

TESTIMONY BEFORE THE TREASURY TRIBAL TAX ADVISORY COMMITTEE-

LUMMI NATION CONCERNS ABOUT PREVENTION OF FEDERAL TAXATION OF CEREMONIAL ACTIVITY

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PURPOSE: *The purpose here is to address why tribal leaders need to define the scope of “What are Ceremonial Activities?” In the Tribal General Welfare Exclusions Act of 2014 this activity is excluded from federal taxation. Neither the tribes or IRS have adequately defined the scope of traditional tribal ceremonial practices. This opens individual Tribal Indians up for IRS tax collection actions (due to filed 1099 forms). Over time, Tribal leaders have sought and secured changes in the application of federal and state taxes to Indian Country- through acts of congress or court actions. Collectively, we have battled against external taxation inside our boundaries as invasive to our sovereignty. Our tribal people and their ceremonial practices must be protected. We have to defend our traditional practices from external influences- to tax a right is to destroy that right. I believe federal Indian law (as adjudicated) predominantly is schizophrenic and unconstitutional. We must work hard to take the madness out of tax law as applied to Indian Ceremonialists. As a traditional artist, I just prevailed in my appeals to stop taxation of ceremonial activity (Pacific NW Totem Art). I understand the Seattle IRS Office has been directed to stop auditing artists/ceremonialists based on the 2014 Act. The question then is “Are we going to protect all our ceremonial tribal people across the United States?”*

We are fortunate to have prominent tribal leaders appointed to the Treasury Tribal (Tax) Advisory Committee originally called for by the 2014 Act. These Appointees are William Ron Allen of Jamestown S’klallum, Lacey Horn of the Cherokee Nation, and Marilyn Malerba of Mohegan, Sharon Edenfield of Confederated Tribes of Siletz, Patricia King of Oneida Nation, Eugene Magnuson of Pokagon Band of Potawatomi, and Rebecca Benally of Navajo Nation. These leaders advise the Secretary of the Department of Treasury on tax issues impacting Indian Country, as well as work to assist in establishing education and training programs for the IRS and its field agents that work with tribal governments. In recognition of their prominence, this memorandum is drafted specifically with them in mind, as my report to them for the Lummi Nation. Below we shall address the trail of injustice in the application of federal tax law to Indian Country. For those others that receive this report, your comments and concerns can be sent to info@ttacresources.org.

As tribal nations and tribal people, we have survived historic attacks upon our traditional knowledge and ceremonial practices. It has been over five hundred-plus years since discovery and we have not completely converted to Christianity or completely assimilated into the United States. We have fought off attempts to disband our tribal people. We have been able to save and salvage our collective, traditional ceremonial knowledge and practices. As tribes working

together, we have defended our rights to exist as Indigenous Nations and Peoples. Our resistance shall continue for another five hundred years. You, as tribal leaders, are surrounded by traditional ceremonial people when you are in your homeland. You encounter this same extensive cultural awareness in all your interactions with other Native Nations. You are at the front line, as a tribal leader, defending tribal people and their indigenous rights, spiritual gifts and practices. Native American ceremonialism & traditional knowledge is the backbone to our existence as tribal people.

Let me remind you, at one time we were completely sovereign, independent Indian nations. We owned our aboriginal territory. Our people owed allegiance to their tribe first and foremost. They were not "citizens" of any foreign power. We conducted intertribal commerce and war, before the white race came here. We had our own spirituality that endowed everyone with the right to their ritualistic/ceremonial practices and cosmological beliefs. We were rich with traditional knowledge that blended our lives with the natural world around us. We were nearly completely disease free, except for matters of depression- such as grief from the lost of loved ones or spiritual impoverishment at the individual level. We were surrounded by plants and wildlife that flourished and sustained us. Now, we live in a world where extinction of species is a daily reality. Sustained yield has become a thing of the past.

Today, we live in a time in which the U.S. Department of Treasury, Internal Revenue Service, is constantly at our tribal doors seeking ways to apply the whole U.S. Internal Revenue Code to Indian Country. IRS Agents are encouraged to find new ways to apply the tax laws and to identify test cases that will result in multiple millions or even hundreds of millions of new "tax dollars" for the United States from Indian Country- like in the Miccosukee case (1.4 billion dollar lost to the US/IRS). IRS agents enter Indian Country based 1099 forms that report "gross income" not claimed on the 1040 form, and armed "tax court decisions." In place of guns they have tax court opinions based on legal fictions.

These "tax cases" are important to them because congressional enactments or treaties-made with the Indian tribes (about 700) do not authorize their presence in Indian Country. The only real authority for IRS activity inside Indian Country is court precedence based on legal fictions tied to the idea of "Indian Citizenship." In 1986, in a congressional hearing, Dr. Rudy Ryser estimated that the U.S. Indian budget was about one billion dollars but the U.S. took four billion or more annually from Indian Country via federal taxes upon Indian land, estates, income, and commerce. Multiple billions of dollars are leaving Indian Country, annually, in the form of federal taxes. This, then, has stimulated individual states to move in and secure more taxes.

The subject matter of this memorandum is about "Ceremonial Activity" that is excluded from taxation under the Tribal General Welfare Exclusions Act of 2014. When we organized to defend our rights to help our poverty-stricken people (per general welfare), we included demands to protect ceremonial activity; both were addressed in the 2014 Act. We recognize the Miccosukee Case (2018) has created tension and confusion on what is "*extravagant or lavish*" assistance per the General Welfare activity; but, in this paper, we seek to address the emerging conflict over the definition of "ceremonial activity." First, we need to understand the

evolution of legal fictions that lead up to the taxation of “Tribal Indians” and keep in mind that it is a “tribal Indian” that conducts ceremonial activity. For this purpose, I shall review some of the historic (tax) injustices that have developed due to tax court decisions, and our failure to devise constitutional challenges to IRS taxation collection activity.

In the beginning, we were separate from the rest of the world until the “Discovery” era began. “Discovery” of our lands opened up huge profit potentials for the “Discovering Nations.” Eventually, the European Nations began to compete with each other. Each nation was racing to discover and claim parts of the Western Hemisphere- that were not discovered by a prior Christian Nation. All these nations, through their kings and queens, considered themselves to be a part of the “Catholic World” and subjected to the influence of the Pope (through Papal Bulls). During the Discovery era, the Reformation began- causing division within the Christian World. Emerging nation-states began to separate from Catholicism but remained (reformed) “Christian Nations.” These European Nations were confronted with conflicts in claims of discovery. They could go to war with each other over whose discovery was superior to the other, based on church doctrines and Papal Bulls. Instead, the “Discovery Doctrine” emerged to govern & resolve conflicting discovery claims between nations.

