

U.S. DEPARTMENT OF THE TREASURY
TREASURY TRIBAL ADVISORY COMMITTEE
PUBLIC MEETING MINUTES –
September 18, 2019
9:00 a.m. to 4:30 p.m.

The Treasury Tribal Advisory Committee (TTAC) conducted a public meeting on September 18, 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 4:30 p.m.

The following TTAC members were present:

TTAC

Chairman W. Ron Allen
Rebecca Benally
Sharon Edenfield
Lacey Horn, Chair
Patricia “Trish” King
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, Attorney-Advisor, Office of Tax Legislative Counsel

CDFI Fund

Clint Hastings, Senior Portfolio Manager
Rosa Martinez, New Markets Tax Credits

Internal Revenue Service

Christie Jacobs, Director, Indian Tribal Governments Office
Telly Meier, 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)
Pamela Kinard, Special Counsel to the ACC, 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)

CALL TO ORDER

DFO Vallabhaneni called the meeting to order at 9:14 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 Chairman W. Ron Allen, who joined the meeting at 10:42 a.m.

Rebecca Benally made a motion to approve the June 20, 2019, TTAC Public Meeting Minutes. Chief Lynn Malerba seconded. Motion passed unanimously.

Vice-Chair Magnuson made a motion recommending that the TTAC Charter be amended to reflect a membership start date of June 20, 2019. 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.

Rebecca Benally thanked NAFOA and NCAI for their work in supporting the TTAC

TTAC member Sharon Edenfield summarized written public comments submitted by the National Congress of American Indians, Kickapoo Traditional Tribe of Texas, Lummi Nation, Oglala Sioux Tribe, Santa Ynez Band of Chumash Indians and the Prairie Band of Potawatomi Nation. Public comments will be available on the Treasury Tribal Policy website.

Chairperson Horn invited members of the audience to make public comments.

Samuel Cohen, Government Affairs and Legal Officer, Santa Ynez Band of Chumash Indians, thanked Treasury and IRS for their recent guidance regarding the refinancing of Tribal Economic Development Bonds. He then discussed issues related to the General Welfare Exclusion and requested additional guidance on consideration for medical benefits.

Lydia Bearkiller, Office of Special Trustee Representative, Oglala Sioux Tribe, expressed concerns about the reorganizing of the IRS, including the Indian Tribal Governments office and downsizing of regional offices. A lack of regional offices to provide support to remote tribes puts a burden on these tribes. Often they need to travel great distances or need to secure expensive legal assistance to continue business operations.

Jackson S. Brossy, Executive Director, Native CDFI Network discussed the importance of the Native American CDFI Program, recommendations for examining the need for the program in Indian Country and increasing resources to the Program. He also discussed barriers to tribal participation in Opportunity Zones and New Markets Tax Credits and the negative impact of dual taxation on economic development in Indian Country.

Clint Hastings, Senior Portfolio Manager CDFI Fund, thanked Jackson S. Brossy for his comments and made recommendations to attend the CDFI Advisory Committee meetings and getting in contact with Shane Jets from the CDFI Advisory Committee who oversees lending and community development in Indian Country.

The Chair thanked the presenters for their comments and participation.

Vice-Chair Magnuson mentioned that the recently adopted bylaws require that public comments be received 15 calendar days in advance of a public meeting. This will provide adequate time to forward comments to TTAC members for consideration.

The TTAC discussed the need to develop a Priority Matrix that will define issues related to tax, propose solutions and identify action items for the TTAC to pursue.

The TTAC suggested that NAFOA would be the best choice to work with the TTAC in developing this, as they have the ability to secure feedback from tribes. Chief Lynn Malerba made a motion to request that NAFOA develop a Priority Matrix with tribal input. Vice-Chairperson Eugene Magnuson seconded, motion passed unanimously.

