

U.S. DEPARTMENT OF THE TREASURY  
TREASURY TRIBAL ADVISORY COMMITTEE  
PUBLIC MEETING MINUTES

June 16, 2021  
1:00 p.m. to 4:00 p.m.

(121 participants on call.)

The Treasury Tribal Advisory Committee (TTAC) conducted a public meeting on June 16, 2021. Due to COVID-19 safety measures, the meeting was held via teleconference.

In accordance with the provisions of Public Law 92-463, the meeting was open to the public from 1:00 p.m. to 4:00 p.m.

The following TTAC members were present:

**TTAC**

Chairman W. Ron Allen  
Sharon Edenfield  
Lacey Horn, Chair  
Eugene Magnuson, Vice Chair  
Chief Lynn Malerba

The following Treasury representatives were present:

**Office of Tax Policy**

Krishna Vallabhaneni, Tax Legislative Counsel and TTAC Designated Federal Officer (DFO)  
Kimberly Koch, Office of Tax Policy

Nancy Montoya, Treasury Tribal Affairs Program Coordinator and Point of Contact for Tribal Consultation

**CDFI Fund**

Clint Hastings, Associate Program Manager, Native American Initiatives

**Internal Revenue Service**

Angela Gartland, Director, Government Entities  
Telly Meier, Program Manager, Indian Tribal Governments Office  
Carmen Zucker, Technical Program Manager, Office of Indian Tribal Governments  
Janine Cook, Deputy Associate Chief Counsel (Exempt Organizations and Employment Taxes),  
IRS, Office of Associate Chief Counsel (EEE)  
Pamela Kinard, Special Counsel, IRS, Associate Chief Counsel (EEE)  
Rachel Levy, Associate Chief Counsel, IRS, Office of Associate Chief Counsel (EEE)  
Andrew Megosh, Senior Tax Law Specialist, IRS, Office of Associate Chief Counsel (EEE)  
Dave Rifkin, Attorney, IRS, Office of Associate Chief Counsel (EEE)

Karla Meola, Special Counsel, IRS, Office of Associate Chief Counsel  
Lisa Mojiri-Azad, Assistant to Branch Chief, IRS, Office of Associate Chief Counsel  
Dominic DiMattia, Associate Attorney, IRS, Office of Associate Chief Counsel

## **CALL TO ORDER**

DFO Vallabhaneni called the meeting to order at 1:00 p.m., welcomed the participants and turned it over to Chairperson Lacey Horn.

## **ROLL CALL**

Chairperson Horn welcomed the participants and provided a roll call of the TTAC Members. All TTAC members except Patricia King were present.

Chief Lynn Malerba provided a Tribal opening. Chairperson Horn turned the meeting over to DFO Vallabhaneni, who introduced Commissioner of the Internal Revenue Service, Charles Rettig.

Commissioner Rettig confirmed the IRS' commitment to assisting Tribal governments and members and emphasized the importance of the TTAC in helping the IRS to perform its function in Indian Country. He discussed the work that the IRS has done to address the impacts of COVID-19, including over \$800 billion in economic impact payments despite switching to a virtual environment. He noted the 20 years of experience that the IRS' Indian Tribal Governments office has in working with Indian Country on tax matters and strengthening government-to-government relationships. He acknowledged that many Tribal businesses have been affected by the pandemic and that the IRS has worked on assisting these entities through the pandemic. The IRS is committed to ensuring that Indian Country has access to all COVID relief available to them, including tax relief for Tribes and individuals through the Advance Child Tax Credit. He thanked the TTAC for being a source of information on Tribal matters to the IRS and for their work.

DFO Vallabhaneni turned the meeting back to the Chair.

Chairperson Horn thanked the Commissioner and recognized the IRS' commitment to resolving tax issues for Indian Country. The TTAC members were called upon to acknowledge the Commissioner.

