HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE TULALIP TRIBES et al., Plaintiffs, and THE UNITED STATES OF AMERICA, Plaintiff-Intervenor, v. THE STATE OF WASHINGTON, et al., Defendants.	Case No. 2:15-cv-00940-BJR **UNITED STATES' MOTION REGARDING SCOPE OF GOVERNMENT SERVICES** NOTE ON MOTION CALENDAR: October 14, 2016

INTRODUCTION

The Consolidated Borough of Quil Ceda Village—a tribally-chartered municipality on trust land within the Tulalip Reservation— was designed, financed, and built by the Tulalip Tribes and the United States. The Village remains under comprehensive tribal and federal regulation. The United States intervened in this action to prevent the State and County defendants from taxing the economic activities within Quil Ceda Village in a manner inconsistent with federal law. Specifically, the Tribe and the United States allege that State and

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County taxation within the Village is preempted by federal law, unlawfully interferes with the Tribe's sovereign right of self-government, and burdens on-reservation commerce within the Village in violation of the Indian Commerce Clause of the U.S. Constitution.

This case is limited to economic activities within Quil Ceda Village, and the authority of the State and County to tax those activities. As a result, the United States and the Tribe have taken the position, consistent with applicable case law, that the appropriate scope of evidence extends only to matters within or directly affecting commerce in Quil Ceda Village. *See* Dkt. 35 at pp. 3-4. Throughout discovery, however, the State and County defendants have sought to expand this scope, and have relied substantially on government services (a) provided outside the boundaries of Quil Ceda Village, and (b) that do not directly support or relate to the commerce within the Village. This includes State and County services provided to State and County taxpayers generally, to Tulalip tribal members generally, and to the Tulalip Reservation and County at large, mostly without any relationship to the activities being taxed. Such an expansive view is not only inconsistent with applicable case law, but also untenable as a practical matter. The United States respectfully submits this motion regarding relevant government services pursuant to the Court's Revised Scheduling Order of August 22, 2016, Dkt. 70 at p. 1.

QUESTION PRESENTED

To tax non-Indian activity on a reservation, a state must identify a regulatory function or service it performs that directly relates to the activity it seeks to tax. This case deals solely with economic activities within the boundaries of a tribally chartered municipality, Quil Ceda Village, on tribal trust land within a reservation. Can the State and County legally justify their taxation within the Village based on services provided outside the Village, and which do not directly support or relate to the economic activities being taxed?

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BACKGROUND

Tulalip is the political successor in interest to the Snohomish, Snoqualmie, Skykomish, and other allied tribes and bands that signed the 1855 Treaty of Point Elliott with the United States.[1] Lands comprising the Tulalip Reservation were reserved by the Treaty, as well as by Executive Order. The Tulalip tribal government is organized pursuant to the Indian Reorganization Act, 25 U.S.C. § 5123,[2] and the Tribe's Reservation sits just west of U.S. Interstate 5 in Snohomish County.

The Tribe is unique in that it has chartered its own separate municipality, the Consolidated Borough of Quil Ceda Village, pursuant to a federally approved tribal law. The municipality encompasses approximately 2,000 acres of land within a portion of the Tulalip Reservation, all of which are held in trust by the United States for the benefit of the Tribe.

The Tribe and the federal government worked in concert to develop these lands as a source of tribal economic development. With direct financial support and other assistance from the federal government, Tulalip constructed the infrastructure necessary to support a major retail, tourism, entertainment, and commercial center at Quil Ceda. The Tribe and the federal government contributed tens of millions of dollars to this project, and the Tribe continues to provide the vast range of governmental services to those operating at or visiting the Village.

The Village is governed by a Village Charter and a Village Council. Pursuant to the Tulalip Leasing Act of 1970, Pub. L. No. 91-274, 84 Stat. 302 (codified as amended at 25 U.S.C. § 415(b)), Tulalip comprehensively regulates all aspects of the leasing of trust lands within the

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[1] For purposes of this motion, the factual background includes facts alleged in the Complaint filed by the Tribe and Village (Dkt. 1) and the United States' Complaint in Intervention (Dkt. 24).

