

**Mashantucket Pequot Tribal Nation’s Recommendations
for Final Report of Tax Working Group to General Assembly**

The Mashantucket Pequot Tribal Nation greatly appreciates the time, attention, and resources that members and staff of the Working Group have committed to resolving concerns around dual taxation in connection with non-Indian property located on tribal trust lands.

The Tribe also expresses deep appreciation to those leaders, legislators, and staff in the General Assembly and Administration that have continued to foster this conversation and debate in pursuit of a resolution.

The resulting public record will undoubtedly be incorporated into the long and storied history of the complicated relations between tribal nations and their citizens and federal, state, and local governments. The associated discourse will be studied for years to come by policymakers and scholars alike.

On behalf the Mashantucket Pequot Tribal Nation - Kutaputush (Thank you).

Primary Recommendation:

The Mashantucket Pequot Tribal Nation recommends that the Tax Working Group’s final report to the General Assembly, due January 1, 2024 pursuant to Public Act 23-204, support the following:

- Amending the Connecticut General Statutes § 12-81 to include a specific tax exemption for: “non-Indian owned personal property located on land held in trust by the United States for the benefit of a federally recognized Indian tribe.”
- Providing annual payments to the Towns of Ledyard and Montville from the Mashantucket Pequot- Mohegan Fund of \$600,000 each for the next three (3) years.
- State will facilitate discussions with the Mohegan Tribe and Town of Montville about how to appropriately address the PILOT obligations agreed to in their 1994 settlement agreements.

Principles behind the Recommendation:

1. Respect of Tribal Sovereignty While Supporting Fair Tax Policy

The Mashantucket Pequot Tribal Nation has made it a priority for over two decades to reverse the dual taxation policy that disrespects tribal sovereignty and allows neighboring municipalities to tax non-Indian vendors operating on tribal trust lands.

Despite assertions made over time to the contrary, the issue for the Tribe is about far more than the associated dollars. The Tribe’s efforts are directed at correcting an injustice that has been

allowed to stand for too long. If it were about money, the Pequot Tribe would have come to an agreement with the other impacted stakeholders long ago. The matter is about the core inequity behind the policy – a sentiment shared by tribal nations across the country.

The information presented by the Pequot Tribe and the Town of Ledyard, taken together, supports the fact that the Tribe, and not the Town, provides the services to the non-Indian vendors whose property is being taxed. The Town’s presentations and response to the Tribe’s presentations did not contradict this fact.

Rather, Ledyard states that it incurs additional costs in two areas: **Education and Policing**.

- **Education.** The Town states that it is fiscally impacted by the fact that the Tribe does not pay taxes on trust lands, but then calculates the cost of that impact by comparing the *cost to educate* the number of children living on trust lands to the amount the Town receives from the Federal Government for education of those children. Based on that comparison, the Town says that it incurs unfunded education costs of **\$1,318,330**.
- **Education.** The comparison to *cost to educate* is dubious if the Town is claiming that the Reservation is located within the Town boundaries which gives it the right to tax. If that is the Town’s position, then the Town should not compare to *cost to educate*, as no other town resident is charged cost to educate. Rather, the Town relies on property tax revenue (whether or not that covers the cost to educate of a given property owner). With tax exempt trust lands, the funds received from the Federal government approximate tax revenues at **\$5,458¹** per student, for a total of **\$458,472** for 84 children who live on trust lands and attend Ledyard schools.
- **Education.** Even if we use the *cost to educate* number and treat tribal children as if they are coming from a separate jurisdiction (similar to coming from another town where the tuition charged to out of town residents is closer to the cost to educate number), the Town’s costs are not unfunded when you consider not only the money Ledyard receives from the federal government (**\$458,472**), but also the other sources of revenue received by the Town due to the location of trust properties.
 - Town receives PILOT of **\$1,000,994** annually, 97.5% of which is based on trust properties.
 - Town receives **\$1,391,000** from the Mashantucket Pequot-Mohegan Fund (comprised of contributions the two tribes make to the state based on slot revenue and i-gaming revenue.)
 - MPTN is one of the largest taxpayers in the Town and pays **\$447,265** annually in taxes for a business (Two Trees) with no associated children attending school.

¹ For purposes of this summary, we are using the number reported in Senator Osten’s presentation, which we understand is from the Ledyard Superintendent of Schools. Ledyard’s presentation had a slightly lower per pupil amount of \$5,240.

- **Policing.** Without any supporting information or explanation, the Town claims that MPTN should be responsible for the cost of eight police officers totaling **\$960,024** in costs.
 - Ledyard made the decision to move from a resident state trooper to a full police department in or about 2015, long after traffic to Foxwoods Resort Casino had peaked and started to decline.
 - MPTN has its own police force of 39 full-time and 6 part-time officers. The Tribe entered an MOU with the State in or about 2014, and since that time has been the primary police force patrolling and maintaining law and order on the Reservation. It is the Tribe’s police force, not Ledyard’s, that provides such services to the non-Indian vendors and lessees on Reservation.
 - There is no justification for Ledyard claiming that the Tribe or the non-Indian vendors should pay for 8 police officers. Would East Hartford be able to tax in Hartford because of increased traffic from the XL Center?
 - Even if we accept that there is some additional cost to the Town due to the location of the Tribe’s gaming facilities and the non-Indian vendors are somehow responsible for that cost, the Town is receiving over **\$ 1 million in PILOT** payments from the State, **\$1.4 million from the Mashantucket Pequot – Mohegan** Fund, and a total of **\$777,073² from the Tribe in tax** dollars for off reservation properties.

