



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #MOH-17-011

### TITLE: Equitable Treatment for Tribal Nations in Congressional Tax Reform

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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**, Congress is considering reform of the federal tax code to promote economic growth, reduce burdens of compliance, and increase fairness; and

**WHEREAS**, Tribal Nations must be included in national tax policy because under the current Internal Revenue Code, Tribal Nations are left without many of the benefits, incentives, and protections provided to state and local governments. This inequity significantly handicaps tribal authority to provide much needed government revenue for tribal programs and prevents economic growth on tribal lands; and

**WHEREAS**, tribal proposals will need to be adapted to fit within the larger framework that is under development, but certain fundamental principles will remain:

- The United States Constitution recognizes tribal governments as sovereigns;
- The power to tax is an essential and necessary instrument of self-government;
- Tribes have responsibility to regulate conduct on Indian lands;
- Tribes provide a broad range of governmental services: education, health care, public safety, and infrastructure needed to support economic development;
- Like states, tribal governments are not taxable entities, so they can retain and use their revenues for governmental purposes;
- Tribal governments must be treated with parity in all areas of tax policy; and
- As sovereign governments, tribes must have the authority to:
  - generate tax revenue free from overlapping state taxation;
  - create incentives for business development and job creation;
  - access government financing tools;
  - make decisions for promoting the health and welfare of citizens; and
  - promote certainty of jurisdiction, certainty to capital markets, and certainty in tax policy to enhance economic growth; and

**WHEREAS**, Congress is considering the elimination of depreciation schedules from the tax code in order to permit businesses to deduct the cost of capital investments in the year they are made. This change in tax policy would effectively eliminate the benefits of accelerated depreciation, one of the few tax incentives for business development in Indian country; and

**WHEREAS**, the Low-Income Housing Tax Credit (“LIHTC”) is the largest resource for creating affordable housing in the United States today, but Tribal Nations must apply to state government LIHTC programs, and many states use criteria that benefit only urban areas—thus ignoring the unmet low-income housing needs of Indian country; and

**WHEREAS**, in 2000, Congress established the New Markets Tax Credit (“NMTC”) to spur investment in low-income communities, but despite the potential of the NMTC program to enhance Indian country economic development and create jobs in underserved Native communities, in the last three funding cycles, only one Native American Community Development Entity has received funding under the NMTC program; and

**WHEREAS**, NCAI supports fair and equitable inclusion of Indian tribes in tax reform and will work cooperatively with all Tribal Nations and intertribal organizations to secure passage of such legislation.

#### **A. Provisions for Tribal Government Tax Parity**

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians supports the enactment of the Tribal Tax and Investment Reform Act, and urges that it address important issues in tax parity including:

1. *Tribal Government Tax-Exempt Bonds*. Under federal tax rules generally applicable to government debt, tribal governments may issue tax-exempt bonds only for “essential government functions” and are prohibited from issuing “private activity bonds.”<sup>1</sup> The IRS has declined to view economic development as a governmental function, even though state and local governments frequently use tax-exempt financing for development projects;
2. *Tribal Government Pension Plans*. Under current law, Tribal Nations must maintain two separate types of employee pension plans—a government plan for tribal employees performing essential government functions and a separate plan for tribal business employees. Tribal governments, like state governments, should be able to operate a single, comprehensive, government pension program for all of their employees, regardless of their functions. Tribal governments should also be eligible to offer 457 plans currently reserved for state and local governments;
3. *Tribal Foundations and Charities*. Tribally-controlled and funded foundations and charities do not enjoy the same public charity classification as foundations and charities controlled and funded by state or local governments;
4. *Tribal Child Support Enforcement Agencies*. Tribal child support enforcement agencies need authority to access parent locator services and enforce child support orders through claims against federal tax refunds of parents with past due obligations;

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<sup>1</sup> The only exception for tribal governments is the limited quantity of Tribal Economic Development Bonds available through an allocation process administered by the IRS. The available volume of TEDBs is likely to be depleted within the next 12 months, and will be wholly inadequate to allow Tribal Governments to rebuild infrastructure.

