NATIONAL CONGRESS OF AMERICAN INDIANS

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Deputy Asst. Secretary Aaron Klein
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Re: Follow-up responses to questions raised by IRS and Treasury in a recent meeting

Dear Secretary Geithner and Deputy Assistant Secretary Klein:

In recent meetings with the Department of the Interior, the U.S. Department of the Treasury and the Internal Revenue Service (IRS), several legal issues were identified for follow-up. These issues were:

1) Status of earnings from trust funds during the time the tribe is in control of the funds for the purpose of making a per capita distribution to its citizens via the Per Capita Act.

2) Status of trust funds if comingled with a tribe's general fund.

3) Whether the Per Capita Act's cross-reference of the 1973 Indian Judgment Distribution Fund Act limits tax-exempt treatment only to funds which meet the criteria outlined in Section 7 of the Indian Judgment Distribution Act.

4) Treatment of per capita distributions from settlement funds to be under the Per Capita Act.

5) The federal Indian law canons of construction and their influence on interpretation of the Per Capita Act issues.

The following addresses each of these issues in detail. We appreciate IRS and Treasury continuing this dialogue with NCAI and its members and we hope to resolve this matter soon and in a manner that honors the trust relationship.

In addition, we would like to request the opportunity for a meeting with you. We would like to include tribal leaders from the Warm Springs and Yakama Nations, because of their strong interest and leadership on these issues. We would propose the week of September 17 for your consideration.

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1. **Earnings on trust funds are not taxable even after they are distributed by OST to tribe under Per Capita Act**

25 U.S.C. 1407 provides:

> None of the funds which . . . are distributed per capita or *held in trust* pursuant to a plan approved under the provisions of this chapter, . . . including all interest and investment income accrued thereon *while such funds are so held in trust*, shall be subject to Federal or state income taxes, nor. . . be considered as income or resources…

The question is whether the funds are still "held in trust" after they are transferred to the tribe by OST for ultimate distribution per capita to members. The answer is "yes." The funds are still encumbered with trust status. The intent of the Per Capita Act was simply to allow the tribes to distribute the trust funds on their own negotiable instrument, in lieu of the distribution being made on Treasury checks. Prior law precluded distribution of trust funds (that were earmarked for per capita distribution to members) to tribal treasury.[1] The Per Capita Act at 25 USC 117a changed prior law to provide:

> Funds which are held in trust by the Secretary of the Interior (hereinafter referred to as the "Secretary") for an Indian tribe and which are to be distributed per capita to members of that tribe may be so distributed by either the Secretary or, at the request of the governing body of the tribe and subject to the approval of the Secretary, the tribe

The tribe does not own the funds after they are transferred from OST to the tribe. 25 USC 117 provides only an alternative distribution arrangement and does not change the trust status of those funds. In other words, the tribe steps into the shoes of OST as the trustee and custodian of those funds since the beneficial owners of the funds continue to be the individual members. A "trust" is a legal arrangement in which property is held by one party, the trustee, to be managed by the trustee for the benefit of another.[2] Conveyance of the trust assets to the trustee is generally a prerequisite to establishment of a trust.[3] The Per Capita Act still requires funds earmarked for "per capita" distributions to be held by the tribe for the benefit of the individual members, and therefore, the tribe assumes the role of "trustee" by definition.

Accordingly, since the funds are still "held in trust" when in the possession of the tribe, all interest and investment income accrued on those funds while held by the tribe are exempt from Federal or state income tax.

[1] Section 19 of the Curtis Act, 30 Stat. 495, 502.
[2] Black's Law Dictionary 1508-09 (6th ed. 1990); 76 Am. Jur. 2d *Trusts* §§ 1, 2, 52 (1992).
[3] 76 Am. Jur. 2d *Trusts* § 52.

2. Trust funds do not lose their tax-exempt status when commingled in the Tribe's general fund

When a trustee commingles trust funds and personal funds, as long as trust property can be traced and followed, the property into which it has been converted remains subject to the trust, and, if the trustee mixes trust funds with his (its) own, the whole will be treated as trust property, except so far as he may be able to distinguish what is his. This doctrine applies in every case of a trust relation.[4] Thus, the funds are still impressed with a trust status. As such, the tribe does not come into ownership of the funds merely by commingling them. Were the members to require an accounting from the tribe, they would be entitled to the total amount of funds transferred by OST, plus the earnings thereon while held by the tribe in trust for them.

