



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #MN-23-006

TITLE: Urging the Department of Treasury to Acknowledge a Federal Income Tax Exemption for Tribally Chartered Corporations Wholly, Jointly, or Majority Owned by a Tribal Nation

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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 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 United States has historically recognized the unique legal status of Tribal Nations, which are not foreign nations, states, nor ordinary interest groups, but rather political bodies with inherent powers of self-governance; and

WHEREAS, the Internal Revenue Service (IRS) has confirmed that Federally chartered corporations under Section 17 of the Indian Reorganization Act of 1934 (IRA) and Section 3 of the Oklahoma Indian Welfare Act (OIWA) are not entities separate from the Tribal Nation for Federal tax purposes and are not subject to Federal income tax on income earned in the conduct of commercial business on or off the Tribal Nation's reservation; and

WHEREAS, IRS revenue rulings have determined that a corporation organized by an Tribal Nation under state law is subject to Federal income tax on the income earned in the conduct of commercial business on and off the Tribal Nation's reservation; and

WHEREAS, the IRS has yet to address the Federal tax status of corporations chartered under tribal law that may be wholly owned, majority owned, or jointly owned by a Tribal Nation; and

WHEREAS, on June 21, 2023, and June 22, 2023, the United States Department of the Treasury is conducting tribal consultation on the tax status of tribally chartered corporations; and

WHEREAS, the taxation of tribally owned and chartered corporations represents a direct economic burden on Tribal Nation governments and their ability to provide for their citizens and develop their economies; and

WHEREAS, tribally chartered corporations play a crucial role in tribal economies providing jobs, income, and services to tribal members; and

WHEREAS, the U.S. Constitution, in Article I, Section 2, Clause 3, refers to "Indians not taxed," reflecting the historical recognition and understanding of the unique legal and political status of Indian tribes and their citizens, and the intent of the Founders to distinguish Tribal Nations from other taxable entities or persons; and

WHEREAS, 26 U.S. Code § 7871, known as the "Indian Tribal Governmental Tax Status Act," acknowledges that Indian Tribal Governments shall be treated as States for certain purposes, extending specific tax advantages to Tribal Nation governments; and

WHEREAS, Federally chartered corporations under the IRA and OIWA have complexities and limitations associated with their structures, such as restrictions on the type of businesses they can operate and requirements for federal oversight and approval of certain decisions; and

WHEREAS, tribally chartered corporations offer greater flexibility, enabling Tribal Nation governments to structure their business operations according to their unique cultural, social, and economic circumstances, thus fostering an environment of growth, self-determination, and economic prosperity, and enhancing the Tribal Nation's ability to provide for the well-being of its members, consistent with the principles of sovereignty and self-governance; and

WHEREAS, partnerships with outside investors can provide Tribal Nations with access to additional capital and resources for them to enter into self-determined economic activities that they otherwise would not be able to undertake on their own; and

WHEREAS, exempting tribally owned and tribally chartered corporations, from Federal income tax is consistent and aligns with the Federal policy of self-determination and the Federal trust responsibility; and

WHEREAS, the principles of tribal sovereignty and self-determination, recognized and honored in numerous Federal laws, treaties, and policies, logically support tax exemptions for corporations chartered under tribal law that are wholly, jointly, or majority owned by a Tribal Nation.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) urges the Department of the Treasury and the Internal Revenue Service to recognize a Federal income tax exemption on income earned in the conduct of commercial business on or off the Tribal Nation's reservation when the business is wholly, jointly, or majority owned by a Tribal Nation and is chartered under the tribal law; and

BE IT FURTHER RESOLVED, that NCAI urges the Department of the Treasury and the Internal Revenue Service to consider the profound implications of taxation on the economic development, sovereignty, and wellbeing of Tribal Nations and to work closely with tribal leaders in shaping tax policy that honors and supports the principles reflected in this resolution; and

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

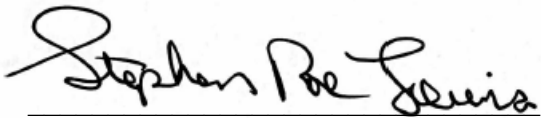
CERTIFICATION

The foregoing resolution was adopted unanimously by the Executive Committee on Friday, June 16, 2023, after a positive recommendation from the relevant Committee at the 2023 Mid Year Convention of the National Congress of American Indians, held June 5-8, 2023, in Prior Lake, MN.



Fawn Sharp, President

ATTEST:



Stephen Roe Lewis, Recording Secretary