Chairman Allen noted the importance of the IRS unrestricting revenue so that Tribes could reduce their dependence on the Federal government. In addition, he discussed the importance of using BIA's Section 17 definition of Tribally-owned corporations as the vehicle to establish Tribal businesses, both on and off reservation, as these are the main sources of income for Tribes. He also noted state taxation on these businesses. He encouraged the Commissioner to become more familiar with these issues and help better define Tribal tax jurisdiction on these issues.

Sharon Edenfield thanked the Commissioner for his encouraging remarks and for the time and effort of his staff on behalf of Tribes.

Vice-Chair Magnuson thanked the Commissioner for his remarks and efforts to reduce Native American child poverty.

Chief Malerba emphasized the critical role that economic development plays in providing services to Tribal communities. In addition to services, these revenues also help restore cultural assets for Tribes. She looked forward to the partnership with IRS and being creative in accomplishing mutual goals.

Chairman Horn thanked the Commissioner for his participation in the Public Meeting and he reiterated his commitment to the mutual work.

Treasury and IRS introduced staff participating in the meeting.

Chairperson Horn yielded the meeting to DFO Vallabhaneni. The meeting minutes from the March 17, 2021 meeting were approved. The minutes will be posted on the Treasury TTAC website.

### **TTAC Member Updates**

No updates: Chairperson Horn, Vice-Chair Magnuson and Chief Malerba

Chairman Allen met with northwestern Tribes to provide an update on the activities of the TTAC, including the three subcommittees. He had also discussed tax parity issues regarding state taxation and GWE individual tax issues related to CARES and American Rescue Plan Tribal funds.

Sharon Edenfield discussed the impact of payments from Tribes administered under Tribal GWE programs on individual federal benefits. In some cases, assistance made under GWE result in Tribal members being disqualified from federal benefits as the assistance is treated as income. The Social Security Administration has been engaging with both Ms. Edenfield and Chairman Allen on resolving this issue for Social Security Insurance.

The agenda then moved into subcommittee updates.

### **General Welfare Exclusion Subcommittee**

Chairman Allen recognized the members of the Subcommittees who had worked on the report:

Chairman Allen noted that the report outlines the principles and specific concepts reviewed in the report. The report culminates in proposed regulations for consideration by the TTAC. The report was produced with extensive outreach and work sessions with Tribes over the past year with assistance from NCAI and NAFOA. Over 70 responses, including recommendations, were received as a result of outreach.

The report is organized around principles. A principle focus in the report is on the definition of “lavish and extravagant” as the term applies to GWE. The report emphasizes the importance of “safe harbor” provisions for Tribes in applying the GWE.

The report clarifies the difference between per capita and GWE payments, how GWE should be used in minor trusts, recommended substantiating GWE expenses related to IRS code 139E vs.

2014-35 and are applied appropriately, recommended flexibility in “safe harbor” provisions so that each Tribe’s unique differences are considered, provided guidance on payments for cultural services, recommended that prospective enforcement moves forward instead of backwards, determined that “Lavish and extravagant” varies from Tribe to Tribe and that this definition should be determined at the Tribes’ individual discretion, recommended that accumulated and deferred GWE payments should be tax exempt and that GWE payments do not negatively impact Tribal citizens’ federal benefits. A section was added to address the tax treatment of disaster or emergency assistance payments, which are often administered under GWE programs. The report also addresses the treatment of grants to Native American-owned businesses and GWE jurisdiction over Tribal construction.

Councilperson Edelman emphasized the extensive outreach, including a pandemic-necessitated extension for Tribal input, that was conducted by the subcommittee and subsequently informed the report.

The report was opened for discussion with the full TTAC.

Vice-Chair Magnuson recognized the work that was dedicated to producing the report on behalf of Tribal citizens.

Chief Malerba emphasized the importance that each Tribe define for themselves the meaning of “lavish and extravagant” when referring to GWE benefits.

Chairperson Horn acknowledged the hours devoted to producing the report.

Chief Allen made a motion to request that the TTAC accept the report and proposed regulations and submit the report and proposed regulations to Treasury for consideration and consultation.

Sharon Edenfield seconded.

Discussion on the report resumed with Chairman Horn including compensation for ceremonial and spiritual activities are well-addressed in the report and reflects comments from Tribes that these activities are not “services.”