3. The Per Capita Act & the 1973 Indian Judgment Distribution Fund Act

In recent meetings, Treasury and IRS personnel requested clarification on why the 1973 Indian Judgment Distribution Fund Act ("Judgment Distribution Act") was cross-referenced in Section 117b(a) of the Per Capita Act. We feel the Per Capita Act's reference to the Judgment Distribution Act reflects Congress' intent that any per capita distribution made under the Per Capita Act be exempt from both Federal and state income taxes and excludable as income or resources in determining eligibility for financial assistance or other benefits.

A. An Analysis of the Statutory Construction

Section 117b(a) of the Per Capita Act states "Funds distributed under [the Per Capita Act] . . . shall be subject to the provisions of section 7 of the [Judgment Distribution Act]."
Section 7 of the Judgment Distribution Act (codified at 25 U.S.C. § 1407), in its entirety, reads:

> None of the funds which –
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> (1) are distributed per capita or held in trust pursuant to a plan approved under the provisions of this chapter, or
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> (2) on January 12, 1983, are to be distributed per capita or are held in trust pursuant to a plan approved by the Congress prior to January 12, 1983,
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> (3) were distributed pursuant to a plan approved by Congress after December 31, 1981 but prior to January 12, 1983, and any purchases made with such funds, or
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> (4) are paid by the State of Minnesota to the Bois Forte Band of Chippewa Indians pursuant to the agreements of such Band to voluntarily restrict tribal rights to hunt and fish in territory ceded under the Treaty of September 30, 1854 (10 Stat. 1109), including all interest accrued on such funds are held in a minor's trust,

[4] *National Bank v. Insurance Co*., 104 U.S. 54, 26 L. Ed. 693 (1881). *See also, NCNB Fin. Servs., Inc. v. Shumate*, 829 F. Supp. 178, 180 (W.D. Va. 1993), aff'd sub nom. *Nationsbank of North Carolina, N.A. v. Shumate*, 45 F.3d 427 (4th Cir. 1994), cert. denied 515 U.S. 1161, 132 L. Ed. 2d 859, 115 S. Ct. 2616 (1995) (the court held that statutorily protected funds [in that case, social security benefits] are protected even if they are commingled in a savings or checking account with funds from other sources).

> including all interest and investment income accrued thereon while such funds are so held in trust, shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act [42 U.S.C. 301 et seq.] or, except for per capita shares in excess of $2,000, any Federal or federally assisted program.[5]

Since the fourth category is specific to the State of Minnesota and the Bois Forte Band of Chippewa Indians, we will look at the first, second and third categories, each of which mention "plan[s]" "approved" "by Congress."

The referenced "plan[s]", outlined in 25 U.S.C. § 1402 and § 1403, refer to plans for use of judgment funds awarded by the Indian Claims Commission ("ICC"), or the United States Court of Federal Claims.

Under Section 1402, the Secretary of Interior is required to submit a plan to Congress regarding various issues, *e.g.*, "use and distribution of funds," "identification of present-day beneficiaries," and "formula[s] for the division of funds."[6] Furthermore, Section 1403 requires the Secretary of Interior to host hearings on the record "to obtain the testimony of tribal leaders and members of the Indian tribes,"[7] and to assure that "legal, financial, and other expertise of the Department of the Interior has been made fully available in an advisory capacity to the tribe"[8] while developing the plan. While burdensome, these requirements arguably make sense in developing a plan for the distribution of judgment funds awarded by the ICC or the U.S. Court of Federal Claims. However, IRS personnel recently asked whether the Per Capita Act's reference to Section 1407 denotes that each per capita distribution under the Per Capita Act must meet the rigorous criteria under Section 1407 of the Judgment Distribution Act, *i.e.*, whether Section 1407 outlines "four buckets" which per capita distributions must fit into to qualify as exempt from taxation? We answer this question in the negative for the following reasons.

