

106TH CONGRESS
1ST SESSION

S. 615

To encourage Indian economic development, to provide for a framework to encourage and facilitate intergovernmental tax agreements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 1999

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To encourage Indian economic development, to provide for a framework to encourage and facilitate intergovernmental tax agreements, 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 “Intergovernmental Tax
5 Agreement Act of 1999”.

6 **SEC. 2. FINDINGS; PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1 (1) Indian tribal governments exercise govern-
2 mental authority and powers over persons and ac-
3 tivities that occur on Indian lands;

4 (2) a dual State-tribal tax burden on trans-
5 actions by Indian tribes and members of Indian
6 tribes with non-Indian persons and entities under-
7 mines the ability of Indian tribes to finance govern-
8 mental functions and programs of those Indian
9 tribes;

10 (3) the apportionment of taxes from commercial
11 activities occurring on Indian lands should take into
12 account the government services provided by the
13 State and the Indian tribe involved to members of
14 that Indian tribe and other individuals residing on
15 those lands;

16 (4) the governments of Indian tribes and States
17 have negotiated and entered into more than 200 tax
18 compacts, and those compacts cover a variety of
19 commodities and retail taxes;

20 (5) in cases in which a tax compact between an
21 Indian tribe and a State is not in effect, conflicts be-
22 tween the State and Indian tribe may require the ac-
23 tive involvement of the United States in the role of
24 the United States as a trustee for the Indian tribe;

25 (6) alternative dispute resolution—

1 (A) has been used to resolve successfully
2 disputes in the public and private sectors;

3 (B) results in expedited decisionmaking;
4 and

5 (C) is less costly and less contentious than
6 litigation; and

7 (7) it is necessary to facilitate intergovern-
8 mental agreements between Indian tribes and States
9 and political subdivisions thereof.

10 (b) PURPOSES.—The purposes of this Act are as fol-
11 lows:

12 (1) To strengthen the economies of Indian
13 tribes.

14 (2) To encourage and facilitate tax agreements
15 between the governments of Indian tribes and State
16 governments.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

19 (1) COMPACT.—The term “compact” means a
20 written agreement between a State and an Indian
21 tribe concerning the collection and remittance of—

22 (A) applicable State taxes on retail com-
23 mercial transactions involving non-Indians on
24 Indian lands of that Indian tribe; or

25 (B) covered tribal equivalency taxes.

1 (2) COVERED TRIBAL EQUIVALENCY TAX.—The
2 term “covered tribal equivalency tax” means a tribal
3 equivalency tax—

4 (A) with a rate that is equal to or greater
5 than the rate of an applicable State sales or ex-
6 cise tax for transactions for which the tax is
7 imposed; and

8 (B)(i) that is used to—

9 (I) fund tribal government operations
10 or programs;

11 (II) provide for the general welfare of
12 the Indian tribe and the members of that
13 Indian tribe;

14 (III) promote the economic develop-
15 ment of that Indian tribe; or

16 (IV) assist in funding operations of
17 local governmental agencies; or

18 (ii) that is a fuel or highway tax, with re-
19 spect to which the revenues derived from the
20 tax are used only for highway and transpor-
21 tation purposes.

22 (3) INDIAN LANDS.—The term “Indian lands”
23 means, with respect to an Indian tribe—

24 (A) lands within the reservation of that In-
25 dian tribe; and

1 (B) other lands over which the Indian tribe
2 exercises governmental jurisdiction.

3 (4) INDIAN TRIBE.—The term “Indian tribe”
4 has the meaning given that term in section 4(e) of
5 the Indian Self-Determination and Education Assist-
6 ance Act (25 U.S.C. 450b(e)).

7 (5) NON-INDIAN.—The term “non-Indian”
8 means a person who is not—

9 (A) an Indian tribe;

10 (B) comprised of members of an Indian
11 tribe; or

12 (C) a member of an Indian tribe.

13 (6) PANEL.—The term “Panel” means the
14 Intergovernmental Dispute Resolution Panel estab-
15 lished under section 5.

16 (7) SECRETARY.—The term “Secretary” means
17 the Secretary of the Interior.

18 (8) STATE.—The term “State” means each of
19 the 50 States.

20 (9) TRIBAL EQUIVALENCY TAX.—The term
21 “tribal equivalency tax” means a tax that—

22 (A) is imposed by the tribal government of
23 an Indian tribe on retail commercial trans-
24 actions that involve non-Indians on Indian

1 lands within the jurisdiction of that Indian
2 tribe; and

3 (B) is in addition to any State tax that
4 may be imposed.

5 **SEC. 4. INTERGOVERNMENTAL TAX AGREEMENTS.**

6 (a) IN GENERAL.—The consent of the United States
7 is granted to States and Indian tribes to enter into com-
8 pacts and agreements in accordance with this Act.

