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Pot Casino? Native American Tribe Sparks Marijuana Business — Tax Free

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With medical marijuana legal in most states and recreational marijuana in a growing number, there is still much talk about taxing the profits. Some fear that the industry will be taxed to death, and that the continuing federal tax problems of section 280E of the tax code, the industry faces a tax double whammy. That's one reason Native Americans might have a clever work-around. Native American gaming is big business, so why not Native American marijuana?

In 1987's *California v. Cabazon Band of Mission Indians*, the Supreme Court ruled that in states that permit gaming, tribes can conduct gaming on Native American lands unhindered by state regulation. A year later, Congress enacted the Indian Gaming Regulatory Act of 1988, creating a regulatory framework for gaming on Indian lands. Today, Native American tribes are looking to expand beyond casinos into marijuana, legal for medical use in 29 states and for recreational use in 7.



As governments try to exact on taxes to cash in, the idea of a tax-free ticket to the industry is not lost on Native Americans. Some tribes are considering changes to tribal laws as well as looking at commercial opportunities. California's Pinoleville Pomo Nation was poised as the [first tribe to grow medical marijuana](#). Federal law still outlaws marijuana, and this too could give Native American tribes big advantages. The Department of Justice has taken notice, issuing [a memorandum](#) that reviewed their policy on marijuana issues as they relate to Native American tribes. As a sovereign

nation, a [Native American tribe can open a marijuana resort even in a state where pot is illegal](#). With spreading legalization and taxes being levied right and left, tribal tax advantages could also be huge.

Now, [Electrum Partners](#) and a Seminole Indian-owned company called MCW have announced a new partnership for legal cannabis business development and expansion in a tax-free environment under tribal government. Electrum Partners handles cannabis finance, investment and advisory services. Former Chief of the Seminole Tribe, James E. Billie, is joining forces with Electrum. Electrum and MCW hope to deliver a tax free environment, limited liability, permit and zoning advantages.

Former Chief Jim Billie noted the benefits of tribal sovereignty coming to the cannabis industry, and a huge economic development opportunity for the Native American Community. “Investors, cannabis industry entrepreneurs and American Indian tribal governments have reason to rejoice over a 50%-60% competitive advantage in cash flow and federal taxes,” said Mr. Leslie Bocskor, Founder and President of Electrum Partners. “To achieve our mission of creating and owning winners in the market, this game changing, innovative and disruptive model provides new markets for licensed and regulated businesses as well as being the foundation for other business advantages created by attaching tribal government sovereignty to the cannabis industry. This will provide widespread solutions for the tax and liability burdens that most cannabis businesses face, and much more.”

“We believe in tribal sovereignty and its advantages for tribal economic development, thus by adding tribal sovereignty as an economic advantage, we simply decrease the cost and increase the profits for every business partner who takes advantage of the structure we’ve set up,” Bocskor continued. Native American tribes and their wholly owned tribal corporations are not subject to federal income taxes on their earnings. Some types of tax-exempt organizations are taxed on some types of income. Tribes are exempt from federal income taxes even when conducting commercial activities. They can form corporations to conduct business and their income remains exempt. Native Americans are U.S. citizens, and unlike their tribes, individuals *are* subject to federal income taxes. Even exempt tribal income can be taxed when distributed to individual members of the tribe.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.