



Jeffrey R. Beckham
Secretary

STATE OF CONNECTICUT
OFFICE OF POLICY AND MANAGEMENT



January 10, 2024

The Honorable Matthew D. Ritter
Speaker of the House
Legislative Office Building, Room 4105
300 Capitol Avenue
Hartford, Connecticut 06106

The Honorable Martin M. Looney
President Pro Tempore of the Senate
Legislative Office Building, Room 3300
300 Capitol Avenue
Hartford, Connecticut 06106

Dear Speaker Ritter and President Looney:

As you are aware, section 359 of public act 23-204 established a working group to examine the taxation of reservation land held in trust for federally recognized Native American tribes in the state and the tangible personal property located thereon. As chairperson of the working group, I hereby submit the attached report to the General Assembly.

Pursuant to the public act, the working group was comprised of executive, legislative, municipal and tribal representatives. The working group was charged with submitting a report to the General Assembly that sets forth the group's recommendations on the subject matter it examined. Given the varying perspectives of the group's members, the group was unable to unanimously agree on specific recommendations. As such, the members were invited to independently prepare their own recommendations, each of which is included in the report. In addition, the report contains the materials presented at the meetings along with the minutes of such meetings.

The working group appreciates the opportunity to examine this important issue and to present the attached report for consideration by the General Assembly.

Sincerely,

Jeffrey R. Beckham
Secretary

C: Michael Jefferson, Clerk of the Senate, State Capitol
Frederick Jortner, Clerk of the House, State Capitol
Stephanie D'Ambrose, Office of Legislative Research
Deborah Schander, State Librarian

Working Group to Examine the Taxation of Federally Recognized Tribal Nations

Membership

Working Group Chairman:

Jeffrey Beckham, Secretary, Office of Policy and Management

Members:

Sen. Catherine Osten, Co-Chair, Appropriations Committee

Rep. Toni Walker, Co-Chair, Appropriations Committee

Sen. Eric Berthel, Ranking Member, Appropriations Committee

Rep. Tammy Nuccio, Ranking Member, Appropriations Committee

Sen. John Fonfara, Co-Chair, Finance, Revenue and Bonding Committee

Rep. Maria Horn, Co-Chair, Finance, Revenue and Bonding Committee

Sen. Henri Martin, Ranking Member, Finance, Revenue and Bonding Committee

Rep. Holly Cheeseman, Ranking Member, Finance, Revenue and Bonding Committee

Sen. MD Rahman, Co-Chair, Planning & Development Committee

Rep. Eleni Kavros-DeGraw, Co-Chair, Planning & Development Committee

Sen. Ryan Fazio, Ranking Member, Planning & Development Committee

Rep. Joe Zullo, Ranking Member, Planning & Development Committee

Betsy Conway, Senior Legal Counsel, Mashantucket-Pequot Tribal Nation

Jody Cummings, General Counsel, Mashantucket-Pequot Tribal Nation

Jean Swift, CFO, Mashantucket-Pequot Tribal Nation

Chuck Bunnell, Chief of Staff, Mohegan Tribal Nation

Larry Roberts, Attorney General, Mohegan Tribal Nation

Fred Allyn, III, Mayor, Town of Ledyard

Leonard Bunnell, Mayor, Town of Montville

Table of Contents

Letter to Speaker Ritter and President Pro Tempore Looney.....	1
Working Group Membership.....	2
Table of Contents.....	3
Recommendations.....	4
Meeting Materials.....	25
Meeting Minutes.....	212

Recommendations

Senator Osten
Findings and Recommendations

Passage of an exemption for non-Tribal businesses operating on trust land is warranted for the following reasons:

1. Each federally recognized Tribe is a sovereign government that supports all the “municipal” needs of the non-Tribal businesses operating on their trust lands. These businesses receive no services from the Towns of Ledyard and Montville.
2. Allowing Ledyard and Montville to continue taxing non-tribal businesses undermines the ability of each tribe to support its own infrastructure and governmental needs.
3. Both Tribes are economic engines in the state and CT should support their endeavors and respect their sovereign rights.
4. Passage of an exemption treats each tribe equally.

Consequences of passage of the exemption legislation.

1. Passage of an exemption for non-tribal businesses would result in an approximate annual revenue reduction of \$500,000 to \$700,000 for both Ledyard and Montville.
2. To hold Ledyard and Montville harmless the state should commit an annual Mashantucket Pequot-Mohegan Fund increase of the 2023 revenues received by each town for this taxation. This would not increase with the advent of any new economic development on the reservation.

Subsequent Action Warranted

1. Montville should immediately STOP taxing motor vehicles on Mohegan tribal lands. There is not any substantiation warranting such taxation.

Mohegan Settlement Agreements

1. Connecticut should remove section 1F regarding PILOT payments from the Mohegan/State Settlement Agreement.
2. Mohegan and Montville should commence discussions immediately to bring agreement to a standard recognizing the tribe’s sovereignty.

Secretary Jeffrey R. Beckham
Findings and Recommendations

Secretary Beckham - Recommendations

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).

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.

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**.

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.

Mashantucket Pequot Tribal Nation Findings and Recommendations

**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.

**Mashantucket Pequot Tribal Nation
Tribal Council Comments**



December 27, 2023

Distinguished members of the Tribal Taxation Working Group,

On behalf of the Mashantucket Pequot Tribal Council, I am writing to express our sincere appreciation for your efforts to explore the harms and injustice of dual taxation in Indian Country.

Your willingness to review how Connecticut allows municipalities to assess personal property tax on non-Indian vendors operating on tribal trust lands, outside of our government-to-government agreements, and how it infringes on tribal sovereignty and undermines our collective economic growth objectives is a conversation long overdue and one we very much appreciate.

We are particularly grateful, not only for the meaningful opportunity to provide the Pequot perspective, but also for the knowledge gained by all as to the viewpoints of other stakeholders at the table. While adoption of consensus recommendations proved elusive, we are confident that our collective engagement has laid the necessary foundation for a common ground, fair, and appropriate near-term policy change.

We remain convinced that a tax exemption in state law for non-Indian owned personal property located on tribal trust lands is the most equitable and efficient way to address the dual taxation issue. Pequot's proposed exemption offers a simple and narrowly targeted solution that provides much needed clarity in this area of law.

Importantly, notwithstanding any agreement entered into by a tribal nation and a neighboring government, the proposed exemption equally respects the tribal sovereignty of each nation and acknowledges their lawful authority over trust lands – a principle identified as high priority by Working Group members.

The proposal acknowledges the need that tribal nations have to raise the revenue necessary to support their own governmental functions on trust lands and to further reinvest in upgrades to local infrastructure, no different than how the State of Connecticut or its municipalities must budget accordingly for their own constituent services. When you consider that the tribal governments are providing the full range of government services to their citizens, tenants and vendors, and visitors located on tribal land, as experienced first-hand by Working Group members who toured Mashantucket this past fall, the policy is particularly well justified.

The strong government-to-government partnership between the tribes and the state over the last three decades has yielded Connecticut well over \$8 billion in direct revenue and provided the region with formidable economic engines that support thousands of local jobs. Surrounding municipalities have received tens of millions of dollars in grant funds as a result of the state revenue sharing agreements with additional special allocations going to the towns that are adjacent to tribal lands.

As shown in the Working Group, removing the threat of dual taxation on tribal lands spurs on new economic development and job creation that will benefit the region at-large for years to come. Unlike corporations that come and go, this land has been our home and will remain so. We have a deep commitment to our homelands that runs far beyond business interests. Trust lands are crucial to honoring our past, fostering our present, and guaranteeing our future.

Leaving the tribal nations, our neighboring municipalities, and taxpayers to wrestle with a vague and unpredictable balancing test with a continued looming threat of litigation in order to clarify the taxing authority on trust lands is not a viable or responsible solution – nor is it in the best economic interest of the state. As we outlined in our presentations to the Working Group, many states have successfully addressed the glaring inequity of dual taxation by instituting exemptions, providing for tax compacts, and/or implementing other parity measures mutually agreed upon by those states and the area tribal nations.

Our great State of Connecticut has a long and storied history of pioneering justice and equality. Where the courts have gotten it wrong in the past or where Congress isn't yet willing to act, the Connecticut General Assembly has time and again taken it upon itself to do what is right. This situation is no different, it is an opportunity to seize yet another pivotal moment in time.

Changing the status quo is never easy. It takes conviction, patience, and perseverance — attributes, we are proud to say, the Pequot Tribe personifies in abundance as evidenced by our very existence today after surviving attempted genocide in 1637 and the centuries following.

The Mashantucket Pequot Tribal Nation remains committed to working with all parties to pursue equitable and sensible solutions to resolve the issues around dual taxation. Resolution of the matter remains at the very top of our list of policy priorities. Politics aside, the information compiled through the Working Group's deliberations clearly and concisely articulate the issue for purposes of posterity so that future generations may reflect upon and deduce whether the actions taken, or not taken as the case may be, stand the test of time.

We look forward to working closely with each of you in the 2024 legislative session to ensure that Connecticut enacts a fair tax policy that promotes economic development on tribal lands to benefit the tribal nations, our neighboring municipalities, and the State of Connecticut.

Best wishes to you and your families this holiday season and for a happy and healthy New Year.

Kutaputush qah wuyamu,



Chairman Rodney Butler

Statement of the Mohegan Tribal
Council

Adopted 12/10/23

Thank you Mr. Chairman. We want to take this opportunity to thank the members of this working group and the staff for all of their hard work over these past few months. On behalf of the Mohegan Tribe, we want to express our gratitude for the amount of time and effort that everyone has put into this important issue. The Mohegan Tribe has a long history of working collaboratively with their neighbors, local governments, state government, and the federal government. We have been directed by our elected Tribal leaders to take every step possible to do the same here today. We sincerely hope that this working group can find a consensus to move forward because we believe that the legislature should respect the ideas of everyone, particularly a fellow government.

If a consensus cannot be found, we would ask that we take no action..but to simply share the information that has been gathered which would respect the views of all members. This working group, was charged with addressing this issue for both federally recognized Native American Tribes. Therefore, the only fair path would be to not place one Tribe's interests above another.

The issue of dual taxation is important. Mohegan Tribal leaders have spoken out in support of addressing dual taxation in Connecticut and elsewhere, but that must be premised on the fact that the corrective action is implemented fairly for all involved and does not cause more disparities.

We all know there is a long history of theft of native lands, breaking of treaties, and forcing tribes into agreements that are not in their best interest. Both Tribes represented here today can attest to that. The fact that a state has taken the time to explore these issues in an open and transparent forum with the goal of correcting some of that mistreatment of Tribes says a lot about the state of Connecticut.

Before us today are three or four proposals. We understand and respect the proposal made by the secretary of OPM. These are difficult budget times and his position from a fiscal standpoint dictate a conservative approach requiring additional study to fairly achieve the goals of addressing dual taxation. The proposals that has been put forward by Senator Osten and the Mashantucket Pequots addresses the dual taxation issue for the Mashantucket Pequots, while ignoring the challenges that were forced upon the Mohegan Tribe by the state when the Mohegan Tribe was working to settle their land claims. Therefore, however well-intentioned this proposal may be, the Mohegan Tribal Council rejects the assertion that this proposal is good for the Mohegan people. We support addressing this flaw in our taxation system, but only if it is state policy enacted with parity for all Native American Tribal Nations being impacted. If recommended to the Connecticut General Assembly or adopted by them, this proposal will cause additional harm which in effect will run counter to the goals of this work to address systemic unfairness.

The proposal Mohegan has before you is fair, fiscally responsible, and puts both tribes on a level playing field and hears the concerns of both Nations. The best solution that does no harm is one that addresses the concerns of both tribes on the topic of dual taxation, and we remain committed to continue working toward such an agreement. Our team has been tasked by our Tribal leaders to work with all parties willing to recognize the importance of equity amongst all Tribes. But we must make clear, and will continue to reiterate, that the state should not enact any proposal that satisfies one tribe's concerns while both ignoring and further perpetuating a historic wrong placed upon another tribe on the very same issue of taxation. Both Tribes must agree..

Thank you again for your time, and trust that we can continue to work collaboratively, listen to all of the governments' interests and chart a fair and equitable solution.

Mohegan Draft Bill

Referred to Committee on APPROPRIATIONS

Introduced by:

**AN ACT ESTABLISHING A PROPERTY TAX EXEMPTION FOR
PROPERTY LOCATED ON CERTAIN INDIAN LANDS AND
AUTHORIZING CREDITS FOR PAYMENTS MADE TO LEDYARD
AND MONTVILLE FOR EXEMPT PROPERTY**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 12-81 of the 2023 edition of the general statutes is amended by adding subdivision (83) as follows (*Effective [insert date] and applicable to assessment years commencing on or after [insert date]*):

(NEW) (83) (a) Real property and personal property located on any land held in trust by the United States for a federally recognized Indian tribe.

(b) Notwithstanding the other provisions of this section, any tribe entitled to the exemption under 12-81(1) and (83)(a) for real property or personal property located on land held in trust by the United States for a federally recognized Indian tribe shall receive a credit equal to the amount paid with respect to such real property or tangible personal property if such payment was made by a lessee, sublessee, or by the tribe pursuant to a lease or contract with the tribe or instrumentality of the tribe or pursuant to an agreement between the tribe and a local government. Such credit shall be applied to any contribution or other payments due from the tribe to the State pursuant to a memorandum of understanding. A tribe may claim such credit within 30 days of payment to a local government or as soon thereafter as the tribe deems appropriate.

Statement of Purpose:

State and local governments generally may not tax real or personal property owned by tribes on trust lands. The State and the Town of Montville have settlement agreements with the Mohegan Tribe that are unfair and inequitable because they effectively impose such taxes on certain tribal trust lands and tribal personal property on trust lands, with the risk of dual taxation for non-tribal businesses looking to do business on tribal lands. With regard to state or local government taxation of non-Indian personal property on tribal trust lands, courts apply an interest-balancing test that can lead to inconsistent results and dual taxation on tribal trust lands. This legislation addresses the uncertainty of whether the State and Town settlement agreements provide for the taxation of non-Indian personal property on Mohegan trust lands.

The Bill respects tribal sovereignty by exempting certain property located on tribal trust lands from personal property taxes and providing a credit against other financial obligations of tribes to the state for any real or personal property payments made to a local government. If a Tribe, a tribal entity, lessee, or sublessee makes payments of, or in lieu of, such taxes on tribal trust lands, the Bill allows for the Tribe to claim a credit against any payment made to the State pursuant to a Memorandum of Understanding in an amount equal to such amounts paid to a local government.

Nothing herein impacts the State's distribution of the Mashantucket Pequot and Mohegan Fund, any distribution formula of the Fund, or diminishes other grants to Ledyard and Montville as casino host communities.

Meeting Materials

Senator Osten Presentation
November 2023

Property Tax Concerns and Tribal Trust Lands in Connecticut

November 2023

Dual Taxation Overview

- Dual Taxation is the circumstance of one government reaching into the territory of another government to impose taxes.
- Both tribes agree on the facts below:
 - Ledyard charges non-tribal businesses on Mashantucket land \$553,000 (as of 2023) in personal property taxes i.e., Hard Rock Café
 - This is equivalent to .4979% of 1 mill in Ledyard
 - Montville charges non-tribal businesses on Mohegan land \$554,000 (as of 2023) in personal property taxes i.e. Michael Jordan's Steakhouse
 - This is equivalent to .3849% of 1 mill in Montville
- Tribal government provides all associated “municipal services” to these non-Tribal businesses: police, fire, public health and safety etc.
- Out of respect for the sovereign nature of each tribe, it is requested that the state eliminate the ability of neighboring municipalities to impose personal property taxes on tribal trust lands. Neither tribe is seeking compensation from the state of Connecticut.

Tribal Governance Costs

Cost of Tribal Government Services on Reservation		
	MPTN Expenditures	Mohegan Expenditures
Tribal Government	\$56,637,000	\$96,899,000
Housing (Family)	\$853,000	
Health Services (FQHC)	\$5,761,000	
Education/After School Services	\$2,495,000	
Utilities (Water/Sewer/Electric)	\$21,492,000	\$946,000
Public Works/ Infrastructure	\$28,071,000	\$4,390,000
Public Safety (Police/Fire/Court)	\$9,876,000	\$14,322,000
Museum - Included in government operations 300,000 sq ft		
Total Cost	\$125,185,000	\$116,557,000

Tribal Economic Impacts

Businesses off Reservation	
MPTN	Mohegan
Foxwoods El San Juan (PR)	Mohegan Sun Pennsylvania
Norwich Inn and Spa - Norwich	Inspire South Korea
Command Holdings - CT	Resorts Casino Atlantic City
Norwich Inn and Spa - Providence	ilani Washington State
Lake of Isles - No. Stonington	Fallsview Canada
Two Trees Hotel - Ledyard	Casino Niagara
Preston Plains Water Co. - Preston	Mohegan Casino at Virgin Hotels Las Vegas
Pequot Health Care - CT	Upcoming Manhattan New York
Wondr Nation - CT	Pautipaug Golf Course
	Jersey Mikes (5)

Individuals Employed by Respective Tribal Nations				
	Foxwoods	MPTN (Not at Casino)	Mohegan Sun	Mohegan (Not at Casino)
Number of Employees	3,500	1,500	5,121	502

Tribal Economic Impacts Continued

Assessed Values of Properties as of 2022		
Top Ten Taxpayer	Mashantucket	Mohegan
Ledyard	\$21,058,613	Not in Top Ten
Montville	Not in Top Ten	Not in Top Ten
North Stonington	\$13,856,990	Not in Top Ten
Sprague	Not in Top Ten	\$2,084,870
Norwich	\$9,895,960	Not in Top Ten
Preston	\$1,587,200	Not in Top Ten
Stonington	\$11,707,260	Not in Top Ten
Waterford	Not in Top Ten	Not in Top Ten
East Windsor	Not in Top Ten	Not in Top Ten
Total Assessed Value of Property	\$58,106,023	\$2,084,870

Taxes Paid to Ledyard	Mashantucket
Two Trees Hotel	\$447,265
Other MPTN Properties	\$329,808
Total	\$777,073

Taxes Paid to Montville	Mohegan
Other MT Properties	Information forthcoming
Total	

Tribal Economic Impacts Continued

Do Towns receive state aid as a result of reservation activity?