Under this theory, each per capita distribution issued by an Indian tribe would need to be developed through a detailed plan by the Secretary of Interior, as discussed above, and submitted to Congress for approval, before being distributed. This rationale seems unreasonable and contrary to Congress' intent in enacting the Per Capita Act. As a general rule, in interpreting legislation "we must presume that the legislation intends that its pronouncements will operate fairly, reasonably and equitably."[9] Section 117a of the Per Capita Act reads:

> Funds which are held in trust by the Secretary of the Interior for an Indian tribe and which are to be distributed per capita to members of that tribe may be so distributed by either the Secretary or, at the request of the governing body of the tribe and subject to approval of the Secretary, the tribe (emphasis added).[10]

[5] Indian Judgment Distribution Fund Act, 25 U.S.C. § 1407 (1973).
[6] *Id.* at § 1402(a).
[7] *Id*. at § 1403(a)(2).
[8] *Id*. at § 1402(b)(1).
[9] Crawford, Earl. "Statutory Construction: Interpretation of Laws," Thomas Law Book Co. 455 (1940).
[10] Per Capita Act, 25 U.S.C. § 117a (1983).

In short, the Per Capita Act expands tribal self-governance by allowing Indian tribes to distribute, subject to approval of the Secretary (not Congress), per capita distributions to tribal members. Under this interpretation, it would be unreasonable to interpret Section 117b(a)'s reference to the Judgment Distribution Act to require that distributions made under the Per Capita Act also meet the plan requirements under Section 1407 of the Judgment Distribution Act ***and*** be approved by Congress.

Instead, the reference to Section 1407 simply applies identical treatment to per capita distributions under the Per Capita Act as is applied to the funds and distributions outlined in Section 1407(1)-(4) of the Judgment Distribution Act. This interpretation compliments the general rule that "adopted provisions become a part of the adopting statute but only those provisions which relate to the new statute's subject" (emphasis added).[11]

If we use this approach, the Per Capita Act is clear and unambiguous. With respect to Section 1407, the only reasonable portions which apply to the Per Capita Act are those which describe the treatment of funds, *i.e.*, the portions that extend tax exempt treatment and exclude per capita distributions from income or resources used to determine eligibility for financial assistance or other benefits.

B. Legislative Reports

Furthermore, if there were room for debate, or ambiguity, "reports of legislative committees . . . may be resorted to as indicia of the legislative intent where it is obscure."[12] A quick read of the House and Senate Reports regarding the Per Capita Act evidences that placing the burdensome administrative restrictions found in Section 1407 on distributions made under the Per Capita Act was not the intent of referencing them within Section 117b.

The House Report, Committee on Interior and Insular Affairs, states "funds distributed pursuant to this legislation . . . shall be subject to the provisions of Section 7 of the Judgment Distribution Act with respect to tax exemptions and eligibility for government benefits (emphasis added)."[13] Also, the Report states "payment of per capita sums by Federal officials with checks drawn upon the United States Treasury is often time-consuming as compared with payment by tribal check and also results in some administrative cost to the United States."[14] Additionally, the Congressional Budget Office notes that "[e]nactment of [the Per Capita Act] involves no cost to the United States."[15] If the requirements necessary to distribute funds under the Judgment Distribution Act were required, there would be a considerable amount of administrative cost associated with distributions made under the Per Capita Act.

Also, the Senate Report, Select Committee on Indian Affairs, actually considered the converse: the Per Capita Act's effect on the Judgment Distribution Act. In doing so, the Committee clarified that "enactment of the [Per Capita Act] would specify that . . . the bill would not affect the requirements for distribution of funds appropriated in satisfaction of judgments of the Indian Claims Commission or the Courts of Claims. Distribution of those funds would continue to be controlled by the 1973

[11] Crawford at 440.
[12] *Id*. at 383-84.
[13] H.R. Rep. No. 652, 97th Cong., 2d Sess. 3 (Jul. 22, 1982).
[14] *Id*.
[15] *Id*. at 4.

Act, except that per capita payments made under a plan approved under the 1973 Act may be made by an Indian tribe if all other provisions of the 1973 Act are met (emphasis added)."[16] In short, the only per capita distributions that need satisfy the requirements entailed in Section 1407 are those made from judgment funds derived from the ICC or the U.S. Court of Federal Claims.

