



State–Tribal Collaboration: How Tribal Entities Govern Business and Commerce

Tribal business entities vary widely in structure, governance, and legal standing, depending on the laws and traditions of each Nation. These differences are grounded in Tribal sovereignty and federal Indian law. Regardless of the specific type of Tribal entity, all interactions should be approached with the same professionalism and respect given to sovereign governments, similar to international diplomacy.

Tribal business entities may be chartered under Tribal law, federal law, or state law, which determines key attributes such as tax liability, immunity, and jurisdiction.¹

Tribally Chartered Entities

Unincorporated business entities: Tribal governments often form business entities that are unincorporated conduit of the Tribe such as a business committee or an economic development board that oversees business activities on Tribal land but do not have a separate legal entity from the Tribe. They operate in coordination with the Tribal government.

Incorporated business entities: Tribal law or ordinance may allow for a Tribally chartered for-profit entity pursuant to tribal code or resolution. These entities avoid state regulation and taxation and require no approval from federal or state authorities to establish. If the corporation acts as an integral part of the Tribe, it is exempt from federal taxation.

Limited Liability Corporations (LLCs): LLCs may be formed under Tribal law and, unlike state-chartered LLCs, allow for sovereign immunity and avoidance of state jurisdiction.

Federally Chartered Entities

For profit corporations: A Section 17 corporation is a for-profit tribal business structure created by the Indian Reorganization Act (1934), which protects Tribal assets as it is separate and distinct from the Tribal government.² These entities can be established through Tribal ordinance or law and are owned entirely by the Tribe or Tribal members, or majority-owned by Tribes or Tribal members and partnered with other non-Tribal entities, provided it is allowed by the Tribe's ordinance or law. These entities can issue tax-exempt bonds if the proceeds are used to finance essential services on behalf of the Tribal government. A Section 17 entity has sovereign immunity and does not pay federal taxes for activities on trust or reservation land.

¹ Atkinson, Karen, and Kathleen Nilles. 2008. *Tribal Business Structure Handbook*. U.S. Department of the Interior. The Office of the Assistant Secretary – Indian Affairs.

² Office of Indian Economic Development. "Choosing a Tribal Business Structure." <https://www.bia.gov/service/starting-business/choosing-tribal-business-structure#tribally-chartered-corporation-2>.

A Section 17 entity must be issued a Federal Charter of Incorporation by the Bureau of Indian Affairs regional office after submitting a resolution adopted by the Tribal Council. Once approved, the council must then ratify the charter through resolution.

State Chartered Entities

For-profit corporation: Tribes can establish a for-profit corporation under state laws through articles of incorporation.³ These entities are owned by shareholders and governed by a board of directors with shareholders exempt from liability for the corporation. These are likely subject to federal taxes as they are separate entities from the Tribe, but do not pay state taxes. These entities also do not benefit from sovereign immunity unless they are explicitly structured under Tribal control.

An LLC can also be formed through state articles of incorporation. These are easy to form, and the tax attributes of the LLC are passed down to members, resulting in limited liability for owners. LLCs get pass-through tax treatment where each owner pays federal taxes on their share of the LLC's income.

How Tribes Might Leverage Tribal Entities

All of the above incorporated entity types are wholly distinct and separate from all other Tribally owned assets. These entities are often used to manage Tribal businesses such as casinos, gas station/convenience stores, agricultural enterprises, and other economic endeavors.

Inherent sovereign powers allow Tribes to regulate economic activity on Tribal lands, including the generation, transmission, and distribution of power. A Tribal Regulatory Authority can be established through any of the entity types previously described. Tribes may use the above-described entities to acquire or build a Tribal Utility to provide utility services on the reservation. A Tribal Utility may generate and sell power on the wholesale market if interconnected to a line that is part of the Open Access Transmission Tariff.

Through these entities, Tribes may also exercise regulatory authority, which allows for the regulation of public utilities by asserting jurisdiction over energy development, rate-setting, and community energy access.⁴ A Tribal entity exercising regulatory authority may negotiate directly with the utility and regulate activities on Tribal lands without involvement of the state public services commission. This includes developing Tribal-specific utility programs for Tribal members; developing net-metering, community solar and interconnection policies; and negotiating tariffs and rates. However, this regulatory authority can be complicated by the checkerboard nature of Tribal lands and allotments held by non-Tribal members.⁵

References

<https://www.bia.gov/service/starting-business/choosing-tribal-business-structure#tribally-chartered-corporation-2>. Office of Indian Economic Development.

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³ [Choosing a Tribal Business Structure](#). Office of Indian Economic Development.

⁴ Schaff, Margaret. 2020. "Regulation of Electric Utilities on Indian Reservations: Tribal Governments' Oversight of Renewable Energy Development and Utility Providers and Authority to Create Tribal Utilities." *Energy Law Journal* 41 (20): 261. <https://www.eba-net.org/wp-content/uploads/2023/02/10-Schaff261-283Final.pdf>.

⁵ <https://www.nrel.gov/state-local-tribal/tribal-energy-collaboration>

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