

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

December 9, 2020
1:00 p.m. to 4:00 p.m.

The Treasury Tribal Advisory Committee (TTAC) conducted a public meeting on December 9, 2020. 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
Chief Lynn Malerba
Eugene Magnuson

Patricia “Trish” King and Rebecca Benally were absent due to family emergencies.

The following Treasury representatives were present:

Office of Tax Policy

Krishna Vallabhaneni, Tax Legislative Counsel and TTAC Designated Federal Officer (DFO)

Internal Revenue Service

Margaret Von Lienen, Director, Exempt Organizations and Government Entities
Angela Gartland, Acting Director, IRS/Government Entities
Phil Lindenmouth, Acting Deputy Commissioner, TE/GE
Telly Meier, Manager, Indian Tribal Governments Office
Carmen Zucker, Technical Manager, Indian Tribal Governments Office
Janine Cook, Deputy Associate Chief Counsel (Exempt Organizations and Employment Taxes),
IRS, Office of Associate Chief Counsel (EEE)
Rachel Levy, Associate Chief Counsel, IRS, Office of Associate Chief Counsel (EEE)
Dave Rifkin, Attorney, IRS, Office of Associate Chief Counsel (EEE)
Andrew Megosh, Senior Tax Law Specialist, IRS, Office of Associate Chief Counsel (EEE)
Angella Warren, Branch Chief, IRS, Office of Associate Chief Counsel (Income Tax and
Accounting)
Lisa Mojiri-Azad, Assistant to the Branch Chief, IRS, Office of Associate Chief Counsel
(Income Tax and Accounting)
Danchai Mekadenaumporn, Assistant to the Branch Chief, IRS, Office of Associate Chief
Counsel (EEE)

Dominic DiMattia, Attorney, IRS, Office of Associate Chief Counsel (Income Tax and Accounting)

CDFI Fund

Clint Hastings, Associate Program Manager, Native American Initiatives

CALL TO ORDER

DFO Vallabhaneni called the meeting to order at approximately 1:05 p.m., welcomed the participants and turned it over to Chairperson Lacey Horn.

ROLL CALL

All TTAC members were present, with exception of Rebecca Benally and Patricia King, who were absent due to family emergencies.

Treasury, IRS, OCC and CDFI Fund attendees were introduced.

Designated Federal Official (DFO) Krishna Vallabhaneni opened the meeting at 1:02 p.m. and turned the meeting over to Chairperson Lacey Horn. Chairperson Horn thanked participants for joining the call and conducted a roll call. Patricia King and Rebecca Benally were unable to attend due to family emergencies. All other TTAC members were present. Eugene Magnuson, Vice-Chair, provided a tribal opening. DFO Vallabhaneni motioned to approve the minutes from the September 16, 2020 TTAC Public Meeting and Chairperson Horn seconded. The minutes were unanimously approved.

Chairperson Horn then reviewed the TTAC's work in 2020. She noted the impact of COVID-19 on tribal nations and commended the work of those who worked to mitigate the impacts of COVID-19. She noted that three TTAC Public Meetings were held in 2020 and discussed the work of three subcommittees, which involved taking the needs and ideas of Indian Country, creating workplans and considering the impact of recommendations on Indian Country. She highlighted the use of surveys and feedback from Indian Country to produce recommendations. She then requested a moment of silence to honor and recognize efforts to overcome COVID-19 and the people who were lost to the virus. TTAC members Ron Allen and Lynn Malerba noted the strengths of the TTAC in providing guidance on Indian Country matters and encouraged Treasury to take a broader approach to the objectives and roles of the TTAC.s Sharon Edenfield noted that the TTAC had highlighted issues related to General Welfare Exclusion payments and their impact on federal benefits for tribal members.

The meeting then moved to updates from the TTAC members.

Chairman Ron Allen discussed questions he had received from tribal leaders and organizations regarding how funds distributed to tribal members under the General Welfare Exclusion for relief from COVID impacts will affect other sources of relief funding. Chairman Allen also noted interest in the Biden Administration's priorities and whether the mission of the TTAC will change. He also advocated for Congressional change to expand the role of the TTAC beyond its current scope to include matters outside of tax policy.

