



# Lower Sioux Indian Community in the State of Minnesota

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*Cansayapi Otunwe*

April 26, 2023

The Honorable Ann Rest, Chair  
Taxes Committee  
Minnesota Senate  
328 Capitol  
Saint Paul, MN 55155

Sent by electronic mail to: [Christie.Blood@senate.mn](mailto:Christie.Blood@senate.mn)

***RE: S.F. 1811 Omnibus Tax Bill, Article 17, Section 1 (taxes and fees; refund sharing agreements with Indians)***

Dear Chair Rest:

Lower Sioux Indian Community in the State of Minnesota, a sovereign and federally recognized Indian tribe, writes to share its concerns regarding proposed language in the Senate Omnibus Tax Bill, Article 17, §1, subd. 1(d) for taxes and fees; refund sharing agreements with Indians.

The Community has concerns with the proposed language, as written, in subsection (d) that requires the Commissioner to consider tribal enrollment records as a factor for confirming a Tribe's tax refund amount, in part, based on enrolled members of a Tribe who live on or adjacent to the reservation.

The Community strongly objects to the proposed language for two reasons: (1) the per capita refunds under the tribal-state tax agreements are based on "Indian population" which is not the same as enrolled members, and (2) requiring the disclosure of confidential enrollment documents infringes the tribal sovereign immunity of the Community.

There is no specific method for determining a tribal population imposed by federal statute or regulation. As you are aware, where determining a tribal population was necessary, the Bureau of Indian Affairs relied on the American Indian Population and Labor Force Report—the same report referenced in Minnesota Statute § 270C.19, subdivision 1, which is no longer available. There is currently no replacement of the BIA American Indian Population and Labor Force Report. Other federal agencies that are required by law to determine tribal population use various statistical methods to confirm a tribe's self-certification of its Indian population. For example, the

Department of Housing and Urban Development's Indian Housing Block Grant Program determines tribal population in "formula areas" that correspond to the area where a tribe has governmental jurisdiction or provides services, 24 C.F.R. § 1000.302.

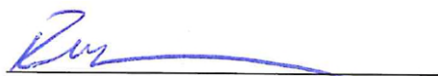
Under federal law, tribal membership is considered an internal tribal government matter. The Community possesses inherent powers of tribal self-government, including the right to form their own governments, to establish and determine membership (i.e., tribal citizenship), and to exclude persons from tribal lands. Therefore, the Community objects to a proposed mandate to access tribal enrollment data because the matter of tribal membership is within the sole purview of the Community.

And it has been federal policy to defer to tribal self-certification for federal funding available to Tribes. For example, the United States Department of Treasury's methodology for allocating American Rescue Plan Act funds defers to tribal self-certification. Tribal governments also certify Indian populations for purposes of entering into compacts and other funding agreements with Indian Health Services ("IHS") to participate in the IHS Self-Governance Program. When reviewing a tribe's self-certification of Indian population, IHS takes into account some statistical formulas developed by IHS to estimate population based on past census data and patient care statistics.

The Community urges you to replace language in subsection (d) with language that authorizes the Commissioner to instead rely on tribal self-certification of its Indian population.

Thank you, Chair Rest, for considering the Community's proposed changes. We welcome the opportunity to discuss this further at your convenience.

Pidamaya-do,



Robert L. Larsen, President

cc: Mitch Berggren, at: [Mitch.Berggren@senate.mn](mailto:Mitch.Berggren@senate.mn)