



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PDX-20-013

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TITLE: Calling Upon Congress to Support the Modernization of Federal Indian Traders License Statute and Regulations in Keeping with the Indian Self-Determination Policy

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 are sovereigns that pre-date the United States, with prior and treaty protected rights to self-government and to our tribal lands, and

WHEREAS, the Constitution of the United States, through the Treaty, Commerce, and Apportionment Clauses and the 14th Amendment, recognizes the sovereign status of tribal nations established prior to the United States; and

WHEREAS, tribal nations predate the United States and are independent sovereigns vested with complete and inherent authority over our lands and our citizens; and

WHEREAS, from the first days of the American Republic, the United States entered into treaties with tribal nations on a government-to-government basis recognizing tribal homelands and rights of self-government; and

WHEREAS, the Constitution establishes treaties as an essential part of the Supreme Law of the Land and recognizes tribal nations as sovereigns with the power to make treaties on a nation-to-nation basis; and

WHEREAS, tribal nations reserved and exercise self-government over permanent homelands from amongst vast original lands; and

WHEREAS, the Constitution of the United States acknowledges tribal nations as vested with sovereignty and jurisdiction over tribal citizens who are referred to as “Indians not taxed” by the Apportionment Clause and the 14th Amendment; and

WHEREAS, tribal lands have inherent authority to tax transactions and economic activities on Indian homelands to raise funds necessary to provide tribal government programs, services and activities; and

WHEREAS, the Supreme Court has ruled that, “the power to tax is an essential attribute of Indian sovereignty because it is a necessary implement of self-government and territorial management.” See *Kerr-McGee Corp. v. Navajo Tribe of Indians*, 471 U.S. 195 (1985)(quoting *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982).

WHEREAS, the Supreme Court has ruled that the federal Indian Traders statute and regulations pre-empt state taxation on Indian country transactions involving Indian tribes or members such as in *Central Machinery Co. v. Arizona State Tax Commission*, 448 U.S. 160 (1980) and *Warren Trading Post Co. v. Arizona Tax Comm’n*, 380 U.S. 685 (1965); and

WHEREAS, certain Supreme Court decisions, such as *Washington v. Confederated Tribes of Colville*, 447 U.S. 134 (1980), have permitted state and local governments to infringe on tribal sovereignty and taxation authority by imposing separate taxes on Indian country transactions and activities; and

WHEREAS, Indian Country, via the below resolutions, has repeatedly called on the Executive Branch to fulfill its fiduciary responsibility to modernize the Indian Trader regulations and pre-empt dual taxation of activities within tribal lands and has continued to await federal action on these requests:

- #SAC-12-042, Supporting Solutions, Including Federal Legislation if Necessary, that Will Reverse or Mitigate the Effects of the 1989 Decision of the U.S. Supreme Court in the Case of Cotton Petroleum V. New Mexico.
- #SD-15-045, Urging the Department of Interior to Address the Harms of State Taxation in Indian Country and Prevent Dual Taxation of Indian Communities.
- #ECWS-17-001, Reaffirmation of the Federal Trust Responsibility to Preserve and Restore the Tribal Land Base and Promote Economic Development.
- #DEN-18-018, Urging the Department of the Interior to Restart its Process of Updating the "Licensed Indian Trader" Regulations.
- #ABQ-19-015, Urging the Secretary of the Treasury to Assist in Ending Dual Taxation of Economic Activity in Indian Country.

NOW THEREFORE BE IT RESOLVED that we now call upon Congress to direct the Secretary of the Interior to update and modernize the federal Indian Traders regulations consistent with the Indian Self-Determination Policy, President Reagan’s American Indian Policy, President Clinton’s Executive Order 13175, and President Obama’s Executive Order 13647;

BE IT FURTHER RESOLVED that the Secretary of the Interior should address the following principles, derived from the aforementioned cases and longstanding federal policy, in the updated federal Indian Traders regulations:

- “The Policy of the United States is to Support Indian Self-Determination, Promote Tribal Economic Development, and Foster Indian Economic Self-Sufficiency.”
- “Through treaties, statutes, and executive orders, the United States reserved Indian reservations and lands as permanent homelands for Indian nations and tribes.”
- “The United States encourages and supports Indian economic self-sufficiency, strong tribal governments, and sustainable tribal homelands.”
- “As an aspect of Indian sovereignty, Indian tribes possess inherent authority to regulate and tax Indian commerce on Indian reservations and lands and tribal generation of Indian country value is important to promote economic self-sufficiency, so state taxation of Indian commerce substantially involving Indian nations, Indians and their trading partners is pre-empted, absent express congressional authorization.”


BE IT FURTHER RESOLVED that consistent with Executive Order 13175 and pursuant to the Indian Self-Determination Act, Congress should mandate that the revised federal Indian Traders regulations be updated by the Secretary of the Interior and must include a provision to recognize the authority of tribal nations to develop our own tribal laws to regulate Indian commerce, including standards for business licensing, fair credit, merchantability of goods and services, protection of public health and safety, and taxation, which shall have the same pre-emptive effect as the federal regulations; and

BE IT FURTHER RESOLVED that the President, Congress and the Secretary should act to modernize the federal Indian Traders statutes and regulations within the first 100 days of the next Administration; 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 2020 Annual Session of the National Congress of American Indians, held Nov 8, 2020 - Nov 13, 2020, with a quorum present.



Fawn Sharp, President

ATTEST:



Juana Majel Dixon, Recording Secretary