

2) ensuring the TTAC's mission, while established for the purposes of GWE, has a broader scope of work to fully benefit Tribes; and 3) to hold off on approving the bylaws until the first two motions were addressed.

TTAC members unanimously agreed to continue working on the bylaws with the goal of approving them during the next TTAC meeting.

In addition to discussing a broad array of Tribal tax issues, which are outlined in more detail below, the third matter of business was to establish subcommittees to focus the committee's work. TTAC members announced the establishment of three subcommittees – 1) GWE, 2) Dual Taxation, and 3) Tribal Pensions.

In addition, the TTAC selected the Native American Finance Officers Association (NAFOA) to provide technical assistance to the committee.

As a final matter of business, the TTAC expressed its desire to meet once more this fiscal year (FY) and three times each FY in the future. Chair Horn tentatively set Sept. 17-19, 2019, as a potential meeting date for FY 2019 and Dec. 1-3, 2019; March 24-26, 2020; and Sept. 14-16, 2020, as potential meeting dates for FY 2020.

Tribal Tax Issues Discussed

Members of the TTAC raised many tax issues that continue to plague Indian Country. These include, but are not limited to:

Dual Taxation: TTAC members expressed concern that dual taxation (taxation by states or localities in addition to Tribal governments) is problematic because such taxation stifles economic growth and, because taxes collected by states are not remitted to or otherwise used to support services on Tribal land, does not promote the overall general welfare of Native Americans. TTAC members requested that the Treasury Department

and IRS work with Indian Country to ensure that Tribes have tax authority over their lands by issuing guidance and providing oversight. TTAC members also discussed a legislative fix to further acknowledge and strengthen the meaning of the Indian Commerce Clause.

Opportunity Zones: TTAC members requested that all eligible tracts in Indian Country be designated as Opportunity Zones. Only 150 of 573 Tribes received Opportunity Zone allocations, meaning that most Tribes were left out of this important opportunity. The Treasury Department expressed that this request would require a legislative fix before such allocations could be made. Any legislative fix would also require an extension of the timeframe for investments in Indian Country to ensure that allocation would be beneficial for investors and Tribes. The Treasury Department and IRS shared with TTAC members that a public hearing on Opportunity Zones would be held in July and urged their participation. (See Holland & Knight Native American Law Blog, "Opportunity Zones: Spurring Development in Indian Country," Aug. 21, 2018.)

The "Kiddie Tax": TTAC members requested that the Treasury Department and IRS support a "Kiddie Tax" fix. The Kiddie Tax provisions have, from their beginning, applied to all "unearned income." Certain financial distributions made by Tribal governments to their Tribal members have long been defined by statute as "unearned income" subject to income tax. These distributions of Tribal revenue to individual Tribal members on a per capita basis are derived from a number of sources, including gaming, allotted Tribal lands, rents or royalties, and the sale of resources. By federal statute, all per capita derived from gaming and certain other activities is taxable. These per capita payments are used by many young Tribal members to pay their tuition and living expenses in the pursuit of higher educa-

tion. However, the modifications to the Kiddie Tax in the Tax Cuts and Jobs Act of 2017, in some instances, increased the tax rate imposed on young Tribal members and thus increased the overall amount of tax due from many young Tribal members receiving these distributions. In many cases, this has an unintended consequence of doubling or tripling the tax rate paid by young Native Americans on financial support they receive from their Tribal governments. (See Holland & Knight alert, "Tax Parity, Kiddie Tax Exemption Still Needed for Indian Country," June 4, 2018.)

General Welfare Exclusion: Under the GWE, certain Indian general welfare benefits are not considered gross income. To date, guidance has not been issued as to what is considered "lavish or extravagant" and therefore does not qualify for this tax-preferred status. TTAC members and Treasury Department representatives agreed that further clarification on what is "lavish or extravagant" is crucial to the success of the program and preventing unnecessary audits. Additionally, the Treasury Department requested information on what constitutes "cultural activities." TTAC members warned that defining "cultural activities" could be problematic as there are 573 federally recognized Tribes, each possessing their own cultures and practices. Instead, TTAC members encouraged the Treasury Department to determine what activities are clearly employment and others that are not. (See Holland & Knight alert, "IRS Issues Guidance on Tribal General Welfare Exclusion and Safe Harbors," April 21, 2015.)

Education of IRS Field Agents: The GWE Act imposed a moratorium on general welfare audits pending further guidance and training. TTAC members requested that all Tribal audits be suspended until IRS agents are properly trained. Questions were raised about what standards would be used to train the agents and how these might be developed. TTAC members requested that the Treasury Department and IRS consult with Tribal governments on these standards and the actual training prepared by the agencies.

