



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians  
Resolution #REN-13-009

**TITLE: Support for Legislation to Amend the Internal Revenue Code to Respect the Sovereignty of Indian Nations to Govern and Promote the General Welfare of Tribal Citizens and to Protect Our Homelands**

EXECUTIVE COMMITTEE

PRESIDENT  
Jefferson Keel  
*Chickasaw Nation*

FIRST VICE-PRESIDENT  
Juana Majel Dixon  
*Pawnee Band of Mission Indians*

RECORDING SECRETARY  
Edward Thomas  
*Central Council of Tlingit & Haida Indian Tribes of Alaska*

TREASURER  
W. Ron Allen  
*Jamestown S'Klallam Tribe*

REGIONAL VICE-PRESIDENTS

ALASKA  
Mike Williams  
*Akiak Native Community*

EASTERN OKLAHOMA  
S. Joe Crittenden  
*Cherokee Nation*

GREAT PLAINS  
Robert Shepherd  
*Sisseton Wahpeton*

MIDWEST  
Matthew Wesaw  
*Pokagon Band of Potawatomi*

NORTHEAST  
Lance Gumbs  
*Shinnecock Indian Nation*

NORTHWEST  
Fawn Sharp  
*Quinalt Indian Nation*

PACIFIC  
Don Arnold  
*Scots Valley Band of Pomo Indians*

ROCKY MOUNTAIN  
Ivan Posey  
*Shoshone Tribe*

SOUTHEAST  
Larry Townsend  
*Lumbee Tribe*

SOUTHERN PLAINS  
George Thurman  
*Sac and Fox Nation*

SOUTHWEST  
Joe Garcia  
*Ohkay Owingib*

WESTERN  
Ned Norris, Jr  
*Tobono O'odham Nation*

EXECUTIVE DIRECTOR  
Jacqueline Johnson Pata  
*Tlingit*

NCAI HEADQUARTERS

1516 P Street, N.W.  
Washington, DC 20005  
202.466.7767  
202.466.7797 fax  
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 (Indian nations); 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 United States Government has a unique government-to-government relationship with Indian tribes, as set forth in the Constitution at Article I, Section 8 where tribal governments are identified as distinct and separate autonomous governments: "Congress shall have power . . . To regulate Commerce with foreign Nations, and among the several States, **and with the Indian tribes.**"; and

**WHEREAS**, the Treaty and Supremacy Clauses of the Constitution affirm the status of Indian nations as sovereigns with rights of self-determination and self-government over tribal citizens and tribal territory; and

**WHEREAS**, the Constitution, through the Apportionment Clause and the Fourteenth Amendment, recognizes citizens of Indian nations as "Indians not taxed"; and in 1924, Congress unilaterally extended U.S. citizenship to non-citizen Indians, but expressly reserved the right of tribal citizens to tribal and other Indian property as follows: "provided, that the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property," Act of June 2, 1924, 43 U.S. Stats. At Large, Ch. 233, p. 253 (1924), *codified at* 8 U.S.C. § 1401(b); and

**WHEREAS**, through treaties, statutes, executive orders, other legal agreements and laws, the United States undertook many obligations to our people in exchange for hundreds of millions of acres of our homeland, yet the federal government has not met its solemn obligations to our people; and

**WHEREAS**, many tribal governments provide for the general welfare of their people and communities through tribal governmental programs, services, and benefits; and

**WHEREAS**, the Internal Revenue Service (IRS) interferes with Indian self-determination and tribal governmental authority by targeting Indian nations for audits and examinations which seek to tax government programs, services, and benefits provided to tribal citizens; and

**WHEREAS**, current IRS audits of Indian nations are arbitrary and inconsistent because case-by-case determinations are based on the subjective, discretionary authority of IRS agents at the regional and local levels, and because many tribal programs are based on the needs of the entire tribal community; and

**WHEREAS**, in Notice 2012-75, the IRS produced draft guidance for IRS agents in the application of the General Welfare Exclusion (GWE) to Indian nations and their citizens; and while it sought to be a positive development, this guidance wholly fails to appropriately recognize tribal self-governance and Indian self-determination, and, despite the fact that Notice 2012-75 is a draft pending final review, the IRS has continued to target tribal government programs, services, and benefits on a broad scale across the country; and

