

TO: Cleora Scott, Ex. Director ATNI

FR: Lummi Nation, member of ATNI Tax Subcommittee of EDC

RE: Recommendations for Tax Platform Work at NCAI-
Intertribal Coeur d' Alene Meeting on ATNI Resolution #09-49

DA: June 10, 2009

Mission Statement: The Mission is to organize intertribal support to develop a national campaign to resolve tax problems in Indian Country due to the Internal Revenue Service audits & alleged income taxes owed by tribal members, and IRS interference with the “essential governmental functions and services” delivered by tribal governments. The long-term campaign Mission is to reverse the IRS impacts through the IRS Administrative system or secure legislative amendments to IRC, while staying out of federal court systems.

Constitutional Relationship with Indian Tribes: The U.S. President and Senate share the “Treaty-making Powers” (Article II, Section 2, Clause 2) delegated by the U.S. Constitution. The Senate and House of Representatives share the “Indian Commerce Clause Powers” (Article I, Sec. 2, Clause 3) delegated by the Constitution. The Supreme Court has powers to interpret “treaties-made” (Article III, Sec. 2, Cl. 1). And, all three branches of national government must hold the constitution, acts of legislature, and treaties-made as “Supreme law of the land” (Article VI, Cl. 1 & Cl.2). Tribal Indians, and their inherent forms of government, were kept separate from “We the People of the United States” (Preamble) when the Popular Sovereignty Constitution delegated powers to the national government, by the words “Excluding Indians not taxed” (Article I, Sec. 2, Cl.3), and the 14th Amendment confirmed this separate status (Sec. 1 & Section 2).

Mission Goals: (1) Generate intertribal, inter-organizational support for inherent tribal sovereignty and tax exemption of tribal Indians and commerce; (2) Seek congressional hearings to align the President’s and Congressional Indian Policies up with the Constitution, by securing a Joint Resolution of Congress; (3) Seek Congressional Hearings to amend the Internal Revenue Code to secure extensive tax preemptions, exemptions, credits for Indian Country, as a compromise for US violations of the Constitutional Relationship with Indian Country.

EXAMPLES OF TAX PROBLEMS:

- A. IRS demands W2s for tribal members doing various cultural services for tribal governments;
- B. IRS demands 1099s for tribal members doing various cultural services for tribal governments;
- C. IRS demands payment of taxes for tribal members (elders, parents, children, and all others) that:
 - 1. Cook for and coordination of tribal community events and provided stipends or pay;

2. Coordinate tribal sports activities and provided stipends or pay for coaches or youth, or parental participation;
3. Work with the Youth in recovery activities and provided stipends or pay for traditional coaches/counselors/advisors/role-models supporting the youth;
4. Coordination of traditional Pow Wows or other cultural/ceremonial events and receive stipends or pay or allowances for costs;
5. Sells traditional native art to tribal governments, community members, or others and receives income or pay for the same;
6. Value of tribal HUD homes;
7. Tribal “financial” contributions to impoverished tribal members (elders, women, children, et.al.) as supplemental assistance for housing costs, housing repairs, food, transportation assistance, clothing, energy/fuel/weatherization, health insurance coverage, unemployment assistance, education/vocational training expenses, care of dependent children, and other aspects of tribal essential governmental functions & services;
8. Income from treaty-reserved natural resources not exempt unless the “Dawes Act exemption” is applied, limited to the first person (owner of the trust properties) unlike Section 7873 Fishing Rights Exemptions;
9. No tribal recovery of income taxes applied to tribal/non-tribal employees;
10. State taxation of tribal economies/commerce without constitutional jurisdiction;
11. Tribal contributions for burial assistance;

EXAMPLES INTERNAL REVENUE CODE AMENDMENTS NEEDED FOR INDIAN COUNTRY:

Indian Owned Fee Land - Tribal Members: Fee Lands owned or purchased by an enrolled tribal member or members, located within the exterior boundaries of the respectively established Indian reservation, whether established by treaty, executive order, or federal enactment, shall only be subjected to the taxation powers of the respective self-determining, self-governing Indian Nation by power of preemption authorized by this legislation;