Tax Status of Tribally Chartered Entities: TTAC members discussed the need for parity among Tribally chartered entities regarding their tax status. Currently, Section 17 corporations are not subject to tax; however, the tax status of wholly owned, Tribally chartered corporations is unclear. The Treasury Department requested more information on these entities to further the conversation. The Treasury Department and IRS noted that this fix could require legislation.

Tax Extenders: TTAC members requested that the Indian tax extenders – Indian employment tax credit, accelerated depreciation for business property on Indian Reservations and the Indian coal production tax credit – be permanently authorized and expanded to be used by nonprofits and other organizations not currently authorized to receive the credits but may do business in Indian Country or hire Native Americans. The Treasury Department and IRS noted that this fix would require legislation.

New Markets Tax Credits: TTAC members requested permanent reautho-

rization of the New Markets Tax Credit (NMTC) program and to establish a Tribal set-aside. Although the Treasury Department has taken some steps toward improving the NMTC program for Indian Country, such as designating a place on the NMTC application to check if a project is benefiting a Tribal community, more work is needed to ensure Indian Country receives NMTC allocations in every funding cycle. The Treasury Department and IRS noted that this fix would require legislation.

Low-Income Housing Tax Credits: TTAC members acknowledged the lack of adequate housing in Indian Country and encouraged the expansion of the Low-Income Housing Tax Credit (LIHTC) in Indian Country. The Treasury Department and IRS noted that this fix would require legislation.

Tribal Charities: TTAC members requested that Tribal charities be treated on par with state charities. Currently, the inadvertent lack of parity between Tribes and other governments under the public charity classification rules makes it difficult for Tribes to form and fund separate nonprofit organizations for charitable purposes without risking classification as a private foundation. The Treasury Department and IRS noted that this fix would require legislation.

Tax-Exempt Debt: TTAC members also addressed the lack of equal treatment under current law applicable to tax-exempt financings by Tribal governments. Currently, Tribal governments are unfairly subject to an "essential government function test" whereas state governments, who also enter into commercial business, are not. In addition, TTAC members discussed the problem of Tribal Economic Development (TED) bonds being subject to a volume cap. (See Holland & Knight alert, "IRS Provides Guidance on Refinancings of Tribal Economic Development," May 24, 2019.)

Tribal Pensions: TTAC members requested that the Treasury Department and IRS support an amendment to the Employee Retirement Income Security Act (ERISA) provisions of federal law relating to governmental plans so that Tribal plans will be treated as governmental plans regardless of whether the employees covered are engaged in commercial or governmental activity. By removing Tribal governmental plans from ERISA, the U.S. Department of Labor will no longer have jurisdiction to audit Tribal plans for compliance with rules designed for private pension and benefit plans. More specifically, the bill removes the "essential government function" and "commercial" activity tests that currently apply to Tribal plans, but not to state and local government plans.

Additional Issues: TTAC members requested support from the Treasury Department and IRS for the enactment of the Tribal Social Security Fairness Act, addressing audits in other agencies on the grounds of misperceptions of the taxation of Indians (e.g., U.S. Social Security Administration), clean or renewable energy tax credits and financing to promote energy modernization and independence, and other opportunities to promote the well-being of Native Americans.

Hotel rates for Siletz Tribal members

Siletz Tribe hotel rates all year round! No longer do you have to guess at what your rate is and worry about higher rates in the summer. One rate for each hotel type is now \$79 for standard deluxe oceanfront rooms and \$99 for oceanfront junior suites.

Siletz News Letters Policy

Siletz News, a publication of the Confederated Tribes of Siletz Indians, is published once a month. Our editorial policy encourages input from readers about stories printed in *Siletz News* and other Tribal issues.

All letters must include the author's signature, address, and phone number in order to be considered for publication. *Siletz News* reserves the right to edit any letter for clarity and length, and to refuse publication of any letter or any part of a letter that may contain profane language, libelous statements, personal attacks or unsubstantiated statements.

Not all letters are guaranteed publication upon submission. Published letters do not necessarily reflect the opinions of *Siletz News*, Tribal employees, or Tribal Council.

Please type or write legibly. Letters longer than 450 words may be edited for length as approved by Tribal Council Resolution #96-142.

Please note: The general manager of the Siletz Tribe is the editor-in-chief of *Siletz News*.

Editor-in-Chief: Brenda Bremner
Editor: Diane Rodriguez
Assistant: Andy Taylor