Ledyard’s Claimed MPTN-Related Deficits vs. MPTN-Related Payments Received

Claimed Education Expenses Deficit	(-) \$ 1,318,330
Claimed Policing Expenses Deficit	(-) \$ 960,024
Annual PILOT Payments from Trust Land (97.5% of total PILOT)	(+) \$ 975,969
Annual MPM Fund Payment	(+) \$ 1,391,000
Annual Property Taxes from Two Trees	(+) \$ 447,265
Total – ANNUAL SURPLUS TO LEDYARD	(+) \$ 535,880

The Tribe believes Ledyard’s alleged MPTN-related deficits are overstated. But even assuming those amounts are correct, the combination of MPTN trust land-related PILOT, Mashantucket Pequot-Mohegan Fund payment, and property taxes paid by MPTN just for the Two Trees property results in ***an annual surplus to Ledyard of \$535,880***. This surplus does not include the additional \$553,000 Ledyard currently receives in personal property tax revenue for non-Indian owned property located on the reservation. Adding that amount creates an ***MPTN-related surplus for Ledyard that currently exceeds \$1 million annually***.

² The Mashantucket Pequot Tribe is one of the largest taxpayers in Ledyard and pays \$447,265 annually for taxes on Two Trees Inn, and \$329,808 for other properties in Ledyard which are a mix of residential and vacant land (with no associated education costs).

2. Fair and Equitable for Both Tribes while Respecting Territorial Sovereignty

- The tax exemption acknowledges the Tribes are separate sovereigns; respects the Tribes' authority and governance over their trust lands; and acknowledges the Tribes' need to raise revenue to support governmental services provided by the Tribes, not the Towns.
- Both Tribes are treated equally under the tax exemption.
- The Mohegan settlement agreements do not address non-Indian personal property which is the only focus of this exemption.
- While the Mohegan Tribe states that they may get sued by Montville if this exemption is enacted, there is no good faith basis for Montville to bring such a suit under the agreements. The exemption would prohibit Montville from taxing non-Indian property owners; the exemption does not address the Payments in Lieu of Taxes that the Mohegan Tribe agreed to pay on tribally owned real and personal property.
- PILOT payments that the Mohegan Tribe agreed to pay is a serious issue, but it is not related to or impacted by the exemption for non-Indian owned personal property. Montville has no basis to sue non-Indian property owners based on an agreement with the Mohegan Tribe and no basis to hold the Mohegan Tribe responsible for such payments as they do not own such property.
- In the Tax Working Group's discussions, Montville has not specifically said they would bring a lawsuit if the exemption is enacted and has not identified a basis for any such lawsuit. While the threat of litigation has been raised by Mohegan, no legitimate rationale has been offered to support that concern. Further, no reasonable reading of the Mohegan's settlement agreements comes close to supporting that claim.
- Taxation of non-Indian property is a separate and distinct issue from the voluntary PILOT agreement that the Mohegan Tribe entered into with the Town of Montville - as is (and was in 1994) Mohegan's sovereign right - as a means to expedite efforts to spur economic development on Mohegan trust lands and enter into the gaming arena.
- MPTN concurs that the flawed policies within the Mohegan/Montville agreement should be revisited, but that resolution is outside the scope of the core matter of dual taxation and should be dealt with separately. The agreement has specific considerations that go beyond the fundamentally flawed principle of dual taxation allowed under Connecticut state statute.

3. Eliminates the need for further litigation

- Ledyard relies on the Second Circuit decision to oppose the enactment of a tax exemption and says it is consistent with the majority of decisions in the country. We were unable to locate other decisions related to property taxes, other than the Oklahoma Supreme Court decision cited by Matthew Dayton, OPM Undersecretary for Legal Affairs in his summary at the First Meeting of the Working Group. *See Video Gaming Technologies, Inc. v. Rogers County Bd. Of Tax Roll Corrections*, 475 P.3d 84 (Supreme Ct. Okla.

2019). The Oklahoma decision expressly disagrees with the Second Circuit decision demonstrating the vague and unpredictable nature of the balancing test use.

- More importantly, due to the nature of the balancing test used by the courts in deciding whether a State can impose a tax within Indian country on non-Indians and its intense focus on the facts of a particular case, the Second Circuit decision only decides the issue and facts presented in that case. Further litigation would be necessary to determine whether the State property tax is preempted under any different set of facts, nature of the tax, and changes in the factors being considered by the courts. A decision now would also take into consideration the Oklahoma Supreme Court decision that found a similar property tax preempted by federal law. Moreover, the composition of the U.S. Supreme Court has changed impacting decisions in Indian country.

Alternative Recommendation:

In the event that the majority of the Working Group does not support the enactment of a tax exemption for the final report, the Mashantucket Pequot Tribal Nation asks the Working Group to consider recommending to the General Assembly (via the Working Group Report) that it enact legislation that would authorize the Governor or his designee (such as the Commissioner of Revenue Services) to enter a tax agreement with any federally recognized Indian tribe that requests to negotiate such an agreement. Such legislation could address the following items or provide that an agreement with a tribe should or must include the following:

- Duration of Agreement (could limit duration, e.g., no longer than 5 years)
- Purpose of Agreement
- Manner of financing the agreement and establishing and maintaining a budget for the agreement
- Method to be employed in accomplishing a partial or complete termination of the agreement
- How will agreement be administered
- Procedure for determining if and how the tax revenue will be shared by the State/Municipality and a Tribal Government
- Administrative procedures for collecting shared revenue
- Minimum insurance or bonding if any required
- Explanation of allowable administrative expenses that may be deducted from shared revenue collected
- Audit provision for both sides to insure compliance with agreement
- Statement that State and Tribe will cooperate to collect only one tax and will share or refund revenue as specified in the agreement
- Statement in agreement that parties to agreement are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as expressly set forth in the agreement.