

CURRENT ISSUES IN SUPPORT OF TRIBAL ECONOMIC DEVELOPMENT AND TAX POLICY

Tribal Economic and Tax Advocacy Alliance
(TETRAA)

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TRIBAL ECONOMIC GROWTH THROUGH TAX & LAW REFORM

- Gaming has allowed Indian Country to regain significant wealth lost as the result of European colonization of the Americas
- Many Indian nations and tribes have done well through gaming
 - But many others have not, due primarily to lack of access to patrons and competition from state-licensed facilities
- Indian Country remains some of the poorest areas in the United States
- Both gaming and non-gaming tribal nations have need for greater economic development and economic diversification

WHAT IS THE TRIBAL DIVERSIFICATION OPPORTUNITY?

- Indian gaming is a \$40 billion industry that has provided an important economic “springboard” for Indian Country for diversification and new economic investment—
 - Hard dollars to invest in new ventures
 - Experience operating complex business organizations
 - Credibility with development partners
 - Trust of investors and banks
 - Knowledge about deal structures and legal infrastructure
 - Customer support for tribal enterprises

WHAT ARE THE TRIBAL DIVERSIFICATION CHALLENGES?

■ Internal Challenges –

- Tribal governments are not inherently entrepreneurial
- Tribal governments have not developed sufficient business development and legal infrastructures
- Tribal labor pools are dependent upon a service delivery and gaming services platform
- Tribal economies have little entrepreneurship
- There are other internal challenges as well . . .

WHAT ARE THE TRIBAL DIVERSIFICATION CHALLENGES?

■ External Challenges -

- Tribal lands are usually under the control of the federal government, e.g. “trust” lands
- Tribal governing process may be under the control of federal government, e.g. secretarial approval of tribal laws
- Tribal business ventures are subject to certain federal approvals
 - e.g. National Environmental Policy Act, Tribal Energy Resource Agreements
- State and local governments have authority to tax certain transactions on tribal lands - “dual taxation”

WHY CAN'T EXTERNAL CHALLENGES BE ADDRESSED?

- Changes in federal law are necessary to resolve external challenges
- Indian Country does not have a singular focus right now on addressing the external economic diversification challenges
- There is no specific federal government policy or plan to assist Indian Country economic development
- The last time the federal government focused its efforts to study Indian Country development to diversify tribal economies was 1984
 - Reagan Commission on Indian Reservation Economies

WHAT MUST BE DONE TO PROMOTE DIVERSIFICATION?

- **FOCUS** Indian Country advocacy on economic growth and diversification
- **DEVELOP** a comprehensive long-range tribal economic plan with specific legislative and regulatory action measures to promote tribal economic development and diversification
- **ADVOCATE** for the plan to be enacted by the Congress and/or adopted by the President's White House Council on Native American Affairs
- **BUILD** relationships and provide political support to those U.S. public officials who will act to support long-range tribal economic development

TRIBAL ECONOMIC TAX REFORM ADVOCACY ALLIANCE (TETRAA)

TETRAA is a coalition of American Indian tribal nations, intertribal Native organizations, and Native-owned businesses dedicated to advocating for changes in federal law and regulations that interfere with Indian Country economic development.

Purpose: The Alliance is focused on four primary objectives:

- **Respect Tribal Sovereignty and Treaty Rights to Free Tribal Economies;**
- **Reform Tax Laws to Restore “Indians Not Taxed” Status, including amending Economic-related Regulations to improve Tribal economies;**
- **Promote Native Entrepreneurship and Business Development; and**
- **Support Research in support of Tribal Economic Growth and Tax Reform.**

TRIBAL ECONOMIC TAX REFORM ADVOCACY ALLIANCE (TETRAA)

- **Focused on Tax legislative advocacy (and other economic development matters)--**
 - Target 2025 action as Tax Cuts and Jobs Act is expiring.
- **In the process of building more organizational structure—**
 - Development of by-laws
 - Working in coordination with other intertribal organizations, such as NITA, NCAI, ATNI, and USET.
 - Coordinating active lobbying efforts.
- **Recruit and Engage Tribal Leader participation.**
 - Washington D.C. Fly-in to meet with Congressional members and staff.
 - Holding Congress and federal agencies accountable.

