

117TH CONGRESS
2D SESSION

S. 5048

To amend the Internal Revenue Code of 1986 to treat Indian tribal governments in the same manner as State governments for certain Federal tax purposes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2022

Ms. CORTEZ MASTO (for herself, Mr. WYDEN, and Mr. SCHATZ) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to treat Indian tribal governments in the same manner as State governments for certain Federal tax purposes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Native American Tax
5 Parity and Relief Act of 2022”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) There is a unique Federal legal and political
2 relationship between the United States and Indian
3 tribes.

4 (2) Indian tribes have the responsibility and au-
5 thority to provide governmental programs and serv-
6 ices to tribal citizens, develop tribal economies, and
7 build community infrastructure to ensure that In-
8 dian reservation lands serve as livable, permanent
9 homes.

10 (3) The United States Constitution, United
11 States Federal Court decisions, Executive orders,
12 and numerous other Federal laws and regulations
13 recognize that Indian tribes are governments, retain-
14 ing the inherent authority to tax and operate as
15 other governments, including (inter alia) financing
16 projects with government bonds and maintaining eli-
17 gibility for general tax exemptions via their govern-
18 ment status.

19 (4) Codifying tax parity with respect to tribal
20 governments is consistent with Federal treaties rec-
21 ognizing the sovereignty of tribal governments.

22 (5) Indian tribes face historic disadvantages in
23 accessing the underlying capital to build the nec-
24 essary infrastructure for job creation, and certain
25 statutory restrictions on tribal governance further

1 inhibit tribes’ ability to develop strong governance
2 and economies.

3 (6) Indian tribes are sometimes excluded from
4 the Internal Revenue Code of 1986 in key provisions
5 which results in unfair tax treatment for tribal citi-
6 zens or unequal enforcement authority for tribal en-
7 forcement agencies.

8 (7) Congress is vested with the authority to
9 regulate commerce with Indian tribes, and hereby
10 exercises that authority in a manner which furthers
11 tribal self-governance, and in doing so, further af-
12 firms the United States government-to-government
13 relationship with Indian tribes.

14 **SEC. 3. TREATMENT OF INDIAN TRIBES AS STATES WITH**
15 **RESPECT TO BOND ISSUANCE.**

16 (a) IN GENERAL.—Section 7871(c) of the Internal
17 Revenue Code of 1986 is amended to read as follows:

18 “(c) SPECIAL RULES FOR TAX-EXEMPT BONDS.—

19 “(1) IN GENERAL.—In applying section 146 to
20 bonds issued by Indian Tribal Governments the Sec-
21 retary shall annually—

22 “(A) establish a national bond volume cap
23 based on the greater of—

24 “(i) the State population formula ap-
25 proach in section 146(d)(1)(A) (using na-

1 tional Tribal population estimates supplied
2 annually by the Department of the Interior
3 in consultation with the Census Bureau),
4 and

5 “(ii) the minimum State ceiling
6 amount in section 146(d)(1)(B) (as ad-
7 justed in accordance with the cost of living
8 provision in section 146(d)(2)), and

9 “(B) under regulations prescribed by the
10 Secretary, allocate such national bond volume
11 cap among all Indian Tribal Governments seek-
12 ing such an allocation in a particular year.

13 “(2) APPLICATION OF GEOGRAPHIC RESTRIC-
14 TION.—In the case of national bond volume cap allo-
15 cated under paragraph (1), section 146(k)(1) shall
16 not apply to the extent that such cap is used with
17 respect to financing for a facility located on qualified
18 Indian lands.

19 “(3) RESTRICTION ON FINANCING OF CERTAIN
20 GAMING FACILITIES.—No portion of the volume cap
21 allocated under this subsection may be used with re-
22 spect to the financing of any portion of a building
23 in which class II or class III gaming (as defined in
24 section 4 of the Indian Gaming Regulatory Act) is

1 conducted or housed or any property actually used
2 in the conduct of such gaming.

