



COALITION OF LARGE TRIBES

Mandan, Hidatsa and Arikara Nations / Oglala Sioux Tribe / Crow Tribe / Navajo Nation / Sisseton Wahpeton Sioux Tribe /
Blackfeet Tribe of Montana / Rosebud Sioux Tribe / Spokane Tribe / Cheyenne River Sioux Tribe / Ute Indian Tribe

**Coalition of Large Tribes
Indian Energy Tax Reform Proposals**

February 28, 2013

Tax reforms are needed to incentivize the development of Indian energy resources which have long been locked up by bureaucratic federal oversight. Reforms must also put tribal resources on equal competitive footing with non-tribal resources and ensure that Indian tribes can raise the same tax revenues utilized by state and local governments to properly regulate and support energy industry activities. Without these tax reforms, domestic Indian energy resources will remain undeveloped and tribes will be frustrated in their efforts to promote energy and economic development on Indian reservations. Indian tribes will also not be able to use tax revenues to support tribal governance and reservation infrastructure and will remain largely dependent upon federal appropriations.

The Coalition of Large Tribes (COLT) proposes the following reforms to federal tax law as a part of its efforts to promote Indian energy development and equitable tax treatment of Indian tribal governments.

Section 1. Affirm exclusive tribal authority to tax energy activities on Indian lands. Indian tribes need the same tax resources that other governments rely on to oversee energy development and provide infrastructure needed to support the energy industry. However, current federal case law allows states to tax activities on Indian lands without regard to the chilling effect such a burden puts on Reservation energy development. Legislation should reaffirm exclusive tribal taxing authority and require tribes to fairly reimburse states for any substantiated services that have a nexus to oil and gas production impacts on Indian lands.

Proposed Legislative Text:

- (a) **IN GENERAL.**—Indian tribes have exclusive authority to levy or require all assessments, taxes, fees, or levies for energy activities on Indian lands.
- (b) **REIMBURSEMENT FOR SERVICES.**—State and other local governments may enter into agreements with Indian tribes for reimbursement of services provided by the state or local government that are a directly related to the energy activities on Indian lands. Indian tribes, state and local governments are directed to negotiate in good faith in developing such agreements. Any agreement under this section may be reviewed for accuracy by the Secretary of the Interior.
- (c) **DEFINITIONS.**—For the purposes of this section, the terms “Indian tribe” and “Indian land” have the meaning given the terms in section 2601 of the Energy Policy Act of 1992 (25 U.S.C. 3501).

Section 2. Indian Mineral Development Act preemption of State taxing authority. The Indian Mineral Development Act (IMDA), Public Law No. 97-382 (1982), was enacted “to further the policy of self-determination and ... to maximize the financial return tribes can expect for their valuable mineral resources. S.Rep. No. 97-472 at 2 (1982). However, current state taxation of minerals produced under an IMDA agreement limits the financial return tribes can obtain for their mineral resources. To fulfill the original purpose of the IMDA and encourage domestic production of Indian energy resources, Congress should clarify that the IMDA preempts state taxation of minerals produced under an IMDA agreement.

Proposed Legislative Text:

- (a) PREEMPTION OF STATE TAXATION.—Section 3 of the Indian Mineral Development Act of 1982 is amended by adding at the end the following new subsection:
- “(c) The Indian tribe owning a beneficial or restricted interest in the mineral resources that are the subject of a Mineral Agreement shall have the exclusive authority to tax the development of those resources.”

Section 3. Permanent Extension of Accelerated Depreciation for Investments on Indian Lands. The American Taxpayer Relief Act of 2012 extended accelerated depreciation for investments on Indian lands until the end of 2013. A one year extension will have little impact on the staggering unemployment, on average about 50 percent, and lack of job opportunities in Indian Country. To foster business development on Indian reservations, investment tax credits need long-term authorization to allow businesses to plan accordingly. Long-term authorizations are needed as private businesses make plans to commit to on-reservation business development and the lengthy federal oversight and permitting associated with that development.

Proposed Legislative Text:

- (a) PERMANENT EXTENSION.—Subsection (j) of section 168 of the Internal Revenue Code of 1986 (relating to property on Indian reservations) is amended by striking paragraph (8).
- (b) MODIFICATION OF QUALIFIED INFRASTRUCTURE PROPERTY.—
- (1) The last sentence of clause (ii) of section 168(j)(4)(C) of the Internal Revenue Code of 1986 is amended by striking “and communications facilities” and inserting “communications facilities, facilities related to the production or extraction of minerals or energy resources, facilities for the production, generation, transportation, transmission, or distribution of energy, and facilities for the sequestration of emissions related to such production” before the period at the end.
- (2) Section 168(j)(4) of such Code is amended by adding at the end the following new subparagraph:
- (D) SPECIAL RULE FOR FACILITIES PREDOMINATELY USING RESOURCES HELD IN TRUST FOR INDIAN TRIBES OR THEIR MEMBERS.—The term ‘qualified Indian reservation property’ shall include property predominately using resources held in trust for Indian tribes or their members to produce energy or minerals

where title to the energy or minerals being produced is held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

(c) EFFECTIVE DATES.—

(1) EXTENSION.—The amendment made by subsection (a) shall apply to property placed in service after December 31, 2009.