[2] Formerly 25 U.S.C. § 476. *See* http://uscode.house.gov/editorialreclassification/t25/index.html.

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Village, and the activities on those lands, pursuant to a Tulalip Leasing Code, federally approved tribal ordinances, and individual lease provisions. Pursuant to the Indian Trader Statutes, 25 U.S.C. § 261 *et seq*., and their implementing regulations, all non-Indian businesses at Quil Ceda hold a federal Indian trader's license issued by the United States Bureau of Indian Affairs. Numerous other federal agencies are responsible for health and safety inspection services and environmental review, regulation, and permitting within Quil Ceda Village.

Through their planning, design, and development activities, investment in infrastructure, provision of government services and amenities, and selection and management of commercial tenants, Tulalip and the Village have implemented federal goals of tribal economic development, self-sufficiency, and self-determination, all arising out of federal statutes and regulations, and have converted a vacant stretch of land on the Tulalip Reservation into a thriving economic center.

The State and County Defendants, to the exclusion of the Tribe and Village, collectively impose approximately $40 million annually in personal property taxes, business and occupation (B&O) taxes, and sales and use taxes on the personal property, businesses, and retail sales occurring on the Tribe's leased trust lands within Quil Ceda Village. The Tribe, in its sovereign capacity, has authority to impose its own sales and use, B&O, and personal property taxes at Quil Ceda Village. But because of the extent of State and County taxation, the Tribe cannot impose its own taxes without adversely affecting on-reservation business at the Village. The Tribe and the United States have alleged that double taxation would significantly reduce or extinguish sales and commerce within the Village, significantly reduce the Village's success as a commercial center, and strongly deter new and existing businesses from locating and remaining there.

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The Tribe and Village filed their Complaint in this action on June 12, 2015. Dkt. 1. The United States moved to intervene on August 6, 2015, Dkt. 14, which the Court granted on September 1, 2015. Dkt. 23. The parties exchanged initial disclosures on October 21, 2015. In those disclosures, the State and County defendants identified over 200 named individuals they claimed were likely to have discoverable information, and 86 sources and locations of information. They also included many other unnamed individuals and locations of information. In fact, State broadly maintains that "any individual who works for the State or contracts with the State to provide services could have discoverable information." Dkt. 32 at p. 14.

The Tribe and the United States raised the present scope-of-evidence issue in the parties' Joint Status Report and Discovery Plan on October 28, 2015 (Dkt. 35 at pp. 3-4):

> It is the position of the Tribe and the United States that the appropriate scope of these subjects of discovery and the evidence in this case extends to matters within or directly affecting the Consolidated Borough of Quil Ceda Village, or otherwise having some identifiable nexus with activities occurring within the boundaries of the Village, consistent with the allegations of their complaints.

The State and County Defendants did not address this scope directly, but instead claimed that "the appropriate scope of these subjects of discovery and the evidence in this case extends to all facts alleged in the Complaints of the Tribe and the United States and to all matters relevant to the defense of the State and the County under applicable federal law." Dkt. 35 at p. 4.

Discovery began shortly thereafter and is ongoing. But because of the State's and County's excessively broad interpretation of which services are relevant, discovery has been lopsided. For example, the United States has objected to answering discovery as to government services or financial investment in activities outside the boundaries of Quil Ceda Village which do not directly affect the Village. *See*, *e.g.*, Declaration of Daron T. Carreiro at pp. 6, 8, 10, 11, 21, 30, 32, 34. Instead, it has limited its responses to federal services and federal direct funding

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of activities within or directly affecting Quil Ceda Village which have some substantial nexus to the specific activities subject to the taxes challenged in this action. *Id.* The State and County, on the other hand, have identified several types of government services that they claim justify taxation within Quil Ceda Village, including, for example, providing election services and voter registration services to County residents Reservation-wide; herbicide spraying on the Tulalip Reservation; and grants to Tulalip artists.