Indian Owned Fee Land - Non-Tribal Members: Fee Lands owned or purchased by an Indian or Indians, enrolled in any other federally recognized Indian tribe or tribes, within the exterior boundaries of an Indian reservation, whether established by treaty, executive order, or federal enactment, shall only be subjected to the taxation powers of the respective self-determining, self-governing Indian Nation where said land is located, by the power of preemption authorized by this legislation;

Fee Lands Owned by Indian Nation: Any Fee Lands owned or purchased or received in the form of donations or otherwise by an Indian tribe or Nation shall be and is hereby declared to be exempt from taxation by an external, non-Indian local government, so long as said land is owned by the tribal government, and is essential to the performance of essential government functions and the delivery of services and benefits to the dependent tribal community membership;

Indian Owned Fee Lands: Any Indian, who is not a resident on the respective Indian Reservation where he owns Fees Lands may sell the said lands to a federally recognized Indian Nation at or below market value, and the “seller” shall be entitled to receive a tax deduction incentive of 50% of the market value, to be deducted from their federal income taxes for any and all incomes derived from off-

reservation sources, whether or not such qualification is exercised as an entitlement of the individual, joint, or corporation entity. Such lands, when purchased by an Indian Nation, shall be exempt from any taxation by external, non-Indian governments;

Indian Owned Fractionated Interests: Any Indian owned fractionated interests in any estate, where said lands are protected by restricted fee patent or trust patent, located within the exterior boundaries of a federally recognized Indian Nation, may be sold or donated to the Indian Nation by the Indian Heir or Owner at fair market value or less and the value of said legal transfer or sale to the Indian Nation shall be deductible from any and all income taxes they may owe to the United States for off-reservation income sources not associated with their trust estates or interests therein;

Non-Indian Owned Fee Lands: Any Non-Indian Owned Fees Lands sold to a federally recognized Indian Nation at or below market value shall entitle the “seller” to receive a tax deduction incentive of 25% per year, for the next four years following the sale, based on the fair market value, to be deducted from their federal income taxes, whether or not such qualification is exercised as an entitlement of the individual, joint, or corporation entity. Such lands, when purchased by an Indian Nation, shall be exempt from any taxation by external, non-Indian governments;

Taxation of Non-Indian Owned Lands: Taxes upon lands owned by non-Indians, located inside the exterior boundaries of an Indian Reservation, whether established by treaty, executive order, or federal enactment, shall continue to be paid to and collected by the local non-Indian government; provided, however, that the local non-Indian government shall enter a tax distribution compact with the respective tribal government, providing 100% of the taxes paid minus up to 20% for the administrative fees for processing, handling, and distribution of the collections. This is authorized provided the Indian tribe shall earmark said taxes received for the improvement or maintenance of public rights of ways or resolution of boundary survey disputes involving Indian lands and said rights of way boundaries.”

Indian Owned Natural Resources: All income, revenues, distributions, and dividends paid to tribal people and generated from Natural Resources that are owned by an enrolled Indian or Indian tribe or tribal entity, and located inside the boundaries of an established Indian Reservation, whether or not established by treaty, executive order, or federal statute, shall be exempt from federal and state taxation under the exemptions established by Section 7873 of the Internal Revenue Code.

Indian Employees of Tribal Government: Any enrolled Indian, working for a self-determining & self-governing Indian Tribe, or any of its entities or agencies, within the exterior boundaries of an established Indian Reservation, shall be exempted from the payment of federal income taxes provided the tribal government has preempted such tax by law, and that all said revenues so preempted shall be gathered by the tribal government on a regular basis, and provided said revenues are used for the performance of essential government functions and provision of essential services to the dependent tribal membership or for the protection of said memberships’ entitlements and rights or the enhancement of tribal economic development. This section shall apply to all said Indian Employees’ income regardless of the original source of income or revenues. The tribal government shall exercise said taxation jurisdiction over both tribal and non-tribal Indians working within or for their government or within an on-reservation economy;