Mashantucket Pequot-Mohegan Fund Annual Distribution

Ledyard	\$1,391,000
Montville	\$1,446,162

FY 23 PILOT Payment from State

Ledyard	\$1,000,994	97.5% of this payment is related to land in trust
Montville	\$2,133,345	63.3% of this payment is related to land in trust

Education Overview

Is there an educational cost to the Towns related to the reservation?

Education	Total Students	Total Students from the Reservation	Total Special Education Students	Total Special Education Students from the reservation	Total excess cost	Total excess cost from the reservation
Ledyard	2435	84*	260	31	20	1
		3% of total students	11% of total students	11.5% of special education students	1%	1.2%
Montville	2017	0*	397	0	23	N/A
		0%	20%	0%		N/A

*State Department of Education reports that there are 69 American Indian students in Ledyard and 12 American Indian students in Montville.

Education Overview

Is there educational revenue to the Towns related to the reservation?

Impact Aid	
Ledyard	Town receives \$5,458 per child. \$458,472 is for MPTN (which is 84 students). \$544,807 is for military students (which is 100 students). There is a small amount received from children of workers employed by the MPTN
Montville	Town does not apply but they are eligible for this funding. 33% of Mohegan workers live in Montville according to a Ct DOT report. (1,650 from Montville of 5,000 total employees.)

Is there any in-kind educational benefit from the Tribe to the Town?

2 MPTN staff visit Ledyard Schools twice per week per Memorandum of Understanding.

Education Overview – Ledyard

Estimated State Entitlement/Calculated Grants:

- Total: \$11,624,199
- Agricultural Science Program – FY 2023 Payments \$1,051,239
- Excess Cost – Special Ed FY 2023 Payments \$943,236

Estimated Federal Funds/Calculated Grants:

Grant	Fiscal Year	Budget Reference	Most Recent Approved Allocation	Payments	Most recent reported expenditures	Grant Balance
Title IV Part A	2023	2023	\$17,356	0	0	\$17,356
ARP ESSER Funds	2021	2021	\$1,855,487	\$1,400,000	\$1,400,000	\$455,487
Title I Part A	2024	2024	\$247,682	\$0	\$0	\$247,682
Title II Part A	2024	2024	\$41,784	\$0	\$0	\$41,784
IDEA 611	2024	2024	\$568,301	\$0	\$0	\$568,301
IDEA 619	2024	2024	\$21,014	\$0	\$0	\$21,014

Education Overview - Montville

Estimated State Entitlement/Calculated Grants:

- Est. FY 24 Education Cost Sharing Grant: \$12,802,864
- Excess Cost – Special Ed FY 2023 Revenue \$592,444

Estimated Federal Funds/Calculated Grants:

Grant	Fiscal Year	Budget Reference	Most Recent Approved Allocation	Payments	Most recent reported expenditures	Grant Balance
Title I Part A	2023	2023	\$314,885	\$258,055.08	\$257,408.73	\$56,829.92
Title II Part A	2023	2023	\$53,016	\$39,681	\$39,843.14	\$13,335
Title III EL	2023	2023	\$14,795	\$12,022	\$9,816.86	\$2,772.95
IDEA 611	2023	2023	\$640,787	\$328,813.02	\$322,473.18	\$311,973.98
IDEA 619	2023	2023	\$15,384	\$8,840.15	\$8,832.48	\$6,543.85
Title IV Part A	2023	2023	\$22,395	\$16,897.50	\$16,897.50	\$5,497.50
ARPA ESSER	2021	2021	\$2,469,755	\$395,158.74	\$394,703	\$2,074,596.26
IDEA 611	2024	2024	\$640,787	\$0	\$0	\$640,787
IDEA 619	2024	2024	\$15,384	\$0	\$0	\$15,384

Public Safety / Infrastructure Overview

Mutual Aid				
	Mashantucket		Mohegan	
	Each Month	Yearly	Each Month	Yearly
	Mutual Aid going to other towns			
Fire Aid	3.77	45.2	3.33	40
EMS Aid	Contracted with American Ambulance		16.08 *	193
Paramedic Intercept	Contracted with American Ambulance		130.2 *	1563
	Mutual Aid from other Towns			
Fire Aid	0.15	1.8	0.5	6
EMS Aid				
Paramedic Intercept				

* Insurance pays a portion of the cost of EMS and Paramedic Services

Other - Mashantucket Related Expenditures to Support Infrastructure in Ledyard

Item	Detail	Cost
Dam/Culvert	Lantern Hill North 2013	\$615,000
Bridge	Shewville Road Bridge 2015	\$362,000
Paving	Coachman Pike 2015	\$192,000
Paving	Jessica Lane 2023	\$50,000
	TOTAL	\$1,219,000

Public Safety Overview Continued

Are the municipal police forces comparable in size and cases to other similarly sized municipalities?

Town	Population	# of Sworn Officers	Traffic Stops (3yr average)	Traffic Stops 2022	DUIs (3yr average)	DUIs 2022
Montville	18,387	31 (Established in 2023)	2300	2486**	89	55
East Lyme	18,788	31	1,212	1,637	40.3	50
Stonington	18,480	42	700	1,063	57.66	75
Wilton	18,457	43	3,461	4,068	33.66	32
Madison	17,565	33	1,085.33	1,200	19.66	21
Suffield	15,731	21	700.33	958	19	20
Ledyard*	15,413	23 (Established in 2017)	2,607.66	2986**	38.66	47
Plainfield	15,143	20	1,357.33	1,658	47.66	44
Cromwell	14,317	27	1,114.66	1,038	46.66	53
Mashantucket	457	39 + 6 pt	23.5	17	2	2
Mohegan	54	40	9.6	26	0	0

* Relative to pistol permits there were 7 applications and 6 permits that were approved in the past 6 years

** Traffic stop numbers have been turned over for review and mapping to determine if they are related to the Reservation or business of the casino.

Taxation Overview

If there was a 3% increase in taxes each year by the Town what would the increased cost be on the non-tribal vendors?

	Current Rates		Y1		Y2		Y3		Y4		Y5
Ledyard	\$553,315	\$16,599	\$569,915	\$17,097	\$587,012	\$17,610	\$604,622	\$18,139	\$622,761	\$18,683	\$641,444
Montville	\$554,835	\$16,645	\$571,480	\$17,144	\$588,624	\$17,659	\$606,283	\$18,188	\$624,471	\$18,734	\$643,205
			Y6		Y7		Y8		Y9		Y10
Ledyard	\$641,444	\$19,243	\$660,687	\$19,821	\$680,508	\$20,415	\$700,923	\$21,028	\$721,951	\$21,659	\$743,609
Montville	\$643,205	\$19,296	\$662,502	\$19,875	\$682,377	\$20,471	\$702,848	\$21,085	\$723,933	\$21,718	\$745,651

Current Mill Rates

Ledyard	34.56	1 mill raises \$1,111,309
Montville	27.77	1 mill raises \$1,441,536

Separate Matter for Consideration: **Mohegan Tribe Settlement Agreements**

- **Mohegan Settlement Agreements are separate and distinct from dual taxation issues associated with non-tribal businesses operating on trust land as referenced in the previous slides. Both tribes benefit equally from passage of the core dual taxation proposal related to non-Tribal businesses.**
- Any changes made to the Mohegan Settlement Agreements **may be subject to (federal) Department of Interior approval**. That is **NOT the case** for any proposals related to the core issue of dual taxation of non-Tribal businesses. The state has full purview over the proposed exemption for non-Tribally owned businesses operating on trust land as referenced in the previous slides.
- **Mohegan & Montville Settlement Agreement– Signed June 16, 1994**
 - Requires a \$500,000 payment yearly to the Montville capital account.
 - Requires a one-time payment of \$3 million to develop a water distribution system for Montville which will include Mohegan's needs.
 - Requires use of the Preston Incinerator to dispose of waste and allows Montville to add the refuse to its tonnage.
 - Requires an upgrade and then use of Montville's wastewater collection and treatment system.
 - Requires Mohegan to pay for the services of Rome, Frankel, and Kennelly to work towards attaining at least 1% of the gaming funds and a \$3 million payment for Montville.
 - For any land acquired in trust beyond initial 700 acres, requires Mohegan Tribe to pay PILOT for 1) real property taxes that would be due on such land if it were not tax exempt; and 2) all tribally-owned motor vehicles and personal property located on such land (with some limited exceptions for some computers/data processing/telecommunications equipment).
- **Mohegan & State Settlement Agreement – Signed April 4, 1994**
 - Set up Mohegan's obligation to pay PILOT on trust land holdings that exceed 700 acres in an amount that would be paid if the property were not tax exempt.
- **Bureau of Indian Affairs Approved December 5, 1994**
- **These issues of Tribal Property are specific to only Mohegan and should be addressed.**

Conclusions

Passage of an exemption for non-Tribal businesses operating on trust land is warranted for the following reasons:

1. Each federally recognized Tribe is a sovereign government that supports all the “municipal” needs of the non-Tribal businesses operating on their trust lands. These businesses receive no services from the Towns of Ledyard and Montville.
2. Allowing Ledyard and Montville to continue taxing non-tribal businesses undermines the ability of each tribe to support its own infrastructure and governmental needs.
3. Both Tribes are economic engines in the state and CT should support their endeavors and respect their sovereign rights.
4. Passage of an exemption treats each tribe equally.

Consequences of passage of the exemption legislation.

1. Passage of an exemption for non-tribal businesses would result in an approximate annual revenue reduction of \$500,000 to \$700,000 for both Ledyard and Montville.
2. To hold Ledyard and Montville harmless the state should commit an annual Mashantucket Pequot-Mohegan Fund increase of the 2023 revenues received by each town for this taxation. This would not increase with the advent of any new economic development on the reservation.

Subsequent Action Warranted

1. Montville should immediately STOP taxing motor vehicles on Mohegan tribal lands. There is not any substantiation warranting such taxation.

Mohegan Settlement Agreements

1. Connecticut should remove section 1F regarding PILOT payments from the Mohegan/State Settlement Agreement.
2. Mohegan and Montville should commence discussions immediately to bring agreement to a standard recognizing the tribe’s sovereignty.

Mashantucket Pequot Tribal Nation
Presentation
September 2023

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

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

MPTN Presentation
November 14, 2023



Mashantucket Pequot
Tribal Nation

MASHANTUCKET PEQUOT TRIBAL NATION PRESENTATION

November 14, 2023



MASHANTUCKET PEQUOT TRIBAL NATION'S RECENT HISTORY TO ESTABLISH RECOGNITION TRUST LANDS AND GAMING IN CONNECTICUT

- MPTN brought land claims suit in 1976 challenging illegal sale of tribal lands by state in violation of federal law (Mohegan Tribe brought same type of suit)
- MPTN negotiated a settlement with landowners and the State that resulted in the Mashantucket Pequot Settlement Act (1983) resolving land claims
- **Bingo Case (1986)**
- **Indian Gaming Regulatory Act – good faith bargaining suit (1990)**
- **Gaming procedures (1991)**
- **Slots Memorandum of Understanding (1993)**
- **Mohegan Tribe gains federal recognition in 1994, enters gaming compact and Slot MOU, settlement agreements**



TWO SEPARATE ISSUES

DUAL TAXATION v. AMENDING SETTLEMENT AGREEMENT

Proposed Legislation to Exempt from Property Tax *Non-Indian Personal Property on Trust Lands Does Not Impact Mohegan's Agreements with Town or State*

- Neither State nor Montville Agreement address **Non-Indian Personal Property**
- State Agreement addresses Tribal Trust lands, not personal property
- Montville Agreement specifically addresses: “**tribally owned motor vehicles and personal property**”
- No basis for Montville to bring suit if State enacts an exemption for Non-Indian Personal Property on trust lands



FINANCIAL IMPACT TO LEDYARD NOT SUPPORTED BY THE NUMBERS

EDUCATION: Incorrect Comparison to Cost to Educate – No Ledyard taxpayer paying the cost to educate children

- Approximately 84 school-aged children living on Trust/Restricted Fee lands that attend Ledyard Schools
 - Ledyard receives impact aid from Federal government of approximately \$5,400 per pupil per year (\$453,600 annually)
 - Ledyard receives PILOT payments from State of about \$1,000,994 (mostly based on trust lands)
 - Ledyard receives \$1,391,000 from MPTN/Mohegan Fund
 - MPTN pays \$447,265 in property taxes to Ledyard for Two Trees (with no associated children in school)
- Approximately 67 school-aged children live on tribally or member owned Fee Lands in Ledyard, attend Ledyard Schools and pay taxes to Ledyard as any other resident (Tribe pays \$329,808 for these fee properties in Ledyard)



FINANCIAL IMPACT TO LEDYARD NOT SUPPORTED BY THE NUMBERS

ROADS:

In last 10 years, the MPTN has spent over \$1 million in road work and improvements on Town roads and bridges

Year	Name of Road	Cost	Comments
2013	Lantern Hill North	\$615,000	Replaced culvert across road and paved road
2014	Shewville Road Bridge	\$362,000	Partnered with Ledyard to replace bridge on Shewville Road. Mashantucket Pequot Tribe managed the entire project.
2015	Coachman Pike Repave	\$192,000	Redid drainage and storm piping, new catch basin tops, and repaved the road
2023	Jessica Lane	\$50,000	Mashantucket Pequot Tribe agreed to spend a NTE \$50,000 in assisting Ledyard pay to repave the road



FINANCIAL IMPACT TO LEDYARD NOT SUPPORTED BY THE NUMBERS

PUBLIC SAFETY - POLICING

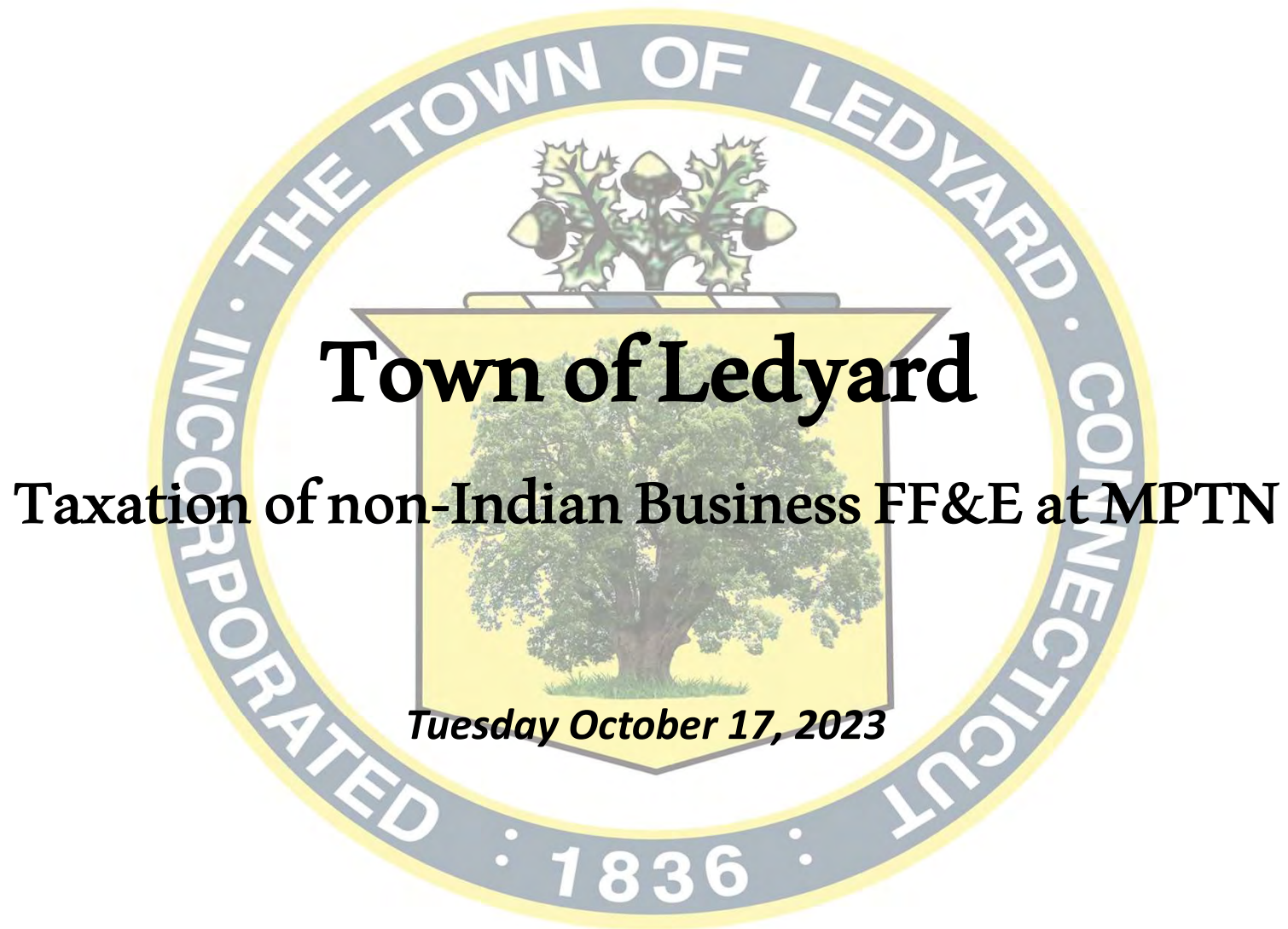
- MPTN entered an MOU with State in August 2014 for on Reservation policing allowing the Tribal police to be the primary police force on Reservation
- Ledyard opted to move from a State Resident Trooper model to a full municipal police force in 2016
- The major roads to Foxwoods, the Museum, Lake of Isles, Two Trees Hotel (Route 2 and Route 214) are State, not Town, roads with the State Police patrolling Route 2
- No different than if Hartford had a development that impacts East Hartford or West Hartford – those towns cannot reach into Hartford to tax