LEGISLATION TETRAA SUPPORTS

- **Tribal Tax and Investment Reform Act (117th Congress – H.R. 4054)**
 - Treatment of Indian tribes as states for bond issuance;
 - Repeal of the essential government function requirement;
 - Treatment of pension and employee benefit plans maintained by tribal governments
 - Treatment of tribal foundations and charities;
 - Improving effectiveness of tribal child support enforcement agencies;
 - Recognizing Indian tribal governments for adoption credit.
- **118th Congress Draft Bill from Rep. Moore includes additional provisions:**
 - Repeals essential government function test for excise taxes under 7871(a)(2);
 - Excludes payments under IHS loan repayment program from gross income;
 - Excludes certain amounts received under IHS professions scholarship program from taxable income;
 - Expect further updates to the pension language.
 - Clarifies that any Indian general welfare benefit not be counted as income or resources for the purpose of determining eligibility for Supplemental Security Income benefits.

LEGISLATION TETRAA SUPPORTS

- **Native American Tax Parity and Relief (117th Congress – S.5048)**
 - **Essentially the same as the Tribal Tax and Investment Reform Act except:**
 - **Enhancing access to the low-income housing tax credit**
 - **Incentivizing Indian employment for those living on or near a reservation. The legislation extends and modifies the Indian employment tax credit, including increasing the wage limitation from \$20,000 to \$30,000.**
 - **Incentivizing investment in areas that significantly serve Tribal or Alaska Native Villages. The legislation introduces an additional \$175 million per year new markets tax credit, applicable specifically to Tribal Statistical Areas. It broadens the definition of "low-income community" to include businesses serving Tribal or Alaska Native Village members and confirmed as eligible by the relevant Indian Tribal Government.**
 - **Clarifying Tribal general welfare benefits for Social Security.**

TETRAA'S AGENDA

- **Indians Not Taxed Act (Discussion Draft)**
 - **Grants Tax immunity for individual Indian income sourced solely from within the Reservation for members who are bona fide residents for the entire tax year (excludes income for services performed as an employee of the U.S.);**
 - **Expands and makes permanent the Indian Employment Credit (up to 100k); and**
 - **Entitles Indians and Alaska Natives to a 100% credit for tax payments paid to the Indian tribal government of which they are a member or citizen.**
- **Indian Trader Regulations (Concept)**
 - **By revising the Indian Trader Regulations, the Department of Interior can unequivocally preempt state taxing jurisdiction and eliminate the problem of dual taxation. This could be achieved by explicitly prohibiting states from imposing taxes on certain transactions of Indian commerce falling under the purview of an Indian trader license.**
 - **An example of the Department' ability to preempt state tax can be found in 25 CFR § 169.11.**
- **Urging protection of Treaty Rights and Treaty Trade**

REGULATORY ENGAGEMENT

- **Monitor Treasury Tribal Advisory Committee (TTAC)**
 - Established under the Tribal General Welfare Exclusion Act of 2014 to “advise the Secretary [of the Treasury] on matters relating to the taxation of Indians.”
- **Advocate before Treasury Department and Internal Revenue Service on tax-related issues—**
 - Tribal general welfare exclusion act implementing regulations
 - Tax status of tribally-chartered corporate entities
 - Resolution of inequities of tribal pension plans
 - Exclusion of general welfare benefits from income for non-Treasury programs
- **Engage with White House Council on Native American Affairs, Department of Interior, and Department of Commerce on Tribal economic matters**

JOIN THE TRIBAL ECONOMIC TAX REFORM ADVOCACY ALLIANCE (TETRAA)

- **TETRAA seeks your engagement!**
- **By-weekly calls, typically Monday at 4pm (Eastern)**
- **In-person Fly-ins and Summits following TTAC**
- **Summit and Hill Meetings.**
 - **March 2023 and June 2023**
 - **Upcoming Summit and Fly-in in May 2024**

QUESTIONS? EMAIL ROB@CAPITOLHILLPOLICYGROUP.COM OR NAOMIE DROLL AT NAOMIE@CAPITOLHILLPOLICYGROUP.COM