This last point is codified in Section 117b(b) of the Per Capita Act, "Funds appropriated in satisfaction of judgments." This section addresses what should happen if the per capita is a judgment fund payment. In this instance, Congress states, "Nothing in sections 117a to 117c of this title shall affect the requirements of the [Judgment Distribution Act], or of any plan approved thereunder, with respect to the use or distribution of funds subject to that Act." (emphasis added). Congress took great care to identify 3 categories of funds which may be distributed under the Per Capita Act: distributions under any of its subparts (Section 117b(a)), distributions of judgment funds (Section 117b(b)); and distributions to Shoshone and Arapahoe Section 117b(c)). Furthermore, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'"[17] Congress specifically included the tax and resource exemption provision of 25 U.S.C. 1407 for all funds held in trust and it is presumed this was intentional.

The Per Capita Act, on its face, does not limit the function of Section 1407 to only judgment funds, instead it makes clear, through Section 117b(b), that judgment funds must also satisfy additional requirements under the Judgment Distribution Act. Congress did not include the exemption clause only in the section relating to judgment funds and, conversely, did not exclude the exemption clause from the section governing distribution of all funds from trust.

Finally, 25 U.S.C. 117b contains express exemptive language as indicated in its title, "Tax exemption Funds distributed under sections 117a to 117c." As described above, the legislative history of the Per Capita Act and later Congressional explanations of the Act indicate that Congress chose not to limit tax exemption to the judgment funds held in trust. Further, if Congress intended to circumscribe its incorporation of the tax exemption provisions of 25 U.S.C. 1407 to only the judgment funds held in trust, then it was required to make that limitation explicit – it did not. A fundamental canon of construction for interpreting legislation is that "Congress said what it meant."[18]

4. Settlement funds have trust status and may be distributed under the Per Capita Act

A. Trust Status of Settlement and Judgment Funds

The "general rule" is that funds appropriated to satisfy judgments, including those funds to be distributed on a per capita basis, are trust funds.[19]

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[16] S. Rep. No. 659, 97th Cong., 2d Sess. 4 (Sep. 8, 1982)

[17] *CBS Inc. v. Primetime 24 J.V.*, 245 F.3d 1217, 1225 (11th Cir. 2001). (quoting *Russello v. United States*, 464 U.S. 16, 23, 104 S. Ct. 296, 78 L. Ed. 2d 17 (1983)).

[18] *United States v. LaBonte*, 520 U.S. 751, 757, 117 S. Ct. 1673, 1677, 137 L. Ed. 2d 1001 (1997).

[19] *Cheyenne-Arapaho Tribes of Indians of Okla. v. United States*, 512 F.2d 1390, 1392, 206 Ct. Cl. 340 (Ct. Cl. 1975) ("It is clear from past actions of this court and from the Supreme Court, and from the actions of both Congress and the Executive Branch, that funds appropriated to Indians to satisfy judgments of the Indian Claims Commission or of this court . . . are, when kept in the Treasury, held in trust for the Indians.").

The trust status of the funds applies until such time as the funds are distributed to the intended beneficiaries. As long as the U.S. government holds the funds, they are imbued with trust status. There need not be an explicit expression of intent to hold the funds in trust; they are presumed to be held in trust.[20]

This general rule establishing a trust relationship applies whether the funds are the result of a settlement of a claim or court-ordered judgment on a claim.[21] In addition, Congress has explicitly recognized the trust character of judgment funds, requiring that "analogous" funds be treated also as trust funds.[22]
Further, the U.S. government cannot unilaterally repudiate their obligation to the funds as trustee by settling outside of the contours of the Judgment Distribution Act.[23]

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[20] *Moose v. United States*, 674 F.2d 1277, 1281 (9th Cir. 1982) ("explicit use of the word 'trust, ' or any other particular language, is not necessary" to manifest Congress' intent that the government hold a judgment fund for the benefit of the recipients. This general rule applies with greater than usual force to a situation where the United States holds funds for an Indian tribe, because of the traditional and repeated emphasis on the fiduciary nature of the United States-Indian relationship. *Id.*
The Court of Claims decision in *Navajo Tribe v. United States*, 1980, 224 Ct. Cl. 171, 624 F.2d 981, 987 stated:

> Where the Federal Government takes on or has control or supervision over tribal monies or properties, the fiduciary relationship normally exists with respect to such monies or properties (unless Congress has provided otherwise) even though nothing is said expressly in the authorizing or underlying statute (or other fundamental document) about a trust fund, or a trust or fiduciary connection.

