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THE COLVILLE TRIBAL TRUST CLAIMS SETTLEMENT AND PER CAPITA DISTRIBUTIONS

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NESPELEM, WA – Over the past several weeks, the Colville Business Council has received numerous questions regarding the \$193 million settlement between the United States and the Confederated Tribes of the Colville Reservation. The settlement, which resolved the Colville’s claims against the US government for trust mismanagement, was recently approved by the federal judge overseeing Colville’s and several other tribes’ trust claims. The settlement funding is expected to be disbursed by the US to the Tribes within two months.

Twenty percent of the settlement will be retained in a trust account for distribution to Colville members. Any part of the remaining 80 percent, if distributed as an additional “per capita payment,” would be subject to federal income taxes and could affect a recipient’s eligibility for federal, state and tribal benefit programs.

“The Colville Business Council was able to negotiate an agreement with the United States which put more than \$38 million of our trust claims settlement into a special trust account,” CBC Chairman Michael O. Finley said today. “Any distribution from the remaining settlement funds would be subject to income taxes.”

The federal government’s presumption is that income in any form that is received by an individual is taxable unless specifically exempted by federal law. The Colville claims settlement agreement negotiators took this into account, and crafted the agreement with the intent of ensuring that a portion of the funds, if distributed, would be exempt from taxation.

Finley noted that the US initially did not want to keep any settlement proceeds in trust. Of the 40 other tribal trust settlements that the US publicly announced in April 2012, the Colville Tribes was one of only four tribes that was able to successfully negotiate to keep settlement proceeds in trust.

**FACT SHEET:
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- The Settlement between the Colville Tribes and the United States totaled \$193 million and was based on claims of mismanagement of tribal trust funds and non-monetary trust resources (i.e., trust lands).
- The Settlement Agreement retained 20% of the total settlement amount (\$38.6 million) in trust with the intent of providing tax-free per capita distributions from that portion to the Colville membership.
- Of the 41 tribal trust settlements that were announced in April 2012, the Colville Tribes was one of only four tribes to successfully negotiate to keep any settlement proceeds in trust.
- Any per capita payments from the non-trust portion of the settlement would be taxable and tribal members would be responsible for paying the tax. Recipients would be issued 1099's and the amounts would have to be reported as income to the IRS.
- Any per capita payments from the non-trust portion of the settlement would count as income or resources in determining initial and ongoing eligibility for federal or federally-assisted programs such as SSI, TANF, Medicaid, Veterans Affairs, Energy Assistance, Child Care Assistance, federal financial aid for college students, and HUD housing, among others. This means that any per capita payment from a non-trust source has the potential to make tribal members ineligible for these and other need-based programs.
- Per capita payments from the trust portion of the settlement in excess of \$2,000 in many cases will be counted as income or resources in determining whether the recipient is or remains eligible for federal or federally-assisted programs. HUD housing is an example of a federal program where this would apply.
- Persons who lose eligibility for assistance because of a per capita payment may be required to re-apply for the assistance.
- Tribal assistance programs that lose clients because they are no longer eligible for services may also lose federal funding based on the program's reduced number of eligible clients.

It has been longstanding practice for the federal government not to consider per capita distributions from tribal trust accounts to be taxable. No general exemption exists, however, for per capita distributions made from non-trust sources.

Funds disbursed from a settlement approved by an act of Congress—a “legislative settlement”—may be nontaxable, but only if the legislation approving the settlement specifically exempts them from taxation. For example, the annual payment the Tribes receives from the Bonneville Power Administration under the 181-D settlement (a percentage of the revenue generated from Grand Coulee Dam) may be distributed tax-free because this exemption was part of the legislation approving the settlement. The Colville Tribes’ \$193 million settlement and the 40 other publicly announced tribal trust settlements are not legislative settlements.

For any taxable distribution over \$600 in one year, the Colville Tribes would be required by federal law to issue a “1099” form to the Internal Revenue Service and to the recipient, as with other taxable income. The amount on the 1099 would have to be reported in that tax year. Depending on other income received, the tax burden on a recipient of taxable per capita income could increase considerably.

Per capita payments from a non-trust source could also affect the eligibility of tribal members currently receiving assistance from TANF, Medicaid, SSI, Veterans Affairs, Energy Assistance, Child Care Assistance, and other programs where services are conditioned on financial need. This means that any per capita payment from a non-trust source has the potential to make tribal members ineligible for these and other need-based programs if the payment were to put the members over the income or resource threshold for a particular program. Also, the effect of having fewer eligible clients in these programs could decrease the federal and state funds available in the future, as programmatic funding for these programs is generally based on the number of clients served. For tribal college students receiving financial aid, per capita payments received this year could decrease the amount of aid provided next year.

In addition, per capita distributions from a non-taxable trust source are not categorically exempt in determining eligibility for financial, medical and other benefits administered under federal or federally-assisted programs. Per capita payments in excess of \$2,000 may count as income or resources in determining eligibility for federal or federally-assisted benefit programs, even if distributed from a trust account, depending on the eligibility requirements of a particular program.

Finley said the “Colville team negotiated hard and achieved one of the best settlements in the nation on behalf of our land, forests, past and future generations. We were able to bring about a long overdue compensation for our mismanaged resources. We did not intend for the federal government to be allowed to recoup a large portion of

the Tribes' settlement on the back end through taxation of our Tribal members. The effects of any per capita distribution, whether taxable or not, need to be taken into account.”

Finley also stated that the CBC will soon select an investment firm to assist the Tribes in making the best choices for mid- and long-term investments of the funding. In addition to providing investment advice and services to the Tribes, the firm chosen will be required to provide free “financial literacy” courses to all Tribal members. These courses are intended to help participants make good choices for the future.

Aside from providing appropriate payments to Tribal members, the CBC intends to use a portion of the settlement funding to improve the health of Colville Tribal forests and other natural resources.

“It is in the best interests of our people that those priceless natural resources are restored and preserved. Managed wisely, our lands can provide a sustained income to the Tribes and our people for generations to come,” Finley said.

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