

NATIONAL CONGRESS OF AMERICAN INDIANS

EXECUTIVE SUMMARY

Tribal Tax Parity

Since Indian tribes are governments, they should generally be treated like states for all federal tax purposes. As such, Section 7871 should be broadened to treat Indian tribes like states for all tax Code purposes, except in limited instances where a special rule for tribal governments is absolutely necessary, such as:

- A special rule to allow tribes to continue to offer 401(k) retirement savings plans¹
- Legislation meant to protect tribal general welfare programs from tax scrutiny

Specific Instances where the Tribal Tax Parity is Urgently Needed

Tribal tax parity is urgently needed in the following core areas:

- **Tax Exempt Bonds** – eliminate “essential government function” analysis; expand private activity bond authority
- **Employee Benefit and Pension Plans** – eliminate “essential government function” threshold
- **Tribally Funded and Controlled Charities**
 - (1) treat tribal funding as public support for purposes of Section 170(b)(1)(A) (vi) (*i.e.*, the public charity classification test that is satisfied on the basis of how much support a charity derives from "public" sources);
 - And (2) treat charitable organizations formed to support Indian tribal governments the same as organizations formed to support state, local and federal government for purposes of Section 509(a)(3).
- **Treatment as States for purposes of federal streamlined sales tax legislation**
 - Treat federally recognized Indian tribes as “member states” in any Streamlined Sale and Use Tax Agreement
 - Make clear that the federal legislation is not intended to override longstanding principles of federal law governing the respective taxing jurisdictions of state and tribal governments, particularly with respect to

¹ Since Congress amended the Code in 1995 to specifically clarify that tribes, unlike state and local governments, could offer 401(k) plans, many tribes have adopted 401(k) plans as the primary vehicle for their employees. Many would now like to supplement such plans with governmental pension plans, and corrective legislation is needed to accomplish that goal. But Congress should preserve the right of tribal employers to continue to sponsor 401(k) plans as well.

- purchases made by tribes and tribal members within Indian reservations and trust lands
- Protect existing bilateral agreements between states and tribes for the collection and allocation of sales tax revenues

Need to Evaluate the Effectiveness of Tax Incentives for Tribal Governments

NCAI understands that Congress is engaged in reviewing the effectiveness of numerous expired or expiring tax provisions. NCAI offers its assistance in evaluating the following incentives for development in Indian Country.

- Accelerated Depreciation for Indian Reservation Property
- Indian Employment Tax Credit
- Indian Coal Credit
- Clean Renewable Energy Bonds (CREBs)
- New Markets Tax Credit

Based on initial feedback from NCAI members and supporters, we believe that providing Accelerated Depreciation for Indian Reservation Property has the potential to be a significant and meaningful incentive but only if it is enacted on a longer-term basis and appropriately targeted to encourage investment that would not otherwise occur. The Indian Employment Credit is too complex and has not been widely utilized by the Tribes. We would like to explore why the Clean Renewable Energy Bonds have not been allocated to any tribal government users. However, it is our understanding that the New Markets Tax Credit and Indian Coal Credits are considered to be effective incentives for economic and resource development.

New Proposals

NCAI would also like Congress to consider incentives that tribally-owned enterprises could actually use, including the following:

- Payroll Tax Credit for On-Reservation Employment
- Energy Tax Incentives that Tribes could Utilize More Effectively than CREBs.

NCAI looks forward to working with Congress on these and other issues in the context of comprehensive tax reform.

For further information regarding any of the topics discussed herein, please contact John Dossett, General Counsel or Derrick Beetso, Staff Attorney at (202) 466-7767.