



LUMMI INDIAN BUSINESS COUNCIL

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DEPARTMENT _____

DIRECT NO. _____

September 13, 2019

VIA EMAIL (tribal.consult@treasury.gov)

To the U.S. Department of Treasury Tribal Advisory Committee

Re: *Comments regarding TTAC Operating Procedures and By-Laws*

The Lummi Nation, a federally-recognized Indian nation, submits the following comments regarding the activities of the Treasury Tribal Advisory Committee (“TTAC”), which was established by Congress under the Tribal General Welfare Exclusion Act of 2014, Pub. L. 113-168, 128 Stat. 1883, § 3 (codified at 26 U.S.C. § 139E).

Background. The Act provides the TTAC with a broad mandate – to “advise the Secretary on matters relating to the taxation of Indians.” It further provides that the TTAC must assist the Secretary of the Treasury establish a program for the (A) training and education for internal revenue field agents who administer and enforce internal revenue laws with respect to Indian tribes on Federal Indian law and the Federal Government’s unique legal treaty and trust relationship with Indian tribal governments, and (B) training of such internal revenue field agents, and provision of training and technical assistance to tribal financial officers, about implementation of this Act and the amendments made thereby. Until such time as the education and training of IRS agents occurs, all audits of tribal government benefit programs are suspended.

Congress took action to authorize the Act because of years of efforts by the IRS Office of Indian Tribal Governments to systematically audit Indians and Indian tribal governments and assess tax on tribal government benefits, including health care, education, and elders’ benefits. At the time, this audit activity had generated \$205 million in assessments over a five-year period. The Treasury Inspector General for Tax Administration concluded that while the ITG Office had developed a successful program to audit Indians and Indian tribes, it had not developed adequate performance measures and objectives. *See* the Report at: <https://www.treasury.gov/tigta/auditreports/2013reports/201310018fr.pdf>.

At the time the Act was enacted, the IRS had begun a process of implementing a General Welfare Exclusion by administrative rule. However, it would not halt auditing activity or provide any advisory committee to ensure accountability. Congress enacted the Act and created the TTAC to (i) ensure oversight of the Treasury Department and IRS to protect Indians and Indian tribal governments from ITG and IRS auditing efforts, and (ii) support Indian tribal governments and their economic development through tax policy and related measures under the Treasury Department’s authority.

Comments on TTAC operating procedures and by-laws. As a general matter, the Lummi Nation believes that the TTAC should conduct its business in an open and transparent

manner with ample opportunity for input from, and interaction with, tribal leaders. It should establish a working agenda that addresses the top priorities of Indian Country and Alaska Natives relating to taxation and economic development that builds upon the years of effort that has occurred to date.

- I. Consultation Obligation.** Pursuant to Presidential Executive Order 13175, the Treasury Department has an obligation to consult with federally-recognized American Indian or Alaska Native tribal governments regarding matters that affect them. The Department has implemented this mandate, which is binding on the TTAC. See <https://home.treasury.gov/policy-issues/tribal-affairs/tribal-consultations>.

To effectuate the consultation obligation, the TTAC by-laws should require that—

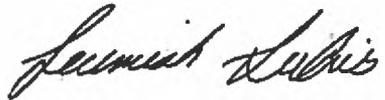
- A. *The TTAC will consult with Indian tribal governments and their leaders by convening a meeting (in person or by teleconference) at least two weeks in advance of each regularly scheduled TTAC meeting for purposes of (1) updating tribal leaders on the TTAC's activities and (2) receiving input on matters of policy concern; and*
 - B. *TTAC consultation meetings shall be held at convenient venue where tribal leaders are likely to attend in large numbers, such as meetings of the National Congress of American Indians and regional meetings in which tribal governments are members; and*
 - C. *Tribal leaders shall be recognized as designating another tribal official or representative to participate in consultation on behalf of the Tribal government; and*
 - D. *Indian tribal governments retain their authority to consult with the Department independently of the TTAC.*
- II. Full and Informed Participation.** The TTAC should ensure that all of its meetings are conducted in a transparent manner to allow tribal leader engagement and involvement. The TTAC by-laws should require that—
- A. *The TTAC meeting agendas include an item that allows tribal leaders, tribal organizations, and their representatives to ask questions and make comments for the record; and*
 - B. *TTAC meeting notices shall be provided to tribal leaders and their attorneys and official representatives at least fourteen (14) days in advance.*
- III. Subcommittees.** The TTAC has a wide variety of issues to address, which will be challenging for seven Committee members to address on a quarterly basis. It is recommended that the TTAC establish subcommittees within its by-laws to better structure the flow of work, chaired by a TTAC member with the assistance of designated individuals. The following standing subcommittees are recommended:

- A. GWE Implementation and Field Agent Training — this subcommittee would address the remaining issues associated with implementing the TGWE, including guidance governing cultural and ceremonial benefits, definition of “lavish or extravagant” and developing curriculum and training IRS field agents on principles of federal Indian law;
 - B. Audit Policy and Enforcement Oversight — this subcommittee would review IRS audit activities including resumption of audits of tribal benefit programs upon satisfaction of field agent training, current audits of tribal governments by other means (e.g. payroll or compliance audits), and current IRS enforcement activities and litigation policy against Indians and Indian tribes;
 - C. Tribal Consultation and External Relations — this subcommittee would facilitate effective communications with federally-recognized sovereign Indian nations and tribes, facilitate coordination between Treasury and other Federal agencies that affect Indian Country (e.g. DOI, DOL, DOC),
 - D. Treaty and Trust Responsibility Enforcement — this subcommittee would assist the Treasury Department in fulfilling its treaty and trust responsibilities to Indian nations and Alaska Natives on tax and economic policy matters;
 - E. Tribal Tax and Economic Growth Policy — this subcommittee would review existing federal policy, law and pending federal legislation that relates to Indian Country economic development, including but not limited to dual tribal-state taxation, inadequate access to capital and issuance of tax-exempt debt, tax treatment of tribal entities
- IV. Setting Policy Priorities.** Tribal governments and our leaders have worked for years to establish policy priorities for Indian Country in the areas of taxation and economic development. The TTAC should not re-commence this policy priority process but should instead build upon these existing policy priorities. We recommend that the TTAC base its policy agenda from resolutions adopted by tribal governments, the National Congress of American Indians, and regional intertribal organizations like the Affiliated Tribes of Northwest Indians and the United South and Eastern Tribes.
- V. No “No-Bid” Contracts.** It is anticipated that the TTAC will need to contract with experts to provide training to IRS agents working in Indian Country, as well as to provide technical assistance in conducting its operations.

The TTAC by-laws should provide that all of its contractors be subject to a public request for proposals and competitive bidding based upon demonstrated qualifications.

Thank you for the opportunity to provide comments to the Treasury Tribal Advisory Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah Julius". The signature is written in a cursive style with a large initial 'J'.

Jeremiah Julius
Chairman