3 “(4) DEFINITIONS AND SPECIAL RULES.—For
4 purposes of this subsection—

5 “(A) INDIAN TRIBAL GOVERNMENT.—The
6 term ‘Indian Tribal Government’ means the
7 governing body of an Indian Tribe, band, na-
8 tion, or other organized group or community, or
9 of Alaska Natives, which is recognized as eligi-
10 ble for the special programs and services pro-
11 vided by the United States to Indians because
12 of their status as Indians, and also includes any
13 agencies, instrumentalities or political subdivi-
14 sions thereof.

15 “(B) INTERTRIBAL CONSORTIUMS, ETC.—
16 In any case in which an Indian Tribal Govern-
17 ment has authorized an intertribal consortium,
18 a Tribal organization, or an Alaska Native re-
19 gional or village corporation, as defined in, or
20 established pursuant to, the Alaska Native
21 Claims Settlement Act, to plan for, coordinate
22 or otherwise administer services, finances, func-
23 tions, or activities on its behalf under this sub-
24 section, the authorized entity shall have the
25 rights and responsibilities of the authorizing In-

dian Tribal Government only to the extent provided in the Authorizing resolution.

“(C) QUALIFIED INDIAN LANDS.—The term ‘qualified Indian lands’ shall mean an Indian reservation as defined in section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), including lands which are within the jurisdictional area of an Oklahoma Indian Tribe (as determined by the Secretary of the Interior) and shall include lands outside a reservation where the facility is to be placed in service in connection with—

“(i) the active conduct of a trade or business by an Indian Tribe on, contiguous to, within reasonable proximity of, or with a substantial connection to, an Indian reservation or Alaska Native village, or

“(ii) infrastructure (including roads, power lines, water systems, railroad spurs, and communication facilities) serving an Indian reservation or Alaska Native village.”.

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 45(c)(9) of the Internal Revenue Code of 1986 is amended to read as follows:

1 “(B) INDIAN TRIBE.—For purposes of this
 2 paragraph, the term ‘Indian tribe’ means any
 3 Indian tribe, band, nation, or other organized
 4 group or community which is recognized as eli-
 5 gible for the special programs and services pro-
 6 vided by the United States to Indians because
 7 of their status as Indians.”.

8 (c) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to obligations issued in calendar
 10 years beginning after the date of the enactment of this
 11 Act.

12 **SEC. 4. TREATMENT OF TRIBAL FOUNDATIONS AND CHAR-**
 13 **ITIES LIKE CHARITIES FUNDED AND CON-**
 14 **TROLLED BY OTHER GOVERNMENTAL**
 15 **FUNDERS AND SPONSORS.**

16 (a) IN GENERAL.—Section 170(b)(1) of the Internal
 17 Revenue Code of 1986 is amended by adding at the end
 18 the following subparagraph:

19 “(I) TREATMENT OF CHARITIES SUBSTAN-
 20 Tially FUNDED BY INDIAN TRIBAL GOVERN-
 21 MENTS.—For purposes of subparagraph (A)(vi),
 22 the term ‘governmental unit’ includes an Indian
 23 tribal government, an agency, instrumentality,
 24 or subdivision of an Indian tribal government,
 25 or an entity established under Federal, State,

1 or tribal law which is wholly owned or con-
2 trolled by any of the foregoing.”.

3 (b) CERTAIN SUPPORTING ORGANIZATIONS.—Sec-
4 tion 509(a) of such Code is amended by adding at the
5 end the following: “For purposes of paragraph (3), an or-
6 ganization described in paragraph (2) shall be deemed to
7 include an Indian tribal government, an agency, instru-
8 mentality, or subdivision of an Indian tribal government,
9 or an entity established under Federal, State, or tribal law
10 which is wholly owned or controlled by any of the fore-
11 going.”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 the date of the enactment of this Act.

