



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #ABQ-19-015

**TITLE: Urging the Secretary of the Treasury to Assist in Ending Dual Taxation
of Economic Activity in Indian Country**

EXECUTIVE COMMITTEE

PRESIDENT
Fawn R. Sharp
Quinault Indian Nation

FIRST VICE-PRESIDENT
Aaron Payment
*Sault Ste. Marie Tribe of
Chippewa Indians*

RECORDING SECRETARY
Juana Majel-Dixon
Pauma Band of Luiseño Indians

TREASURER
Clinton Lageson
Kenaitze Indian Tribe

**REGIONAL VICE-
PRESIDENTS**

ALASKA
Rob Sanderson, Jr.
*Tlingit & Haida Indian Tribes of
Alaska*

EASTERN OKLAHOMA
Norman Hildebrand
Wyandotte Nation

GREAT PLAINS
Larry Wright, Jr.
Ponca Tribe of Nebraska

MIDWEST
Shannon Holsey
*Stockbridge Munsee Band of
Mohican Indians*

NORTHEAST
Tina Abrams
Seneca Nation of Indians

NORTHWEST
Leonard Forsman
Suquamish Tribe

PACIFIC
Erica Mae Macias
Cahuilla Band of Indians

ROCKY MOUNTAIN
MARK POLLOCK
Blackfeet Nation

SOUTHEAST
Nancy Carnley
*Ma-Chis Lower Creek Indian
Tribe of Alabama*

SOUTHERN PLAINS
Robert Tippeconnie
Comanche Nation

SOUTHWEST
Vacant

WESTERN
Alan Mandell
Pyramid Lake Paiute Tribe

CHIEF EXECUTIVE OFFICER
KEVIN ALLIS
*Forest County Potawatomi
Community*

NCAI HEADQUARTERS

1516 P Street, N.W.
Washington, DC 20005
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 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, the U.S. Congress enacted the Tribal General Welfare Exclusion Act of 2014, Pub. L. 113-168, 128 Stat. 1883 (TGWE), which established that benefit payments or services provided by Indian tribal governments to their citizens under a tribal government program would not be subject to federal income taxation so long as the tribal government administers such program under specified guidelines and other restrictions; and

WHEREAS, the TGWE established a Treasury Tribal Advisory Committee (TTAC) for purposes of advising the Secretary of the Treasury “on matters relating to the taxation of Indians;” and

WHEREAS, the U.S. Constitution recognizes the status of Indian nations and tribes as sovereign nations through the Treaty, Supremacy, and Commerce Clauses, and recognizes tribal citizens as “Indians not taxed;” and

WHEREAS, through such actions as the Trade and Intercourse Acts and Indian Trader Acts, Congress has sought to regulate and protect commerce occurring with Indians in Indian Country under Federal law since 1790; and

WHEREAS, the U.S. Supreme Court has previously determined that the Federal Indian Trader Acts pre-empt state taxation of Indian commerce with non-Indian businesses occurring within Indian Country (*see Warren Trading Post Co. v Arizona State Tax Comm. (1965); Central Machinery Co. Arizona Tax Comm. (1980)*), but in recent years has abandoned that approach in favor of one that requires non-Indians to pay tax on goods sold in Indian Country and for tribal governments to collect such taxes (*see Moe v. Salish & Kootenai Tribes (1976), Washington v Confederated Tribes of the Colville Indian Reservation (1980), N.Y. Dept. of Taxation & Finance v. Milhelm Attea & Bros. (1994)*); and

WHEREAS, state taxing authority in Indian Country has been further expanded by the U.S. Supreme Court under a balancing test of federal and tribal interests against state interests to determine if state taxes are pre-empted, which increasingly ignores federal treaties, laws, and policies supporting tribal self-determination (*see White Mountain Apache Tribe v. Bracker (1980); California v. Cabazon Band of Mission Indians (1987)*); and

WHEREAS, most dramatically, and without Congressional authorization, the U.S. Supreme Court ruled 30 years ago that both tribal and state governments can tax economic activity of non-Indians doing business in Indian Country, creating an intolerable burden of dual taxation on tribal economic activity (*see Cotton Petroleum Corp. New Mexico (1989)*); and

WHEREAS, tribal governments face a losing proposition when forced to collect state taxes in addition to tribal taxes as resulting dual taxation drives business away and precludes new investment; and

WHEREAS, tribal economies are funneling millions of tax dollars into treasuries of state and local governments outside of Indian country with no benefit to tribal nations; and

WHEREAS, this economic and legal construction created by the U.S. Supreme Court without Congressional authorization is fundamentally unfair to tribal nations, undermines the Constitution's promise of respect for tribal sovereignty, and keeps tribal lands as the most underserved areas within the United States; and

WHEREAS, NCAI's standing resolutions support the following solutions to dual taxation:

- #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; and
- #DEN-18-018, Urging the Department of the Interior to Restart its Process of Updating the "Licensed Indian Trader" Regulations; and

WHEREAS, TTAC presents a unique opportunity to request the Administration and Department of Treasury's assistance in addressing this issue; and

WHEREAS, TTAC should establish a policy priority to recommend that the Department of the Treasury assist in addressing and eliminating the problem of dual taxation within Indian Country.

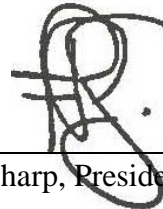
NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) strongly urges the Administration and Secretary of the Treasury to develop solutions to address and eliminate dual taxation by multiple governments in Indian Country; and

BE IT FURTHER RESOLVED, NCAI calls upon the Treasury Tribal Advisory Committee to establish a policy position that recommends to the Administration, Secretary of the Treasury, and to Congress a legislative or regulatory solution that addresses and eliminates dual taxation by multiple governments in Indian Country; 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