



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #SD-15-045

TITLE: Urging the Department of Interior to Address the Harms of State Taxation in Indian Country and Prevent Dual Taxation of Indian Communities

EXECUTIVE COMMITTEE

PRESIDENT
Brian Cladoosby
Swinomish Tribe

FIRST VICE-PRESIDENT
Randy Noka
Narragansett Tribe

RECORDING SECRETARY
Aaron Payment
*Sault Ste. Marie Tribe of Chippewa
Indians of Michigan*

TREASURER
W. Ron Allen
Jamestown S'Klallam Tribe

REGIONAL VICE- PRESIDENTS

ALASKA
Jerry Isaac
Native Village of Tanacross

EASTERN OKLAHOMA
Joe Byrd
Cherokee Nation

GREAT PLAINS
Leander McDonald
Spirit Lake Nation

MIDWEST
Roger Rader
Pokagon Band of Potawatomi

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Fawn Sharp
Quinault Indian Nation

PACIFIC
Jack Potter, Jr.
Redding Rancheria

ROCKY MOUNTAIN
Darrin Old Coyote
Crow Nation

SOUTHEAST
Larry Townsend
Lumbee Tribe

SOUTHERN PLAINS
Liana Onnen
Prairie Band of Potawatomi Nation

SOUTHWEST
Joe Garcia
Ohkay Owingeh Pueblo

WESTERN
Bruce Ignacio
Ute Indian Tribe

EXECUTIVE DIRECTOR
Jacqueline Pata
Tlingit

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, Indian nations and tribes were independent sovereign nations prior to formation of the United States and from the First days of the Republic, the United States entered into treaties and agreements with Indian nations and tribes, acknowledging their status as sovereigns; and

WHEREAS, the Constitution affirms the status of Indian nations and tribes as sovereigns through the Treaty, Supremacy, and Commerce Clauses, and recognizes tribal citizens as "Indians not taxed;" and

WHEREAS, through the Federal Indian traders license, Congress has sought to regulate and protect Indian commerce since 1776; and

WHEREAS, Indian nations and tribes retain our original inherent authority over our members and our territory, including the authority to tax and regulate Indian commerce; *Merrion v. Jicarilla Apache*; *Kerr McGee*; and

WHEREAS, the Supreme Court has ruled that the Federal Indian traders license system pre-empts state taxation on Indian commerce with non-Indian businesses; *Warren Trading Post*; *Central Arizona Machinery*; and

WHEREAS, the Supreme Court has acknowledged that under a balancing test of Federal and tribal interests vs. state interests, state taxation and regulation of reservation generated value is pre-empted; *White Mountain Apache v. Bracker*; *California v. Cabazon*; and

WHEREAS, the Supreme Court has allowed states to tax Indian sales to non-Indians, where the goods are “pre-packaged” and imported to the reservation solely for resale; *Moe v. Salish; Colville*; and

WHEREAS, the Supreme Court in *Moe v. Salish & Kootenai* (1976), and *Washington v. Colville Tribes* (1980), and *Cotton Petroleum v. New Mexico* (1989) has issued confusing and extremely harmful rules regarding state taxation in Indian country where state governments can collect taxes in Indian Country; and

WHEREAS, in *Cotton Petroleum*, the Supreme Court held that States can tax Indian minerals mined on Indian lands within Indian Country contrary to the Supreme Court decision in *Blackfeet Tribe v. Montana*, which held that States could not tax Indian mineral development on Indian lands within Indian Country; and

WHEREAS, the Supreme Court’s decision *Cotton Petroleum* relies on an erroneous economic analysis which suggested that state taxes would not have negative impacts on oil and gas development on tribal lands, and the case should not be allowed to form policy in Indian country because neither the Tribe nor the United States as trustee were parties in *Cotton Petroleum*; and

WHEREAS, the *Cotton Petroleum* decision has also caused dual taxation on Indian mineral development within Indian Country that has caused Indian Tribal nations to lose billions of dollars in tax revenue that are needed to develop the appropriate infrastructures, *i.e.*, roads, law and order, commercial and housing to accommodate the boom of energy development; and

WHEREAS, Tribal Nations are not able to develop any kind of legacy fund that will allow them to replace the revenue from oil and gas development once the finite oil and gas minerals are mined out; and

WHEREAS, the Supreme Court’s erroneous *Cotton Petroleum* analysis is contrary to the Indian Self-Determination Policy, undercuts tribal economic development, undermines tribal self-sufficiency, and violates the United States’ trust responsibility to protect Indian trust lands and natural resources; and

WHEREAS, tribal governments and the federal government have a duty to provide the critical government services and infrastructure in Indian country, the federal government has consistently failed in its treaty and trust obligations to fund these services, and tribal communities struggle greatly with inadequate roads & bridges, schools, hospitals, police and justice systems; and