WORK GROUP REPORT

- PA 23-204, Sec. 359 requires the work group to submit a report to General Assembly by January 1, 2024 with recommendations
- MPTN endorses a Work Group recommendation to enact a tax exemption (add to C.G.S. Sec. 12-81) for “non-Indian owned personal property located on lands held in trust by the United States for the benefit of a federally recognized Indian tribe”
 - Recognizes tribal sovereignty and equitable tax policy
 - Treats both federally recognized tribes equally
 - No impact on Mohegan Tribe’s agreements with State and Town which do not address non-Indian personal property
- MPTN supports Mohegan Tribe’s efforts to revisit settlement agreements as a separate issue not linked to or dependent on the personal property exemption

Town of Ledyard Presentation
October 2023



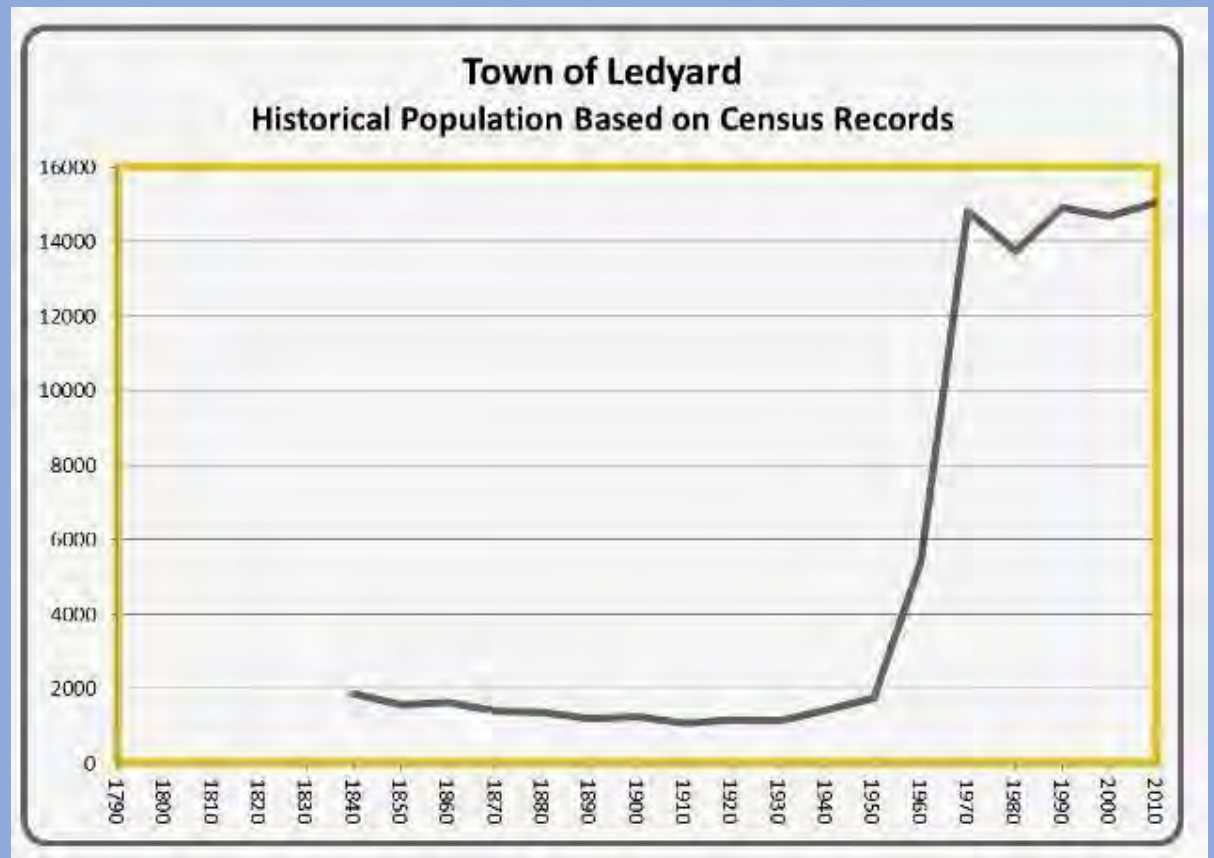
Town of Ledyard

Taxation of non-Indian Business FF&E at MPTN

Tuesday October 17, 2023

TOWN HISTORY

- Part of New London Colony (est. 1653)
- Part of Groton (Inc. 1702)
- Town of Ledyard (Inc. 1836)
- Current population 15,336 per CT Data Collaborative



Credit ConnecticutHistory.org

MAJOR EMPLOYERS NEARBY

- Foxwoods Resort Casino (MPTN)
 - General Dynamics (Groton)
 - Pfizer (Groton)
- US Submarine Base (Groton)

LAND AREA / COMPOSITION

- 40 Square miles
 - 95%+ Residential use
 - 5% Zoned Commercial / Industrial
 - Less than 1% utilized
- Commercially/Industrially

LEGAL HISTORY OF TAXATION ISSUE

- Currently, under CT law, no Indian is taxed directly or indirectly for any activity on the Reservation. If the Tribe or its member(s) owns personal property maintained on the Reservation, it is exempt from taxation.
- 2nd Circuit Court decision followed longstanding Supreme Court precedent that upheld the authority of the State and Town of Ledyard to collect personal property taxes on non-tribal businesses on the Reservation- a decision that is consistent with many other court decisions throughout the country.
- AG Blumenthal participated vigorously in the case to defend this important taxation power.
- The payment of business taxes on non-Indian property is a partial offset to the services still provided by the Town.

TOWN SERVICES PROVIDED TO MPTN

EDUCATION:

150+/- children residing on non-taxable MPTN lands attend Ledyard Public Schools.

Base educational cost FY24 is \$16,496 (Lowest cost per pupil in SE CT, ranks 159 of 164 in CT spending.)

Special Education Costs average \$50,000 per SPED student.

Ledyard receives two partial offset payments: FPL503 (Federal) and ECS (State)

BASE ED COSTS (150 x \$16,496) = \$2,474,400

SPED (49 x \$50,000 Avg.) = \$2,450,000

LESS: FPL503 (150 x \$5,240)= (\$786,000)

LESS: CT ECS (150 x \$4,746)= (\$712,000) (rounded)

=====

Ledyard's Current Annual Cost to educate after FPL503 and ECS: \$3,426,423

***Ledyard also pays tuition for children residing on non-taxable MPTN lands to attend MAGNET schools.**

TOWN SERVICES PROVIDED TO MPTN (Con't)

Public Safety:

Since 1992, the number of sworn officers in Ledyard increased from 15 to 23, despite a limited increase in population.

Since 2017, Ledyard Police Chief has reviewed MPTN pistol permit applications and issued temporary State permits when appropriate. (This may change)

Excluding “Routine Patrols” on the roads highlighted on the map, the average number of calls for service on these roads by Ledyard Police is 1,409 per year (Data 2018-2022). Patrols add another 2,097 avg. / Yr.



In Summary, Ledyard receives approximately \$665,000 in Business FF&E from commercial vendors doing business at MPTN, including California Pizza Kitchen, Nike, Kate Spade, Dunkin Donuts and others. Payment of these taxes is standard practice to these seasoned business operators, and acts as a partial offset to the aforementioned services provided.

A loss of this revenue to the Town of Ledyard will adversely effect our ability to continue to provide the previously outlined services to MPTN.

Mohegan Tribe Presentation



Working Group to Examine the Taxation of Federally Recognized Tribal Nations

MOHEGAN TRIBE'S PRESENTATION TO
THE WORKING GROUP

The Mohegan Tribe and Dual Taxation

- The Mohegan Tribe fully supports the elimination of dual taxation on tribal lands so long as it is done so while maintaining parity for both federally recognized Tribes and without harm to the Tribes' neighboring towns and residents.
- The Mohegan Tribe remains committed to working together toward this goal while recognizing that it is impossible to separate the compulsory "agreement" on payments to Montville, (required of the Mohegans by the State of CT to settle our land claims), from the fair and equitable elimination of dual taxation.
- We appreciate the State's willingness to correct this unfair practice equitably, while ensuring that the same mistakes of the past in treating the Tribal nations disparately are not repeated.

What is dual taxation and how is it considered dual taxation on each Tribe's trust property?

- The Workgroup's first meeting included a brief summary of case law concerning taxation in Indian Country.
- As Undersecretary Dayton, Office of Policy and Management, explained at our first meeting, unless Congress has said otherwise, trust land is immune from real property taxation. **This is true for the Mashantucket Pequot Tribe (MPT). Mohegan's trust land (over 700 acres) is subject to real property taxation.**
- Undersecretary Dayton explained that a Tribe's tangible property is exempt from taxation, unless Congress has said otherwise. **This is true for MPT. Mohegan's tangible property (over 700 acres) is mostly subject to taxation.**
- Regarding taxation of non-Indian personal property, Undersecretary Dayton summarized the balancing of interests test that has resulted in unpredictable decisions.



What is dual taxation and how is it considered dual taxation on each Tribe's trust property?

Mohegan provides the following on-reservation services:

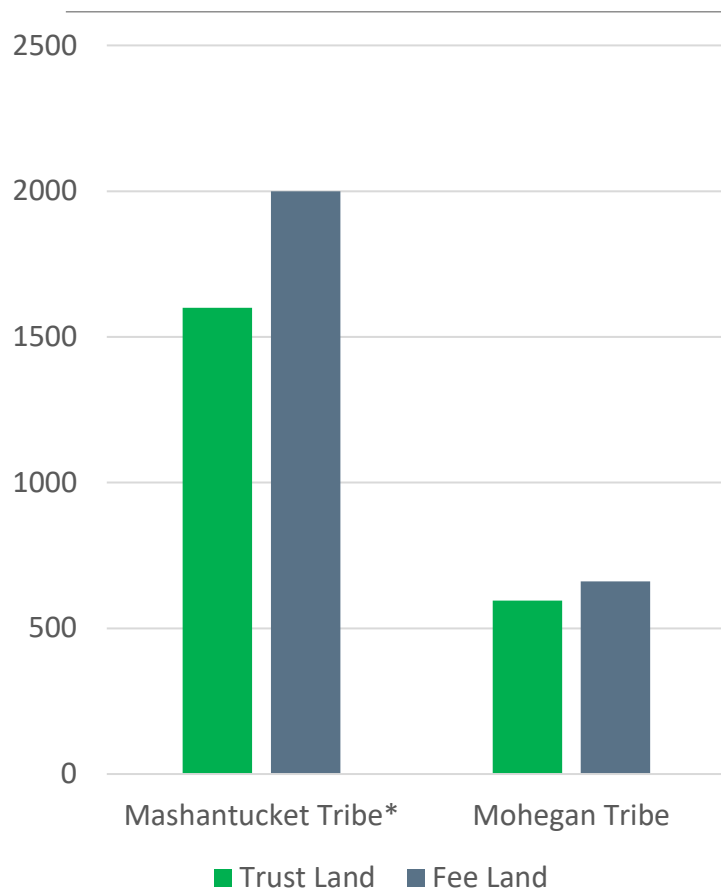
- Police, Fire, and Ambulance
- Regulation of health and safety, including workplace safety
- Social services
- Building permits and certificates of occupancy
- Public works, including all road maintenance and snow removal
- Natural Resources protection
- Housing
- Utilities
- Tribal court system

Mohegan provides the following services to the surrounding community:

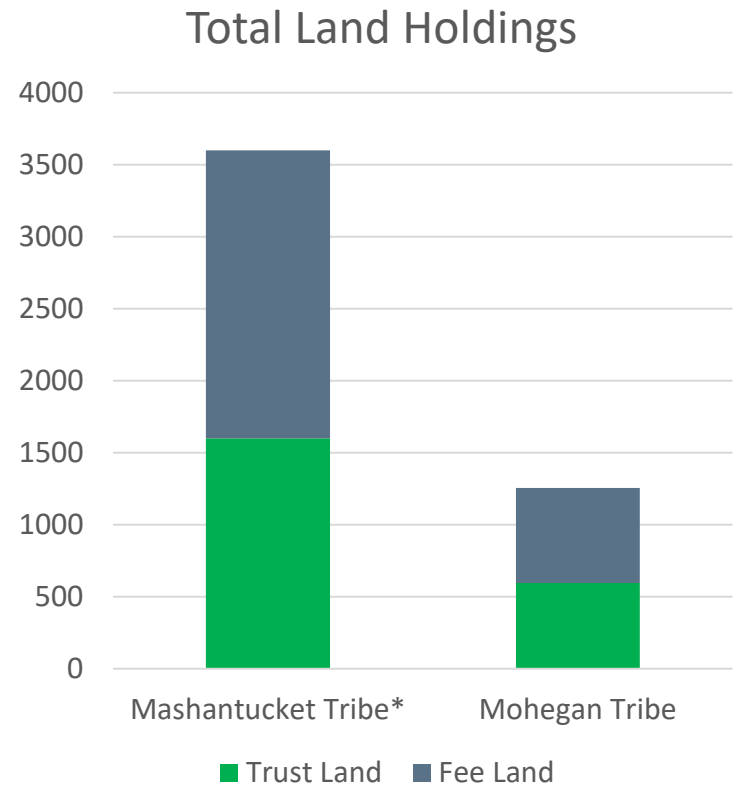
- Police, Fire, and Ambulance
- Paramedic



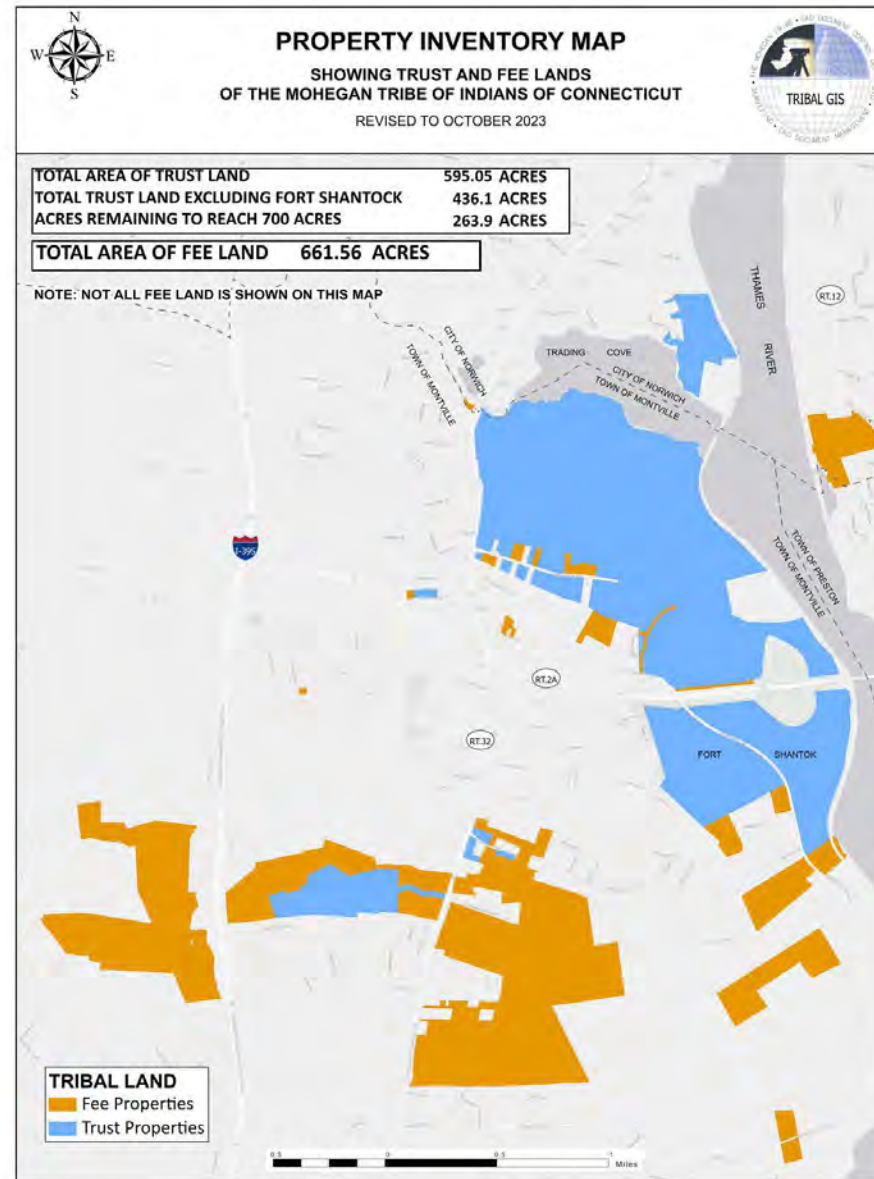
What is dual taxation and how is it considered dual taxation on each Tribe's trust property?



* Estimate based on news reports



What is dual taxation and how is it considered dual taxation on each Tribe's trust property?



What is dual taxation and how is it considered dual taxation on each Tribe's trust property?

Status Quo

	Mashantucket Pequot Tribe		Mohegan Tribe to 700 Acres		Mohegan after 700 acres	
	MPT	TOWN	MT	TOWN	MT	TOWN
Real Estate Tax on Tribal Trust lands	Can Tax	Cannot Tax	Can Tax	\$500k annually	Can Tax	Can Tax
Tribal Personal Property Tax on Trust Lands	Can Tax	Cannot Tax	Can Tax	Cannot Tax	Can Tax	Can Tax
Non-Indian Personal Property Tax on Trust Lands	Can Tax	Can Tax	Can Tax	Can Tax	Can Tax	Can Tax

DUAL TAXATION

What is dual taxation and how is it considered dual taxation on each Tribe's trust property?