This doctrine would insert a “first in time” rule, hopefully to circumvent conflicts that may have led to open war. The first Christian Nation to discover an unoccupied land (or land occupied by non-Christian people) had superior rights to all subsequent discoveries by other Christian Nations. This helped the nations avoid unnecessary wars. This doctrine gave right to the First Discovering Nation to enter relationships with the native people that occupied the lands. It did not give them dominion over the natives themselves; although the church required them to subjugate the non-Christians if they could, and allegedly then gave them “god granted dominion.” Centuries passed as the conflicts continued to manifest. European nations sought massive territories initially to exploit the abundant natural resources (at first gold and silver) and eventually to settle colonies within.

In North America there were conflicting discovery claims by the English, French, Spanish, and the emerging united colonies that eventually sought independence and self-government. The Declaration of Independence led to the 1776 Revolution. Britain lost. Colonies became individual states, states became organized into the “Confederated” United States. The Confederacy was going to lead to interstate warfare. A solution was needed. The Constitutional Congress gathered. The results was a “sovereignty” based on the “People” and not “state sovereignty. This 1787-89 “Popular Sovereignty” constitution is composed of limited delegations of authority from the people to the government.

Prior to the 1787 constitution ratification, a conflict in rights to purchase lands from the Indians had brewed amongst colonialists, colonies, and the rights of the king. The king claimed all rights to govern the territory and relationships with the native nations. It began before the Proclamation of King George (1763). It culminated in the Supreme Court decision in Johnson v. M’Intosh, 1823. It took about seventy years for the case to ripen for judicial review. Individual colonials, and investors, had sought to purchase land directly from the tribes- without

authorization of the King. The king ordered the colonialists to stop (1763) on the grounds that only the king can purchase these lands from the Indians.

About twenty-six years later, the popular sovereignty constitution was ratified (1787-89). It provided for the formation of the U.S. Supreme Court (Article III). Sixty years later, Chief Justice Marshall would decide the case. He could have decided in favor of tribal independence and sovereignty- which would mean the tribes could dispose of their lands as they saw fit. But, he ruled that only the U.S. can authorize such sales, with the belief that the Indians only had a right to occupy the territory and could not freely alienate their lands.

At the time, Chief Justice Marshall, and his father, had pending land grant applications in the U.S. government system. Between them they sought to secure title to 258,000 acres inside of Indian Country. Marshall's M'Intosh ruling would preserve the very system that would guarantee their private ownership of the lands they applied for. This decision would have impacts beyond the United States, rationalizing "colonial nations" to rationalize dominance and theft of indigenous lands/territories (e.g., in USA, Canada, Australia, New Zealand).

Afterwards, the court's M'Intosh ruling would be considered the cornerstone of federal Indian law. It artificially limited Indian Tribes' inherent sovereign status. Tribes were inherently separate and now by "white discovery" we only occupied our lands by their permission. Keep in mind, the Discovery Doctrine was intended to limit conflicts between Christian Nations. In this case, Marshall basically said, in M'Intosh, that *"We know it is all based on a lie, but if we admit it is a lie, then we have to give it all back. And, we can't do that, so we have to act as if the lie is true."*

Marshall would go on to rule in Worcester v. Georgia (1832) that the federal government had sole power over *Indian Affairs*, and the relationship between the tribes and the United States was *Nation-to-Nation*. And, that no state authority existed inside of Indian Country- it was *extraterritorial* to the state. Now, based on the "Indian Commerce Clause" and the "treaties-made clause" and the "Supremacy Clause" this was appropriate. In that light, the U.S. power over "Indian Affairs" was plenary (superior to the individual state, and exclusive). Treaties established government to government relationships. The Indian Commerce Clause authorized the U.S. to regulate their peoples' commercial/trade relationships with the tribes. In the early years, all non-Indians had to have an "Indian Traders License" to legally enter Indian Country, or face federal trespass charges. States had no authority to regulate this commerce (dormancy aspect of the commerce clause).

However, in Cherokee Nation v. Georgia (1831), Marshall ruled that the tribes were *"dependent, domestic sovereignties"* and *"like the ward to the guardian"* were in a state of tutelage. The M'Intosh case claimed we only had a right to occupy our lands and the "Christian" claim was superior to any tribal rights. While Worcester should have kept the state(s) out of Indian Country, the Marshall Court turned us all into incompetent people and nations- needing the United States to control our lives and lands. In time states entered our reservations and applied their police and taxation powers, primarily based on court-made law.

And, the BIA became our “guardian” as we became “wards.” The BIA stole everything (See: Cobell Settlement, 2012) but controlled our lands and lives since we were considered legally incompetent (see impacts of the General Allotment Act of 1887, as amended in 1910).

Over the past couple hundred-plus years the Supreme Court rulings and federal Indian law have become schizophrenic- one legal personality protects the tribes’ sovereignty while the other subjugates them into incompetent nations and people. This attitude toward Indians has permeated the whole federal government, and like a disease has spread legally & politically to the states. Today we have states taxing inside our boundaries, even when the state constitution forbids this type of jurisdiction (e.g., Washington State Constitution, Article 26). Based on the “Equal Footing Doctrine” and national plenary power over Indian Affairs, the states disclaimed jurisdiction as the price to enter the Union.

Marshall was deeply aware of the intent of the 1787 Constitution Founding Fathers, when it came to “tribal Indians” and “Indian Tribes.” The Founding Fathers knew Indian Country was separate from the United States. He was a participant in the development of the U.S. popular sovereignty constitution. He witnessed the Great Compromise of 1787 between the large and small states, as this status impacted the formation of the House and Senate. At the time of the Constitutional Convention Debates, there existed the large states that the king had originally given colonial charters that granted extensive land claims. These charters gave those states claims to the western lands- all the way to the South Sea (Pacific Ocean). The king was not aware that the “North American Continent” was not narrow like Middle America. These large states gave up their western land claims on the condition that “New States” could be formed therein and admitted into the Union, on an equal footing like the original 13 states. A part of the deal was the “pending states” did not have control or power over Indian Affairs. It was a power plenary to the national government. This was a means to prevent unjust wars emerging between the Indian Tribes and the United States or with individual states. Indian Tribes and Tribal Indians were not included in the popular sovereignty government established by the 1787 Constitution. They were outside of “We the People of the United States.”

It is like there is a Constitutional Divide. This is much like the Continental Divide. But, in this instance, the original U.S. Constitution language that structured the US relationship with tribal Indians and Indian Tribes is still constitutionally intact, although not thoroughly comprehended or complied with. This divide was built with purpose, with intent, it fit within the Check and Balance System that made the national government functional within limited power. It balanced the powers of state versus national governance for the benefit of the People.

Tribal Indians could not be citizens (see: Elk v. Wilkins, 1884) per Article I, Section 2, Clause 3 (Excluding Indians not taxed). This intent was retained in the 14th Amendment (Section I- *subject to the jurisdiction* thereof- per US Citizenship, Sec. 2- *Excluding Indians not taxed* per state citizenship). During the Reconstruction Debates the congressmen argued that Indians are not subject to the jurisdiction of the United States, that is why they entered treaties with the tribes and regulated trade/commerce with them. And, they cannot be a US Citizen, they are tribal Indians. But, to make sure the states do not do that which the United States cannot do,

the original language of “Excluding Indians not taxed” was inserted, to limit the states. This language blocked the general application of the “naturalization” powers (Art. I, Sec. 8, Cl. 4) to tribal Indians as a whole, distinct constitutional class.

