Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Barr, William: Files
Folder Title: Indian Policy (5)
Box: 8

To see more digitized collections visit:
https://reaganlibrary.gov/archives/digital-library

To see all Ronald Reagan Presidential Library inventories visit:
https://reaganlibrary.gov/document-collection

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: https://reaganlibrary.gov/citing

National Archives Catalogue: https://catalog.archives.gov/

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of
Human Development Services

Administration for Native Americans
Washington DC 20201

June 16, 1982

MEMORANDUM TO: Working Group on Indian Policy

FROM : Commissioner
Administration for Native Americans

SUBJECT : Indian Preference Issue Paper

I am attaching an issue paper on Indian Preference for your consideration as discussed at our meeting on June 16, 1982.

A. David Lester

Attachments

INDIAN PREFERENCE EMPLOYMENT: THE NEED FOR A CONVERSION MECHANISM

ISSUE

Approximately 85% of the Indian work force of the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) are employees with excepted rather than competitive status. Some of these employees have remained in such status after years of more than satisfactory Federal service which has demonstrated beyond any doubt their qualifications to do the work of their positions. Such status restricts their movement to positions in the competitive service. We believe that the restrictions should be removed.

BACKGROUND

Indian Reorganization Act (1934)

The current practice of exercising preference toward Indians in employment within BIA and IHS has its origins in appropriations bills and executive orders dating back more than a century. It was condified in law, however, within Section 12 of the Indian Reorganization Act of 1934. The purpose of the law was to enable Indian tribes to exercise a greater degree of self-government, politically and economically.

In the words of Congressman Howard, House sponsor of the bill:

> Indian progress and ambition will be enormeously strengthened as soon as we adopt the principle that the Indian Service shall gradually become, in fact as well as in name, an Indian Service predominantly in the hands of educated and competent Indians.

The civil service system, with its standards for the employment of persons nationwide, was seen within this framework as both unwieldy and unnecessary. Section 12 of the Act, therefore, removed employment within BIA from the civil service system:

> The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions.

Despite the noble objectives outlined in the Indian Reorganization Act, the Bureau of Indian Affairs did not pass quickly and easily into the hands of Indian people. Indian employment in the Bureau did rise over the next forty years from approximately 34% to 57%. However, such employment was controlled in two ways:

1) Indian preference was granted on initial hires only, not extended to transfers, reassignments or promotions. Thus, Indians had to compete with non-Indians once they were inside the Bureau.

2) The mechanism for appointment of preference eligible Indians remained what it had been prior to 1934, a civil service appointment under Schedule A. The standards used for such appointments, while they varied to some extent, mirrored greatly the standards for competitive appointments. Since the Bureau

remained within the civil service system, the result was a work force of non-Indians with full competitive service status and Indians with excepted (therefore limited) service status. The concept of a local government agency was never achieved.

COURT DECISIONS

1) Mescalero Apache Tribe v Hickel (1971)
This case raised the issue of the application of Indian preference not only to initial hires, but to reductions-in-force in the BIA. While that application was denied, the policy itself of Indian preference was upheld.

2) Morton v Mancari (1974)
This is undoubtedly the most important case regarding Indian preference. Mancari questioned the constitutionality of Indian preference, as a violation of anti-discremination provisions of the Equal Employment Opportunity Act of 1972. The Supreme Court ruled that Indian preference is a political not a racial preference, and therefore not prohibited by the Equal Employment Opportunity Act.

3) Freeman v Morton (1974)
This case questioned the narrow application of Indian preference to initial hires only and sought to extend it to promotions, transfers and reassignments. The court upheld such an extension.

4) Tyndall v United States (1977)
This case tested the applicability of the decision in the Freeman v Morton case to the Indian Health Service, which had not been a party to that suit. The court ruled that IHS was, nevertheless, covered by the decision.

Recent Legislation

In the aftermath of the court decisions mentioned above, Congress has also wrestled with the issue of Indian preference.

1) Public Law 93-638, Indian Self-Determination and Education Assistance Act (1975)
This law encourages the Departments of the Interior and Health and Human Services to reduce government involvement in Indian services by contracting with

Indian tribal organizations for the delivery of those services. A provision of the law stipulates that such contractors must exercise Indian preference in employment and training.

While the law very clearly promotes the goal of Indian preference, which is Indian self-determination, it is in itself an indictment of the agencies involved. Had these agencies more vigorously implemented Indian preference over the years, such services would by now be in the hands of "educated and competent Indians."

2) Public Law 95-561, Title XI, Indian Education (1978)
This section of a larger education bill spells out more clearly the mechanism for achieving Indian self-determination in the field of education. In general, it places control of education in the hands of local Indian school boards. While the overall thrust of the law is to strengthen Indian self-government, there is a provision allowing for the waiver of Indian preference in the hiring of teachers.

3) Public Law 96-135, Early Retirement Act (1979)

This law allows non-Indian employees of the BIA and IHS to retire early, due to their employment disadvantages in the light of Indian preference. In addition, it allows vacancies within BIA and IHS to be filed without regard to Indian preference by non-Indian employees whose health, safety, continued employment or effectiveness would be better served by such a move.

While this law attempts to deal with the aftermath of a poorly implemented Indian preference policy, it could serve only to perpetuate the problem. For example, a considerable number of non-Indian retirees of the BIA have already returned as reemployed annuitants. In addition, frequent waivers of Indian preference on behalf of non-Indian employees could erode Indian self-determination. Finally, the one provision in the law which calls for programs to recruit and train Indian employees has to this point been largely ignored.

OPTIONS

We need to remove what are considered to be unwarranted impediments to effective, maximum utilization of the employees involved, and thereby improve employment opportunities for American Indians in the Federal work force. This would be consistent with the Merit System Principles of the Civil Service Reform Act of 1978, in that it could facilitate recruitment of qualified individuals from one of the most underrepresented groups in our society.

1. Request a conversion agreement. The Office of Personnel Management could enter into an agreement with the concerned Departments under the provisions of 5 CFR 6.7.

