

Property Tax Advisory

Property Tax Advisories are interpretive statements authorized by RCW 34.05.230.

THIS DRAFT PTA IS TO BE USED SOLELY FOR DISCUSSION PURPOSES. UNDER NO CIRCUMSTANCES IS THIS DRAFT PTA TO BE USED TO DETERMINE TAX LIABILITY OR ELIGIBILITY FOR A TAX DEDUCTION, EXEMPTION, OR CREDIT.

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Taxation of Permanent Improvements on Tribal Trust Land

Question: May state and local governments assess property tax on permanent improvements built on land owned by the United States and held in trust for an Indian tribe?

Answer: No. The United States Court of Appeals for the Ninth Circuit determined in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153 (9th Cir. 2013) that where the United States owns land covered by 25 U.S.C. § 465 and holds it in trust for the use of a tribe, permanent improvements on that land are exempt from state and local property taxation.

Facts: The Great Wolf Lodge is located in Thurston County on land owned by the United States and held in trust for the Chehalis Tribe. The Lodge itself (i.e., the permanent improvements and buildings on the property) is owned by CTGW, LLC, an entity in which the Chehalis Tribe has a 51 percent ownership interest.

In 2007, Thurston County began assessing property taxes on the Great Wolf Lodge. The County recognized that § 465 exempted the land from state and local taxation. It concluded, however, that the structures on the land were not tax exempt because they were owned by CTGW and not the Tribe. The Tribe and CTGW believed that federal law barred the County from imposing these property taxes and brought suit against the County and related defendants in September 2008, seeking declaratory and injunctive relief. The district court granted summary judgment to the County, holding that state and local governments are not necessarily prohibited from taxing permanent improvements, like the Great Wolf Lodge, that are owned by non-Indians. The Tribe and CTGW appealed to the Ninth Circuit Court of Appeals.

The Court of Appeals reversed the district court. Relying on *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973), the Court explained that “the question of tax immunity cannot be made to turn on the particular form in which the Tribe chooses to conduct its business.” The Court held that under

Mescalero and 25 U.S.C. § 465, state and local governments cannot tax permanent improvements built on land owned by the United States and held in trust for an Indian Tribe, stating that:

Under *Mescalero*, § 465's exemption from state and local taxation applies to permanent improvements on that land. Thus, neither Thurston County nor any other state or local entity can tax the Great Wolf Lodge or other permanent improvements on that land. Thurston County's property taxes on the Grand Mound Property are therefore invalid under § 465 and *Mescalero*. *Confederated Tribes*, 724 F.3d at 1157.

Conclusion: State and local property taxes on permanent improvements built on non-reservation land owned by the United States and held in trust for an Indian tribe are preempted by § 465. This is true without regard to the ownership of the improvements. Thus, state and local governments cannot assess property tax on permanent improvements built on land owned by the United States and held in trust for an Indian tribe.

The scope of this Property Tax Advisory is limited to whether land owned by the United States and held in trust for an Indian tribe, and the permanent improvements built thereon, are subject to state and local property taxation. This Advisory does not address the applicability of any state or local property taxation to personal property (other than permanent improvements) located on non-reservation land owned by the United States and held in trust for an Indian tribe. Nor does it address the applicability of any state and local excise taxes to activities or transactions occurring on non-reservation land owned by the United States and held in trust for an Indian tribe, including but not limited to the leasehold excise tax or other taxes on possessory interests.
