most purposes, it found that the Section does not include an exception for purposes of social security taxes under Chapter 21 of the Code, and as a result, the IRS issued an assessment of \$300,000+ against at least one federally recognized Indian tribe; and

WHEREAS, the IRS has taken the legal position that social security withholding tax on wages applies to certain tribal government employees even though these employees pay into the same state retirement plan as their professional state government counterparts who are exempt from social security withholding tax; and

WHEREAS, these IRS examinations conflict with the federal policy supporting Indian Self-Determination, and undermine the government-to-government relationship between the federal government and tribal governments; and

WHEREAS, the IRS is aggressively pursuing tribal governments for social security withholding taxes who have acted in good faith in assuming that certain tribal employees were immune because of participation in a tax exempt state retirement plan; and

WHEREAS, the Internal Revenue Code exempts state governments from the social security tax withholding requirements for wages paid to certain state employees covered under a state retirement plan; and

WHEREAS, the Pension Protection Act of 2006 was not only flawed by requiring tribes to divide pension plans into “essential government” plans and “commercial” plans (as noted in NCAI Resolution DEN-07-059), the law failed to clarify that the Code also exempts tribal employers from social security withholding requirements; and

WHEREAS, the IRS’s narrow interpretations of the Code fall short of achieving true parity in the treatment of similar tribal and state government employee participants in state retirement plans.

NOW THEREFORE BE IT RESOLVED, that NCAI calls upon Congress to amend the Internal Revenue Code to ensure the equal treatment of tribal government employers and state government employers for purposes of social security withholding taxes on wages paid to government employees; and

BE IT FURTHER RESOLVED, that NCAI calls upon Congress to amend the Code to provide IRS the express authority to apply this provision of law retroactively and to waive penalties and interest; and

BE IT FINALLY RESOLVED, that this resolution and the resolutions referenced in the preceding clauses 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 2013 Annual Session of the National Congress of American Indians, held at the Cox Business Center from October 13 - 18, 2013 in Tulsa, Oklahoma with a quorum present.



President

ATTEST:



Recording Secretary