WHEREAS, Indian tribes must rely on enterprises and natural resources to generate revenue, yet most of the tax revenue from tribal lands is funneled into state government coffers; and

WHEREAS, the Supreme Court rulings result in the inequity of dual taxation where tribal tax policies are displaced by the overwhelming economic impact of state taxes and the collection of a state tax prevents tribal governments from implementing our own tax laws; and

WHEREAS, tribal members generally must go off reservation to purchase goods and services, and it is estimated that as much as 80% of tribal members' incomes are spent off-reservation. The state collect all of the revenue generated from Indian country both on-reservation and off, tribal sovereign authority and treaty rights are violated, and reservation economies and government services are greatly harmed; and

WHEREAS, without action, there is great risk that the harms caused by antiquated tax rules in Indian country will be further exacerbated by increases in state taxes and evolving state tax collection systems that target Indian country for state revenue; and

WHEREAS, under the Indian Trader laws at 25 U.S.C. §262, the Department of Interior has authority where "any person desiring to trade with the Indians on any Indian reservation shall ... be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians."

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) urges the Department of Interior to exercise its authority under the Indian Trader laws at 25 U.S.C. §262, adopt amendments to the Indian Trader Regulations at 25 CFR §140, to protect tribal governments and their communities from the harmful effects of dual taxation and promote Indian Self-Determination, support economic development, and enhance tribal self-sufficiency, and specifically:

- Pre-empt state taxation of Indian commerce;
- Protect Indian country value from state regulation and taxation; and
- Preserve tribal taxation authority over Indian Commerce, free from state interference; and

BE IT FURTHER RESOLVED, that Congress should enact legislation to support and enhance the Secretary's efforts to promote Indian Self-Determination, Tribal Economic Development and Tribal Self-Sufficiency by supporting tribal taxation and regulatory authority over Indian commerce and preventing dual state taxation of Indian commerce; and

BE IT FURTHER RESOLVED, that the Secretary of the Interior has a trust responsibility to protect Indian oil and gas and mineral development from state regulation and taxation and the Secretary of Interior should make a determination under the Indian Minerals Leasing Act and the Indian Minerals Development Act that:

- Oil, gas and byproducts as well as other minerals on Indian lands are non-renewable trust resources and the United States has a trust responsibility to protect Indian Sovereignty, Self-Determination, and regulatory and taxation authority over oil, gas and mineral development on Indian lands;
- Indian oil, gas and mineral development is essential to Indian Self-Determination, economic development, and economic self-sufficiency;

- The Secretary has a corresponding trust responsibility to protect Indian oil, gas and mineral development from state taxation and regulation;
- In addition, any tribal government sales of oil, gas, and by-products or other minerals should be subject to tribal taxation and regulation, and state taxation and regulations must be pre-empted; and

BE IT FURTHER RESOLVED, that NCAI urges the Secretary of Interior to also adopt amendments to the Indian Minerals Leasing Act and the IMDA Regulations at 25 CFR Parts 211 and 225 so as to prevent States from taxing Indian minerals by making the Parts 211 and 225 regulations exclusive regulations, not subject to State taxation or regulatory interference; (the Secretary's authority is set forth more fully in the MHA Nation White Paper Attached); and

BE IT FURTHER RESOLVED, that Congress should enact legislation to promote Indian Self-Determination, Tribal Economic Development, and Tribal Self-Sufficiency in the area of Indian oil and gas development, protect tribal taxation and regulatory authority, and preempt state taxation on Indian oil and gas development and overturn the Cotton Petroleum case; and

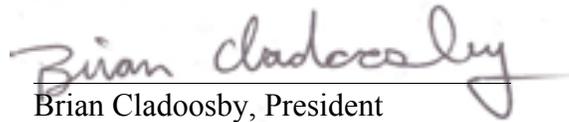
BE IT FURTHER RESOLVED, that the NCAI hereby directs its Executive Staff to assist and facilitate the Tribal Nations' efforts to eliminate dual taxation by States on activities by Indian Nations within their Reservations which includes efforts to amend regulations, obtain a legislative fix to *Cotton Petroleum* and all other tax-related cases and through litigation where appropriate; and

BE IT FURTHER RESOLVED, that the Secretary of Interior shall place the issue of dual state taxation of Indian commerce on the White House Tribal Nations Conference, address the issue with Indian nations and tribes, and develop a plan of action to prevent dual state taxation of Indian commerce; and

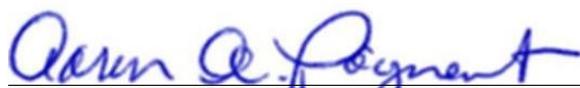
BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2015 Annual Session of the National Congress of American Indians, held at the Town and Country Resort, San Diego, CA, October 18-23, 2015, with a quorum present.


Brian Cladoosby, President

ATTEST:


Aaron Payment, Recording Secretary