Pros

a. Both the Department of Health and Human Services and the Department of the Interior have supported such an agreement (see Tab A).

b. The method uses existing rules to solve the problem.

c. Overcomes the burden Indian preference employees bear when seeking competitive appointments and are being examined for jobs for which they are in many cases already qualified.

Cons

a. OPM rejected the conversion agreement request. Their view was that the Indian Reorganization Act of 1934 did not establish a separate appointing authority nor did it make BIA and IHS positions excepted (see Tab B).

b. Non-Indian employees may perceive this action as decreasing their opportunities to compete for a declining number of Federal jobs.

c. May highlight the individual personnel and career aspects of the agreement and thereby overshadow the legislative intent to give Indian people control of the Indian service.

2. Issue an Executive Order. Executive Orders have been used to establish Schedule A appointing authorities. Those authorities normally contain a provision for conversion to the competitive service after an appropriate interval and after meeting specified criteria.

Pros

a. An Executive Order would demonstrate the President's commitment to the principles of self-determination.

b. An Executive Order could be a part of other concrete actions that the President announces in a Federal Indian policy.

c. The President would assert the Administration's role in Indian policy.

d. An Executive Order would be viewed favorably by the Indian constituency and would tend to raise their hopes for continued improvement in relationships with the Federal government.

e. An Executive Order is expeditious and would not increase Federal expenditures for its implementation.

Cons

a. May be narrowly percceived as simply a personnel action rather than as a personnel policy which strengthens the Administration's overall policy of self-determination.

b. An Executive Order, like a conversion agreement, may be viewed as discriminatory though it is not (see Morton v Mancari ruling that Indian preference is a political not a racial preference).

RECOMMENDATIONS

We recommend Option 2, that the President issue an Executive Order that would permit free movement under specific conditions of Indian employees appointed under Schedule A 213.3112(a)(7) and Schedule A 213.3116(b)(8) to positions in the competitive service. The conditions for this movement were developed in support of the request for a conversion agreement and are attached at Tab C.

TAB A

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 27 1980

Mr. Alan K. Campbell
Director, Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415

Dear Mr. Campbell:

The Departments of the Interior and Health and Human Services share a major responsibility for implementing the provisions of Section 12 of the Indian Reorganization Act of 1934, which requires the preferential employment of Indians in the agencies which deeply affect their lives; namely, the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS). As an expediency in exercising this responsibility effectively, both Departments currently utilize excepted appointing authorities under Schedule A. As a result, approximately 85% of the Indian work force of BIA and IHS are employees with excepted rather than competitive status. Some of these employees have remained in such status after years of more than satisfactory Federal service which has demonstrated beyond any doubt their qualifications to do the work of their positions. Such status, as you are aware, restricts their movement to positions in the competitive service. We believe that in this case the restrictions should be removed.

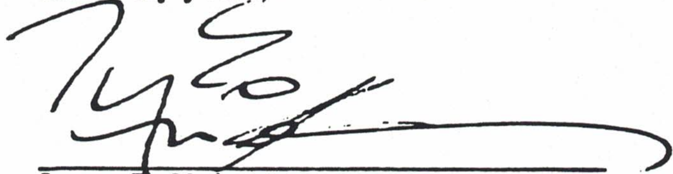
Therefore, as you personally suggested as a solution to this issue in a letter dated July 10, 1978, to the Chairman of the Albuquerque - Santa Fe Federal Executive Board, we are proposing that the Office of Personnel Management enter into a personnel interchange agreement with the Departments of the Interior and Health and Human Services. We are requesting an agreement under the provisions of 5 CFR 6.7, to permit the free movement under specific conditions of employees appointed under Schedule A 213.3112(a)(7) and Schedule A 213.3116(b)(8) to positions in the competitive service. A copy of the proposed Agreement is enclosed.

This agreement would remove what is considered to be an unwarranted impediment to effective, maximum utilization of the employees involved, and would improve employment opportunities for American Indians in the Federal work force. It is consistent with the Merit System Principles of the Civil Service Reform Act of 1978, in that it could facilitate recruitment of qualified individuals from one of the most underrepresented groups in our society. We understand that in a recent case your General Counsel indicated that an agreement under Rule 6.7 was not appropriate for certain positions under Schedule A. This was based on the fact that the Schedule A positions involved are part of the same personnel system under Title V as the competitive service. However, since the Schedule A exceptions for BIA and IHS stem from the Indian Reorganization Act of 1934, 25 U.S.C. 472, we believe that a personnel interchange agreement would be appropriate in this case.

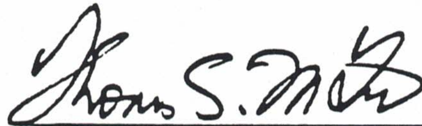
Upon approval of the agreement we will take the necessary actions within our agencies to advise our employing offices of the agreement. We would also ask that OPM make other agencies aware of the hiring flexibility. This is necessary in order to effectively implement the affirmative action aspects of this proposal.

Early and favorable action in this matter would be appreciated. Should there be a need for additional assistance for your staff, please have them contact David Mischel, Staffing Division, Office of the Assistant Secretary for Personnel Administration, Department of Health and Human Services (Phone: 245-1943); or Charles Moody, Division of Employment, Office of Personnel, Department of the Interior (Phone: 343-7764).

Sincerely yours,



Larry E. Meierotto
Assistant Secretary - Policy,
Budget and Administration



Thomas S. McFee
Assistant Secretary
for Personnel Administration
Department of Health and Human Services

United States
**Office of
Personnel Management** Washington, D.C. 20415

In Reply Refer To Your Reference

DEC 16 1980

Honorable Larry E. Meierotto
Assistant Secretary - Policy,
Budget and Administration
Office of the Secretary
Department of the Interior
Washington, D.C. 20240

Dear Mr. ~~Meierotto~~ Larry:

This refers to your request of October 27, 1980, for an agreement under the provisions of 5 CFR 6.7 to permit interchange between the competitive civil service and employees in the Bureau of Indian Affairs, Department of the Interior, and the Indian Health Service, Department of Health and Human Services, appointed under Schedule A sections 213.3112(a)(7) and 213.3116(b)(8).

