

# FEDERAL EXCISE TAX PARITY FOR TRIBAL GOVERNMENTS

## Current Law

The Internal Revenue Code impose excise taxes on a number of sales, transactions, and other activities ranging from sales of luxury vehicles (Section 4001) to certain structured settlement transactions (Section 5891). Many of these excise taxes contain an exemption or other special provision for state and local governments, but few of those provisions explicitly reference Indian tribal governments.

- Although Section 7871(a) treats Indian tribal governments as states for certain purposes, it does so only with respect a small subset of the excise taxes for which state and local governments have an exemption or other special provision.
- Moreover, that treatment is subject to Section 7871(b), which limits the excise tax exemptions of Indian tribal governments to transactions involving the exercise of an essential government function. State and local governments are not subject to a similar restriction.
- In addition, the Code contains several discrepancies and ambiguities with respect to the treatment of Indian tribal governments for excise tax purposes. For example, Section 7871(a)(2)(A) treats tribes the same as states for the excise taxes imposed under "chapter 31 (relating to tax on special fuels)." However, the tax on special fuels is just one of several excise taxes contained in chapter 31. In particular, Section 4001(d) contains a luxury tax exemption for government vehicles used for police, firefighters, search and rescue, or other law enforcement or public safety activities. Due to the parenthetical in Section 7871(2)(A), it is unclear whether this additional exemption extends to Indian tribal governments.

These and other discrepancies and ambiguities are further highlighted in a July 24, 2012 Congressional Research Service memorandum to former Representative Wally Herger entitled "Internal Revenue Code Provisions that Provide Special Tax Treatment to State and Local Governments Not Available to Indian Tribal Governments" ([http://www.usetinc.org/Libraries/USET\\_Tax\\_Initiative/20120724\\_CRS\\_Report\\_IRC\\_Indian\\_Tribal\\_Gov.sflb.ashx](http://www.usetinc.org/Libraries/USET_Tax_Initiative/20120724_CRS_Report_IRC_Indian_Tribal_Gov.sflb.ashx)).

## Reasons for Change

The lack of parity between Indian tribal governments and other governments for excise tax purposes is inconsistent with the status of Indian tribal governments as sovereign governmental entities under the United States Constitution. Moreover, the ambiguities in the Internal Revenue Code regarding the application of excise taxes and excise tax exemptions to Indian tribal governments have been a source of confusion for tribal governments and the parties with whom they transact business.

## Proposal

In order to ensure full parity with state and local governments, the essential government function limitation imposed on Indian tribal governments by Code Section 7871(b) should be repealed. In addition, the excise tax exemptions and other special excise tax provisions enjoyed by state and local governments should be extended or clarified to include Indian tribal governments where there currently is not full parity.

## Suggested Language

(b) EXCISE TAX PARITY. Subsection (a) of section 7871 of the Internal Revenue Code of 1986 (relating to Indian tribal governments treated as States for certain purposes) is amended by striking subsection (a)(2), and inserting the following language:

(2) for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed by—

(A) chapter 31 (relating to the tax on luxury passenger vehicles, the tax on special fuels, and the tax on heavy trucks and trailers)

(B) chapter 32 (relating to manufacturers excise taxes, including the gas guzzler tax and special fuels taxes),

(C) subchapter B of chapter 33 (relating to communications excise tax),

(D) chapter 35 (relating to excise taxes on wagering),

(E) chapter 36 (relating to the harbor maintenance tax, transportation by water taxi, and tax on use of certain highway vehicles),

(F) chapter 40 (relating to occupational taxes on persons in the trade or business of wagering)

(G) chapter 51 (relating to taxes on distilled spirits, wine and beer, including bonding requirements)

(H) chapter 53 (relating to taxes on certain firearms);

(I) chapter 55 (relating to the structured settlement factoring tax).’