



## Tribal Government Charities - Parity

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### Summary:

- Charities funded and controlled by tribal governments do not receive the same public charity designation that other government-controlled charities are given.
- Support H.R. 3138, which amends Section 170(b)(1)(A)(vi) to end the differential treatment of tribal government charities.

### Background Information:

Tribal charities can be a vehicle of advancing education, sustaining and educating on cultural traditions, and responding to other social needs of the community. Generally, there are two choices of how a 501(c)(3) can be classified, either as a public charity or a private foundation. Public charities receive advantages over private foundations: higher donor tax-deductible giving limits, the ability to attract support from other public charities and private foundations, and less lengthy and complex 990 tax returns.

Under current law, tribal governments can form a 501(c)(3) as a private foundation only. Private foundations have restrictive regulations that can double compliance costs annually. Support from state and local governments are treated as "public support" for purposes of public charity classification. In addition, organizations formed to support state and local governments are treated as "supporting organizations" for purposes of public charity classifications, while the status of organizations formed to support tribal governments is unclear.

The lack of parity between tribal governments and other governments under the public charity classification rules makes it difficult for tribes to form and fund separate 501(c)(3) nonprofit organizations. As a result, tribal governments often operate foundations as unincorporated funds or divisions of the government. While such governmental charities can be effective if fully funded by the tribal government, they are not the most effective vehicles for leveraging tribal resources and raising additional charitable dollars from private foundations, corporations and individual donors.

### Recommendation:

In order for tribal charities to thrive, these organizations should not be treated as private foundations but should enjoy the same status as other government-controlled foundations and charities. Support H.R. 3138, which amends Section 170(b)(1)(A)(vi) (i.e., the public charity classification test that is satisfied based on how much support a charity derives from "public" sources) and treat charitable organizations formed to support tribal governments the same as organizations formed to support state and local governments for purposes of Section 509(a)(3).