Sharon Edenfield noted that, while most of her efforts have involved responding to COVID-19 related tribal member support, she continues to engage in subcommittee work.

Eugene Magnuson deferred his updates to the subcommittee reports.

Chief Lynn Malerba discussed that the CARES Act continued to highlight differences in parity for tribal businesses and tribal governments. She encouraged the TTAC to correct these disparities by educating federal agencies and Congress on these disparities and suggest administrative or legislative fixes for these disparities. As an example, she pointed out that many tribal governments and businesses employ more than 500 employees and therefore are not able to access certain resources.

The meeting then moved to updates from the TTAC Subcommittees.

Ron Allen and Sharon Edenfield discussed the work of the General Welfare Exclusion (GWE) Subcommittee. The Subcommittee has two charges: one to implement the substantive provisions of the GWE and the second is to provide guidance on the IRS training of field agents. The Subcommittee established a workplan in May 2020 and updated in July. The Subcommittee provided recommendations and sent these in a solicitation for feedback to tribes on these recommendations. National Congress of American Indians (NCAI) and the Native American Financial Officers' Association held a joint forum on August 26, 2020 to discuss the recommendations. On November 24, 2020 the Subcommittee met to review responses from the solicitation for feedback. Eighteen responses were received, and the Subcommittee decided to extend the time for comments and recommendations to January 29, 2021. The Subcommittee's goal is to allow for discussion on responses in March 2021, conduct a forum on revised recommendations in April 2021 and propose recommendations in June 2021. The GWE Subcommittee's work plan has been revised with the new target dates. It was noted that special precautions were taken to preserve the confidentiality of tribal responses and encouraged tribes to respond to the request for comments.

Chief Lynn Malerba thanked her co-chair, Rebecca Benally, for her contributions to the Subcommittee on Dual Taxation's work. The Subcommittee will be submitting the report to the TTAC for tribal consultation. Chief Malerba quoted from the report, stating that "Until dual taxation, where state and local government tax on-reservation business activity is addressed, Tribal governments will struggle to enhance/diversify their reservation economies, be unable to stabilize the Tribal tax and regulatory environment, and be unable to meet the needs of their citizens that must be served. Tribal governments must have equal standing with all governments within the United States regarding taxing and regulatory authority." She then went on to discuss the legal framework for the current state of dual taxation, the impact of dual taxation on tribal economies and service to tribal members and added responsibility of nation rebuilding. She stated that tribal nations should have the authority to determine their own tax structures. She gave an example of the Campo Kumeyaah Wind Project in California, which was developed on tribal lands and generates significant property and sales tax revenues for the state of California, none of which are shared by the Campo tribal government. She noted promising models, such as the Reno-Sparks Indian Colony in Nevada, which has developed sites that are leased for business

activities with taxes paid by the commercial entities to the tribes. Proposed changes by the state of Nevada would result in taxes that are like surrounding areas, removing incentives for business development on tribal land. She noted that when significant business investments exist in a state, both the tribal and local communities benefit economically and cited several examples, including purchasing, employment, and tax revenue. Chief Malerba then requested that Treasury hold consultation on the eleven recommendations made in the report, which are:

