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Tax Status of Tribally Chartered Corporations Tribal Leader Talking Points White House Tribal Nations Summit 2023

Summary

Uncertainty regarding the tax status of Tribally-Chartered Corporations (TCCs) is one of the federal policy barriers faced by Tribal Nations as we seek to build our economies and generate our own governmental revenues. For well over two decades, Treasury and the Internal Revenue Service (IRS) have stated their intent to issue formal guidance on the tax status of TCCs, but have not done so. In large part, this appears to be because of differences between departments at IRS, where some have a belief that TCCs are tax shelters and the office of Indian Tribal Governments (ITG) has held back destructive guidance that would subject any TCC not wholly owned by a Tribal Nation to corporate taxation. Now, the Department of Treasury, via the Tribal Affairs Office, has initiated consultation with the intent of publishing guidance on the tax status of TCCs. This is particularly timely, as many Tribal energy corporations, which should be eligible for Direct Pay tax credits under the Inflation Reduction Act, are Tribally-chartered and not wholly-owned. If majority owned TCCs are ultimately taxable, not only would this inappropriately tax the instrumentalities of Tribal governments, but this would also impede many Tribal Nations from accessing Direct Pay tax credits, as intended.

Talking Points/Recommendations

- We are urging Treasury to issue guidance affirming that TCCs (whether wholly, jointly or majority owned) share the same tax status as the Tribal government, and therefore, are not subject to federal tax on earned income regardless of the location where that income is earned.
- Due to the onerous process associated with the establishment of Section 17 Corporations, Tribal Nations are often establishing LLCs. IRS must understand that these entities are simply generating revenue for government services to our people – not an opportunity for Tribal Nations to avoid taxation.
- IRS must consult with Tribal Nations, as well as work with the Office of Tribal and Native Affairs, and familiarize itself with our unique circumstances in order to avoid the issuance of inappropriate guidance.
- In addition, IRS should commit to interagency communication and coordination on this issue, as it has in the past with the General Welfare Exclusion Act. This will allow IRS to be consistent with other agencies in its approach to TCCs.

Because there is Strength in Unity