The Office of Personnel Management's authority to enter into such agreements applies only to personnel systems covering positions which are excepted from the competitive civil service by statute. In the case of the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS), the Indian Reorganization Act of 1934 provided only that Indians would receive preference in filling positions in these organizations. The Act did not establish a special appointing authority for BIA or IHS positions or take the positions out of the competitive service. In fact, when they are not occupied by Indians holding Schedule A appointments, BIA and IHS positions are in the competitive service. As the positions involved are not excepted by statute, an interchange agreement under 5 CFR 6.7 would not be legally appropriate, even though the Schedule A authorities were established to carry out legislative intent.

We share your desire to integrate Indian employees more fully into the civil service mainstream. However, we feel this should be accomplished through the competitive examining system. Schedule A authorities are intended, not as the primary avenue for employment of Indians, but as a limited alternative to carry out the intent of the Indian preference laws. New flexibilities in the competitive examining process offer a chance to increase Indians' ability to compete successfully and decrease dependence on Schedule A authorities for their initial appointments.

The Civil Service Reform Act permits OPM to delegate competitive examining authority for many positions directly to agencies. For positions which will continue to be filled through OPM registers, we are expanding use of local, rather than broad coverage, examinations. Both delegation and local examining should increase opportunities to target recruiting toward particular candidate sources and to replace general measurements such as tests with more specific job-related criteria.

OPM also has authority to approve experimental standards or demonstration projects which would afford an opportunity to experiment with innovative methods of ranking and referring candidates. If BIA and IHS wish to take advantage of this new flexibility, their experimental techniques will, of course, have to meet basic standards of validity and job relatedness and will have to be applied to all competitors. However, adoption of methods geared to the requirements of their specific jobs, particularly jobs involving rapport with Indians and understanding of Indian culture, may increase the success of Indians in obtaining employment through the competitive process.

We would be glad to explore with you any alternatives for increasing Indian representation in the Federal work force within the basic framework of legal requirements and competitive principles.

Sincerely yours,

Jule M. Sugarman
Deputy Director

AGREEMENT FOR THE MOVEMENT OF PERSONNEL BETWEEN INDIAN EXCEPTED APPOINTMENTS AND THE COMPETITIVE CIVIL SERVICE SYSTEM

Under authority provided in Part 6.7 of the Civil Service Rules (5 CFR 6.7), employees under Indian appointments (Schedule A, 213.3112(a)(7) and Schedule A, 213.3116(b)(8)) in the Department of the Interior and in the Department of Health and Human Services may be appointed to positions in the competitive civil service; and employees in the competitive civil service may be appointed to competitive positions in the Indian service in the Department of the Interior (DOI) and the Department of Health and Human Services (HHS) subject to the following conditions:

1. Type of Appointment Before Movement. Employees of the DOI must be serving in continuing positions under Schedule A, 213.3112(a)(7) which are either excepted career or excepted career-conditional. Employees in the HHS must be serving in continuing positons under Schedule A, 213.3116(b)(8) which are either excepted career or excepted career-conditional. Employees in the competitive service must be serving in positions under career or career-conditional appointments.

2. Qualification Requirements. Employees of DOI and HHS must meet the qualification standards and requirements for the position to which they are to be appointed in accordance with OPM established regulations for transfer of employees within the competitive civil service. Employees in the competitive service must meet the appropriate standards and requirements established for competitive appointments to Indian service positions in DOI and HHS.

3. Length of Service Requirements. Excepted employees of DOI and HHS must have served continuously for at least 1 year under any excepted appointment(s) as described under 1 above before they may be appointed to positions in the competitive civil service under the authority of the Agreement. Employees in the competitive civil service must have completed not less than 90 days under career-conditional or career appointments in the competitive service before they may be appointed to positions under this Agreement.

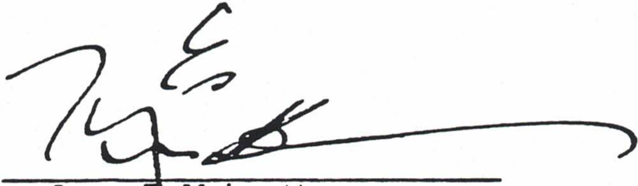
4. Selection. Employees in DOI and HHS under Schedule A, 213.3112(a)(7) and 213.3116(b)(8) may be considered for appointment to positions in the competitive civil service in the same manner that employees of the competitive service may be considered for transfer to such positions. Employees in the competitive service may be considered for appointment to Indian service positions in DOI and HHS on the basis of their qualifications for the positions to be filled and with appropriate observance of Indian preference requirements.

5. Type of Appointment Granted After Movement. Employees of DOI and HHS who are appointed to competitive positions under the terms of this Agreement will have career or career-conditional appointments, depending upon whether they meet the 3 year service requirement for career tenure. Substantially continuous service which commences under any type of appointment as described in 1 above will be acceptable in meeting the service requirement for career tenure.

6. Probationary Periods. Employees who are appointed under this Agreement will not be required to serve new probationary periods.

7. Status. DOI and HHS employees who are appointed in the competitive civil service under the terms of this Agreement will receive a competitive civil service status. Thereafter, such employees will be entitled to the benefits and privileges provided by the Office of Personnel Management rules, regulations and instructions for persons having a competitive civil service status. Employees of the competitive civil service who are appointed to Indian service positions in DOI and HHS will have career or career-conditional status, as appropriate.

8. Effective Date. This Agreement becomes effective on the date it is signed by the Office of Personnel Management. It may be terminated on the part of either the Department of the Interior or the Department of Health and Human Services or the Office of Personnel Management following thirty (30) days notice from any of these agencies.



