

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

December 3, 2019
9:00 a.m. to 1:00 p.m.

The Treasury Tribal Advisory Committee (TTAC) conducted a public meeting on December 3, 2019, in the Cash Room at the U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, D.C.

In accordance with the provisions of Public Law 92-463, the meeting was open to the public from 9:00 a.m. to 1:00 p.m.

The following TTAC members were present:

TTAC

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

Absent

Patricia “Trish” King could not be available because of inclement weather.

The following Treasury representatives were present:

Office of Tax Policy

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

CDFI Fund

Rosa Martinez, New Markets Tax Credits

Internal Revenue Service

Tammy Ripperda, Commissioner, Tax Exempt and Government Entities
Margaret Von Lienen, Director, Exempt Organizations and Government Entities
Angela Gartland, Acting Director, IRS/Government Entities
Christie Jacobs, Indian Tribal Governments Office
Telly Meier, Manager, Indian Tribal Governments Office
Victoria Judson, Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes (EEE)), IRS/Office of Chief Counsel
Janine Cook, Deputy Associate Chief Counsel (Exempt Organizations and Employment Taxes), IRS/Office of Chief Counsel (EEE)

Lisa Mojiri-Azad, Assistant to the Branch Chief IRS/Office of Associate Chief Counsel (Income Tax and Accounting)

Angella Warren, Branch Chief, IRS/Office of Associate Chief Counsel (Income Tax and Accounting)

Dave Rifkin, Senior Attorney, IRS/Office of Chief Counsel (EEE)

Andrew Megosh, Senior Tax Law Specialist, IRS/Office of Chief Counsel

CALL TO ORDER

DFO Vallabhaneni called the meeting to order at 9:16 a.m. and turned it over to Chairperson Lacey Horn.

TTAC Member Rebecca Benally provided a tribal opening.

ROLL CALL

All TTAC members were present with the exception of Trish King, who was unable to join the meeting due to travel conditions.

Chairwoman Horn recognized IRS Commissioner for Tax Exempt and Government Entities, Tammy Ripperda and thanked her for her staff's participation in the Preparatory and Public Meeting. She invited Commissioner Ripperda to address the TTAC.

Commissioner Ripperda discussed the recent reorganization of the Tax Exempt and Government Entities Division and expressed her desire that the reorganization will lead to a more responsive approach to tribal tax issues.

DFO Vallabhaneni made a motion to approve the September 18, 2019 TTAC Public Meeting Minutes. Chairwoman Lacey Horn seconded. Motion passed unanimously.

The TTAC discussed the requirements for the TTAC's Committee Member Technical Advisors under Section 6.6 of the by-laws. Each Committee Member requesting a Technical Advisor submitted required information to the Chairperson.

Chairman W. Ron Allen motioned to nominate Fatima Abbas, Director of Policy and Legislative Counsel, NCAI as his advisor.

Rebecca Benally motioned to nominate Derrick Watchman, President/Owner, Sagebrush Hill Group LLC as her advisor.

Councilwoman Sharon Edenfield motioned to nominate William "Randy" Wilson, Controller Confederated Tribes of Siletz Indians as her advisor.

TTAC Chairwoman Lacey Horn motioned to nominate Robert Yoder, Yoder & Langford, P.C. as her advisor.

TTAC Vice-Chairman Eugene Magnuson motioned to nominate Dr. Eric Trevan, Faculty Evergreen State College as his advisor.

Chief Lynn Malerba motioned to nominate Elizabeth “Liz” Malerba, Legislative and Policy Director, United Southern and Eastern Tribes Sovereignty Protection Fund (USET)

Motions to nominate advisors for TTAC members passed unanimously without any second.¹ The TTAC then received public comments from the meeting participants.

Robert Jones, representing the Seneca tribe, addressed the TTAC regarding taxation matters specific to the Seneca tribe. The tribe provided written comments on the topic.

Samuel Cohen, representing the Santa Ynez Band of Chumash Indians, addressed the TTAC regarding several recommendations specific to the GWE. The tribe provided written comments on the topic. Also was suggested to relax the two week deadline for public comments since TTAC agendas are not available then and the point of offering comments are to discuss items not on the agenda. Liberalization is needed.

Vice Chair Eugene Magnuson discussed a Public Comment letter regarding employment tax 941 examinations received from the Redding Rancheria tribe addressed to the TTAC.