Non-Indian Employees of Tribal Government: Any non-Indian employee, working for a self-determining & self-governing Indian Tribe, or any of its entities or agencies, within the exterior boundaries of an established Indian Reservation, shall be exempted from the payment of federal income taxes provided the tribal government has preempted such tax by law, and that all said revenues so preempted shall be gathered by the tribal government for the performance of essential government functions and provision of essential services to the dependent tribal membership or for the protection of said memberships’ entitlements and rights, or the enhancement of tribal economic develop. This section shall apply to said Non-Indian Employees’ income regardless of the original source of income or revenues. The taxing tribal government shall exercise said taxation jurisdiction over all non-Indian employees working within their government or on-reservation economy;

Tax Forms for Tribal Income Taxation: Any income tax collected from a tribal member, an Indian non-tribal member, any Indian corporation or other legal business entity, and any non-Indian individual or business located inside of Indian Country, shall be collected and documented by the Indian tribe that makes such collections and reported to the IRS on forms designed to document such income tax collection, to assure the IRS that said in-lieu income taxes have been collected. The IRS shall provide the

individual or entities with the proper forms to assure that they are not held accountable for federal income tax when said taxes were already paid to respective tribal nation; and,

Essential Government Functions: shall include the purchase by an Indian Nation of any lands owned in fee status by any tribal member, non-tribal member, or non-Indian person or corporate entity, as well as the purchase of any fractionated minor shares in any trust or restricted fee patent estates located within the exterior boundaries of any reservation- whether established by treaty, executive order, or federal statute. It is an essential government function to develop tribal economies, commerce, and business for the generation of tribal revenues for investment into tribal health, housing, education, economic infrastructure, and jobs training initiatives.

Taxation of Indian Per Capita- Recommendation #1: Any income or revenues that have been paid out to individual tribal Indians, by an Indian tribe, or any of its' business, corporate, or any other commercial business entities, in the form of per capita distribution to individual tribal Indian members, that shall be subjected to federal income taxes, shall be qualified for a dollar for dollar tax deduction for any amount said tax payer donates to help finance the education of enrolled tribal Indians attending any of the American Indian Colleges, and any graduate or professional universities thereafter, annually limited to the tax amount the federal government would have collected on the same. All such donations must be made to a scholarship fund managed by the American Indian Higher Education Association, and pro-rated out to accredited tribal colleges. Certification of such donations shall prevent further federal taxation of the same income. Such tax deductible donations shall be authorized so long as any of the tribes pay out a per capita distribution to its members. *[This language added after the testimony was submitted to the Senate Finance Committee, but addressed directly with the SFC Senior Counsel during October 08]*

Taxation of Indian Per Capita- Recommendation #2: Any income or revenues that have been paid out to individual tribal Indians, by an Indian tribe, or any of its' business, corporate, or any other commercial business entities, in the form of per capita distribution to individual tribal Indian members, that shall be subjected to federal income taxes, shall be qualified for a dollar for dollar tax deduction/credit for any amount said tax payer donates to help finance the health insurance or services of enrolled tribal Indians resident on any Indian reservation that joined an intertribal health charity set-up to receive and qualify for such charitable donations, annually limited to the tax amount the federal government would have collected on the same income value donated hereunder. All such donations must be made to an intertribal fund managed by an established intertribal charity organization structured to manage the same. Certification of such donations shall prevent further federal taxation of the same income. Such tax deductible donations shall be authorized so long as any of the tribes pay out a per capita distribution to its members. *[This language added after the testimony was submitted to the Senate Finance Committee, but addressed directly with the SFC Senior Counsel during October 08]*

Indian Arts & Craft Tax Exemption: “Any Native American Arts & Craft produced by enrolled members, or their children and dependents, of a Federal Recognized Indian Tribe, within the exterior boundaries of an established Indian Reservation, whether established by treaty, executive order, or federal statute, that produces revenue or income to qualified tribal members and their dependents shall be exempted from all federal and state taxation. Such exemption shall extend and apply to the production, transportation, marketing, and management activities of said arts & crafts production when such activities are implemented by a 100% Indian business entity owned and operated by an enrolled tribal member, an Indian Artist Association, or otherwise tribally authorized corporation.”