



# NATIONAL CONGRESS OF AMERICAN INDIANS

September 14, 2012

Secretary Timothy Geithner  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Commissioner Douglas Shulman  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20004

## EXECUTIVE COMMITTEE

PRESIDENT  
**Jefferson Keel**  
*Chickasaw Nation*

FIRST VICE-PRESIDENT  
**Juana Majel Dixon**  
*Pauma 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  
**Bill Martin**  
*Central Council of Tlingit & Haida  
Indian Tribes of Alaska*

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**  
*Quinault Indian Nation*

PACIFIC  
**Don Arnold**  
*Scotts Valley Band of Pomo Indians*

ROCKY MOUNTAIN  
**Scott Russell**  
*Crow Tribe*

SOUTHEAST  
**Larry Townsend**  
*Lumbee Tribe*

SOUTHERN PLAINS  
**George Thurman**  
*Sac and Fox Nation*

SOUTHWEST  
**Joe Garcia**  
*Ohkay Owingeh*

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

EXECUTIVE DIRECTOR  
**Jacqueline Johnson Pata**  
*Tlinait*

Deputy Asst. Secretary Aaron Klein  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

## Re: Notice 2012-60

Dear Secretary Geithner, Deputy Assistant Secretary Klein, and Commissioner Shulman:

On behalf of the National Congress of American Indians, I write to thank you and the Internal Revenue Service for the recent Notice 2012-60. This Notice gives much-needed clarity to Indian tribes regarding the intentions of the federal government in regards to the tax treatment of distributions made from recent Indian tribal trust settlements. We particularly appreciate that the Notice is timely in addressing the settlements and the rationale for the tax status of trust funds is based on the Per Capita Act of 1983.

As pleased as we are, I must restate that the larger issue – the tax treatment of distributions made from tribal trust resources under the auspices of the Per Capita Act of 1983—still has not been addressed. We are definitely encouraged that Notice 2012-60 references House Report No. 98-230 as providing “that per capita distributions of tribal trust revenue ‘shall be subject to the provisions of [25 U.S.C. § 1407] with respect to tax exemptions.’” In fact, we cite the same language in our arguments to both Treasury and IRS about the tax-exempt status of per capita distributions made from tribal trust resources, such as timber stumpage. However, Notice 2012-60 limits its effect by stating “[t]he federal income tax treatment of other per capita payments made by the Secretary of the Interior or Indian tribes to members of Indian tribes is outside the scope of this notice and may be addressed in future guidance.”

We urge that this future guidance be provided very soon. In treaties and agreements with the United States, Indian tribes ceded millions of acres of land -- worth untold trillions to the United States. In return, certain lands were reserved for the exclusive use and benefit of the tribes. It is clear that our lands and the income directly from our lands should never be taxed by the United States, and this is reinforced by the Per Capita Act. We believe Notice 2012-60 actually provides a strong framework of analysis to support extending its reach to include all trust resource per capita payments.

Further, we wanted to note that in a recent letter to NCAI (see Attachment), dated August 30, Secretary Vilsack, U.S. Department of Agriculture, stated that the USDA is currently reviewing the IRS' interpretation of the tax treatment of per capita distributions and its potential implication on USDA programs, such as on the Special Supplemental

Nutrition Program for Women, Infants, and Children (WIC); the Food Distribution Programs on Indian Reservations; the National School Lunch Program; the School Breakfast Program; the Commodity Supplemental Food Program; as well as other USDA programs. Further, Secretary Vilsack stated USDA's intent to reach out to Treasury on this matter, and discuss tribal consultation on this issue.

NCAI and its partners urge IRS and Treasury to review Notice 2012-60 and examine its potential applicability to general distributions made under the Per Capita Act. We feel that Notice 2012-60 provides a strong framework, and would simply need a few additional paragraphs addressing the Per Capita Act in general.

We thank you again for your tireless efforts and want to convey that Indian Country appreciates the strong working relationship we have developed with both IRS and Treasury over the past year. We look forward to strengthening this relationship and working to better the policies and regulations affecting the tax treatment of tribal governments and tribal citizens. Thank you again, and if you have any further questions or comments, please feel free to contact me or John Dossett, NCAI General Counsel, at (202) 466-7767 or [jdossett@ncai.org](mailto:jdossett@ncai.org).

Sincerely,



Jefferson Keel  
President, NCAI

CC: Jodi Gillette, White House  
David Hayes and Hilary Tompkins, Department of Interior  
Christie Jacobs, Internal Revenue Service



United States Department of Agriculture

Office of the Secretary  
Washington, D.C. 20250

AUG 31 2012

AUG 30 2012

Mr. Jefferson Keel  
President  
National Congress of American Indians  
1516 P Street, N.W.  
Washington, D.C. 20005

Dear Mr. Keel:

Thank you for your letter of June 26, 2012, requesting consultation under Executive Order 13175. I apologize for the delayed response.

Specifically, your request for consultation refers to the new Internal Revenue Service (IRS) interpretation of the Per Capita Act of 1983, 25 U.S.C. §117a et seq., at 117b, regarding tribal trust funds, and the impact this interpretation will have on the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), which is administered at the federal level by the U.S. Department of Agriculture's (USDA) Food and Nutrition Service.

In addition to WIC, this new interpretation may affect other nutrition assistance programs serving Indian Country, including the Food Distribution Program on Indian Reservations, the National School Lunch Program, the School Breakfast Program, and the Commodity Supplemental Food Program, as well as other USDA programs. At this time, we are reviewing this IRS interpretation and analyzing its impact, if any, on USDA programs.

Additionally, we are reaching out to the U.S. Department of the Treasury to explore the possibility of a joint consultation on this issue. Once our analysis is complete, we will reach out to schedule a USDA consultation on this issue if a broader consultation with multiple federal agencies has not already been scheduled.

USDA is committed to fulfilling its responsibilities under Executive Order 13175 and to work collaboratively with tribal leaders to ensure our programs and services are implemented fairly and effectively throughout Indian Country.

If you have any additional questions or concerns, please contact my Senior Advisor on Tribal Affairs, Janie Hipp, at (202) 205-2249 or [janie.hipp@osec.usda.gov](mailto:janie.hipp@osec.usda.gov).

Sincerely,

Thomas J. Vilsack  
Secretary