

2025 ATNI Winter Convention

Taxation Committee Written Report, Prepared by Josh Gabel

Day 1 of 1, January 29, 2025 (~30 attendees)

Agenda Item	Presenter(s)
ATNI Taxation Update	Henry Cagey
Cougar Den	Kip Ramsey III
Resolution Review	Josh Gabel
Washington State Department of Revenue	Daniel Knudsen
TTAC Updates	W. Ron Allen
Red Rock Innovations	Eddie Sherman, Ashwani Dhiman
Indigenous Cannabis Industry Association	Mary Jane Oatman

ATNI Taxation Update

Committee Chair Henry Cagey presented an update to the 30 or so attendees in the Taxation Committee session. This included work needed to get the Tribal Tax and Investment Reform Act and Treasury regulations related to the General Welfare Exclusion and Tribally Chartered Corporations across the finish line with federal partnership. Chair Cagey highlighted issues with the Washington State Department of Licensing attempting to tax tribal retail fuel providers, problems tribal members are having at specific retailers receiving tax-free status on certain treaty specific goods, discussed the need for a meet up with Washington State Retailer's Association, and privatizing tribal cannabis grown by tribal members. Chair Cagey referenced stepping away and handing off this work to the next generation, identifying Josh Gabel as his nominee for Chair of the Taxation committee.

Tribal Tax and Investment Reform Act

Introduced by Rep. Gwen Moore and Rep. David Schweikert in the 118th Congress, the Tribal Tax and Investment Reform Act is designed to provide Indian tribal governments with the same treatment as state and local governments under federal law, fostering economic development and enhancing sovereignty. The bill removes barriers for tribes in various areas, allowing us to better address unique challenges we face. Below is an overview of key sections within the bill:

Section 3: Bond Issuances and Excise Taxes

- Repeals the "essential government function" test, which limited tribes' ability to issue governmental bonds.
- Establishes rules for private activity bonds, allowing tribes to issue bonds for economic development at parity with state and local governments.
- Treats tribes equally to state and local governments with respect to certain excise taxes, including manufacturing and communication excise taxes.

Section 4: Pension and Employee Benefit Plans

- Treats tribal government pension and employee benefit plans similarly to state government plans.
- Removes the "essential government function" and "commercial" activity tests that previously applied to tribal plans.
- Ensures tribal public safety employees have the same retirement age distribution rules as state and local public safety employees.

- Exempts Tribal 401(k) plans from long-term, part-time employee eligibility rules, consistent with state and local government exemptions.

Section 5: Tribal Foundations and Charities

- Addresses disparities under the public charity classification rules, making it easier for tribes to form and fund nonprofit organizations under Section 501(c)3.
- Treats tribal funding as public support for charitable organizations, aligning them with state, local, and federal governments for tax purposes.

Section 6: Tribal Child Support Enforcement

- Allows tribal child support enforcement agencies to access the federal tax refund offset program, which helps collect past-due child support through federal income tax returns.
- Currently, only state agencies have access to this program, and this provision expands it to tribal agencies.

Section 7: Adoption Tax Credit and Special Needs Designation

- Grants tribal governments the ability to determine whether a child has "special needs" for the purposes of claiming the Adoption Tax Credit, just as states currently can.
- This will enable adopting parents to qualify for the credit if a tribal court determines a child has special needs.

Section 8: New Markets Tax Credit for Tribal Areas

- Creates an annual \$175 million New Markets Tax Credit specifically for low-income tribal communities.
- This credit attracts private capital to underserved tribal areas, aiming to boost economic development.

Section 9: Tribal Low-Income Housing Tax Credits (LIHTC)

- Modifies the definition of "difficult development area" to include Indian areas, making it easier for tribes to access the LIHTC program.
- This program helps fund affordable housing development within tribal communities.

Section 10: General Welfare Benefits

- Clarifies that tribal general welfare benefits are excluded from gross income and resources for income tax purposes.
- Ensures that these benefits do not affect eligibility for Supplemental Security Income (SSI) or the benefit amounts.

Section 11: Indian Employment Tax Credit

- Extends and updates the expired Indian Employment Tax Credit, incentivizing employers to hire tribal members or their spouses who live and work on reservations.
- Increases the wage offset limit from \$20,000 to \$30,000 and simplifies the credit formula to help address high unemployment rates in tribal areas.

Section 12 and Section 13: Health Professional Loan Repayment and Scholarships

- Excludes payments made under the Indian Health Service Loan Repayment Program and Indian Health Professions Scholarships Program from gross income for tax purposes.

- This enables health professionals working for the Indian Health Service to qualify for tax incentives available to other public sector health professionals.

Overall, the bill strengthens the ability of tribal governments to generate revenue, improve their workforce, expand affordable housing, enforce child support, and provide health benefits to tribal communities. These reforms aim to foster economic development and ensure fairness and equality for tribes in the federal tax system.

Tribal General Welfare Act – Proposed Treasury Rule

The Tribal General Welfare Exclusion Act (September 13, 2014) allows Tribes to provide general welfare benefits to our citizens without these benefits being counted as taxable income. The Act includes guidelines ensuring these benefits support the well-being of Tribal members, promote general welfare, are not lavish or compensation for services, and are available to eligible individuals.