The United States' efforts to narrow the scope of discovery, *see, e.g.*, Carreiro Decl. at pp. 37-44, have been unsuccessful. For example, the United States served an interrogatory to the County defendants asking, "[w]ith respect to Section II of your Initial Disclosures, identify which individuals have knowledge about County services provided within Quil Ceda Village, and state the substance of each individual's knowledge." *Id.* at p. 46. In response, the County raised numerous objections, and has said that it will not respond to the interrogatory. *Id.* at 47.

On August 22, 2016, the Court entered a revised Scheduling Order (Dkt. 70), setting various upcoming briefing, discovery, and expert-related deadlines.

ARGUMENT

I. Overview of the *Bracker* balancing test.

When a state asserts taxation authority over non-Indian activities in Indian country, courts conduct a balancing test to determine whether state authority is preempted by federal law.[3] This preemption analysis – termed the "*Bracker* test" or "*Bracker* balancing" – is unique in that it is not controlled by the standards of preemption developed in other areas of the law, and an

[3] By contrast, "when a State attempts to levy a tax directly on an Indian tribe or its members inside Indian country, rather than on non-Indians, [the Supreme Court employs] a more categorical approach" and "the [state] tax cannot be enforced absent clear congressional authorization." *Okla. Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 458-59 (internal quotation marks omitted).

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express congressional statement of preemption is not required. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980); *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue of New Mexico*, 458 U.S. 832, 838 (1982). Instead, courts conduct a balancing test to determine whether the federal and tribal interests in a particular activity outweigh the state's interest in taxing that activity. *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334-36 (1983); *Bracker*, 448 U.S. at 144-45.[4]

For example, in *Bracker*, the Supreme Court invalidated two state taxes—a motor vehicle license tax and a fuel tax—which Arizona sought to impose upon a non-Indian company harvesting timber on the White Mountain Apache reservation. In considering the federal interests, the Supreme Court cited the "detailed" and "comprehensive" federal regulation of on-reservation timber harvesting. 448 U.S. at 145-48. The Court also relied upon the "firm federal policy of promoting tribal self-sufficiency and economic development" by citing, among other statutes, the Indian Reorganization Act and the Indian Self-Determination and Education Assistance Act. 448 U.S. at 143 & n.10. Tribal interests included the tribe's financial investment in its timber resources, including expenditures for reforestation, fire control, wildlife promotion, road improvement, safety inspections, and general policing of the forest. *Id.* at 150. Significantly, "[t]he roads at issue [were] built, maintained, and policed exclusively by the Federal Government and the Tribe, and its contractors." *Id.* at 150. The state, on the other hand, asserted only a general desire to raise revenue, without identifying any other specific regulatory interest served by the taxes sought to be imposed. In balancing federal and tribal interests

[4] While this section focuses on the legal standard applicable to Count I of the United States' Complaint ("Preemption"), *see* Dkt. 24 at p. 20, the Tribe and the United States have stated that the same scope of evidence is applicable to, and will be used in support of, all other claims for purposes of this case. Dkt. 69 at pp.11-13.

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against the relevant state interests, the Court held that the state's interests were insufficient to overcome the detailed federal regulatory scheme and tribal interests at issue. *Id.*

Similarly, in *Mescalero*, the Supreme Court held that state regulation of on-reservation hunting and fishing by non-Indians was preempted by countervailing federal and tribal interests in the activity. The Court again cited federal statutes, such as the Indian Reorganization Act and the Indian Self-Determination and Education Assistance Act, as embodying the federal government's commitment to promoting tribal self-sufficiency and economic development. 462 U.S. at 334-35 & n.17. The Court also relied upon substantial financial and technical efforts by the federal government and the tribe to develop the Mescalero Apache Tribe's fish and wildlife resources to attract non-Indian tourism. 462 U.S. at 327-29. The Court additionally cited the comprehensive fish and game management program governed by tribal ordinances and subject to approvals by the U.S. Department of the Interior. *Id.* The state, on the other hand, did not contribute in any significant respect to the development or the maintenance of on-reservation fish or wildlife resources. Moreover, the state failed to identify any regulatory function or service in connection with on-reservation hunting and fishing by non-Indians which would justify the state's concurrent regulatory authority over such conduct; instead, the state essentially argued only that it would lose income. *Id.* at 341-42.

