



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PDX-20-025

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TITLE: Calling Upon Congress to Enact Legislation to Provide Equitable Tax Treatment for Tribal Governments

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, in the modern Indian Self-Determination Era, Congress committed to support and assist tribal nations to develop strong, stable tribal governments to administer quality programs and develop the economies of our respective communities; and

WHEREAS, tribal nation's priorities must be included in federal tax policy because under the Internal Revenue Code, tribal nations are left without many of the benefits, incentives, and protections provided to state and local governments, and this inequity significantly handicaps tribal authority to provide much needed government revenue for tribal programs and prevents economic growth on tribal lands; and

WHEREAS, Congress and the Administration had the opportunity to address these inequities when it considered and passed the first major overhaul of the Internal Revenue Code in three decades; and

WHEREAS, Congress and the Administration failed to include tribal priorities in the Tax Cuts and Jobs Act of 2017 and did not pass a tribal tax parity bill in the 116th Congress despite calls by Indian Country via resolutions #MOH-17-011, Equitable Treatment for Tribal Nations in Congressional Tax Reform, #ABQ-19-081, Calling on Congress to Immediately Enact Legislation to Provide Tribal Nations Tax Parity and Spur Tribal Economic Development, #ABQ-19-020, Support for Legislative Efforts to Increase Tribal Access to New Markets Tax Credits, and #ABQ-19-084, Calling on Congress to Provide Tax Fairness for Tribal Youth; and

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) incorporates the above resolutions by reference and calls on Congress to uphold its treaty and trust obligations to tribal nations by passing legislation that honors the sovereign status of tribal nations and promotes the growth of tribal economies advancing tribal nations' self-determination and self-reliance goals; and

NOW THEREFORE BE IT RESOLVED that to promote tax equity and fairness for tribal nations and parity with state and local governments, Congress should enact legislation in the following areas:

- **Low Income Housing Tax Credits (LIHTC):** LIHTC provides tax incentives, via state allocations, to developers to create affordable housing. Tribal nations have been left out of this program and should have increased access to Low Income Housing Tax Credits by including Indian Country in the direct allocation of these credits.
- **New Markets Tax Credits (NMTC):** The NMTC Program attracts private capital to economically distressed communities with tax credits to investors. The rate of NMTC deployment in Indian Country is low. Proportional allocation modeled after the rural allocation and incentives would address this issue by bringing capital investment in tribal infrastructure and employment to Indian Country.
- **Tax-Exempt Bond Parity:** State and local governments can issue tax-exempt bond debt for commercial activity to raise revenue. Tribal nations are permitted to only issue bonds for essential government functions and not economic development activity. This restricts economic stimulus and limits bond market access for tribal nations.
- **Indian Employment Tax Credit Improvement:** The Indian Employment Tax Credit promotes job creation on Indian lands. The program was enacted more than 25 years ago and needs improvement: Congress should simplify, expand, and make the Indian Employment Tax Credit permanent to increase Indian Country jobs and opportunity.

- **Parity for Indian Health Service Health Professionals.** Indian Health Service Health Professionals should have the same recruitment and retention tax incentives as other public sector health systems.
- **Government Pensions Parity.** Like other governments, tribal nations should have the same opportunity to provide pensions to tribal employees through governmental pension plans;
- **Excise Tax Parity.** Tribal Governments are exempt from some excise taxes, but not others. Tribal Governments should receive the full excise tax exemptions available to state and local governments and eliminate the tribal “essential government function” test;
- **Tax Parity for Tribal Government Charities**—provide tax parity for tribal government foundations and charities as “public charities,” like state and local charities and foundations to increase the opportunity for tax deductible contributions;
- **Tax Parity for Tribal Youth:** the 2018 Tax Act imposed a penalty on unearned income allocated to youth, including tribal government per capita gaming payments, and this penalty should be eliminated;
- **Parity under the Adoption Tax Credit** for Indian parents with “special needs” adoptive children by recognizing the authority of tribal governments to promote the interests of special needs “adoptive children” in parity with state governments;
- **Enhance the Tribal General Welfare Exclusion Act (TGWEA):** The TGWEA excludes from gross in- come, for income tax purposes, the value of a tribal general welfare benefit. An amendment is needed to clarify that these benefits are excluded from income for a social security eligibility determination; and

BE IT FURTHER RESOLVED that the National Congress of American Indians calls upon Congress to sponsor and support the enactment of the tribal tax fairness provisions set forth above;

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