

Advocacy: 4 Years in Brief Review

- Indian Health Care Improvement Act
- Tribal Law & Order Act
- Violence Against Women Act
- HEARTH Act – leasing under tribal regulations
- Recovery Act Tribal Provisions
- Stafford Act – emergency response
- New Leasing Regulations & Permanent Improvements
- Land into Trust – 325 square miles
- Cobell Settlement – 1.4 billion
- Buy Back Program - 1.9 billion in land consolidation
- Tribal Trust Settlements – over 1.1 billion
- Water Settlements – 9 tribes – 2 billion
- Keepseagle Settlement
- Consultation Improvements
- General Welfare Guidance
- Guidance on Trust Per Capita Act
- Patchak Patch – fixes appeals of land to trust
- **Tribal General Welfare Exclusion Act**

Tribal General Welfare Exclusion Act

- HR 3043 sponsored by Rep. Devin Nunes (R-CA) co-sponsored by Rep. Ron Kind (D-WI) and 60 others
- S. 1507 sponsored by Sen. Jerry Moran (R-KS) co-sponsored by Sen. Heitkamp (D-ND) and 24 others
- Passed House and Senate last week, and awaiting President's signature

Tribal General Welfare Exclusion Act

- Codifies Tribal General Welfare doctrine
- Contains special provision for amounts paid in cash or in kind for certain ceremonial activities
- Establishes Tribal Advisory Committee and Mandates IRS Training
- Suspends certain IRS audits until training occurs

Tribal General Welfare Exclusion Act

“Statutory Construction-

Ambiguities...shall be resolved in favor of Indian tribal governments and deference shall be given to Indian tribal governments for the programs administered and authorized by the tribe to benefit the general welfare of the tribal community.”

Tribal Tax Initiative – Going Forward

- Tax Extenders in the Lame Duck 2014: Indian Employment & Accelerated Depreciation & New Markets Tax Credit
- H.R. 3030 Tribal Tax & Investment Reform Act :
 - Tribal government tax exempt bonds
 - Tribal government pension plans
 - Tribal foundations and charities
 - Tribal child support enforcement agencies
 - Tribal access to Clean Renewable Energy Bonds
- Marketplace Fairness Act, S. 743
- H.R. 2332 - Adoption Tax Credit Tribal Parity
- Indian Health Professions Tax Fairness Act
- Low Income Housing Tax Credit
- Comprehensive Tax Reform

“Tax Extenders” in Lame Duck

- Indian Employment Tax Credit -- Section 45A
 - Incremental credit -- current year wages and health insurance costs are subject to the credit if exceed such costs paid in the base year (1993),.
- Accelerated Depreciation for On-Reservation Business Infrastructure – Section 168(j)
- Indian Coal Production Tax Credit
- New Markets Tax Credit – tax credit for capital investment in Community Development Entities
- Low Income Housing Tax Credit

Marketplace Fairness Act

States have a Tax Problem – the Internet

- Supreme Court in 1992 (Quill v. North Dakota) – states cannot collect sales tax on out of state retailers because there are over 7,000 local and state taxes
- Impermissible burden on interstate commerce
- States estimate that they will lose \$400 billion in revenue on remote sales over the next ten years

Streamlined Sales and Use Tax Agreement

Solution:

- Massive Intergovernmental Compact
- All participating “states” agree to implement sales taxes the same way – both remote and direct sales
- Voluntary intergovernmental compact
- Even with compact, states don’t have the authority to impose the uniform taxes on remote sellers
- Marketplace Fairness Act would permit participating states to impose on remote sellers

U.S. Constitution, Article I, Section 8:

The Congress shall have power ... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Uniform Sourcing Rules

The member states agree to require sellers to source the sale of a product in accordance with the following provisions.

- a) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
- b) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser occurs -- the location indicated by instructions for delivery.

Tribal Governments' Taxing Authority

Supreme Court Rules

Tribal taxing authority is an inherent government function (Kerr-McGee, Colville)

Tribe may collect tax when product is received by any purchaser on tribal land. (Colville, Moe)

For products without "reservation generated value," state may collect the tax when the product is received by a non-tribal member on tribal land. Dual Taxation. (Moe, Colville)

State may not collect tax when product is received on tribal land by tribal member. (Central Machinery, Moe, Warren Trading Post)

Streamlined Sales and Use Tax Agreement v. Tribal Sales Transaction Rules

SSUTA

- Remote Sales – Location of Delivery
- Face to Face Sales – Location of Business

TRIBAL RULES

- Remote Sales – Location of Delivery if purchaser is Tribal Citizen/Entity
- Face to Face Sales – Location of Business if purchaser is a Tribal Citizen

Nevada-Tribal Sales Tax Compacts



Tax Revenue and Bond Infrastructure



Nevada-Tribal Sales Tax Compacts



Current Sales Tax Legislation

Marketplace Fairness Act:

- S. 743 – has passed Senate with tribes included in the definition of “states.”
- Supported by NCAI Resolution
- House Judiciary Committee is considering
- As federal funding for states and tribes decreases, there is a need for more taxing authority.

Including Tribes in Remote Sales Legislation

Tribes could be included like language in S. 34 (Enzi/R-WY) from the 110th Congress

- Included tribes as member states (optional);
- Protected future and existing tax agreements between states and tribes; and
- Protected tribal tax jurisdiction on the reservation

Please contact your Members in Congress and ask them to support including tribes in the Marketplace Fairness Act.

Principles of Tax Parity for Tribal Governments

- Tribal governments must be treated with parity in all areas of tax policy
- Constitution recognizes tribal governments; treaty and trust obligations
- Tribes have responsibility to regulate conduct on Indian lands.
- Tribes operate a broad range of governmental services: education, health, public safety, and transportation.
- Like states and local governments, tribal revenues are not taxable but are governmental revenues of a distinct sovereign.

Tribal governments need respect for authority:

- to raise tax revenue free from overlapping state taxation
- to create incentives for business and jobs
- to access to government financing tools
- to make decisions regarding citizens' needs
- to promote certainty of jurisdiction, certainty to the capital markets, and certainty in tax policy to sustain economic growth.