II. State and County services provided outside the boundaries of Quil Ceda Village, and which do not directly support or relate to activities within the Village, cannot serve as support for State and County taxation.

For state interests in a particular tax to outweigh federal and tribal interests, the state must show that its tax relates to a specific service provided by the state in connection with the taxed activity. *Ramah*, 458 U.S. at 843-45 & n.10; *Bracker*, 448 U.S. at 150. This is because a state's "general desire to increase revenues" is not sufficient to justify state taxation of non-Indian

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activity in Indian country. *Ramah*, 458 U.S. at 845; *see also Bracker*, 448 U.S. at 151 ("where respondents are unable to justify the taxes except in terms of a generalized interest in raising revenue, we believe that the proposed exercise of state authority is impermissible."); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 343 (1983) (state's "general desire to obtain revenues is simply inadequate"); *Hoopa Valley Tribe v. Nevins*, 881 F.2d 657, 661 (9th Cir. 1989) ("Showing that the tax serves legitimate state interests, such as raising revenues for services used by tribal residents and others, is not enough.") (internal citations omitted).

The Supreme Court has rejected attempts by state governments to rely on an overly broad scope of services to justify taxation. In *Ramah*, the State of New Mexico sought to impose its gross receipts tax on a non-Indian construction company that was building an on-reservation school, attempting to justify its tax based upon general services provided by the state to both the contractor and to the tribe. In invalidating the tax, the Court cited the absence of a relationship between the state taxes and the state services. In particular, the Court held that state services directed toward business activities off the reservation could not justify a tax imposed upon the contractor for the construction of a school on tribal lands. 458 U.S. at 843-44. Moreover, the Court held that the state declined to take responsibility for the activity (educating the affected Indian children), and that the state's provision of services generally to the Ramah Navajo Indians was not sufficiently related to the taxed activity (school construction). *Id.* at 843-45 & n.10.

The Supreme Court in *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989), did not abandon the requirement from *Bracker* and *Ramah* that there must exist a relationship between the services provided by a state and the on-reservation activities it seeks to tax. While a portion of the *Cotton Petroleum* opinion references off-reservation state services, as well as state services provided generally to tribal members, it does so for very different reasons.

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In *Cotton Petroleum*, it was the non-Indian taxpayer (and not the state) who sought to introduce evidence of the state's off-reservation services and other unrelated services to tribal members. 490 U.S. at 170. But it did so in support of a constitutional proportionality argument (arguing that total state expenditures must equal total state tax collections) and not in support of a preemption or *Bracker*-balancing argument. *Id.* In fact, the non-Indian plaintiff, Cotton Petroleum, did not even argue preemption as an independent claim in the lower courts. *Id.* at 172 and 176 n.11; *see also Cotton Petroleum v. State*, 745 P.2d 1170, 1172 (N.M. Ct. App. 1989) ("Cotton, on the other hand, contends that this case is not a preemption case because the economic impact on the tribe is minimal and is not a primary consideration."). The plaintiff argued that preemption was not the legal standard, and asked the court to instead "adopt a new analysis" of apportionment. 745 P.2d at 1172.[5]

Nevertheless, the Supreme Court addressed preemption in section III of its opinion, 490 U.S. at 176-187. And in this Section, the Supreme Court described and relied upon *Ramah* and *Bracker* at length. Among other things, it highlighted that the state governments in *Bracker* and *Ramah* did not contribute in any significant respect to the economic activities they sought to tax (except to tax them). The Court in *Cotton Petroleum* distinguished those cases from the one

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[5] As a result of this case strategy, the plaintiff also did not put on any evidence of the state tax burdening the tribe economically. 490 U.S. at 173 ("the record contained no evidence of any adverse impact on the Tribe and, indeed, indicated that the Tribe could impose even higher taxes than it had without adverse effect"). The trial court therefore determined that no economic burden fell on the tribe by virtue of the state taxes; that state taxes did not affect the tribe's ability to collect its own taxes, or impose a higher tax; and that double taxation did not deter the relevant economic activity (on-reservation oil and gas production). *Id.* at 171-72; *see also Cotton Petroleum v. State*, 745 P.2d 1170, 1175 (N.M. Ct. App. 1989) ("The record contains no evidence of an impact of tribal sovereignty" and "[t]he Tribe's own consultant indicated that the Tribe could charge an even higher tax despite the state taxes imposed on Cotton.").

