

**MSP  
#10****INDIAN TRIBAL TAXPAYERS: Inadequate Consideration of Their Unique Needs Causes Burdens****RESPONSIBLE OFFICIALS**

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**DEFINITION OF PROBLEM**

In filing season 2013, an IRS filter wrongly flagged Indian tribal member returns as fraudulent due to common filing characteristics that the IRS has identified as indicators of fraud. This error in tax administration is symptomatic of the IRS's failure to recognize legitimate geographic, economic, and cultural circumstances of a unique taxpayer population. Although the National Taxpayer Advocate's 2008 Annual Report to Congress applauded IRS outreach to Indian Nations as exemplary, it is unclear if all IRS functions are responsive to their needs. In certain cases, IRS operating divisions (ODs) remain unaware of the particular characteristics and needs of Indian taxpayers, potentially resulting in unnecessary contact with the IRS and unwarranted audits, taxes, or penalties. Particular concerns relate to the IRS's:

- Improper treatment of tribal distributions;
- Misunderstanding of Native American family structure;
- Ignorance of tribal sovereignty;
- Delays in processing of certain settlement awards; and
- Failure to publish legal guidance for tribes.

In guidance posted on an internal web page, the IRS Indian Tribal Government (ITG) function advises employees to seek help from a TAS Local Taxpayer Advocate (LTA) when an OD fails to respond to an issue within ITG's jurisdiction or expertise. While LTAs welcome referrals, when one function routinely seeks assistance in relaying taxpayer needs to another function, the issue extends beyond case-by-case resolution.

## ANALYSIS OF PROBLEM

### Indian Tribal Taxpayers Have Unique Status.

Indian tribes have a unique status in federal tax law.<sup>1</sup> In some respects, tribes have a level of sovereignty similar to that of the 50 states, which are not subject to tax on their income.<sup>2</sup> Historically, the Supreme Court classified tribes as domestic dependent nations.<sup>3</sup> The Internal Revenue Manual (IRM) sets forth the following overview of tribal sovereignty.<sup>4</sup>

#### *The Internal Revenue Manual Gives an Overview of Tribal Sovereignty.*

The U.S. government has a unique legal relationship with Indian tribal governments as set forth in the Constitution, treaties, statutes, and court decisions. Congress may limit the authority of Indian tribes, but within those limits the tribes retain “attributes of sovereignty over both their members and their territory.”<sup>5</sup> Tribal government powers include the authority to choose the form of government, determine tribal membership, regulate tribal and individual property, levy taxes, establish courts, and maintain law and order. Generally, Indian tribes provide governmental services, such as transportation, education, and medical care to tribal members.

Although Congress can limit tribal powers of sovereignty, the states cannot. The general rule in the field of Indian law is that unless there is specific delegation of authority provided by Congress, laws do not apply to Indians on reservations. Thus, Indian tribes are “semi-sovereign” entities, or “distinct, independent political communities” within the borders of the states in which they reside. Their sovereign powers can be limited or defined by an act of Congress or, in some cases, those powers may have been implicitly lost when tribes became subject to overriding federal sovereignty. On the other hand, the laws of any state can have but limited effect on Indian residents of reservations, or on the exercise of tribal sovereign power within reservations.<sup>6</sup>

1 According to expert sources, both American Indian and Native American are acceptable terms, although the latter tends to encompass Native Alaskans and Hawaiians as well as Indians *per se*. While each term may connote subtle nuances, authors may use them interchangeably. See Kathryn Walbert, *American Indian vs. Native American: A Note on Terminology* (Univ. of N.C. – Chapel Hill), <http://www.learnnc.org/lp/editions/nca-american-indians/5526> (last visited May 6, 2013); Peter d’Errico, *Native American Indian Studies: A Note on Names* (Univ. of Mass. – Amherst), <http://www.umass.edu/legal/derrico/name.html> (last visited May 6, 2013); Nat’l Museum of the Amer. Indian, *What Is the Correct Terminology: American Indian, Indian, Native American, or Native?* (Smithsonian Inst.), <http://nmai.si.edu/explore/forfamilies/resources/didyouknow/#2> (last visited May 6, 2013); Native Amer. Rights Fund, *Why Are Indians Sometimes Referred to as Native Americans?*, <http://www.narf.org/pubs/misc/faqs.html> (last visited May 6, 2013); Utah Div’n of Indian Affairs, *American Indian vs. Native American: Which Is The Proper Term?*, [http://indian.utah.gov/faq/indian\\_heritage.html](http://indian.utah.gov/faq/indian_heritage.html) (last visited May 6, 2013).