Result if Legislation Does Not Address Montville Agreement

	Mashantucket		Mohegan over 700 acres	
	MPT	TOWN	MT	TOWN
Real Estate Tax on Tribal Trust lands	Can Tax	Cannot Tax	Can Tax	Can Tax
Tribal Personal Property Tax on Trust Lands	Can Tax	Cannot Tax	Can Tax	Can Tax
Non-Indian Personal Property Tax on Trust Lands	Can Tax	Cannot Tax	Can Tax	?

Dual Taxation



What is dual taxation and how is it considered dual taxation on each Tribe's trust property?

Status Quo – Who pays taxes to local governments

	Mashantucket Currently	Mohegan Currently	Mohegan after 700 acres
Real Estate Tax on Tribal Trust lands	Does Not Pay	\$500k annually to town for capital improvements	\$500k annually Tribe pays 100% on every acre over 700 acres
Tribal Personal Property Tax on Trust Lands	Does Not Pay	Does Not Pay	Tribe pays effectively 100%
Non-Indian Personal Property Tax on Trust Lands	Vendors Pay	Vendors Pay	Vendors Pay

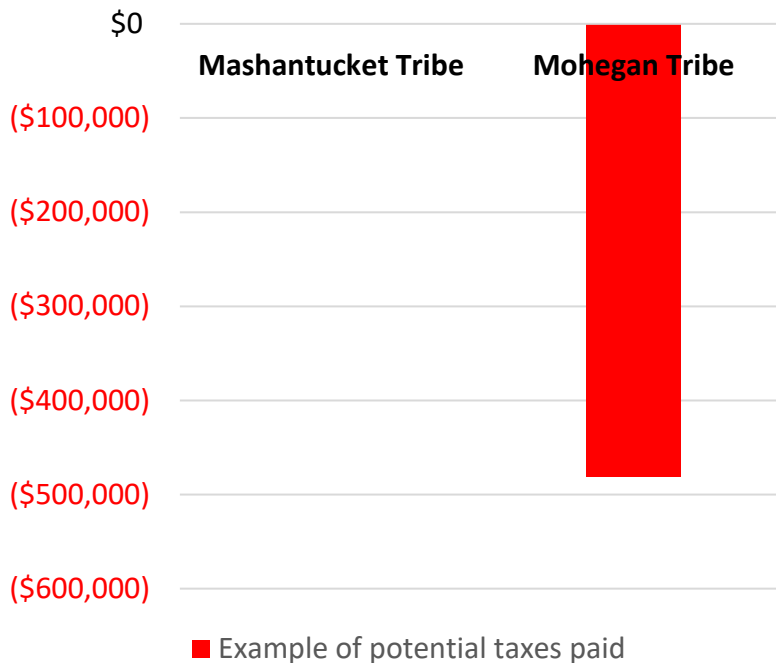
What is dual taxation and how is it considered dual taxation on each Tribe's trust property?

Who pays taxes to local governments if Legislation Does Not Address Montville Agreement

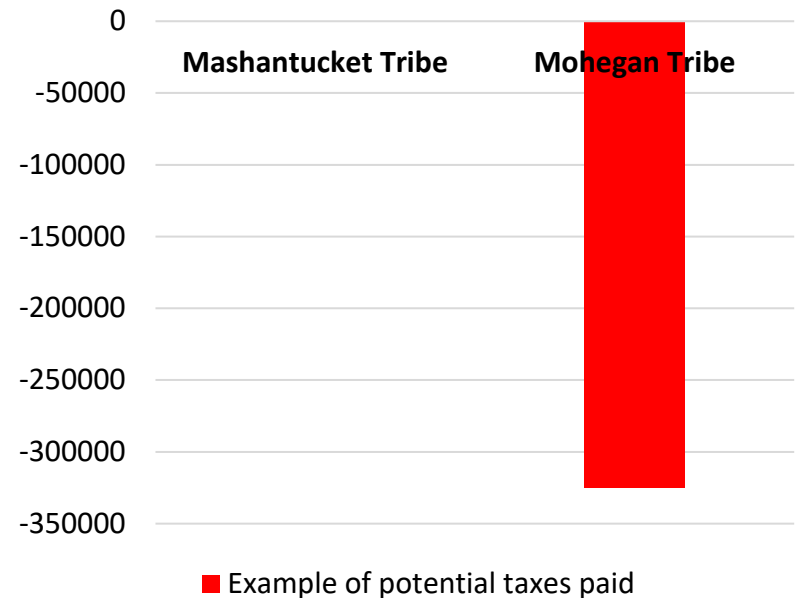
	Mashantucket	Mohegan
Real Estate Tax on Tribal Trust lands	Does Not Pay	\$500k annually 100% on anything over 700 acres
Tribal Personal Property Tax on Trust Lands	Does Not Pay	Effectively 100% on any personal property located on lands over 700 acres
Non-Indian Personal Property Tax on Trust Lands	Does Not Pay	Litigation

What is dual taxation and how is it considered dual taxation on each Tribe's trust property?

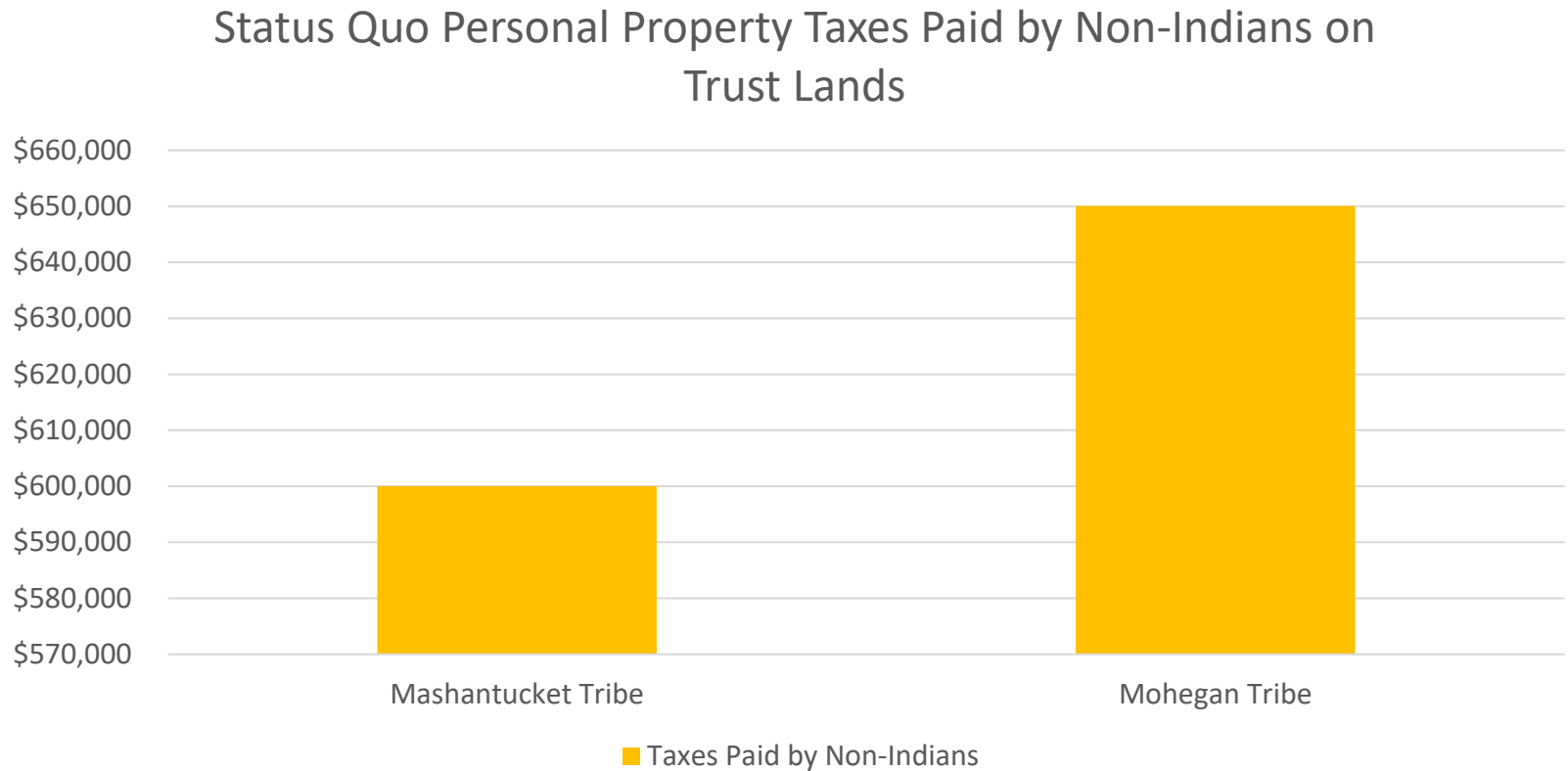
Status Quo Real Estate Taxes Paid by Tribes on Trust Lands Over 700 or Under Legislation that does not address Montville Agreement



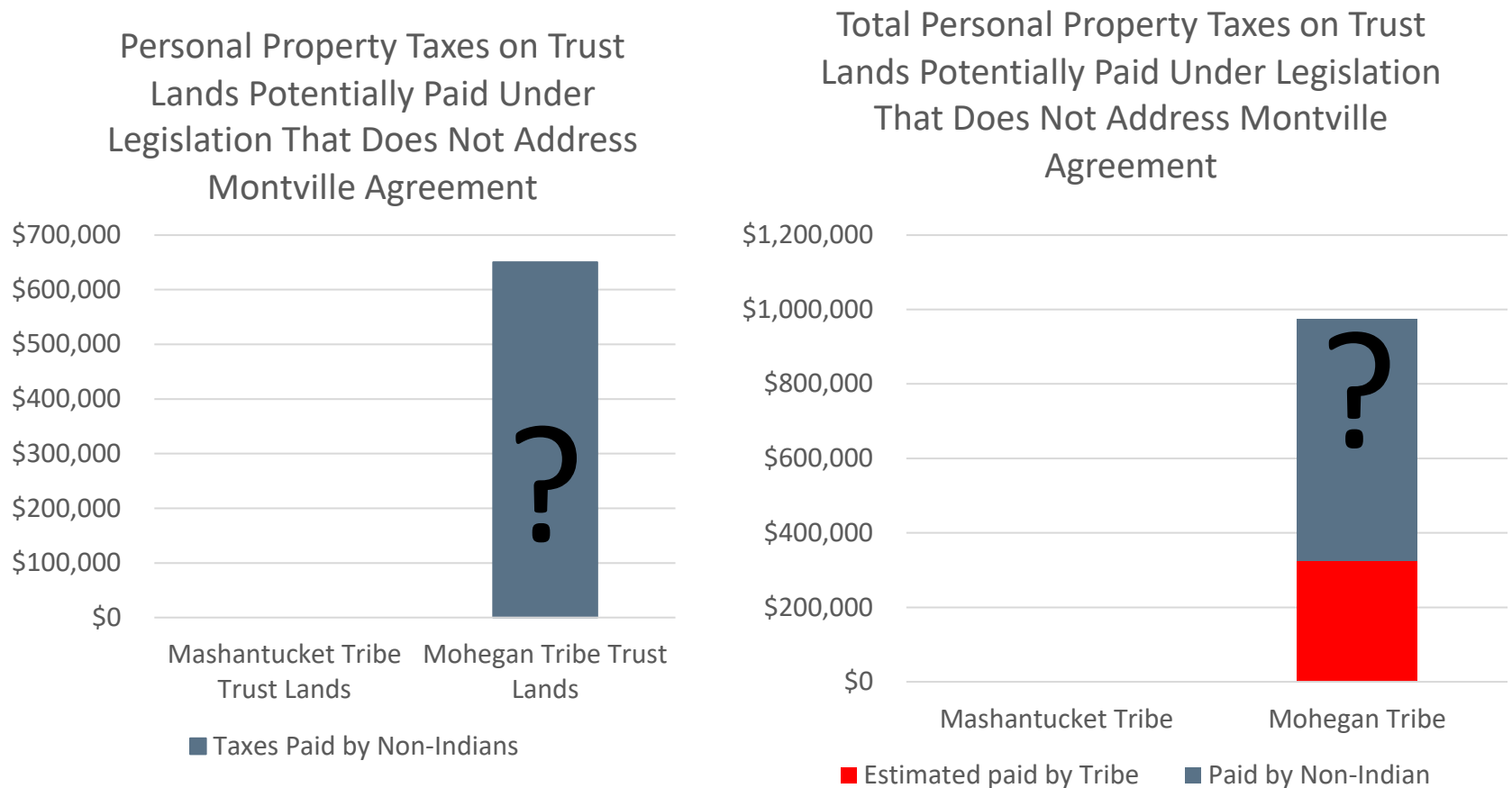
Status Quo Personal Property Taxes Paid by Tribes on Trust Lands Over 700 Acres or Under Legislation that does not Address Montville Agreement



What is dual taxation and how is it considered dual taxation on each Tribe's trust property?

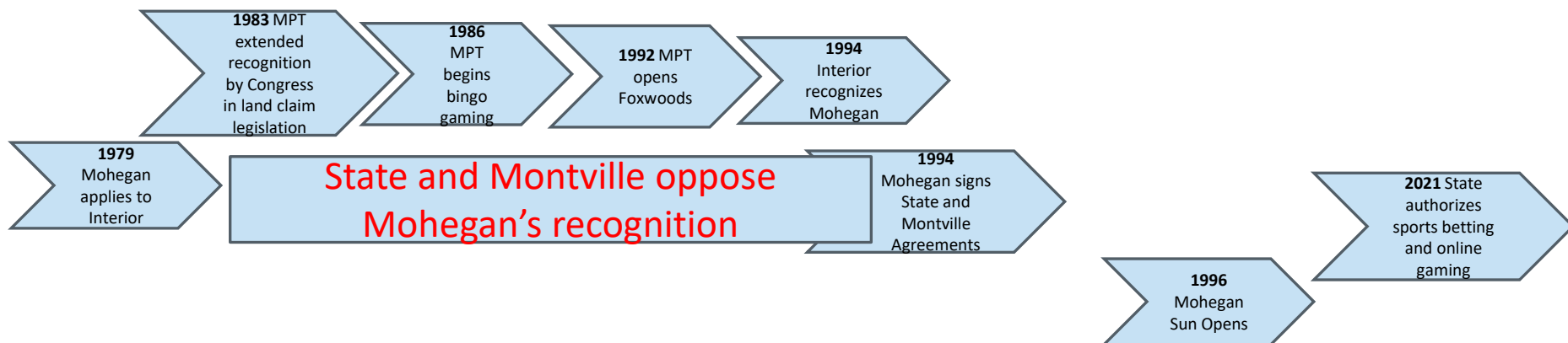


What is dual taxation and how is it considered dual taxation on each Tribe's trust property?



What agreements do the Tribes have with the Towns and what is the impact of those agreements?

- Mashantucket Pequot Tribe shared that they do not have agreements with any Town, including Ledyard.
- Mohegan was effectively obligated to enter into agreements with both the State and Montville. State leveraged litigation threat to extract unconscionable concessions.
- Difference due to change in the political environment in CT from early 80s to mid-1990s and how the Tribes were recognized.



What a
the Town

Blumenthal

Mohegan lawyer,
chief differ on
land claim tactics

By VIRGINIA GROARK
Day Staff Writer

Montville — Attorney General Richard Blumenthal, setting the stage for possible land claim negotiations, said Wednesday he is inclined not to appeal the Mohegan Indians' federal recognition.

Sue Whipple, a Mashantucket Pequot, stands outside her home

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Place Your Bets: A New Casino

Mohegan Sun Will End Foxwoods' Local Monopoly



Among the slot machine devotees at Mohegan Sun on Wednesday night was Anna Capuano, 78, of Stratford, Conn.

By JONATHAN RABINOVITZ

UNCAVILLE, Conn., Oct. 16 — Michael Giguere sipped a Coke and looked ill. It was late Wednesday afternoon, and in a few minutes, 20,000 people would be streaming through the doors of Mohegan Sun, a giant new casino that is opening to the public on Saturday.

Mr. Giguere, a 20-year-old Montville resident who until that moment had worked only as a roofer, was about to sweat through his first full shift as a blackjack dealer, a test for him and 5,500 other employees of the new casino. After 16 weeks of training, he was panicking about whether he would spin out the cards smoothly, collect and pay out his bets properly, and avoid spilling the chips.

"I'm too nervous to talk," Mr. Giguere said. "Please leave me alone."

Only a year or so ago, the dealers, waitresses and cashiers had been welders, machinists, nurses and engineers, working for companies that were laying people off or closing whole divisions. For them, and this region, the opening of the casino offers a ray of hope, and yet one more sign of how southeastern Connecticut has moved away from the blue-collar manufacturing that was once its hallmark to a very different industry.

With the opening of Mohegan Sun, a casino the size of three and a half football fields in a factory complex that used to make nuclear reactor components, this part of the state now has two of the three largest casinos in the nation.

Only 18 miles away from the new casino, moved by the 1,160-member Mohegan tribe, is Foxwoods Resort Casino on the Mashantucket Pequot reservation in Ledyard, the world's most profitable casino with more visitors last year, at least 30 million, than the combined populations of New York City, Los Angeles and Chicago.

Mohegan Sun will end the monopoly over the New England gambling market that Foxwoods has enjoyed for several years and may cut into its revenues, estimated to exceed \$1 billion this year. But

Continued on Page B6

Comparing Connecticut's Casinos

The opening of the Mohegan Sun casino on Saturday will end Foxwoods Resort Casino's monopoly of the New England gambling market. Here's a glance at the two competitors.

Mohegan Sun

OWNERS

Mohegan Indians, a tribe of 1,100. Close allies of the British in 17th-century war against the Mashantucket Pequot tribe. Lost their reservation in 19th century, regained it last year.

PARTNERS

A principal partner is Sol Kerzner, South African gambling mogul with casinos around world.

