

Seneca Nation of Indians

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PRESIDENT'S OFFICE

June 1, 2021

VIA E-MAIL (TTAC@treasury.gov)

Treasury Tribal Advisory Committee
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Room 1426G
Washington, D.C. 20220

Re: Comments for Consideration at the June 16, 2021 Treasury Tribal Advisory Committee ("TTAC") Meeting

Dear Treasury Tribal Advisory Committee Members,

On behalf of the Seneca Nation ("Nation"), we write to provide comments for your consideration at the June 16, 2021 TTAC meeting in Washington, DC. The Nation urges the TTAC to adopt a uniform process for Subcommittees to engage with Native Nation leaders as Subcommittees develop reports and recommendations. The Nation also asks that the full TTAC engage directly with Native Nation leaders regarding the GWE Subcommittee's report and proposed regulations prior to adopting and sending the final report to the Treasury Department for formal consultation.

I. Adopt a uniform process requiring Subcommittees to engage with Native Nation leaders as they develop reports and recommendations.

The Nation believes in the Nation-to-Nation relationship between the United States and Native Nations, and that meaningful dialogue on issues that impact our Nation members are most effective for maintaining a productive diplomatic relationship between our Nations. To date, the Nation does not believe that all TTAC Subcommittees have operated in a consistent and transparent fashion that allows for maximum input and engagement by Native Nations and their leaders. Rather than allow each Subcommittee to choose their processes, the Nation urges the TTAC to develop a uniform process among all Subcommittees in which consultation between Subcommittee

members and Native Nation leaders on draft reports and recommendations is mandated before the Subcommittees submit their final or draft reports and recommendations to the TTAC for adoption.

Each Subcommittee has adopted a different process for developing reports and recommendations and it has been hard for Native Nation leaders to understand where each Subcommittee is in its process. For example, while the GWE Subcommittee has held multiple sessions with Native Nation leaders in the course of developing its draft report and proposed regulations, the first time Native Nation leaders saw the Dual Taxation Subcommittee's draft report was after it was already adopted by the TTAC.

Native Nations must have a meaningful role in contributing to and engaging with the TTAC Subcommittees, which are doing the heavy lifting of the TTAC in advising the Secretary of the Treasury on matters related to the taxation of Native Nations. The TTAC should model what meaningful consultation and engagement with Native Nation leaders looks like for the Treasury, even down to the work of its Subcommittees. Native Nations and their leaders are not mere members of the public and should not be treated as such. If reports and recommendations are represented as being for the benefit of Indian Country, the Subcommittees must actually engage with Native Nation leaders. Otherwise, the draft reports only represent the views of the individuals on each Subcommittee in their individual capacities, many of whom are attorneys or lobbyists who are not Native Nation leaders.

II. The full TTAC should engage with Native Nation leaders regarding the GWE Subcommittee's report and proposed regulations prior to adopting the final GWE report and regulations.

The Nation has appreciated the opportunity to engage with the TTAC GWE Subcommittee and commends the GWE Subcommittee in helping formulate a report and proposed regulations that convey to the Treasury and Internal Revenue Service ("IRS") that each Native Nation is unique, has its own history, its own customs and traditions, and its own relationship with the United States. The Nation recently submitted comments to the TTAC GWE Subcommittee to be considered as part of the Subcommittee's efforts to revise the draft report and proposed regulations for implementing the Tribal General Welfare Exclusion Act ("TGWEA") in order to ensure that the proposed regulations were not more restrictive than the TGWEA.

With its comments, the Nation requested and strongly urged the GWE Subcommittee to submit its final report and proposed regulations for consideration during the TTAC's December 15 meeting rather than the TTAC's June 16 meeting. We requested that the GWE Subcommittee wait until the December meeting so that the GWE Subcommittee can conduct another round of discussions with Native Nation leaders after revising its draft report and proposed regulations. This additional round of discussions would allow Native Nation leaders to review the revised report and proposed regulations, and to see if additional issues should be addressed, especially if new challenges arise as Native Nations implement the new American Rescue Plan Coronavirus State and Local Fiscal Recovery Funds. If the GWE Subcommittee does in fact present its revised report and proposed regulations at the June 16 meeting, we ask that the TTAC hold a consultation session with Native Nation leaders with all TTAC members, prior to adopting the revised report and proposed regulations.

In the numerous Treasury consultation sessions that Nation leaders have been a part of this year, Treasury has emphasized that it is currently focused on implementing the American Rescue Plan, and even then, has had a hard time ramping up to do so, as evidenced by the need to extend deadlines and forgo additional spending guidance. Similar to other non-COVID-relief guidance the Treasury is currently putting on hold, like the long-awaited guidance on the tax status of tribally chartered corporations, Treasury is likely to put the GWE Subcommittee's revised report and proposed regulations on hold. In light of Treasury's current priorities and in order to maximize Native Nation input, the Nation urges the TTAC to allow more time for getting the GWE report and proposed regulations right.

GWE guidance is at the heart of the TGWEA and the TTAC's intended purposes under the law, so it is reasonable that the TTAC ensure that it is affording Native Nations maximum opportunity to engage on the issue by sharing the final revised report and proposed regulations with Native Nations before formally adopting them. This is especially true because the GWE Subcommittee is proposing the GWE guidance in the form of federal regulations. Once the proposed regulations are in the hands of the federal government, they would likely be more rigid and difficult to change over time.

III. Conclusion

Thank you for your consideration of the Nation's views and the opportunity to provide remarks at the June 16 TTAC meeting.

Nya:wëh (thank you),



Matthew B. Pagels
Seneca Nation President