

Tribal Tax Investment and Reform Act of 2024

Rep. Gwen Moore and Rep. David Schweikert

The **Tribal Tax and Investment Reform Act** amends the Internal Revenue Code to ensure that Indian tribal governments are treated consistent with state and local governments under federal law. Additionally, this bill removes undue barriers to tribal economic development. The federal government has trust obligations and treaty responsibilities to Native Americans and tribes, that are founded in the US government's duty to uphold tribal sovereignty and self-governance. With this bill, Congress can better address unique problems and challenges of Tribal Nations and empower the sovereignty of Indian tribes.

- **Section 3: Treatment of Tribes as States with Respect to Bond Issuances and Excise Taxes.** This section repeals the “essential government function” (EGF) test that limits the ability of Tribes to issue governmental bonds. This section also establishes private activity bond volume cap rules to enable tribal governments to issue private activity bonds for economic development purposes, like state and local governments can. This bill places Tribes on equal footing with state and local governments with respect to select excise taxes, including manufacturing and communication excise taxes.

- **Section 4: Treatment of Pension and Employee Benefit Plans Maintained by Tribal Governments.** This section amends the Internal Revenue Code to treat tribal government pension and employee benefit plans in the same way as state government plans. It removes the “essential government function” requirement and “commercial” activity test that applies to tribal plans, while adding uniform federal protections and fiduciary standards that protect beneficiaries. This section also (1) ensures that tribal public safety employees are entitled to the same retirement age distribution rules that apply to state and local public safety employees, (2) grandfathers certain “457” plans that were improperly sold to tribal governments, and (3) exempts Tribal 401(k) plans from the new long-term, part-time employee eligibility rules, consistent with the long-standing exemptions available to state, local and other governmental retirement plans.

- **Section 5: Treatment of Tribal Foundations and Charities like Charities Funded and Controlled by Other Governmental Funders and Sponsors.** This section addresses an unintended disparity under the public charity classification rules that makes it difficult for tribal nations to form and fund Section 501(c)(3) nonprofit organizations outside of private foundations by (1) treating tribal funding as public support for purposes of Section 170(b), and (2) treating charitable organizations formed to support Indian tribal governments the same as organizations formed to support state, local and federal government for purposes of Section 509(a)(3). 2)

- **Section 6: Improvement of Effectiveness of Tribal Child Support Enforcement Agencies by Parity of Access to the Federal Tax Refund Offset Program.** This section permits tribal child support enforcement agencies to enforce orders for support through withholding of past due child support obligations through federal income tax returns of parents with past

due obligations. Currently, only state child support collection agencies can access the offset program that authorizes the Department of the Treasury to withhold from tax refunds amounts owed for past due child support payments.

- **Section 7: Recognition of Indian Tribal Governments for Purposes of Determining Under the Adoption Tax Credit Whether a Child Has Special Needs.** Tribal nations have jurisdiction over adoption proceedings involving their citizens. However, currently only states to designate children as “special needs” for purposes of claiming the adoption tax credit. A special needs determination automatically entitles adopting parents to the maximum amount of the credit, irrespective of the actual expenses incurred. This section would permit adopting parents to receive an Adoption Tax Credit when a tribal court makes a determination that a child has “special needs.” Adoptions of children with special needs generally means children who are considered difficult to place for adoption.
- **Section 8: Creation of New Markets Tax Credit for tribal statistical areas.** This section creates an annual \$175 million New Markets Tax Credit for low-income Tribal communities and for projects that serve or employ Tribe members. NMTC Program attracts private capital to economically distressed communities by providing tax credits to investors. This section addresses the low rate of NMTC deployment in Indian Country through a credit set-aside.
- **Section 9: Increased effectiveness of Tribal Low-Income Housing Tax Credits (LIHTC) in Indian Country.** The LIHTC program provides tax incentives to developers to create affordable housing, but credits are often unavailable to tribes. This section modifies the definition of difficult development area to include an Indian area for the purposes of determining eligible basis thereby explicitly including Tribes in the LIHTC program criteria.
- **Section 10: Clarification that Tribal General Welfare Benefits are not unfairly categorized as income related to Supplemental Social Income eligibility or benefit amounts.** The Tribal General Welfare Exclusion Act (TGWEA) excludes from gross income and resources, for income tax purposes, the value of a tribal general welfare benefit. This section excludes these benefits from Supplemental Social Income eligibility and benefit amount determinations.
- **Section 11: Modification and Extension of Indian employment tax credit.** The section extends and updates the expired Indian Employment Tax Credit, a credit for employers who hire Tribal members or their spouses who work on a reservation and live on or near a reservation. This credit is important to addressing high unemployment rates on many Tribal Nations and supporting tribal communities and businesses. The section increases the wage amount an employer can offset from \$20,000 to \$30,000 and simplifies the credit formula.
- **Section 12 and Section 13: Exclusion from gross income for payments under Indian health service loan repayment program and Indian health professions scholarships program.** These sections make health professionals at the Indian Health Service eligible for recruitment and retention tax incentives available to other public sector health professionals.