The SHOSHONE-BANNOCK TRIBES

FORT HALL INDIAN RESERVATION
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April 5, 2013

The Honorable David Reichert, Chair
Charitable/Exempt Organizations Work Group
U.S. House of Representatives
1127 Longworth House Office Building
Washington, D.C. 20515

The Honorable John Lewis, Vice Chair
Charitable/Exempt Organizations Work Group
U.S. House of Representatives
343 Cannon House Office Building
Washington, D.C. 20515

The Honorable Dave Camp, Chairman
House Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

The Honorable Sander Levin, Ranking Member
House Committee on Ways and Means
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The Honorable Max Baucus, Chairman
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The Honorable Mike Crapo
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The Honorable Jim Risch
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The Honorable Mike Simpson
U.S. House of Representatives
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Re: Exclusion of Tribal Government General Welfare Benefits from Income

Dear Members of Congress:

As you consider reforms to federal tax policy, I write on behalf of the Fort Hall Business Council, the governing body of the Shoshone Bannock Tribes, to urge you to enact legislation to clarify that benefits in the form of general welfare services and programs provided by Indian tribes to our citizens are excluded from gross income of the individual tribal citizens. Draft legislation and a letter are attached to this comment for your consideration.

The United States Constitution acknowledges Indian tribes as governments, and as such tribes are not subject to direct taxation for on-reservation activities. In addition, the Constitution's Apportionment Clause and the 14th Amendment to the Constitution provides: "Indians not taxed," meaning tribal citizens are excluded from taxation and representation because our people were represented by tribal nations.

In return for hundreds of millions of acres of tribal homelands and other obligations on the part of tribal governments, the United States made treaty promises to provide for the health, education, and general welfare of Indian people. Many of these promises are codified in federal laws such as the Indian Self-Determination and Educational Assistance Act, the Indian Health Care Improvement Act, the Native American Housing and Self Determination Act, and hundreds of other laws, most of which are included in Title 25 of the United States Code and many of which are administered by the Bureau of Indian Affairs and the Indian Health Service.

Congress and the public widely acknowledge that the Federal Government has not upheld these treaty promises. With regard to the statutory obligation to tribes, these attempts too have failed through inadequate or non-existent funding.

In recent years, some Indian tribes, tired of waiting on the United States to meet its obligations, have taken it upon ourselves to provide these general welfare services to our people. Tribal governments provide (or supplement federal programs and grants) benefits to meet the housing, education, elder care, transportation, cultural and other needs of tribal citizens. For many tribal governments, provision of these programs and services are an inherent matter of tribal culture. Even before the formation of the United States, tribal governments have always existed for the good of our people, and to help our communities through difficult times.

Instead of fostering these acts of tribal self-determination, in recent years, Internal Revenue Service (IRS) field agents have targeted benefits provided by tribal governments to our citizens as taxable income.

A January 28, 2013 Report of the Treasury Inspector General for Tax Administration ("Treasury IG Report") confirms these intrusions. The Treasury IG Report notes that between FY 2008 and FY 2011, the IRS completed 908 "tax modules" or examinations of 95 Indian tribal entities and 203 tribal members connected to 68 tribes. Of these 908 examinations, only eight cases were referred to the National Fraud Office, and the Criminal Investigator (CI) accepted only four of those cases for further investigation. The Treasury IG Report confirms concerns that tribes have been investigated at a much higher rate than the rest of the general population. It also shows that the increased investigations have yielded few results. However, these audits and examinations come at a significant cost to tribal governments in the form of time and resources.

As you may know, in December of 2012, the Treasury Department and IRS took initial steps to curb the IRS field agent practices and to respect tribal sovereignty when it issued Notice 2012-75 ("draft guidance"). The draft guidance is a step in the right direction. However, the draft guidance is not permanent and it leaves a significant amount judgment about the validity of tribal government programs in the hands of IRS field agents. In addition, despite the fact that the draft guidance is not final, IRS field agents continue to pursue enforcement actions involving tribal

government-provided benefits to Indian citizens. It is irresponsible to pursue or continue enforcement actions while the IRS determines how the federal tax code should apply to Indian tribes.

To put a stop to these intrusions on tribal sovereignty and to conform with the mandates of the U.S. Constitution, I urge you to consider including the attached legislative proposal in any tax reform legislation that Congress considers in the coming year. In addition, I ask that you consider sending the attached letter to Treasury Secretary Lew to urge him to require training and technical assistance of IRS field agents and tribal financial officers, before permitting the IRS to move forward on existing or future actions against Indian tribes that involve tribal government-provided general welfare benefits.

Thanks to the House Ways and Means Committee for accepting this comment as part of your examination of comprehensive tax reform, and thank you all for your consideration of the attached legislation and letter. I look forward to working with you to achieve reasonable tax reform that respects the United States Constitution, the status of Indian tribes as governments within our federalist system, and the significant and severe unmet needs of Native Americans.

Sincerely,

Nathan Small

Nathan Small,
Chairman