See also, *Loudner v. United States*, 108 F.3d 896, 900 (8th Cir. 1997) ("There is a presumption that absent explicit language to the contrary, all funds held by the United States for Indian tribes are held in trust."); *Angle v. United States*, 709 F.2d 570, 575 (9th Cir. 1983) ("We have been able to find, and the parties have cited to us, no evidence of 'explicit language' in the statute or its history indicating that the judgment fund moneys were not to be held in trust for the California Indians, pending distribution."); *Rogers v. United States*, 697 F.2d 886, 890 (9th Cir. 1983) ("With this strong tradition [of government's 'unique trust obligation' to Indian nations] in mind, we recognize[] that there is a presumption that absent explicit language to the contrary, all funds held by the United States for Indian tribes are held in trust.").

[21] *62 Fed. Reg. 11505 at 11506, March 1997* (Notice of Interpretation recognizing trust accounting is required for Indian judgment *and* settlement funds because they are not monies belonging to the Government, as agreed between the General Accounting Office, the Department of the Treasury, and the Office of Management and Budget in the Executive Office of the President).

[22] 31 U.S.C. § 1321(a)(67) ("miscellaneous trust funds of Indian tribes"). The intent of Congress to provide for explicit trust status was explained in *Chippewa Cree Tribe of the Rocky Boy's Reservation vs. U.S.:*

> In keeping with this thought, the committee applied itself to the task of listing in subsection (b) of this section, all funds of a trust nature appearing on the books of the Government. It is quite possible that some accounts that should have been included in the list have been inadvertently omitted. If so, it will not be a difficult matter for the particular department, bureau, or official, administering such an account, if of a character analogous to those named in this section, to have it established as a trust fund for which appropriation is made by the terms of this act.

69 Fed. Cl. 639 (2006), citing H.R. Rep. No. 73-1414, at 12, Permanent Appropriation Repeal Act ("PAR Act"), ch. 756, § 20(a), 48 Stat. 1224, 1233 (1934) (originally codified at 31 U.S.C. § 725s(a) (1934)).

[23] *Chippewa Cree v. U.S., 69 Fed. Cl. 639.* ("Defendant's attempt to avoid liability by arguing that its duty to trust fund beneficiaries terminated with the distribution of the funds is unavailing.").

B. Settlement Funds Can Be Distributed Under the Per Capita Act

Accordingly, since the settlement funds are trust funds, they can be distributed under the auspices of the Per Capita Act. As explained previously, reference to the Judgment Distribution Act does not require that distributions made under the Per Capita Act also meet the plan requirements under Section 1407 of the Judgment Distribution Act. Further, reference to Section 1407 does not mean that the tax and resource exemption provisions apply only to judgment funds awarded under the Judgment Distribution Act that are distributed under the Per Capita Act.
Numerous courts cite to 25 U.S.C. § 1407 as an indication of Congress' recognition that the judgment funds are trust funds:

> …a statute [Act of October 19, 1973, Pub.L. 93-134, 87 Stat. 466 (codified at 25 U.S.C. §§ 1401-07] enacted several years after the Distribution Act to establish a uniform procedure for distributing Indian judgment funds indicates a congressional understanding that all such funds are held in trust. Section 7 of that statute-now 25 U.S.C. § 1407-states that "(n)one of the funds distributed per capita or held in trust under the provisions" of the statute are to be taxed. This language indicates that Congress regarded all undistributed Indian judgment funds as "held in trust."[24]

Accordingly, the funds distributed pursuant to 25 U.S.C. §§ 1401-1408 are tax exempt not because of their status as judgment funds, but rather because of their status as trust funds. Essentially, the tax and resource exemption is in recognition of the trust status of the funds.

