

**MASHANTUCKET PEQUOT TRIBAL NATION  
PRESENTATION:**

**EXAMINATION OF THE TAXATION OF NON-INDIAN  
TANGIBLE PERSONAL PROPERTY LOCATED ON LAND HELD  
BY UNITED STATES IN TRUST FOR FEDERALLY  
RECOGNIZED INDIAN TRIBES**

September 19, 2023

**AT THE END OF OUR FIRST MEETING, SECRETARY BECKHAM ASKED:**

1. What is dual taxation and how is it considered dual taxation on each Tribe's trust property?
2. What is the impact on both Tribes if the General Assembly enacted a law exempting from taxation personal property located on trust lands?
3. What agreements do the Towns have with the Tribes?
4. Why should Connecticut take this action in the absence of Federal action?
5. What have other states done to address this issue?

# Two Separate Issues and Solutions

- **ISSUE I:** Taxation of non-Indian personal property located on trust land
  - Proposed tax exemption under Connecticut law for non-Indian personal property located on trust land (for example: furniture/equipment owned by California Pizza Kitchen, a lessee at Foxwoods, or Krispy Kreme at Mohegan)
  - Mashantucket Pequot and Mohegan Tribes treated same under tax exemption
    - Non-Indian property will not be subject to tax by municipalities under State law
    - Each Tribe decides whether to impose a tribal tax
- **ISSUE II:** Mohegan Settlement Agreements with State and Town address only Mohegan Tribe and Tribally-owned real and personal property located outside of initial reservation (700 acres)
  - Government-to-government discussions between State, Town, and Mohegan Tribe
  - Mashantucket Pequot Tribe is not part of those discussions
  - Proposed exemption does not impact Mohegan's settlement agreements

## ISSUE I

# Tax Exemption for Non-Indian Personal Property On Trust Lands

- Add to the list of exemptions in CGS § 12-81
  - Tangible personal property owned by non-Indian person or entity and located wholly within land held by United States in trust for a federally-recognized Indian tribe.
- Impact to Mashantucket Pequot and Mohegan Tribes is the same
  - Respects both Tribes' sovereign territory
  - Acknowledges that both Tribes provide and pay for governmental services within trust lands
  - Eliminates dual taxation threat by allowing only Tribes to tax
- Reduces Ledyard and Montville tax revenue by approximately \$600,000 for each town; however, towns receive state impact aid and Ledyard receives federal aid

## Q1: What is Dual Taxation?

- Dual taxation/threat of dual taxation occurs when states assert the right to tax non-Indian personal property on trust lands
  - Tribes have a clear right to tax that property
  - A state's right to tax is dependent on a vague, unreliable balancing test
- Tribes are put in the position of choosing between two bad options:
  - Forego the tribal tax and lose desperately needed revenue to fund essential governmental services; OR
  - Impose a tribal tax in addition to the state tax and lose critical opportunities for economic development

## Q1: Dual Taxation in Indian Country

- Level Set – Issue is taxation of tangible personal property owned by non-Indians and located on trust lands.
- Federal law is clear that States cannot tax lands held in trust on behalf of Indian tribes or personal property that is owned by Tribes or Indians and is located on trust property.
- State taxation of non-Indian personal property located wholly within trust property
  - U.S. Supreme Court precedent is confusing and contradictory
  - Lower courts left with uncertain and amorphous balancing test that provides contradictory decisions.

## Q2: Impact to Mashantucket Pequot if Proposed Exemption Adopted

- Mashantucket Pequot provides all government services within its trust land
  - These services benefit the non-Indian owners of personal property located on trust land
- Cost of government services funded by Mashantucket Pequot: **\$25M annually**

### Mashantucket Pequot Government Services

- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>• Police, Fire, and Ambulance</li><li>• Regulation of health and safety, including workplace safety (TOSHA) and food inspections</li><li>• Public works, including all road maintenance and snow removal</li><li>• Natural resources protection</li><li>• Education</li><li>• Housing</li></ul> | <ul style="list-style-type: none"><li>• Utilities, including potable water and waste water treatment</li><li>• Electricity through co-gen facility</li><li>• Tribal court system</li><li>• Land Use Commission for building permits and certificates of occupancy</li><li>• Historic preservation office</li></ul> |
|---|--|