The state court, and ultimately the Supreme Court, based their opinions on these facts, which are distinguishable from the situation at Quil Ceda Village, where state taxes do in fact affect the tribe's ability to collect its own taxes, or impose a higher tax, and where double taxation would significantly reduce or extinguish sales and commerce within the Village and would strongly deter new and existing businesses from locating and remaining there.

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before it, citing state services provided to the plaintiff, Cotton Petroleum, in connection with the taxed activity (oil and gas production), as well as the state's regulation of wells. *Id.* at 185-86.

But the Supreme Court's analysis of off-reservation state services, and other services provided to tribal members generally, appears in a separate section IV of the opinion, *id.* at 187-191, addressing the plaintiff's proportionality argument, where Cotton Petroleum itself presented "evidence that tax payments by reservation lessees far exceed the value of services provided by the State to the lessees, or more generally, to the reservation as a whole." *Id.* at 189. In other words, this evidence was proffered by the taxpayer, not the state (and apparently without objection), and for an entirely different legal theory. This portion of the opinion makes no reference to *Ramah* or *Bracker* (which, by contrast, are described throughout the Section III preemption analysis of the opinion).

When read in context with the rest of the opinion and procedural history of the case, *Cotton Petroleum*'s reference to off-reservation state services, and services provided to the reservation generally, arises under different circumstances as part of the analysis of an entirely distinct legal issue. As a result, the *Ramah* limitation on the scope of relevant evidence for preemption under *Bracker* balancing remains the law, and was neither overturned nor modified by *Cotton Petroleum*.

The Ninth Circuit has also required a direct connection between state taxes and the activity to be taxed, describing that connection as a "close relationship," "directly relate[d]," or "narrowly tailored" requirement. *See Cabazon Band of Mission Indians v. Wilson*, 37 F.3d 430, 435 (9th Cir. 1994) ("this court has required that the State demonstrate a **close relationship** between the tax imposed on the on-reservation activity and the state interest asserted to justify such tax") (emphasis added); *Hoopa Valley Tribe v. Nevins*, 881 F.2d 657, 661 (9th Cir. 1989)

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(state tax preempted where it did not fund services "**directly relate[d]**" to the activity being taxed) (emphasis added); *Crow Tribe of Indians v. Montana*, 819 F.2d 895, 901 (9th Cir. 1987) (even if state taxes are supported by "legitimate" state interests, the taxes must also be "**narrowly tailored**" to achieve those interests) (emphasis added).[6]

Even where the Ninth Circuit has upheld state taxation of non-Indians under *Bracker*, it has done so only after balancing state interests that directly relate to, or have some close connection with, the activity being taxed. *See, e.g.*, *Gila River Indian Community v. Waddell*, 91 F.3d 1232, 1238 (9th Cir. 1996) (relying on state services described as "critical to the success" of a tribal race park and amphitheater);[7] *Salt River Pima-Maricopa Indian Cmty. v. Arizona*, 50 F.3d 734, 735 (9th Cir. 1995) (relying on services provided within and with some direct connection to a shopping mall).

