



TREASURY TRIBAL ADVISORY COMMITTEE



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

March 17, 2021
1:00 p.m. to 4:00 p.m.

The Treasury Tribal Advisory Committee (TTAC) conducted a public meeting on March 17, 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
Rebecca Benally
Sharon Edenfield
Lacey Horn, Chair
Chief Lynn Malerba
Eugene Magnuson

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
Colin Campbell, Office of Tax Policy

Office of the Comptroller of the Currency

David Black, Community Development Specialist

Internal Revenue Service

Angela Gartland, Director, Government Entities
Telly Meier, Manager, Indian Tribal Governments Office
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)
Casey Lothamer, Area Counsel (Mid-Atlantic), IRS, Office of Division Counsel (TEGEDC)

Andrew Megosh, Senior Tax Law Specialist, IRS, Office of Associate Chief Counsel (EEE)
Dave Rifkin, Attorney, IRS, Office of Associate Chief Counsel (EEE)
Angella Warren, Branch Chief, IRS, Office of Associate Chief Counsel (Income Tax and Accounting)

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.

Rebecca Benally provided a Tribal opening.

DFO Vallabhaneni introduced Secretary Janet Yellen.

Secretary Yellen thanked the TTAC for the invitation to address Indian Country at the TTAC Public Meeting. She noted the disparate impacts of COVID-19 on Tribal communities. Treasury is working to end the immediate public health emergency under COVID-19 and mitigate economic impacts. Secretary Yellen referenced the \$32.1 billion in emergency funding provided to Indian Country under the American Rescue Plan Treasury. Treasury will work to get the funding out as quickly as possible and in ways that enable the greatest impact. After the immediate crisis is over, Treasury will focus on long-term economic issues affecting Indian Country. She recognized the role that TTAC plays in addressing tax policy issues that affect Indian Country, such as the General Welfare Exclusion Act of 2014, and expressed her desire to work with the TTAC to make sure that tax policy doesn't get in the way of economic development in Indian Country.

Chairperson Horn expressed her thanks to Secretary Yellen, emphasizing the Secretary's awareness of Indian Country and the problems they face. Other TTAC members provided comments to the Secretary, including congratulations on her appointment, working with Treasury on broader issues outside of tax policy, promoting equal standing with other governments on taxation, and opportunities to work with Treasury to create economic development for Tribal members and communities.

Treasury and IRS introduced staff participating in the meeting.

Chairperson Horn yielded the meeting to DFO Vallabhaneni. The meeting minutes from the December 9, 2020 meeting were approved. The minutes will be posted on the Treasury TTAC website.

TTAC members provided updates. Chairman Allen noted that the GWE Subcommittee will release its draft report on regulatory guidance for the implementation of the GWE. He also discussed the structure of the subcommittee work and steps taken since the adoption of the work plan in March 2020. Twenty-seven written comments were received as a result of tribal

outreach conducted by the subcommittee. A virtual public forum was held August 26, 2020 and attended by approximately 70 individuals. Subsequently, a report was drafted of proposed regulations. NAFOA will host a public forum session on the proposal on April 22. Comments on the proposal are due on April 23. The Subcommittee will review the comments and issue a final report to the TTAC by the June 16, 2021 TTAC Public Meeting. The report will be available for review by the public. The Subcommittee is also recommending transitional relief under GWE for COVID relief funds (pending final guidance and formal rulemaking.). Specifically, the committee recommends that Treasury adopt a “Safe harbor” treatment for disaster relief, prospective enforcement and good faith compliance. This approach is consistent with other guidance IRS has taken under Section 139 E.

Rebecca Benally noted that the Dual Taxation report had been released to Treasury and Bureau of Indian Affairs. She thanked her co-chair, Chief Lynn Malerba and other members of the subcommittee report. The report contains eleven recommendations and can be found on the TTAC website for review by the public. Tribes are encouraged to provide feedback on the report and recommendations by June 28, 2021.

Sharon Edenfield noted that the pandemic has exacerbated conditions in Indian Country and advocated for exclusion from taxation under the GWE disaster relief provision. Eugene Magnuson noted that the Tribal Pension Subcommittee workplan was accepted in December 2020 and thanked the members of the subcommittee for their contributions in producing the work plan.

Chief Malerba noted that all agencies throughout federal government needed to view Tribal governments as equal partners in addressing the pandemic and to work together to provide easier access to services for Indian Country. She emphasized that all funding should be treated as trust and treaty obligations and not grants.