If the United States wanted to have trade or commerce with the Indian Tribes then it was authorized to establish it under the Indian Commerce Clause (Art. I, Sec. 8, Cl. 3). Or, it could enter treaties with the tribes (Art. II, Sec. 2, Cl. 2). Once the President negotiated, and the Senate ratified the respective treaty it became *Supreme law of the Land* (Art. VI, Cl. 2). Any challenges to the treaty went to the federal/Supreme Court (Art. III, Sec. 2, Cl. 1).

When “New States” (Art. IV and NW Ordinance of 1787) entered the Union (anticipated by the Great 1787 Compromise, and per the Equal Footing Doctrine) the tentative state had to admit the US had plenary power over Indian Affairs. This “plenary power” meant it was a power of the national government superior to the state. The new state had to disclaim jurisdiction over Indians and Indian lands. These “Disclaimers” were incorporated in the “organic territorial acts” of the pending state or their draft state constitution before becoming a member of the Union. It was clear that the US had control over Indian Affairs & commerce with the tribes- and the state did not. This is called the dormancy aspect of the Indian Commerce Clause. Just as in Article I, Section 10, states do not have treaty-making powers but could enter interstate compacts with the consent of congress. In modern congressional authorization, the tribe(s) and state could enter compact to regulate gaming activity- placing tribes in the position as a state. However, congress never authorized tribal/state liquor and tobacco compacts.

In addition, all officials (state and federal) were obligated to honor the treaty commitments (Art. VI, Cl. 3), as well as the constitution and acts of congress, as “Supreme law of the land.

This separate status of “tribal Indians” (and Indian tribes) was true at the time “John Elk” (1884) filed in court to challenge for a right to participate in non-Indian government and society. He lost. The Court ruled he was a “tribal Indian” and not a part of “*We the People.*” This case remains true constitutionally today. When the 39th and 40th Reconstruction Congresses had the chance to amend the constitution to include tribal Indians for citizenship it decided to specifically retain the constitutional relationship with “Tribal Indians” as was confirmed in Elk. So, under the 14th Amendment, the Negroes, Hindus, Gypsies, Chinese, the Irish, et.al., all could become naturalized citizens but “not tribal Indians.” The Court recognized that the individual tribal Indian could apply and become naturalized under specific circumstances, but the constitution blocked general citizenship of all tribal Indians.

Now we should look at the challenge to the “divide” from the perspective developed by the IRS in court cases. In 1924, the Congress enacted the Indian Citizenship Act. This was a generic application to all “tribal Indians.” The intent of the Indian Citizenship Act was to override the Indian Religious Crimes Code. This campaign was lead by Ida May Adams (lawyer and suffrage Rights Activists for Women), from San Diego. She wanted to assure American Indians had Religious Freedom under the First Amendment. The “act” is not an amendment of the

constitution, and it did not override the 14th Amendment, but it did circumvent the intent of the Founding Fathers and the Reconstruction Congresses.

The 1924 Indian Citizenship Act was in recognition of both the need for Indian Religious Freedom under the First Amendment (more below) and the fact that many Native Americans were veterans of the First World War. The text of the act (43 U.S. Stats. At Large, Ch. 233, p.253 (1924)) is:

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress Assembled, That all non citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: 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.** [Approved June 2, 1924 (H.R. 6355] Otherwise codified as Title 8, Sec. 1401(b).*

Here we see that the “citizenship” was not to impact our ownership of property (as in the very narrow ruling of Squire). The cash value of our activities and property have, however, been targeted by the IRS constantly- since their Squire victory. The IRS sought the ability to tax Indian (Property) income in the Choctaw (Trust Income) case just over 20 years earlier to Squire. “Trust income” versus “taxable income” has been the battle zone. But, citizenship was not supposed to impact the “Indian” in regards to tribal or “other” property. “In ordinary affairs” (tribal) Indians became taxable. I especially took notice that after the Tribal General Welfare Exclusions Act (2014) was enacted that the IRS Notice 2015-34 (about the application of the General Welfare Exclusions Act) had limited the citation of Squire. The key words began with **“In Ordinary Affairs, Indians are citizens...”** Now, it became “Indians are citizens subject to the payment of income taxes as are other citizens.” In my mind, this exposes a movement to bury key words that are important to further distinctions about tribal Indians and income taxation. In our minds and hearts, we know the property and resource (value added) incomes of Indian Country were never intended to be taxed originally based on constitutional intent. At this point, we do not know how extensively “In Ordinary Affairs” should limit taxation inside of Indian Country per tribalism.

From 1924 to 1978, American Indians (as tribal people and tribal governments) still did not have religious freedom protected by the federal government. The “First Amendment” experiment failed to deliver the freedom sought. Eventually, the tribes secured the American Indian Religious Freedom Act in 1978. In 1988, the Supreme Court gutted any protection of sacred sites benefits that were in AIRFA (1978). Based on court decisions, tribal Indians did not have rights to protect sacred sites or ancestral cemeteries. In other cases, tribal Indians did not have rights to use eagle feathers in ceremonial regalia and artifacts, nor did tribal people have a right to use peyote contrary to state laws, and federal Indian prisoners lost rights to rituals. Led by the late Rueben Snake, and elder activist Suzan Harjo, the American Indian Religious Freedom Project/Coalition helped reinstate these rights by securing amendments to AIRFA in the 1990s.

Over time, the BIA was the nexus between the Indian Tribes and the U.S. Government. Indian Affairs was under their control. From the time of the Constitution (1787-89) ratification, the Department of War had control over Indian Affairs. But, this system allowed “officials” to steal all the funds appropriated for Indian Affairs... causing wars to breakout. In 1849, Indian Affairs was transferred to the Department of Interior for that reason. But the theft continued (up to the Cobell Settlement in 2012). When confronted by this truth, in 1868, in desperation President Grant transferred Indian Affairs management to the Christian Churches (1872). The churches immediately instituted the Indian Religious Crimes Code and Natives were imprisoned without rights to lawyers, trial, juries, or defense.... Just being a ceremonial Indian resulted in their imprisonment. The attacks upon our traditional (non-Christian) ceremonialism has been long and constant- from discovery to now.

A couple lessons the Indian tribes have learned is to represent your own tribe before congress to secure rights. And, tribes learned to hire a lot of attorneys and lobbyists to guide their defenses. Tribes also learned to beware of the BIA. However, in our efforts to expand self-determination and self-government, we learned to self-lobby and self-represent for changes in the laws that protect our people (e.g., AIRFA Amendments, American Indian Graves Protection and Repatriation Act, the Indian Child Welfare Act, Indian Tribal Governmental Tax Status Act, Indian Fishing Rights Tax Exclusion, Tax Exclusion of Medical Benefits, Tax Exclusions for General Welfare Activities and Ceremonial Activities, American Indian Arts & Crafts Act, etc.). New protective laws have materialized out of congress due to the influence of consistent & dedicated tribal leadership lobbying.

