Tribal Tax Sovereignty Legislation
Frequently Asked Questions

What does the Tribal Tax Sovereignty Legislation do?

This legislation will put in statute current Oregon practices regarding real property improvements on Tribal Trust land.

1. It states that county and state governments cannot tax real property improvements on Tribal trust land, regardless of whether the property has Indian or non-Indian ownership.
2. It provides County Assessors, Tribes and businesses certainty about the taxation of real property improvements on Tribal trust land.

What it doesn't do:

- It does not impact centrally assessed property.
- It does not affect the taxation of real property improvements that are located on fee land.
- It does not affect the taxation of personal property.
- It does not take away current revenue flows to the county, because counties are not taxing real property improvements on trust land.
- It does not open the door for more casinos to open.

What sparked this legislation?

This legislative concept is consistent with federal statutes, 2012 BIA regulations and the Ninth Circuit Court of Appeals decision in *Chehalis v Thurston County Board of Equalization*which affirmed that Tribal governments are the sole authority to tax trust land real property improvements, regardless of ownership.

The Confederated Tribes of the Chehalis Reservation took Thurston County, Washington to court because the county was taxing real property improvements on their water park facility, known as the Great Wolf Lodge. The case was resolved by the U.S. 9th 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.

The Washington Department of Revenue issued a rule after this case, from which this legislation is modeled.

Why does this apply to both non-Indian and Indian owned real property improvements?

In the Chehalis ruling, the Ninth Circuit 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."***

Because this applies to non-Indian and Indian owned property, will there be an upsurge of non-Indians opening casinos?

No. All gaming in Indian Country is subject to the Indian Gaming Regulatory Act passed by Congress in 1988. The Act provides intensive federal oversight of gaming on reservations, and designated a new federal agency, the National Indian Gaming Commission, to carry out comprehensive regulatory duties related to Indian gaming. This comprehensive federal framework is to protect tribes as the primary beneficiary of gaming in Indian County; requires the Commission's approval for management contracts with non-Indians, and bars and casinos in Indian country that are non-Indian owned unless both the state and the tribe approve them. The Oregon Constitution forbids the State from authorizing casinos.

Is it easy to put land into Trust status?

It is a very difficult, laborious, expensive and long process to put land into trust. To even start the process with the Bureau of Indian Affairs – called the BIA – one has to submit a request that has a complete legal description and survey of the property, complete environmental and land use analysis, including current and future uses, and a detailed analysis of any restrictive convents, rights of way or easements.

The BIA provides state and local government written notice that a fee-to-trust application has been submitted. State and county governments have the right to protest this. Then, there is a long evaluation process based on the criteria established in 25 CFR Part 151 and any applicable policies.

The BIA publishes its final agency determination on whether the land will be taken into trust. If BIA agrees to take land into trust, it provides public notice in the Federal Register and in local newspapers of its decision.

Why doesn't this statute apply to Centrally Assessed property?

The Chehalis case involved a property tax assessment of the tangible property by the Thurston County Washington Assessor of a hotel, indoor water park, and convention center, which was located on land owned by the United States and held in trust for the Confederated Tribes of the Chehalis Indian Reservation. The tax at issue in Chehalis involved a property tax and not a use type tax, leasehold interest tax, possessory interest tax, or other similar type of tax.

Do Tribal Governments provide services on trust land?

Tribal Governments provide services on Indian Country, including trust land, either directly or paying for them through intergovernmental agreements with local governments.

What type of taxes do Tribal Governments impose?

As sovereign nations with formal governmental structures, the Oregon tribes impose a variety of taxes on both Indian and non-Indians who live and conduct business activities within Indian Country. For example such taxes include: property taxes, motor vehicle fuel taxes, cigarette taxes, transient lodging taxes alcohol taxes and business privilege taxes. Tribal taxes are used to help defray the cost of providing essential governmental services to all reservation residents, both Indian and non-Indian. Services include public safety (i.e. fire, police, emergency response), water, sewer communication services, public roads, natural resource management, zoning and planning services, tribal courts, public transportation services, schools, and social welfare services.