Chairperson Horn acknowledged the IRS Advisory Committee’s recommendations for Indian Country in their 2020 report. The first is to establish a compliance assurance process with IRS that would address taxation questions and interpretations. The second recommendation is for a dedicated Tribal official to serve at Treasury for tribal matters. She noted that the Dual Taxation report recommended a Deputy Assistant Secretary for Indian Country and Alaska Native Development. She also mentioned the Treasury and IRS’ more favorable working relationship with Indian Country moving forward, including helping to facilitate collaboration with the Social Security Administration to address outstanding issues regarding eligibility for benefits and GWE assistance.

The agenda then moved into subcommittee updates.

Chairman Allen reviewed the report given earlier on the GWE and thanked his co-chair Sharon Edenfield and the members of the Subcommittee for their work. He also noted that the work is divided in two sections: core GWE principles for consideration and recommendations for the implementation of the GWE and training of IRS field agents. Co-chair Edenfield encouraged Tribes to read the draft report and submit comments to the subcommittee. Chairman Horn noted that the most prominent comment from Tribes is that the GWE rules reflect the

sovereignty of each member tribe to meet the needs of their members as they see fit. Chairman Allen also emphasized that COVID-19 relief funds should not negatively impact eligibility for federal benefits, such as SSDI, housing assistance and other General Welfare Assistance programs.

Chief Malerba noted that the Dual Taxation report is ready for public release and that Tribal consultation will be held in April 2021 as part of NAFOA's annual conference. This will begin the comments period for Tribes to provide comments. There will be at least two consultations on the Dual Taxation report and recommendations. Chief Malerba emphasized that part of the ongoing process will be to examine the adoption of the recommendations and whether the recommendations are resolving dual taxation issues or having unintended consequences for Indian Country. Co-chair Benally mentioned that addressing dual taxation issues is a process, but that there is a plan in place that includes both administrative and legislative fixes. The goal is for Tribal governments become the only taxing authority for all business and economic activity occurring on their reservations. DFO Vallabhaneni thanked the Subcommittee for their work on Dual Taxation and confirmed that Treasury stands ready to work with Indian Country on dual taxation.

Co-chair Magnuson reviewed the mission of the Tribal Pension subcommittee and mentioned the adoption of its workplan at the December 9, 2020 TTAC Public Meeting. The subcommittee developed the Native Pension Survey under the guidance of Dr. Eric Trevan. The survey seeks to understand how Tribal governments and Tribal entities use Tribal retirement benefits to improve tribal general welfare and build sustainable workforces. Specifically, how the bifurcated compliance requirements impact Tribes' ability to provide pension benefits. The survey and analysis will be conducted under the direction of Dr. Eric Trevan and California State University San Marcos. A report and recommendations for the TTAC are expected to be presented to the TTAC by the June 16, 2020 TTAC Public Meeting. Co-chair Magnuson described the stringent measures taken to protect tribal privacy and ensure anonymity of data. He also discussed the topic areas included in the survey, which can be found in the workplan.

Chairman Horn called on Sharon Edenfield to summarize a public comment letter received by the TTAC.

Tina Abrams, Councilor, Seneca Nation, addressed the TTAC with three issues. 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 SSDI, HUD 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 SSA 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 noted that a public comments letter was

sent to the TTAC. The Tribe objects to the change posited in the upcoming Tribal consultation on the Coronavirus Relief Funds (CRF). The Tribe feels that it is improper to consult with all of Indian Country and Alaska Native Corporations when pending litigation regarding CRF concerns three specific Tribes. Chief Barnes expressed concern that the upcoming Tribal consultation does not meet the intent of President Biden's recent Memorandum on Tribal Consultation. He also provided specific resolutions to resolve the inequities in the CRF distributions. He urged the members of the TTAC to convey an opinion to provide relief to his Tribe.

Chairperson Horn thanked Councilor Abrams and Chief Barnes for their comments and noted that the issue of GWE benefits disqualifying tribal members from benefits has been raised in prior meetings. She also mentioned that this issue is being reviewed by the GWE Subcommittee for action. She encouraged Councilor Abrams to reach out to the co-chairs of the subcommittees for more information on their work. Chairman Allen mentioned that Councilor Abrams can find information on the meetings through either NAFOA or NCAI and made himself and co-chair Edenfield available for discussion on the subcommittee work. Chief Malerba discussed the importance of consultation in the Dual Taxation subcommittee work and acknowledged Chief Barnes leadership on the allocation formula for CRF.

