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Hearing Statement of Senator Max Baucus (D-Mont.)
Regarding What Tax Reform Could Mean for Tribes and Territories
As prepared for delivery

There is a Crow proverb that says, "Man's law changes with his understanding of man. Only the laws of the spirit remain always the same."

Our desire to spur broad-based economic growth and give help to those who need it stays the same. But our laws are ever-changing. And while some were well-intentioned, the 15,000 changes made to the tax code since 1986 have created too much complexity and unfairness. Tax reform needs to simplify the code in a way that creates jobs and encourages growth.

Today, we look at tax reform and how it affects Indian tribes and the United States' five territories: Puerto Rico; the U.S. Virgin Islands; Guam; American Samoa, and the Northern Mariana Islands.

Indian governments and the territories are in some ways similar to state governments; each provides hospitals, public schools and law enforcement. But U.S. policies do not recognize tribal governments or territories as states or fully-sovereign nations.

Instead, U.S. law is a patchwork of complicated rules for each territory. And for tribal governments, U.S. policies are inconsistent. Tax policy is a microcosm of this inconsistency.

The unemployment rate on some reservations, such as the Northern Cheyenne reservation in Montana and the Pine Ridge reservation in South Dakota, is 80 percent.

One in four Indians lives below the poverty line. American Indians' median income is 31 percent less than all other Americans. U.S. territories and commonwealths also suffer from high unemployment.

In the past, Congress has recognized the special status of tribal governments and the island territories and taken steps through our tax policies to improve their economic conditions.

We provided accelerated depreciation for capital investments and an employment credit for businesses located in Indian country. Congress also allowed businesses to claim a credit for the production of coal from Indian land.

The accelerated depreciation provision brought jobs and economic activity to the Crow Tribe in Montana when Westmoreland Coal used it to boost profits.

But there are issues with these provisions. Two-thirds of the state of Oklahoma qualifies as an eligible Indian reservation under the accelerated depreciation provision and employment tax credit as written. Perhaps the tax laws need to be better targeted.

Congress should also level the playing field for tax-exempt bonds. States are currently allowed to issue tax-exempt bonds for any public purpose. These bonds help governments access cheap capital to build schools and court houses. States can also use them to finance tourism and economic development projects like municipal golf courses, convention centers and hotels.

In contrast, tribal governments can only issue bonds for government buildings. Their bonds have to pass what's called an "essential government test."

To address this inequity, in 2009, Congress authorized two billion dollars of tribal economic development bonds for any purpose other than gambling facilities. The Treasury Department studied the program, and it recommended Congress repeal the essential government test. We should do this as part of tax reform.

Another area of concern for tribal governments is the application of the general welfare doctrine. This doctrine allows governments to provide benefits to citizens without those benefits counting as taxable income.

Tribes provide many benefits to their members including educational assistance and cultural awareness, along with housing and meals. But it's often unclear which benefits are eligible for the exemption. That uncertainty is tough on families and tribal governments, and it's something we should fix.

For U.S. territories, federal tax law previously contained an economic activity tax credit and a possessions tax credit to encourage investment. These credits expired at the end of 2005. Another provision set to expire sends a portion of excise taxes on rum to two territories to help fund their government operations. Today's hearing provides an opportunity to consider these issues in the context of broader tax reform.

I hope today's witnesses will help us understand what roadblocks should be eliminated and what incentives work for Indian Country and the territories.

When I talk with tribes in Montana, they tell me the same thing – they want a better future for their children and less reliance on the federal government. These are goals we all share.

So let us use tax reform as an opportunity to achieve those goals. Let us think outside the box. Let us hear what might be done to help tribes and territories meet their goals.

And in the spirit of the Crow proverb, let us take this opportunity to make man's law reflect our common desires.

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