2 See 10th Amend. to U.S. Const.; IRS Pub. 963, *Federal-State Reference Guide*.

3 See *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831). Further, lands reserved by tribes are defined by statute as Indian Country. See 18 U.S.C. § 1151; IRM 4.86.1.1.1(2), *Who We Are* (June 1, 2006); IRM 4.86.1.3(2), *Other Tribal Contacts* (June 1, 2006). “Indian Country is a multifaceted term that historically has been used as a geographical designation, as a legal term, and as a cultural concept that encompasses the past, present, and future of American Indian people. It embodies the idea that there is ‘a place’ for Indians. The existence of Indian Country, through the many evolutions of that term, represents an acknowledgment and agreement that Indian people will survive. It is a concession to the notion that the melting pot is not everyone’s idea of the American dream, and that many Indian people desire to live in that place they call Indian Country.” *Gale Encyclopedia of U.S. History*, available at <http://www.answers.com/topic/indian-country#ixzz2TCAIJZCq> (last visited July 31, 2013). See also Stephen W. Silliman, *The ‘Old West’ in the Middle East: U.S. Military Metaphors in Real and Imagined Indian Country*, 110 *American Anthropologist* 237 (2008), available at [http://www.faculty.umb.edu/stephen\\_silliman/articles/oldwestinmiddleeast.pdf](http://www.faculty.umb.edu/stephen_silliman/articles/oldwestinmiddleeast.pdf) (last visited July 31, 2013); Rob’t Imrie, *Tribes Angered by General’s Reference to Enemy Land as Indian Country*, Associated Press (Feb. 21, 1991), available at <http://www.apnewsarchive.com/1991/Tribes-Angered-By-General-s-Reference-to-Enemy-Land-as-Indian-Country-/id-ce150feb55e4a9058c307295efc07f4a> (last visited July 31, 2013).

4 The following passage is taken from IRM 4.86.1.5, *Tribal Sovereignty Overview* (Jan. 1, 2003).

5 IRM 4.86.1.5, *Tribal Sovereignty Overview* (Jan. 1, 2003) (quoting *U.S. v. Mazurie*, 419 U.S. 544, 557 (1975)).

6 IRM 4.86.1.5, *Tribal Sovereignty Overview* (Jan. 1, 2003) (citing Mary B. Magnuson, *Indian Legal Issues*, Minn. Inst. of Legal Educ’n (1995)).

Over the years, presidents have issued executive orders that directed federal agencies, to the extent permitted by law, to “respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.”<sup>7</sup>

### **The IRS Should Follow the Indian Tribal Government Function (ITG) in Exercising Cultural Sensitivity.**

The ITG function, which operates within the Tax-Exempt/Government Entities Operating Division (TE/GE), addresses tribal employment, programs, trusts, businesses, and distributions to individual members. While the 2008 Annual Report to Congress praised the exemplary outreach conducted by ITG toward its customers, it is unclear if the function has received cooperation within the IRS.<sup>8</sup> On the contrary, ITG and TAS staff have heard IRS employees utter culturally insensitive remarks to tribal people. An IRM provision that directs IRS employees to follow ITG protocol when contacting tribes could establish a model for consultation of the ITG function within the IRS.<sup>9</sup> While the ITG function focuses on tribal entities:

There may be times when it is unclear who should be controlling a situation, such as in the examination of a tribal leader’s personal income tax return or the examination of a large number of tribal members. When coordination efforts between divisions do not resolve a tribal issue, Taxpayer Advocate Service referrals should be considered as a potential avenue of resolution when certain criteria are met.<sup>10</sup>

Accordingly, the IRS, led by TAS and ITG, should train campus and field compliance employees about tribal issues. Jointly, federal agencies have produced an online course containing a “Cultural Orientation” module that could counteract reported insensitivity.<sup>11</sup>

### **Tribal Members Confront Issues Different from Those of the Overall Taxpayer Population.**

Indian taxpayers may confront IRS misunderstandings and delays relating to issues such as tribal distributions, presumed fraud or frivolous positions, family relations, settlement awards, and health coverage. As these issues are reflected on individual returns, they would be processed by ODs rather than the ITG function which focuses on Native American issues. Consequently, individual Indians may have to reinvent the wheel to resolve systemic problems on a case-by-case basis. It would be more efficient for the IRS to establish a cross-functional working group on issues of Indian individuals, parallel to the ITG function that focuses on tribal entities.

