



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #ABQ-19-023

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TITLE: Calling Upon the United States Treasury Department to Engage in Full and Meaningful Consultation on the Tax Exempt Status of Tribally Chartered Entities

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 and the United Nations Declaration on the Rights of Indigenous Peoples, 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, tribal nations possess inherent sovereignty which includes the authority to raise governmental revenue and engage in economic development for the health, welfare, and safety of their citizens; and

WHEREAS, the U.S. Constitution recognizes that tribal nations are sovereign through the Treaty, Supremacy, and Commerce Clauses; and

WHEREAS, as a result of their sovereignty, tribal nations are not subject to federal income taxation as recognized by the Internal Revenue Service (IRS) in Revenue Ruling 67-284; and

WHEREAS, tribal chartered entities, as arms of a tribal nation, should be exempt from federal income taxation as recognized by the IRS in Revenue Ruling 67-284; and

WHEREAS, the IRS has not promulgated precise guidance on the limits of federal tax immunity for tribally chartered entities; and

WHEREAS, the IRS presently applies a multi-factor test that assesses whether a tribally chartered entity is an “integral part” of the tribal nation; and

WHEREAS, in a September 2019 Dear Tribal Leader Letter (DTLL), the United States Treasury Department (Treasury) announced that it will be conducting one consultation in Prior Lake, Minnesota on October 8, 2019, and one telephone consultation on October 10, 2019, regarding the income tax treatment of entities chartered under tribal law; and

WHEREAS, pursuant to the federal trust responsibility, tribal treaties, and Executive Order 13175, federal departments are obligated to engage in full and meaningful tribal consultation prior to taking agency action which impacts tribal nations and citizens.


NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) calls upon the United States Treasury Department (Treasury) to release details of its proposed action on the tax immunity of tribally chartered entities and to conduct consultation with tribal nations in all Bureau of Indian Affairs regions throughout the United States prior to any policy changes; and

BE IT FURTHER RESOLVED, that NCAI calls upon the Internal Revenue Service to maintain its current policy regarding the tax exempt tax status of tribally chartered entities until full and meaningful consultation has occurred in accordance with the Treasury's tribal trust responsibilities, treaty obligations, and Executive Order 13175; 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 2019 Annual Session of the National Congress of American Indians, held at the Albuquerque Convention Center, October 20-25, 2019, with a quorum present.



Fawn Sharp, President

ATTEST:



Juana Majel Dixon, Recording Secretary