DFO Vallabhaneni noted Secretary Yellen's remarks on improving economic development in Indian Country and encouraged participants to send their tax policy concerns with Treasury to the TTAC@treasury.gov mailbox. He recognized the impact of GWE benefits on federal benefits. He also noted that the Secretary's appointments for the TTAC expire in June. A call for nominations for these appointments will go out shortly. Last, he noted that Treasury will be participating in Tribal consultation on Dual Taxation.

Nancy Montoya discussed upcoming consultations on the CRF allocation, the American Rescue Plan State and Local Fiscal Recovery Funds for Tribes, joint Tribal consultation on Tribal Consultation Policies with SSA, SBA and VA and BIA's Tribal consultation on the use of self-certified Tribal enrollment. Chairman Allen and Eugene Magnuson asked questions regarding the purpose of the American Rescue Plan's State and Local Fiscal Recovery Fund consultation. Ms. Montoya clarified that consultation was an opportunity for Tribes to provide feedback to Treasury on any perceived challenges with using the funds that could help inform guidance. Chairman Allen mentioned that the TTAC needed to be in sync with the White House Intergovernmental Affairs. Ms. Montoya confirmed that Treasury was in close contact with White House Office of Intergovernmental Affairs regarding tribal matters.

Telly Meier, Program Manager for the IRS' Indian Tribal Governments Division, discussed the release of a new 1099 NEC (non-employee compensation) and conducted six trainings in January for attracting over 5,000 attendees, including some from tribal governments. Mr. Meier also mentioned the release of a new publication, the "Income Tax Guide for Native American Sole Proprietors". He thanked IRS General Council and IRS Advisory Committee Member Jean Swift for their help. IRS held a session in February during tax season to introduce the publication. ITG is hosting two weeks of protocol training for IRS employees on working with Indian Country. Sam Cohen, the new IRS Advisory Committee member, is attending to provide feedback to the IRS on improving training. Mr. Meier mentioned that the IRS has eight

new employees working with Tribes and to reach out if the contacts were unfamiliar to confirm that they are IRS agents. Mr. Meier also stated that employment tax training would launch online later in the year. Mr. Meier also discussed how Treasury and IRS are working to address denial of benefits from SSA, USDA and the Department of Education due to GWE payments being counted as income. He encouraged tribal representatives to contact him if they knew of instances where this was happening. Sharon Edenfield requested that VA be added to the list of agencies that were denying benefits.

Janine Cook, Office of Chief Counsel for the IRS, provided an update on the tax status of tribally-chartered corporations. She reviewed the two tribal consultations and one listening session held in 2019. The onset of COVID-19 and the associated work on the legislation delayed work on the project. She said that the project remains on the Treasury Priority Guidance plan and that Treasury and IRS hope to resume work on the project shortly. Chairman Allen asked what the next steps are coming from the IRS on this issue. Ms. Cook stated that she could not provide a preview of guidance but assured Chairman Allen that all comments provided during consultation are appreciated and would be considered as they draft guidance and would work closely with DFO Vallabhaneni. DFO Vallabhaneni added that he had given thought to best practice that could apply to this issue. He also discussed the steps that are taken to develop guidance, including issuing proposed guidance that could then go to tribal consultation and public comment. Chairman Allen emphasized that many Tribes use tribally owned businesses to support their self-reliance and determination and that there is great interest from Indian Country in tax policy on this issue. He encouraged Treasury to consult with Tribes before proposed guidance is published to better understand tax policy interpretation and provide feedback.

Chairman Horn announced the resignation of TTAC member Patricia King on March 15, 2021 due to personal family circumstances. The Chair has notified Treasury of her resignation. Treasury has notified the Chair of the House Ways and Means Committee of her resignation and the vacancy on the Committee to begin the process of appointing a new member. Chairman Horn and other members of the TTAC recognized the critical role she played in launching the TTAC and in serving as the co-chair of the Tribal Pensions Committee and thanked her for her service.

Chairman Horn reminded the participants to visit the Treasury's website for TTAC information. The next Public Meetings are Wednesday, June 16 and Wednesday, December 15, 2021. The June meeting will be via teleconference.

Vice-Chair Eugene Magnuson provided the tribal closing.

DFO Vallabhaneni thanked everyone for attending and closed the meeting at 3:25 p.m.