(2) MODIFICATIONS.—The amendments made by subsection (b) shall apply to property placed in service after the date of the enactment of this Act.

Section 4. Eligibility of Indians for Work Opportunity Tax Credit. The American Taxpayer Relief Act of 2012 extended the Indian Employment Tax Credit until the end of 2013. Rather than continuing to separately authorize tax credits for Indian employment, Indians should be included in the existing Work Opportunity Tax Credit. Inclusion in this modern national employment tax credit program will help to ensure that tax credits for employing Indians are not left behind.

Proposed Legislative Text:

(a) QUALIFIED INDIANS TREATED AS MEMBERS OF A TARGETED GROUP.—
Section 51(d) of the Internal Revenue Code of 1986 is amended—

(1) in paragraph (1), by striking “or” at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting “, or”, and by adding at the end the following new subparagraph: “(J) a qualified Indian.”, and

(2) by adding at the end the following new paragraph:

“(15) QUALIFIED INDIAN.—

“(A) IN GENERAL.—The term ‘qualified Indian’ means any individual—

“(i) who is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe, and

“(ii) whose principal place of abode is on or near an Indian reservation—

“(I) in the case of qualified employment services described in subparagraph (B)(i), on which the qualified employment services are performed,

“(II) in the case of qualified employment services described in subparagraph (B)(ii), of the Indian tribe which holds, or for whose benefit the United States holds, the energy or mineral resources with respect to which the qualified employment services are performed, and

“(III) in the case of qualified employment services described in subparagraph (B)(iii), of the Indian tribe for which there is a hiring preference.

“(B) QUALIFIED EMPLOYMENT SERVICES.—The term ‘qualified employment services’ means—

“(i) any services performed for an employer within an Indian reservation,

“(ii) any services performed for an employer in connection with a trade or business which—

“(I) consists of the development of energy or mineral resources held by the United States in trust for the benefit of an Indian tribe or enrolled members of an Indian tribe or held by an Indian tribe or any enrolled member of an Indian tribe and subject to a restriction by the United States against alienation, and

“(II) pays royalties from such trade or business to an Indian tribe, or

“(iii) any services with respect to which there is a hiring preference under the law of an Indian tribe or under an agreement between the employer and an Indian tribe.”

“(C) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given such term under section 45A(c)(6).

“(D) INDIAN RESERVATION.—The term ‘Indian reservation’ has the meaning given such term under section 168(j)(6).”

(b) CREDIT FOR SECOND YEAR WAGES, ETC.—Section 51 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(1) SPECIAL RULES FOR EMPLOYMENT OF QUALIFIED INDIANS.—

“(1) CREDIT FOR SECOND-YEAR WAGES.—With respect to the employment of a qualified Indian—

“(A) the amount of the work opportunity credit determined under this section for the taxable year shall include 50 percent of the qualified second-year wages for such year, and

“(B) in lieu of applying subsection (b)(3), the amount of the qualified first-year wages, and the amount of applicable second-year wages, which may be taken into account with respect to any qualified Indian shall not exceed \$10,000 per year.

“(2) QUALIFIED SECOND-YEAR WAGES.—For purposes of this subsection, the term ‘qualified second-year wages’ means, with respect to any qualified Indian, wages attributable to qualified employment services rendered during the 1 year period beginning on the last day of the 1-year period with respect to such qualified Indian determined under subsection (b)(2).

“(3) INFLATION ADJUSTMENT.—In the case of any calendar year after calendar year 2010, the \$10,000 amount in paragraph (1)(C) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting ‘calendar year 2010’ for ‘calendar year 1992’ in subparagraph (B) thereof. Any increase determined under the preceding sentence shall be rounded to the nearest multiple of \$500.

“(4) SPECIAL RULES FOR AGRICULTURAL AND RAILWAY LABOR.—If a qualified Indian is an employee to which subparagraph (A) or (B) of subsection (h)(1) applies, rules similar to the rules of such subparagraphs shall apply except that—

“(A) such subparagraph (A) shall be applied by substituting ‘the amount in effect under subsection (l)(1)(B)’ for ‘\$6,000’, and

“(B) such subparagraph (B) shall be applied by substituting ‘one-twelfth of the amount in effect under subsection (l)(1)(B)’ for ‘\$500’.”

(c) COORDINATION WITH INDIAN EMPLOYMENT CREDIT.—Subparagraph (B) of section 45A(b)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sentence: “If any portion of wages are into account under subsection (e)(1)(A) or (l)(1)(A) of section 51, the preceding sentence shall be applied by substituting ‘2-year period’ for ‘1-year period’.”

