

115TH CONGRESS
1ST SESSION

S. 1935

To amend the Internal Revenue Code of 1986 to treat Indian tribal governments in the same manner as State governments for certain Federal tax purposes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 5, 2017

Mr. MORAN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to treat Indian tribal governments in the same manner as State governments for certain Federal tax purposes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal Tax and Invest-
5 ment Reform Act of 2017”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) There is a unique Federal legal and political
2 relationship between the United States and Indian
3 tribes.

4 (2) Indian tribes have the responsibility and au-
5 thority to provide governmental programs and serv-
6 ices to tribal citizens, develop tribal economies, and
7 build community infrastructure to ensure that In-
8 dian reservation lands serve as livable, permanent
9 homes.

10 (3) The United States Constitution, U.S. Fed-
11 eral Court decisions, Executive orders, and numer-
12 ous other Federal laws and regulations recognize
13 that Indian tribes are governments, retaining the in-
14 herent authority to tax and operate as other govern-
15 ments, including (inter alia) financing projects with
16 government bonds and maintaining eligibility for
17 general tax exemptions via their government status.

18 (4) Codifying tax parity with respect to tribal
19 governments is consistent with Federal treaties rec-
20 ognizing the sovereignty of tribal governments.

21 (5) That Indian tribes face historic disadvan-
22 tages in accessing the underlying capital to build the
23 necessary infrastructure for job creation, and that
24 certain statutory restrictions on tribal governance

1 further inhibit tribes’ ability to develop strong gov-
 2 ernance and economies.

3 (6) Indian tribes are sometimes excluded from
 4 the Internal Revenue Code of 1986 in key provisions
 5 which results in unfair tax treatment for tribal citi-
 6 zens or unequal enforcement authority for tribal en-
 7 forcement agencies.

8 (7) Congress is vested with the authority to
 9 regulate commerce with Indian tribes, and hereby
 10 exercises that authority in a manner which furthers
 11 tribal self-governance, and in doing so, further af-
 12 firms the United States government-to-government
 13 relationship with Indian tribes.

14 **SEC. 3. TREATMENT OF INDIAN TRIBES AS STATES WITH**
 15 **RESPECT TO BOND ISSUANCE.**

16 (a) IN GENERAL.—Subsection (c) of section 7871 of
 17 the Internal Revenue Code of 1986 (relating to Indian
 18 tribal governments treated as States for certain purposes)
 19 is amended to read as follows:

20 “(c) SPECIAL RULES FOR TAX-EXEMPT BONDS.—In
 21 applying section 146 to bonds issued by Indian tribal gov-
 22 ernments (or subdivisions thereof), the Secretary shall an-
 23 nually—

24 “(1) establish a national bond volume cap based
 25 on the greater of—

1 “(A) the State population formula ap-
 2 proach in section 146(d)(1)(A) (using national
 3 tribal population estimates supplied annually by
 4 the Department of the Interior in consultation
 5 with the Census Bureau), and

6 “(B) the minimum State ceiling amount in
 7 section 146(d)(1)(B) (as adjusted in accordance
 8 with the cost of living provision in section
 9 146(d)(2)), and

10 “(2) allocate such national bond volume cap
 11 among all Indian tribal governments seeking such an
 12 allocation in a particular year under regulations pre-
 13 scribed by the Secretary.”.

14 (b) REPEAL OF ESSENTIAL GOVERNMENTAL FUNC-
 15 TION REQUIREMENTS.—Section 7871 of such Code is fur-
 16 ther amended by striking subsections (b) and (e).

17 (c) EFFECTIVE DATE.—

18 (1) SUBSECTION (a).—The amendment made
 19 by subsection (a) shall apply to obligations issued in
 20 calendar years beginning after the date of the enact-
 21 ment of this Act.

22 (2) SUBSECTION (b).—The repeals made by
 23 subsection (b) shall apply to transactions after, and
 24 obligations issued in calendar years beginning after,
 25 the date of the enactment of this Act.

1 **SEC. 4. TREATMENT OF PENSION AND EMPLOYEE BENEFIT**
 2 **PLANS MAINTAINED BY TRIBAL GOVERN-**
 3 **MENTS.**

4 (a) AMENDMENTS TO THE INTERNAL REVENUE
 5 CODE OF 1986.—

6 (1) QUALIFIED PUBLIC SAFETY EMPLOYEE.—
 7 Section 72(t)(10)(B) of the Internal Revenue Code
 8 of 1986 (defining qualified public safety employee) is
 9 amended by—

10 (A) striking “or political subdivision of a
 11 State” and inserting “, political subdivision of
 12 a State, or Indian tribe”; and

13 (B) striking “such State or political sub-
 14 division” and inserting “such State, political
 15 subdivision, or tribe”.