Arlen Menendez and Henry Cagey, representing NCAI’s Task Force on Tribal taxation, discussed the seven resolutions on taxation issues passed at the 2019 Annual Conference. In response, Chairman Allen pointed out that it is important for tribes to understand what Treasury and the IRS can, and cannot do, regarding tax policy. The TTAC and other organizations working on tribal tax policy need to identify what is within their statutory ability to change

Sean Crane, representing the Seneca nation, discussed the impact of tribal taxation on public goods and services and economic development in tribal nations. He gave examples such as the lack of availability of clean water on some tribal lands and how economic development was meant to fund public goods not funded by the federal government. He encouraged Treasury and IRS to keep open minds as they approached their work.

Chief Malerba encouraged tribes to engage in tribal consultation with Treasury as another distinct avenue of providing information to the federal government.

Dante Desidero, Executive Director of the Native American Financial Officers’ Association, commended the TTAC on the hard work done to provide structure to the TTAC’s charge of advising the Secretary on tax policy issues. He discussed NAFOA’s work with the Federal Reserve Board to include specific CRA credits for bank participation and capital investment in Indian Country. He also discussed NAFOA’s work with the Congressional House Ways and Means Committee to include specific allocations for New Markets Tax Credits as they seek to reauthorize the program.

Discussion ensued about whether the TTAC should be forwarding recommendations to the Secretary of the Treasury on these topics.

¹ In accordance with bylaws, no second was required.

Chief Malerba made a motion that the TTAC have ad hoc telephonic meetings to discuss tax matters with a deadline and whether the TTAC should provide letters of support to the Secretary. Chairman W. Ron Allen seconded the motion, and the motion passed.

Jackson Brossy, Executive Director of the Native CDFI Network, discussed the importance of CDFIs in providing capital and banking services to Indian Country. He commended the TTAC on their work today and encouraged their continued focus on removing barriers to economic development in Indian Country.

Derrick Watchman, representing the National Center for American Indian Enterprise, discussed the difficulty of attracting investors to Indian Country that contribute to economic development under state and local taxation. He mentioned layers of taxation in Indian Country to state and county jurisdiction is insurmountable.

Lenore Scheffler, representing the Lower Sioux Indian Community in Minnesota, discussed interpreting the General Welfare Exclusion's definition of "lavish and extravagant" through a tribal perspective when reviewing payments to tribal members. She stated that the phrase "lavish and extravagant" is the antithesis of tribal culture. Ms. Schffler also thanked the IRS for improvements in service.

Chief Malerba responded by emphasizing that tribes do not means-test before providing benefits to tribal members. She noted that each tribal nation needs to determine for themselves what constitutes "lavish and extravagant."

Robert Porter, representing the Calista Corporation, with over 31,000 shareholders stated that they will be submitting public comments regarding tribal consultation and the TTAC. Specifically, he called upon Treasury to amend their Tribal Consultation Policy to include Alaska-Native Corporations incorporated under state law in the policy and to consult with them on the same basis as federally-recognized tribes.

Mark Van Norman, representing the Great Plains Tribal Chairman's Association discussed the long history of U.S. and Indian national treaties that recognize the tribal right to self-govern. He mentioned treaties preserve original right to self-government and are deeply imbedded in American history from the Northwest Ordinance onward. His point was self-government should be a bar to dual taxation. He looks forward to an expansive future for the TTAC.

Chairman Allen reminded the participants about the importance of re-telling history and reinforcing lessons learned.

The Public Comments session was concluded.

Chief Malerba discussed the progress of the TTAC's work during 2019. She noted the first Public Meeting of the TTAC was held in June, with two other Public Meetings completed by year end. The TTAC elected a Chair and Vice-Chair, drafted and approved bylaws with the help of NAFOA and NCAI, and made recommendations for charter considerations to ensure that the TTAC's government-to-government relationship is preserved. The TTAC established three Subcommittees (GWE, Dual Taxation and Tribal Pensions) and noted other policy issues such as

the Kiddie Tax, tax status of tribally-chartered corporations, tax extenders, etc.) The TTAC will be focusing on the implementation of the Tribal General Welfare Exclusion Act, including the definition of “lavish or extravagant” and the training of IRS and tribal professionals on the GWE. The TTAC and IRS will need to work together to establish training rules before establishing curriculum and outreach. She explained how the TTAC provided an additional avenue for communication to Treasury but does not replace the role of Tribal Consultations in providing feedback to Treasury on tribal tax policy issues. NAFOA was selected as a main technical advisory coordinating organization and will be developing a Priority Policy and Issues Matrix.

Chairwoman Horn discussed the Subcommittee Operating Procedures. Chairman Allen motioned to approve the Subcommittee Operating Procedures for the GWE Subcommittee. Councilwoman Sharon Edenfield seconded and the motion passed.

