



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #LNK-12-010

TITLE: Urging IRS to Cease Unlawful Efforts to Tax Trust Per Capita Payments

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, for more than sixty years some member tribes of the NCAI have made very modest per capita distributions to their enrolled members of revenue, held in trust by the Office of Special Trustee (“trust per capita payments”), which is realized from the utilization of tribal trust resources; and

WHEREAS, such trust per capita payments have always been regarded by the member tribes of the NCAI, the Department of Interior and by the United States Congress as excluded from taxation by federal or state governments; and

WHEREAS, the Internal Revenue Service (IRS) of the U.S. Department of Treasury has recently asserted to several member tribes of the NCAI that the IRS now regards such tribes’ modest trust per capita payments as taxable income to the recipient tribal members; and

WHEREAS, the NCAI considers the IRS recent assertions of taxability to constitute a shift in policy and/or practice which has tribal implications and, as such, requires meaningful consultation with the affected NCAI member tribes, on a government to government basis, as mandated by Executive Order No. 13175 and IRS internal policies; and

WHEREAS, requests by the NCAI member tribes subject to the new IRS policy and action regarding the taxability of trust per capita payments to consult with the IRS and the Department of Treasury under IRS internal policies and Executive Order No. 13175, Section 5, have been denied; and

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WHEREAS, the NCAI strongly believes that the new IRS policy and action regarding the taxability of trust per capita payments is contrary to long-standing federal policy, federal common law and the "Per Capita Act" of 1983 (Public Law 98-64).

NOW THEREFORE BE IT RESOLVED, that the NCAI hereby respectfully but strongly urges the IRS and the Department of Treasury to immediately cease implementation of the new IRS policy regarding taxability of trust per capita payments as such action is in violation of federal policy, federal common law and Public Law 98-64; and

BE IT FURTHER RESOLVED, that the NCAI hereby requests that the IRS, the Department of Treasury, the Department of Interior and the White House commence meaningful government-to-government consultations with the NCAI member tribes, and other tribes across the nation, directly impacted by the new IRS policy regarding taxability of trust per capita payments as required by Executive Order No. 13175 and IRS internal policies; 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 2012 Mid-Year Session of the National Congress of American Indians, held at The Cornhusker Hotel from June 17-20, 2012 in Lincoln, Nebraska, with a quorum present.



President

ATTEST:



Recording Secretary