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## MEMORANDUM

April 9, 2018

TO: Tribal Tax Policy Clients

FROM: Michael Willis /s/ and Wendy Pearson /s/

RE: Tax Policy Developments

This memorandum reports on the following tax policy matters:

- ***Treasury Department Schedules the Inaugural Meeting of the Treasury Tribal Advisory Committee for May 8, 2018***
- ***Congress Uses Spending Bills to Expand the Low-Income Housing Tax Credit and to Extend Tax Credits Designed Stimulate Investment on Indian Lands***
- ***The Indian Community Economic Enhancement Act of 2018 Passes the Senate and Moves to the House for further Consideration***

### ***Treasury Department Schedules the Inaugural Meeting of the Treasury Tribal Advisory Committee for May 8, 2018***

The Tribal Advisory Committee that Congress established in 2014 to advise the Secretary of the Treasury on matters of Indian taxation will meet in its first official session on May 8, 2018, in Washington, DC. Congress created the advisory committee, now known as the Treasury Tribal Advisory Committee (TTAC) when it enacted the Tribal General Welfare Exclusion Act of 2014. Although the TTAC's charter was filed by the Treasury Department on February 10, 2015, Treasury refused to convene the Committee until all the congressionally-appointed members had been confirmed. With Senator Hatch's appointment this year of Rebecca Benally of the Navajo Nation, the seven-member TTAC is now complete.

The TTAC has scheduled its first meeting for May 8, 2018 in Washington, D.C. Beverly Babers Ortiz, who has been the Treasury Point of Contact for tribal consultation and for working with the TTAC, however, has been reassigned within Treasury. In the absence of a designated Point of Contact, the TTAC has requested a meeting with Secretary of Treasury, Steve Mnuchin, prior to the May 8, 2018 meeting in order to reach agreement on topics to address with Treasury.

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The TTAC's proposed agenda for its first meeting is expected to include the following topics:

- Reviewing the TTAC Charter and Bylaws for any revisions.
- Providing guidance to the IRS on interpreting the "lavish and extravagant" restriction on tribal general welfare benefits provide under Internal Revenue Code ("Code") Section 139E. The TTAC is concerned that IRS agents do not have sufficient familiarity with tribal culture or values to properly interpret the "lavish and extravagant" restriction. For example, will the IRS take into account tribal customs of caring for their elders when making such determination? Will the IRS understand the amount of money typically spent on tribal cultural ceremonies?
- Addressing issues raised by tribes that Code Section 139E is not being applied consistently by the IRS across and within the regions of the country.
- Begin development of a comprehensive IRS field agent training curriculum.
- Addressing tax parity for tribal governments to provide clarity and to prevent state and local government interference in tribal governmental revenue-generating activities.

### ***Congress Uses Spending Bills to Expand the Low-Income Housing Tax Credit and to Extend Tax Credits Designed Stimulate Investment on Indian Lands***

Congress enacted the "Tax Cut and Jobs Act" (P.L. 115-97) on December 22, 2017, on a party line vote, without including any of the tax reform priorities identified by Indian tribes and tribal organizations. In 2018, Congress has twice relied upon budget bills to address tribal tax-related matters.

Most recently, in the FY 2018 Omnibus Appropriations Act, Congress expanded the Low-Income Housing Tax Credit (LIHTC) Program for the first time in a decade. The credits allocable to each state were increased by 12.5%, beginning in 2018 and continuing through 2021. Qualifying low income housing projects were broadened to allow the developer to utilize averaging to meet the 60% of median income test for the occupants.

Earlier in the year, as part of the short-term continuing resolution, known as the "Bi-Partisan Budget Act of 2018," Congress extended several tax credits designed to attract investment to projects on Indian lands. These tax credits, which expired on December 31, 2016, were retroactively extended for another year, through December 31, 2017. As a result of this legislation, the following credits apply for 2017 tax filings: the

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Indian employment tax credit; accelerated depreciation for business property on an Indian reservation; and the production credit for Indian coal facilities.

### ***The Indian Community Economic Enhancement Act of 2018 Passes the Senate and Moves to the House for further Consideration***

The Indian Community Economic Enhancement ("ICE") Act of 2018 (S. 1116) passed the Senate on March 22, 2018. It has now moved to the House of Representatives for further consideration by the Committee on Natural Resources and the Committee on Education and the Workforce.

Senate Committee on Indian Affairs Chairman John Hoeven (R-ND) introduced S. 1116 with the co-sponsorship of Senator John McCain (R-AZ). The bill has been promoted by the National Congress of American Indians (NCAI), the Native American Financial Officers Association (NAFOA), and the National Center for American Indian Enterprise Development (NCAIED), among others, to address the lack of parity between Indian tribal governments and state and local governments, particularly with respect to securing private financing for infrastructure and economic development. The bill would accomplish the following:

- Amends the Native American Business Development, Trade Promotion, and Tourism Act of 2000 (25 U.S.C. 4302) to establish the Office of Native American Business Development (ONAB) under the Secretary of Commerce. The Director ONAB will become the point of contact between tribes, tribal organizations and Treasury on policies, programs and general matters of economic development. ONAB will also coordinate all federal agencies on consultation with tribes and implementation of this new act, ICE.
- Requires interagency coordination, within one year of enactment, between Treasury and Commerce on improving, promoting, and removing barriers to investment in Indian Country, including development of alternatives for loan collateral, training entrepreneurs through tribally owned colleges/universities and tribal organizations, and working with SEC to make Indian tribes "accredited investors." Treasury and Commerce are required to report every two years to Congress on their work on these matters.
- GAO is required to conduct a study within 18 months of enactment which addresses –
  - current federal programs and services available to Indian communities to capitalize economic development and infrastructure building (including telecommunications and broadband). The study should also address demand and usage of these programs/services and compare their efficacy to similar programs offered to non-Indian communities.

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- Assess, quantify and compare financing assistance available to non-Indian communities versus Indian communities through various federal agencies.
- Assess, quantify and compare usage of tax incentives by non-Indian communities versus Indian communities, such as New Markets Tax Credit, Investment Tax Credit, Low Income Housing Credit, Renewable Energy credits, and accelerated depreciation.
- Propose alternatives to encourage tribal investment in a community development investment fund or bank.
- Amends the "Buy Indian Act" to require Secretaries of Interior and Health and Human Services to employ Indian labor and purchase Indian products and to harmonize their procurement policies and practices to implement the mandate and achieve an annual minimum percentage goal for procurement. The agencies are required to consult with tribes, tribal industrial organizations and other stakeholders to improve procurement. A report to Congress on their efforts and successes is required every two years.

### *Conclusion*

Please do not hesitate to contact us if you have any questions or would like further information on the topics discussed in this memorandum.