Rebecca Benally motioned to approve the Subcommittee Operating Procedures for the Dual Taxation Subcommittee. Chief Malerba seconded and the motion passed.

Vice-Chair Eugene Magnuson motioned to approve subcommittee operating procedures for the Tribal Pensions subcommittee. Councilwoman Sharon Edenfield seconded and the motion passed.

Chairwoman Horn announced the co-chairs of the Subcommittees. Chairman Ron Allen and Sharon Edenfield lead the General Welfare Exclusion subcommittee, Chief Lynn Malerba and Rebecca Benally lead the Dual Taxation subcommittee and Vice-Chairman Eugene Magnuson and Trish King lead the Tribal Pensions subcommittee.

Chairwoman Horn discussed the composition of the Subcommittees. Subcommittees may have up to seven members, including the co-chairs. The Subcommittees will report to a quorum of the TTAC. She stated that the Subcommittees were currently recruiting for volunteers and that a form will be distributed through NAFOA to collect nominations.

Chairman Allen made a motion to select three individuals for the GWE Subcommittee: Wendy Pearson, Hobbs Straus Dean & Walker, LLP; Sam Cohen, Government Affairs and Legal Officer, Santa Ynez Band of Chumash Indians and Robert Yoder, Attorney, Yoder & Langford, P.C. Sharon Edenfield seconded and motion passed.

Rebecca Benally motioned to select five individuals as members of the Subcommittee on Dual Taxation: Derrick Watchman, President/Owner, Sagebrush Hill Group LLC; Michael Connolly, President, Laguna Resource Services, Inc.; Henry Cagey, Councilman, Lummi Nation; and Michael Willis, Partner, Hobbs Straus Dean & Walker, LLP. Chief Lynn Malerba seconded and motion passed.

Vice-Chairman Eugene Magnuson motioned to select two individuals as members of the Subcommittee on Tribal Pensions: Cassie Langford, Attorney, Yoder & Langford, P.C. and Randy Wilson, Controller, Confederated Tribes of Siletz Indians. Sharon Edenfield seconded and motion passed.

The TTAC then reviewed the operating procedures for the subcommittees. Chairman W. Ron Allen motioned to approve the procedures and Councilwoman Sharon Edenfield seconded. Motion passed unanimously.

Rebecca Benally made a motion to approve the TTAC Committee bylaws. Chief Lynn Malerba seconded. Motion passed unanimously.

NAFOA is developing a matrix of issues that could be addressed by the TTAC. Currently the focus is on the top three issues (GWE, Dual Taxation and Tribal Pensions) but others have been identified. They include but are not limited to:

- Indian Coal Production Tax Credit
- Kiddie Tax
- Tax Exempt Debt
- Accredited Investor
- Securities Registration
- Bankruptcy and Restructuring
- Community Reinvestment Act
- New Markets Tax Credit
- Low Income Housing Tax Credit
- Opportunity Zones
- Access to Capital
- Accelerated Depreciation

Chief Malerba and Chief Allen emphasized that the goals for 2020 focus on what the TTAC felt was achievable, but the TTAC intends to be flexible enough to take on urgent issues or issues that require immediate action. As an example, Sharon Edenfield cited the Kiddie Tax as an issue that was first raised at the June TTAC public meeting and one that the TTAC will continue to monitor.

The TTAC's 2020 goals include:

- Continuing to meet with representatives of Indian Country and in Indian Country, where feasible.
- Meet with the Secretary in person to provide recommendations
- Initiate training of IRS field agents
- Encourage Treasury and IRS to continue participating in NAFOA's conferences

Christie Jacobs mentioned that IRS provides information and updates on many of these issues and encouraged interested parties to subscribe to the IRS' Indian Tribal Governments News. A subscription link can be found on the [IRS Indian Tribal Governments website](#). Treasury's [Tribal Affairs website](#) was also mentioned as a source of information regarding Tribal Consultations and information on TTAC, including upcoming consultations, meetings and meeting minutes. Public Comments for TTAC can be sent to TTAC@treasury.gov and those relating to tribal matters outside of TTAC or related to consultation issues can be sent to Tribal.consult@treasury.gov.

Christie Jacobs was recognized for providing outstanding service to Indian Country for over 20 years.

Sharon Edenfield reiterated the need to work with other federal agencies on tribal benefit issues and enlisted Treasury's help in this effort.

The Public Meeting dates for 2020 were announced:

March 25, 2020²
September 16, 2020
December 9, 2020

Chief Malerba provided a tribal closing and the meeting was adjourned at 12:43 PM.

² Public Meeting date was subsequently changed to March 31, 2020 to accommodate a TTAC member's scheduling conflict.