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work after the date of the enactment of this Act.

Section 5. Permanent Extension of Indian Coal Production Tax Credit. Production of coal on Indian lands is a long-term endeavor. In order to incentivize private industry to partner with Indian tribes or simply invest in the development of Indian coal resources, Indian coal production tax credits should be made permanent. A primary disincentive to development of Indian coal resources is the extensive and lengthy federal permitting process. Indian coal production tax credits should attempt to offset this disincentive by providing a commensurate credit.

Proposed Legislative Text:

(a) EXTENSION.—

(1) IN GENERAL. – Section 45(d) (relating to qualified facilities) is amended

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(A) by striking “January 1, 2009” where it appears in paragraph (10) and inserting “January 1, 2025”.

(2) IN GENERAL— Section 45(e) (relating to definitions and special rules) is amended –

(A) by striking “during the 7-year period” where it appears in clause (i) of paragraph (10)(A), and

(B) by striking “(I) to an unrelated person, and (II)” and by striking “such 7-year period and” where they appear in clause (ii) of paragraph 10(A), and

(C) by striking “during the 4-year period” where it appears in paragraph 10(D).”

(3) EFFECTIVE DATE. – The amendments made by this subsection shall take effect on the date of the enactment of this Act.

Section 6. Renewable Energy Production Tax Credit Transferability. As renewable energy technologies continue to develop, the economic viability of renewable energy projects often

depends on the ability to utilize federal tax credits. Because tribes are not able to take advantage of these tax credits, tribal projects are effectively priced out of the market. Indian tribes need to be able to use all of the tools that are available to others to lower the cost of developing energy projects. Indian tribes should be authorized to assign their share of the production tax credit for electricity generated from renewable energy to a private sector partner in the project.

Proposed Legislative Text:

(a) IN GENERAL.—Paragraph (3) of section 45(e) of the Internal Revenue Code of 1986 (relating to production attributable to the taxpayer) is amended to read as follows:

(3) PRODUCTION ATTRIBUTABLE TO THE TAX PAYER.—

(A) IN GENERAL.—In the case of a facility in which more than 1 person has an ownership interest, except to the extent provided in regulations prescribed by the Secretary, production from the facility shall be allocated among such persons in proportion to their respective ownership interests in the gross sales from such facility.

(B) SPECIAL RULE FOR INDIAN TRIBES.—

(i) IN GENERAL.—In the case of a facility described in subparagraph (A) in which an Indian tribe has an ownership interest in the gross sales from such facility the Indian tribe may assign to any other person who has an ownership interest in such facility any portion of the production from the facility that would (but for this subparagraph) be allocated to such Indian tribe. Any such assignment may be revoked only with the consent of the Secretary and shall be made at such time and in such manner as the Secretary may provide.

(ii) INDIAN TRIBE.—For purposes of clause (i), the term ‘Indian tribe’ means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.’’

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to electricity produced and sold after the date of the enactment of this Act.

Section 7. Low Sulfur Refinery Tax Credit. The Internal Revenue Code provides a low sulfur fuel tax credit of 5 cents for every gallon of low sulfur diesel fuel produced by a qualified small business refiner during the tax year. See, 26 U.S.C. 45H. However, a “small business refiner” is defined as one that has no more than 1,500 individuals engaged in the refinery operations on any day and had an average daily domestic refinery run or average retained production for the one-year period ending on December 31, 2002 under 205,000 barrels. Thus, under the Internal Revenue Code, a refinery would have had to been operating in 2002 to qualify for the tax credit, and the IRS form for this credit provides that the refiner must have been in operation on April 1, 2003. Any low sulfur diesel tribal refineries in operation after 2002, will not qualify as a small business refiner. The barrel limit is also too restrictive.

The Internal Revenue Code should be amended to create a low sulfur diesel tax credit for any tribal refinery, in addition to the existing credit for small business refiners. This legislation would retain the 1,500 employee cap and 5 cents per gallon credit, but remove the barrel and time limits, and provide that the credit may be sold for equity.

Proposed Legislative Text: (Modeled after the existing small business refiner credit at 26 U.S.C. 45H)

(a) IN GENERAL.—For the purposes of section 38, the amount of the low sulfur diesel fuel production credit determined under this section with respect to any facility on Indian land is an amount equal to 5 cents for each gallon of low sulfur diesel fuel produced during the taxable year by such facility.

...

(c) DEFINITIONS AND SPECIAL RULE.—The term “tribal refinery” means, with respect to any taxable year, a refiner of crude oil on Indian land for which no more than 1,500 individuals are engaged in the refinery operations of the business on any day during such taxable year.

...

(h) Credits as equity.—Tribal refineries may sell the tax credits under this section to their business partners to obtain equity for that amount of tax credit.