GAMING SPACE

About 170,000 square feet, third largest in the nation, with 2,500 slot machines, 180 table games and a 1,500-seat bingo hall.

RELATIONS WITH NEIGHBORING TOWN

Montville Mayor wishes them the best of luck.

EMPLOYEES

About 5,500

Foxwoods Resort

OWNERS

Mashantucket Pequot, a tribe of 340. Dominated Connecticut in early 17th century until British and Indian allies almost killed off all the Pequot. Have had reservation for more than 150 years.

PARTNERS

None.

GAMING SPACE

About 250,000 square feet, the nation's largest, with 4,428 slot machines, 308 table games, a 3,000-seat bingo hall, Keno and an off-track betting center.

RELATIONS WITH NEIGHBORING TOWN

Mayors of Ledyard and other towns are suing the tribe for its efforts to annex land.

EMPLOYEES

About 10,200

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Local appeal

Indian Non-Intercourse Act of 1790. At the request of West Hartford attorney Jerome M. Griner, who is representing the tribe, the Mohegans' land claim was stayed until a decision was made about the tribe's petition for federal recognition.

Now that the tribe has been recognized, Griner said he will soon contact U.S. District Court Judge Peter C. Dorsey, who is hearing the case.

Griner said the state's objection until now was that the tribe

See APPEAL page A16

during bingo

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What agreements do the Tribes have with the Towns and what is the impact of those agreements?

May 1994 State/Mohegan Agreement

The Tribe shall make payments in lieu of taxes on real property it acquires in an amount equal to the tax that would be paid on such property were the same not exempt from taxation, unless agreement is reached with a municipality for a lesser amount. The Tribe shall have the same right of



What agreements do the Tribes have with the Towns and what is the impact of those agreements?

May 1994 State/Mohegan Agreement

3. Cooperation of Parties. The parties agree to cooperate

-9-

fully in requesting and supporting passage by the United States Congress of the statute described in paragraph 4 and in implementing the executive action described in that paragraph.

The parties also agree that further proceedings in the Tribe's pending land claim against the State shall be stayed while such legislation is pending; provided, however, that this stay shall terminate on December 31, 1994, unless extended by agreement of the parties, or earlier if the Court, upon motion by either party, determines that favorable action by Congress within a reasonable time does not seem likely.

June 1994 Montville/Mohegan Agreement

4. Commitments of Both Parties. Both parties agree to

cooperate fully in requesting and supporting enactment of federal and State of Connecticut legislation and/or execution of other legally binding actions to implement the terms of this Agreement. The parties specifically agree to seek federal legislation implementing provisions of this Agreement as set forth in Exhibit A to this Agreement.

What agreements do the Tribes have with the Towns and what is the impact of those agreements?

June 1994 Montville/Mohegan Agreement

2. Commitments of the Mohegan Tribe. The Mohegan Tribe agrees:

a. To make payments of \$500,000 from the Tribe's gaming revenues to the Town's Capital Budget on each annual anniversary date of the commencement date of slot machine (i.e., video facsimile) gaming activities on Land Claim Reservation Lands, if such gaming activities are conducted on

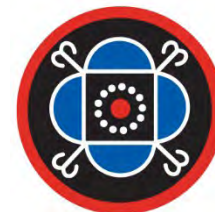


What agreements do the Tribes have with the Towns and what is the impact of those agreements?

June 1994 Montville/Mohegan Agreement

i. To make to the Town annual payments in lieu of taxes, on all land outside the Land Claim Reservation Lands held in trust by the United States on behalf of the Mohegan Tribe as follows:

The Tribe shall make payments in lieu of taxes on real property it acquires in an amount equal to the tax that would be paid on such property were the same not exempt from taxation under federal or state law, unless agreement is reached with the Town for a lesser amount.



Mohegan
Tribe

What agreements do the Tribes have with the Towns and what is the impact of those agreements?

June 1994 Montville/Mohegan Agreement

j. Except for personal property located on Land Claim Reservation Lands and motor vehicles garaged thereon, the Tribe agrees to make to the Town annual payments in lieu of taxes on all tribally owned motor vehicles and personal property located on land held in trust by the United States on behalf of the Mohegan Tribe with the exclusion of:

The Tribe shall make such payments in lieu of taxes 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. Such assessments and payments shall

What are the settled expectations of the Towns?



What is the impact on both Tribes for personal property if level of exemption is \$1.3M

- If the language that failed to pass in the prior session is adopted, the State will:
 - eliminate dual taxation for the Mashantucket Pequot Tribe
 - continue dual taxation for the Mohegan Tribe and
 - ignite litigation between Montville and Mohegan which will poison the relationship
- Language that failed to pass in prior session will exacerbate Connecticut's unequal treatment of the Tribes, returning to the misguided policy of the mid-1990s.



What is the impact on both Tribes under current proposal?

Mohegan Proposal for Equity and Fairness

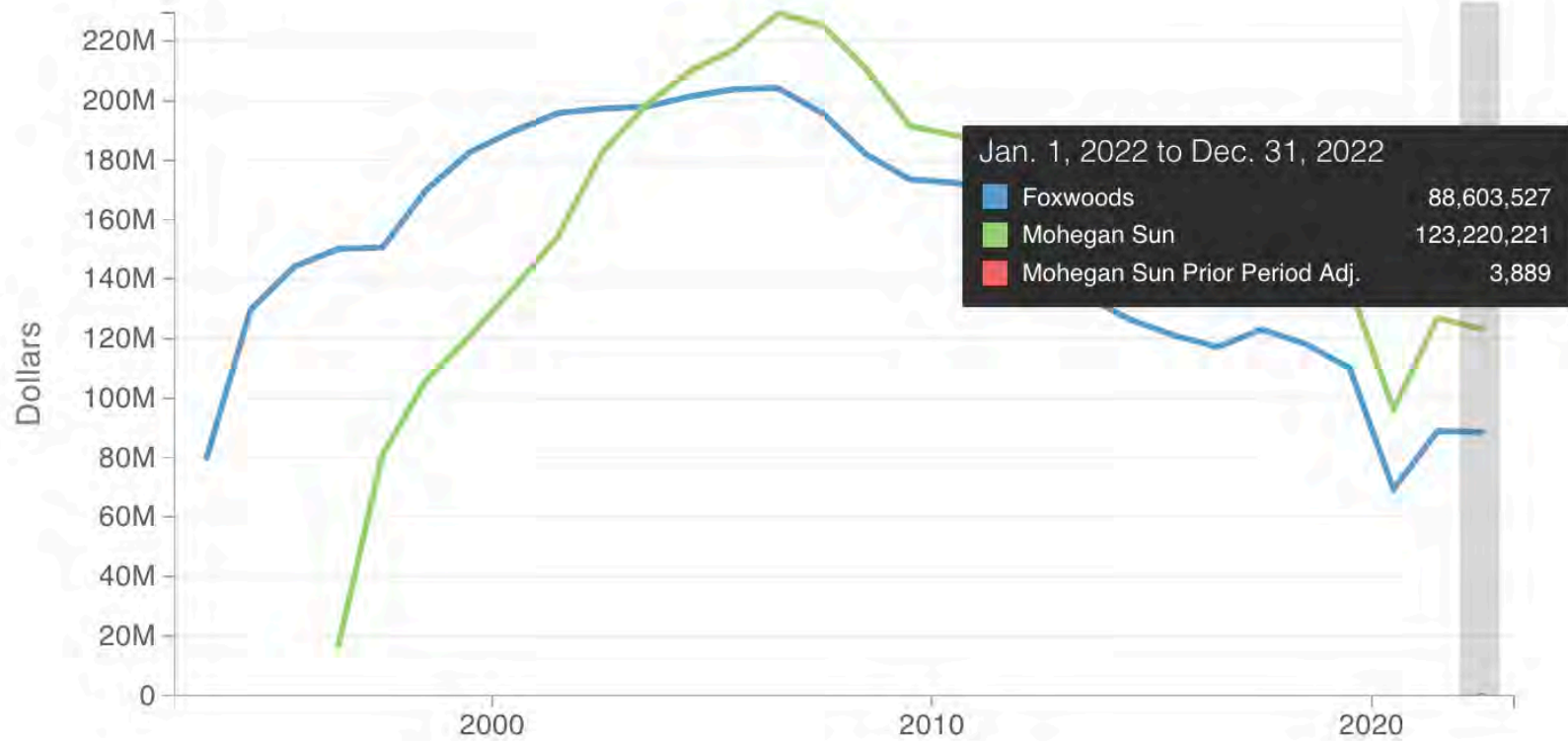
1. End taxation of non-Indian personal property on trust land.
2. Provide Tribes dollar-for-dollar credit to Mashantucket Pequot and Mohegan Fund for payment of real estate and personal property taxes paid by Tribes or non-Indians on trust lands to local governments.
3. Impact on State of Tribal dollar-for-dollar credit to Mashantucket Pequot Mohegan Fund is de minimus given that funds are being paid to Towns.



What is the impact on both Tribes under current proposal?

Total Slot Machine Contributions to State by Each Casino Over Time

See current year's data at: <https://portal.ct.gov/DCP/Gaming-Division/Gaming/Gaming-Revenue-and-Statistics>



What is the impact on both Tribes under legislation that does not address Montville Agreement?

Who pays taxes to local governments if Legislation Does Not Address Montville Agreement

	Mashantucket	Mohegan
Real Estate Tax on Tribal Trust lands	Does Not Pay	\$500k annually 100% on anything over 700 acres
Tribal Personal Property Tax on Trust Lands	Does Not Pay	Effectively 100% on any personal property located on lands over 700 acres
Non-Indian Personal Property Tax on Trust Lands	Does Not Pay	Litigation

This appears to be a National issue. Why should the State take unilateral action?

- State set floor for taxation of tribal trust lands over 700 acres and opened door to tribal personal property thereon.
- Opportunity for the State to provide equity to both Tribes given that Tribes provide multitude of services on trust lands.
- Opportunity to ensure Tribes and Towns, as host communities, are on equal footing.
- Federal action in the near term is unlikely.
- Connecticut recently has led on National issues such as on-line gaming, sports betting, and the Indian Child Welfare Act.
- State should continue modern approach of equity and fairness.



What have other States done to address the issue?

- Maine – addressing restrictive settlement act.
- Michigan – agreements with tribes rather than litigation.
- California – changed tribal gaming compacts to promote equity and fairness from earlier, misguided compacts.
- Montana – prohibits taxation of tribal fee land if trust application is pending.





Q&A

Indian Self-Government, Dual Taxation, and Economic Impacts Presentation

Jonathan B. Taylor
September 2023

Indian Self-Government, Dual Taxation, and Economic Impacts

Jonathan B. Taylor

September 19, 2023

Jonathan Taylor

Research Affiliate



Program Associate



President

THE TAYLOR POLICY GROUP



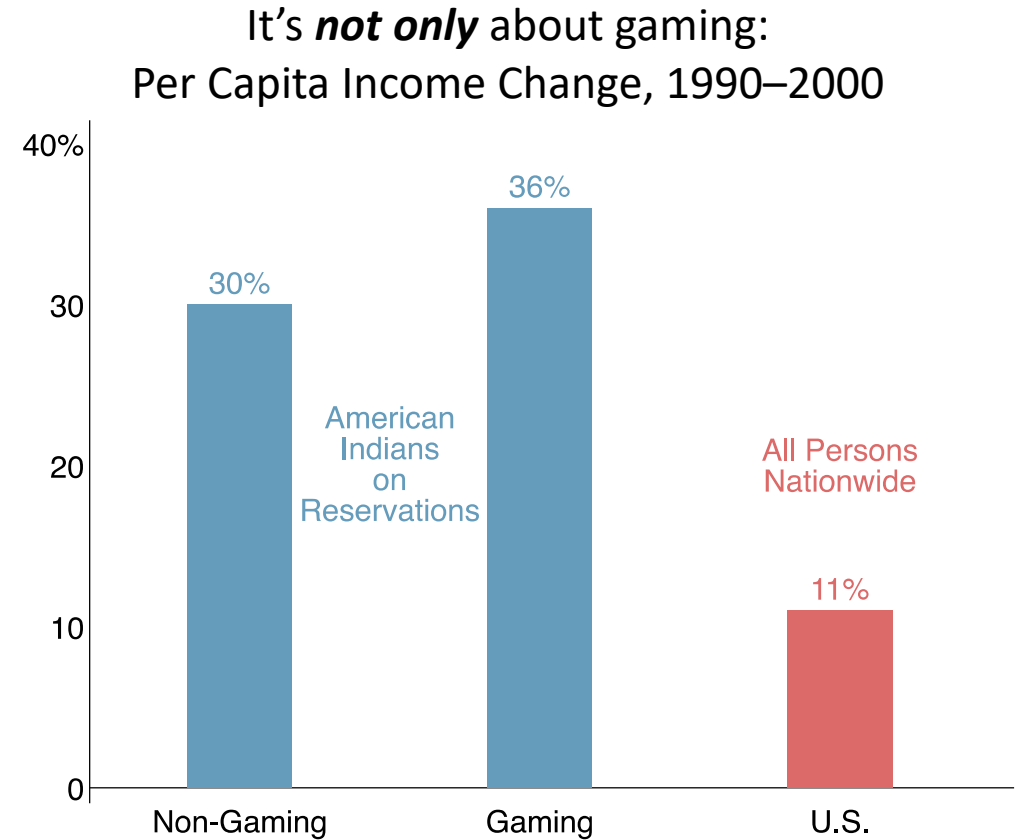
Opinions are my own, not the views of the institutions with which I'm affiliated.

30 Years of Research



Indian Self-Government: Not just the law...a good idea

- American Indian economic and social resurgence arises from *self-government* not aid or federal antipoverty programs.
- *Self-government* in Indian Country entails making law, paving roads, treating sewage, restoring habitat, placing foster children, taxing economic activity, regulating water quality, adjudicating disputes, and more.
- Growing economies, improving public services, and stronger infrastructure spillover to non-Indians (and to state and local treasuries).



Taylor & Kalt, 2005.

What Indian Self-Government Produces:

- More effective and valuable use of natural resources (Krepps and Caves 1994, Jorgensen 2000)...
- Shorter emergency response times and greater public satisfaction with emergency services (Taylor, *et al.*, 1999, Wakeling, *et al.*, 2000)...
- Top-in-the-nation substance abuse recovery rates (NWITC, 2022)...
- High-quality rural health and wellness facilities (Kalispel, 2022)...
- Top-ranked job quality (Kalt, *et al.* 2022)...
- Broadband, 9-1-1 service, highway, and other infrastructure (Kalt, *et al.* 2022)...
- Economic growth in regions that need it (Croman Taylor, 2016)...

...to the benefit of Indians and non-Indians.

ECONOMIC IMPACT OF THE MASHANTUCKET PEQUOT TRIBAL NATION

Jonathan B. Taylor
July 2019



THE TAYLOR POLICY GROUP



Findings in Brief

The Mashantucket Pequot Tribal Nation's enduring nature as a government, its continuous occupancy of a 350-year old reservation, and recognition of those facts in law determine the economic character of its effects on Connecticut today, the subject of this report.

Thirty years of research now makes clear that American Indian economic growth arises not from federal aid or program design, but rather from tribes' asserting their sovereignty, building institutions to exercise that sovereignty, and designing those institutions in alignment with Indigenous culture.

The Mashantucket Pequot Tribal Nation (MPTN) stands in the vanguard with the tribes that demonstrate both the validity of that research and the benefits of American Indian economic growth for surrounding communities.

To attract and accommodate customers from beyond the local population, the MPTN has invested more than \$2.7 billion in Foxwoods Resort Casino since inception.

Foxwoods and the Tribe's allied businesses attract more than 12.8 million visits per year—an average of 35,000 visits daily. Over its lifetime, Foxwoods has hosted 300 million visits, the rough equivalent of every living man, woman, and child in the US today.

At the end of 2017, 9,702 people were employed at the Mashantucket Pequot Reservation, as follows:

- MPTN employed 544 people to do the work of its government.
- Foxwoods and other tribal enterprises employed 6,772.
- An additional 2,386 people worked in non-tribal retail stores and restaurants on the reservation.

If it were a single entity, the combined employment of MPTN government operations, Foxwoods and other tribal enterprises, and the other businesses located at Foxwoods would rank it eighth in Connecticut above Wal-Mart and below the University of Connecticut. As a stand-alone proposition, Foxwoods Resort Casino ranks thirteenth, above Trinity Health of New England and below Mohegan Sun and The Hartford.

Seventy-seven percent of the Tribe's payroll is paid in Connecticut, most of it close to Mashantucket, CT. More than four-fifths of this Connecticut payroll was paid in the state's poorest zip codes.

In fiscal year 2017, employees of the Tribe's government and business enterprises earned more than \$180 million in regular and overtime earnings, plus \$144 million in benefits (the bulk of which were medical and dental insurance, paid leave, and 401(k) contributions) for a tribe-wide total employee compensation of \$324 million.

The Mashantucket Pequot Tribe withheld \$31 million in federal income taxes, \$8.8 million in state income taxes, and \$40 million in Social Security and Medicare taxes. In addition to these amounts, the Tribe's tenant stores and restaurants paid compensation and withheld taxes too.

The estimated direct, indirect, and induced impacts of the 2017 economic activity of the Mashantucket Pequot Reservation totaled \$1.1 billion for the Connecticut economy. Mashantucket Pequot Reservation economic activity supported nearly 12,500 jobs in Connecticut in 2017.

Under the terms of intergovernmental agreements with Connecticut, the MPTN and the Mohegan Tribe have made payments to the State over the past 25 years that amount to nearly \$8 billion.

In 2017, Mashantucket Pequot Reservation economic activity yielded \$145 million in direct Connecticut state and local government revenue; Indirect and induced economic activity added an estimated \$52 million to Connecticut's total.

Connecticut's realized revenue from the Mashantucket Pequot and Mohegan Tribes in the fiscal year ended June 30, 2018 (\$273 million) is almost a third the size of the \$921 million that Connecticut realized in corporation tax revenue that year.