1. Create a position in the Department of Treasury of “Deputy Assistant Secretary for Indian Country and Alaska Native Development in the Office of Economic Policy” for the purpose of managing Treasury-related policy that honors the trust relationship the federal government has to tribes as set forth in the U.S. Constitution, ensuring that pending and new legislation and guidance have beneficial impacts for tribes, for the purpose of conducting ongoing, effective tribal consultations and other such matters as may be necessary.
2. Broaden the Treasury Tribal Advisory Committee to include tribal leadership that is reflective of the diversity of Indian Country and to encompass the broader issues within the realm of the economic policy Tribes engage with Treasury on.
3. The Department of Treasury should ensure tribal participation by ensuring adequate time for public comments during TTAC meetings and by engaging tribal leadership on a consultative basis regarding the recommendations made by the TTAC to ensure tribal economic interests are broadly represented in all policy, regulation and guidance.
4. The Department of Treasury should, in consultation with tribes, commit resources to reviewing all tax regulations and economic policy impacting Tribal nations and develop guidance that recognizes the sovereign authority of tribes to be the sole taxing authority on their lands.
5. The Department of Treasury should, in consultation with tribes conduct an economic impact study for the purpose of quantifying all taxes generated by Indian country economic development to ascertain the impact of eliminating dual taxation barriers.
6. The Department of Interior should continue the Indian Trader Regulations (25.C.F.R §140) comprehensive update with proper government to government consultation in the compilation of the draft and final regulation. These updates should explicitly pre-empt state taxation for commerce on Indian lands; prohibit Indian country business activity from state regulation and taxation and preserve and not interfere in tribal taxation authority over Indian Commerce.(NCAI, 2015).
7. Tribal tax codes, agreements and Tribal tax compacts with states and local governments, free from interest-balancing tests or dual taxation schemes, should serve as the legal basis relationships between tribes and federal, state, and local governments.
8. Intertribal commerce is and should not be subject to State or local government taxation.

9. Any federal legislation governing the ability of States to impose sales taxes on internet and other remote sales should clearly affirm that Tribal Nations have the right to collect these taxes on their tribal lands and that where a Tribal tax applies, the state sales tax does not.
10. Statutory amendments to the HEARTH Act as noted in 25 CFR 162.017 should include the following language:
 - (a) permanent improvements on the leased land, without regard to ownership of those improvements are not subject to any fee, tax, assessment levy or other charge imposed by any State or political subdivision of a State. Improvements shall be subject to taxation only as determined by the Indian tribe with jurisdiction.
 - (b) activities under a lease conducted on the leased premises are not subject to any fee, tax, assessment, levy or other charge (e.g. business use, privilege, public utility, excise, gross revenue taxes) imposed by any State or political subdivision of a State. Activities shall be subjected to taxation only as determined by the Indian tribe with jurisdiction.
 - (c) the leasehold or possessory interest is not subject to any fee, tax, assessment, levy or other charge imposed by any State or political subdivision of a State. Leasehold or possessory interests shall be subject to taxation only as determined by the Indian tribe with jurisdiction.
11. Treasury Department will hold government to government consultations with all tribal nations and incorporate recommendations from consultations into the Department's policy and regulatory guidance.

In response to a question from Chairman Allen, Chief Malerba confirmed that the report would be available on NCAI's and NAFOA's website. She also confirmed that the TTAC welcomes comments on the report and its recommendations from tribal governments, scholars and other key stakeholders and noted that the report is still a work in progress. Chairman Allen suggested that the report might also include legislative action that could clarify the sovereignty of tribal governments in taxation. He made a motion to approve the report from the Dual Taxation Subcommittee and Chairperson Horn suggested this be tabled until the "Recommendations" portion of the agenda.

Eugene Magnuson, co-chair of the Tribal Pension Subcommittee, thanked his co-chair Trish King and acknowledged subcommittee members for their work. Mr. Magnuson noted that the Subcommittee's workplan was approved in September 2020 and reviewed the nine issues affecting tribal pensions that the Subcommittee are considering in their work:

1. Definition of essential governmental function
2. Definition of "Commercial" activities
3. Control group testing (requires employers to treat all related entities as a single employer)
4. Employee sharing, transfers and rehires
5. Domestic relations orders (tribal members may be forced to address divorce issues outside of tribal courts or in more than one system)
6. Combined Assets (tribes currently have divided asset pools for pensions, depriving them of cost savings, different levels of service and less bargaining power)

7. Coordination with CPA audit standards
8. State court enforcement actions (requires that tribes conduct suits in state courts and outside of tribal court systems.
9. Prospective enforcement pending guidance under PPA

Co-chair Magnuson discussed these nine issues in detail, including their impacts on tribal pension activity and sustainability. An independent survey is being developed by Dr. Eric Trevan, a visiting scholar at Cal State San Marco that will help determine tribal priorities for the Subcommittee and should be completed within the next 30-45 days. The survey will be disseminated through national organizations to gather feedback from tribal governments. Protocols are in place to preserve respondent confidentiality and anonymize information. Data will be presented to the Subcommittee in aggregate and no individual data will be presented. Chairperson Horn thanked the Subcommittee for their work, emphasized the confidentiality of the responses and data and encouraged a robust response from tribal governments. The work plan will be available for public review.