16 (2) GOVERNMENTAL PLAN.—The last sentence
 17 of section 414(d) of such Code (defining govern-
 18 mental plan) is amended to read as follows: “The
 19 term ‘governmental plan’ includes a plan established
 20 or maintained for its employees by an Indian tribal
 21 government (as defined in section 7701(a)(40)), a
 22 subdivision of an Indian tribal government (deter-
 23 mined in accordance with section 7871(d)), an agen-
 24 cy, instrumentality, or subdivision of an Indian trib-
 25 al government, or an entity established under Fed-

1 eral, State, or tribal law which is wholly owned or
 2 controlled by any of the foregoing.”.

3 (3) DOMESTIC RELATIONS ORDER.—Section
 4 414(p)(1)(B)(ii) of such Code (defining domestic re-
 5 lations order) is amended by inserting “or tribal”
 6 after “State”.

7 (4) EXEMPT GOVERNMENTAL DEFERRED COM-
 8 PENSATION PLAN.—Section 3121(v)(3) of such Code
 9 (defining governmental deferred compensation plan)
 10 is amended by inserting “by an Indian tribal govern-
 11 ment or subdivision thereof,” after “political subdivi-
 12 sion thereof,”.

13 (5) GRANDFATHER OF CERTAIN DEFERRED
 14 COMPENSATION PLANS.—Section 457 of such Code
 15 is amended by adding at the end the following new
 16 subsection:

17 “(h) CERTAIN TRIBAL GOVERNMENT PLANS GRAND-
 18 FATHERED.—Plans established before the date of enact-
 19 ment of this subsection and maintained by an Indian tribal
 20 government (as defined in section 7701(a)(40)), a subdivi-
 21 sion of an Indian tribal government (determined in accord-
 22 ance with section 7871(d)), an agency, instrumentality, or
 23 subdivision of an Indian tribal government, or an entity
 24 established under Federal, State, or tribal law which is
 25 wholly owned or controlled by any of the foregoing, in com-

1 pliance with subsection (b) or (f) shall be treated as if
 2 established by an eligible employer under subsection
 3 (e)(1)(A).”.

4 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT
 5 INCOME SECURITY ACT OF 1974.—

6 (1) IN GENERAL.—The last sentence of section
 7 3(32) of the Employee Retirement Income Security
 8 Act of 1974 (29 U.S.C. 1002(32)) is amended to
 9 read as follows: “The term ‘governmental plan’ in-
 10 cludes a plan established or maintained for its em-
 11 ployees by an Indian tribal government (as defined
 12 in section 7701(a)(40) of the Internal Revenue Code
 13 of 1986), a subdivision of an Indian tribal govern-
 14 ment (determined in accordance with section
 15 7871(d) of such Code), an agency, instrumentality,
 16 or subdivision of an Indian tribal government, or an
 17 entity established under Federal, State, or tribal law
 18 which is wholly owned or controlled by any of the
 19 foregoing.”.

20 (2) DOMESTIC RELATIONS ORDER.—Section
 21 206(d)(3)(B)(ii)(II) of such Act (29 U.S.C.
 22 1056(d)(3)(B)(ii)(II)) is amended by inserting “or
 23 tribal” after “State”.

24 (3) CONFORMING AMENDMENTS.—

1 (A) Section 4021(b) of such Act (29
2 U.S.C. 1321(b)) is amended by striking “or” at
3 the end of paragraph (12), by striking the pe-
4 riod at the end of paragraph (13) and inserting
5 “; or”, and by inserting after paragraph (13)
6 the following new paragraph:

7 “(14) established or maintained for its employ-
8 ees by an Indian tribal government (as defined in
9 section 7701(a)(40) of the Internal Revenue Code of
10 1986), a subdivision of an Indian tribal government
11 (determined in accordance with section 7871(d) of
12 such Code), an agency, instrumentality, or subdivi-
13 sion of an Indian tribal government, or an entity es-
14 tablished under Federal, State, or tribal law which
15 is wholly owned or controlled by any of the fore-
16 going.”.

17 (B) Section 4021(b)(2) of such Act (29
18 U.S.C. 1321(b)(2)) is amended by striking “, or
19 which is described in the last sentence of sec-
20 tion 3(32)” and inserting a comma.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to years beginning after the date
23 of the enactment of this Act.

