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## **GENERAL MEMORANDUM 18-036**

### Tribal Social Security Fairness Act Enacted

On September 20, 2018, the President signed HR 6124, the Tribal Social Security Fairness Act ("Act"), as PL 115-243. The Act provides long-sought parity for tribal governments with regard to Social Security and Medicare coverage for tribal council members. It provides a process by which tribal governments, like state and local governments, can opt-in to Social Security and Medicare taxes and coverage for appointed or elected tribal council members and tribal council leadership ("members"). The Act also retroactively provides a process by which tribal council members who had erroneously paid (and were not refunded) Social Security and Medicare taxes prior to enactment of the Act can receive Social Security and Medicare credit for the payment of those taxes.

In our General Memorandum 17-033 of June 28, 2017, we wrote in detail about previous iterations of the legislation, including a summary of past efforts to provide tribal governments with parity in this regard. It appears that the main difference between the Act and its earlier versions is that the Act provides a process by which tribal council members can retroactively obtain credit for past Social Security and Medicare taxes paid. The Act was sponsored by Representative Reichert (R-WA) and co-sponsored by Representatives: DelBene (D-WA); Cole (R-OK); Kilmer (D-WA); Schweikert (R-AZ); Gallego (D-AZ); and O'Halleran (D-AZ). Their statements of support for the Act when it was considered on the House Floor are attached.

Please let us know if we may provide additional information about the Tribal Social Security Fairness Act.

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A motion to reconsider was laid on the table.

**TRIBAL SOCIAL SECURITY  
FAIRNESS ACT OF 2018**

Mr. REICHERT. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6124) to amend title II of the Social Security Act to authorize voluntary agreements for coverage of Indian tribal council members, and for other purposes, as amended.

The Clerk read the title of the bill. The text of the bill is as follows:

H.R. 6124

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Tribal Social Security Fairness Act of 2018”.

**SEC. 2. VOLUNTARY AGREEMENTS FOR COVERAGE OF SERVICES BY AMERICAN INDIAN TRIBAL COUNCIL MEMBERS.**

(a) IN GENERAL.—Title II of the Social Security Act (42 U.S.C. 401 et seq.) is amended by inserting after section 218 the following new section:

**“VOLUNTARY AGREEMENTS FOR COVERAGE OF INDIAN TRIBAL COUNCIL MEMBERS**

**“Purpose of Agreement**

“SEC. 218A. (a)(1) The Commissioner of Social Security shall, at the request of any Indian tribe, enter into an agreement with such Indian tribe for the purpose of extending the insurance system established by this title to services performed by individuals as members of such Indian tribe’s tribal council. Any agreement with an Indian tribe under this section applies to all members of the tribal council, and shall include all services performed by individuals in their capacity as council members.

“(2) Notwithstanding section 210(a), for the purposes of this title, the term ‘employment’ includes any service included under an agreement entered into under this section.

**“Definitions**

“(b) For the purposes of this section:

“(1) The term ‘member’ means, with respect to a tribal council, an individual appointed or elected to serve as a member or the head of the tribal council.

“(2) The term ‘tribal council’ means the appointed or elected governing body of a federally recognized Indian tribe.

**“Effective Date of Agreement**

“(c)(1) Any agreement under this section shall be effective with respect to services performed after an effective date specified in such agreement, provided that such date may not be earlier than the first day of the next calendar month after the month in which the agreement is executed by both parties.

“(2) At the request of the Indian tribe at the time of the agreement, such agreement may apply with respect to services performed before such effective date for which there were timely paid in good faith (and not subsequently refunded) to the Secretary of the Treasury amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 had such services constituted employment for purposes of chapter 21 of such Code. No agreement under this section may require payment to be made after the effective date specified in such agreement of any taxes with respect to services performed before such effective date.

**“Duration of Agreement**

“(d) No agreement under this section may be terminated on or after the effective date of the agreement.”.

(b) CONFORMING AMENDMENTS.—  
(1) SOCIAL SECURITY ACT.—Section 210(a) of the Social Security Act (42 U.S.C. 410(a)) is amended—

(A) in paragraph (20), by striking “or” at the end;

(B) in paragraph (21), by striking the period at the end and inserting “; or”; and

(C) by inserting after paragraph (21) the following new paragraph:

“(22) Service performed by members of Indian tribal councils as tribal council members in the employ of an Indian tribal government, except that this paragraph shall not apply in the case of service included under an agreement under section 218A.”.

(2) INTERNAL REVENUE CODE OF 1986.—The Internal Revenue Code of 1986 is amended—

(A) in section 3121(b)—  
(i) in paragraph (20), by striking “or” at the end;

(ii) in paragraph (21), by striking the period at the end and inserting “; or”; and

(iii) by inserting after paragraph (21) the following new paragraph:

“(22) service performed by members of Indian tribal councils as tribal council members in the employ of an Indian tribal government, except that this paragraph shall not apply in the case of service included under an agreement under section 218A of the Social Security Act.”; and  
(B) in section 3121(d)(4), by inserting “or 218A” after “section 218”.