15 **SEC. 5. IMPROVING EFFECTIVENESS OF TRIBAL CHILD**
16 **SUPPORT ENFORCEMENT AGENCIES BY PAR-**
17 **ITY OF ACCESS TO THE FEDERAL PARENT LO-**
18 **CATOR SERVICE AND FEDERAL TAX REFUND**
19 **OFFSETS.**

20 (a) ACCESS TO FEDERAL PARENT LOCATOR SERV-
21 ICE.—Section 453(c) of the Social Security Act (42 U.S.C.
22 653(c)) is amended—

23 (1) by striking “and” at the end of paragraph
24 (4);

1 (2) by striking the period at the end of para-
2 graph (5) and inserting “; and”; and

3 (3) by adding at the end the following:

4 “(6) the child support enforcement agency of an
5 Indian tribe or tribal organization that is eligible for
6 a grant under section 455(f).”.

7 (b) IMPROVING THE COLLECTION OF PAST-DUE
8 CHILD SUPPORT FROM FEDERAL TAX REFUNDS.—

9 (1) AMENDMENT TO THE SOCIAL SECURITY
10 ACT.—Section 464 of the Social Security Act (42
11 U.S.C. 664) is amended by adding at the end the
12 following:

13 “(d) APPLICABILITY TO INDIAN TRIBES AND TRIBAL
14 ORGANIZATIONS ELIGIBLE FOR A GRANT UNDER THIS
15 PART.—This section, except for the requirement to dis-
16 tribute amounts in accordance with section 457, shall
17 apply to an Indian tribe or tribal organization eligible for
18 a grant under section 455(f) in the same manner in which
19 this section applies to a State with a plan approved under
20 this part.”.

21 (2) AMENDMENT TO THE INTERNAL REVENUE
22 CODE.—Subsection (c) of section 6402 of the Inter-
23 nal Revenue Code of 1986 is amended by adding at
24 the end the following: “For purposes of this sub-
25 section, any reference to a State shall include a ref-

1 erence to any Indian tribe or tribal organization de-
 2 scribed in section 464(d) of the Social Security
 3 Act.”.

4 **SEC. 6. RECOGNIZING INDIAN TRIBAL GOVERNMENTS FOR**
 5 **PURPOSES OF DETERMINING UNDER THE**
 6 **ADOPTION CREDIT WHETHER A CHILD HAS**
 7 **SPECIAL NEEDS.**

8 (a) IN GENERAL.—Section 23(d)(3) of the Internal
 9 Revenue Code of 1986 is amended—

10 (1) in subparagraph (A), by inserting “or In-
 11 dian tribal government” after “a State”; and

12 (2) in subparagraph (B), by inserting “or In-
 13 dian tribal government” after “such State”.

14 (b) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to taxable years beginning after
 16 the date of the enactment of this Act.

17 **SEC. 7. INCLUSION OF INDIAN AREAS AS DIFFICULT DE-**
 18 **VELOPMENT AREAS FOR PURPOSES OF CER-**
 19 **TAIN BUILDINGS.**

20 (a) IN GENERAL.—Subclause (I) of section
 21 42(d)(5)(B)(iii) of the Internal Revenue Code of 1986 is
 22 amended by inserting before the period the following: “,
 23 and any Indian area”.

24 (b) INDIAN AREA.—Clause (iii) of section
 25 42(d)(5)(B) of the Internal Revenue Code of 1986 is

1 amended by redesignating subclause (II) as subclause (IV)
2 and by inserting after subclause (I) the following new sub-
3 clauses:

4 “(II) INDIAN AREA.—For pur-
5 poses of subclause (I), the term ‘In-
6 dian area’ means any Indian area (as
7 defined in section 4(11) of the Native
8 American Housing Assistance and
9 Self Determination Act of 1996 (25
10 U.S.C. 4103(11))).