1 **SEC. 5. TREATMENT OF TRIBAL FOUNDATIONS AND CHAR-**
 2 **ITIES LIKE CHARITIES FUNDED AND CON-**
 3 **TROLLED BY OTHER GOVERNMENTAL**
 4 **FUNDERS AND SPONSORS.**

5 (a) IN GENERAL.—Section 170(b)(1)(A) of the Inter-
 6 nal Revenue Code of 1986 is amended by adding at the
 7 end the following: “For purposes of clause (vi), the term
 8 ‘governmental unit’ includes an Indian tribal government
 9 (determined in accordance with section 7871(d)), an agen-
 10 cy, instrumentality, or subdivision of an Indian tribal gov-
 11 ernment, or an entity established under Federal, State,
 12 or tribal law which is wholly owned or controlled by any
 13 of the foregoing.”.

14 (b) CERTAIN SUPPORTING ORGANIZATIONS.—Sec-
 15 tion 509(a) of such Code is amended by adding at the
 16 end the following: “For purposes of paragraph (3), an or-
 17 ganization described in paragraph (2) shall be deemed to
 18 include an Indian tribal government (determined in ac-
 19 cordance with section 7871(d)), an agency, instrumen-
 20 tality, or subdivision of an Indian tribal government, or
 21 an entity established under Federal, State, or tribal law
 22 which is wholly owned or controlled by any of the fore-
 23 going.”.

24 (c) EFFECTIVE DATE.—The amendments made by
 25 this section shall apply to taxable years beginning after
 26 the date of the enactment of this Act.

1 **SEC. 6. IMPROVING EFFECTIVENESS OF TRIBAL CHILD**
 2 **SUPPORT ENFORCEMENT AGENCIES BY PAR-**
 3 **ITY OF ACCESS TO THE FEDERAL PARENT LO-**
 4 **CATOR SERVICE AND FEDERAL TAX REFUND**
 5 **OFFSETS.**

6 (a) ACCESS TO FEDERAL PARENT LOCATOR SERV-
 7 ICE.—Section 453(c) of the Social Security Act (42 U.S.C.
 8 653(c)) is amended—

9 (1) by striking “and” at the end of paragraph
 10 (4);

11 (2) by striking the period at the end of para-
 12 graph (5) and inserting “; and”; and

13 (3) by adding at the end the following:

14 “(6) the child support enforcement agency of an
 15 Indian tribe or tribal organization that is eligible for
 16 a grant under section 455(f).”.

17 (b) IMPROVING THE COLLECTION OF PAST-DUE
 18 CHILD SUPPORT FROM FEDERAL TAX REFUNDS.—

19 (1) AMENDMENT TO THE SOCIAL SECURITY
 20 ACT.—Section 464 of the Social Security Act (42
 21 U.S.C. 664) is amended by adding at the end the
 22 following:

23 “(d) APPLICABILITY TO INDIAN TRIBES AND TRIBAL
 24 ORGANIZATIONS ELIGIBLE FOR A GRANT UNDER THIS
 25 PART.—This section, except for the requirement to dis-
 26 tribute amounts in accordance with section 457, shall

1 apply to an Indian tribe or tribal organization eligible for
 2 a grant under section 455(f) in the same manner in which
 3 this section applies to a State with a plan approved under
 4 this part.”.

5 (2) AMENDMENT TO THE INTERNAL REVENUE
 6 CODE.—Subsection (c) of section 6402 of the Inter-
 7 nal Revenue Code of 1986 is amended by adding at
 8 the end the following: “For purposes of this sub-
 9 section, any reference to a State shall include a ref-
 10 erence to any Indian tribe or tribal organization de-
 11 scribed in section 464(d) of the Social Security
 12 Act.”.

13 **SEC. 7. RECOGNIZING INDIAN TRIBAL GOVERNMENTS FOR**
 14 **PURPOSES OF DETERMINING UNDER THE**
 15 **ADOPTION CREDIT WHETHER A CHILD HAS**
 16 **SPECIAL NEEDS.**

17 (a) IN GENERAL.—Section 23(d)(3) of the Internal
 18 Revenue Code of 1986 (defining child with special needs)
 19 is amended—

20 (1) in subparagraph (A), by inserting “or In-
 21 dian tribal government” after “a State”; and

22 (2) in subparagraph (B), by inserting “or In-
 23 dian tribal government” after “such State”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 the date of the enactment of this Act.

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