(c) RULE OF CONSTRUCTION.—Nothing in this Act or the amendments made by this Act shall be construed to affect application of any Federal income tax withholding requirements under the Internal Revenue Code of 1986.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Washington (Mr. REICHERT) and the gentleman from Massachusetts (Mr. NEAL) each will control 20 minutes.

The Chair recognizes the gentleman from Washington.

**GENERAL LEAVE**

Mr. REICHERT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 6124, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

Mr. REICHERT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am proud to rise today in support of my bill, the Tribal Social Security Fairness Act. This bipartisan bill supports our community’s Tribal leaders and their fair access to the Social Security system and the benefits they have earned by ensuring Tribal governments have the same opportunity to participate in the Social Security Program that so many others across the country rely on. It was unanimously approved by the Ways and Means Committee in late June.

This bill provides a simple solution to a problem facing Tribal leaders across the country, including in my home State of Washington. In Washington State, many Tribal leaders have been paying into the Social Security system with the expectation of future benefits. However, a Social Security Administration policy ruling issued in 2006 prevented them from continuing to

pay into the program and have their earnings count toward future benefits.

This problem was brought to my attention a few years ago when I met with Virginia Cross. Virginia Cross is the chairwoman of the Muckleshoot Tribal Council in Washington State. After this meeting, we discovered other Tribal leaders in Washington and across the country face the same challenges, including the Snoqualmie Tribe in Washington. Hearing these examples, it just didn’t seem fair that those who wanted to pay into the system could not pay into the system. That is when my staff and I went to work to find a solution.

Thanks to the dedicated advocacy of the Muckleshoot and the Snoqualmie Tribes and the leadership of fellow Washingtonians, Representatives DELBENE and KILMER, as well as Representatives COLE and SCHWEIKERT, we were able to find a bipartisan, comprehensive solution to the problem. I would also like to thank Chairman BRADY and Ranking Member NEAL of the Ways and Means Committee and their staff for all the hard work they have put in on this most important bill.

I urge my colleagues to join me today in righting this wrong so our Tribal leaders can receive the Social Security benefits they deserve.

Mr. Speaker, I reserve the balance of my time.

Mr. NEAL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 6124, which closes a longstanding gap in Social Security coverage for members of Indian Tribal councils.

Let me thank Representatives DAVE REICHERT and SUZAN DELBENE for their good work to resolve this issue.

H.R. 6124 allows Indian Tribal councils to voluntarily cover their members under Social Security in a way that is similar to how State and local governments do so today. This would allow individuals employed as members of Tribal councils to contribute to Social Security and Medicare and, therefore, earn benefit protection.

I want to emphasize that the decision to participate would be voluntary. Each Tribal council will have the right to decide for itself.

In addition, because there has been confusion around this issue for many years, the legislation allows Tribal council members to receive benefit credit if they have erroneously paid Social Security taxes in the past, even though they were not required to. This is only fair, and I am pleased that the legislation addresses this problem as well.

Social Security and Medicare coverage are valuable protections for all Americans. I am pleased that this bipartisan legislation is moving forward, and I urge its support.

Mr. Speaker, I reserve the balance of my time.

Mr. REICHERT. Mr. Speaker, I yield such time as he may consume to the

gentleman from Texas (Mr. SAM JOHNSON).

Mr. SAM JOHNSON of Texas. Mr. Speaker, I want to thank Mr. REICHERT, Ms. DELBENE, Mr. COLE, and Mr. KILMER for introducing this commonsense bill.

As chairman of the Ways and Means Social Security Subcommittee, I held a hearing last year on Social Security coverage for some State and local governments. During the hearing, we discussed how State and local governments were initially excluded from Social Security. But over time, the law was changed to provide State and local governments the choice to extend Social Security coverage to their employees.

However, Tribal councils don't have this same option. The IRS and Social Security have a rule that Tribal council members are not eligible for Social Security coverage. That isn't right. Tribal councils should be able to participate in Social Security if they want to. The bill on the floor today fixes this by giving Tribal councils the choice.

I also want to be clear that this bill does not mandate Social Security coverage. Tribes will still have the ability to make their own decision.

This bill treats Tribal council members fairly when it comes to Social Security benefits and is the result of a request from several Tribal councils. I encourage my colleagues to support this bill. It is a bipartisan bill.

Mr. NEAL. Mr. Speaker, I am prepared to close, and I reserve the balance of my time.

Mr. REICHERT. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona (Mr. SCHWEIKERT), a member of the Ways and Means Committee.