The TTAC then led a discussion on the General Welfare Exclusion. This is the primary statutory mandate for the creation of the TTAC. Particular emphasis was spent on the lack of definition of the terms “lavish and extravagant” as they relate to tribal benefits and income taxation. Defining these terms as they relate to benefits and taxable income will require in-depth exploration of the role that tribal culture plays in providing benefits. There was also discussion on the current moratorium on auditing tribal benefits and whether reinstating audits would trigger a retroactive audit. IRS staff reiterated that usually audits are forward-looking. IRS staff discussed the process for removing the moratorium, which would involve issuing guidance, developing IRS field agent and tribal financial officers’ training, and then implementing that training. The TTAC and Treasury reiterated that they will be working together to provide relevant guidance and training as part of their mandate. The DFO stated that the law requires that Treasury consult with tribes regarding the definition of “lavish and extravagant”. Chairperson Horn expressed support for a “safe harbor” provision for GWE benefits.

Chairperson Horn discussed the work of the three subcommittees and the need for external experts to provide expertise on the priority issues. Chief Lynn Malerba made a motion for NAFOA to conduct a call for experts. Sharon Edenfield seconded. Motion passed unanimously.

Chief Lynn Malerba discussed the need for as many TTAC members as possible to participate in the GWE subcommittee. It was noted that the DFO will need to participate in any subcommittee meetings that involve four or more TTAC members. It was noted that Treasury’s expertise will be required in depth on GWE issues. Chief Malerba emphasized that, “It’s not about the source of funds, such as gaming or other enterprises, but more on the use of funds that create a stable community. We are in a process of nation-rebuilding.”

Sharon Edenfield, reiterated Chief Lynn Malerba's comments. She noted tribal nations are all different and the cultural significance for each tribe is different and unique and will need to be highlighted in further discussion and solutions.

Vice Chairperson Eugene Magnuson made a note that individual audits are continuing and GWE payments and other items are being scrutinized despite not being income and nontaxable. Vice-Chairperson Eugene recommended a reminder to IRS field agents concerning the moratorium on audits and the unique nature of GWE payments.

Sharon Edenfield posed a technical question, concerning the moratorium of audits and whether the audits will be retroactive following guidance.

Treasury officials provided clarity. In general, when Treasury issues guidance under a statutory provision through regulation process and most generally regulations and other guidance are prospective and there are exceptions depending on the issue, but something we will keep into consideration.

Sharon Edenfield pursued the question on the moratorium and retroactive audits.

Christie Jacobs mentioned this will be an issue to be worked out. This issue has been outstanding since 2014 and guidance has yet to be issued. Tribal officials and governments are trying to stay in compliance during this period/. She addressed a question from Vice-Chairperson Magnuson on individual audits, whereby individuals are audited because the 1099 statement submitted by the tax payer does not match the 1099 received by the IRS for tribal benefits. Letters are sent to the taxpayer requesting that they contact the IRS. . She mentioned that this outcome could be the result of a mismatch between automated records. The IRS Tribal Governments Office would encourage the tax payer to reach out to the Tribal Government office for clarification.

Chairman W. Ron Allen Joined the Meeting at 10:42 A.M. He provided comments on GWE and items to be clarified.

Rebecca Benally made comments regarding cultural and ceremonial issues under GWE.

Patricia King made comments on the use of revenue used by the nations, i.e. gaming and other enterprise dollars, which fund the services and governance. In our nation is it almost one hundred percent of gaming dollars going to those items. We pay regulatory fees which are not taxes on gaming operations. There needs to be another conversation on these items.

Chairman W. Ron Allen, mentioned planning on the training of IRS field agents and Native American finance officers. He mentioned identifying and collecting information from tribal leaders that are unique to each region and tribe in Indian Country.

Telly Meier, IRS, agreed, but reiterated that guidance needs to be issued first until considerations for training are considered.

Krishna Vallabhaneni made comments on the issuance of guidance and that this will be a consultative process. DFO Vallabhaneni went further to quote the TGWEA, “Ambiguities in section 139E of such Code [Internal Revenue Code of 1986], as added by this Act, shall be resolved in favor of Indian tribal governments and deference shall be given to Indian tribal governments for the programs administered and authorized by the tribe to benefit the general welfare of the tribal community.”