5. *Indian Adoption Tax Credit.* Adoption is widespread throughout Indian country. Under current law, the IRS cannot recognize tribal court orders determining the ‘special needs’ of adoptive children. This provision is needed to permit adoptive parents of Indian children to receive tax credits on par with other adoptive parents whose children’s special needs have been determined by state courts;
6. *Extend Tax Benefits Granted to Doctors Employed by Indian Health Service Facilities.* Specific tax benefits (such as exclusion from income for the forgiveness of student loan debt) are available to most doctors employed in the public sector but not to those employed by the Indian Health Service or tribal healthcare systems. These facilities need the same incentives for practitioners to bring their skills to Indian country as other public health facilities;
7. *Support Legislation to Exempt Tribal Government Distributions from “Kiddie Tax” Provisions.* Due to a flaw in the tax code, distributions from minors’ trust funds established by tribal governments are subject to taxation at the rate of a minor’s parents, resulting in an unintended disincentive to attend college. Correcting this would provide fairness to Indian youth and families receiving benefits from tribal funds;
8. *Provide Tribal Governments with the Same Excise Tax Exemptions as Provided to States.* Due to an omission in the tax code, tribal governments are not treated equal to state and local governments for a variety of excise tax exemptions: (i) excise taxes on luxury passenger vehicles, special fuels, and heavy trucks and trailers; (ii) manufacturing excise taxes, including the Gas Guzzler Tax; (iii) communications excise taxes, (iv) wagering excise taxes, (v) Harbor Maintenance Tax; (vi) occupational taxes on persons in the business of wagering, (vii) taxes on distilled spirits, wine and beer, (viii) taxes on certain firearms, and (ix) and the Structured Settlement Factoring Tax; and
9. *Tribal Leader Access to Social Security Benefits.* In 1957, the IRS determined that amounts paid to elected tribal government officials are not considered “wages” under the Federal Contributions Act and thus are not eligible for Social Security benefits. This IRS ruling causes elected tribal officials (particularly those with many years of tribal service) to potentially receive reduced Social Security benefits or be completely ineligible to receive those benefits. Congress should adopt the Tribal Social Security Fairness Act and amend Section 218 to permit tribal governments the same option that state and local governments have to enter into agreements with the Social Security Administration to provide Social Security and Medicare coverage to tribal government officials; and

#### **B. Extension and Modification of Tax Provisions Aimed at Economic Development**

**BE IT FURTHER RESOLVED**, that NCAI urges Congress to simplify, expand, and make permanent the Indian Employment Tax Credit. Specific changes include:

1. Modify the base year from 1993 to the average of qualified wages and health insurance costs for the two tax years prior to the current year;
2. Expand the income tax credit to include up to \$30,000 in qualifying wages and health insurance costs per eligible employee and raise the cap on the permissible wages per qualified or eligible employee from \$45,000 to \$60,000; and
3. Provide a payroll tax credit for tribal government employers and Section 501(c)(3) organizations operating within Indian country; and

### **C. Set-Asides for Low-Income Housing and New Markets Tax Credits**

**BE IT FURTHER RESOLVED**, that NCAI supports enactment of Low-Income Housing Tax Credit legislation provided that the legislation includes the following Indian country provisions:

1. Indian nations and tribes should be treated as states for purposes of Low-Income Housing Tax Credit allocation, and Congress should establish a set-aside of Low-Income Housing Tax Credits for Indian country;
2. Indian tribes should be authorized to use the national average median income in lieu of the area average because in many areas of Indian country local area incomes are too low to benefit actual low-income housing users; and
3. Indian tribes should be eligible to receive the Low-Income Housing Tax Credit directly and transfer it to the building manager or developer through a long-term lease to accommodate the unique status of Indian trust lands; and

**BE IT FURTHER RESOLVED**, that NCAI supports legislation that would spur investment and create jobs by providing increased deployment of New Markets Tax Credits for projects in Indian country, including the Aiding Development of Vital Assets in Native Communities and Environments Act (or the “ADVANCE” Act), and a set-aside in the New Markets Tax Credit program for Indian nations; and

### **D. Addressing State Taxation with Regulatory Action and Congressional Action**

**BE IT FURTHER RESOLVED**, that NCAI calls upon the Secretary of the Interior to move forward with updating and revising the Indian Trader Regulations to address state taxation of Indian country value, commerce, economic activity, Indian energy development, and Indian natural resource production, and to recognize the original, inherent sovereign authority of Indian nations and tribes to regulate Indian commerce; and

**BE IT FURTHER RESOLVED**, that NCAI calls upon Congress to fulfill its obligation under the Commerce Clause of the United States Constitution to confirm the original inherent sovereign authority of tribal nations to regulate all commerce that occurs on tribal lands, and to recognize nation-to-nation commerce; and

**BE IT FURTHER RESOLVED**, that NCAI also urges Congress to address state taxation of Indian country value, commerce, economic activity, Indian energy development, and Indian natural resource production, and areas such as leased property, personal property, oil & gas, sales taxes, and remote sales; and

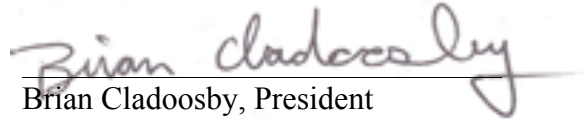
**BE IT FURTHER RESOLVED**, that NCAI calls upon Congress to enact incentives and tax credits for renewable and conventional energy development in Indian country; and

**BE IT FURTHER RESOLVED**, that Congress and the Administration should seek the guidance of the Treasury Tribal Advisory Committee established under Public Law 113-168 on tax reform issues; 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 2017 Midyear Session of the National Congress of American Indians, held at the Mohegan Sun Convention Center, June 12 to June 15, 2017, with a quorum present.

  
Brian Cladoosby, President

**ATTEST:**

  
Aaron Payment, Recording Secretary