

SIXTEENTH DECENNIAL CENSUS OF POPULATION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A STATEMENT PREPARED BY THE DIRECTOR OF THE CENSUS, DEPARTMENT OF COMMERCE, GIVING THE WHOLE NUMBER OF PERSONS IN EACH STATE AS ASCERTAINED UNDER THE SIXTEENTH DECENNIAL CENSUS OF POPULATION, AND THE NUMBER OF REPRESENTATIVES TO WHICH EACH STATE WOULD BE ENTITLED UNDER AN APPORTIONMENT OF THE EXISTING NUMBER OF REPRESENTATIVES BY THE METHOD KNOWN AS THE METHOD OF MAJOR FRACTIONS, WHICH WAS THE METHOD USED IN THE LAST PRECEDING APPORTIONMENT, AND ALSO BY THE METHOD KNOWN AS THE METHOD OF EQUAL PROPORTIONS

JANUARY 8, 1941.—Referred to the Committee on the Census, and ordered to be printed

To the Congress of the United States:

In compliance with the provisions of section 22 (a) of the act approved June 18, 1929, providing for the fifteenth and subsequent decennial censuses and for the apportionment of Representatives in Congress, as amended by the act of April 25, 1940, I transmit herewith a statement prepared by the Director of the Census, Department of Commerce, giving the whole number of persons in each State as ascertained under the Sixteenth Decennial Census of Population, and the number of Representatives to which each State would be entitled under an apportionment of the existing number of Representatives by the method known as the method of major fractions, which was the method used in the last preceding apportionment, and also by the method known as the method of equal proportions.

The Director of the Census has included all Indians in the tabulation of total population since the Supreme Court has held that all Indians are now subject to Federal taxation (*Superintendent v. Commissioner*,

295 U. S. 418). The effect of this upon apportionment of representatives, however, appears to be for determination by the Congress, as concluded in the Attorney General's opinion of November 28, 1940, to the Secretary of Commerce, a copy of which is annexed hereto.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
January 8, 1941.

TABLE 1.—Populations of the States, 1940, and apportionment of Representatives in Congress, 1940 and 1930

State	Population, Apr. 1, 1940 (1)	Present number of Rep- resenta- tives ¹ (2)	Apportionment of 435 Representatives, 1940					
			Method of major frac- tions			Method of equal prop- ortions		
			Number of Rep- resenta- tives (3)	Change from 1930		Number of Rep- resenta- tives (6)	Change from 1930	
				Gain (4)	Loss (5)		Gain (7)	Loss (8)
United States.....	131,660,275	435	435	10	-10	435	9	-9
Alabama.....	2,832,961	9	9			9		
Arizona.....	499,261	1	2	1		2	1	
Arkansas.....	1,949,387	7	6		-1	7		
California.....	6,907,387	20	23	3		23	3	
Colorado.....	1,123,296	4	4			4		
Connecticut.....	1,709,242	6	6			6		
Delaware.....	266,505	1	1			1		
District of Columbia.....	663,091							
Florida.....	1,897,414	5	6	1		6	1	
Georgia.....	3,123,723	10	10			10		
Idaho.....	524,873	2	2			2		
Illinois.....	7,807,241	27	26		-1	26		-1
Indiana.....	3,427,706	12	11		-1	11		-1
Iowa.....	2,534,268	9	8		-1	8		-1
Kansas.....	1,891,028	7	6		-1	6		-1
Kentucky.....	2,845,627	9	9			9		
Louisiana.....	2,363,880	8	8			8		
Maine.....	847,226	3	3			3		
Maryland.....	1,821,214	6	6			6		
Massachusetts.....	4,316,721	15	14		-1	14		-1
Michigan.....	5,256,106	17	18	1		17		
Minnesota.....	2,792,300	9	9			9		
Mississippi.....	2,183,796	7	7			7		
Missouri.....	3,784,664	13	13			13		
Montana.....	559,456	2	2			2		
Nebraska.....	1,315,834	5	4		-1	4		-1
Nevada.....	110,247	1	1			1		
New Hampshire.....	491,524	2	2			2		
New Jersey.....	4,160,165	14	14			14		
New Mexico.....	531,818	1	2	1		2	1	
New York.....	13,479,142	45	45			45		
North Carolina.....	3,571,623	11	12	1		12	1	
North Dakota.....	611,935	2	2			2		
Ohio.....	6,907,612	24	23		-1	23		-1
Oklahoma.....	2,336,434	9	8		-1	8		-1
Oregon.....	1,089,684	3	4	1		4	1	
Pennsylvania.....	9,009,180	34	33		-1	33		-1
Rhode Island.....	713,346	2	2			2		
South Carolina.....	1,899,804	6	6			6		
South Dakota.....	642,961	2	2			2		
Tennessee.....	2,915,841	9	10	1		10	1	
Texas.....	6,414,824	21	21			21		
Utah.....	559,310	2	2			2		
Vermont.....	359,231	1	1			1		
Virginia.....	2,677,773	9	9			9		
Washington.....	1,736,191	6	6			6		
West Virginia.....	1,901,974	6	6			6		
Wisconsin.....	3,137,537	10	10			10		
Wyoming.....	250,742	1	1			1		