Now, we must get back to our conflicts on tax challenges. Contrary to Elk, this generic citizenship was imposed upon all “tribal Indians” across the nation. If you read the minutes of the 39th and 40th Reconstruction Congresses you would find how clearly the Congress intended that **tribal Indians** could not be either national or state citizens, and were not taxable. In pursuit of clarifying “tribal Indians” as citizens, the U.S. Department of Interior Solicitor issued an “Opinion on *Excluding Indians not taxed*.” The Solicitor did a detailed analysis of the constitutional status of the tribal Indians. But, he concluded that because the “Indian Citizenship Act” was passed all Indians are citizens. So, he said there are no “tribal Indians” that qualify under this constitutional language. With the stroke of a pen “tribal Indians” became a part of history and not the present. If George Custer knew you could wipe out all the “tribal Indians” with the stroke of a pen then the Battle of Little Big Horn could have been avoided.

In **Squire v. Capoeman** (1956), the court ruled “*In Ordinary Affairs*, Indians are citizens....” Then it concluded, ... “*All citizens pay taxes, therefore Indians pay taxes.*” This ruling came out when tribes could not hire their own lawyers without BIA approval. And, tribes were not a party to the tax case. The BIA ruled over tribes as their “wards.” Tribes were economically poor. In addition, tribes were battling against tribal “Termination” and the “Relocation” of their membership into major cities for forced assimilation. The US was purposefully trying to destroy “tribal Indian” status, as was the intent of the General Allotment Act (1887), which was hypothetically overcome by Congress when it enacted the Indian Reorganization Act (1934). Our problem was, we did not or could not challenge what the Tax Court (Supreme Court)

meant by the words “In Ordinary Affairs....”. This is ambiguous today. But, it is clear enough for the IRS to single out the individual Indian and go after him for tax evasion as a “citizen,” time and time again.

Let me explain that Article I, Section 8, Clause 4 is the “Naturalization” power of the Constitution. The Constitutional Founding Fathers set it up so “foreigners” could come here and apply for citizenship, as authorized by the constitution. These foreigners would apply for citizenship, swear allegiance to the USA, and disavow any connection or allegiance to their former country of origin. They permanently left their country of origin and intended to permanently live within the emerging United States. They would get sworn in as citizens before a judge. This was the venue process for “John Elk” if he wanted to overcome the constitutional (divide) blockage as an individual “tribal Indian.” By this action he became a member of “*We the People of the United States.*” But, he would have to leave his people forever. He would have to leave Indian Country forever. This general forced citizenship (1924 Act) would come around to bite us in the rear- we did not get religious freedom, we got taxation, and representation as a very small “minority” group competing for existence in the United States.

In the Squire case, Capoeman won his right to have his “trust income” protected- as a tribal Indian with trust protected Indian lands. This was the precedent case that was used when the tax court in Earl v. Commissioner (1983) authorized taxation of treaty fishing rights income. The “timber industry” and the “fishing industry” are similar in economic value added activity for tribes and tribal Indians. There are about 16 steps to getting the timber (or the fish) from harvest to the final consumer and then making sure there exists “sustainable yield” via timber (or fishery) management regimes. But, **Capoeman** only protected 1/16th of the economic value of the “Indian Timber.” In the fishing rights language (now Section 7873, per Phase I- enactment of the law, and Phase II – interpretation of the law), we secured protection of all 16/16ths of the Indian Fishing Rights Industry. No other Indian-owned natural resources industry has such a broad set of tax exclusions....mainly because tribes have not followed the precedent of the treaty & constitutional arguments used to secure the fishing exclusions. The treaty resources, the treaty fishery, and the fishing incomes, were protected, retained property as a part of the tribal rights, for tribal people.

Capoeman, in the minds of the IRS Agents, blew open the doors to all of Indian Country for purposes of applying Internal Revenue Code Section 61- Gross Income to Indians in Indian Country. They argue that all citizens pay federal taxes on their gross income. To them, the “Indian Citizen” is not a tribal Indian but a citizen, that just happens to live on an Indian Reservation. But, we know “tribal Indians” are not the same legally, culturally, and politically as a citizen Indian. We know Tribal Indians exist and are still covered by “Excluding Indians not taxed” contrary to what the Department of Interior Solicitor concluded (1940).

When conducting ourselves as tribal Indians we are not acting as citizen Indians. As tribal Indians our allegiance is to our tribe and people, and we live & work inside of Indian Country. As citizen Indians our allegiance expands to the United States. The two parts of our political/legal/civic personality are distinguishable. This is why it was so important to keep our

Treaty Fishing Rights Industry protected against IRS encroachment... tribal Indian fishers were exercising tribal fishing rights secured by treaty, act of congress, or executive order specifically for tribal (enrolled) Indians. These same "rights" could not be exercised by "Ordinary" citizens, except as permitted by state laws that authorize whites to fish from a share of the natural resources reserved for them, per the treaty "in-common" language.

The question then is "What are the duties and responsibilities" of the new naturalized citizen (whether he came from Ireland, England, Germany, or even the Omaha Indian Nation- as John Elk did)? Well, he lives as a citizen, amongst other citizens. He works with them. He votes in general elections like them, and pays taxes to "his" new government. For "Indian Citizens" it is the same. They live, work, worship, talk, and are entertained like any citizen- outside of Indian Country but do so as a part of "We the People." As a citizen he has rights, duties, and responsibilities imposed by the U.S. Constitution, as a part of his sworn allegiance to the United States or the individual state.

However, on the other hand, the "Citizen Indian" could still be an enrolled tribal Indian. He may work for his people, live on the reserve, and participate in all "Ceremonial Activities" that helps define his separate status as a "tribal Indian" today. Even in the cities, there are enrolled tribal Indians that live as "citizens" and come back to participate in tribal or ceremonial events as "Tribal Indians." But, then, there are unenrolled Indians that live as assimilated individual citizens and never come back to Indian Country, and never or almost never engage in ceremonial activity. They have become the assimilated "White, Christian Farmer" that the United States (through the BIA and Churches) wanted us all to become.

Constitutionally, the right to be a "tribal Indian" still exists. In fact, it is an indigenous inherent right of our people and not granted to us by any foreign power or the United States. It is still relevant to our inherent sovereignty. Our own "popular sovereignty government" is founded upon the delegation of authority from our qualified member tribal Indians. There are over five hundred federally recognized tribes with about three million enrolled "tribal" Indians today. The attempts to break up the Indian Nations, and to disperse their people, to force their complete assimilation into white society has failed as a matter of U.S. law and policy. Today, we exercise rights of Self-Determination and Self-government. We are protected by our tribal governments. We sought and defended rights declared in the United Nations Declaration on the Rights of Indigenous Peoples."

