HARVARD Kennedy School
PROJECT ON INDIGENOUS GOVERNANCE AND DEVELOPMENT

The Harvard Kennedy School Project on Indigenous Governance and Development releases research on Newly Proposed Rules for Tribal Taxation from the U.S. Treasury and IRS.

October 7, 2024, Cambridge, MA – Today, Prof. Joseph P. Kalt, Director of the Harvard Kennedy School Project on Indigenous Governance and Development, released an analysis of the likely effects of newly Proposed Rules by the U.S. Treasury and the Internal Revenue Service. These Rules would (1) expand the governmental authority of federally recognized American Indian nations to design programs for the general welfare of their citizens, and (2) clarify the federal tax status of tribal government-owned enterprises. The study finds that adoption of the Proposed Rules would greatly strengthen the capacities of tribal governments, to the benefit of tribes and the United States as a whole.

Federal policy now puts the 574 federally recognized American Indian nations in the position of striving to perform essentially all of the functions of any state and local government. Unlike state and local governments, however, the tribal nations have severely limited abilities to generate tax revenues. Thus, tribal governments rely heavily on the businesses they own to generate revenue to pay for these activities.

State and local governments, too, operate a myriad of commercial enterprises, ranging from state gambling lotteries to liquor stores, port and airport authorities, electricity and water companies, toll roads, transit companies, zoos, and many others. Moreover, as a general matter, a state or local government's businesses are not taxable by the federal government or other governments, and these businesses typically support only minuscule portions of state and local spending.

The United States Treasury's recently Proposed Rule providing guidance under the Tribal General Welfare Exclusion Act would move tribes' provision of general welfare benefits toward parity with other governments' tax treatment of general welfare benefits and give deference to Tribes as to how they govern for the general welfare of their citizens. In further support of tribal self-governance, the newly Proposed Rule on the federal tax status of tribal government entities would clarify that enterprises wholly-owned by tribal governments cannot be subject to income tax.

Prof. Kalt concludes that these provisions will greatly solidify key components of the highly successful federal policy of tribal self-determination through self-government. In particular, they will immediately improve tribes' access to credit and will directly enhance resources needed for economic development, service provision, and infrastructure investment. Both the tribal and non-tribal citizens of the U.S. will be the beneficiaries.

The study's findings are available here. Treasury's Fact Sheets are here (General Welfare Exclusion) and here (Federal Tax Status), and the associated notice to tribal leaders regarding the latter and Treasury's consultation process is here.

For further information, contact the Harvard Kennedy School Project on Indigenous Governance and Development at 617-496-4229 or https://indigenousgov.hks.harvard.edu/.

The Harvard Kennedy School Project on Indigenous Governance and Development is based in the Ash Center for Democratic Governance and Innovation at the Harvard Kennedy School, Harvard University. The Project aims to understand and foster the conditions under which sustained social and economic development is achieved among Indigenous nations in the US and beyond.

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