SAN CARLOS APACHE TRIBE

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Terry Rambler
Tribal Chairman

Dr. John Bush
Vice-Chairman

April 11, 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
1106 Longworth House Office Building
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The Honorable Max Baucus, Chairman
Senate Finance Committee
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The Honorable Orrin Hatch, Ranking Member
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The Honorable Tom Udall
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The Honorable Martin Heinrich
United States Senate
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The Honorable Ben Ray Lujan
U.S. House of Representatives
E-mail: Aaron.Trujillo@mail.house.gov

Re: Exclusion of Tribal Government General Welfare Benefits from Income

Dear Members of Congress:

On behalf of the San Carlos Apache Tribe, as you consider reforms to federal tax policy, I 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, social 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 to 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 place a moratorium on enforcement actions involving government benefits derived from programs and services provided by tribes to enrolled members until: (1) training and technical assistance of IRS field agents and tribal financial officers on legal treaty and trust responsibilities; (2) the Secretary consults with tribes before issuing final General Welfare Exclusion guidance; and (3) the Department provides further training to IRS field agents and tribal financial officers with regard to implementation of the final guidance and standards.

Thank you 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,

SAN CARLOS APACHE TRIBE

Terry Rambler
Chairman

Cc: John Lewis, Executive Director, Inter Tribal Council of Arizona
Jacqueline Johnson Pata, Executive Director, National Congress of American Indians
John Bush, Vice Chairman, San Carlos Apache Tribe
Tribal Council Members, San Carlos Apache Tribe
A.B. Ritchie, Attorney General, San Carlos Apache Tribe
Debbie Ho, Kim Tee Hee and John Harte, Mapetsi

DRAFT – GWE AMENDMENT – DRAFT

To amend the Internal Revenue Code of 1986 to codify the exclusion from gross income of general welfare programs and services provided for Indians, and other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress, assembled,

SEC. 1. SHORT TITLE
This Act may be cited as the "Tribal Government Services Act of 2013".

SEC. 2. FINDINGS AND AFFIRMATIONS.

Congress finds and affirms that –

(1) The Constitution of the United States acknowledges Indian tribes as native nations, with a bi-lateral government-to-government relationship with the United States in the Treaty, Commerce, and Supremacy Clauses. Indian tribes are vested with inherent sovereign authority over their members and their territory.

(2) The Constitution recognizes tribal citizens as "Indians not taxed," subject to tribal government jurisdiction in the original Apportionment Clause and the 14th Amendment. Congress granted non-citizen Indians citizenship through the 1924 Indian Citizenship Act with the stipulation that the grant of such citizenship does not impair or in any manner affect an Indian's right to tribal or other property. In this way, Congress preserved tribal government relations with tribal citizens, at the request of tribal citizens, as part of the basic bargain for dual citizenship for tribal citizens as U.S. citizens.

(3) The United States reserved Indian reservations and lands as permanent homes for Indian tribes through treaty, agreements, statutes, and executive orders. Under reserved powers of tribal self-government, Indian tribes have a right and a duty to provide government programs and services to tribal citizens as assisted and supported by the United States. Under treaties, agreements, statutes, and executive orders, Indian tribes have a right and a duty to strive to make Indian reservations and lands "livable," permanent homes for tribal citizens, now and in future generations.

(4) Such tribal government programs and services are in the general welfare interests of Indian tribes and the United States. Such tribal government programs and services are not taxable benefits to tribal citizens, but reflect the community tradition of tribal self-government that has been handed down by Indian tribes since time immemorial.

SEC. 3. EXCLUSION FROM GROSS INCOME FOR TRIBAL GOVERNMENT SERVICES AND PROGRAMS PROVIDED TO TRIBAL CITIZENS.

(a) In General.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by inserting after Section 139D the following new section:

"SEC. 139E. General Welfare Provided for Indians.

"(a) General rule
Except as otherwise provided in this section, gross income does not include the value of any

qualified Indian general welfare benefit.

"(b) Qualified Indian general welfare benefit
For purposes of this section, the term "qualified Indian general welfare benefit" means—
"(1) any housing, education, elder and disabled, transportation, or cultural and religious benefits authorized, provided or purchased, directly or indirectly, by the United States through a program, grant to, or a contract or compact with an Indian tribe or tribal organization, or through a third-party program funded by the United States,
"(2) housing, education, elder and disabled, transportation, or cultural and religious benefits provided or purchased by, or amounts to reimburse for such benefit provided by, an Indian tribe or tribal organization for, or to, a member of an Indian tribe, and the spouse or dependent family member of such a member,
"(3) any other housing, education (including early childhood education, after school programs, secondary and post-secondary education), elder and disabled, transportation, or cultural and religious benefit provided by an Indian tribe or tribal organization that supplements, replaces, or substitutes for a program or service relating to such benefit authorized or provided by the Federal government to Indian tribes or members of such a tribe, and
"(4) other qualifying Indian general welfare benefits programs shall include transportation fares to public facilities; transportation, meals, and temporary lodging of a tribal family member while a family member is receiving medical care away from the reservation; assistance to individuals in exigent circumstances; costs for temporary relocation and shelter for individuals displaced from their homes; emergency assistance; special programs and services provided by the United States to Indians because of their status as Indians; and benefits directly related to provisions included in specific treaty agreements between the United States and the Indian tribe.