<sup>7</sup> *Id.* (quoting Exec. Ord. No. 13175, 65 Fed. Reg. 67249 (Nov. 6, 2000)).

<sup>8</sup> National Taxpayer Advocate 2008 Annual Report to Congress 99-100 (footnotes omitted): “Another example of outstanding service is the IRS’s Office of Indian Tribal Governments outreach to Indian Nations. During 2008, the office conducted 85 events with a total attendance of more than 3,600 customers. The office also offered large-scale workshops for 227 Alaskan tribal villages and 112 Navajo villages. Services include educational workshops on Title 31, employment tax forms, tip reporting, employment taxes, the Earned Income Tax Credit (EITC), information reporting, and gaming issues. VITA also held sessions at seven events. The IRS should follow the Office of Indian Tribal Governments’ model in targeting and bringing programs to other taxpayer populations.”

<sup>9</sup> See IRM 4.86.1.2, *Protocol for Contacting Tribes* (Jan. 1, 2003).

<sup>10</sup> See IRM 4.86.1.1.3, *Coordination Between Divisions* (July 28, 2008).

<sup>11</sup> *Working Effectively with Tribal Governments*, available at <http://tribal.golearnportal.org/return.php> (last visited July 31, 2013).

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*While the IRS recently issued various pieces of guidance helpful to Indian individuals, major projects remain outstanding, especially those applicable to tribal entities. The resulting uncertainty can sustain a chilling effect on tribal enterprise, distorting economic opportunities.*

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### *The IRS Has Treated Tribal Distributions Improperly.*

Tribes may distribute funds, such as tax-exempt revenue of the tribe, to individual members. IRS compliance functions consistently subject tribal distributions, that are not from work, to self-employment tax apparently due to misinterpretation of Form 1099, *U.S. Information Return*. For federal tax purposes, these amounts may constitute income, but it is unclear why they would be treated as self-employment earnings. The TE/GE intranet includes a form instructing ITG staff to advise IRS campuses that such distributions are not an individual's self-employment earnings, and to file Form 911, *Application for Taxpayer Assistance Order*, with the LTA if a campus does not comply.<sup>12</sup>

While TAS is pleased that the ITG function shows concern by referring problems for resolution, this approach all but concedes that Automated Underreporter (AUR, the IRS program that processes information returns) may have a harmful effect, and at worst, may discriminate against a particular taxpayer population. For tax year 2011, TAS has identified in LTA inventory at least 42 cases where the IRS inaccurately assumed that a tribal member's Form 1099 was incorrect, either because the withholding amount apparently did not meet expected parameters or otherwise. The data reveal an underlying systemic issue that the IRS should be trying to resolve.

### *The IRS Has Filtered Returns Inaccurately.*

In the 2013 filing season, an IRS filter wrongly flagged returns of tribal members as fraudulent presumably because their characteristics, such as certain mail delivery patterns, happened to resemble those in a fraudulent scheme.<sup>13</sup> This error in tax administration is symptomatic of IRS failure to recognize legitimate geographic, economic, and cultural circumstances of a unique taxpayer population, and to program IRS systems to avoid false positives that have a disparate impact on that population. Given that the IRS routinely changes filters to reflect characteristics of the filing population, this experience should afford an opportunity for greater accuracy in the future. To avoid repeating past mistakes, IRS functions (such as Wage & Investment Pre-Refund, AUR, Automatic Substitute for Return (ASFR), Correspondence Exam, and Field Exam) should consult ITG before implementing filters or similar programs that could erroneously target Indian taxpayers.

### *The IRS May Misunderstand Native American Family Structure.*

Eligibility for various tax benefits may depend on family relations as documented by the taxpayer. However, some Native American families do not fit the standard family structure. Last year, the National Taxpayer Advocate proposed a Legislative Recommendation to recognize children with special needs adopted under tribal law, as the tax law recognizes only those adopted under state law.<sup>14</sup> Generally, the Internal Revenue Code (IRC) allows a credit to parents who adopt children, with a larger amount for

<sup>12</sup> See [http://tege.web.irs.gov/article.asp?category=tege&title=mytege-ge-itg-government-functions&path=/my-tege/4\\_govt-entities](http://tege.web.irs.gov/article.asp?category=tege&title=mytege-ge-itg-government-functions&path=/my-tege/4_govt-entities) (last visited Apr. 26, 2013).