Larry E. Meierotto
Assistant Secretary of the Interior

Date: OCTOBER-27-1980

Alan K. Campbell
Director, Office of Personnel Management

Date: ______________

Thomas S. McFee
Assistant Secretary
Department of Health and Human Services

Date: Oct 28, 1980

NATIONAL CONGRESS OF AMERICAN INDIANS

202 E STREET, N.E., WASHINGTON, D.C. 20002 (202) 546-1168

EXECUTIVE DIRECTOR
Ronald P. Andrade
Luiseno-Diegueno

EXECUTIVE COMMITTEE

PRESIDENT
Joe De La Cruz
Quinault

FIRST VICE-PRESIDENT
Ralph Eluska
Aleut

RECORDING SECRETARY
Ella Mae Horse
Cherokee

TREASURER
Hollis D. Stabler, Jr.
Omaha

AREA VICE PRESIDENTS

ABERDEEN AREA
Robert Chasing Hawk
Cheyenne River Sioux

ALBUQUERQUE AREA
Guy Pinnecoose, Jr.
Southern Ute

ANADARKO AREA
Newton Lamar
Wichita

BILLINGS AREA
E.W. (Bill) Morigeau
Salish-Kootenai

JUNEAU AREA
Clifford A. Black
Eskimo

MINNEAPOLIS AREA
Gordon Thayer
Lac Courte Oreilles/Ojibway

MUSKOGEE AREA
Perry Wheeler
Cherokee

NORTHEASTERN AREA
Elmer John
Seneca

PHOENIX AREA
Anthony Drennan
Colorado River Indian Tribes

PORTLAND AREA
Russell Jim
Yakima

SACRAMENTO AREA
Juanita Dixon
Luiseno

SOUTHEASTERN AREA
Eddie Tullis
Poarch Band of Creeks

June 23, 1982

Mr. William Barr
Special Assistant to the President
The White House
Washington, D.C. 20500

Dear Mr. Barr;

Enclosed are materials concerning the Indian Tribal Governmental Tax Status Act (H.R. 3760 and S. 1298). There are two papers which give a chronological status report on each of the bills; a one-page synopsis of the bills and also a copy of the joint testimony given by NCAI, the National Tribal Chairman's Association and the Council of Energy Resource Tribes at the Senate Select Committee on Indian Affairs' oversight hearing on economic development.

In the House, H.R. 3760 has yet to be heard by the Subcommittee on Select Revenue Measures of the Committee on Ways and Means. It was only referred down to subcommittee on April 20. Eleven co-sponsors have been added during the second session, bringing the total to twenty-eight.

In the Senate, S. 1298 has yet to be heard by the Subcommittee on Taxation and Debt Management of the Committee on Finance. The Committee on Finance has yet to receive a reply from OMB and Treasury, to whom the bill was referred June 15, 1981. The only action of any kind which has been taken were the previously mentioned Senate Select Committee on Indian Affairs' oversight hearing in which the Indian Tribal Governmental Tax Status Act was one topic.

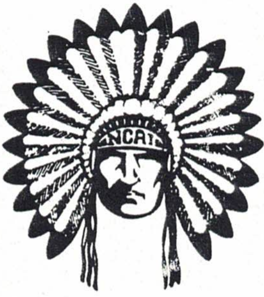
Passage of this legislation during the 97th Congress does not look good. The bills have strong tribal support but the Administration has yet to indicate clear support for the bills and consequently, Congressional leaders have not given this legislation high priority.

If you need further information, please do not hesitate to call.

Respectfully,

Ronald P. Andrade

Ronald P. Andrade
Executive Director



NATIONAL CONGRESS OF AMERICAN INDIANS

202 E STREET, N.E., WASHINGTON, D.C. 20002 (202) 546-1168

INDIAN TRIBAL GOVERNMENTAL TAX STATUS ACT OF 1981

(1) Summary of Provisions

The bill would amend the Internal Revenue Code of 1954 to give recognized Indian tribal governments the same federal tax status as state and local governments. More specifically, the bill would amend the Code so that:

(A) Taxes paid to a tribal government would be deductible for federal income tax purposes.

(B) Charitable contributions to a tribal government would be deductible for income, estate and gift tax purposes.

(C) Interest earned on certain tribal government obligations would be exempt from federal income taxes, subject to some special limitations regarding tax treatment of tribal industrial development bonds.

(D) Tribal governments would be exempt from certain federal excise taxes including taxes on special fuels, manufactures excises taxes, highway use taxes, and communications excise taxes on telephone service.

(2) Background and Purpose

The I.R.S. has issued rulings under various provisions of Code holding that Indian tribes are not political subdivisions of the United States or states. Consequently, Indian tribes do not qualify for the tax benefits accorded by the Code upon states and local governments. See, e.g., Rev. Rul. 58-610, 1958-2 C.B. 815; Rev. Rul. 68-231, 1968-1 C.B. 48; Rev. Rul. 74-179, 1974-1 C.B. 179. This bill would statutorily correct an interpretation of the Code which weakens tribal governments and hinders development of private business on reservations.

Indian tribal governments provide a full range of government services and are already recognized to have the power to tax transactions on reservation lands. This bill would not give tribes additional powers of taxation.

(3) Federal Tax Impact

The House Ways and Means Committee, during the 95th Congress, estimated that section of the bill providing for deductibility of Indian tribal government taxes would reduce income tax revenues by $1 million per year. It was estimated that all provisions of the bill would reduce overall tax liability by less than $5 million per year.

The Treasury Department agreed with these estimates.

(4) History of Legislation

93rd Congress: Similar bill sponsored by Rep. Ullman.
94th Congress: Identical bills (H.R. 8989 and S.2664) reported out of Committee on Ways and Means (H.R. Rep. No. 94-1693, 2d Session (1976)).
95th Congress: Identical bill (H.R. 4089) reported out of the House Committee on Ways and Means (H.R. Rep. No. 95-843, 2d Session (1978).
96th Congress: Similar bill (H.R. 5918) introduced by Rep. Ullman, Udall and Frenzel.

