



April 15, 2013

Honorable David Reichert
U.S. House of Representatives
1127 Longworth House Office Building
Washington, D.C. 20515

Honorable John Lewis
U.S. House of Representatives
343 Cannon House Office Building
Washington, D.C. 20515

Re: Committee on Ways and Means Charitable/Exempt Organizations Working Group

Dear Congressman Reichert and Lewis:

Ho-Chunk Incorporated, a wholly owned corporation of the Winnebago Tribe of Nebraska, respectfully requests your consideration of the following tax reform proposal.

Authorize a Tribe or Tribally Owned Entity to be Eligible to be a S Corporation Shareholder

Under IRS Revenue Ruling 2004-50, federally recognized Indian tribes are not able to make an election to be an eligible S corporation shareholder for the purposes of Section 1361. Congress should amend the IRS Code to authorize federally recognized Indian tribal governments or their wholly-owned entities to be eligible to be a shareholder in an S corporation for the purposes of Section 1361.

Allowing Indian tribes to create S corporations would align the IRS Code with overarching federal tax policies and promote Indian economic development. The current IRS revenue ruling is inconsistent with these other federal policies and does not provide any reasoning for why tribes cannot form S corporations. Instead, the ruling is simply a function of Indian tribes not fitting into existing definitions under IRS Code. Where possible the IRS Code should be amended to include Indian tribes and align federal tax policies.

Need for Change

First, pursuant to treaties, the U.S. Constitution, Supreme Court case law and other federal laws, federally recognized Indian tribes and tribally owned entities are typically exempt from federal taxes. However, under current law, when a tribe or tribal entity must form a state chartered corporation in order to conduct business or otherwise, these corporations are subject to federal income tax.

Authorizing tribes and tribal corporations to elect to be treated as S corporations, would allow the tribe to form a state chartered corporation and not be subject to federal income tax. This would align

1 Mission Drive
PO Box 390
Winnebago, NE 68071

800.439.7008
P 402.878.2809
F 402.878.2560



the IRS Code with overarching federal policy regarding the taxation of Indian tribes and allow tribes to create state chartered entities without subjecting them to federal taxation that normally does not apply to tribes.

Second, allowing tribes and tribal corporations to be treated as S corporations would give tribes more flexibility in developing tribal economies and allow tribes accelerate their economic impact. This would further federal policies promoting economic development on Indian reservations, provide jobs on Indian reservations, and reduce tribal dependence on federal programs.

While current federal policies promote Indian economic development, more needs to be done. Indian tribes are subject to the highest rates of unemployment and poverty in the Country. According to the U.S. Census, while the U.S. poverty rate was 9.8% in 2007, the Native American poverty rate was more than 2.5 times that at 25.3%.¹

Moreover, the average unemployment rate for Indian reservations nationwide is 49%.² In the Great Plains and Rocky Mountain Regions the average reservation unemployment rates are 77% and 67%, respectively.³ These regions encompass the States of Montana, Nebraska, North Dakota, South Dakota and Wyoming.

If national unemployment reached these levels Congress would take action to address the situation. Indian country needs your assistance to allow tribes or tribal entities to create S corporations and provide a tool for Indian tribes to boost their economies.

¹ U.S. Census Bureau, *American Indian and Alaska Native Heritage Month: November 2008*, http://www.census.gov/Press-Release/www/releases/archives/facts_for_features_special_editions/012782.html.

² Bureau of Indian Affairs Labor Force Report (2005).

³ *Id.*

1 Mission Drive
PO Box 390
Winnebago, NE 68071

800.439.7008
P 402.878.2809
F 402.878.2560