9 (b) COMPACT NEGOTIATIONS.—An Indian tribe may
10 request the Secretary to initiate negotiations on the part
11 of that Indian tribe with a State for the purpose of enter-
12 ing into a tax compact under this section. A State may
13 request the Secretary to initiate negotiations between an
14 Indian tribe and the State to enter into such a tax com-
15 pact.

16 (c) NOTIFICATION.—The Secretary shall notify each
17 affected Indian tribe or State of any request made under
18 subsection (b).

19 (d) REQUIREMENTS FOR REQUEST FOR INITIATION
20 OF NEGOTIATIONS.—

21 (1) WRITTEN REQUEST.—A request by an In-
22 dian tribe or State under subsection (a) shall be in
23 writing.

24 (2) RESPONSE.—Not later than 30 days after
25 receiving a request referred to in paragraph (1), the

1 Secretary shall issue a written response to the In-
2 dian tribe or State that submitted the request.

3 (e) COMMENCEMENT OF NEGOTIATIONS; COMPLE-
4 TION OF NEGOTIATIONS.—

5 (1) COMMENCEMENT OF NEGOTIATIONS.—Not
6 later than 30 days after the date specified in sub-
7 section (d), the Secretary shall commence negotia-
8 tions with respect to the tax compact that is the
9 subject of the request submitted by the Indian tribe
10 or State.

11 (2) COMPLETION OF NEGOTIATIONS.—Not later
12 than 120 days after the commencement of the nego-
13 tiations under paragraph (1), the parties shall com-
14 plete the negotiations, unless the parties agree to an
15 extension of the period of time for completion of the
16 negotiations.

17 (f) MEDIATION.—The Secretary shall initiate a medi-
18 ation process, with the goal of achieving a tax compact,
19 if—

20 (1) by the date specified in subsection (e)(1),
21 the party that was requested to enter into negotia-
22 tions, failed to respond to that request; or

23 (2) upon the completion of an applicable period
24 for negotiations, as determined under subsection
25 (e)(2), the parties have failed to execute a compact.

1 **SEC. 5. INTERGOVERNMENTAL DISPUTE RESOLUTION**
2 **PANEL.**

3 (a) **ESTABLISHMENT.**—There is established the
4 Intergovernmental Dispute Resolution Panel.

5 (b) **MEMBERSHIP OF THE PANEL.**—

6 (1) **IN GENERAL.**—The Panel shall consist of—

7 (A) 1 representative from the Department
8 of the Interior;

9 (B) 1 representative from the Department
10 of Justice;

11 (C) 1 representative from the Department
12 of the Treasury;

13 (D) 1 representative of State governments;
14 and

15 (E) 1 representative of tribal governments
16 of Indian tribes.

17 (2) **CHAIRPERSON.**—The members of the Panel
18 shall select a Chairperson from among the members
19 of the Panel.

20 (c) **DUTIES OF PANEL.**—To the extent allowable by
21 law, the Panel may consider and render a decision on the
22 following:

23 (1) If negotiations and mediation conducted
24 under section 4 do not result in the execution of a
25 compact, a dispute between the State and Indian

1 tribe that is referred to the Panel at the discretion
2 of the Secretary.

3 (2) Any claim involving the legitimacy of a
4 claim for the collection or payment of retail taxes
5 claimed by a State with respect to transactions con-
6 ducted on Indian lands (including counterclaims,
7 setoffs, or related claims submitted or filed by an In-
8 dian tribe in question regarding an original claim in-
9 volving that Indian tribe).

10 (d) FEDERAL MEDIATION CONCILIATION SERVICE.—

11 (1) IN GENERAL.—In a manner consistent with
12 this Act, the Panel shall consult with the Federal
13 Mediation Conciliation Service (referred to in this
14 subsection as the “Service”) established under sec-
15 tion 202 of the National Labor Relations Act (29
16 U.S.C. 172).

17 (2) DUTIES OF SERVICE.—The Service shall,
18 upon request of the Panel and in a manner con-
19 sistent with applicable law, provide services to the
20 Panel to aid in resolving disputes brought before the
21 Panel.

22 **SEC. 6. JUDICIAL ENFORCEMENT.**

23 (a) IN GENERAL.—Except as provided in subsections
24 (b) and (c), the district courts of the United States shall
25 have original jurisdiction with respect to—

1 (1) the enforcement of any compact entered
2 into under this Act; and

3 (2) any civil action, claim, counterclaim, or
4 setoff, brought by any party with respect to a com-
5 pact entered into under this Act to secure equitable
6 relief, including injunctive and declaratory relief.

7 (b) DAMAGES.—No action to recover damages arising
8 out of or in connection with an agreement or compact en-
9 tered into under this Act may be brought, except as spe-
10 cifically provided for in that agreement or compact.

11 (c) CONSENT TO SUIT.—Each compact entered into
12 under this Act shall specify that each party to the
13 compact—

14 (1) consents to litigation to enforce the com-
15 pact; and

16 (2) to the extent necessary to enforce that com-
17 pact, waives any defense of sovereign immunity.

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