<sup>13</sup> The IRS uses statistical and other criteria, commonly known as filters, to segregate returns into treatment streams. See generally IRM 4.1.3, *Sources of Returns-Priority Programs-DIF and Ordering* (Aug. 10, 2012).

<sup>14</sup> See National Taxpayer Advocate 2012 Annual Report to Congress 520 (Legislative Recommendation: *Amend the Adoption Credit to Acknowledge Jurisdiction of Native American Tribes*).

a child who has special needs relating to ethnic background, age, membership in a minority or sibling group, or a medical condition.<sup>15</sup> However, the tax law allows only a state to certify special needs.<sup>16</sup> In specified circumstances, the tax law treats a tribe as a state, but unfortunately the adoption credit is not a specified provision.<sup>17</sup>

Similar legislative or administrative misapprehensions of Indian households, which can consist of multiple generations living together, may arise in the context of filing status, the child tax credit, Earned Income Tax Credit, dependency deduction, or otherwise.<sup>18</sup> The IRS has recognized unique circumstances of tribal members in informal guidance on “Alternative Documentation for Native Americans,” which lists tribal — rather than state — documents acceptable for identifying qualifying children.<sup>19</sup> Such informal guidance deserves to be codified in the IRM.

### *The IRS May Display Ignorance of Tribal Sovereignty.*

TAS is aware of cases in which tribal members who may have misunderstood federal tax requirements tell the IRS that they are members of sovereign nations. In response, the IRS asserts a penalty for a frivolous position.<sup>20</sup> While certain allegations of sovereignty may be frivolous, Indian tribes are sovereign entities.<sup>21</sup> In good faith, the taxpayer may have made a true statement that was simply inapplicable to an individual return. Thus, a tribal member’s statement about sovereignty may not reflect a desire to delay or impede the administration of federal tax laws within the meaning of the penalty provision. The IRS should clarify that not all statements about sovereignty deserve a frivolous penalty.

### *The IRS May Delay Processing of Keepseagle Awards.*

In 2011, the U.S. Department of Agriculture (USDA) settled a class action lawsuit, known as *Keepseagle*, for discrimination against Indian borrowers in the Farm Loan Program.<sup>22</sup> Under the settlement, 4,200 “Track A” individuals received up to \$50,000 each in 2012; 170 “Track B” individuals received up to \$250,000 each.<sup>23</sup> In addition, USDA forgave outstanding debt and remitted to the IRS amounts to cover the taxes on the awards, including the forgiveness. In general, forgiven debt constitutes income, with exceptions for insolvent taxpayers, among other cases.<sup>24</sup> TAS is aware of *Keepseagle* cases in which the IRS has not credited USDA remittances to taxpayers’ accounts. In addition, taxpayers who claim the insolvency exception may face refund delays pending IRS verification of insolvency.<sup>25</sup> In this case, taxpayers

15 See IRC § 23(d)(3).

16 See *id.*

17 See IRC § 7871.

18 See IRC §§ 2, 24, 32, 151.

19 See Service-wide Electronic Research Program (SERP) Alert W 04158 (Mar. 4, 2004).

20 See IRC § 6702.

21 Compare Rev. Rul. 2007-22, 2007-1 C.B. 866, with IRM 4.86.1.5, *Tribal Sovereignty Overview* (Jan. 1, 2003).

22 See *Keepseagle v. Vilsack*, No. 1:99CV03119 (D.D.C. 2011).

23 See Nat’l Cong. of Amer. Indians, *Protect Native Money Update* (Jan. 30, 2013), available at <http://www.ncai.org/protectnativemoney> (last visited July 31, 2013).

24 See IRC § 108.

25 See IRS Pub. 4681, *Canceled Debts, Foreclosures, Repossessions, and Abandonments*.

While the ITG function conducts exemplary outreach, other IRS organizations remain unaware of particular characteristics and needs of Indian individual and tribal taxpayers. This lack of awareness could result in unnecessary contact with the IRS and unwarranted auditing, taxation, or penalties.

may need assistance in submitting the required information.<sup>26</sup> The IRS should render assistance as required, after consultation and collaboration with TAS.