## Q2: Impact to Mashantucket Pequot if Proposed Exemption Adopted

- When Ledyard imposes a property tax on non-Indian owned tangible personal property located and used on trust land, it takes critical tax dollars from the Tribe and eliminates the Tribe's ability to enact its own tax laws and policy
  - Town does not provide services to the non-Indian property owners on trust land
  - Creates a windfall for Ledyard at the Tribe's expense of ~\$600K annually
  - Tribe needs this money to fund governmental services and to invest in critical infrastructure
  - Tribe needs this money to pay down significant debt incurred in building infrastructure and gaming resort that provides largest source of government funding
- Ledyard receives money from Tribe, State and Federal Government to address any fiscal impact of trust lands and casino

## Q2: Impact to Mashantucket Pequot if Proposed Exemption Adopted

- Ledyard has previously cited education and road maintenance costs as justification
  - Non-Indian businesses do not receive education services
  - Ledyard receives Federal Impact Aid for education of Tribal students
  - Key roads to Tribal lands maintained by State, not Ledyard
  - Mashantucket Pequot spent over \$80M to improve Route 2 – main road to Tribe's Resort
- State exemption would provide certainty and allow Tribes to impose their own taxes without fear of threatening economic development on their lands
  - Keeps tax dollars in the jurisdiction where services are being provided
- Exemption is good tax policy and recognizes Tribes as governments incurring substantial costs to provide government services on trust land

## Q2: Impact to Ledyard if Proposed Exemption Adopted

- Ledyard collects approximately \$600k annually on non-Indian personal property located on trust lands
- State pays Ledyard grants in lieu of taxes on trust land equal to 100% of property taxes that would have been paid on the land (\$379,330 in 2021) C.G.S. §§ 12-19a; 12-19b
- MPTN pays Ledyard \$800K annually in property taxes on land held in fee
- MPTN has paid approximately \$4.5B to State in slot contributions
  - In 2021, Ledyard received approximately \$1.4M from Mashantucket Pequot-Mohegan Fund
- Ledyard receives approx. \$1.6M annually in Federal impact aid for education of federally connected children, including tribal children

## Q4: Why should Connecticut address Dual Taxation in the absence of Federal action?

- Federal government has taken action
  - Created Treasury Tribal Advisory Committee (TTAC)
    - Recommendations include Tribes working with States to address dual taxation
- Federal law in this area is confusing, conflicting, and leads to a proliferation of litigation and wasted resources for all sovereigns involved
- Connecticut precedent for taking action
  - 2002 DRS Revenue Ruling – Tribes entered discussions with the State related to sales and use taxes, which ultimately led to Tribes submitting requests and DRS issuing a revenue ruling that the State and Tribes agreed to
  - 2002 For over 20 years, the Revenue Ruling has successfully addressed this complex and confusing tax area while avoiding litigation.

## Q4: Treasury Tribal Advisory Committee

- Established under the Tribal General Welfare Exclusion Act of 2014, Pub. L. 113-168, §3
- 7-member committee that advises U.S. Treasury Secretary on significant matters related to taxation of Indians, training of IRS field agents, and provisions of training and technical assistance to Native American financial officers.
- Lynn Malerba, Chief of Mohegan Tribe and current Treasurer of the United States, sat on TTAC prior to becoming Treasurer. Remains involved in TTAC's work.
- Jean Swift, Mashantucket Pequot CFO, worked on dual taxation subcommittee; appointed and served as TTAC member from 2022-2023
- Rodney Butler, Mashantucket Pequot Chair appointed as TTAC member in 2023

## Q4: TTAC Subcommittee on Dual Taxation Report

- TTAC Subcommittee studied dual taxation issue and released report in December 2020
- Report reviews the historical and legal context of dual taxation and provides numerous examples across the United States
- Report's desired policy objective: "Tribal nations as sovereign governments shall be the only taxing authority for all businesses and economic activity occurring on and with their reservations."
- Report concludes: "Clearly, successful Tribal government-owned businesses create a positive economic environment, both locally and statewide. But taxes paid to the state and local governments do not come back to the reservations in the form of services, infrastructure and programs, thereby weakening Tribal economies and Tribal societies."