We are close to understanding this conflict generated by the drive of the IRS to extract taxes from Tribal Indians and Indian Country. We need to define what does "*In Ordinary Affairs, Indians are citizens*" mean? The definition should cover those times and circumstances in which the "activity" of the Indian Citizen cannot be distinguished from any similar activities of any other "naturalized" citizen of the United States. We should then list those activities that are common to citizenship, but not common to Indian Country by traditional culture and society. Keep in mind that "tribal Indians" and "Indian Country" are heavily regulated by the federal laws and policies.

In addition, we need to define what is “*Ceremonial Activity*.” This is the activity that is not common to U.S. Citizens but specifically relevant to tribal Indians and Indian tribes. It is the stuff that “traditional knowledge” is founded upon and incorporates to make sense of “tribal traditional culture.” Ceremonial activity makes us whole as tribal Indians. These are the things that are significantly a part of the tribal Indian’s allegiance to his Tribal Nation. Tribes have consistently voiced concerns about our people’s right to practice traditional knowledge and ceremonial practices. These concerns were specifically incorporated as important in the U.N. Declaration on the Rights of Indigenous Peoples, as accepted by President Obama, and the rest of the world (per their indigenous populations).

But, understandably the term is not clear. It is ambiguous right now. How do we distinguish a tribal Indian involved in ceremonial activity from a citizen Indian acting in ordinary affairs. If we cannot clarify it through the administrative consultations process (guided by the Treasury Tribal Advisory Committee) then we may need to seek congressional clarification of “*ceremonial activity*” that limits or distinguishes “*In Ordinary Affairs, Indians are citizens,...*” But, the Indian citizen pays taxes because he is acting as a US or state citizen, outside of Indian Country, and not as a tribal Indian, per the limitations placed governmental delegated authority in the U.S. or state constitutions. If taxes inside Indian Country are owed, then the tribal Indian owes taxes to his tribal nation, since Indian Country is *extraterritorial* to the United States and individual state. Time and again, impoverished tribal nations watch as the federal and state governments drain tribal economies via taxation. The federal “Guardian” is taxing the “Ward” for his supervision.

Any time an Indian is acting in his “tribal” capacity then he is not acting as a “Ordinary” citizen. His duty to his “Indian Nation” is separate from his modern & imposed citizenship duty to the state or national governments. Defining what are “ceremonial activities” should limit what is “*In Ordinary Affairs*.” We have to keep in mind that the IRS believes all 70,000 pages of the Internal Revenue Code applies to “tribal Indians” and not just “citizen Indians.” The IRS position has been strengthened by the conclusions in the Opinion of the Solicitor (1940) on “*Excluding Indians not taxed*.” The conclusion ran contrary to constitutional intent and the legal facts included in the opinion itself. But, it appears the *Solicitor* was a good soldier and concluded as ordered – but he left a trail for Indian Country to follow back to the founding intent of the constitution itself. This is why I have always argued that we need to have a rewrite and re-conclusion of this opinion, and limit its impacts to “citizen Indians” acting in “ordinary affairs” and not “tribal Indians” conducting “ceremonial activities” or exercising duties and responsibilities owed to their tribal government and traditional society, based on access to “tribal” or “Indian” properties (and income is property).

In the Tribal General Welfare Exclusions Act, in cases of “ambiguity” the tribe or the individual Indian wins. And, the disputed subject matter can go to the TTAC for review, consideration, and recommendations to Treasury. If it remains ambiguous then the subject matter can be sent to congress for clarification. Now, the IRS just prevailed in a test case against the Miccosukee Nation in Florida over the limits to “General Welfare” assistance verses IGRA Taxable “per capita distributions.” The ruling is ambiguous as regards what is “extravagant or lavish” general

welfare assistance levels. This case is now a matter of concern to all tribes that seek to develop their "General Welfare" assistance tribal programs for their poverty stricken membership. The same type of confusion surrounds the issue of "Ceremonial Activity." Tribes and tribal programs, as a matter of federal law interpretation, file 1099s on such activities, creating problems for the tribal member Indians now confronted with allegations of tax evasion.

Included in the TGWE Act of 2014 is language that says "Ceremonial Activity" is excluded from taxation. We recognize that the IRS has attempted to develop an Indian Division inside the IRS that specializes in Indian Taxation Questions. While it works to help define the scope of "General Welfare Assistance" exemptions and definitions, the "ceremonial activity" exclusion is ambiguous and a problem to the IRS and the tribes. What is "ceremonial activity?" And, does the IRS have the expertise to define it and the scope of exclusion from taxation? If tribes and the IRS are going to design education and training programs for the IRS and Tribes then this subject needs clarification.

Well, the IRS cannot adequately define "ceremonial activity." There was a nominal attempt to consult with the tribes early when the 2014 act came out. But, the tribes are protective against outsider entities that try to define "Who is a ceremonial Tribal Indian?" and "What does a ceremonial tribal Indian do?" The definition and scope of the law must be the subject matter of thorough IRS/Tribal Consultations. The Tribes should be assured of prior and informed consent via such thorough consultations before they agree to any IRS Guidance on this matter. And, there will have to be a comprehensive "Guidance" released to structure the processes to control associated 1099s that would otherwise be routinely filed with the IRS.

As Head of the House of Tears Carvers (a traditional totem pole carving entity under tribal traditional and modern law), I just prevailed in the IRS Appeal process. The IRS sought to apply taxes to my ceremonial activity. I am the Head Carver and represent all my apprentice artists through the Lummi House of Tears Carvers. We are incorporated under authority of the Lummi Constitution and per the federal authorizations found under the Indian Tribal Governmental Tax Status Act (IRC Section 7871), as influenced by the additional language included in the Tribal General Welfare Exclusions Act of 2014 (IRC Section 139E) that recognizes such tribal entities may be managed in accordance to tribal customary practices. In addition, we recognize that the American Indian Arts and Crafts Act (as amended) applies to our activity. Indian Arts and Crafts are extensively regulated by the federal government. While the House of Tears Carvers are known for donating traditional totem pole art all across the United States and up into Canada, there are instances in which stipends or commissions are exchanged for the carving of tribal symbols on totem poles- as related to tribal ceremonial and cosmological traditional knowledge and for public & education display.

As the Head Carver, I was challenged by the IRS for not paying taxes on 1099 Miscellaneous Income associated with totem art which was not recognized and included in my 1040 form when I filed for tax returns. This 2013 (and later, 2011) challenge came forward with the IRS alleging taxes past due, with fines, penalties, and interest. I argued, throughout the administrative appeals, that this alleged income was covered by the ceremonial activities

exclusion language (IRC Section 139E). The IRS argued it was taxable as gross income (IRC Section 61). After exhausting the appeal process (as of July 2019), I prevailed. The IRS Appeals Office (Florida Office) ruled the 1099 identified “income” was not taxable as it was “ceremonial activity” covered by the language and protected under the moratorium in the 2014 Act. I still wait to receive the official decision in written form. This tax exclusion was recognized and advocated by the Indian Division of the IRS national office in Washington D.C. as their understanding of the language.

