



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #SD-15-046

### TITLE: Per Capita Distributions of Tribal Trust Funds

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#### NCAI HEADQUARTERS

1516 P Street, N.W.  
Washington, DC 20005  
202.466.7767  
202.466.7797 fax  
[www.ncai.org](http://www.ncai.org)

**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 NCAI adopted Resolution #LNK-12-010 at its 2012 MidYear Session in Lincoln, Nebraska calling for the Internal Revenue Service (IRS) to cease unlawful efforts to tax tribal trust per capita payments, which are directly derived from tribal trust resources, and NCAI adopted Resolution #SAC-12-052 at its 2012 Annual Convention in Sacramento, California calling for the IRS to immediately issue a decision declaring that trust per capita payments are non-taxable, and NCAI adopted Resolution # ANC-14-001 at its 2014 Midyear Session in Anchorage, Alaska calling for the IRS to amend its interim guidance to defer to the Department of the Interior (DOI) on the characterization of trust funds; and

**WHEREAS**, NCAI greatly appreciates that on March 10, 2014 the IRS issued Notice 2014-17 providing “interim guidance” concerning the taxability of tribal trust per capita payments, and on September 18, 2015 the IRS issued Notice 2015-67 providing final guidance confirming that tribal trust per capita payments are not taxable; and

**WHEREAS**, Notice 2015-67 correctly states that tribal trust per capita payments are exempt from taxation but limits the scope of the guidance to only funds held in trust in an account by the Secretary of the Interior, and does not address funds acquired through “direct pay” leases; and

**WHEREAS**, funds acquired through direct pay leases are funds derived from tribal trust resources, as defined at 25 CFR § 115, et seq., which are distributed directly to the tribal lessor, and not paid to a tribal trust account established with DOI’s Office of the Special Trustee (OST) even though such funds would otherwise be eligible for deposit into an OST trust account; and

**WHEREAS**, direct pay leases are fully authorized by BIA leasing regulations at 25 CFR §162 and the funds acquired therefrom are derived from tribal trust resources and therefore entitled to the same nontaxable status as funds accepted into OST tribal trust accounts; and

**WHEREAS**, direct pay leases are often preferable for both tribes and DOI because they enable much quicker payment, eliminate the need for Interior to handle trust funds and potentially mishandle trust funds, and promote greater self-governance.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians (NCAI) strongly urges the Internal Revenue Service to issue further guidance clarifying that tribal funds derived from direct pay leases are also nontaxable since such funds are directly derived from tribal trust resources; and

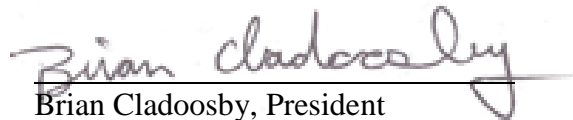
**BE IT FURTHER RESOLVED**, that the NCAI member tribes call on the IRS to engage in a moratorium on the audit of all per capita payments from tribal trust funds and funds directly derived from tribal trust resources and/or assets until such time as the new guidance is developed; and

**BE IT FURTHER RESOLVED**, that the Office of the Special Trustee and the Department of the Interior consider addressing this issue by amending and updating the DOI regulations governing tribal trust accounts at 25 C.F.R. §115 (including by removing the prohibition in §115.805 on OST's acceptance of direct pay lease and other revenues into an tribal trust account) consistent with the administrative preference for direct pay leases and the expanded role of tribes in administering their own leases under the HEARTH Act at 25 U.S.C. §415(h); 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