



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #SD-15-036

### **TITLE: Support for Tribal Tax Reform and Setting Tax Policy Priorities**

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**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**, the United States has entered into numerous treaties with the American Indian nations and tribes located within its borders, including NCAI member Tribes, in which it has promised to recognize and respect tribal sovereignty and jurisdiction, but has consistently violated those treaties throughout its history; and

**WHEREAS**, since 1924, when the U.S. government unilaterally conferred citizenship upon American Indians born within the United States, Congress preserved the right of Indians to tribal and other property uninfluenced by the grant of such citizenship, yet the U.S. government led by the Internal Revenue Service has sought to tax tribal government activities and the income of individual Indians; and

**WHEREAS**, despite any act of Congress authorizing such taxation, the U.S. government led by the Internal Revenue service has consistently held that individual Indians are subject to federal income tax for income not “derived from the land” or derived from treaty-protected fishing rights; and

**WHEREAS**, in 1982, the U.S. Congress enacted the Indian Tribal Government Tax Status for purposes of ensuring that tribal government revenues would not be subject to income tax and would be treated like other sovereign governments for tax purposes; and

**WHEREAS**, in 1989, the U.S. Supreme Court decided the case of *Cotton Petroleum Corp v. New Mexico* where it was held that state governments have the authority to impose taxation on non-Indians doing business on tribal lands, thus undermining exclusive tribal taxing jurisdiction and allowing states and local governments to interfere with tribal economic activity; and

**WHEREAS**, in 2014, after years of targeted efforts by the Internal Revenue Service to audit tribal governments and individual Indians, NCAI and other Indian nations and tribes succeeded in advocating to the U.S. Congress to end the practice of taxing tribal government benefits by enacting the Tribal General Welfare Exclusion Act; and

**WHEREAS**, there remain important issues of tax policy, tribal economic development, and protection of tribal and individual Indian tax immunities that must be protected and pursued.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians (NCAI) continues to support efforts by the U.S. Congress to reform the U.S. tax code to ensure greater protection and respect for treaty-protected sovereign rights of tribal sovereignty and self-determination, especially to support efforts by tribal governments to establish strong tribal economies; and

**BE IT FURTHER RESOLVED**, that the NCAI tribal tax reform efforts shall include the following essential guiding priorities:

- Respect for the treaty-defined government-to-government relationship between Indian nations and the United States;
- Restore greater recognition of the U.S. government's classification of "Indians not taxed;"
- Promote job creation and economic development on tribal lands, in particular ensuring that existing tax immunities are preserved and expanded to address the evolution of tribal economies;
- Protect tribal citizens from unauthorized and unjust taxation by the U.S. government for income earning activities on sovereign tribal lands; and

**BE IT FURTHER RESOLVED**, that NCAI supports the following initiatives as part of the Congressional reform of the U.S. tax code:

1. Establish tax-free Tribal Empowerment Zones on tribal lands to promote investment, job creation, and revenue generation for tribal governments;
2. Remove state tax and regulatory burdens on economic activity occurring on tribal lands by (i) affirming the exclusive taxing jurisdiction of tribal governments within their territories, and (ii) ensuring that tribe-to-tribe trade can occur without taxation or regulation by state or local governments;
3. Enact the adoption tax credit to ensure that tribal court adoption proceedings of special needs children allow adopting parents to obtain tax credits otherwise available through state court proceedings;
4. Ensure that tribal child support enforcement agencies are treated like states for purposes of federal parent locator services and the federal tax refund offset mechanism;

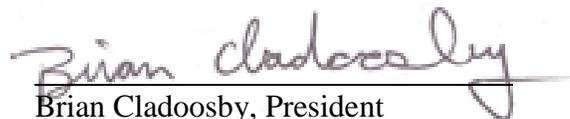
5. Ensure that bonds issued by tribal governments are not subject to an “essential government function” test and otherwise issued on a tax-exempt basis like state and local governments;
6. Extend permanently the existing temporary federal tax credits, such as the Indian Employment Tax Credit, the Accelerated Depreciation for Business Property on Indian Reservations, and the Indian Coal Production Credit; and
7. Ensure that tribal council members are fully eligible to participate in the Social Security system; and
8. Ensure the sovereign immunity of tribal governments from all federal excise taxes like state governments, as well as benefit from public charity classification rules and alternative fuel tax credits;
9. Enact modification to the Kiddie Tax to ensure that tribal government trust distributions are not subject to higher rates of tax; and
10. Establish within the Treasury Department a self-governance program that would allow tribal governments to establish and capture federal income tax generated within their borders and otherwise establish autonomy from the Internal Revenue Service like the Commonwealth of Puerto Rico; and

**BE IT FURTHER RESOLVED**, that this resolution be forwarded to regional and national forums and organizations beyond NCAI, United South & Eastern Tribes (USET), California Association of Tribal Governments, Native American Finance Officers (NAFOA), the Great Plains Tribal Chairman’s Association, and the Midwest Alliance of Sovereign Tribes (MAST); 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