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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

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**Opening Statement of
Chairman Don Young**
Subcommittee on Indian and Alaska Native Affairs
At the Oversight Hearing on
“Per Capita Act and Federal Treatment of Trust Per Capita Distributions”
Friday, September 14, 2012 at 11:00 a.m.

As prepared for delivery.

Today the Subcommittee will review the Federal government’s controversial tax treatment of non-gaming per capita payments distributed by Indian tribes to their enrolled members. Gaming revenues are governed by the Indian Gaming Regulatory Act of 1988 and are not at issue in this hearing.

Under historical precedent, case law, and a statute known as the Per Capita Act, per capita payments from tribes to their members are not taxable if the funds are taken from accounts held in trust by the Department of the Interior. These funds in turn are derived from the development of natural resources on lands held in trust for tribes, among other sources.

To be clear, these per capita payments are not government hand-outs. They are benefits that belong to Indians, secured under terms negotiated in treaty and statute whereby tribes ceded tens of millions of acres of land to the United States.

It would be a grave injustice to tax revenues originating from lands held for the exclusive use and benefit of American Indians, who secured their property at a great cost.

Today’s hearing was called when the Committee learned that several tribes received troubling notices from the IRS. The IRS notified the tribes that enrolled members receiving per capita payments from the tribes’ trust accounts are taxable. The taxability of such benefits appears to be unprecedented. It drastically affects the special status of recognized tribes, a matter over which this Committee has jurisdiction.

At the same time that tribes are wrestling with this new, unauthorized tax liability, the IRS last week issued a public notice declaring that per capita payments from the private accounts of 55 tribes are not taxable. These are tribes that recently settled their trust mismanagement lawsuits with the Obama Administration, a settlement process called the Settlement Proposal to the Obama Administration, or “SPOA.”

While the United States should not tax tribal settlement funds, the IRS guidance regarding SPOA funds is most curious.

It is clear that the Per Capita Act protects tribal funds from taxation when they're in trust accounts. It does not protect funds held in private, non-trust accounts.

This begs a question: Why would the IRS tax tribal payments derived from trust resources, while granting tax relief for payments derived from non-trust accounts?

This makes no sense, and it creates the perception that something political has occurred in the Department of the Treasury.

I believe that none of the funds I've described should be taxable, but the IRS must explain why it thinks certain trust payments are taxable while the private ones are not. I look forward to hearing more about these issues from our witnesses today, and hope to explore solutions to ensure the Per Capita Act is implemented as intended by Congress.