

***“Whatever Happened To The
‘Indians Not Taxed’?
And When Did The Congress Say
That State And Local Governments
Can Collect Taxes In Our Territories?”***

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RESTORING “INDIANS NOT TAXED”

- The U.S. Constitution is clear -- that there once existed a class of Indians in the United States who were not considered as taxpayers. Art. I, Sec. 2, Cl. 3.
- But Congress granted citizenship to all Indians in 1924, and the federal courts and Internal Revenue Service eliminated that constitutional status.
- Tribal governments do not pay tax on income, nor do Indian farmers or fishermen earning income derived from treaty-protected lands and waters
- **Should an effort be made to restore Indian tax immunity for income earned on tribal lands?**

NON-INDIAN TAXPAYERS IN INDIAN COUNTRY

- Non-Indians doing business in Indian Country recently have been subject to state and local taxation
- Starting in 1976, the U.S. Supreme Court has ruled that non-Indians doing business in Indian Country must pay state and local taxes
 - The Court has said tribal governments must assist in state tax collection as a "minimal burden" of enforcement.
 - Some tribal nations resist, but most have pursued tax compacts
- In 1989, the Court upheld state taxing authority and the authorization of "dual taxation" of tribal commerce by tribal and state governments.

TRIBAL ECONOMIES ARE WEAKENED BY DUAL TAXATION

- Allowing multiple governments to tax business activity on tribal lands has numerous effects –
 - Kills investment and job creation
 - Steals tribal wealth
 - Preserves Third World poverty conditions for too many Indian nations and Alaska Native communities
- Recent DOI efforts to update and revise old leasing and right-of-way regulations pre-empt state and local taxation
- Current effort to issue new regulations to the Indian Trader Statutes can solve the problem
 - **Secretary Zinke must be convinced to support this effort!**

NOW IS THE TIME FOR ACTION ON TRIBAL TAX REFORM

- Congress is taking up comprehensive tax reform plan right now
- The Trump Administration is also pursuing a tax reform plan.
- The challenge is that those efforts seek to streamline the Tax Code and reduce tax rates, the opposite of what Indian Country needs
 - Temporary Indian Country tax credits could be eliminated (wage, depreciation, coal production)
 - Tax incentives like Tribal Empowerment Zones and New Market Tax Credits are needed
- **Failure to act now could mean a missed opportunity!**

TRIBAL LEADERS MUST LEAD NOW ON TAX AND REGULATORY REFORM

- Pursue on-the-ground tribal business development, including restructuring of internal business infrastructure
- Pursue changes in federal law and regulations that are **specifically** designed to generate revenue and expand tribal economies
- Engage with to Department of Interior, Treasury and Commerce to set forth a tribal economic growth policy agenda
- Advocate for federal legislation to expand economic growth in Indian Country and for Alaska Natives

TRIBAL ECONOMIC GROWTH ALLIANCE HAS FORMED – PLEASE JOIN

- Tribal leaders are mobilizing to focus the advocacy voice to expand Indian country and Alaska Native economic growth
 - Tax reform and Indian Trader Statutes regulations
 - Regulatory and energy development reform
 - Land use reform
- Goal is to enhance advocacy efforts and policy positions of national and regional intertribal organizations
 - NIGA, NCAI, NCAIED, NAFOA, COLT
- NIGA board adopted resolution on April 9, 2017 to support a joint task force in support of Tribal Leaders Alliance on Economic Growth and Fair Taxation
- May 3-4 worksession and summit in Washington, D.C. is planned
- To participate, contact me or Robert Odawi Porter, Esq. at robert.porter@dentons.com.