MPTN's economic and fiscal benefits to Connecticut never required any tax abatement, relocation incentive, tax exemption, or other Connecticut tax expenditure.

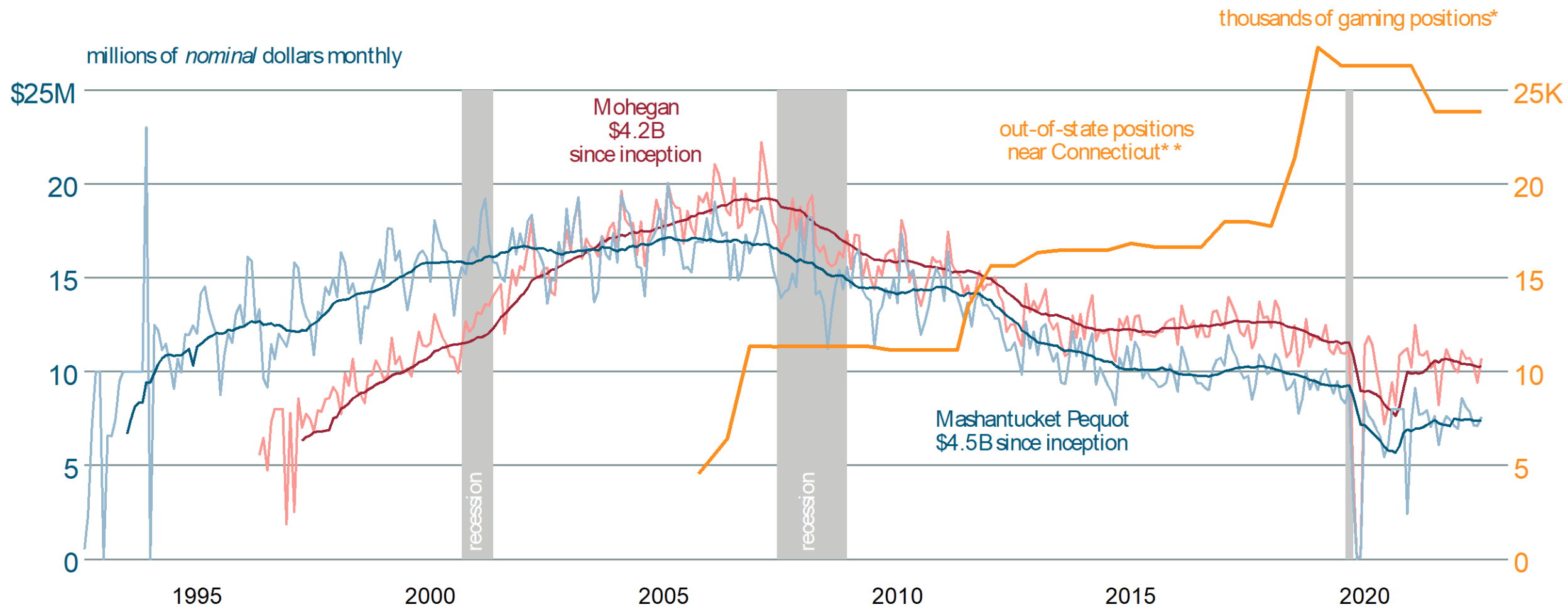
MPTN's 25% direct payment of \$120 million in Connecticut fiscal year 2018 would just about cover the cost of Connecticut's business exemption of sales taxes for machinery used in manufacturing, \$101 million, and its research and experimentation tax credit, \$21 million.

Since more than three-quarters of Foxwoods' gaming dollars in 2017 came from out-of-state patrons, taxpayers and advocates of Connecticut economic growth can rest assured that the Tribe's economic impact is overwhelmingly a net contribution.

The Mashantucket Pequot Economic Engine

1. The Mashantucket Pequot Tribe and its tenants employed 9,702 people, paying 77% of its payroll in Connecticut.
2. 80%+ of in-state tribal payroll was paid into the poorest zip codes in Connecticut.
3. Three-quarters of Foxwood's gaming dollars come from out-of-state patrons.
4. MPTN withheld \$31 million in federal income taxes, \$8.8 million in state income taxes, and \$40 million in Social Security and Medicare taxes.
5. Mashantucket Pequot economic activity yielded \$145 million in direct Connecticut state and local government revenue; Indirect and induced economic activity added an estimated \$52 million to Connecticut's total.
6. Connecticut's realized gaming revenue from the Mashantucket Pequot and Mohegan Tribes in the fiscal year ended June 30, 2018 (\$273 million) was almost a third the size of the \$921 million that Connecticut realized in corporation tax revenue that year.
7. MPTN's economic and fiscal benefits to Connecticut never required any tax abatement, relocation incentive, tax exemption, or other Connecticut tax expenditure.
8. MPTN's 25% direct *payment* of \$120 million in Connecticut fiscal year 2018 would just about cover the cost of Connecticut's business *exemption* of sales taxes for machinery used in manufacturing, \$101 million, and its research and experimentation tax *credit*, \$21 million (Taylor, 2019).

Tribal Contributions to Connecticut and Out-of-State Competition



* Positions = slot machines + 7 × (table games + poker tables)

** In Massachusetts, Rhode Island, and southeast New York for selected dates up to January 1, 2023.

Darker line indicates trailing 12-month moving average.

Sources: FRED, Casino City, CT DCP.

\$4.2B + \$4.5B = \$8.7B nominal dollars, or \$12.9B in inflation-adjusted, 2022 dollars.

The Dual Taxation Burden & the Benefit of Lifting It

- Routinely in Indian Country, state and local governments abdicate responsibility for public goods and services on Indian Reservations: “That’s a tribal and federal problem.”
- When state and local governments tax reservation activity without contributing to reservation public goods and services, tribes face a Hobson’s choice: double-tax an economic activity (and drive it off-reservation) or don’t tax it at all.
- Double-taxation leads to underinvestment via delay, complexity, and fiscal shortfall. There are investments that are years later than otherwise and investments that don’t take place at all.
- Tribal primacy in on-reservation taxation puts the resources, decision-making, and investment potential in the right hands—to the benefit of non-Indians, too (Croman & Taylor, 2016).

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Implications of Congressional Status of Montville Agreement



Working Group to Examine the Taxation of Federally Recognized Tribal Nations

MOHEGAN TRIBE'S PRESENTATION TO
THE WORKING GROUP REGARDING
CONGRESSIONAL STATUS OF MONTVILLE
AGREEMENT

What is the impact on both Tribes under current proposal?

Mohegan Proposal for Equity and Fairness

1. End taxation of non-Indian personal property on trust land.
2. Provide Tribes dollar-for-dollar credit to Mashantucket Pequot and Mohegan Fund for payment of real estate and personal property taxes paid by Tribes or non-Indians on trust lands to local governments.
3. Credit based on tax receipts from local governments.
4. Most transparent approach to address inequitable situation.
5. Impact on State of Tribal dollar-for-dollar credit is de minimus given that funds are being paid to Towns.



Mohegan Proposal Consistent With Federal Legislation

Mohegan Proposal for Equity and Fairness

- Payments made to Montville as provided under Montville Agreement.
- Tribe is credited for payments made to Montville in payments to Mashantucket Pequot and Mohegan Fund.
- Accordingly, neither Montville Agreement nor Federal legislation requires amendment.



Mohegan Proposal Consistent With Federal Legislation

Mohegan Proposal for Equity and Fairness

- Mohegan supports other solutions that achieve equity and fairness.
- Federal legislation expressly provides that Montville Agreement may be amended by the parties if approved by the Secretary of the Interior.

SEC. 7. RATIFICATION OF TOWN AGREEMENT.

25 USC 1775e.

(a) **IN GENERAL.**—Notwithstanding any other provision of law, the consent of the United States is hereby given to the Town Agreement and the Town Agreement shall be in full force and effect.

(b) **APPROVAL OF TOWN AGREEMENT.**—The Secretary shall approve any subsequent amendments made to the Town Agreement after the date of enactment of this Act that are—

(1) mutually agreed on by the parties to the Town Agreement; and

(2) consistent with applicable law.

Mohegan Proposal Consistent With Federal Legislation

Mohegan Proposal for Equity and Fairness

- Mohegan supports other solutions that achieve equity and fairness.
- Consistent with Federal legislation, Montville Agreement provides for amendment by the parties if approved by the Secretary of the Interior.

16. Amendments. This Agreement shall be amended solely by written agreement of the parties hereto and with the approval, if required, of the Secretary of the Interior.



Treasury Tribal Advisory Committee
December 2020



TREASURY TRIBAL ADVISORY COMMITTEE

DECEMBER 9, 2020



Subcommittee On Dual Taxation Report



**Submitted this 9th day of December
by the Subcommittee Chairpersons
and its Members:**

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Co-Chair and TTAC member

Rebecca Benally (Navajo)

Co-Chair and TTAC member

Henry Cagey (Lummi)

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TREASURY TRIBAL ADVISORY COMMITTEE SUBCOMMITTEE ON DUAL TAXATION REPORT

DECEMBER 9, 2020

Desired Policy Objective

That Tribal nations as sovereign governments shall be the only taxing authority for all business and economic activity occurring on and within their reservations.

Discussion

Until dual taxation, where state and local governments tax on-reservation business activity is addressed, Tribal governments will struggle to enhance/diversify their reservation economies, be unable to stabilize the Tribal tax and regulatory environment, and be unable to meet the needs of their citizens that must be served. Tribal governments must have equal standing with all governments within the United States regarding taxing and regulatory authority.

In 1982, the U.S. Supreme Court concluded that

“The power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management. This power enables a tribal government to raise revenues for its essential services....[It derives] from the tribe’s general authority, as sovereign, to control economic activities within its jurisdiction, and to defray the cost of providing governmental services by requiring contributions from persons or enterprises engaged in in such activities within that jurisdiction.”

Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982).

This statement underscores two important concepts. First, taxation is an important instrument of being a sovereign; and second, taxation finances government. An infringement upon the right to tax infringes upon both core attributes of sovereign governance.

American Indian nations and tribes pre-date the formation of the United States and possess inherent and treaty-recognized sovereignty. As a fundamental aspect of that sovereignty, Tribal nations possess immunity from being taxed by the United States federal and state governments. Moreover, Tribal lands subject to the jurisdiction of Tribal governments are not subject to direct taxation by outside governments.

This fundamental legal and political reality is reflected in the United States Constitution in three primary ways. First, the Constitution identifies Native peoples as “Indians not taxed”, a reference

recognizing the separate and independent political status of Tribal nations and the fact that Native people were originally recognized as politically separate (Art. I, Sec. 2, Cl. 3). Secondly, the Constitution recognizes treaties as the “supreme law of the land” which serve as the primary legal mechanism for the recognition of Tribal sovereignty and inherent tax immunity (Art. II, Sec. 2, Cl. 2). And lastly, various Acts of Congress recognizing and regulating the United States’ relationship with Tribal nations, including those without a treaty relationship, affirm inherent Tribal sovereignty and the independent political status of Native peoples (Art. I, Sec. 8, Cl. 3).

None of the 370 treaties between Tribal nations and the United States authorize the taxation of Native peoples, Tribal lands, or business activities occurring on those lands. Nor has Congress ever expressly authorized such taxation (except in limited circumstances). Indeed, when Congress has acted regarding Indian taxation matters, it has done so to protect Tribal tax immunities, such as the case in 1983 when Indian treaty fishing income was declared federal tax-exempt.

And yet, today Indian citizens must pay federal income tax on income earned on their Tribal lands while American state and local governments also assess taxation on non-tribally owned business activity occurring on Tribal lands. The reason for this divergence in the Constitutional and Treaty relationships is two-fold. First, the United States through its Internal Revenue Service following the establishment of the Federal income tax in 1913 and the Indian Citizenship Act of 1924 has sought to apply Federal tax law to Indian nations and individual Indians. And second, Federal court decisions, including U.S. Supreme Court cases, have often sided with the IRS and the states in matters relating to the taxation of Indians creating a body of precedent that has departed from the terms set forth in the Constitution and Indian treaties.

In recent years, this problem has become a critical threat to the growth of Tribal economies as the Supreme Court precedent has permitted state and local governments to tax certain economic activity occurring on Tribal lands involving non-Indians. As recently as 1980, the Supreme Court recognized the pre-emptive effect of Federal law against state taxation (*Central Machinery v. Ariz. Tax Comm’n*). However, since that time the Court has ignored Federal laws regulating Indian traders and inherent tax immunity of Tribal lands to authorize state and local government taxation on Tribal lands (e.g. *Cotton Petroleum v. New Mexico* (1989); *N.Y. Dep’t of Tax & Finance v. Milhelm Attea Bros.* (1994)). Unfortunately, this is in direct conflict with the Indian Commerce clause in the Constitution (Art. I, Sec. 8, Cl. 3), which provides that solely the Congress may regulate commerce with the Indian nations.

The consequence of this recent change in Federal law is crippling to the growth of Tribal economies. Since Tribal governments retain inherent authority to impose taxation, the specter of “dual taxation” by both Tribal and state governments undermines current and future Tribal economic growth. Only in certain industries, where margins are significant, can the dual taxation burden be overcome, but that is not the point. With the outside state and local government taxes setting the tax rate floor, Tribal governments are deprived of the ability to use tax policy to attract businesses to their lands in the manner available to all other governments seeking to grow their economies to support their citizens.

The issue of dual taxation in Indian Country is even more relevant after the U.S. Supreme Court's decision in July 2020 in the *McGirt v. Oklahoma* case affirming the continued existence of the reservation boundaries for the Muscogee (Creek) Nation in eastern Oklahoma. By affirming the boundaries of the Creek Reservation, the Court also confirmed that the Reservation constitutes "Indian country" under 18 U.S.C. § 1151, which has positive implications, not only for the Muscogee (Creek) Nation, but for everyone within the Nation's boundaries who wish to work collaboratively toward a brighter future for all who work and reside in the Reservation, consisting of eleven counties with an area of approximately 3.6 million acres of land, including much of Tulsa and occupied by hundreds of thousands of people.

The Supreme Court's affirmance of the Creek Reservation creates an opportunity for the Nation to work with private and public partners to develop new economic development opportunities for the Nation, businesses within the boundaries, and with neighboring government partners. But, like any other Indian tribe seeking to develop the proper business infrastructure to support the needs of all critical Tribal governmental programs and services, the Nation must look towards revenue raising options that may exist within its reservation, including taxation options.

Ever since the *McGirt* ruling, the Nation has been making critical decisions, legal and policy-wise, on how the affirmance of its governmental jurisdiction and responsibilities will change how it does business in its Indian Country. Muscogee (Creek) Nation Principal Chief David Hill has established the Mvskoke Reservation Protection Commission consisting of various subject matter experts in a wide range of issues, including law enforcement, business and commerce, taxation and regulatory matters, and Indian Child Welfare, to chart the opportunities arising from the decision. A good part of the discussions with the Commission deals with the multiple questions of taxation authority to be exercised by the Nation within the Reservation boundaries and how that will be achieved when the Oklahoma Tax Commission seeks to impose State taxes within the Reservation as well.

Historically, the State of Oklahoma has continued to impose its taxation authority in Indian Country over the objections of Oklahoma Tribal Nations, including Muscogee (Creek) Nation, and sometimes these cases end up before the U.S. Supreme Court resulting in pro-Tribal rulings. However, the Nation believes it is in the best interests of the Nation to take a proactive approach to work with neighboring Tribes, State, County, Municipal, and Federal partners, as well as the business community in the area of taxation. In *McGirt*, Justice Gorsuch wrote, "Oklahoma and its Tribes have proven they can work successfully together as partners . . . the State has negotiated hundreds of intergovernmental agreements with tribes, including many with the Creek."

Impact of Dual Taxation on Tribal Economies

Dual taxation fundamentally is state taxation on Indian lands. This situation creates additional costs on tribal land based business and economic activity. Not only does business and economic activity have to pay tribal taxes, it is also burdened with state/local taxes which in most cases makes the business/economic activity non-feasible for development.

Dual taxation also has an impact on the ability of a tribal nation to secure funding for needed projects. A classic approach to economic development is for a jurisdiction to identify a location of economic potential and then develop the infrastructure paid with borrowed money, typically tax-exempt debt. Taxes, including property and sales, defray the cost of governmental services, and debt service, and help finance discretionary programs that enhance the quality of life for the community. As the development grows, the economies of scale further enhance the discretionary side of the revenue stream. The taxation revenue stream eventually retires the financing, giving another boost to the revenue generation.

This approach, and its variations, have been used by many jurisdictions to bootstrap economic development in their localities. Unfortunately, for tribal communities, this process is hamstrung by dual taxation issues as identified in previous sections. Unfortunately, for a tribal community, economic development of this type often ends up diverting resources from critical public services due to the lack of borrowing capacity. When borrowing occurs, the costs are often higher than other communities due to the risk of uncertainty regarding tax policy. The tribal community is short-changed on the revenue side by the diversion of taxes from the tribes, while the responsibilities of government toward businesses operating in the tribal jurisdiction remain.

In a leading economic analysis of the impact of dual taxation on Tribal economies, the authors state a fundamental premise that:

“Every government relies on tax revenues to fund essential services and public goods, including building and maintaining infrastructure (such as roads, broadband, water and waste water systems); permitting and licensing businesses and professions; enforcing contracts and resolving disputes; ensuring public safety, educating children and workers; enforcing building codes and other safety measures; insuring against unemployment and worker injury; and more.

(Croman, Kelly and Taylor, Jonathan B. 2016).

