

With Tribal Social Security Fairness Act of 2019, Tribal Leaders Are Now Able to Pay Into Social Security

Sept. 25, 2019 — Thanks to the Tribal Social Security Fairness Act of 2018, elected leaders of federally recognized tribes now are able to voluntarily pay into social security through an agreement with the commissioner of the U.S. Social Security Administration. This was not possible under a previous Internal Revenue Service ruling, which stated that tribal officials could not contribute to social security for the duration of their terms serving in elected tribal council positions.

According to that ruling, tribal leaders' salaries were not "wages" for the purposes of Federal Insurance Contributions Act or Federal Unemployment Tax Act purposes. While they did not have to pay FICA or FUTA, tribal officials also could not make social security contributions.

According to Fredericks Peebles & Patterson attorney Thomasina Real Bird, many tribes and tribal leaders viewed this as a hardship. It also was a potential deterrent for seeking elected office.

"For years, tribal council leaders and other elected officials were not accruing social security benefits," Real Bird said. "Although most of these positions are full-time, they were not able to pursue their retirement planning as they would in other full-time positions, which certainly was a burden. Many felt they were sacrificing their future economic security, and they had to plan outside the social security system.

"For example, a tribal member might consider running for a tribal council position, after years in a regular job," she continued. "With the inability to continue contributing to social security, that person might opt not to run, or to stop after one term of service."

Under this new legislation, elected tribal officials now can accrue those social security benefits during their time in office. These previously unavailable benefits include Old Age, Survivors and Disability Insurance.

"This is a long-overdue change in federal law, and it is a huge win for tribal leaders," Real Bird said. "They can continue to serve their communities while also planning for their own future economic security."

Participation is voluntary. Social security payments and credit will start to accrue the month after a tribe signs the agreement with the commissioner of social security and presents the signed agreement and resolution to the U.S. Social Security Administration. What's more, if a tribe did unknowingly contribute FICA taxes for its elected officials in previous years and did not request a refund, the social security credit will be retroactive to when the old FICA payments were made.

"If a tribe wants to seek credit for previous elected leaders who did contribute to FICA while in office, it has to indicate that on the form agreement," Real Bird explained. "The U.S. Social

Security Administration will research this and verify the amount that is owed to those elected officials.”

To find out more about the TSSFA and next steps for tribal officials, contact Thomasina Real Bird at (303) 673-9600 or trealbird@ndnlaw.com.

A majority Native American-owned law firm, Fredericks Peebles & Patterson has offices in Sacramento, California; Louisville, Colorado; Rapid City, South Dakota; and Washington, DC. For more information, visit www.ndnlaw.com

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