Chairperson Horn clarified that any differences of opinion on the definition of “lavish and extravagant” should fall back onto the Tribe. Chairman Allen emphasized that the intent of the proposed regulation is that Tribe should have the defining authority, not the IRS field, on how cultural activities are compensated appropriately.

Chairperson Horn expressed pleasure that the report incorporated disaster relief as a GWE benefit. Chairman Allen emphasized that not only COVID-19 but other disasters continue to negatively impact Tribes and their members. She also noted the importance of existing or start-up businesses in providing economic opportunity for Tribes and that grants should be eligible GWE benefits. She also noted the report’s recommendation to Treasury to not rely on *United States of America vs. Miccosukee Indians of Florida* in developing guidance on GWE because of it does not include several points of progression since the case was resolved. Chairperson Horn also noted that “safe harbor” and other provisions included in the report be maintained.

A vote was held on accepting the report and recommendations. Motion carried with five TTAC members voting unanimously in favor of the motion.

Treasury and IRS had no comments on the report.

### **Dual Taxation Subcommittee**

Chief Malerba recognized the members of the Dual Taxation Subcommittee and report contributors. She noted that two Tribal consultations on the Dual Taxation report had been held. The due date for written comments to Treasury is June 28, 2021. Treasury will summarize comments and recommendations and meet with the TTAC to discuss next steps.

Chairman Allen asked about the role that NCAI may play in helping to reinforce the sovereignty of Tribal nations to set taxation. Chief Malerba also noted that BIA will be addressing taxation through the Indian Trade Act.

Chairperson Horn noted that she participated in the two consultations and was pleased with participation from Indian Country.

Treasury and IRS had no comments on the committee work.

### **Tribal Pensions Subcommittee**

Eugene Magnuson thanked the subcommittee members for their work. Vice-Chairman Magnuson noted that the work plan was adopted in September, 2020.

He noted the nine issues that needed to be addressed regarding Tribal pensions.

- Definition of governmental functions
- Definition of commercial activity
- Control group testing/single employer impact
- Employee-sharing, transfers and rehires
- Domestic relation orders
- Requirement for different asset-pools dilutes economies of scale for Tribal pensions
- Coordination of CPA audit standards
- State court-enforcement actions
- Perspective enforcement

He noted that a survey sent to Tribal governments to gather information on Tribal pension plans was suspended as several Tribes expressed confusion on the survey, pending the reworking of questions to support the information gathering from Tribes.

No further discussion from either TTAC, Treasury or IRS occurred.

### **Public Comment**

Chairman Horn called Tina Abrams, Councilor with the Seneca Nation to provide public comment.

Tina Abrams, Councilor, Seneca Nation, addressed the TTAC on several issues. She encouraged the TTAC to engage with Tribes in gathering Tribal input and in preparing subcommittee reports. She reiterated that Tribal members are being required to report GWE benefits to federal agencies and that these benefits are being counted as sources of income, thus disqualifying the Tribal members from receiving these federal benefits. These include Social Security Disability Insurance, HUD housing assistance and SNAP (USDA) benefits. The loss of these benefits especially impact elders in Tribal communities. These benefits should not disqualify members from assistance or be treated as taxable income. She requested that the Social Security Administration engage with the TTAC in a meeting to discuss these issues. Benefits provided to Tribal members should not be taxed and IRS has not yet issued guidance that GWE benefits are not taxable. She asked if Treasury would be issued guidance on the tax status of COVID-19 relief funds used to meet the needs of Tribal members. She also requested advance notice to Tribes for any meetings being held by TTAC subcommittees so that Tribal nations can provide input.

Chief Benjamin Barnes, Chief of the Shawnee Tribe asked if the TTAC has approached Treasury about whether CARES and ARP funding can be exempted from affecting the direct costs associated with Tribal administration. Tribes do not have enough funding to pay for basic indirect administration functions.

Chairman Allen responded that other Tribes are concerned about this issue as well. He considers this a high-priority issue on how Tribes' indirect rates will be affected by this funding. He also recognized the Seneca Nation's concerns on GWE and pointed out that solutions have been included in the GWE report.

