

**[Alternative Language to S.1771/H.R.3080 –
Targeted Relief from ACA’s Employer Mandate for Indian Tribes]**

To amend the Internal Revenue Code of 1986 to exclude from the calculation of employer assessable payments for Indian tribal governments and Indian tribal government-owned businesses employees who are tribal members.

SECTION 1: SHORT TITLE

This Act may be cited as _____.

SECTION 2: EXCLUSION OF TRIBAL MEMBER EMPLOYEES FROM ASSESSABLE PAYMENT CALCULATION.

- (a) IN GENERAL.--Section 4980H(c)(2) of the Internal Revenue Code is amended by adding at the end the following new subparagraph:

“(F) EXCLUSION OF TRIBAL MEMBER EMPLOYEES FROM ASSESSABLE PAYMENT CALCULATIONS FOR TRIBAL GOVERNMENTS AND TRIBAL GOVERNMENT-OWNED BUSINESSES.—

(1) For purposes of determining under subsection (a) “the number of individuals employed by the employer as full-time employees during such a month” and under subsection (b)(1) “the number of full-time employees of the applicable large employer described in subparagraph (B) for such month”, for tribal governments and tribal government-owned businesses, Tribal member employees shall not be included.

(A) “Tribal government and tribal government-owned business” is defined as an Indian tribal government (as defined in Internal Revenue Code (IRC) section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with IRC section 7871(d)), or an agency or instrumentality of either; any corporation if all of the outstanding stock of such corporation is owned, directly or indirectly, by an Indian tribal government (as so defined), and any partnership or LLC if all of the capital and profits interests are owned, directly or indirectly, by an Indian tribal government (as so defined).

(B) “Tribal member employees” is defined as persons eligible for an exemption from the penalty for not securing health insurance coverage under IRC § 5000A(e)(3) as a member of an Indian Tribe and persons eligible for an exemption from the penalty for not securing health insurance coverage under IRC § 5000A(e)(5) and ACA § 1501, under which 45 C.F.R. § 155.605(g)(6) was established, granting an exemption for American Indians and Alaska Natives who are eligible for services through an Indian health care provider.

- (b) EFFECTIVE DATE.—The amendment made by this section shall apply to months beginning after December 31, 2013.

FINDINGS

Section 3 of the Indian Health Care Improvement Act (IHCIA) states, in part:

“Congress declares that it is the policy of this Nation, in fulfillment of its special trust responsibilities and legal obligations to Indians— ‘(1) to ensure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy’.”

Despite this stated policy in the IHCIA, the Patient Protection and Affordable Care Act (ACA), in establishing a new section 4980H of the Internal Revenue Code, requires certain tribal governments and other tribal government-owned businesses, to make payments to the federal government for the health care of Indian tribal members simply because they are employees of the tribe or a tribal-government business.

The targeted relief contained in this alternative language to S. 1771 / H.R. 3080 would reconcile these provisions by excluding employees who are tribal members from the calculations of assessable payment amounts owed under the Affordable Care Act by a tribal government or tribal government-owned entity.

More specifically, the United States has a special trust responsibility to improve the health status of AI/ANs (25 U.S.C. § 1602); it is “a major national goal of the United States to provide the quantity and quality of health care services and opportunities that will eradicate the health disparities between Indians and the general population of the United States (25 U.S.C. § 1601(2)). In furtherance of these responsibilities and achievement of the national goal, the IHS is expressly prohibited from billing tribal self-insurance plans unless the tribal government has expressly authorized payments to the IHS (25 U.S.C. § 1621e(f) (“Absent specific written authorization by the governing body of an Indian tribe for the period of such authorization (which may not be for a period of more than 1 year and which may be revoked at any time upon written notice by the governing body to the Service), the United States shall not have a right of recovery under this section if the injury, illness, or disability for which health services were provided is covered under a self-insurance plan funded by an Indian tribe, tribal organization, or urban Indian organization.”)). A requirement to provide health insurance for tribal members simply because they are tribal employees is directly contrary to satisfying these requirements.