The "direct connection" requirement applies in other circuits as well. In a recent Eleventh Circuit case involving a state rental tax imposed upon non-Indian lessee casino operators on a reservation, the State of Florida attempted to justify its tax in the very same

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[6] In *Barona Band of Mission Indians v. Yee*, the Ninth Circuit stated, in general terms, that "[r]aising revenue to provide general government services is a legitimate state interest," 528 F.3d 1184, 1192-93 (9th Cir. 2008), citing as authority an earlier iteration of the *Crow* case, 650 F.2d 1104, 1113 (9th Cir. 1981) ("*Crow I*") ("Of course, revenue raising to support government is a proper purpose behind most taxes."). It is important to note, however, that even *Crow I* itself recognized that merely asserting a legitimate state interest is not enough to justify taxation of non-Indians within a reservation: in preemption balancing, the state tax must also be "**carefully tailored** to effectuate the state's legitimate interests." 650 F. 2d at 1114 (emphasis added). And later, *Crow II* made clear that, to survive preemption, a state must show that its taxes are "**narrowly tailored**" to achieve its interests. 819 F.2d at 901 (emphasis added). The rule from these cases, and from *Ramah*, *Bracker*, and *Mescalero*, remains: a state's generalized interest in raising revenue cannot justify taxation of non-Indians in Indian country.

[7] To be clear, case law does not require that the dollar amount of the tax be *proportional* to the dollar amount of services provided by the state. *Cotton Petroleum*, 490 U.S. at 185 & n.15 (1989). But regardless of the comparable dollar amounts of state services and state taxes, the rule remains that the state services proffered to justify state taxation of an activity must be closely related or directly connected to that specific activity. The Ninth Circuit conflates these distinct issues in *Gila*, 91 F.3d at 1239, purporting to address the direct relationship requirement, but actually citing the proportionality rule from *Salt River* and *Cotton Petroleum*.

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manner that the State and County here attempt to justify their taxes at Quil Ceda Village: by pointing to services provided throughout the reservation generally, "including law enforcement, criminal prosecution, and health services, as well as intangible off-reservation benefits . . . such as infrastructure and transportation services." *Seminole Tribe of Florida v. Stranburg*, 799 F.3d 1324, 1341 (11th Cir. 2015), *cert. denied sub nom. Seminole Tribe of Florida v. Biegalski*, 136 S. Ct. 2480 (2016). The Eleventh Circuit rejected that attempt, holding that "none of the services cited by [the state] is critically connected to the business of commercial land leasing on Indian property—the activity taxed by the Rental Tax." *Id.* at 1342. The Eleventh Circuit went on to hold that "[t]he State of Florida has not shown any state interest in its Rental Tax beyond the general raising of revenue to provide generalized services." *Id.* at 1343. So too here with State and County taxation at Quil Ceda Village.

Contrary to this rule, the State and County appear determined to rely on government services provided outside the boundaries of Quil Ceda Village, and which do not directly support or relate to any of the commerce they tax within the Village. This includes State and County services provided to State and County taxpayers generally, to Tulalip tribal members generally, and to the Tulalip Reservation and Snohomish County at large. Again, according to the State, "virtually any individual who works for the State or contracts with the State to provide services could have discoverable information." Dkt. 32 at p. 14.

The United States, in contrast, asserts that *Bracker* and other applicable case law mandate that the focus of balancing be on those services directly related to Quil Ceda Village. For its part, the United States intends to use the following types of evidence in support of its claims:

- Federal statutes, treaties, regulations, and the broad policies that underlie them, to inform the federal interests related to Quil Ceda Village, Village governance, leasing of Village lands, federal licensing of Village business, and commerce within the Village.

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- The United States' direct financial investment in planning, designing, financing, constructing, and operating Quil Ceda Village, including its physical infrastructure (road projects, street lighting, utilities, storm water planning, storm water system upgrades, outlet mall improvements, and environmental mitigation and remedial actions within Quil Ceda Village).

- Government services and regulatory activities provided by the United States within Quil Ceda Village, such as federal licensing of Quil Ceda Village businesses; federal environmental inspections, environmental cleanup activities, and environmental regulation of businesses/facilities within Quil Ceda Village; federal health, safety, and food service inspections within Quil Ceda Village; technical oversight, training, and assistance to tribal health inspectors and food handlers within Quil Ceda Village; federal permitting of construction projects, wetland redevelopment, and habitat improvements within Quil Ceda Village; and federal review and approval of tribal ordinances applicable within Quil Ceda Village.

