

Tribal Tax Parity: A Legal and Moral Obligation of the United States



Congress has an undeniable obligation to ensure that federal tax policy provides Tribal Nations the same opportunities as other governments to meet the needs of their citizens. Tribal Nations, as original members of the American family of governments, possess a unique legal and political relationship with the United States, as defined by the U.S. Constitution, treaties, statutes, court decisions, and executive orders. This body of law establishes three fundamental principles:¹

1. Congress has plenary authority over matters involving Indian Affairs, and state law ordinarily does not apply within Indian Country absent authorization by Congress.
2. Tribal Nations retain inherent sovereign authority over their lands and resources as sovereign nations within the United States.
3. Through its acquisition of land and resources, the United States formed a fiduciary relationship with Tribal Nations whereby it has recognized a trust relationship to safeguard tribal rights, lands, and resources.² In upholding this tribal trust responsibility, the United States “charged itself with moral obligations of the highest responsibility and trust” in its relationship with Tribal Nations.³

For decades, the Internal Revenue Code has failed to recognize and support the inherent rights of Tribal Nations to exercise their taxing authority on tribal lands to develop robust economies in the way that state and local governments do. This inequity significantly hinders Tribal Nations’ ability to generate and allocate much-needed government revenue to support otherwise under-resourced tribal programs and fund economic and community development initiatives that create job opportunities and prosperity in Native communities.

Tribal governments must be treated with parity in all areas of tax policy, and, as sovereign governments, Tribal Nations must have the ability to:

- Generate tax revenue free from overlapping state taxation;
- Create tax incentives for business development and job creation;
- Access government financing tools;
- Devise and invest in self-determined solutions essential to promoting the health and welfare of tribal citizens; and
- Promote certainty of jurisdiction, certainty to capital markets, and certainty in tax policy to enhance economic growth.

It is imperative that Congress enact long-overdue legislation that fulfills the federal government’s trust and treaty obligations to recognize and support Tribal sovereignty and self-determination. This legislation should affirm the inherent right of Tribal governments to achieve tax parity with other governmental structures in the United States, empowering them to pursue economic development for Nation rebuilding and community well-being.

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¹ See *Johnson v. M'Intosh*, 21 U.S. 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); and *Worcester v. Georgia*, 31 U.S. 515 (1832) (collectively called the “Marshall Trilogy”).

² *Cherokee Nation v. Georgia*, 20 U.S. 1 (1831).

³ *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942).