

A Changing Landscape for Property Taxes on Tribal Lands

By Miriam R. Woods

After many many years of advocating for the right of tribes to tax non-tribal businesses or vendors on tribal land, Indian Country is finally seeing some momentum. With the passage of the 2014 Tribal General Welfare Exclusion Act, the IRS will no longer be able to tax individual Indians who receive the benefit of tribal “general welfare” programs such as education and healthcare. The recent 11th Circuit District Court in a tax dispute at Seminole FL held that certain state taxes on leases at the Seminole property were preempted by the comprehensive leasing regulations adopted by the Obama Administration. Agua Caliente is challenging a similar state tax at the 9th Circuit and while those cases will certainly be subjected to additional litigation, the landscape is clearly shifting towards respecting a tribe’s right to impose its own tax on its own land. [Miriam Woods’](#) blog below elaborates on these cases and discusses how the recent legislation enacted in Washington State is also moving the ball forward. Now is a perfect time to begin reviewing your lease agreements and tax structure to come up with a plan to successfully begin to exercise what is a critical right of sovereignty – to determine and impose your own tax while driving economic development in Indian Country.

Throughout the nation legislators and courts are revisiting the state and local taxation of tribal land leased to non-tribal members. In late 2012, after finding that even the possibility of a state or local tax on leases by tribes may stop the tribes from imposing their own taxes, the Bureau of Indian Affairs (BIA) revised its [regulations](#) on the leasing of Indian land. Now, when a tribe leases tribal land to a non-Indian, the lease interest cannot be taxed by any state or local government.¹

Shortly after the BIA revisions were enacted, the U.S. District Court for the Southern District of Florida struck down a rental tax applied to commercial property on leased tribal land.² The Court found that the tax was expressly prohibited under the new regulations. And “[i]f Florida’s Rental Tax does not apply, an entity leasing tribal land will have additional money in its pocket—money that would then be available to the Tribe, either through negotiated higher rent or through a tribal tax.”³

Earlier this year the Agua Caliente Band of Cahuilla Indians sued Riverside County, California for collecting a possessory interest tax from leaseholders of Indian land, stating the tax infringes on tribal sovereignty: “Riverside County uses the money collected on the Reservation to benefit people living in other cities and areas far away from where the taxes are collected,” said Agua Caliente Chairman Jeff Grubbe. The complaint, filed Jan. 2 in the U.S. District Court for the Central District of California, states that the tax increases the tribe’s economic burden and devalues Indian land leases.⁴ And the tax limits the tribe’s income—the tribe agreed to forgo its

¹ 25 CFR 162.017.

² *Seminole Tribe of Florida v. Florida Department of Revenue*, 2014 WL 4388143 (S.D. Fla. May 5, 2014).

³ *Id.* at 6.

⁴ Brief of Plaintiff at 5, *Agua Caliente Band of Cahuilla Indians v. Angulo*, No. 14-00007 (C.D. Cal. Jan. 2, 2014).

own tax to avoid a double tax on its leaseholders.⁵ County officials insist the tax is valid under the new regulations.⁶

Here in Washington, Gov. Jay Inslee signed a new bill into [law](#)⁷ last April that aims to subject Indian tribes to the same conditions as state and local governments with respect to property owned exclusively by the tribes. The law expands an existing tribal property tax exemption, imposes a leasehold excise tax (LET) obligation on leasehold interests of exempt tribal property, and imposes a payment in lieu of tax (PILT) obligation with respect to exempt tribal property if there is no taxable leasehold interest in the property for LET purposes. The Department of Revenue published a chart⁸ to help taxpayers determine whether their property is taxable under the new law:

Tribal Property Owned in Fee	Inside Reservation	Outside Reservation
Non-Economic Development Property <i>*Property owned by the tribe and used to provide an essential government service other than economic development.</i>	Eligible for Exemption	Eligible for Exemption
Economic Development Property <i>*Property owned by the tribe on or before March 1, 2014 and occupied by the tribe for economic development purposes.</i>	Eligible for Exemption <i>*Annual Renewal Required</i>	Eligible for Exemption <i>*PILT agreement is a requirement for exemption *Annual Renewal Required</i>
Economic Development Property <i>*Property owned by the tribe on or before March 1, 2014 and occupied by a tenant for economic development purposes.</i>	Eligible for Exemption <i>*Upon exemption, non-tribal tenant is subject to LET *Annual Renewal Required</i>	Eligible for Exemption <i>*Upon exemption, both tribal and non-tribal tenants are subject to LET *Annual Renewal Required</i>
Economic Development Property <i>*Property acquired by the tribe after March 1, 2014 and occupied for economic development purposes.</i>	Not Eligible for Exemption	Not Eligible for Exemption

Some tribes, including [Tulalip](#), are developing their own property tax provisions and enforcement regimes now that the concern of double taxation is beginning to subside. And for now exempt improvements on tribe-owned land, taxpayers may qualify for [refunds](#) from the county on prior years' property taxes. This is a good time for tribes and lessees alike to review the new tax provisions and the terms of their leases. Please contact [Miriam Woods](#) to discuss how these developments may apply to your specific situation.

⁵ *Id.*

⁶ Brief of Defendant, *Agua Caliente*, No. 14-00007 (C.D. Cal. Jul. 28, 2014).

⁷ Ch. 207, Laws of 2014.

⁸ DOR Legis. Update, Subjecting Federally Recognized Indian Tribes to the Same Conditions as State and Local Governments for Property Owned Exclusively by the Tribe at 2 (Jul. 2, 2014), *available at* http://dor.wa.gov/Docs/Pubs/SpecialNotices/2014/SN_14_FedRecogIndianTribes.pdf.