

H.R. 3030, The Tribal Tax and Investment Reform Act of 2013

The general purpose of H.R. 3030 is to amend the Internal Revenue Code in order to treat Indian tribal governments in the same manner as state governments for federal tax purposes. Under current law, there are several instances in which more restrictive and often unworkable rules have been applied to tribes; in other cases, the tax treatment of tribal governments has simply been overlooked. A remedy is important to complete the work that Congress originally undertook when it passed the Indian Tribal Governmental Tax Status Act in 1982.

Sec. 1. Short Title. Designates the title of the bill as the "Tribal Tax and Investment Reform Act of 2013."

Sec. 2. Findings. Recites findings that demonstrate the need for parity in the Code's treatment of state, local and tribal governments, including the consistent recognition in the Constitution, federal jurisprudence and longstanding administrative policy that Indian tribes are governments, that tribes have responsibilities to provide governmental programs and services to tribal citizens, and the historic disadvantages faced by Indian tribes in accessing capital for economic development and self-determination.

Sec. 3. Treatment of Tribes as States with Respect to Bond Issuance. This section addresses the lack of equal treatment under current law Code rules applicable to bond financings by tribal government.

Subsection (a) amends Section 7871 by eliminating the essential governmental function test and subjecting tribes to the same federal tax standards and requirements as states for governmental tax-exempt bond issuances. The subsection also establishes private activity bond volume cap rules to enable tribal governments, like states, to issue limited quantities of such bonds for economic development purposes.

Subsection (b) also puts tribes on a more level playing field with respect to certain governmental excise taxes by repealing the essential governmental function which the current law imposes as an "additional" requirement on tribal, but not state governments, seeking exemptions. The changes would be effective for obligations issued and transactions occurring in calendar years beginning after date of enactment.

Sec. 4. Treatment of Pension and Employee Benefit Plans Maintained by Tribal Governments.

Subsection (a) amends various provisions of the Internal Revenue Code to treat tribal government plans like state plans, including with respect to the following:

1. adding the same distribution rights for tribal and state public safety employees;
2. removing the "essential government function" and "commercial" activity tests that currently apply to tribal plans, but not to state and local government plans;
3. confirming that pension plans may honor tribal court domestic relations orders that meet the same standards applied to state court orders;

4. grandfathering tribal "457" plans that otherwise comply with the Code and were established when it was not clear what plans tribes could adopt; and
5. applying the same employment tax rules for tribal deferred compensation plans that apply to state and local plans.

The common theme of these Code amendments is to provide government fairness between Indian tribal plans and other government plans. Subsection (b) makes two key conforming amendments to the Employee Retirement Income Security Act (ERISA) provisions of federal law relating to governmental plans.

Sec.5. Treatment of Tribal Foundations and Charities like Charities Funded and Controlled by other Governmental Funders and Sponsors.

The inadvertent lack of parity between tribes and other governments under the public charity classification rules makes it difficult for Indian tribes to form and fund separate nonprofit organizations for charitable purposes.

Subsection (a) treats tribal funding as public support for purposes of Code 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).

Subsection (b) treats charitable organizations formed to support Indian tribal governments the same as organizations formed to support state and local governments for purposes of Section 509(a)(3).

Sec. 6. Improving Effectiveness of Tribal Child Support Enforcement Agencies by Parity of Access to the Federal Parent Locator Service and Federal Tax Refund Offsets.

Subsection (a) of the bill amends Section 453(e) of the Social Security Act (SSA) to child support enforcement agencies of Indian tribes and tribal organizations to access the same parent locator database available to State child support agencies.

Subsection (b) of the bill amends the SSA and the Code that permit tribal child support enforcement agencies to offset tax refunds for past due payments if necessary.

Sec.7. Application of Clean Renewable Energy Bonds to Tribes

This section amends Section 54(j) of the Code to allow tribal governments, as well as their agencies, instrumentalities and wholly owned and controlled tribal entities formed under federal, state or tribal law to apply for special allocations of clean renewable energy bonds. Clean renewable energy bonds are special tax-credit subsidized financing that allow governments to finance renewable energy plant and equipment, including solar, wind and geothermal facilities. Under the special allocation, up to \$200 million per year for each of 2014, 2015 and 2016 shall be made available for allocation to tribes and tribal entities.