**WHEREAS**, to comply with Notice 2012-75, Indian nations are required to alter traditional, cultural practices of providing for the social, economic, religious, and other needs of all community members and adopt written eligibility guidelines and restrictions; such written guidelines and restrictions are contrary to the traditional and cultural practices and ways of life of our Indian nations; and

**WHEREAS**, the Treasury Inspector General for Tax Administration (TIGTA) released a report on January 28, 2013 (Reference Number 2013-10-018) confirming that the IRS has increasingly targeted tribal governments through the Abuse Detection and Prevention Team (ADAPT) of the Indian Tribal Governments office of the IRS and ultimately concluding that the ADAPT program has yielded few measurable results, and noted that the ADAPT program “[has] **not developed specific performance objectives and measures.**”; and

**WHEREAS**, NCAI has consistently called on the United States Congress, the Administration, and the IRS to enact legislation and implement policies to exclude tribal governmental programs, services, and benefits from taxable income, to give deference to tribal laws, codes, policies, customs and traditions to determine their own community needs, and to otherwise protect and promote tribal self-determination.

**NOW THEREFORE BE IT RESOLVED**, that NCAI calls upon the United States Congress to amend the Internal Revenue Code to clarify that tribal government programs, services, and benefits authorized or administered by Indian nations and tribes for tribal citizens, spouses, dependents, and others as determined by the tribal government, are excluded from income under the GWE doctrine; and

**BE IT FURTHER RESOLVED**, that NCAI calls upon the United States Congress to clarify that benefits that are items of cultural significance or cash honoraria provided by tribal governments to tribal citizens for cultural purposes or cultural events shall not represent compensation for services and shall be excluded from taxable income; and

**BE IT FURTHER RESOLVED**, that NCAI calls upon the United States Congress to determine that it is the policy of the United States to promote Indian self-determination, strong tribal governments and tribal economic self-sufficiency, and a provision to avoid hardship on Indian nations and their citizens; and that the IRS shall have the express authority to waive penalties and interest; and

**BE IT FURTHER RESOLVED**, that NCAI calls upon the United States Congress to include legislative provision that this statute is an act for the benefit of Indian nations, and shall be liberally construed in favor of Indian nations with all ambiguities resolved in favor of the Indian nations; and

**BE IT FURTHER RESOLVED**, that NCAI calls upon the United States Congress to define that the mission of the IRS Office of Indian Tribal Governments shall be to promote government to government relations, provide training and technical assistance on tax policy, economic development and the use of tax incentives for job creation; and

**BE IT FURTHER RESOLVED**, that NCAI calls upon the United States Congress to authorize national and regional Tribal Advisory Committees within the Department of the Treasury to advise the Secretary of the Treasury on matters of Indian tax policy and to assist in developing and implementing such policies in Indian Country; and

**BE IT FURTHER RESOLVED**, that NCAI calls upon the United States Congress, the Administration, and the Internal Revenue Service to place a moratorium on review by the Internal Revenue Service of tribal governmental programs, services, and benefits for tribal citizens until such time as (1) the amendments to the Internal Revenue Code excluding Indian tribal governmental programs, services, and benefits from the taxable income of recipients have been enacted and implemented, and (2) there is proper training and education of Internal Revenue Service personnel, including IRS field agents, to carry out their functions consistent with principles of Federal Indian law and the Federal Government's unique treaty and trust relationship with Indian nations, and to provide training and technical assistance to tribal financial officers for the purpose of implementing the amendments to the Internal Revenue Code; and

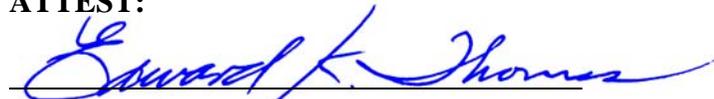
**BE IT FINALLY RESOLVED**, that NCAI Resolutions SAC-12-016 (October 2012) and LNK-12-008 (June 2012) remain in full force and effect; this resolution complements those prior resolutions; and together, the three resolutions shall be the policy of the NCAI unless they are withdrawn by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2013 Midyear Session of the National Congress of American Indians, held at the Atlantis Casino from June 24 - 27, 2013 in Reno, Nevada with a quorum present.

  
\_\_\_\_\_  
President

**ATTEST:**

  
\_\_\_\_\_  
Recording Secretary