FOR FURTHER INFORMATION CONTACT: Francis Robert at 546-1168

NATIONAL CONGRESS OF AMERICAN INDIANS

MEMORANDUM

Date:

To:

From: Francis Robert, Economic Development Staff

Subject: Current Status of H.R. 3760, Indian Tribal Governmental Tax Status Act

DATE	ACTION	MEMBER	PARTY/ STATE/DIST.
6/2/81	intro	JONES, James	D-OK-1
"	*	CONABLE, Barber, Jr.	R-NY-35
"	*	FRENZEL, Bill	R-MN-3
"	*	MATSUI, Robert	D-CA-3
"	*	UDALL, Morris	D-AZ-2
"	*	CLAUSEN, Don	R-CA-2
"	*	YOUNG, Don	R-AK-al
"	*	BEREUTER, Douglas	R-NB-2
"	*	SOLARZ, Stephen	D-NY-13
"	*	LOWRY, Mike	D-WA-7
"	refer	Ways and Means	
6/16/81	*	EMERY, David	R-ME-1
"	*	KILDEE, Dale	D-MI-7
"	*	VENTO, Bruce	D-MN-4
7/17/81	*	LUJAN, Manuel, Jr.	R-NM-1
"	*	KOGOVSEK, Raymond	D-CO-3
"	*	WATKINS, Wes	D-OK-3
9/30/81	*	SWIFT, Al	D-WA-2
12/11/81	*	BAILY, Don	D-PA-21
4/20/82	refer	Select Revenue Measures	
5/13/82	*	ROE, Robert	D-NJ-8
"	*	OBERSTAR, James	D-MN-8
"	*	LEHMAN, William	D-FL-13
"	*	HAWKINS, Augustine	D-CA-29
"	*	DASCHLE, Thomas	D-SD-1
"	*	ROYBAL, Edward	D-CA-25
5/20/82	*	SIMON, Paul	D-IL-24
"	*	WON PAT, Antonio	D-Guam-Del.
"	*	TAUKE, Thomas	R-IA-2
"	*	FAUNTROY, Walter	D-DC-Del.
6/3/82	*	HARKIN, Tom	D-IA-5
6/15/82	*	DeLUGO, Ron	D-V.Isl-Del.

* cosponsor added

NATIONAL CONGRESS OF AMERICAN INDIANS

MEMORANDUM

Date:

To:

From: Francis Robert, Economic Development Staff

Subject: Current Status of S.1298, Indian Tribal Governmental Tax Status Act

DATE	ACTION	MEMBER	PARTY/ STATE
6/2/81	intro	WALLOP, Malcolm	R-WY
"	*	BRADLEY, Bill	D-NJ
"	*	HATFIELD, Mark	R-OR
"	*	PACKWOOD, Bob	R-OR
"	*	BAUCUS, Max	D-MT
"	refer	Finance	
6/10/81	*	INOUYE, Daniel	D-HI
"	*	BURDICK, Quentin	D-ND
6/15/81	refer	OMB & Dept. of Treasury	
6/23/81	*	ANDREWS, Mark	R-ND
7/8/81	*	CRANSTON, Alan	D-CA
7/13/81	*	SIMPSON, Alan	R-WY

* cosponsor added

INDIAN TRIBAL GOVERNMENTAL TAX STATUS ACT (S.1298, H.R.3760)

Joint Testimony

of

National Congress of American Indians
Council of Energy Resource Tribes
National Tribal Chairmen's Association

for

Senate Select Committee on Indian Affairs
Hearings on Economic Development

April 29, 1982

NEED FOR EQUITABLE TAX TREATMENT OF TRIBAL GOVERNMENTS

A major obstacle confronting tribal governments attempting to generate revenues is that they do not currently have a number of federal tax advantages enjoyed by every other government in the United States, including state, county and municipal governments. We therefore strongly support the Indian Tribal Governmental Tax Status Act, currently pending in both Houses of Congress (S.1298; H.R.3760), which would remedy this inequitable situation. We support the bill, first, as a matter of equity; second, because the bill would strengthen tribal economic self-sufficiency by strengthening the abilities of tribal governments to provide public goods and services for their people; and third, because the bill recognizes the appropriate role of tribal governments.

The bill would remedy the effects of a series of Internal Revenue Service rulings issued during the late 1960's and early 1970's which held that, since Indian tribes are neither states nor political subdivisions of states, they are not eligible for certain benefits given states and their political subdivisions under the Internal Revenue Code. As a result, revenue raising and saving mechanisms available to and commonly used by other governments are foreclosed to Indian tribal governments. This discriminatory treatment is unfortunate inasmuch as tribal governments are faced with the task of bringing their people, among the poorest in the nation, into economic prosperity. This task is made more difficult, at least in part, because tribal governments are not given the same benefits as other governments in the Internal Revenue Code.

The Act would:

o allow deductions from federal income taxes for charitable contributions to Indian tribes;

- allow deductions from federal income taxes for taxes paid to tribal governments;

- exempt from federal income taxes interest paid on certain bonds issued by tribal governments;

- allow deductions from federal income taxes for contributions to tribal political campaigns;

- exempt tribal governments from certain excise taxes including those on special fuels, manufacturers excise taxes, highway use taxes and communications excise tax, and

- allow tribal governments to offer tax-exempt annuities to certain employees.

Our first point is that as a matter of equity, tribal governments should be given the same benefits given state, county and municipal governments under the Internal Revenue Code. The governments of federally recognized Indian tribes exercise sovereign powers. They have the responsibility to provide a full range of government services to their citizens. Increasingly, tribes have sought to exercise their powers of government to improve their local economies and to provide services to their people. We feel that it is appropriate therefore to facilitate these efforts to confer upon tribal governments the same benefits conferred upon other governments under the Internal Revenue Code. It should be noted that this legislation would not empower tribal governments to exercise any governmental powers which they now do not have, nor would it extend to tribal governments any benefit not now extended to other governments. It merely would end the discriminatory application of the Internal Revenue Code toward tribal governments.

