TITLE: Call for IRS to Defer to the Department of the Interior on Characterization of Tribal Trust Funds

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 Mid-Year 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

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 inviting comments by September 17, 2024 prior to issuance of final guidance; and

WHEREAS, Notice 2014-17 correctly states that tribal trust per capita payments are exempt from taxation pursuant to federal law as a “general rule” but goes on to describe in detail three “exceptions” involving the “mischaracterization” of taxable personal income as non-taxable per capita distributions; and

WHEREAS, the three “exceptions” set out in Notice 2014-17 describe the “mischaracterization” of taxable compensation for services, non-trust business profits mischaracterized as trust land lease payments, and taxable gaming revenues mischaracterized as trust land lease payments, all of which are activities related to deposits and withdrawals from tribal trust accounts managed by the Office of the Special Trustee (OST) in the U.S. Department of Interior and tribal trust and restricted fee land leases approved and managed by the Bureau of Indian Affairs; and
WHEREAS, NCAI and its member tribes are very concerned that Notice 2014-17’s detailed description of “exceptions” to the tax exemption accorded tribal trust per capita payments will result in the IRS undertaking additional intrusive and unnecessary audits and examinations of tribal financial, enrollment and other internal records. Any questions or concerns the IRS may have regarding possible “mischaracterization” of trust per capita payments should be addressed to the OST and BIA through proper intra-governmental consultations between Treasury and Interior department agencies; and

WHEREAS, the Department of Interior regulations at 25 C.F.R. § 115.702 already include a process where Interior reviews the source of tribal funds for inclusion in a trust account; and

WHEREAS, it is the policy of the Department of Interior to maximize tribal revenue from tribal trust and restricted fee land through leasing and other business activities.

NOW THEREFORE BE IT RESOLVED, in order to prevent unnecessary IRS audits of tribal records resulting from any per capita guidance and to prevent conflict with Interior regulations and policy, NCAI member tribes call on the IRS in its final guidance on the tax exemption accorded tribal trust per capita payments to omit the three stated “exceptions” to the tax exemption; and

BE IT FURTHER RESOLVED, that the NCAI member tribes call on the IRS to include in the final guidance regarding the tax exemption for tribal trust per capita payments a prominent direction that:

“The IRS shall defer to the Department of the Interior and its regulations and decisions on the characterization of trust funds and on tribal trust and restricted fee land leases, and will address any questions or concerns regarding possible mischaracterization of taxable tribal payments as tax-exempt per capita payments through appropriate consultations with the OST and the BIA.”; and

BE IT FURTHER RESOLVED, that the IRS shall confirm that issues regarding tribal trust accounts and tribal trust and restricted fee land leases shall be addressed through consultations with the OST and BIA, and that NCAI member tribes and their citizens shall not be subject to audits or examinations regarding trust per capita payments made pursuant to the Per Capita Act prior to consultation with OST and BIA; 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 Mid-Year Session of the National Congress of American Indians, held at the Dena'ina Civic & Convention Center, June 8-11, 2014 in Anchorage, Alaska, with a quorum present.

ATTEST:

[Signature]
President

[Signature]
Recording Secretary