As Head of the House of Tears Carvers, we teach the youth (as apprentices) that the symbols, the colors, the legends/myths/folklore associated with the totemic arts is ceremonial recitation of our cosmological and spiritual teachings about our relationship and stewardship toward the world around us. And, from the time the tree is harvested to the time the pole is publicly displayed the spiritual ceremonial protocols demand our respect and accountability.

However, this (native art, symbology, mythology, etc.) composes just one aspect of what is “ceremonial activity.” To get this “activity” defined and to understand its scope means that we have to dig deeper into “traditional knowledge and practices” as tribal people and tribal nations to advise the IRS during Consultations. These “consultations” must be called for and organized. We need to have what is being addressed scoped out for tribal leaders and participating IRS officials. We do not believe the IRS is capable of doing this on its own. The IRS Agents are not experts on tribal traditional culture, knowledge, and ceremonial practices. To IRS dismay, many tribal traditional leaders will not disclose ceremonial practices to the IRS (as a federal entity, and as evident in initial attempts to consult with the tribes on the subject). This is due to the historic trauma tribal societies have experienced in their experiences with the federal government and Christian churches – where both cooperated in efforts to destroy traditional tribalism and ceremonial culture, beliefs, language, regalia, symbols, knowledge, rituals, and practices. As well as many non-Indians that “harvest” Indian traditional knowledge and then seek to copy right it for their personal benefit.

In recognition of this, tribal leaders tend not to disclosure ceremonial practices and belief systems. Knowing this, I designed the “Traditional Protocols” position on “ceremonial activities” that are not taxable. I recognize that IRS agents are not experts on native traditional cultural practices. We should not expect them to define the scope of the exclusions. If left alone, then the IRS has to resort to the standard practices. This means a ceremonialist fills out a W9, an action takes place, a check is issued, the associated 1099 is filed with the IRS and flags the exchange as taxable income that should have been declared & recognized in the 1040 filing. When the ceremonialist does not report it on the 1040 form the challenge begins. This process and evolving case law will only cause more controversy for “tribal Indians.” We must design a system we can jointly agree to control the “1099” dilemma and how it exposes ceremonial activity to IRS audits.

Think of the bones of a skeleton as representative of traditional knowledge and ceremonial practices. Each cultural bone can be named. One cultural bone is “song” another is “dance” another is “regalia” and so on. We, as tribal leaders, know we mutually intent to protect the

“ceremonial knowledge & practices” aspect of songs, dances, and regalia. This, as an example, is done primarily by the traditional knowledge being transmitted to the next generation through oral history and active participation. When I said the word “Song” it did not disclose who sings it, when they sing it, where they sing it, why they sing it, how they sing it, or whether it is gender based, age based, or tied to specific geographical or maritime places or sacred sites, or to weather patterns or the elements, or owned by a person, family, or community. Nor did it disclose the language used to assure the ceremony is successful. There is a vast amount of “traditional knowledge” that is not transmitted by just saying the word “song.” You have not even disclosed if the song has a name. This “traditional knowledge” forms the meat around the traditional culture bone. These deep traditional teachings are protected by traditionalists and not readily disclosed by them. For example, at Lummi, and amongst, our Coast Salish, Halkomelem, and Lashootsead relatives it is referred to as “Advice” in English. Because of the Indian Religious Crimes Code, Termination, Relocation, and other scorched earth policies and laws applied to Indian Country, we have learned to be cautious and keep our mouths shut because the “oppressor” may be listening. We guard against the non-Indian opportunist.

However, the “Traditional Protocols” is a “Bare Bones” attempt to design a system that the tribes and IRS can use to identify “ceremonial activity” that is excluded from taxation. I argue that the “draft” should be re-worked into a new proposed version that can be shared with the IRS and all Indian Tribes for consideration. The new version would be entitled, “Booklet on Ceremonial Activities.” A national notice will have to go out to call tribes forward or submit written testimonials for more elaboration on the subject. During consultations the IRS should attempt to get more tribal in-put on the proposed system for identifying ceremonial activity. If it is resolved, and the proposed “Booklet” could be put into final form then the tribes would need to secure a “Guidance from the IRS” to address the 1099 problem that the booklet seeks to void. There are those that do not believe “consultations” can be called now. If not then the TTAC members are very important to the finalization process- since the booklet can be used to guide and educate IRS field agents and tribal officials.

The guidance should be informative for any governmental or non-government entity that would normally sent a 1099 Miscellaneous Income tax form to the IRS. In this guidance, it should be clarified that for any ceremonial activity that has a cash exchange or other property involved then it should be registered with and mailed to the respective tribal member’s tribe, if the tribal member wants to assure it is not taxed as income. A minimal amount might not have to be registered, say anything up to \$500 or any activity not otherwise requiring a 1099 form. But, if a W9, check or cash or property, and a 1099 are involved then the guidance should direct the entity to file the 1099 forms with the tribal ceremonial registry office, and not the IRS. The registry would make note that it is covered under “ceremonial activity” and may cite sections of the booklet that applies. If challenged in specific cases then the IRS would request to meet with the Tribal Ceremonial Registry office, and review their registry, if specifically requested access is approved by the tribal government. A simplified means to inform and guide the parties involved with have to be developed (such as a handout card that guides all parties to the IRS & tribal websites that explains the exclusion process).

The current problem is rather specific. A traditional person is asked to develop, design, carve, and paint a totem pole, as an example of ceremonial activity. This may be requested by another tribe, since not all tribes have totem pole carvers due to historical trauma. Then, the tribe has the “traditional artist” fill out a W9. He performs and delivers the product. A check is issued if it is commissioned. And, then, under normal procedures the entity issuing the check sends in the 1099 to the IRS. This 1099 flags the failure to pay taxes when the 1040 does not reflect it. This is standard accounting office practices- for governmental and non-governmental agencies. It would cost hundreds of millions of dollars to change the tax forms nationally to reflect the change in the new tax law. We can rest assured the IRS will not want to do this. But, unless otherwise guided, the 1099 will continue to flag IRS field agents to begin audits and collections. So, the process must involve “tribal interception of the 1099s.” That interception & registration process must be done in a manner that assures the IRS that no fraud can or will take place.

The general idea is that Indian Tribes are Self-determining, Self-governing, Self-regulating, Self-Accounting, Self-policing, and Self-reporting when questionable activity is raised. While we seek to act as sovereigns, it is not our intent to allow fraud or corruption to take place to cover purposeful tax evasion by “tribal Indians” or “citizen Indians.” A systematic check and balance system must be designed and agreed to between the tribes and the IRS.