We are greatly concerned that since the Tax Status Act was introduced in Congress last year, there has been no movement of the bill in either chamber. There is now a real danger that it will die in Congress this year, as it has over the past three congressional sessions. This would be a tremendous setback to tribes in their attempts to achieve economic self-sufficiency if allowed to happen and we respectfully urge all Select Committee members to actively support this bill.

QUESTIONS AND ANSWERS ON THE

INDIAN TRIBAL GOVERNMENTAL TAX STATUS ACT

Q. What is the present tax status of Indian tribes?

A. The Internal Revenue Code presently contains no specific references to Indian tribes other than the tribal exemption from the Crude Oil Windfall Profit Tax. It does not specifically provide that they are taxable or non-taxable. The Internal Revenue Service has taken the position that tribes are not taxable entities (Revenue Ruling 67-284). The IRS does not attempt to collect federal income taxes from Indian tribes for either their governmental or their profit-making activities.

The Internal Revenue Code also does not extend to Indian tribes certain benefits that are extended to states and their political subdivisions. The Code provides that charitable contributions to states and their "political subdivisions" are tax deductible. No mention is made of charitable contributions to Indian tribes. In a 1974 Revenue Ruling, however, the IRS held that a contribution to a tribe was not deductible (Revenue Ruling 74-179) as a tribe is not a state nor a political subdivision of a state.

Another example is that the Code exempts from gross income interests on certain obligations of states and political subdivisions of states. No specific mention is made of Indian tribes but the issue of the treatment of interest of obligations of tribes did come before the IRS. They ruled in 1968 that the interest on a tribal obligation could not be excluded from gross income, as a tribe is neither a state nor a political subdivision of a state (Revenue Ruling 68-231).

Although IRS has not ruled specifically on the applicability of other benefits given to states and their political subdivisions, such as the deductability of certain taxes paid to them, it is clear that those provisions cannot be assumed to apply to tribes.

Q. Congress has been considering legislation to limit Industrial Development Bonds (IDB). Would not this bill give tribes an advantage if that legislation goes forward?

A. Industrial Development Bonds issued by tribes should be treated in the same manner as those issued by other governments.

Q. Does this bill give tribes any advantage not given to states?

A. No.

Q. Does the bill place any limits on tribes not placed on other governments?

A. Yes, there are two limits placed on tribes which do not apply to other governments.

The first is that other governments may use municipal bonds to finance profit-making facilities. Tribes would be able to use tax exempt bonds which are not IDB's, only to finance essential government services or public utilities. Tribes, unlike other governments, would not be able to issue tax exempt bonds to finance tribally owned profit-making operations. This is because these profit-making activities are tax exempt.

The legislative history of H.R. 4089, the predecessor to this bill, makes clear that this restriction was added to avoid giving tribes an "unfair advantage." (See House of Representatives Report, No. 95-843, page 11.)

Second, the bill would make tax exempt industrial development bond financing available only if the principle activities of the beneficiary are carried on on the reservation. This restriction does not seem onerous.

Q. Would this bill affect the authority of tribes to levy taxes?

A. No. The bill would grant no additional authority to tribal governments to levy taxes. The major benefit of the tax provision of the bill is that it would diminish the burden of taxes.

Bill —

Issue memo — first draft — not completed,
Should be in Tues COB

Policy Statement on Indian Education

Prior to passage of the Indian Education Act in 1972, Federal aid specifically for Indian education was limited to direct support for Federal schools operated by the Bureau of Indian Affairs and to Johnson-O'Malley Act aid to public school districts. In addition, aid was provided under programs and services available for all public school students under Titles I, II, and III of the Elementary and Secondary Education Act of 1965 and Public Law 81-874 (impact aid for schools near large federal installations).

As a result of a series of hearings conducted across the country, Congress determined that the nature and scope of the needs of Indian children were too great to be dealt with through general compensatory and impact aid, and, further, that significant numbers of Indian children in public schools were not benefiting from this aid. In 1972 Congress passed the Indian Education Act to address the special educational needs of Indian children and adults. Indians served by the programs under the Act include members of federally-recognized and non-federally-recognized tribes, those living in urban areas, and those living on or near reservations.

The Indian Education Act programs:

- provide supplementary educational services;
- improve the quality of services through program models, curriculum materials, and teaching methods; and
- promote self-determination by helping Indian citizens to shape and control their own educational programs.

Diverse projects have been funded, ranging from remedial reading and mathematics to the use of bilingual instruction as an innovative technique for addressing

the special problems of Indian children. Most programs infuse Indian culture into instructional activities. Literacy programs for adults have been funded, and pre-service and in-service training of Indian teachers as well as training of Indians in other professions have been a high priority over the last several years.

The Indian Education Act programs involve virtually every segment of the Indian population--young children, Indian youth, college students, parents, and other adults. The programs are administered, under the direction of Indian people themselves, by institutions that this Act seeks to make more responsive to their needs--local school districts, colleges and universities, and community organizations--as well as by Indian tribes.

In the nine years since the Indian Education Act programs began, the number of Indian children and adults benefiting has almost tripled. In 1981, beneficiaries included 307,000 children and youth, 11,000 adults, and over 1,000 students in higher education programs. A total of $582.9 million has been appropriated since the program was established.

While gains are beginning to be achieved, the American Indian and Alaska Native populations continue to be among the most economically and educationally disadvantaged segments of our population. It is still the case, for instance, that: Indian students attend and complete school and enter and complete higher education at rates far below their majority counterparts; unemployment rates for Indian adults and poverty rates for Indian families greatly exceed rates for the majority population; and household income is significantly lower for Indian families than for non-Indian families.

Under this Administration's Foundation for Education Assistance proposal, several programs currently in the Department of Education will be transferred to agencies with related responsibilities.

Among these are all programs authorized by the Indian Education Act. These programs will be transferred to the Department of the Interior where they will be aligned with other Federal programs affecting the educational attainment of our Indian population.

Thus, the transfer would broaden the authority of the Department of the Interior to include all Indians covered by the Indian Education Act, not just those served under existing BIA programs.

