

May 9, 2007

The Honorable Jeff Delzer
Speaker
North Dakota House of Representatives
State Capitol
Bismarck, North Dakota 58505

Re: Item Veto of Section 12 in HB 1012

Dear Speaker Delzer:

I signed House Bill 1012, the appropriation bill for the Department of Transportation, but veto Section 12 of the bill.

Section 12 of HB 1012 would extend the rights entitled to a member of a federally recognized tribe living on a reservation in North Dakota to any tribal member in the country, regardless of the individual's domicile.

While the motor vehicle excise tax applies to all North Dakotans, the state's taxation authority has limits in transactions involving a federally enrolled tribal member. The limit largely depends on geography. This unique exception to tax individuals differently is based primarily on geographic differences and not only tribal affiliation. According to the United States Supreme Court, tribal tax immunity jurisprudence and the doctrine of tribal sovereignty have a significant geographical component. E.g. Wagnon v. Prairie Band Potawatomi Nation, 126 S. Ct. 676 (2005). As the Court pointed out, Native Americans going beyond reservation boundaries have generally been held subject to nondiscriminatory taxation under state law otherwise applicable to all citizens of the State. E.g. id.

Section 12 of HB 1012 would remove any geographical component to tribal tax jurisprudence and extend a narrowly tailored right that applied exclusively to tribal members transacting business on a reservation to any transactions outside the reservation boundaries. The effect of this extension could cause similarly situated neighbors to be treated differently based solely on their race.

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Section 12 of HB 1012 would create inequity and open an exception that would be overly broad and exempt certain individuals from a law that is otherwise blind to a person's nationality. North Dakota's tax laws should respect tribal sovereignty but be applied equitably and without regard to race when tribal immunity based on geography is not involved.

For these reason, I disapprove and veto Section 12 of HB 1012.

Sincerely,

John Hoeven
Governor

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