In response, the Department of the Treasury and the IRS released a Notice of Proposed Rulemaking (NPRM) on Sept 13, 2024, to implement the Act. This rule supports Tribal self-governance and self-determination by providing flexibility in how Tribes operate and fund their welfare programs. Key provisions of the proposed rule include:

1. Broad Flexibilities:

- **Tribal Deference:** The rule defers to Tribes to resolve ambiguities in favor of the Tribe.
- **Eligibility:** Tribes define who is eligible for benefits, including a broad group of individuals such as descendants, former spouses, and partners.
- **Funding Sources:** Tribes can use any revenue source, including net gaming revenues, to fund benefits.
- **Uniform Payments:** Tribes may offer uniform payments, like per capita payments, using net gaming revenues.
- **Audit Suspension:** Audits will remain suspended until the final regulations are issued and required training is completed.

2. Regulatory Flexibilities:

- **Program Establishment:** Tribes can establish programs through custom, government practice, or formal action, with no need for written documentation if not required by Tribal law.
- **Non-Discrimination:** Programs will not be discriminatory, even if the Tribe's governing body is the entire membership.
- **Benefit Requirements:**
 - **Promotion of General Welfare:** Tribes determine whether a benefit promotes general welfare.
 - **Lavishness:** A test considers the Tribe's unique culture and circumstances to determine if a benefit is lavish. Benefits in line with Tribal guidelines are presumed compliant.
 - **Cultural Significance:** Tribes can determine what is culturally significant, with the IRS deferring to their judgment.

3. Applicability Date: These rules apply to Tribal program participants starting from the taxable years following the final rule's publication.

The Department is also conducting extensive consultations with Tribes, following the Tribal Consultation and Coordination policy, to refine the proposed regulations and ahead of any continuation of audits on GW programs.

Tax Status of Wholly Owned Tribal Entities – Proposed Treasury Rule

The Department of the Treasury and the IRS proposed new rules on October 7, 2024, regarding the tax status of wholly owned Tribal entities. This proposal aims to clarify that entities chartered by Tribes under Tribal law (tribally chartered entities) share the same tax status as their owning Tribes, meaning they are not subject to federal income tax. This clarification is especially important as Tribes pursue clean energy projects eligible for new tax credits.

Key points of the proposed rule include:

1. **Recognition of Tribal Economies:** The rule acknowledges that Tribal economies rely heavily on Tribal businesses to generate revenue, and it supports Tribal sovereignty and self-governance.
2. **Tax Status of Tribally Chartered Entities:**
 - These entities would share their owning Tribe's tax status and would not be subject to federal income tax, similar to federally chartered Tribal corporations.
 - Multi-Tribal entities would have the tax status of the Tribes that own them, and they too would be exempt from federal income tax.
 - The rule does not impose additional reporting requirements on these entities or an "integral part" test.
3. **Eligibility for Clean Energy Tax Credits:**
 - Tribally chartered entities and federally chartered Tribal corporations can directly file for clean energy tax credits through a payment mechanism called elective pay.
 - The rule allows multi-Tribal entities to file for these credits as well.
4. **Reliance on the Proposed Rule:** Tribes can apply the rule to tax years before the publication of the NPRM, ensuring that the tax status of entities is consistent for past years.

The Treasury Department plans to hold further consultations with Tribal nations as part of their ongoing consultation process regarding the NPRM.

Updates from Cougar Den

Chief Operations Officer Kip Ramsey III discussed at a high level the challenges Cougar Den has been facing from the states of Washington and more recently Oregon related to their treaty protected right to trade unincumbered with tribes on a tax-free basis. This included listing by several customer tribes on the IFTA, which seeks to tax retail fuel customers after purchases. This has a severe impact on the competitiveness of those retail gas suppliers impacted, especially related to diesel and trucking fuel sales.

Resolution 2025-11 Review

Josh Gabel presented the resolution addressing issues stemming from actions by the State of Washington's Department of Licensing related to tribally owned retail fuel providers, citing that intertribal commerce has been in practice since time immemorial and is a treaty protected action.

The Affiliated Tribes of Northwest Indians Tax Committee reviewed Resolution #2025-11, which calls on the Washington State Department of Licensing to cease actions perceived as harassment against sovereign Tribal nations, respect their treaty rights, and support inter-tribal commerce.