The meeting was opened for Public Comments from participants.

Chief Malerba summarized a letter received from Navajo Nation President Jonathan Nez and Vice President Myron Lizer regarding tribal use of CARES Act Coronavirus Relief Funds. The letter discussed the devastation of COVID-19 on tribal communities. The letter notes that, while the funds must be used or obligated by December 30, 2020, the funds were not fully distributed until mid-June. The result is that many needs have yet to be addressed within the short period. The Navajo Nation believes that this deadline is unrealistic to meet tribal needs. The Nation requests that the TTAC and Treasury impress upon Congress the need to extend the deadline for expending the funds. Also, that tribal Coronavirus Relief Fund tribal recipients should have ultimate discretion on how to meet the needs of the tribe.

Chairman Allen affirmed that these challenges are being faced by all tribes and there is a need for flexibility in extending the deadline. He noted that the proposed CARES 2.0 would extend the deadline for using Coronavirus Relief Funds.

Chairperson Horn mentioned that the TTAC was not consulted on the implementation of CARES Act tribal distributions.

DFO Vallabhaneni confirmed that the comments were received and welcomed additional comments and concerns.

The teleconference lines were then opened for verbal public comments.

Henry Cagey, Lummi Nation, expressed that fishermen in his tribe are having difficulty accessing stimulus funding allocated for small businesses, including the Economic Injury Disaster Loans (EIDL) and Paycheck Protection Program (PPP). Some banks are not accepting the financial statements presented and are declining loans under IRC Section 7873 – Treaty Fishing Rights-Related Income. Tribal businesses are tax-exempt, and banks are having difficulty accepting these businesses' tax-exempt status. Mr. Cagey suggested that the IRS issue clarification on the tax-exempt status of these enterprises to the banks. Mr. Cagey also discussed

that tax-exempt employees are not taxed on income but are still paying into a pension plan. There is a need to confirm that regarding tribal pensions, the funds that were personally invested (which are tax-exempt) will also be tax-exempt upon withdrawal.

Leland McGee, Tribal Administrator for Santa Rosa Rancheria, noted that tribes continue to struggle with expending CARES Act funding. He emphasized that any new legislative action should extend the deadline for spending CARES Act funding.

Rob Porter, representing several tribal nations, requested an update on the tax status of tribally chartered businesses. Chairperson Horn noted that Janine Cook, IRS will be providing an update later in the meeting.

Sharon Edenfield reiterated that the deadline for submitting comments to the GWE subcommittee has been extended to January 29, 2021. A virtual forum is being scheduled for April 22, 2021 to review the findings. All responses are confidential. A report is expected in June 2021.

Chief Malerba requested that the Dual Taxation report be accepted by the TTAC. Chairman Allen made a motion to accept the report from the TTAC Subcommittee on Dual Taxation and Eugene Magnuson seconded. Motion passed.

The Tribal Pension Subcommittee will be completing a survey within the next 30-45 days. Tribes are encouraged to submit feedback. The survey will be administered via third-party and the findings aggregated to preserve confidentiality.

Chairperson Horn affirmed that the TTAC is requesting that Treasury conduct tribal consultation on the Dual Taxation report in 2021.