In the context of Tribal government operations and its uniqueness, the United South and Eastern Tribes note that tribal governments have responsibilities that are distinct from other sovereigns;

“They have the added responsibility to ensure that they have the revenue needed to maintain Tribal language, culture and ceremonies. The preservation and restoration of Tribal culture remains a significant policy objective that seeks to reverse damage caused by the former federal policy of Indian assimilation which forbade the practice of Native ceremonies and Native language.” (USET, 2017)

If tribes are to be successful in creating self-sustaining economies, diversification of their economic base is essential. Tribes operate businesses on their lands to provide services to their citizens as any other local, state and federal government provide. Indeed, “attracting private sector capital investment in an economy can bring many layers of benefits. These range from the direct benefits of jobs and

profit to the benefits of turnover in the local economy through suppliers and other commerce.” (Miskwish 2015). Tax policy is key to achieving the goal of economic self-sufficiency. Non-tribal governments and policy makers regularly fail to adequately understand or incorporate tribal fiscal prerogatives in striking fair tax apportionments. At times a non-tribal government may view Indian country as a potential source of revenue rather than as a polity with inherent public finance requirements (Kaufmann, 2009).

Dual taxation has the unfortunate consequences of (1) inhibiting private sector capital investment due to taxes levied by nontribal governments which would not happen in another jurisdiction, (2) siphoning tax revenue from the reservation to the state and (3) precluding the tribe’s ability to offer tax policy to incent businesses to locate and operate on tribal lands. Taxes imposed by the state on tribal lands do not return to the reservation as governmental services which further disadvantages tribal government in providing services, regulation and programs for its citizens and the businesses located within its jurisdiction.

The clearest example of this is the Campo Kumeyaay Wind Project in California. This project was created through a significant investment of \$75,000,000 on the Kumeyaay reservation. Annually, over \$400,000 in property tax is collected by the State and by the local San Diego County from the wind power project and \$4,000,000 in sales tax was collected by the State of California on the installation. Unfortunately, none of the tax revenue was shared with the Campo Tribal Government (Miskwish 2015). It is important to note that within San Diego County over \$13 billion of fee lands is exempt from property tax. These lands include colleges, cemeteries, and churches, which do not produce taxable revenue but still require county services. These tax exemptions are markedly different from the tax exemption associated with Tribal lands in trust, as Tribal trust land status corresponds with a reduction in the availability and use of County services (Miskwish, 2015).

A more promising model has been offered by the Reno Sparks Indian Colony in Nevada, which has been able to diversify its economy based on Tribal tax policies through agreements with the State of Nevada that address dual taxation. The Reno Sparks Indian Colony has developed commercial sites which are leased to various business enterprises, with taxes paid by the operators remaining wholly within the Tribal territory for use by the Tribal government. This tax base has benefited both the tribal citizens and non-Indian citizens residing there through the provision of infrastructure, environment cleanup and health services. (Reno-Sparks Indian Colony, 2015). While the Reno-Sparks Indian Colony agreement with the state of Nevada is promising in that it demonstrates the benefits of a separate and unencumbered tax base, it may not go far enough in fully supporting sovereignty. The agreement limits the tribe by requiring the tribe to collect at least the same amount as the surrounding county removing autonomy and any competitive advantage the tribe may have in recruiting entities on to tribal lands. A practice that state and county governments commonly utilize.

An Important Policy Consideration: Tax Parity

In addition to the foregoing economic considerations, it is important to also consider the question of parity and relationships between neighboring sovereign governments. No reasonable person would every consider that the State of Arizona be allowed to levy taxes on a New Mexico business providing goods and services to an Arizona citizen in New Mexico. So why then should the State of Arizona be able to impose a tax on a tribal business providing goods and services to their customers simply because the business is operated by a sovereign government located on a reservation within the State borders?

Mashantucket Pequot Chairman Rodney Butler in his testimony to the U. S House of Representative's Ways and Means Subcommittee on Select Revenue Measures shared this request for parity stating: "Quite simply, we are asking for parity in the federal tax code and to be treated as other sovereigns in this country as reflected in the U.S. constitution, and numerous federal laws, treaties and federal court decisions. Without question, tax parity for Tribal governments will allow for greater self-determination, economic growth and self-sufficiency for Indian Country." (Butler 2020). He further noted that the diverted tax revenues from on-reservation businesses are used by state and local government to serve non-Indian populations, rather than citizens of his Tribal nation. (Butler, 2020)

Tribes as Economic Partners with States

States also are burdened when dual taxation occurs on Tribal lands. Indian economic development enhances state economies (Maruca, 2019). "...Indian economic development helps state growth. Tribal lands are often small and embedded in larger states, so state economies benefit when Indians participate more in the state economy and are better educated, healthier and more secure." (Croman and Taylor, 2016)

Multiple studies demonstrate the positive impact of tribal economic development to the economies outside reservation boundaries. All tribes operate within states and contribute greatly to the state economy when there is positive economic development on tribal reservations. The impacts go far beyond those created through tribal-state gaming compacts, although the experience with gaming fully demonstrates this point.

Nationally, Indian Gaming is a \$32 billion industry (Meister, 2018) and is an economic driver not only for the Tribal government that owns the facility but for the surrounding state(s) given the number of non-Indian employees, state employment taxes, revenue sharing agreements, goods and services purchases from businesses within the state with those businesses paying taxes to the state, and the economic activity of employees spending their discretionary funds within the state economy. Indian casinos employ many non-tribal members from the local community. For example, in 2008, an economic analysis of the Chumash Casino in Santa Barbara County demonstrated that for every \$10 in output from the casino, there was another \$4 in output for the local economy (California Economic Forecast, 2008)

Two studies completed recently share the positive economic impacts of Tribal gaming, but it is important to note that many tribes operate diverse businesses which will have the same positive impact within their tribal, local and state communities. The Mashantucket Pequot Tribal Nation reports that in 2017, it employed 9,702 employees through its many enterprises. 77% of the Tribes payroll is paid in Connecticut with more than 80% of the Connecticut payroll paid in the state's poorest zip codes.

The following economic impact from the report was noted (exclusive of the tenant stores and restaurants):

- \$8.8 million in state income taxes
- \$31 million in federal income taxes
- \$40 million in Social Security and Medicare Taxes
- Estimated direct, indirect and induced impacts of the economic activity on the Mashantucket Pequot Reservation totaled \$1.1 billion for the Connecticut Economy
- Purchased goods and services from 879 Connecticut vendors. It is important to note that these Connecticut vendors will also then purchase goods and service within Connecticut (indirect impact), pay payroll taxes and in turn their employees buy household goods and services (induced impact)
- \$120 million to the state of Connecticut in revenue sharing agreements
- Economic activity on the Mashantucket Pequot reservation supported 12,500 jobs in Connecticut (direct, indirect or induced)

Importantly, these benefits to Connecticut never required any tax abatement, relocation incentive, tax exemption of other Connecticut tax expenditure. Given that more than 75% of Foxwoods gaming dollars in 2017 came from out-of-state patrons, the Tribe's economic impact is overwhelmingly a net contribution (Taylor, 2019).

A similar study of Tribal businesses in Oklahoma (with 17 participating Tribes) demonstrated similar positive impacts (Dean PhD, 2017):

- Employment 96,177 (direct and multiplier)
- Payroll \$4,649,911,522 (direct and multiplier)
- Value added \$8,156,310,352 (direct and multiplier)
- Output \$12,932,330,170 (direct and multiplier)
- \$1.5 billion in exclusivity fees to the State of Oklahoma since 2006 with \$133,940,428 paid in 2017
- \$96,050,971 household income, property and other taxes and fees
- Worker Social Insurance Employer and Employee \$15,284, 162
- Corporate income, dividends and production taxes (including sales tax) \$720,013,134
- Additionally, further dollars are brought into the state through various federal funding sources such as the Indian Reservation Roads program which has contributed significantly to roads and infrastructure projects that all Oklahomans use.

Once again it is important to note that these benefits did not require any tax expenditure, abatement, etc. from the state or local governments.

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.



PHOTOS COURTESY OF CODY HARJO,
NATIVE AMERICAN FINANCIAL OFFICERS' ASSOCIATION

Relevant Legislation, Regulation and Administrative Opportunities to Address Tax Parity

(See addendum)

Recommendations for Action by the U.S. Treasury Department and Department of Interior

In accordance with treaties entered into between the United States and Indian tribes, various Acts of Congress, and the fiduciary trust responsibility, the Treasury and Interior Departments have an obligation to assist in addressing the problem of dual taxation on Tribal lands. The following recommendations should be considered for action:

1. Create a position in the Department of Treasury of “Deputy Assistant Secretary for Indian Country and Alaska Native Development in the Office of Economic Policy” for the purpose of managing Treasury-related policy that honors the trust relationship the federal government has to tribes as set forth in the U.S. Constitution, ensuring that pending and new legislation and guidance have beneficial impacts for tribes, for the purpose of conducting ongoing, effective tribal consultations and other such matters as may be necessary.

Rationale: In recent years Congress has assigned important responsibilities to the Treasury Department for addressing issues affecting Indian Country. A primary responsibility is to engage in Tribal Consultation on matters that affect American Indians and Alaska Natives. Under the Tribal General Welfare Exclusion Act of 2014, Congress created the Treasury Tribal Advisory Committee (TTAC) to “advise the Secretary on matters relating to the taxation of Indians.” And through the IRS, the Department has addressed the issuance of tax-exempt debt by Tribal governments and the collection of payroll and other taxes in Indian Country. Most recently the Congress has assigned responsibility to the Department for the distribution of the \$8 billion Coronavirus Relief Fund. While the Department has assigned a member of its professional staff as the “Tribal Liaison”, these assignments have not been permanent. This instability has led to inconsistency with respect to outreach to Tribal governments and failure to develop and achieve clear policy objectives. Despite the efforts of professional staff recently assigned to work with the TTAC and fulfill Congressional directives, more must be done to bolster the professional staff assigned to work on American Indian and Alaska Native tax and economic development initiatives. This proposal would institutionalize a position in the Treasury department to focus on (i) promoting Indian Country economic development, (ii) integrating Tribal economies in the fabric of U.S. economic policy and (iii) provide an opportunity for economic research and analysis affecting governments.

2. Broaden the Treasury Tribal Advisory Committee to include tribal leadership that is reflective of the diversity of Indian Country and to encompass the broader issues within the realm of the economic policy Tribes engage with Treasury on.

3. The Department of Treasury should ensure tribal participation by ensuring adequate time for public comments during TTAC meetings and by engaging tribal leadership on a consultative basis regarding the recommendations made by the TTAC to ensure tribal economic interests are broadly represented in all policy, regulation and guidance.
4. The Department of Treasury should, in consultation with tribes, commit resources to reviewing all tax regulations and economic policy impacting Tribal nations and develop guidance that recognizes the sovereign authority of tribes to be the sole taxing authority on their lands.
5. The Department of Treasury should, in consultation with tribes conduct an economic impact study for the purpose of quantifying all taxes generated by Indian country economic development to ascertain the impact of eliminating dual taxation barriers.
6. The Department of Interior should continue the Indian Trader Regulations (25.C.F.R §140) comprehensive update with proper government to government consultation in the compilation of the draft and final regulation. These updates should explicitly pre-empt state taxation for commerce on Indian lands; prohibit Indian country business activity from state regulation and taxation, and; preserve and not interfere in tribal taxation authority over Indian Commerce. (NCAI, 2015).
7. Tribal tax codes, agreements and Tribal tax compacts with states and local governments, free from interest-balancing tests or dual taxation schemes, should serve as the legal basis relationships between tribes and federal, state and local governments.
8. Intertribal commerce is and should not be subject to State or local government taxation.
9. Any federal legislation governing the ability of States to impose sales taxes on internet and other remote sales should clearly affirm that Tribal Nations have the right to collect these taxes on their tribal lands and that where a Tribal tax applies, the state sales tax does not.
10. Statutory amendments to the HEARTH Act as noted in 25 CFR 162.017 should include the following language:
 - (a) permanent improvements on the leased land, without regard to ownership of those improvements are not subject to any fee, tax, assessment levy or other charge imposed by any State or political subdivision of a State. Improvements shall be subject to taxation only as determined by the Indian tribe with jurisdiction.
 - (b) activities under a lease conducted on the leased premises are not subject to any fee, tax, assessment, levy or other charge (e.g. business use, privilege, public utility, excise, gross revenue taxes) imposed by any State or political subdivision of a State. Activities shall be subjected to taxation only as determined by the Indian tribe with jurisdiction.

(c) the leasehold or possessory interest is not subject to any fee, tax, assessment, levy or other charge imposed by any State or political subdivision of a State. Leasehold or possessory interests shall be subject to taxation only as determined by the Indian tribe with jurisdiction.

11. Treasury Department will hold government to government consultations with all tribal nations and incorporate recommendations from consultations into the Department's policy and regulatory guidance.

Submitted this 9th day of December by the Subcommittee Chairpersons and its Members:

Addendum

Testimony

U.S. House Committee on Ways and Means

Subcommittee on Select Revenue Measures

Hearing on Examining the Impact of the Tax Code on Native American Tribes

March 4, 2020

Written Testimony of President Fawn Sharp, NCAI President

Testimony of Rodney Butler, Chairman Mashantucket Pequot Tribal Nation

Testimony of Matthew Wesaw, Chairman, Pokagon Band of Potawatomi Indians

Written Testimony of Kenneth Kahn, Chairman Sana Ynez Band of Chumash Indians (did not address dual taxation)

Written Testimony Native American Financial Officers Association (discussed treaty obligations and lack of tax base but did not address dual taxation specifically)

Governmental and Financial studies (note with explicit signed permission from authors/tribe)

U.S. Commission on Civil Rights "Broken Promises: Continued Federal Funding Shortfall for Native Americans. 2018

Articles

"The Power to Tax Economic Activity in Indian Country". Willis, Michael F. Natural Resources and Environment. Vol 28. No.4. Spring 2014.

"Why Beggar Thy Indian Neighbor? The Case for Tribal Primacy in Taxation in Indian Country". Croman, Kelly S. & Taylor, Jonathan B. JOPNA 2016-1. The Harvard Project on American Indian Economic Development and The University of Arizona Native Nations Institute.

"Government to government: Models of cooperation between states and tribes." Johnson, S., Kaufmann, J., Dossett, J., Hicks, S. & Davis S. National Conference of State Legislatures. April, 2009).

"The Unfulfilled Promise of the Indian Commerce Clause and State Taxation, the Tax Lawyer, Summer 2010 (published by the American Bar Association).

Relevant laws

Indian Gaming Regulatory Act. 25 U.S.C. §2710(d)(4).

25 U.S.C §3505 (establishing a commission to develop recommendations on dual taxation and report to Congress). Not established and repealed by Title V of the Energy Policy Act of 2005. 25 U.S.C. §3501 et. seq.

Bureau of Indian Affairs, Residential Business, and Wind and Solar Resource Leases on Indian Lands, 77 Red. Reg. 72440 (Dec 5, 2012), Codified at 25 C.F.R pt. 162.

Indian Tribal Governmental Tax Status Act of 1983. 26 U.S.C §7871

Indian Trader Regulations

Court Decisions

Agua Caliente Band of Cahuilla Indians v. Riverside Cnty. et al., 749 Fed. Appx. 650 (9th Cir. 2019),
Confederated Tribes of the Chelhalis Reservation v. Thurston County Board of Equalization 724 F3d (1153) (9th Cir. 2013)

Cotton Petroleum v. New Mexico 490 U.S 163 (1989)

Flandreau Santee Sioux Tribe v. Noem, 938 F.3d 928 (8th Cir. 2019).

Mashantucket Pequot Tribe v. Town of Ledyard, 772 F.3rd 457 (2d Cir. 2013)

Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 137

McClanahan v. Ariz. State Tax Commission 411 U.S. 164, 165, (1973)

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Michigan v. Bay Mills Indian Community, 2014

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Montana v. Crow Tribe, 484 U.S. 997 (1988), affirming 819 F.2d 895 (9th Cir. 1987)

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Oneida Tribe of Indians of Wis. v. Village of Hobart, 732 F.3d 837 (7th Cir. 2013)
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Seminole Tribe v. the State of Florida, 2014

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Tulalip Tribes v. State of Washington, No. CV 15-00940 (W.D. Wash. Oct. 4, 2018).

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Connecticut DRS Ruling 2002-3



STATE OF CONNECTICUT

DEPARTMENT OF REVENUE SERVICES

TWENTY-FIVE SIGOURNEY STREET

HARTFORD, CONNECTICUT 06106



RULING NO. 2002-3

SALES AND USE TAXES

ADMISSIONS TAX

MOTOR VEHICLE FUELS TAX

APPLICATION TO A FEDERALLY RECOGNIZED INDIAN TRIBE LOCATED IN CONNECTICUT

FACTS:

A federally recognized Indian tribe (hereinafter the "Tribe") located in Connecticut has inquired as to the appropriate tax¹ treatment of a variety of transactions to which the Tribe is a party.² These transactions take place either within or outside of "Indian country of the Tribe."³

ISSUES:

1. Whether sales by the Tribe within Indian country of the Tribe of tangible personal property not produced within Indian country of the Tribe to other than enrolled members of the Tribe are subject to Connecticut sales tax.
2. Whether sales by the Tribe within Indian country of the Tribe of tangible personal property to enrolled members of the Tribe are subject to Connecticut sales or use tax.
3. Whether sales by the Tribe of meals that are prepared and served within Indian country of the Tribe are subject to Connecticut sales tax.
4. Whether sales by the Tribe of lodging (i.e., rooms or other accommodations) located within Indian country of the Tribe are subject to Connecticut sales tax.
5. Whether sales by the Tribe of entertainment that is produced within Indian country of the Tribe, including when the Tribe contracts to have a third party produce an entertainment event at facilities developed and operated by the Tribe within Indian country of the Tribe, are subject to Connecticut admissions tax.
6. Whether tangible personal property or services (including food, non-alcoholic beverages or lodging) given by the Tribe within Indian country of the Tribe to patrons of the Tribe as gifts, prizes or as complimentary or partially complimentary privileges are subject to Connecticut sales or use tax.

