



## Fact Sheet: Tax Status of Wholly Owned Tribal Entities – Proposed Rule October 7, 2024

**Overview:** As a result of federal policy, Tribal Nations largely lack the same property, income, and sales tax bases as non-Tribal governments. Tribal Nations, therefore, rely on commercial entities to generate governmental revenue and have historically accorded their sovereign privileges and immunities to these entities.

Over the past 30 years, Tribes have requested confirmation that their wholly owned entities chartered under Tribal law (Tribally chartered entities) share their tax status because tax certainty is critical to Tribal economic development.

To date, the Internal Revenue Service has confirmed that Federally chartered Tribal corporations have the same tax status as their owning Tribes. Upon the passage of the Inflation Reduction Act (IRA), the question of the tax status of Tribally chartered entities became especially critical as many Tribes began projects, owned by their Tribally chartered entities, to seek clean energy tax credits that are available to Indian Tribal governments for the first time.

**Tribal and TTAC Consultations:** Pursuant to [Treasury's Tribal Consultation and Coordination with Tribal Nations Policy](#), Treasury conducted two consultations in 2023 on this topic and consulted with the Treasury Tribal Advisory Committee (TTAC). The TTAC advises the Secretary on Tribal tax matters.

During these consultations, Tribal leaders explained that Tribally chartered entities are an exercise of their inherent sovereign authority to generate governmental revenue, self-govern the use of that revenue according to their own laws, and self-determine the use of that revenue for their citizenry. Tribal leaders highlighted that decades long tax uncertainty impaired their ability to grow their economies and generate governmental revenue to support their communities. To review this feedback and how it was utilized, see the [Tribal Consultation and Federal Feedback Summary](#).

**Proposed Rule:** On October 7, 2024, the Department of Treasury and the Internal Revenue Service (collectively Department) published a [Notice of Proposed Rulemaking](#) (NPRM or proposed rule) regarding the tax status of wholly owned Tribal entities. This proposed rule recognizes that Tribal entities chartered or organized by one or more Tribes have the tax status of their owning Tribes. This means that these Tribal entities would not be subject to income tax. Further, the rule recognizes that these Tribal entities would be eligible for certain IRA tax credits through a payment mechanism known as elective pay.

To support Tribal leaders in understanding these rules, below is an overview of the regulations.<sup>1</sup>

### A. Key Highlights:

1. **Recognition of the Unique Status of Tribal Economies:** The proposed rule recognizes that, pursuant to Tribal feedback, Tribal economies are unique and rely on Tribal businesses to generate governmental revenue.
2. **Support for Tribal Sovereignty, Sovereign Immunity, and Self-Determination in Tax Administration:** The preamble to the proposed rule confirms the Department's recognition,

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<sup>1</sup> The descriptions provided in this document summarize key provisions of the proposed regulations but are non-exhaustive and do not describe all requirements that may apply. Please see the proposed rule.



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support, and protection of principles of Tribal sovereignty, sovereign immunity, and self-governance that have been repeatedly reaffirmed by the Supreme Court. These commitments reflect the Administration's statement of policy in Executive Order 14112.

3. **Recognition of Tribal Self-Governance and Inter-Tribal Trade Practices:** The proposed rule recognizes that a single Tribe or multiple Tribes have the right to self-determine their revenue generating entities and charter them under their laws.
4. **Confirms Tribally Chartered Entities Are Not Subject to Income Tax:** Tribes do not pay Federal income tax. The proposed rule would provide wholly-owned Tribally chartered entities the Federal tax status of their owning Tribes. This affords them parity with Federally chartered Tribal corporations.

## B. Key Regulatory Highlights

### 1. Tax Status of Tribally Chartered Entities:

- i. **Clarifies that Tribally Chartered Entities Have their Tribe's Federal Tax Status:** The proposed rule recognizes that entities wholly owned by one or more Tribes and organized or incorporated under the laws of the Tribes that own them would not be recognized as separate entities for Federal tax purposes. This means that they would share their owning Tribe's Federal tax status and, therefore, would not be subject to Federal income tax.
- ii. **Multi-Tribal Entities Have the Tax Status of their Owning Tribes:** An entity owned by multiple Tribes, and chartered under their respective laws, would have the Federal tax status of the owning Tribes. This means the entity is not subject to Federal income tax.
- iii. **No Imposition of an Integral Part Test:** The proposed rules incorporate Tribal feedback and do not impose a multi-factor integral part test.
- iv. **Provides Reliance for Years Preceding the NPRM:** The proposed rules describe that Tribes may rely on these rules for tax years that precede the date of the NPRM.
- v. **No Imposition of Information Reporting:** These proposed rules do not subject Tribal entities to any new reporting requirements.
- vi. **Preservation of Tribal Rights Under Other Federal Laws:** These proposed rules would address only the application of Federal tax law and would not affect the rights of Tribes and Tribal entities under other Federal laws.
- vii. **Tax-Status of Partially-Owned Entities Subject to Separate Consultation and Guidance:** The proposed rules describe that the Department will conduct separate Tribal consultation prior to issuing any additional guidance regarding the tax status of partially-owned Tribal corporations.

### 2. Eligibility for Clean Energy Tax Credits:

- i. **Tribally Chartered Entities and Federally Chartered Tribal Corporations May Directly File for Elective Pay:** The proposed rule describes that Federally chartered Tribal corporations and wholly owned Tribal entities may directly register for and claim applicable clean energy tax credits through a payment mechanism known as elective pay.
- ii. **Multi-Tribal Entities May Directly File for Elective Pay:** The proposed rule would also allow Tribally chartered entities and Federally chartered Tribal corporations that are wholly owned by multiple Tribes to be the entity that registers for and claims applicable clean energy tax credits via elective pay.



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- iii. **Provides Reliance for Years Preceding NPRM:** The proposed rules describe that eligible entities may rely on these rules for tax years that precede the date of the NPRM.

**Forthcoming Tribal Consultations:** Pursuant to Treasury's [Tribal Consultation and Coordination with Tribal Nations Policy](#), Treasury is commencing extensive consultation on this NPRM. To register for these consultations, please see our [Dear Tribal Leader Letter](#).