Tina Abrams, Seneca Nation of Indians, commented on the impacts of tribal supports provided to tribal members under GWE and the impact on federal benefits. GWE benefits should not be included as income for calculations on eligibility for SSI or other federal benefits. Ms. Abrams requested a special joint session between SSA and TTAC to discuss how to address this issue before the end of January. The Seneca Nation requests clarification that CRF is not taxable income for purposes of calculating income for purposes of federal benefit eligibility. Ms. Abrams also advocated for using CRF funds to cover home heating costs, which have risen due to stay-at-home protocol. Ms. Abrams also requested that there be more opportunities to solicit information and input from tribal nations on comments received as part of the GWE findings process. She recommended that the TTAC hold a roundtable discussion on their findings with tribal nations.

Ron Allen agreed with concerns raised regarding the inclusiveness of CRF in benefits calculation. He also suggested that a meeting on the GWE findings occur before the March TTAC Public Meeting.

Janine Cook, IRS Deputy Associate Chief Counsel, Exempt Organizations and Employment Taxes, provided an update on the Families First Coronavirus Response Act (FFCRA) paid sick and family leave credits and the Coronavirus Aid, Relief, and Economic Security Act (CARES

Act) Employer Retention Credit. The FFCRA did not directly address the application of the paid leave provisions or the leave credits to tribal governments. The Department of Labor (DOL) retains jurisdiction regarding the paid leave provisions in the FFCRA and IRS cannot provide answers related to DOL rules regarding the requirements to provide paid leave. However, on November 25, 2020 IRS, with the help of Treasury, updated [FAQs](#) to provide additional information on the use of sick and family leave credits, including the availability of the credits for tribal governments. Specifically, FAQ numbers 5, 19(g), 50(a) 51(b) and 51(c) confirm that tribal governments that provide paid sick and medical leave, pursuant to the FFCRA, are eligible to claim the tax credits for qualified leave wages, assuming that they are otherwise qualified employers and other rules apply.

She also provided an update on the Employer Retention Credit. Questions had arisen as to whether and under what conditions tribal governments could claim this credit. A tribal consultation was held on April 14, 2020 to hear from tribal leaders and stakeholders regarding eligibility for the Employer Retention Credit. The government had previously communicated that tribal governments were eligible for the credit if they otherwise met the requirements. However, outstanding questions regarding the application of the requirements for the credit by tribal governments and other tribal entities remained. Subsequently, additional [FAQs](#) on the Employer Retention Credit were posted on IRS.gov that confirmed tribal governments are eligible to use the Employer Retention Credit. Specifically, FAQs 2, 18, 21 and 21(a) answer the outstanding questions related to tribal governments' and certain tribal entities' eligibility for the credit. Tribal questions related to these issues can be sent to tribal.consult@treasury.gov

Ms. Cook affirmed that the tax treatment of tribally-chartered corporations remains on the IRS' list of priority work items for 2021.

Telly Meier, Manager for Indian Tribal Governments, discussed IRS' efforts to update tribes on coronavirus-related issues available through the [IRS' website](#). IRS has been working to engage more fully with Volunteer Income Tax Assistance (VITA) sites, including a [special webpage which provides VITA site resources for Indian Country](#). In early October the IRS released the [Income Tax Guide for Native American Individuals and Sole Proprietors](#). It's anticipated that this resource will be updated in the future and IRS welcomes any suggestions for improving clarity or content. The IRS is streamlining their process for assisting tribes in tax matters. The ITG's Taxpayer Assistance "[how to contact ITG](#)" page now puts individuals in touch with IRS personnel that can answer questions or resolve problems directly. ITG is enhancing its outreach with virtual information sessions on a variety of issues, including an Employer Tax Seminar in the spring. Mr. Meier also discussed an upcoming call with the National Congress of American Indians on the impact of GWE payments to tribal members and the effect on federal benefit eligibility. IRS/ITG will re-engage with other federal agencies to see if there are remedies for negative impacts.

Upcoming TTAC Public Meetings are Wednesday, March 17, 2021; Wednesday, June 16, 2021; and December 15, 2021 from 1:00 p.m. to 4:00 p.m.

Chief Malerba provided a tribal closing and the meeting was turned over to the DFO who closed the thanked the TTAC and IRS for their work and closed the meeting at 3:32 p.m. ET.