"(c) Definitions
For purposes of this section—
"(1) Indian tribe
The term "Indian tribe" has the meaning given such term by section 45A (c)(6).
"(2) Tribal organization
The term "tribal organization" has the meaning given such term by section 4(l) of the Indian Self-Determination and Education Assistance Act.
"(3) Dependent
The term "dependent" has the meaning given such term by section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof.

(b) Clerical Amendment.—The table of sections for such part III is amended by inserting after the item relating to section 139D the following new item:

"Sec. 139E. General Welfare Provided for Indians.".

(c) Training.—The Secretary shall provide:

(1) training and education to IRS field agents in the field of federal Indian law and the Federal Government's unique legal treaty and trust relationship with Indian tribes; and

(2) training of IRS field agents and training and technical assistance to tribal financial officers about implementation of this Act.

(d) Effective Date.—The amendments made by this section shall apply to Indian general welfare benefits to taxable years for which the period of limitation on refund or credit under Section 6511 has not expired and to such benefits provided after the date of enactment of this Act.

DRAFT MORATORIUM LANGUAGE

That no funds appropriated to the Department by this Act shall be available to initiate or continue enforcement actions involving the government benefits derived from programs and services provided by a federally recognized Indian tribe to the enrolled members of the tribe until the following conditions have been met: Treasury Department employees, officials, and senior executives of components and bureaus, including, but not limited to, field agents of the Internal Revenue Service, are trained in federal Indian law and the federal government's unique legal treaty and trust responsibilities to federally recognized Indian tribes; the Secretary consults with Indian tribes before issuing final General Welfare Exclusion guidance pursuant to IRS Notice 2012-75 and implementing standards for the Abuse Detection and Prevention Team program that focuses on Indian Tribal Governments pursuant to TIGTA ref no. 2013-10-018; and the Department provides training and technical assistance to tribal financial officers, IRS field agents, and other relevant Treasury, federal, and tribal officials with regard to implementation of the final guidance and standards.

[Congressional letterhead]
March ___, 2013

The Honorable Jack Lew, Secretary
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Re: IRS Moratorium on Examinations of Tribal GWE Benefits

Dear Secretary Lew:

We write to express concerns about the targeted audits and enforcement actions by the Internal Revenue Service (IRS) of tribal government-provided benefits. These actions are taking place while the Service is concurrently seeking input from tribes on the proposed General Welfare Exclusion (GWE) guidance (IRS Notice 2012-75) and developing standards for the Adapt Detection and Prevention Team (ADAPT) program pursuant to TIGTA Report Reference Number 2013-10-018. Further, in light of Congress' increasing interest to examine this matter, we urge you to take immediate steps to halt the discriminatory audits of tribal government-provided benefits to tribal citizens.

The United States has a legal and political relationship with Indian tribes established through and confirmed by the U.S. Constitution, treaties, federal laws, executive orders, and Supreme Court decisions. Tribal governments ceded hundreds of millions of acres of tribal homelands to help build this Nation. In return, the U.S. promised to maintain tribal self-determination over the permanent homelands of tribes and to provide for and further the health, education, safety, and well-being of Native Americans. Accordingly, hundreds of federal laws acknowledge the federal government's obligations. Unfortunately, the U.S. has failed to fully fund these programs. As a result, some tribes have taken action to meet these shortfalls by providing their citizens health care, education and housing assistance, and other areas to improve the lives of their people.

For more than four decades, Congress has supported a policy of Indian self-determination, and as a result, we support these acts of self-determination.

While we appreciate that the Department and the IRS have increased consultation with tribal leaders, the ongoing campaign of audits by the IRS has cast a shadow over the government-to-government relationship between the U.S. and Indian tribes. Therefore, we urge you to focus the Department's compliance efforts towards the training of staff and field agents about the federal government's unique obligations to tribes as well as the federal policy of tribal self-determination. Until these training efforts occur, and the Department's GWE guidance and ADAPT standards are completed, we urge you to place a moratorium on all IRS actions relating to tribal general welfare programs and services. Thank you for your consideration of this important matter and we look forward to hearing from you.