

To: The Working Group to Examine the Taxation of Federally Recognized Tribal Nations
From: Jeffrey Beckham, Secretary, OPM
Re: DRAFT Recommendations for Consideration
Date: December 1, 2023

Fellow Members of the Working Group, what follows are my thoughts on our work to date and what we might include for consideration by the General Assembly in any report consistent with the public act that charged us with the work that we have done this fall.

Establishment of Working Group

The Working Group to Examine the Taxation of Federally Recognized Tribal Nations was established pursuant to section 359 of public act 23-204. This group was tasked with examining “the taxation of reservation land held in trust for federally recognized Indian tribes in the state and tangible personal property located on such reservation land”¹ and providing “a report on its findings and recommendations to the General Assembly.” The federally recognized Indian tribes in Connecticut are the Mohegan Tribe and the Mashantucket Pequot Tribe (the “Tribes”).

Scope of Working Group

As background, the Tribes and their members are not subject to state or local taxation on their reservation land or the tangible personal property that they own on such reservation land. Thus, the group’s main charge was to examine the state and local taxation of tangible personal property located on reservation land that is owned by third parties.

Although not specifically directed to do so by the legislation, the group also examined the agreement that the Mohegan Tribe entered into with the Town of Montville wherein the Tribe agreed to make payments in lieu of taxes with respect to portions of their reservation land and exempt tangible personal property thereon. Such agreement was entered into in accordance with **Public Law 103-377**, *Mohegan Nation of Connecticut Land Claims Settlement Act of 1994*, enacted by the United States Congress.

Findings and Recommendations

The Federal Government Permits the Taxation of Certain Tangible Personal Property Owned by Third Parties Located on Reservation Land. The ability of a state or local government to impose taxation on the tangible personal property owned third parties on reservation land is controlled by federal law.² The Tribes contend that they should have exclusive jurisdiction to impose property tax of this property. A recent federal court decision, however, disagrees with the Tribes’ contention. The federal Second Circuit Court of appeals found that the taxation of tangible personal property, specifically slot machines, owned by third parties on the Mashantucket Pequot Tribe’s reservation land was not preempted by federal law and, therefore, was properly subject to property taxation by the Town of Ledyard. See Mashantucket Pequot Tribe v. Town of Ledyard, 722 F.3d 457 (2d Cir. 2013).

¹ For ease of reading, reservation land held in trust for federally recognized Indian tribes is referred to as “reservation land” throughout.

² The Department of Revenue Services has issued extensive guidance explaining, and providing examples of, the tax implications of such federal regulation. See **Ruling 2002-3**, *Sales and Use Tax / Admissions Tax / Motor Vehicle Fuels Tax / Application to a Federally Recognized Indian Tribe Located in Connecticut*.

The United States Congress Could Grant the Tribes' Request. In the 2022 and 2023 Connecticut legislative sessions, bills were proposed that would have exempted tangible personal property owned by third parties and located on reservation land from municipal property taxation. The Tribes contend that this exemption is necessary to provide the Tribes with the exclusive jurisdiction to impose property tax on third parties. The Tribes further contend that this exclusive jurisdiction to tax implicates their sovereign right to self-govern.

To the extent that the Tribes' position is based on the concept of sovereignty, the United States Congress has purview over recognition of Indian tribes and the regulation of commerce with such tribes. Moreover, pursuant to Article I, Section 8 of the United States Constitution, Congress is empowered to enact legislation that provides the exemption requested in the proposed legislation. Thus far, Congress has declined to do so.

The Tribes Do Not Agree on a Solution. Resolution of the issue is complicated by that fact that the Tribes do not agree on a single solution. The Mashantucket Pequot Tribe endorses the legislation proposed in 2022 and 2023 that would exempt third parties from property taxation on their tangible personal property located on reservation land. The Mohegan Tribe, however, prefers a solution that would continue to allow these third parties to be taxed by the municipalities, but would also provide a state subsidy to the Tribes equal to the amount of the tax paid by such third parties. Moreover, the Mohegan Tribe is adamant that any solution include relief from their agreement with the Town of Montville. The Mashantucket Pequot Tribe believes that such relief should be addressed separately.

Any Action by the General Assembly Will Set Precedent That May Have Broad Fiscal Implications. As noted above, the statutory charge of the working group was to examine the taxation of real and tangible personal property located on the Tribes' reservations. While the group generally focused its discussions on the property tax, the group noted that the arguments espoused by the Tribes could have implications far beyond the property tax. To this end, any action by the General Assembly on the property tax issue could set a precedent for future policy discussions with respect to other tax types. Specifically, if sovereignty concerns dictate that the Tribes must have the exclusive right to impose property tax on any property on their reservation land, shouldn't this same argument apply with respect to all other tax types? Although the Tribes assert that they have no interest in expanding the scope of their request to other tax types at this time, their limited request, if acted upon, could set a precedent for the expansion of the exemption to all tax types at a future date.

The potential fiscal impact to the state of establishing such a precedent is substantial. The General Assembly should closely consider the broader implications of any action it takes to address the seemingly limited property tax issue prior to setting a potentially costly precedent.

Recommend Continued Study and Coordination with Tribes and Federal Government. We recommend that the General Assembly continue to study the issue and coordinate with federal and Tribal leaders to explore options that minimize any state revenue loss or additional expenditures by the State.