



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #PHX-08-018

**TITLE: Calling on the Secretary of the Interior to Declare as a Matter of Existing Federal Policy that Health Care, Education and Housing Benefits are not Taxable Income**

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**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, Indian Tribes are governments that pre-date the United States and, through the Indian Commerce Clause and the Treaty Clause, the Constitution of the United States recognizes the status of Indian Tribes as sovereigns; and

**WHEREAS**, Federal Agencies have a responsibility to respect the letter and spirit of the United States Constitution, Treaties, current Federal laws, and Executive Orders, regarding the Federal Government's relationship with tribal Governments; and

**WHEREAS**, after years of inadequate federal funding for Tribal healthcare, education and housing many Tribes in Indian Country have instituted programs to provide supplemental health care, education and housing to their Tribal citizens (which under longstanding treaties and agreement should have been performed by the United States); and

**WHEREAS**, in the course of reauthorizing the Indian Health Care Improvement Act, and Native American Housing Assistance and Self-Determination Act Congress has discovered that the IRS is auditing the health benefits provided to individual Tribal citizens by their Tribe through private insurers; and housing and education benefits provided to individual Tribal Citizens by their Tribe; and

**WHEREAS**, recently, for example, the IRS regional office in California recommended to IRS headquarters in Washington that health care benefits provided by a number of Tribes to their members should be taxed as reportable income; and

**WHEREAS**, federal law requires that per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made; and

**WHEREAS**, federal law also requires that tribes fund governmental services for tribal members, provide for general welfare of the tribe or its members, fund economic development and make charitable contributions before any per capita payments can be made and considered per capita payments; and

**WHEREAS**, all tribal government services to tribal members as part of tribal government operations or programs, general welfare of the tribe or its members, economic development or charitable contributions, including, without limitation, health and health insurance benefits and contributions to tribal members, housing benefits and contributions to tribal members or education benefits and contributions to tribal members, are not per capita payments subject to Federal taxation regardless of any means testing or otherwise; and

**WHEREAS**, federal law delegates responsibility to the Secretary of Interior to promote the Federal Trust Responsibility, Tribal self-government and economic development; and

**WHEREAS**, the Indian Gaming Regulatory Act makes a clear distinction between tribal government services and programs, which are not taxable, and per capita payments, which are subject to Federal taxation; and

**NOW THEREFORE BE IT RESOLVED**, that the NCAI does hereby call on the Secretary of Interior to declare as a matter of existing federal policy that all benefits and services to tribal members as part of tribal government operations or programs, general welfare of the tribe or its members, economic development or charitable contributions, including, without limitation, health and health insurance benefits and contributions to tribal members, housing benefits and contributions to tribal members or education benefits and contributions to tribal members, are not per capita payments or otherwise subject to Federal taxation; and

**BE IT FURTHER RESOLVED**, the NCAI calls upon the Secretary of the Interior to resolve this issue with the Secretary of the Treasury to clarify the proper application of the federal Indian self-determination policy consistent with this resolution; and

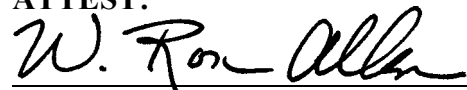
**BE IT FURTHER RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2008 Annual Session of the National Congress of American Indians, held at the Phoenix Convention Center in Phoenix, Arizona on October 19-24, 2008, with a quorum present.

  
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President

**ATTEST:**

  
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Recording Secretary