11 “(III) SPECIAL RULE FOR
12 BUILDINGS IN INDIAN AREAS.—In the
13 case of an area which is a difficult de-
14 velopment area solely because it is an
15 Indian area, a building shall not be
16 treated as located in such area unless
17 such building is assisted or financed
18 under the Native American Housing
19 Assistance and Self Determination
20 Act of 1996 (25 U.S.C. 4101 et seq.)
21 or the project sponsor is an Indian
22 tribe (as defined in section
23 45A(c)(6)), a tribally designated hous-
24 ing entity (as defined in section 4(22)
25 of such Act (25 U.S.C. 4103(22))), or

1 wholly owned or controlled by such an
2 Indian tribe or tribally designated
3 housing entity.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to buildings placed in service after
6 December 31, 2021.

7 **SEC. 8. INDIAN EMPLOYMENT TAX CREDIT.**

8 (a) EXTENSION.—Section 45A of the Internal Rev-
9 enue Code of 1986 is amended by striking subsection (f).

10 (b) MODIFICATION OF DETERMINATION OF AMOUNT
11 OF CREDIT.—Paragraph (2) of section 45A(a) of the In-
12 ternal Revenue Code of 1986 is amended to read as fol-
13 lows:

14 “(2) the quotient of—

15 “(A) the sum of the qualified wages and
16 qualified employee health insurance costs which
17 were paid or incurred by the employer (or any
18 predecessor) during the two most recent cal-
19 endar years ending before the beginning of such
20 taxable year, divided by

21 “(B) 2.”.

22 (c) INCREASED LIMITATION.—Section 45A(b)(3) of
23 the Internal Revenue Code of 1986 is amended by striking
24 “\$20,000” and inserting “\$30,000”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years beginning after
 3 December 31, 2021.

4 **SEC. 9. NEW MARKETS TAX CREDIT FOR TRIBAL STATIS-**
 5 **TICAL AREAS.**

6 (a) ADDITIONAL ALLOCATIONS FOR TRIBAL STATIS-
 7 TICAL AREAS.—Section 45D(f) of the Internal Revenue
 8 Code of 1986 is amended by adding at the end the fol-
 9 lowing new paragraph:

10 “(4) ADDITIONAL ALLOCATIONS FOR TRIBAL
 11 STATISTICAL AREAS.—

12 “(A) IN GENERAL.—In the case of each
 13 calendar year after 2021, there is (in addition
 14 to any limitation under any other paragraph of
 15 this subsection) a new markets tax credit limi-
 16 tation of \$175,000,000 which shall be allocated
 17 by the Secretary as provided in paragraph (2)
 18 except that such limitation may only be allo-
 19 cated with respect to Tribal Statistical Areas.

20 “(B) CARRYOVER OF UNUSED TRIBAL STA-
 21 TISTICAL AREA LIMITATION.—

22 “(i) IN GENERAL.—If the credit limi-
 23 tation under subparagraph (A) for any cal-
 24 endar year exceeds the amount of such
 25 limitation allocated by the Secretary for

1 such calendar year, such limitation for the
 2 succeeding calendar year shall be increased
 3 by the amount of such excess.

4 “(ii) LIMITATION ON CARRYOVER.—
 5 No amount of credit limitation may be car-
 6 ried under clause (i) past the 5th calendar
 7 year following the calendar year in which
 8 such amount of credit limitation arose.

9 “(iii) TRANSFER OF EXPIRED TRIBAL
 10 STATISTICAL AREA LIMITATION TO GEN-
 11 ERAL LIMITATION.—In the case of any
 12 amount of credit limitation which would
 13 (but for clause (ii)) be carried under clause
 14 (i) to the 6th calendar year following the
 15 calendar year in which such amount of
 16 credit limitation arose, the new market tax
 17 credit limitation under paragraph (1) for
 18 such 6th calendar year shall be increased
 19 by the amount of such credit limitation.

