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Taxation

“The power to tax transactions occurring on trust lands and significantly involving a tribe or its members is a fundamental attribute of sovereignty.” - Washington v. Confederated Tribes of Colville Indian Reservation, U.S. Supreme Court (1980).

In order to fully participate as members of the American family of governments, to build a better future for tribal nations, and positively impact rural and regional economies, tribal governments need tax revenue. Exactly like other governments, tax revenue is essential to sustained tribal investments in education, law enforcement, health care, and other government functions. However, in the area of tribal taxation at the local level, state governments have steadily encroached upon tribal jurisdiction. At the same time, tribes have continually worked to develop new tax models to support their communities (e.g., instituting hotel excise taxes, severance taxes, gasoline taxes, etc. and creating tribal tax codes and tax commissions).

Often, these two approaches have come into conflict with one another. Because of this power struggle, Indian tax law is primarily the result of judicial decisions, as well as agreements and/or compacts made at the state and local level.

Focusing specifically on these taxation issues, NCAI, in conjunction with a group of tribal leaders and technical experts, has developed a tribal taxation strategy that affirms tribal sovereignty and seeks to place tribes in a more favorable position to pursue economic and community development projects.

In general, tribal governments lack parity with states, local governments, and the federal government in exercising taxing authority. For example, tribes are unable to levy property taxes because of the trust status of their land, and they generally do not levy income taxes on tribal members. Most Indian reservations are plagued with disproportionately high levels of unemployment and poverty, not to mention a severe lack of employment opportunities. As a result, tribes are unable to establish a strong tax base structured around the property taxes and income taxes typically found at the local state government level. To the degree that they are able, tribes use sales and excise taxes, but these do not generate enough revenue to support tribal government functions.

Compounding tribes’ inability to establish a strong tax base, current federal policy makes it difficult for tribes to utilize tax-exempt

financing options generally available to states to fund the construction of government infrastructure. In addition, other federal tax incentives meant to promote economic development projects on tribal lands seem to benefit non-Indian businesses already doing business in Indian country, while doing little to attract new businesses or to benefit tribally owned businesses. These policies negatively impact economic growth in Indian Country and the effect is felt by entire regional economies.

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Equitable Treatment for Tribal Nations in Congressional Tax Reform
 (/resources/resolutions/equitable-treatment-for-tribal-nations-in-congressional-tax-reform)
 Jun 15, 2017

NCAI President Keel's Prepared Remarks at 2011 NCAI Mid Year Conference
 (/news/articles/2011/06/15/ncai-president-keel-s-prepared-remarks-at-2011-ncai-mid-year-conference)
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Requesting Agencies to Comply with the Tribal General Welfare Exclusion Act, PL 113-168, by Recognizing the Treatment of Income for Purposes of Benefits Eligibility
 (/resources/resolutions/requesting-agencies-to-comply-with-the-tribal-general-welfare-exclusion-act-pl-113-168-by-recognizing-the-treatment-of-income-for-purposes-of-benefits-eligibility)
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Support for Passage by Congress of HR 4943, Tribal Tax and Investment Reform Act of 2016, or Passage of Similar Legislation in the 115th Congress
 (/resources/resolutions/support-for-passage-by-congress-of-hr-4943-tribal-tax-and-investment-reform-act-of-2016-or-passage-of-similar-legislation-in-the-115th-congress)
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