This will result in more efficient operation of the programs and elimination of duplicative services, positions, and expenditures.

New Developmental, Support, and Teaching Initiatives
Indian Education Programs

Five initiatives are emerging in Indian Education Programs: capacity-building, deregulation, dissemination, multi-cultural education and inter-agency and interstate cooperation.

Capacity building encompasses four goals. These include the opportunity for and the ability of Indian groups to influence and direct education for themselves and their children, improve the quality of Indian education, increase the number of Indians in the various education professions, and the promotion of self-sufficiency by improving skills and employability.

Deregulation, the second initiative, emphasizes the goal of increasing flexibility for Indian program applicants, the reduction of administrative burden, and the greater realization of tribal needs.

The dissemination initiative attempts to establish a network of Indian education successful projects and includes an education fair of effective practices to encourage their adaptation or adoption.

This effort will be coordinated with the National Diffusion Network and the technical assistance efforts of the five resource and evaluation centers to to improve program quality in Indian Education Programs.

The multi-cultural initiative includes an ethnographic study to identify and compare the effectiveness of various approaches to multi-cultural education of Indians as a basis for improving local educational projects.

A fifth initiative will enhance interagency and interstate cooperation which will result in improved coordination and delivery of educational services by reducing duplication and cost.

ATTACHMENT I

CHRONOLOGICAL LIST OF TREATIES MADE BETWEEN INDIAN TRIBES AND THE UNITED STATES GOVERNMENT CONTAINING EDUCATIONAL PROVISIONS

DATE	TREATY WITH THE	STATUTE	ARTICLE
Dec. 2, 1794	Oneida, et al.	7 Stat. 47	3
Aug. 13, 1803	Kaskaskia Tribe	7 Stat. 78	3
Aug. 18, 1804	Delaware Tribe	7 Stat. 81	2
Oct. 18, 1820	Choctaw Nation	7 Stat. 210	7,8
Aug. 29, 1821	Ottawa, et al.	7 Stat. 218	4
Sept. 18, 1823	The Florida Tribes of Indians	7 Stat. 224	6
Jan. 20, 1825	Choctaw Nation	7 Stat. 234	2
Feb. 12, 1825	Creek Nation	7 Stat. 237	7
June 2, 1825	Great & Little Osage Tribes	7 Stat. 240	6
June 3, 1825	Kansas Nation	7 Stat. 244	4,5
Aug. 5, 1826	Chippewa Tribe	7 Stat. 290	6
Oct. 16, 1826	Potawatomi Tribe	7 Stat. 295	3
Oct. 23, 1826	Miami Tribe	7 Stat. 300	6
Aug. 11, 1827	Chippewa, et al.	7 Stat. 303	5
Nov. 15, 1827	Creek Nation	7 Stat. 307	---
May 6, 1828	Cherokee Nation	7 Stat. 311	5
Sept. 20, 1828	Potawatomi Tribe	7 Stat. 317	2
Sept. 24, 1829	Delaware Nation	7 Stat. 327	*
July 15, 1830	Confederated Tribes of Sacs, et al.	7 Stat. 328	5
Sept. 27, 1830	Choctaw Nation	7 Stat. 333	20
Feb. 8, 1831	Menomonee Tribe	7 Stat. 342	4,5
Mar. 24, 1832	Creek Tribe	7 Stat. 366	13
May 9, 1832	Seminole Indians	7 Stat. 368	4
Sept. 15, 1832	Winnebago Nation	7 Stat. 370	4
Oct. 24, 1832	Kickapoo Tribe	7 Stat. 391	7
Oct. 27, 1832	Potawatomis of Indiana & Michigan	7 Stat. 399	4
Feb. 14, 1833	Creek Nation	7 Stat. 417	5
May 13, 1833	Quapaw Indians	7 Stat. 424	3
Sept. 21, 1833	United Bands of Otoes & Missourias	7 Stat. 429	4
Oct. 9, 1833	Four Confederated Bands of Pawnees	7 Stat. 448	5
May 24, 1834	Chickasaw Nation	7 Stat. 450	2*
Dec. 29, 1835	Cherokee Tribe	7 Stat. 478	10,11
Mar. 28, 1836	Ottawa, et al.	7 Stat. 491	4*
Sept. 17, 1836	Ioway Tribe, et al.	7 Stat. 511	3
Oct. 15, 1836	Otoes, et al.	7 Stat. 524	3
Oct. 21, 1837	Sacs & Foxes of Missouri	7 Stat. 543	2
Oct. 19, 1838	Ioway Tribe	7 Stat. 568	2
Mar. 17, 1842	Wyandot Nation	11 Stat. 581	4
Oct. 4, 1842	Chippewa of the Mississippi	7 Stat. 591	4

* Supplemental Articles.