### **Treasury Updates**

Clint Hastings, CDFI Fund, announced that \$1.2 billion in awards were made to 863 Community Development Financial Institutions (CDFIs) to support their work to respond to the economic challenges faced by underserved communities impacted by COVID-19. The CDFI Fund was required to provide a minimum of \$25 million to CDFIs serving Native communities. The Fund far exceeded this goal by providing 58 awards totaling over \$54.6 million to Native CDFIs. The funds are expected to be deployed over the next few weeks.

DFO Vallabhaneni noted that on April 1, 2021 a Notice in the Federal Register was published calling for nominations for the Secretary's three appointments to the TTAC whose terms were expiring in June 2021. The nominations period closed on June 1, 2021 and Treasury is considering the submissions. DFO also stated that he contacted the Chairman Neal of the House Ways and Means Committee to advise him of the vacancy created by Patricia King's resignation as a member of the TTAC. As the Treasury is not involved in the Ways and Means Committee appointment to the TTAC, he encouraged interested parties to reach out to Chairman Neal's office directly.

DFO Vallabhaneni also announced that, in response to comments received in part by Tribal governments on the tax treatment of COVID-19 individual relief payments, Treasury posted draft FAQs on the IRS Indian Tribal Government's website for public comment. The FAQ also

included a notice for Tribal consultation on the draft FAQs to be held June 25, 2021. A registration link was included on the website.

Nancy Montoya discussed the upcoming consultations on the draft FAQ and income treatment of COVID-19 payments by the Social Security Administration on June 25, 2021. She also announced the extension of submission deadlines related to the ARP State and Local Fiscal Recovery Funds and Homeownership Assistance Fund. She also noted that the Interim Final Rule on the ARP State and Local Fiscal Recovery Fund is available for review and public comments by July 16, 2021. Comments should be submitted via [regulations.gov](https://www.regulations.gov). Treasury is conducting extensive outreach with Tribes and Tribal stakeholders on the State Small Business Credit Initiative (SSBCI). Requests for outreach and information can be sent to the [tribal.consult@treasury.gov](mailto:tribal.consult@treasury.gov).

Telly Meier provided an update on Tribal tax activities from the Indian Tribal Governments (ITG) office. He mentioned the 1099 training, the new publication on “Income Tax Guide for Native Americans and Sole Proprietors” released in February. He announced a nationwide training in August on Employment Tax that will be combined with individual assistance. In October, the IRS will be conducting a wagering tax training for sports betting enterprises. The Indian Tribal Government webpage is undergoing an update to make it more user-friendly. He also announced that a position for a tax law specialist had recently closed. He thanked Tribal members and organizations for helping with awareness and recruiting efforts for Native applicants.

Janine Cook provided an update on COVID-19 credits provided to employers, including Tribal governments. The three credits are: the Paid Sick and Family Leave, Employee Retention Credit and a new credit, the COBRA subsidy credit. Ms. Cook mentioned that the Paid Sick and Family Leave was extended to September 30, 2021 and expanded to include leave to get a vaccine or recover from receiving a vaccine. The Employee Retention Credits was extended to December 31, 2021. IRS released expanded guidance on these credits and is working on additional guidance. Information is available on [IRS.gov](https://www.irs.gov) COVID payments page. The COBRA subsidy credit is available to eligible Tribal government and tribal entity employers. For eligible individuals, the credit covers 100% of the COBRA premiums for COBRA continuation coverage if the employee lost coverage due to a reduction in hours or involuntary termination of employment. The credit is available for periods of coverage beginning from April 1 through September 30, 2021.

Chairperson Horn announced that the next Public Meeting is tentatively scheduled for December 15, 2021. The date and format will be finalized later in the year. DFO Vallabhaneni noted that the Federal Register notice for the Public Meeting would be published after October 1, 2021 due to fiscal year constrictions.

Chairman Allen provided a Tribal closing.

DFO Vallabhaneni thanked everyone for attending and closed the meeting at 2:57 p.m.