See Dkt. 69 at pp. 4, 6-8. Contrast these with some of the governmental services that the County appears to proffer in support of its alleged interests in imposing and collecting taxes within Quil Ceda Village:

- Cost of providing election services and voter registration services to County residents reservation-wide.

- Herbicide spray expenditures throughout the Tulalip Reservation.

- $540,000 for the acquisition of a piece of property to provide access to a County-owned property on the Tulalip Reservation, but outside the boundaries of, and with no apparent connection to, Quil Ceda Village.

Many of the governmental services proffered by the State similarly lack any direct connection to Quil Ceda Village:

- State seminars and conferences that include tribal member attendance.

- Grants by Evergreen State College to Tulalip artists.

- Services provided by the Washington State Veterans Association to veterans, which may include tribal members.

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These are not services closely related or directly connected to the economic activities being taxed within Quil Ceda Village. Rather, they lack the necessary nexus to the Village and are irrelevant to, much less demonstrative of, a sufficient state or local interest to overcome preemption. To be sure, tax revenues collected within the Village fund State and County services throughout the State and County generally. And no one disputes that individual tribal members within Snohomish County may receive some State and County services similar to other County residents. But such services are legally insufficient to support State and County taxation within the Village. While these services may pertain to a generalized interest in raising revenue, they cannot justify State and County taxation within Quil Ceda Village, as they are not directly related to the specific activities being taxed.

III. Defendants' proposed scope of government services is untenable as a practical matter.

The requirement of a close relationship, or direction connection, is compelled by controlling case law. But even if that were not the case, such a requirement should still be imposed here for practical reasons based on the Tribe's and United States' substantial role in regulating and providing governmental services and funding throughout the Reservation, separate from and unrelated to the activities within Quil Ceda Village. If Reservation-wide funding and services unrelated to Quil Ceda Village are part of the Court's consideration, the United States would have to dramatically expand its discovery and evidence in response to already-served discovery requests about such services.

For example, the United States described in its discovery responses that, for the U.S. Department of Health and Human Services alone, it had located over 900 financial awards totaling over $100 million dating back to 2007 (i.e., only a portion of the date range requested in discovery), for a wide range of services delivered throughout the Tulalip Indian Reservation,

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including but not limited to Head Start, diabetes care and prevention, child support, and nutrition services. *See* Carreiro Decl. at 33. And for the U.S. Environmental Protection Agency, the United States had identified millions of dollars in awards for Reservation-wide services addressing indoor air quality in tribal homes, monitoring amphibian resources, marine shoreline mapping, monitoring Puget Sound water resources, and reducing air emissions from individually owned fishing vessels. *Id.* The United States has since identified millions of dollars in additional funding provided within the Reservation, but outside Quil Ceda Village, by several other federal agencies.

These dollar figures reflect only federal grant and other direct funding of activities within the Reservation, and do not account for the additional regulatory role of the United States throughout the Reservation, where federal activities are extensive but not necessarily calculated, itemized, budgeted, or tracked separately according to specific dollar amounts by the relevant federal agencies providing the service. The United States described in its discovery responses some of the on-Reservation activities of just one federal agency as an example, Carreiro Decl. at 30-31, which were by no means exhaustive for that one agency, and did not include the Reservation-wide services and activities performed by the many other federal agencies.

This effort of gathering, producing, and presenting such broad and extraneous evidence is not mandated by applicable case law, and should not be necessary for any of the parties.

CONCLUSION

The State and County cannot legally justify their taxation within Quil Ceda Village based on services provided outside the Village which do not directly support or relate to the economic activities being taxed. Because this case deals solely with economic activities within Quil Ceda Village, and because so many of the services proffered by the State and County lack any

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connection to commerce within the Village, the Court should preclude the State and County, as a matter of law, from relying on such services in resolving the legal claims in this case.

Respectfully submitted this 22nd day of September 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2016, I electronically filed the foregoing Motion Regarding Scope of Government Services with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following:

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