Confederated Tribes *of the*
Umatilla Indian Reservation

Board of Trustees & General Council

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Testimony of the Confederated Tribes of the Umatilla Indian Reservation
On HB 2148, Tribal Tax Sovereignty
Before the House Revenue Committee

February 26, 2015

Good Afternoon Chair Barnhart, Vice-Chair Bentz and Members of the Committee:

On behalf of the Confederated Tribes of the Umatilla Indian Reservation, this written testimony is to support HB 2148. The state or its political subdivisions do not impose taxes on permanent improvements attached to tribal trust lands. The Bill is important to the Umatilla Tribes to codify that current practice.

HB 2148l is specific to tribal trust lands, which are held in the name of the United States in trust for the benefit of a federally recognized tribe or individual Tribal member(s) land owners. This legislation applies solely to trust land property held in the name of the United States, and not apply to Reservation lands not held in name of the United States.

This rule would provide clarity that Tribal Governments are the sole entity with the authority to tax real property improvements on Tribal Trust land. The Bill is consistent with the federal law protection of permanent improvements on tribal trust lands. Because the state currently does not attempt to impose such taxation, the Bill is revenue neutral.

We, along with the other federally recognized tribes in Oregon worked to develop this concept in a Government-to-Government process. In that process the Department of Revenue helped shape the HB 2148. The cooperation of Association of Oregon County Assessors and the Oregon Association of Counties for their work with us in the interim to craft this concept is appreciated.

Finally, we support a solution that us all avoid costly litigation, and promote a tax policy that supports legal certainty on the Umatilla Indian Reservation on which governments can tax permanent improvements on trust lands.

UMATILLA TRIBES

The Umatilla, Walla Walla and Cayuse Tribes, as sovereigns, entered into the Treaty of 1855 with the U.S. Government. Under that Treaty, we provided land cessions to the United States, reserved perpetual use rights across traditionally hunted and fished areas, and reserved a permanent homeland known as the Umatilla Indian Reservation. The Reservation lands were held in the name of the United States in trust.

We have a long relationship with the federal government. We adopted a constitution and bylaws in 1949. Since then, Tribal government has enacted dozens of Tribal laws and ordinances, which include codes for public safety, water and land use, an independent judiciary, taxes and economic development.

As a federally recognized tribe, the Umatilla Tribes are considered a self-governance tribe. This means that the United States has transferred its Federal programmatic authorities and resources to us in accordance with federal statutes and policies for tribal self-governance. For the last 20 years, Umatilla has compacted those functions from the Bureau of Indian Affairs for education, police, fire, ambulance, roads, realty or land management, public works, natural resources, environmental, planning and economic development along with social services. Congress and the federal agencies have chronically underfunded those services, which cause us to make up the shortfall in providing those services. In addition to the federal compacted functions, our government provides critical funding, facilities and services for a charter school on the Reservation, and public transportation across a three county area in Oregon and links to a 3 county area in SE Washington.

The Umatilla Tribes implement and collect taxes, which defray only a portion of the services we provide. When we can't provide services, we enter into agreements with local governments. We have an interest in protecting tribal trust lands from outside jurisdictions reaching into our reservations and extracting additional taxes for the same one that our tribe imposes.

The Umatilla Indian Reservation is the largest employer in Umatilla County, employing over 1,750 people, over 60% of who are non-Indian. A 2012 report noted that contributions of tribes to Oregon's local economies stimulate more than $1.5 billion in economic output statewide, supporting a total of 13,153 jobs and nearly $507 million in wages and benefits.

As one of the largest employers in NE Oregon, this bill is important to us and the broader community to promote economic development on the Umatilla Indian Reservation. Currently, we have enterprises on our Tribal trust land. We own the trust land, and developed the property known as Coyote Business Park, its improvements, provided the necessary infrastructure, provide the government services to the property, and impose taxes to support those services. The Umatilla Tribes imposes a tribal government a comprehensive taxation structure on businesses located at Coyote Business Park.

Without HB 2148, tax certainty is not achievable on the Reservation. For businesses wishing to locate our Reservation, there is no state tax policy for whether the state will attempt to taxes on the permanent improvement on trust lands. We can tell them what past practice has been, which is Umatilla County has not taxed businesses for permanent improvements attached to tribal trust lands, but there is nothing to point to in state law that provides certainty. Like other Tribes, this has caused us to lose out on business opportunities because of this uncertainty. No one wants to be caught in costly tax litigation caused by lack of tax certainty.

FEDERAL STATUES, REGULATIONS AND COMMON LAW INTERPRETATIONS

This legislative concept is consistent with federal case law, statutes and 2012 regulations which affirmed that Tribal governments are the sole authority to tax trust land real property improvements, regardless of ownership.

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The Confederated Tribes of the Chehalis Reservation successfully litigated against Thurston County, Washington in the federal courts because the county was impermissibly taxing real property improvements on their water park facility, known as the Great Wolf Lodge. The case was resolved by the U.S. Ninth Circuit Court of Appeals, which includes federal court appellate jurisdiction over approximately a dozen federal district courts, including those of Washington and Oregon.

The Ninth Circuit ruled that Thurston County was barred from imposing its tax on permanent improvements at the Great Wolf Lodge holding that federal law under 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.

It is important to note that the Ninth Circuit cited precedent that decided this issue in 1903, and was revisited again in the 1973 Supreme Court precedent from *Mescalero Apache Tribe v. Jones*. In *Mescalero*, the tribe entered into a long term lease with the United States, and in that case, the court ruled that the construction materials the tribe purchased out of state for the construction of real property improvements, and the improvements being permanently attached to the real property, shall be exempt from state and local taxation. The Ninth Circuit in citing Mescalero stated: "*Mescalero sets forth the simple rule that § 465 preempts state and local taxes on permanent improvements built on non-reservation land owned by the United States and held in trust for an Indian tribe. This is true without regard to the ownership of the improvements. Because the Supreme Court has not revisited this holding, we are required to apply it*."

The Court in *Mescalero* further cited a 1903 Supreme Court precedent from *US v. Rickert* that *"…personal property has been 'permanently attached to the realty." In view of Section 465, these permanent improvements on the Tribe's tax exempt land would certainly be immune from the State's ad valorem property tax… Every reason that can be urged to show that the land was not subject to local taxation applies to the assessment and taxation of permanent improvements*." In that case the Roberts County Assessor in South Dakota attempted to collect personal property and real property improvements on members of the Sisseton band of Sioux Indians in South Dakota.

Finally, the Ninth Circuit in deciding the Chehalis decision took judicial notice that the US Department of Interior finalized the 2012 federal regulation for BIA leasing approvals and protection of tribal trust lands under 77 Federal Register 72440, December 5, 2012. Those regulations include clear statements that the regulations are to streamline and expedite the leasing process, advance economic development, and spur renewable energy development.

The federal regulations further support and recognize tribal sovereignty and tribes' achievements in terms of their ability to manage their own affairs on critical leasing issues. Section § 162.017 provides: "***What taxes apply to leases approved under this part?*** *(a) Subject only to applicable Federal law, permanent improvements on the leased land, without regard to ownership of those improvements, are not subject to any fee, tax, assessment, levy or other charge imposed by any State or political subdivision of a State.*

Improvements may be subject to taxation by the Indian tribe with jurisdiction." The Washington Department of Revenue issued a rule after the Chehalis case, which is what we modeled our legislation from.

CONCLUSION

We appreciate the work that went into this legislation. It is an important product of good governance and strong Government-to-Government relations with other eight Tribes and state and local governments.