Confederated Tribes *of the*
Umatilla Indian Reservation

Board of Trustees & General Council

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To: House Revenue Committee
From: Confederated Tribes of the Umatilla Indian Reservation
Re: HB 2148 – Questions posed at the February 26, 2015 committee hearing

The following memo provides answers to questions that were asked in the February 26, 2015 committee hearing regarding HB 2148.

Do you think the 9th Circuit Court outcome would have been different had the buildings been owned by an outside entity?

Answer: No
Explanation: The buildings and improvements (i.e. permanent improvements) are a destination resort consisting of hotel, conference center, and waterpark called the Great Wolf Lodge located on land owned by the United States Government and held in trust (i.e. trust land) for the Confederated Tribes of the Chehalis Reservation. The Great Wolf Lodge is owned by CTGW, LLC, a Delaware limited liability company. CTGW, LLC is owned by Confederated Tribes of the Chehalis Reservation and Great Wolf Resorts, Inc.

> *"Mescalero set forth the simple rule that § 465 preempt 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." (Emphasis Added) Confederated Tribes of Chehalis, 724 F. 3d at 1159.*

For Oregon property tax purposes, the Great Wolf Lodge would be classified as locally assessed property. HB 2148 is consistent with relevant federal statues, regulations, and the federal court interpretations of those implementing statues whereby locally assessed permanent improvements located on trust land are exempt from state and local taxes.

If a tribe has an energy facility placed upon its reservation by a firm from Japan. Does this bill mean that nothing related to that energy facility could be taxed by the State of Oregon?

Answer: No.
Explanation: This bill states that only the real property improvements could not be taxed. It does not stop state or county government from taxing a non-Indian or non-Tribal entity on other things, such as the property within a facility or income taxes.

Specifically related to an energy facility (e.g. gas fired power plant), it would be classified for Oregon property tax purposes as centrally assessed property, which is outside the scope of this bill. HB 2148 specifically states "[t]he exemption granted under this subsection does not apply to property assessable under ORS 308.505 to 308.655", which is centrally assessed property.

Does the State of Oregon have a choice here when it comes to that which is reflected in HB 2148? If we said that we don't choose to extend this tax exemption to permit structures owned by somebody else do we have the power to do that in spite of the 9th Circuit opinion?

Answer: No
Explanation: For over a hundred years, the Supreme Court has upheld federal statutes prohibiting state taxation of tribal trust property, including the application of the statutes to permanent improvements attached to tribal trust property. See United States v Rickert, 188 U.S. 432, upholding federal preemption under the General Allotment Act prohibition against county taxation of trust property and the attached improvements; and Mescalero Apache Tribe v Jones, 411 U.S. 145 upholding federal preemption under 25 U.S.C §465 prohibition against state taxation tribally held property and attached improvements.

The decision out of the 9th Circuit was clear that 25 U.S.C § 465 applies to permanent improvements located on tribal trust land regardless of ownership are not subject to state and local property taxation. HB 2148 is provides clear guidance on this matter.

If the Supreme Court has held that permanent improvements on trust land property cannot be taxed by the state when located on trust property, then how can centrally-assessed property be exempt under this bill such that the state apparently could centrally assess property taxes?

Answer/Explanation: The simple answer is that there are important differences between how locally assessed properties are assessed and taxed regarding permanent improvements to real property, which are deemed taxes on the realty, and how centrally assessed properties are assessed and taxed, which mostly apply to utilities and transportation company assets. Federal courts have unambiguously ruled that locally assessed permanent improvements located on tribal trust land are preempted by federal law, but no court that we are aware of have ruled that this same principle applies to centrally assessed properties. Experienced and thoughtful lawyers disagree on this point, but there is consensus among Tribal attorneys and the U.S. 9th Circuit Court, which has jurisdiction in Oregon, that real property improvements on Tribal trust land cannot be taxed by local governments.

Accordingly, the tribes chose to limit the legislation (HB 2148) to what is legally certain – that property taxes on permanent improvements for locally assessed properties located on Indian trust land is prohibited. We chose to leave to future court decisions the question of whether centrally assessed taxes are subject to the same prohibition.

For example, there is a case in Arizona considering this issue – South Point Energy Center, LLC v. AZ DOR & Mohave County, AZ. This appeal to the Arizona Tax Court deals with a property tax assessment of a natural gas-fired power plant that is owned and operated by South Point Energy Center, LLC, (a non-Tribal entity) located on the Fort Mojave Indian Reservation. This property is centrally assessed by the State of Arizona Department of Revenue. This case is still pending. The Chehalis decision was final – Thurston County did not appeal it to the Supreme Court. The Chehalis Case only involved a locally assessed property tax on the permanent improvements located on tribal trust land and not centrally assessed utility type property. The proposed tribal legislation will only exempt locally assessed property taxes and will not exempt centrally assessed property.

Response prepared by CTUIR Lead Counsel and Tax Administrator