



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #LNK-12-008

TITLE: To Honor our Treaties, Agreements and the Executive Orders by Ceasing and Desisting the IRS Efforts to Tax our Tribal Government Programs and Services to Tribal Citizens which Interferes with our Tribal Government Relationship with our Tribal Citizens, Violates our Homelands, and Violates our Right to Tribal Self-Government

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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, Indian Tribes are sovereigns that pre-date the United States, with prior and treaty protected rights to self-government and to our Indian lands; and

WHEREAS, the Constitution of the United States, through the Treaty, Commerce, Supremacy, and Apportionment Clauses and the 14th Amendment, recognizes the sovereign status of Indian Tribes as Native nations established prior to the United States; and

WHEREAS, Federal Agencies have a responsibility to respect the letter and spirit of the United States Constitution, Treaties, current Federal laws, and Executive Orders, regarding the Federal Government's relationship with Tribal Governments; and

WHEREAS, our reservations are part of the original homeland of our people and under our traditional law, we have been struggling to lead our community back to self-determination and self-sufficiency after the devastating, genocidal campaigns against us in the 19th Century; and

WHEREAS, the United States undertook many treaty obligations in exchange for the cession of hundreds of millions of acres of land, yet the Federal Government has fallen far short in meeting these solemn obligations; and the United States continues to fail to provide adequate funding for Indian programs, which is essential to the function of the tribal government to provide adequate quality of life on Indian reservation lands; and

**WHEREAS**, through our treaties, agreements, and executive orders, the United States recognized and affirmed our inherent rights to self-government and correspondingly, limited the access of Federal officials to our reservations in the absence of our consent; and

**WHEREAS**, after many years Tribes in Indian Country have instituted programs to provide governmental benefits to their Tribal citizens; and

**WHEREAS**, the Internal Revenue Service (IRS) is auditing the benefits provided to individual Tribal citizens by their Tribal Government; and

**WHEREAS**, the IRS is violating our treaty rights to the absolute and undisturbed use and occupancy of our reservations as permanent homelands and is interfering with the governmental relationship between our Tribal Governments and tribal citizens; and

**WHEREAS**, the IRS discriminatory approach to the auditing of Indian tribes is a severe problem given the fact that the 5 of the 10 poorest counties in the country are within our Indian reservations in South and North Dakota; and

**WHEREAS**, the Internal Revenue Code Section 61 states that, except as otherwise provided, gross income includes all income from whatever source derived, and the Internal Revenue Service and federal courts have consistently held that payments made under similar social benefit programs for the promotion of general welfare are not includable in gross income; and

**WHEREAS**, the General Welfare Doctrine provides a common law (or statutory interpretation by implication) exclusion for government social welfare programs, the test is based on facts and circumstances (or a IRS agent's personal value judgment) and is difficult to apply; and

**WHEREAS**, the General Welfare Doctrine as applied by the IRS interferes with treaty rights, self-government, and the absolute and undisturbed use and occupancy of our homelands and discriminates in favor of Federal and state programs and against tribal government programs based upon the non-Indian value judgments of IRS agents; and

**WHEREAS**, statutory language is needed to clarify that governmental benefits provided by Indian tribal governments for their members is not subject to income taxation; and

**WHEREAS**, Federal legislation to amend the Internal Revenue Code is needed that would clarify that governmental benefits provided by an Indian tribe to its members is not subject to income taxation; and

**WHEREAS**, this legislation would apply to governmental benefits provided after the date of enactment. It also includes language to prohibit the IRS or the courts from assuming or inferring that benefits provided by Indian tribes that are not within the scope of the bill were taxable prior to the legislation's effective date.

**NOW THEREFORE BE IT RESOLVED**, that the NCAI calls upon the United States to honor our treaties, agreements, and the executive orders issued in order to honor our treaties and agreements by ceasing and desisting the IRS efforts to tax our tribal government programs and services to tribal citizens which interferes with our Tribal Government relationship with our tribal citizens, violates our homelands, and violates our right to tribal self-government; and

**BE IT FURTHER RESOLVED**, NCAI supports legislation to treat tribal government educational and other benefits as an aspect of tribal self-government and tribal civic life, not personal income to individual tribal members; and

**BE IT FURTHER RESOLVED**, when tribal governments provide government programs and services for the betterment of the tribal community, to promote the welfare of tribal citizens, or to make Indian lands livable as permanent homes, such programs and services further the general welfare of the US by promoting the federal trust responsibility, federal treaty, statutory and Executive Order rights, and Indian self-determination so they are not subject to federal taxation. Treaty and trust payments by the US or Indian tribes are not subject to tax; and

**BE IT FURTHER RESOLVED**, NCAI calls upon the National Indian Gaming Association, Native American Finance Officers Association and other national Indian organizations to support legislation to honor tribal self-government by stopping the IRS interference with our Tribal Government relationship with our tribal citizens by seeking to tax Tribal Government programs and services provided to tribal citizens under the so-called General Welfare Doctrine; 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.

  
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President

**ATTEST:**

  
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Recording Secretary