Sharon Edenfield concurred and thanked Krishna Vallabhaneni for this reference.

Chairperson Horn affirmed the discussion and agreed with the substance of the GWE conversation.

The next order of business was to identify experts to serve on a volunteer basis on TTAC subcommittees. A process will be identified after the second meeting and before the third meeting. The motion to put out a call for experts was motioned by Chief Lynn Malerba and seconded by Chairman W. Ron Allen. The motion carried unanimously.

Chief Lynn Malerba recommended and requested that each of the TTAC members be allowed to participate in conversations with the GWE subcommittee since it is integral to the mandate of the Committee.

Chairman W. Ron Allen provided support for Chief Lynn Malerba’s comments. He recommended and requested regular updates from the subcommittees.

Patricia King motioned to request that Chairman W. Ron Allen draft a purpose statement for the GWE subcommittee to help guide their work. The TTAC will review and finalize the statement. Sharon Edenfield seconded. Motion carried unanimously.

Chief Lynn Malerba led a discussion on Dual Taxation. She reiterated that the issue of dual taxation hinders economic development in Indian Country, and tribes need to have the ability to tax businesses in order to provide for tribal services. The negative externality of dual taxation in a reservation setting is compounded by the fact the non-tribal taxing municipality uses the taxes received from reservation businesses to provide services to non-tribal citizens. In effect, the tribal citizens do not receive any benefit from that taxation since tribal services are provided and financed by the tribe through their own coffers. Rebecca Benally noted that dual taxation makes investment on tribal lands unattractive to potential investors.

Vice-Chairperson Eugene Magnuson led a discussion on the dual Tribal Pension system and noted that this requires extra expense, additional compliance and results in a loss of economic investment advantages because this system leads to a lack of economies of scale for pension investments.

Patricia King made a motion to assign Chairman W. Ron Allen and Sharon Edenfield to lead the GWE subcommittee. Sharon Edenfield seconded and motion passed unanimously.

Sharon Edenfield made a motion to assign Chief Lynn Malerba and Rebecca Benally to lead the Dual Taxation subcommittee. Chairman W. Ron Allen seconded and motion carried unanimously.

Chairman W. Ron Allen made a motion for NAFOA to manage subcommittee scheduling, work plans and deliverables. Vice-Chairperson Eugene Magnuson seconded motion. Motion carried unanimously.

The TTAC emphasized the need for Treasury to provide resources to support subcommittees. IRS stated that they will be working with Treasury to provide support for subcommittee work. Vicki Judson will provide support regarding tribal pensions. Other Treasury Bureaus and Offices expressed their support for the TTAC's work.

IRS/Office of Chief Counsel staff Vicki Judson and Pamela Kinard introduced themselves to the TTAC and provided background on Tribal Pensions.

TTAC members discussed the overlap between tax policy issues and other federal agency policy issues. It was suggested that Treasury meet with other federal agencies (DOL, DOI/OST) as necessary to inform TTAC priorities.

Taxation on per capita distributions was discussed. IRS mentioned recent guidance on this issue, which will be forwarded to the TTAC.

Vice-Chairperson Eugene Magnuson called for a recess.

Break for Lunch 11:15 a.m., reconvened at 12:00 p.m.

Chairperson Horn opened the floor for Public Comments. Phillip Elli, Treasurer, Absentee Shawnee Tribe of Indians of Oklahoma, thanked the TTAC for their work on behalf of the tribes of Oklahoma.

Chairperson Horn mentioned the upcoming tribal consultations on tribally-chartered corporations on October 8, 2019, and October 10, 2019, and on Opportunity Zones on October 21, 2019.

CLOSING BUSINESS

Future Meeting Dates

The TTAC has the following future dates, subject to change:

- December 3, 2019
- March 24, 25, 26, 2020
- September 14, 15, 16 – 2020

Meeting adjourned at 12:14 p.m.