## Q4: Why should Connecticut address Dual Taxation?

- Because it is good tax policy that encourages economic development (also the right, just and fair thing to do)
  - The Tribes are providing all governmental services, but taxes are being imposed by Towns that do not provide services, and Towns spend the tax dollars outside of Tribal lands
    - Poor tax policy, and simply not right, just or fair.
  - Tribes are sovereigns that have experienced historical trauma including massacres, illegal land sales and near extinction
  - Despite the history, the Tribes and the State have worked together to support the State's economy while recognizing the Tribes' sovereignty
  - The Tribe's economic impact on the State has been significant
    - Job creation (within Reservation and outside) – resulting in income tax revenue to State
    - Significant payments to State from gaming revenue (slots and I-gaming)

## Q5: What have other states done to address this issue?

- Many states have recognized:
  - the confusing and unpredictable federal law in this area
  - Tribes are sovereigns
  - there are significant benefits to working cooperatively with other sovereigns
- State legislation is the preferred approach. Examples include:
  - **Nevada** – N.R.S. Sections 372.800&372.805: if a Tribe has a sales tax equal to or greater than State's tax, State will not collect its sales tax on tangible personal property within Reservation.
  - **North Carolina** – NCGSA Section 105-275(48): exempts from property taxes real and personal property on reservation; and Section 105-164: exempts sales by merchants on reservation from state retail sales and use tax.
  - **Mississippi** – Sections 27-65-211 to 27-65-221: State will not levy or collect sales or gross receipts tax within Reservation provided merchants collect and pay a tax to the Tribe.
  - **New Mexico** – N.M.S.A. Sections 7-9-88.1 and 9-11-12.2: credits for taxes paid to a tribe and for tribal cooperative agreements related to tax.
  - **Michigan, Oklahoma, Washington, Wisconsin** (among others) have statutes providing for a state official to enter tax agreements with the Indian tribes within the state to address various taxes.

## ISSUE II

### Q3: What agreements do the Towns have with the Tribes?

- The Mashantucket Pequot Tribe was first tribe in Connecticut to gain federal recognition in 1983 as part of the Tribe's Settlement Act which resolved land claims lawsuit
- As first federally recognized tribe, Pequot addressed and resolved various gaming issues with the State
  - **Litigation (land claims (1983), bingo case (1986), IGRA (1990))**
  - **Gaming procedures (1991)**
  - **Slots Memorandum of Understanding (1993)**
- Other than mutual aid agreements, the Mashantucket Pequot Tribe does not have an agreement with any town

## ISSUE II

### Q3: State and Town Agreements with Mohegan Tribe

- The Mohegan Tribe was federally acknowledged in 1994
  - Settled land claims lawsuit against the State, entered a gaming compact and Slot MOU all at the same time as most issues had been resolved between Mashantucket Pequot Tribe and State
- As part of this global settlement of issues, the Mohegan Tribe also entered an agreement with the Town of Montville.
- Mohegan's agreement with Montville provides for, among other things:
  - Mohegan Tribe able to connect to Town's water and sewer system; send its refuse/garbage to incinerator operated by Preston (Tribe's refuse counted toward Montville's tonnage)
  - Mohegan Tribe paid one-time contribution of \$3 million toward the development of a water supply and/or water distribution system
  - Mohegan Tribe pays \$500k annually to the Montville's capital budget

## ISSUE II

### Q3: State and Town Agreements with Mohegan Tribe

- Mohegan Agreements
  - State/Town agreed to support the Tribe's applications to put land into trust for initial reservation (700 acres)
  - State/Town agreed to waive any challenge to Tribe's federal acknowledgement decision
  - In both the Town Agreement and State Agreement, the Mohegan Tribe agreed to pay Montville an amount in lieu of taxes on real property put into trust (if any) outside the initial reservation.

## ISSUE II

### Q3: State and Town Agreements with Mohegan Tribe

- On trust land outside the initial 700-acre reservation, the Mohegan Tribe agreed to make annual payments in lieu of taxes to the Town “on **all tribally owned motor vehicles and personal property**” with exceptions for certain computer, data processing and telecommunications equipment.
  - PILOT payments are “in an amount equal to the tax that would have been paid on such personal property were the same not relieved from taxation pursuant to applicable exemptions accorded to the Mohegan Tribe **under federal law.**”
  - Clear reference to tribally-owned personal property, not personal property owned by non-Indians
- We understand that the Mohegan Tribe has not yet exceeded the 700 initial acres.

# TAKEAWAYS

- Two separate and distinct issues
  - Stop dual taxation through a tax exemption for non-Indian owned tangible personal property located on land held in trust by United States for Mashantucket Pequot and Mohegan Tribes
  - Mohegan Tribe's settlement agreements with the State and Town
- Tribes are governments providing and funding full array of governmental services within trust lands.
  - Towns do not provide those services on trust lands, but are taxing within trust lands
  - Towns receive money from State, Federal and Tribal governments addressing any financial impact of trust lands
- Proposed exemption is limited to non-Indian owned personal property wholly located within lands held in trust by U.S.
- Mashantucket Pequot and Mohegan Tribes are treated identically under the exemption