¹The present apportionment of Representatives is based on the 1930 census. The method followed in 1930 was the method of major fractions. In that instance the use of the method of equal proportions would have resulted in the same apportionment.

NOVEMBER 28, 1940.

The honorable the SECRETARY OF COMMERCE.

MY DEAR MR. SECRETARY: In your letter of November 9, 1940, you state, in part:

Section 2 of the fourteenth amendment to the Constitution provides that in apportioning representatives, "Indians not taxed" shall be excluded. The census of population upon which the reapportionment of Representatives is to be based is now being prepared.

Since it appears that today all Indians are subject to the Federal income-tax law, your opinion is respectfully requested as to whether there are any Indians not taxed, within the meaning of that phrase as it appears in the Constitution and the fourteenth amendment thereto. There is enclosed herewith a recent opinion of the Solicitor of this Department on this subject.

Also enclosed with your letter is an opinion of the Solicitor of the Department of the Interior dealing with the question at some length.

As pointed out by the Solicitor of the Department of the Interior the answer to your question depends upon whether the phrase "Indians not taxed" refers (1) to Indians not actually paying taxes or only to those who are not subject to taxation and (2) to Indians not taxed or subject to taxation by any taxing authority or only to those not taxed or subject to taxation by the States in which they reside. The bearing of these preliminary questions upon the question presented is apparent in view of the recent decisions of the Supreme Court holding that all Indians are subject to the Federal income-tax law.

The question presented has been discussed in a number of court decisions but the issue has never been squarely raised in any of the decided cases. Some of the cases and some statements appearing in the debates in the Constitutional Convention lend support to the view that since all Indians are now subject to the Federal income-tax laws there are no longer any Indians not taxed within the meaning of the constitutional phrase. On the other hand, other decided cases and other statements appearing in the debates in the Convention equally support the contrary view. Thus it appears that, as stated by your Solicitor, the question presents a "perplexing problem", and that the answer to it is not free from doubt.

The Congress is aware, of course, of the recent decisions of the Supreme Court holding all Indians subject to the Federal income-tax laws. What construction the Congress will now give to the phrase "Indians not taxed" is a question for it to decide, and action taken by it with respect thereto will be final, subject only to review by the courts in proper cases brought before them. An opinion on the question by the Attorney General would not be determinative, since neither the Congress nor the courts would be bound by such opinion.

Moreover, it does not appear that an answer to your question is necessary at this time for any administrative purpose within your Department. In my opinion, a continuance by you of the practice heretofore followed in your Department with respect to the subject will meet every administrative requirement imposed upon your

Department in the premises, and in addition well may furnish to the Congress information desired by that body as a basis for action on its part.

It is recommended, therefore, that you at this time follow your former practice, giving to the Congress full information with respect thereto.

Respectfully,

ROBERT H. JACKSON,
Attorney General.

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