DATE	TREATY WITH THE	STATUTE	ARTICLE
Oct. 11, 1842	Sac, et al.	7 Stat. 596	2
Jan. 4, 1845	Creek, et al.	9 Stat. 821	4,6
Jan. 14, 1846	Kansas Tribe	9 Stat. 842	2
May 15, 1846	Comanche, et al.	9 Stat. 844	13
June 5,17, 1846	Chippewas, et al.	9 Stat. 853	8
Oct. 13, 1846	Winnebago Tribe	9 Stat. 878	4
Aug. 2, 1847	Chippewa of the Mississippi	9 Stat. 904	3
Oct. 18, 1848	Menomonee Tribe	9 Stat. 952	4,5
Apr. 1, 1850	Wyandot Tribe	9 Stat. 987	---
July 23, 1851	Sisseton & Wahpeton Bands of Sioux	10 Stat. 949	4
Aug. 5, 1851	Mendewakanton & Wahpahoota Bands of Sioux	10 Stat. 954	4
Mar. 15, 1854	Otoe, et al.	10 Stat. 1038	4
Mar. 16, 1854	Omaha Tribe	10 Stat. 1043	4,13
May 6, 1854	Delaware Tribe	10 Stat. 1048	5,7
May 10, 1854	United Tribe of Shawnee Indians	10 Stat. 1053	3,6
May 12, 1854	Menomonee Tribe	10 Stat. 1064	3
May 17, 1854	Ioway Tribe	10 Stat. 1069	5,9
May 18, 1854	Kickapoo Tribe	10 Stat. 1078	2
May 30, 1854	United Tribes of Kaskaskia, et al.	10 Stat. 1082	7
June 5, 1854	Miami Tribe	10 Stat. 1093	3,4,12,13
Sept. 30, 1854	Chippewa of Lake Superior	10 Stat. 1109	4
Nov. 15, 1854	Rogue River Tribe	10 Stat. 1119	2
Nov. 18, 1854	Quilsieton & Nahelta Bands of Chasta, et al.	10 Stat. 1122	5
Nov. 29, 1854	Umpqua, et al.	10 Stat. 1125	3,6
Dec. 26, 1854	Nisqually, et al.	10 Stat. 1132	10
Jan. 22, 1855	Dwamish, et al.	12 Stat. 927	3,14
----------	Willamette Bands	10 Stat. 1143	2,3
Jan. 26, 1855	S'Klallams, et al.	12 Stat. 933	11
Jan. 31, 1855	Makah Tribe	12 Stat. 939	11
Feb. 22, 1855	Mississippi, et al. Bands of Chippewa	10 Stat. 1165	3,4
June 9, 1855	Yakama, et al.	12 Stat. 951	5
June 9, 1855	Walla Walla, et al.	12 Stat. 945	2,4
June 11, 1855	Nez Pierce Tribe	12 Stat. 957	5
June 22, 1855	Choctaw, et al.	11 Stat. 611	13
June 25, 1855	Tribes of Middle Oregon	12 Stat. 963	2,4
July 1, 1855	Quinaielt, et al.	12 Stat. 971	10
July 16, 1855	Confederated Tribe of Flathead, et al.	12 Stat. 975	5
July 31, 1855	Ottawa, et al.	11 Stat. 621	1,2
Aug. 2, 1855	Chippewa Tribe of Sault St. Marie	11 Stat. 631	2
Oct. 17, 1855	Blackfoot, et al.	11 Stat. 657	10
Dec. 21, 1855	Molallalas Tribe	12 Stat. 981	2

DATE	TREATY WITH THE	STATUTE	ARTICLE
Feb. 5, 1856	Stockbridge, et al.	11 Stat. 663	4,7,8
Aug. 7, 1856	Creek, et al.	11 Stat. 699	5,7,8
Sept. 24, 1857	Four Confederated Bands of Pawnees	11 Stat. 729	3
Mar. 12, 1858	Ponca Tribe	12 Stat. 997	2
Apr. 19, 1858	Yancton Tribe of Sioux	11 Stat. 743	4
June 19, 1858	Mendawakanton & Wahpahoota Bands of Sioux	12 Stat. 1031	5
July 16, 1859	Swan Creek & Black River Bands of Chippewa, et al.	12 Stat. 1105	1,3
Feb. 18, 1861	Arapahoe, et al.	12 Stat. 1163	2
Mar. 6, 1861	Sac, et al.	12 Stat. 1171	5,6
June 24, 1862	Ottawa of Blanchard's Fork, et al.	12 Stat. 1237	6
June 28, 1862	Kickapoo Nation	13 Stat. 623	3
Mar. 11, 1863	Mississippi, et al. Bands of Chippewa	12 Stat. 2149	13
June 9, 1863	Nez Pierce Tribe	14 Stat. 647	4,5
Oct. 2, 1863	Red Lake, et al. Bands of Chippewa	13 Stat. 667	3
May 7, 1864	Mississippi, et al. Bands of Chippewa	13 Stat. 693	9,13
Oct. 14, 1864	Klamath, et al.	16 Stat. 707	4,5
Oct. 18, 1864	Saginaw, et al. Bands of Chippewa	14 Stat. 657	4
Mar. 8, 1865	Winnebago Tribe	14 Stat. 671	4
Aug. 12, 1865	Wollpahpe Tribe of Snake Indians	14 Stat. 683	7,8
Sept. 29, 1865	Great & Little Osage Tribes	14 Stat. 687	2,8
Oct. 14, 1865	Lower Brule Band of Sioux	14 Stat. 699	6
Mar. 21, 1866	Seminole Tribe	14 Stat. 755	3
Apr. 7, 1866	Bois Fort Band of Chippewa	14 Stat. 765	3
Apr. 28, 1866	Choctaw, et al.	14 Stat. 769	9,21,46
June 14, 1866	Creek Nation	14 Stat. 785	12,13
Feb. 18, 1867	Sac, et al.	15 Stat. 495	9
Feb. 19, 1867	Sisseton & Wahpeton Bands of Sioux	15 Stat. 505	6,7
Feb. 23, 1867	Senecas, et al.	15 Stat. 513	10,19,24
Mar. 19, 1867	Mississippi Band of Chippewas	16 Stat. 719	3
Oct. 21, 1867	Kiowa, et al.	15 Stat. 581	4,7,14
---------	Kiowa, et al.	15 Stat. 589	2
Oct. 28, 1867	Cheyenne, et al.	15 Stat. 593	4,7,13
Mar. 2, 1868	Ute Tribe	15 Stat. 619	4,8,10,15
Apr. 29, 1868	Sioux Nation, et al.	15 Stat. 635	7,9,13
May 7, 1868	Crow Tribe	15 Stat. 649	3,7,10
May 10, 1868	Northern Cheyenne, et al.	15 Stat. 655	4,7
June 1, 1868	Navajo Nation	15 Stat. 667	3,6
July 3, 1868	Eastern Band of Shoshone, et al.	15 Stat. 673	3,7,10
Aug. 13, 1868	Nez Pierce Tribe	15 Stat. 693	3

Source: The Institute for the Development of Indian Law, "A Chronological List of Treaties and Agreements Made by Indian Tribes with the United States" (1973).