20 “(C) TRIBAL STATISTICAL AREA.—For
 21 purposes of this paragraph, the term ‘Tribal
 22 Statistical Area’ means—

23 “(i) any low-income community which
 24 is located in any Tribal Census Tract,
 25 Oklahoma Tribal Statistical Area, Tribal-

1 Designated Statistical Area, Alaska Native
 2 Village Statistical Area, or Hawaiian
 3 Home Land, and

4 “(ii) any low-income community de-
 5 scribed in subsection (e)(1)(B).”.

6 (b) ELIGIBILITY OF CERTAIN BUSINESSES SERVING
 7 TRIBAL MEMBERS.—Section 45D(e)(1) of the Internal
 8 Revenue Code of 1986 is amended to read as follows:

9 “(1) IN GENERAL.—The term ‘low-income com-
 10 munity’ means any area—

11 “(A) comprising a population census tract
 12 if—

13 “(i) the poverty rate for such tract is
 14 at least 20 percent, or

15 “(ii)(I) in the case of a tract not lo-
 16 cated within a metropolitan area, the me-
 17 dian family income for such tract does not
 18 exceed 80 percent of statewide median
 19 family income, or

20 “(II) in the case of a tract located within
 21 a metropolitan area, the median family income
 22 for such tract does not exceed 80 percent of the
 23 greater of statewide median family income or
 24 the metropolitan area median family income, or

1 “(B) which is used for a qualified active
2 low-income community business which—

3 “(i) services a significant population
4 of Tribal or Alaska Native Village mem-
5 bers who are residents of a low-income
6 community described in subsection
7 (f)(5)(C)(i), and

8 “(ii) obtains a written statement from
9 the relevant Indian Tribal Government
10 (within the meaning of section 7871(c))
11 that documents the eligibility of such
12 qualified active low-income community
13 business with respect to the requirement of
14 clause (i).

15 Subparagraph (A)(ii) shall be applied using posses-
16 sion wide median family income in the case of cen-
17 sus tracts located within a possession of the United
18 States.”.

19 (c) REGULATORY AUTHORITY.—Section 45D(i) of
20 the Internal Revenue Code of 1986 is amended by striking
21 “and” at the end of paragraph (5), by striking the period
22 at the end of paragraph (6) and inserting “, and”, and
23 by adding at the end the following new paragraph:

1 “(7) which provide documentation requirements
 2 for the written statement required under subsection
 3 (e)(1)(B)(ii), and

4 “(8) which provide procedures for identifying
 5 qualified low-income community businesses which
 6 meet the requirements of subsection (e)(1)(B)(i)
 7 (taking into account the location need of such busi-
 8 nesses, especially with businesses that serve multiple
 9 tribal or Alaska Native Village communities.”.

10 (d) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to new markets tax credit limita-
 12 tion determined for calendar years after December 31,
 13 2021.

14 **SEC. 10. TRIBAL GENERAL WELFARE PROGRAMS CLARI-**
 15 **FICATION.**

16 (a) IN GENERAL.—Section 1612(b) of the Social Se-
 17 curity Act (42 U.S.C. 1382a(b)) is amended by striking
 18 “; and” at the end of paragraph (25), by striking the pe-
 19 riod at the end of paragraph (26) and inserting “; and”,
 20 and by adding at the end the following new paragraph:

21 “(27) any Indian general welfare benefit (as de-
 22 fined in section 139E of the Internal Revenue Code
 23 of 1986).”.

24 (b) EXCLUSION FROM RESOURCES.—Section
 25 1613(a) of the Social Security Act (42 U.S.C. 1382b(a))

1 is amended by striking “; and” at the end of paragraph
2 (16), by striking the period at the end of paragraph (17)
3 and inserting “; and”, and by inserting after paragraph
4 (17) the following new paragraph:

5 “(18) for the 9-month period beginning after
6 the month in which received, any Indian general wel-
7 fare benefit (within the meaning of section 139E of
8 the Internal Revenue Code of 1986).”.

○