### *Patients of the Indian Health Service Should Be Exempt from the Affordable Care Act.*

The Affordable Care Act (ACA) requires individuals to obtain health insurance or pay a tax.<sup>27</sup> This individual requirement excepts various people, such as those experiencing hardship — as determined by the Department of Health & Human Services (HHS) — as well as Indians, who may receive tribal health care.<sup>28</sup> Technically, the latter exemption covers members of federally-recognized tribes, a category that covers only a portion of the Native American and Alaska Native population, excluding some patients of the federal health care providers such as the Indian Health Service (IHS), which is available to those of Indian descent, even if not enrolled in a recognized tribe.<sup>29</sup> Commentators have complained that penalties should not apply to patients of the IHS or similar services.<sup>30</sup> In response, HHS expanded the hardship exemption to cover those patients, explaining that “HHS does not have the legal authority to modify through regulation the statutory definitions of ‘Indian’ as referenced in the Affordable Care Act... Any changes to the definition must be legislative.”<sup>31</sup>

### **Tribes Need Legal Guidance.**

While the IRS recently issued various pieces of guidance helpful to Indian individuals, major projects remain outstanding, especially those applicable to tribal entities. The resulting uncertainty can sustain a chilling effect on tribal enterprise, distorting economic opportunities.

In particular, integral part regulations, which would offer guidance to tribal entities, have been pending for six years. Historically, a series of IRS rulings has exempted from tax certain entities that are integral parts of governments, which as such are themselves tax-exempt.<sup>32</sup> This patchwork of rulings could affect a variety of entities, including recent forms such as charter schools, as well as enterprises of tribes. In view of the uncertainty of this law with potential economic impact, the Priority Guidance Plan (PGP) annually co-signed by the Commissioner of Internal Revenue, IRS Chief Counsel, and Treasury Assistant Secretary

26 Cf. National Taxpayer Advocate 2008 Annual Report to Congress 39 (Most Serious Problem: *Understanding and Reporting the Tax Consequences of Cancellation of Debt Income*), 391 (Legislative Recommendation: *Simplify the Tax Treatment of Cancellation of Debt Income*); 2007 Annual Report to Congress 13 (Most Serious Problem: *Tax Consequences of Cancellation of Debt Income*).

27 See *supra* Most Serious Problem: *Affordable Care Act: The IRS Communication and Taxpayer Education Strategy Needs Improvement to Meet the Needs of Taxpayers*.

28 See IRC § 5000A(e).

29 See Indian Health Serv., *Indian Health Man.* 2-1.2, available at [http://www.ihs.gov/IHM/index.cfm?module=dsp\\_ihm\\_pc\\_p2c1#2-1.2](http://www.ihs.gov/IHM/index.cfm?module=dsp_ihm_pc_p2c1#2-1.2) (last visited Aug. 1, 2013).

30 See Assoc. Press, *Some Native Americans May Be Penalized Under ACA* (May 15, 2013), available at [http://www.cbsnews.com/8301-204\\_162-57584676/ap-some-native-americans-may-be-penalized-under-affordable-care-act/](http://www.cbsnews.com/8301-204_162-57584676/ap-some-native-americans-may-be-penalized-under-affordable-care-act/) (last visited Aug. 1, 2013).

31 78 Fed. Reg. 39,501 (July 1, 2013); see also IHS Press Release, *Administration Renews Commitment to American Indians and Alaska Natives* (June 26, 2013), available at <http://www.ihs.gov/newsroom/pressreleases/2013pressreleases/renewcommitment/> (last visited Aug. 8, 2013); cf. *infra* Legislative Recommendation: *Premium Tax Credit: Lower the Affordability Threshold*.

32 See Ellen Aprill, *The Integral, the Essential, and the Instrumental*, 23 J. Corp. L. 803 (1998).



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*Punting a noncompliant taxpayer downstream, when that taxpayer has reached out to the IRS, is foolhardy and costly.*

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(Tax Policy) has promised, every year since 2007, regulations setting forth criteria for treating an entity as an integral part of a state, local or tribal government.<sup>33</sup> Yet the IRS has issued no such guidance.

On a related topic, the IRS declined to issue guidance on corporations chartered under tribal law. For federal tax purposes, corporations chartered under state law are corporations, but the status of those chartered under tribal law is unclear.<sup>34</sup> From 2001 to 2007, a PGP commitment to guidance on this topic turned into another broken promise. By way of explanation, tribal corporations could be subsumed under integral part regulations if the IRS completes those regulations.