In this light, on the question of what is ceremonial activity, I have attached the current draft *Table of Contents* of the proposed [Booklet on Ceremonial Activity](#), as shown below.

FOUNDATIONAL DECLARED PURPOSE

PART I. PROTECTION OF TRADITIONAL SPIRITUALITY & CULTURE

- Article 1. Protection of Native Language
- Article 2. Protection of Native Knowledge of Aboriginal Land & Territory
- Article 3. Protection of Spiritual Societies - All Seasons
- Article 4. Protection of Identification of Intertribal Spiritual Practices
- Article 5. Protection of Traditional Songs
- Article 6. Protection of Traditional Dances
- Article 7. Protection of Traditional Ceremonials
- Article 8. Protection of Traditional Sacred Knowledge
- Article 9. Protection of Traditional Tribal Collective
- Article 10. Protection of Traditional Regalia & Clothing
- Article 11. Protection of Sacred Philosophy/Cosmology
- Article 12. Protection of Traditional Intergenerational Relationships
- Article 13. Protection of Sacred Contract with Creation
- Article 14. Protection of Traditional Rules of Conduct
- Article 15. Protection of Traditional Mythology
- Article 16. Protection of Intertribal Marriage Rights
- Article 17. Protection of Sacred Sites and Places
- Article 18. Protection of Traditional Plants and Medicines
- Article 19. Protection of Native Genetic Code
- Article 20. Protection Against Extinction of Ceremonial Foods
- Article 21. Protection of Relationships with the Elemental
- Article 22. Protection Against Ceremonially Accessing Contaminated Sites
- Article 23. Protection of Traditional Subsistence Foods
- Article 24. Protection of Traditional Housing Constructs

PART II. PROTECTION OF TRADITIONAL HUMAN RELATIONSHIPS

Article 25. Protection of Inherent Gifts

Article 26. Protection of Sacred Union of Couples

Article 27. Protection of the Traditional Family

Article 28. Protection of the Traditional Extended Family

Article 29. Protection of the Traditional Community

Article 30. Protection of Intertribal Relationships

Article 31. Protection of Traditional Rights to Become Spiritual Practitioner

Article 32. Protection of Respect for Other Tribes' Leadership

Article 33. Protection of Trans-boundary Rights as Indian Nations

Article 34. Protection of Respect for the Elderly

PART III. PROTECTION OF THE TRADITIONAL CHILD

Article 35. Rights of the Child

PART IV. PROTECTION OF TRIBAL RIGHTS TO DEFINE REALITY

Article 36. Protection of Traditional Measurement of Reality

PART V. PROTECTION OF TRADITIONAL LAWS OF BALANCE

Article 37. Protecting Basic Laws of Balance

PART VI. PROTECTION AND RECOVERY FROM NON-INDIAN INFLUENCES UPON TRIBAL COLLECTIVE

Article 38. Historical Trauma, Historical Truth, and Native Science

Article 39. Right to Express Indian View of History

Article 40. Nation's Right to Represent the Tribal Collective

Article 41. Right to Develop Coast Salish Institute

Article 42. Protection of Traditional Clusters of Knowledge

We should keep in mind that based on the 2014 Act "Ambiguity" is to be resolved in favor of the tribe or tribal Indian. However, we are still challenged on securing an all inclusive definition of ceremonial activity. If this is left unresolved then it will result in tax court cases against vulnerable tribal Indians that are usually to impoverished to defend themselves. To secure the definition and scope would limit IRS activity inside of Indian Country, and help prevent tribal Indians from being audited and taken to tax court. Let us suppose, after extensive and thorough consultations, the IRS is not satisfied with the product (Booklet on Ceremonial Activity) and does not want to issue a Guidance to address the problem with the 1099 flag on possible taxable "gross income." If the Tax Advisory Committee cannot help resolve the disputes then it could recommend the conflict be sent back to congress for clarification. At that stage, if we want to prevail then we have to have "tribal leaders" and "experts" ready to testify before congress, assuming we get clarification language drafted and submitted that we can rally around. The tribal political positions may be and most likely will be in opposition to IRS recommendations.

In the case of congressional oversight hearings, we would want to define what activities are included in the definition of "*Tribal Indians*." Let us summarize it a little. You have a federally recognized Indian Tribe. The tribe has "enrolled" tribal Indians as members. You cannot be enrolled if you are not a blood decedent Indian. The tribe services and protects their tribal

Indians- on and off reservation. You have rights under the tribal constitution. You have inherited tribal lands or property protected by treaty, executive order, or act of congress. There are laws that specifically apply to you, because you are an enrolled tribal member. You are engaged in tribal society because you are a member of the tribal community. Our examples of other reasons you are an “involved tribal Indian” have been listed above (see any cited sample laws). These laws, about Indians and Indian Tribes, do not apply to “non-Indians.” These laws are special and apply to you because you are tribal. Non-Indian citizens cannot come into Indian Country and demand the same rights or protections. Included in all of this is “ceremonial activity” that is based on traditional tribal culture and traditional knowledge & practices passed through the generations and common to the tribal community. So, a part of our goal is to get it more defined as to “What is a tribal Indian.” And, then, to get defined, “What are ceremonial Activities” that tribal Indians practice, but not as citizen Indians.

In addition, we should distinguish, in the hearings, what are the separate, non-tribal, non-Indian duties that transforms a “tribal Indian” into a “Citizen Indian.” What does the “Indian” do that is done “*In Ordinary Affairs*” as citizens of the state or the United States. We note that those are the activities that “John Elk” could not engage in because he was a “tribal Indian” (Elk, 1884) and not a citizen. To define “What are ordinary affairs of citizenship” could be assessed based on what other “citizens” are entitled to or obligated to do based on laws that apply to “*We the People of the United States*” or “*We the People of the State of...*” In this process, we should prop-up and preserve the Elk test on what is a “tribal Indian” in comparison to Indian citizens acting In Ordinary Affairs outside of Indian Country.

In addition, we still have standing resolutions (See NCAI) that call upon the U.S. Department of Justice, the U.S. Department of Interior Solicitor, to re-issue the Opinion of the Solicitor on “*Excluding Indians not taxed*” so that its conclusion is in constitutional compliance. One thing the Alliance of American Indian Leaders did was get hearings before the Senate and the House on the constitutional relationships between the Indian Tribes and the United States. SCR #76 and HCR #331 are known as the Iroquois Resolutions- the resolutions were enacted during the 200 Year Birthday of the United States. The resolutions recognized the constitutional government to government relationship and the fact that the Prophecy of the Iroquois influenced the Popular Sovereignty based Constitution of the United States. We may need to review and recite those testimonials, since it has been over thirty years since the initial congressional hearings.

