



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #TUL-05-026

**TITLE: A Resolution Requesting an Amendment to the Federal Tax Code to Allow Federally Recognized Tribes and States and Their Political Subdivisions to Own Subchapter S Corporations**

### EXECUTIVE COMMITTEE

**PRESIDENT**  
**Joe A. Garcia**  
*Ohkay Owingeh*  
*(Pueblo of San Juan)*

**FIRST VICE-PRESIDENT**  
**Jefferson Keel**  
*Chickasaw Nation*

**RECORDING SECRETARY**  
**Juana Majel**  
*Pauma-Yuima Band of Mission Indians*

**TREASURER**  
**W. Ron Allen**  
*Jamestown S'Klallam Tribe*

### REGIONAL VICE-PRESIDENTS

**ALASKA**  
**Mike Williams**  
*Yupiaq*

**EASTERN OKLAHOMA**  
**Joe Grayson, Jr.**  
*Cherokee Nation*

**GREAT PLAINS**  
**Mark Allen**  
*Flandreau Santee Sioux*

**MIDWEST**  
**Robert Chicks**  
*Stockbridge-Munsee*

**NORTHEAST**  
**Randy Noka**  
*Narragansett*

**NORTHWEST**  
**Ernie Stensgar**  
*Coeur d'Alene Tribe*

**PACIFIC**  
**Cheryl Seidner**  
*Wiyot*

**ROCKY MOUNTAIN**  
**Raymond Parker**  
*Chippewa-Cree Business Committee*

**SOUTHEAST**  
**Leon Jacobs**  
*Lumbee Tribe*

**SOUTHERN PLAINS**  
**Steve Johnson**  
*Absentee Shawnee*

**SOUTHWEST**  
**Manuel Hearl**  
*Ute Mountain Ute Tribe*

**WESTERN**  
**Kathleen Kitchayan**  
*San Carlos Apache*

**EXECUTIVE DIRECTOR**  
**Jacqueline Johnson**  
*Tlingit*

**NCAI HEADQUARTERS**  
1301 Connecticut Avenue, NW  
Suite 200  
Washington, DC 20036  
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**, joint venture economic development projects between federally recognized Tribes of American Indians and the several States of the United States of America and their political subdivisions have been inhibited by the frequent inability of local legal counsel to accommodate and/or understand limited waivers of sovereign immunity in contracts between the parties; and

**WHEREAS**, recent United States Supreme Court decisions have made joint venture contract dispute resolution by arbitration in State Courts an automatic waiver of Tribal sovereign immunity; and

**WHEREAS**, both Tribes and States, counties, and cities wish to avoid taxation of the revenue of joint ventures since both enjoy tax exemption for projects that fall within the definition of "essential governmental purpose;" and

**WHEREAS**, a vehicle could exist with minor changes in the Federal Tax Code that would allow Tribes to form joint ventures with States, counties, and cities within "Subchapter S" Corporations in which: 1) only the assets that both parties assign to the project are at risk in the event of a dispute, 2) a managing body is formed that insulates the project from direct management by the elected officials of either party, 3) the project remains revenue neutral to the Federal Government and either party's tax base, and 4) the earnings from the project pass through to both parties untaxed in the same manner as non-profit entities; and


**WHEREAS**, non-profit corporations formed under Section 501(c)(3) do not pay taxes and may own a Subchapter S corporation under present tax law.

**NOW THEREFORE BE IT RESOLVED**, that the NCAI does hereby request that the United States Congress amend the Internal Revenue Code Section 1361, subparagraph (c)(7) by adding the words "*a federally recognized tribe of American Indians, an individual State, or a political subdivision of a federally recognized tribe of American Indians or an individual State, or*" after the words "For purposes of subsection (b)(1)(B);" and

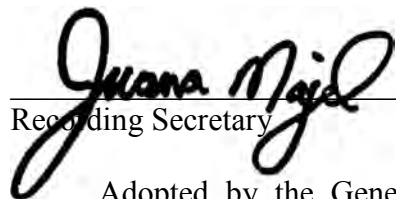
**BE IT FURTHER RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted at the 2005 Annual Session of the National Congress of American Indians, held at the 62<sup>nd</sup> Annual Convention in Tulsa, Oklahoma on November 4, 2005 with a quorum present.

  
\_\_\_\_\_  
President

**ATTEST:**

  
\_\_\_\_\_  
Recording Secretary

Adopted by the General Assembly during the 2005 Annual Session of the National Congress of American Indians held from October 30, 2005 to November 4, 2005 at the Convention Center in Tulsa, Oklahoma.