Nevertheless, the IRS recently issued guidance helpful to tribal members, responding in part to a long-standing executive order that memorializes a U.S. government commitment to consultation with tribes.<sup>35</sup> Significant publications include:

- *General Welfare Exclusion.* Under an administrative doctrine harking back at least to the New Deal era, the IRS has excluded from income government payments to needy individuals. Notice 2012-75 proposes guidance on applying this general welfare exclusion to tribal programs, specifically creating a safe harbor where individual need may be unclear (*e.g.* payments to attend powwows).<sup>36</sup> Upon consideration of public comments, the IRS should finalize this guidance.
- *Indian Gaming Regulatory Act (IGRA) Trusts.* Under IGRA, tribes may set aside *per capita* payments derived from tribal-owned enterprises (such as casinos) for children (and other legal incompetents) in trust. In general, trust deposits are income when the beneficiary obtains control of the money.<sup>37</sup> As set forth in prior guidance, judicial (and regulatory) doctrines of constructive receipt (or economic benefit) may allow deferral of inclusion in income when the beneficiary's control is subject to substantial limitations or restrictions, such as claims of the tribe's creditors.<sup>38</sup> Recent guidance maintains deferral while clarifying that trustees may make staggered distributions to beneficiaries at different ages or upon the occurrence of specific events rather than distributing all the trust assets when the beneficiary attains a specified age, broadening the class of survivors who may inherit a beneficiary's trust interest, and modifying trustees' discretion to make health and welfare distributions.<sup>39</sup>
- *Tribal Trust Settlements.* In 2012, the U.S. settled major litigation in which tribes complained that federal agencies had historically mismanaged property that the government holds in trust for tribes. Consequently, the U.S. agreed to pay more than \$1 billion to tribes, which may in turn make *per capita* payments to members. Recent IRS guidance clarifies that *per capita* payments are excluded

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33 See IRS Priority Guidance Plans, available at <http://www.irs.gov/uac/Priority-Guidance-Plan> (last visited Aug. 2, 2013).

34 See Karen Atkinson & Kathleen Nilles, *Tribal Business Structure Handbook* (Dep't of the Interior, 2008), Ch. III, [http://www.irs.gov/pub/irs-tege/tribal\\_business\\_structure\\_handbook.pdf](http://www.irs.gov/pub/irs-tege/tribal_business_structure_handbook.pdf).

35 See Exec. Ord. 13,175, 65 Fed. Reg. 67,249 (Nov. 9, 2000); supplemented by Pres. Memo. 74 Fed. Reg. 57,879 (Nov. 5, 2009); implemented by O.M.B. Memo. M-10-33 (July 30, 2010).

36 2012-2 C.B. 715 (Dec. 5, 2012).

37 See Treas. Reg. § 1.451-2.

38 See Rev. Proc. 2003-14, 2003-1 C.B. 319.

39 See Rev. Proc. 2011-56, 2011-2 C.B. 834.

from members' income to the extent attributable to the settlement, while interest earned after transfer to the tribe would be included.<sup>40</sup>

## CONCLUSION

While the ITG function conducts exemplary outreach, other IRS organizations remain unaware of particular characteristics and needs of Indian individual and tribal taxpayers. This lack of awareness could result in unnecessary contact with the IRS and unwarranted auditing, taxation, or penalties. Informal and published guidance could direct IRS employees to consult the ITG function or otherwise account for special considerations surrounding Native American individuals and tribal governments.

## RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

- Train all compliance employees about the culture and needs of Native American taxpayers, rendering assistance as required by this population, after consulting with and referring taxpayers to TAS when necessary.<sup>41</sup>
- Establish a cross-functional working group on issues of Indian individuals, parallel to the ITG function which focuses on tribal entities.
- Consult with the ITG function before implementing filters or similar programs (such as those operated by Wage & Investment Pre-Refund, AUR, ASFR, Correspondence Exam; Field Exam) that could have the effect of erroneously targeting Indian taxpayers.
- Correct procedures that result in routine failure to comply with ITG directives.
- Finalize guidance on tribal documentation of qualifying children, frivolous claim penalties, integral parts of governments including tribal corporations, general welfare exclusion of tribal distributions, and other questions as they arise.

<sup>40</sup> See Notice 2013-55, 2013-38 I.R.B. 207; Notice 2013-1, 2013-3 I.R.B. 281; Notice 2012-60, 2012-41 I.R.B. 445.

<sup>41</sup> Cf. National Taxpayer Advocate 2010 Annual Report to Congress 15 (Most Serious Problem: *The IRS Mission Statement Does Not Reflect the Agency's Increasing Responsibilities for Administering Social Benefits Programs*); 2009 Annual Report to Congress, vol. 2, § 4, 75 (Research Study: *Running Social Programs Through the Tax System*).