Key Points of the Resolution:

1. **Historical Context:** ATNI emphasizes that inter-tribal trade has been a cornerstone of Tribal economies since time immemorial and has been preserved through numerous treaties, which remain the supreme law of the land. Tribal nations have long exercised their sovereign authority to establish and manage economic enterprises, including fuel retail stations.
2. **Washington State Department of Licensing Actions:**
 - The Department falsely alleged that Tribal fuel enterprises were violating fuel tax compacts by purchasing untaxed fuel, despite treaty exemptions.
 - These actions interfere with Tribal sovereignty by attempting to influence business decisions and threatening the revocation of fuel tax compacts without legal basis.
 - The Department also placed these Tribes' fuel stations on an "IFTA Untaxed Fuel List," undermining inter-tribal commerce and violating prior court rulings.
3. **“Meat” of the Resolution:**
 - ATNI calls for the immediate cessation of harassment by the Department against Tribal fuel retailers.
 - It demands that the Department respect previous court decisions, maintain a good faith government-to-government relationship, and cease interference with Tribal sovereignty and economic self-determination.
 - The resolution urges the State of Washington to respect the tradition of inter-tribal trade and the sovereign rights of Tribal nations, encouraging fair economic development without imposing unnecessary burdens.
 - It calls for government-to-government consultations with impacted Tribes.
4. **Future Actions:** ATNI will continue to monitor the situation and take appropriate actions to support its member Tribes in protecting their treaty rights, sovereignty, and economic development.

The resolution was passed with a quorum at the 2025 Winter Convention, held in Portland, Oregon.

Washington State Department of Revenue

Tribal Relations Manager Daniel Knudsen provided updates from the Washington State Department of Revenue. Dan talked at length about the Department’s guidance on the tax-exempt status of certain goods and services related to hunting, fishing, and gathering, which is seeing inadequacies by some retailers to enforce, in part due to cashierless checkout experiences and inflexibility with those systems. Chair Cagey recommended a meeting with the Washington Retail Association to help make bigger strides in ensuring retailers are providing tribal members with appropriate tax-free purchases of treaty-related goods and services. The current process for these purchases is as follows:

A tribe, tribal entity, organization, or member/citizen seeking to physically make a tax-exempt purchase at a store in Washington State should:

1. Take the item(s) to be purchased to the Customer Service desk to check out.
2. The Customer Service representative will ask the customer for their tribal I.D. If the customer is a tribe, tribal entity, or organization, a letter on tribal letterhead indicating such will suffice.
3. If there is an age restriction on any item and the tribal identification does not list a date of birth or is worn, the Customer Service representative will also ask for state-issued identification.

4. The Customer Service representative will next verify that the items for purchase are on the WA DOR list of exempt Fishing, Hunting, and Gathering (FHG) item list. The list is available on the DOR web site and is regularly updated by tribes through this TTAG process.
5. If any items to be purchased does not appear on the list, the Customer Service agent will inform the customer that the list does not qualify. Any such item will need to be rung up in a separate transaction where tax will apply.
6. Once the items and customer identification have been verified, the Customer Service representative and the customer will complete the appropriate Department form.
7. Once the tax-exempt transaction is complete, the Customer Service representative will make a second copy of the transaction documents.
8. During this post-sale process, the customer's tribal identification documents will be retained in the retailer's computer sales system. Subsequent tax-exempt purchases will take less time to complete as the tribal customer's information will already be on file.
9. Please keep in mind that Washington retailers are required to keep this documentation on file in their records for four years plus the current year, for a total of five years. A tribal customer may be required to periodically renew their tax exemption documents with a retailer using this process.

TTAC Updates

Chairman W. Ron Allen from Jamestown S'Klallam provided updates from the Treasury Tribal Advisory Committee, which is in the process of educating the new administration on the TTAC's work and the proposed rules related to the Tribal General Welfare Act and the Tax Status of Wholly Owned Tribal Entities. He maintained positivity around getting these much-needed regulations across the finish line despite the influx of new staff and directors in the agencies the TTAC engages with and asked tribes in attendance to elevate the need for these rules with their members of Congress.

Co-Chair Nomination and Selection

Outgoing Co-Chair Henry Cagey nominated Treasurer for the Snoqualmie Indian Tribe Josh Gabel to take over Co-Chair duties for the Taxation Committee, which was seconded by Cow Creek. After providing words on qualifications, Treasurer Gabel was approved via motion to take over this duty with no debate or dissent.

Red Rock Innovations

Eddie Sherman (member, Navajo Nation) and Ashwani Dhiman (founder, Red Rock Innovations) provided a pitch on Red Rock Innovations, a platform offering tribal partners with a vendor network and tribal vendor marketplace. The LLC seeks to address issues in Indian Country with bad actor vendors taking advantage of tribes and tribal members by providing a database of vendors who operate in Indian Country with ratings/reviews to help tribal operators make good choices when it comes to vendor selection. The group is also developing a global tribal marketplace, which seeks to create an eCommerce storefront for tribal vendors to bring their goods to an online marketplace via an independent web-based shopping engine.

Indigenous Cannabis Industry Association

Executive Director Mary Jane Oatman of the Indigenous Cannabis Industry Association presented brief updates and challenges in the cannabis industry coming into a second Trump presidency. She highlighted the progress made by tribes in cannabis and hemp operations, as well as the opportunity for both industries as a whole. Mary emphasized the use of Foreign Trade Zones by tribes to allow for import and export in the industry. Mary is interested in bringing forward a resolution at the next ATNI updating the entity's stance on the cannabis industry, which is over 10 years old and previously opposed the legalization of marijuana (see Resolution #14 – 14). She initially wanted to call to rescind this resolution at the Winter session but changed course after discussing with new Co-Chair Gabel.