Mr. SCHWEIKERT. Mr. Speaker, I will do this really quickly.

Being from Arizona, where I have, functionally, 23 Tribes, 21 or 22 reservations, it is surprising how often this becomes a subject and trying to understand how big and complex many of our Tribal communities are. We think our lives are sometimes complex. Imagine having to operate in the world of multiple layers, where you have to deal with State and local, Federal, and then Tribal politics, issues, and those things.

I was visiting some of my friends on a Tribal community called Ak-Chin. It was interesting. One of the gentlemen there basically said: I am on council. I can't participate in Social Security. But before I was on council, I managed one of the Tribal operations, and there I could participate in Social Security.

I know this is sort of a glitch, but this is one of those honorable things where we step up and we create some optionality. Within that optionality, I think we respect Tribal sovereignty, and we are just doing the right thing here.

Mr. NEAL. Mr. Speaker, I yield myself the balance of my time.

I want to thank the sponsors for their hard work. I urge colleagues on

both sides of the aisle to support this legislation, and I yield back the balance of my time.

Mr. REICHERT. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, H.R. 6124, the Tribal Social Security Fairness Act, is a straightforward, commonsense, bipartisan bill. It ensures our Tribal leaders have access to Social Security benefits that they so deserve.

Mr. Speaker, I urge my colleagues to join me in supporting this bipartisan bill, and I yield back the balance of my time.

Mr. GALLEGRO. Mr. Speaker, I rise today in support of H.R. 6124, the Tribal Social Security Fairness Act.

I am pleased to support this common sense, bipartisan bill that will extend a basic right to tribal leaders across the country: the ability to retire with dignity and security.

Astonishing as it may seem, elected tribal leaders, including those who have already paid into Social Security, can no longer contribute to—or access the benefits of—this critical safety net program.

After a lifetime of service to their communities, tribal leaders shouldn't have to struggle to make ends meet.

They deserve the same access to Social Security as every other American.

This speaks to a broader problem, Mr. Speaker.

As the first inhabitants of our homeland, the interests of Native Americans should be a primary consideration when federal policy makers go to work—not an afterthought.

But, too often, the unique considerations of Indian Country are just that . . . an afterthought.

Nevertheless, every decision we make in this body—from the Farm Bill to healthcare to tax policy—every decision we make impacts our Native American brothers and sisters.

Earlier today, in the Subcommittee on Indian Affairs, we heard from the tribe whose members helped the Pilgrims survive that first winter in Plymouth. Their good will is part of the reason you and I are here today.

Moving forward, it's incumbent upon us to demonstrate the same generosity of spirit that was shown to our nation's founders.

And we can start here and now.

I urge my colleagues to support this common sense legislation today, and to fully consider the implications of new policies on Indian Country in the future.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Washington (Mr. REICHERT) that the House suspend the rules and pass the bill, H.R. 6124, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

#### PROTECT MEDICAL INNOVATION ACT OF 2017

Mr. PAULSEN. Mr. Speaker, pursuant to House Resolution 1011, I call up the bill (H.R. 184) to amend the Internal Revenue Code of 1986 to repeal the

excise tax on medical devices, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 1011, the amendment printed in House Report 115-860 is adopted, and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 184

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Protect Medical Innovation Act of 2018".

#### SEC. 2. REPEAL OF MEDICAL DEVICE EXCISE TAX.

(a) IN GENERAL.—Chapter 32 of the Internal Revenue Code of 1986 is amended by striking subchapter E.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 4221 of such Code is amended by striking the last sentence.

(2) Paragraph (2) of section 6416(b) of such Code is amended by striking the last sentence.

(c) CLERICAL AMENDMENT.—The table of subchapters for chapter 32 of such Code is amended by striking the item relating to subchapter E.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 2019.

The SPEAKER pro tempore. The bill shall be debatable for 1 hour, equally divided and controlled by the chair and ranking minority member of the Committee on Ways and Means.

The gentleman from Minnesota (Mr. PAULSEN) and the gentleman from Massachusetts (Mr. NEAL) each will control 30 minutes.

The Chair recognizes the gentleman from Minnesota.

#### GENERAL LEAVE

Mr. PAULSEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill H.R. 184, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. PAULSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today, the House will vote on H.R. 184, the Protect Medical Innovation Act, which will finally repeal the medical device excise tax and eliminate a burden on patients and the companies that create and produce life-saving medical devices for people all over the world.

The medical device industry is truly an American success story, directly employing more than 400,000 people. In Minnesota alone, more than 35,000 people are employed at almost 700 companies, mostly small companies that you have never heard of. Many of them were started by a doctor or an engineer or an entrepreneur in the garage or in the backyard with an idea to improve or help save someone's life. In fact, 80