Until we do this, then the Squire case will continue to allow the IRS to come after our tribal Indians, at will. The IRS has misinterpreted the Squire case. The IRS conducts itself as if the Court said, “**In All Affairs**, Indians are Citizens.” That is not what the Court said. Our collective tribal actions, over the past three decades, has been to defend the rights of our “tribal Indians as tribal members” involved in “**tribal Indian affairs.**” The Squire decision allows the IRS to single out the individual impoverished tribal Indian (as a citizen Indian) and assert that he owes taxes to his government (the USA). In these precedent settings case, the tribes had no rights to be a party to the cases because those tax cases were between a “citizen Indian” and the

“United States.” Think of the IRS as a Wolf Pack that singles out the weakened little lamb from the flock. The IRS puts so much pressure on the poor individual tribal Indian they settle and pay.

Yes, I prevailed in my challenge with the IRS. The 1099s that were not reported in my 1040 filings (for 2011 and 2013) were from “totem pole art.” I argued it was all covered by the 2014 Act as ceremonial activity. I prevailed. And, the National Indian Division of the IRS notified the Seattle Office to quit auditing the traditional artists, that their activity was considered ceremonial activity and covered by the 2014 Act and under the moratorium. But, this is not “national.” The IRS field agents, all across the United States, are still actively engaged, in other parts of the country, in auditing “art income” as gross income and not covered by the “ceremonial activity” language. Plus, ceremonial activity is much larger than this example case.

We need to present this information to our Inter-tribal organizations and notify all Indian tribes. We need to work with them to update and brief them. We need to get the tribes engaged. We need them to join with us. We need a common platform to base our lobbying and testimonials upon. When we do engage in national consultations for elaboration of the “scope” and “definition” of “ceremonial activity” then we need to be saying the same thing. We need to agree upon and advocate a common solution to the 1099 problem. We need to identify and implement safe guards so there will no opportunity for abuse or fraud- if the tribes assume control over the 1099s involved. It is extremely important that our tribal leaders that participate in the TTAC are evolved, informed, and engaged in the debate. Well informed allies are key to our success as well.

For example, the Pacific NW Tribes united to battle the Earl v. Commissioner tax court decision that applied federal taxes to Indian Treaty Fishing Rights Income. We organized local, regional, and national support and coalitions. We secured a congressional override that instituted Internal Revenue Code Section 7873 for excluding Indian fishing rights income from taxation. But, during this campaign, based on their limited knowledge of Federal Indian Law and Federal Tax Law, the tribal attorneys kept trying to convince the tribes and treaty tribal fishers to settle the tax cases (72 at Lummi, three at Swinomish, and one at Tulalip) and walk away (arguing for about a 3/16ths negotiated win). The Lummi Treaty Protection Force actively argued against settlement, based on our knowledge of Indian Tribes and constitutional history. The lawyers denied our potential to win and advised everyone we will lose the campaign to stop the taxes. Keep in mind these were the tribe’s lawyers, and not the opposition. We won a 16/16th victory. We guided ourselves by the motto: *“Law is only nothing but old politics, if you don’t like the law, then change the politics!”*

In the aftermath of a lot of studying on the differences between our political opinion and the court’s Indian case history, we designed the “Legal/Political Chart” to display the “schizophrenia” that exists in Federal Indian Law (copies at request, since it is a large chart). The chart advocates recognizing that one legal personality argues “Indians and Indian Tribes” are incompetent by law and policy based on legal fictions. The other argues we are sovereign and the U.S. Constitution protects and aligns the nation-to-nation relationships up as the “Supreme Law of the Land.” In between these two lines of thought we inserted (into the chart) the

argument for congressional override of anti-Indian cases that keep us listed as incompetent persons and nations.

In another instance, we designed the Indian Country Tax Chart. This chart seeks to differentiate taxable activities (gross income) by those “citizen Indians” that are acting in “Ordinary Affairs” (Squire v. Capoeman, 1956) as U.S. Citizens. The Counter-part to this status are the “tribal Indians” (Elk v. Wilkins, 1884) conducting themselves as members of Indian Tribes, as tribal members with rights and responsibilities that non-Indians do not have or do not act upon. Foundational to the differentiation is the original U.S. Constitution intent to keep “tribal Indians” (classified as “Excluding Indians not taxed”) and Indian Tribes separate from “We the People” and out of the federal and state governments & politics. The Chart seeks to show that “tribal Indians” are not conducting themselves *as citizens in ordinary affairs*. Individual citizen Indians are outside the tribe and do not participate in tribal government and society. In order to defend the tribal Indian we have to be able to visualize what we are defending.

In drafting our position on “ceremonial activity” and “General Welfare Activity,” as the Lummi Nation, we have looked at draft codes of other tribes, dealing with the implementation of the Tribal General Welfare Exclusions Act of 2014 (IRC Section 139E). The drafts were complete as far as they knew per what was accepted or recognized as “general welfare activity.” But those codes were void of tribal protection of “ceremonial activity.” We took those drafts and created one in which we addressed both issues. We have our draft (available to tribal leaders at request). Until we have “consultations” on “ceremonial activity” and conclusions on the 1099 Tribal Process and necessary “Guidance” from the IRS, we cannot complete the code.

As stated before, we will go through our General Welfare Exclusions version of our draft Traditional Protocols on Ceremonial Activities (which will be transformed in the Booklet on Ceremonial Activities). Once it is cleaned up more then we expect to share our final recommendatons with the Indian Division of the IRS, the tribes, and intertribal organizations, and especially the tribal leaders on the TTAC.

We shall present our testimonial on the recent administrative tax appeal case per Indian Artists in the Pacific NW and its implications to all artists as we call for further consultations or dialogues on ceremonial activity. We will have our legal/political chart, and our Indian Country Tax Chart, our draft GWE Code, and the next version of the Traditional Protocols on Ceremonial Activity (Booklet), for others’ consideration.

The Lummi Nation has relied on the Affiliated Tribes of NW Indians, the United South and Eastern Tribes, the National Congress of American Indians, the Native American Rights Fund, and other intertribal entities to continuously be at the front of our political efforts to preserve our tribal sovereign integrity. We know that there now exists an Intertribal Treasurers group that seeks to be engaged in the debates on what is “General Welfare Activity” and “what is “lavish or extravagant” assistance from the tribes to their membership. All of these entities are important to the dialogues on ceremonial activities. We know that the Lummi Nation has been more aggressive on the constitutional factors; but that was because we were a member of the

Alliance of American Indian Leaders that sought to protect the separate status of tribal sovereignty and tribal people based on the original intent of the U.S. Constitution. Because of that, we have become advocates and defenders of the U.S. Constitution and its check and balances on the exercise of government powers. We believe in the nation-to-nation relationships treaties-made established between the tribes and the USA. We believe the Indian Commerce Clause has been misinterpreted and does not allow the US to control Indian Commerce but only those engaged in commerce/trade with the Indian Tribes. And, we do not believe there exists legal or constitutional authority for the IRS to be collecting taxes inside of Indian Country against tribes or tribal Indians.

We appreciate this opportunity to share with you our position on “Ceremonial Activity.”