Adoption Tax Credit - Parity

**Summary:**
- The current tax law creates disparity in adoptions as parents who adopt children who are non-Native American “special needs” can claim the tax credit, while parents who adopt children who are Native American “special needs” cannot.
- Support H.R. 3138, which amends Internal Revenue Code (IRC) § 7871(a) to refer to IRC § 23, which would treat tribal governments the same as states, thereby allowing adopting parents to receive an adoption tax credit when a tribe has made a determination that a child has “special needs”.

**Background Information:**
According to a 2014 study, 81 percent of the over 50,000 children adopted through public agencies were designated as having “special needs.” Families who adopt a child with “special needs” from foster care can claim a one-time adoption credit of $13,460. The adoption credit was created to reduce the number of children waiting for adoption and to help lessen the financial burden of adoptions.

The IRC allows only states to designate a child as “special needs.” Under the Indian Child Welfare Act (ICWA), tribes have exclusive jurisdiction in custody proceedings involving Native American children on reservations. Because tribal governments are unable to designate children as “special needs,” parents adopting these children through tribal courts are unable to claim the full adoption tax credit. The lack of immediate access to the credit hinders adoption efforts and burdens families who must pay court costs, adoption and attorney fees, and travel expenses.

**Recommendation:**
Support H.R. 3138, which addresses the lack of parity between states and tribal governments by amending in the tax law in IRC § 7871(a) to refer to IRC § 23, thereby treating tribes as States for purposes of IRC § 23 so that tribal determination letters can be accepted by the IRS. This adjustment would serve the purposes of the ICWA, granting appropriate recognition to tribal determinations in this tax context.

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