

TRIBAL TAX SOVEREIGNTY – HB 2148

Protect Sovereignty Rights | Promote Economic Development



Oregon’s nine federally recognized Tribal governments support the 2015 Tribal Tax Sovereignty legislation to affirm Tribal sovereign authority, and clarify that Tribal governments are the sole government with authority to tax real property improvements on Tribal trust land (this does not apply to centrally assessed property). This legislation is based on the recent U.S 9th Circuit Court ruling and the subsequent Washington Department of Revenue rule.

The Tribal Tax Sovereignty legislation will bring needed clarity to Oregon taxing statutes on trust land by codifying existing practice. Importantly, it will have no fiscal impact on local governments.



HB 2148 SCOPE:

- Clarifies current Oregon practice that Tribal governments are the only governmental entities that can impose taxes on real property improvements (e.g. land, land improvements, buildings and structures) on Tribal trust land, regardless of ownership.
- Legislation is based on facts and conclusions from the U.S. 9th Circuit Court *Chehalis vs. Thurston County Board of Equalization*, 724 F.3d 1153 (2013) decision.
- Is in line with the Washington DOR rule, which was issued after the U.S. 9th Circuit Court decision on the *Chehalis* case.
- Has no current fiscal impact to state or county governments.
- Is limited to permanent improvements on real property as defined by ORS 307.010. It does not address other taxes or property interests.
- Fee lands and centrally assessed property are not affected by this legislation.



NEED FOR LEGISLATION:

- Lack of clarity in state law discourages economic development on Tribal trust lands because of the fear of being taxed by Tribal and local governments for the same permanent improvements. This tax uncertainty for businesses hinders economic development and job growth for local communities.
- Tribes already provide and/or pay for governmental services on Tribal trust lands, either by direct service or through intergovernmental agreements with local governments.
- Costly and unnecessary litigation that was seen in Washington and other states should be avoided in Oregon.



BENEFITS: TRIBAL

- Protects sovereignty rights.
- Provides clarity on the issues of real property taxation on Tribal trust land.
- Provides businesses certainty on what entities can tax them.
- Promotes economic development.

BENEFITS: CITIES/COUNTIES

- Economic development leads to more income in the county – more homeowners and taxpayers.
- Facilitates Tribal taxing districts that help defray the cost of providing governmental services.

Legislation Background:

The U.S. Ninth Circuit Court of Appeals (whose jurisdiction includes Oregon) ruled in *Confederated Tribes of the Chehalis Reservation vs. Thurston County Board of Equalization* that federal law at 25 U.S.C. §465 preempts state and local taxes on permanent improvements located on Tribal lands held in trust by the United States. The Ninth Circuit ruling in *Chehalis* was not appealed to the U.S. Supreme Court. Their ruling stated it was made without regard to ownership (Indian/non-Indian).

“The power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management.”

(U.S. Supreme Court Ruling)

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Oregon Indian Country Background

The Nine Federally Recognized Indian Tribes in Oregon:

- Are sovereign nations governed by their own Constitution and bylaws.
- Have formal government structures and court systems.
- Enact laws, regulations, and ordinances to govern the activities within Indian Country.
- Maintain government-to-government relationships with the United States and the State of Oregon.

What is Indian Country¹?

Federal law defines Indian Country as:

1. All land within the limits of an Indian reservation; and
2. Off-reservation dependent Indian communities; and
3. Off-reservation Indian trust land.

Indian Country Contains:

- **“Trust Land”** is owned by the U.S. Government and is held in trust for a Tribal government or individual Tribal member. This legislation applies solely to property on trust land.
- **“Fee land”** within a reservation can be owned by a Tribal government, individual Indian, or non-Indian. This legislation will not impact taxation of fee land.

Taxes and Services

As sovereign nations with formal government structures, Oregon tribes impose a variety of taxes on both Indians and non-Indians who live and conduct business activities within the reservations. These taxes include:

- Property taxes
- Motor vehicle fuel taxes
- Cigarette taxes
- Transient lodging taxes
- Alcohol taxes
- Business Privilege taxes

Tribal taxes help defray the cost of providing essential governmental services to all reservation community residents (Indian and Non-Indian). Through Tribal taxes, federal contracting, or by entering into inter-governmental agreements, Tribal governments provide:

- Public safety (i.e. fire, police, emergency medical response)
- Water, sewer and telecommunication services and infrastructure
- Realty, probate and forestry
- Environmental Health
- Natural resource and fishery management programs
- Zoning and land use services
- Tribal court systems
- Cultural and native language programs
- Public transportation services
- Schools and education
- Social welfare programs
- Medical and behavioral/mental health
- Housing
- Economic and Community Development

¹ Federal Statute: 18 U.S.C. §1151