The Per Capita Act represents Congress' explicit acknowledgment that the funds distributable under the Per Capita are likewise trust funds and, therefore, are to be treated the same as funds distributed under the Judgment Distribution Act. Moreover, Congress has acknowledged that the trust funds distributable under the Per Capita Act are not limited to judgment funds.[25] Further, Congressional testimony in relation to the PAR Act explained that funds carried in accounts referenced in 31 U.S.C. § 1321(a)(67) as "Miscellaneous trust funds of Indian tribes" accrue from sales of surplus tribal Indian lands and timber; oil and gas royalties, including bonus on leases, etc. . . and from judgments" that are later added.[26]

5. The Federal Indian Law Canons of Construction

Finally, the federal Indian law canons of construction dictate that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit."[27] This

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[24] *Moose, see also, Rogers v U.S.,* 697 F.2d 886, 889 (9th Cir. 1983).
[25] See, *e.g.,* 102 S. Rpt. 214 *(*regarding 25 U.S.C. 1408 extension of resource exemption to income from individual Indian allotments Congress stated, "The Tribal Per Capita Distribution Act (P.L. 98-64) extended this [exemption] treatment to tribal per capita distributions of funds derived from tribal trust resources… The impact of S. 754 is to clarify the trust status of the income derived from individual trust allotments or restricted lands and eliminate the inconsistent administrative interpretations that conflict with the trust character of these funds...".
[26] *Hearing on H.R. 9410 Before the Subcomm. on Permanent Appropriations of the House Comm. on Appropriations*, 73d Cong., 2d. Sess., at 267-270 (1934) (letter from Harold L. Ickes, Sec'y of the Interior) (H.R. 9410 Hearing).
[27] *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766-67 (1985).

bedrock principle of federal Indian law is rooted in the federal government's trust responsibility to Indian tribes, and extends to statutes, treaties, agreements, and executive orders.[28]

Meanwhile, the IRS has its own canon that tax exemptions may not be implied but must be express.[29] Where the two canons come into conflict the Supreme Court has acknowledged the validity of both interpretive canons but declined to place one above the other. Instead, in *Chickasaw Nation v. United States*, 534 U.S. 84 (2001), the Court observed that "[t]his Court's earlier cases are too individualized, involving too many different kinds of legal circumstances, to warrant any such assessment about the two canons' relative strength."[30]

We note however, there is precedent where the tribal canons were given more weight than the IRS tax canons. In *Squire v. Capoeman*, 351 U.S. 1 (1956), the Court recognized the IRS tax canon but held in favor of the tribal interest, stating that "doubtful expressions are to be resolved in favor of . . . the wards of the nation, [who are] dependent upon its protection and good faith."[31] Also, in *Choate v. Trapp*, 224 U.S. 665 (1912), the Court held that allotments under an amendment to the General Allotment Act were exempt from taxation, stating that:

> [while ordinarily] tax exemptions are strictly construed . . . , in the government's dealings with the Indians the rule is exactly the contrary. The construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of the [tribal interest.] This rule of construction has been recognized, without exception, for more than a hundred years, and has been applied in tax cases.[32]

While the Indian canons do not apply where the statute is clear on its face – such as in our interpretation of the Per Capita Act – if there were ambiguity, we believe the federal Indian law canons of construction to be the appropriate roadmap to resolve such ambiguity.

Conclusion

Once again, thank you for meeting with NCAI on these important issues. We greatly appreciate your efforts to implement the Per Capita Act as it was intended by Congress, and more generally all of your work to uphold the trust responsibility of the United States to the Indian tribes.

Sincerely,

Jefferson Keel

[28] Newton, Nell Jessup, et al. Cohen's Handbook of Federal Indian Law, § 2.02[1] – § 2.02[2], pp. 119-122 (2005 ed.).
[29] See, *e.g.*, Rev. Rul. 67-284; *United States v. Wells Fargo Bank*, 485 U.S. 351, 354 (1988) ("Exemptions from taxation . . . must be unambiguously proved"); *Squire v. Capoeman*, 351 U.S. 1, 6 (1956) ("To be valid, exemptions to tax laws should be clearly expressed"); *United States Trust Co. v. Helvering*, 307 U.S. 57, 60 (1939) ("Exemptions from taxation do not rest upon implication").
[30] *Chickasaw Nation v. United* States, 534 U.S. at 84, 95 (2001).
[31] *Squire v. Capoeman*, 351 U.S. at 6.
[32] *Choate v. Trapp*, 224 U.S. 665, 675-76 (1912).