RULING NO. 2002-3 (cont'd)

7. Whether purchases of tangible personal property by the Tribe where title to the tangible personal property passes to the Tribe within Indian country of the Tribe or rentals of tangible personal property by the Tribe where delivery of the tangible personal property is made to the Tribe within Indian country of the Tribe are subject to Connecticut sales or use tax.
8. Whether purchases of tangible personal property by the Tribe where title to the tangible personal property passes to the Tribe outside of Indian country of the Tribe or rentals of tangible personal property by the Tribe where delivery of the tangible personal property is made to the Tribe outside of Indian country of the Tribe are subject to Connecticut sales or use tax if such tangible personal property is ultimately used within Indian country of the Tribe.
9. Whether purchases by the Tribe of motor vehicles where title to the motor vehicles passes to the Tribe within Indian country of the Tribe or leases by the Tribe of motor vehicles where delivery of the motor vehicles is made to the Tribe within Indian country of the Tribe are subject to Connecticut sales tax.
10. Whether purchases by the Tribe of enumerated services wherever performed, if the benefit of such services is realized by the Tribe, are subject to Connecticut sales or use tax.
11. Whether purchases of tangible personal property outside of Indian country of the Tribe by contractors or subcontractors of the Tribe for use in projects for the Tribe within Indian country of the Tribe are subject to Connecticut sales or use tax.
12. Whether sales by the Tribe outside of Indian country of the Tribe of tangible personal property and services, including lodging and entertainment, are subject to Connecticut sales, use or admissions tax.
13. Whether fuel delivered to the Tribe within Indian country of the Tribe is subject to Connecticut motor vehicles fuels tax (and any other related tax) when the fuel is used in tribally owned or leased motor vehicles that are garaged within Indian country of the Tribe and are either (1) specially-equipped or (2) dedicated exclusively to an essential governmental purpose (other than gaming).

RULINGS:

1. Sales by the Tribe within Indian country of the Tribe of tangible personal property not produced within Indian country of the Tribe to other than enrolled members of the Tribe are subject to Connecticut sales tax and the Tribe, as a retailer, must collect and remit such tax to the State.

RULING NO. 2002-3 (cont'd)

2. Sales by the Tribe within Indian country of the Tribe of tangible personal property to enrolled members of the Tribe are not subject to Connecticut sales tax. However, purchases by an enrolled member of the Tribe within Indian country of the Tribe will be subject to use tax if the enrolled member purchases the tangible personal property with the intention of using it outside of Indian country of the Tribe and actually so uses it.
 3. Sales by the Tribe of meals that are prepared and served within Indian country of the Tribe are not subject to Connecticut sales tax because the value of the meals is generated within Indian country of the Tribe⁴.
 4. Sales by the Tribe of lodging (i.e., rooms or other accommodations) located within Indian country of the Tribe are not subject to Connecticut sales tax because the value of the lodging is generated within Indian country of the Tribe.
 5. Sales by the Tribe of entertainment that is produced within Indian country of the Tribe, including when the Tribe contracts to have a third party produce an entertainment event at facilities developed and operated by the Tribe within Indian country of the Tribe, are not subject to Connecticut admissions tax.
 6. Tangible personal property or services (including food, non-alcoholic beverages or lodging) given by the Tribe within Indian country of the Tribe to patrons of the Tribe as gifts, prizes or as complimentary privileges are not subject to Connecticut use tax because the burden of the use tax falls directly on the Tribe. However, to the extent such tangible personal property or services are given by the Tribe to patrons of the Tribe on a partially complimentary basis, the consideration received by the Tribe for the non-complimentary portion of the tangible personal property or services will be subject to Connecticut sales tax as provided herein.
 7. Purchases of tangible personal property by the Tribe where title to the tangible personal property passes to the Tribe within Indian country of the Tribe or rentals of tangible personal property by the Tribe where delivery of the tangible personal property is made to the Tribe within Indian country of the Tribe are not subject to Connecticut sales tax. However, such purchases or rentals will be subject to Connecticut use tax if the Tribe purchases or rents the tangible personal property with the intention of using it outside of Indian country of the Tribe and actually so uses it.
 8. Purchases of tangible personal property by the Tribe where title to the tangible personal property passes to the Tribe outside of Indian country of the Tribe or rentals of tangible personal property by the Tribe where delivery of the tangible personal property is made to the Tribe outside of Indian country of the Tribe are not subject to Connecticut sales or use tax provided the Tribe complies with the provisions of Conn. Gen. Stat. §§12-407(6) or 12-408c and the tangible personal property is ultimately used solely within Indian country of the Tribe.
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RULING NO. 2002-3 (cont'd)

9. Purchases by the Tribe of motor vehicles where title to the motor vehicles passes to the Tribe within Indian country of the Tribe or leases by the Tribe of motor vehicles where delivery of the motor vehicles is made to the Tribe within Indian country of the Tribe are not subject to Connecticut sales tax.
10. Purchases by the Tribe of enumerated services wherever performed, if the benefit of the services is realized by the Tribe, are not subject to Connecticut sales or use tax unless such services are to real or tangible personal property located outside of Indian country of the Tribe or to property intended to be used outside of Indian country of the Tribe.
11. Purchases of tangible personal property outside of Indian country of the Tribe by contractors or subcontractors of the Tribe for use in projects for the Tribe within Indian country of the Tribe are not subject to Connecticut sales or use tax provided the contractors or subcontractors comply with the provisions of Conn. Gen. Stat. §§12-407(6) or 12-408c.
12. Sales by the Tribe outside of Indian country of the Tribe of tangible personal property and services, including lodging and entertainment, are subject to Connecticut sales, use or admissions tax.
13. Fuel delivered to the Tribe within Indian country of the Tribe is not subject to Connecticut motor vehicle fuels tax or to Connecticut sales tax provided the fuel is used in tribally owned or leased motor vehicles that are garaged within Indian country of the Tribe and are either (1) specially-equipped or (2) dedicated exclusively to an essential governmental purpose (other than gaming).

DISCUSSION:

The United States Supreme Court has consistently ruled that states are without power to tax Indian reservations and the Indians on them without clear congressional authorization to do so. "[A]bsent cession of jurisdiction or other federal statutes permitting it . . . a state is without power to tax reservation lands and reservation Indians." Oklahoma Tax Commission v. Chickasaw Nation, 515 U.S. 450, 458 (1995) (quoting County of Yakima v. Confederated Tribes and Bands of Yakima Nation, 502 U.S. 251, 258 (1992) (citation omitted)). This general rule is even stronger when dealing with state jurisdiction to tax. "In the special area of state taxation of Indian tribes . . . the [Court] has adopted a *per se* rule" against state jurisdiction. California v. Cabazon Band of Mission Indians, 480 U.S. 202, 215 n. 17 (1987). Application of this *per se* or "categorical" rule to situations where a state is attempting to levy a tax on an Indian tribe depends, however, on where the legal incidence of the state tax falls. Oklahoma Tax Commission v. Chickasaw Nation, at 458. Thus, "[t]he initial and frequently dispositive question in Indian tax cases . . . is who bears the legal incidence of the tax." Id.

RULING NO. 2002-3 (cont'd)

According to the United States Supreme Court:

If the legal incidence of an excise tax rests on a tribe . . . for sales made inside Indian country, the tax cannot be enforced absent clear congressional authorization. But if the legal incidence of the tax rests on non-Indians, no categorical bar prevents the enforcement of the tax . . . and . . . the State may impose its levy

Id. at 459. Therefore, a determination of where the legal incidence of a state tax falls will dictate whether application of such tax will be categorically barred or whether a court will apply a federal preemption test⁵ and balance the respective state, federal and tribal interests. Consequently, for purposes of this Ruling, it must first be determined where the legal incidences of the Connecticut sales and use, admissions and motor vehicle fuels taxes fall.

The Connecticut sales tax is imposed on retailers of tangible personal property or enumerated services for the privilege of making taxable sales in Connecticut. See Conn. Gen. Stat. §12-408(1). Although Connecticut law requires retailers to collect and remit the sales tax, Connecticut law provides that retailers must collect reimbursement for the tax from consumers (hereinafter "purchasers"). See Conn. Gen. Stat. §12-408(2). In determining where the legal incidence of a tax falls, the United States Supreme Court in Oklahoma Tax Commission v. Chickasaw Nation held that the "legal incidence" of a tax falls on the party to which, under the taxing statute, the tax burden is ultimately passed on, even if the tax is to be charged and collected by another person making the sale to such party. Oklahoma Tax Commission v. Chickasaw Nation, at 457-462. Under this analysis, the legal incidence of the Connecticut sales tax clearly falls on purchasers, not retailers.

The corollary to the sales tax is the use tax.⁶ The use tax is imposed "on the storage, acceptance, consumption or any other use in this state of tangible personal property purchased from any retailer for storage, acceptance, consumption or any other use in this state" Conn. Gen. Stat. §12-411(1). Although certain retailers⁷ may be required to collect the use tax from purchasers, liability for the use tax rests ultimately with the purchasers. Therefore, under the holding in Oklahoma Tax Commission v. Chickasaw Nation, in those situations where state law requires purchasers to self-assess and remit the use tax, the burden of the use tax falls exclusively on the purchasers. Thus, like the Connecticut sales tax, the legal incidence of the Connecticut use tax falls on purchasers, not retailers.

Subject to certain exemptions, Conn. Gen. Stat. §12-541 imposes a ten percent tax on the admission charge to any place of amusement, entertainment or recreation. Places of amusement, entertainment or recreation include, but are not limited to, theaters, motion picture shows, auditoriums where lectures and concerts are given, amusement parks, fairgrounds, race tracks, dance halls, ball parks, stadiums, amphitheaters, convention centers, golf courses, miniature golf courses, tennis courts, skating rinks, swimming pools, bathing beaches, gymnasiums, auto shows, boat shows, camping shows, home shows, dog shows and antique shows. See Conn. Gen. Stat.

RULING NO. 2002-3 (cont'd)

§12-540(3). Under Connecticut law, the admissions tax is imposed upon the person making the admission charge. See Conn. Gen. Stat. §12-541(b). Like the sales tax, however, Connecticut law provides that the person making the admissions charge must collect reimbursement for the tax from the purchaser. *Id.* Therefore, under the holding in Oklahoma Tax Commission v. Chickasaw Nation, the legal incidence of the Connecticut admissions tax falls on purchasers, not on persons making the admissions charges.

The Connecticut motor vehicle fuels tax is an excise tax imposed on distributors, as that term is defined in Conn. Gen. Stat. §12-455a(a). Distributors pay motor vehicle fuels tax to the State of Connecticut "for the account of the purchaser or consumer." Conn. Gen. Stat. §12-458(a)(2). In addressing the application of the motor vehicle fuels tax, the Connecticut Supreme Court has determined that "the plain intent of the legislature was to impose the burden of the [motor vehicle fuels] tax upon the motor vehicle fuel purchaser or user, and to make the distributor responsible only for its collection and payment." Wesson, Inc. v. Hychko, 205 Conn. 51, 55-56, 529 A.2d 714, 716 (1987). Therefore, in light of the Connecticut Supreme Court's holding in Wesson, Inc. v. Hychko and in accordance with the United States Supreme Court's holding in Oklahoma Tax Commission v. Chickasaw Nation, the burden of the motor vehicle fuels tax falls on purchasers, not distributors.

Applying this analysis to the facts of this Ruling, the Department has determined that, in the following situations, the legal incidence of the tax falls on the Tribe and, as such, recognizes that the application of the tax is categorically barred. These issues are discussed below with reference to their Ruling number.

2. Sales by the Tribe within Indian country of the Tribe of tangible personal property to enrolled members of the Tribe are not subject to sales tax. However, purchases by an enrolled member of the Tribe within Indian country of the Tribe will be subject to use tax if the enrolled member purchases the tangible personal property with the intention of using it outside of Indian country of the Tribe and actually so uses it.

In this situation, the legal incidence of the Connecticut sales tax falls on enrolled members of the Tribe who are making purchases within Indian country of the Tribe. Although this Ruling does not apply to transactions involving enrolled members of the Tribe, the Department has long recognized that "[w]hen the legal incidence of [a] tax is found to be on a tribe or its members for a sale within Indian country, state taxation of the transaction is categorically prohibited." Ruling No. 95-11 at p. 4. Ruling No. 95-11 also stated, however, that "purchases made by the Tribe or its members in Indian country may be subsequently subject to use tax if the property is intended to be used in Connecticut outside of Indian country at the time of sale and then is so used." *Id.* at p. 3. Therefore, consistent with Ruling No. 95-11 and in accordance with established principles of federal Indian law, sales made by the Tribe within Indian country of the Tribe of tangible personal property to enrolled members of the Tribe are not subject to sales tax, but purchases by an enrolled member of the Tribe within Indian country of the Tribe will be subject to use tax if the

RULING NO. 2002-3 (cont'd)

enrolled member purchases the tangible personal property with the intention of using it outside of Indian country of the Tribe and actually so uses it.

6. Tangible personal property or services (including food, non-alcoholic beverages or lodging) given by the Tribe within Indian country of the Tribe to patrons of the Tribe as gifts, prizes or as complimentary privileges are not subject to Connecticut use tax because the burden of the use tax falls directly on the Tribe. However, to the extent such tangible personal property or services are given by the Tribe to patrons of the Tribe on a partially complimentary basis, the consideration received by the Tribe for the non-complimentary portion of the tangible personal property or services will be subject to Connecticut sales tax as provided herein.

In this situation, the Tribe is giving away goods and services within Indian country of the Tribe to patrons⁸ of the Tribe and is not being reimbursed for such tangible personal property or services. By distributing tangible personal property and services on a fully complimentary basis, the Tribe, under Connecticut law, is making a taxable use of the tangible personal property and services and as such is liable for use tax on the purchase price of the tangible personal property or the retail value of the services. Because the legal incidence of the use tax falls on the Tribe, however, the tax is categorically barred. On the other hand, when the Tribe distributes tangible personal property or services on a partially complimentary basis, the Tribe makes a taxable use of only a portion of the tangible personal property or services and is the retailer of the non-complimentary portion of such tangible personal property or services. Consequently, because the legal incidence of the sales tax, with respect to the non-complimentary portion of the tangible personal property and services, falls on purchasers, not retailers, the consideration received by the Tribe for the tangible personal property or services will be subject to the sales tax as provided herein.

7. Purchases of tangible personal property by the Tribe where title to the tangible personal property passes to the Tribe within Indian country of the Tribe or rentals of tangible personal property by the Tribe where delivery of the tangible personal property is made to the Tribe within Indian country of the Tribe are not subject to Connecticut sales tax. However, such purchases or rentals will be subject to Connecticut use tax if the Tribe purchases or rents the tangible personal property with the intention of using it outside of Indian country of the Tribe and actually so uses it.

As discussed above, the legal incidence of the sales tax falls on purchasers. Here, not only is the Tribe the purchaser but the transactions take place within Indian country of the Tribe. In such situations, the Department has long recognized that "[w]hen the legal incidence of [a] tax is found to be on a tribe or its members for a sale within Indian country, state taxation of the transaction is categorically prohibited." Ruling No. 95-11 at p. 4. Accordingly, because the legal incidence of the sales tax falls on the Tribe when it purchases tangible personal property where title to the tangible personal property passes to the Tribe within Indian country of the Tribe or when it rents tangible personal property where delivery of the tangible personal property is made to the Tribe

RULING NO. 2002-3 (cont'd)

within Indian country of the Tribe, the tax is barred. However, Ruling No. 95-11 also stated that "purchases made by the Tribe or its members in Indian country may be subsequently subject to use tax if the property is intended to be used in Connecticut outside of Indian country at the time of sale and then is so used." *Id.* at p. 3. Likewise, with regard to rentals of tangible personal property where delivery of the tangible personal property takes place within Indian country of the Tribe, Ruling No. 95-11 stated that "[s]uch rentals will not be subject to use tax as long as the Tribe or its members do not rent the property with the intent to use it outside of Indian country and then so use it." *Id.* at p. 4. Therefore, consistent with Ruling No. 95-11 and in accordance with established principles of federal Indian law, purchases of tangible personal property by the Tribe where title to the tangible personal property passes to the Tribe within Indian country of the Tribe or rentals by the Tribe of tangible personal property where delivery of the tangible personal property is made to the Tribe within Indian country of the Tribe will be subject to use tax if the Tribe purchases or rents the tangible personal property with the intention of using it outside of Indian country of the Tribe and actually so uses it.

9. Purchases by the Tribe of motor vehicles where title to the motor vehicles passes to the Tribe within Indian country of the Tribe or leases by the Tribe of motor vehicles where delivery of the motor vehicles is made to the Tribe within Indian country of the Tribe are not subject to Connecticut sales tax.

As discussed above, the legal incidence of the sales tax falls on purchasers. Here, not only is the Tribe the purchaser but the transactions take place within Indian country of the Tribe. In such situations, the Department has long recognized that "[w]hen the legal incidence of [a] tax is found to be on a tribe or its members for a sale within Indian country, state taxation of the transaction is categorically prohibited." *Id.* Accordingly, because the legal incidence of the sales tax falls on the Tribe when it purchases motor vehicles where title to the vehicles passes to the Tribe within Indian country of the Tribe or when it leases motor vehicles where delivery of the vehicles is made to the Tribe within Indian country of the Tribe, the tax is barred.

10. Purchases by the Tribe of enumerated services wherever performed, if the benefit of the services is realized by the Tribe, are not subject to Connecticut sales tax unless such services are to real or tangible personal property located outside of Indian country of the Tribe or to property intended to be used outside of Indian country of the Tribe.

In Connecticut, taxable services are generally enumerated in Conn. Gen. Stat. §12-407(2)(i). These enumerated services fall into three categories: services to real property, services to tangible personal property and "other" services. The Sales and Uses Taxes Act, Conn. Gen. Stat. §12-406 *et seq.*, generally imposes sales and use taxes on these services only when some benefit or use of the service is realized in Connecticut. When applying this general rule to services to real and tangible personal property,⁹ the benefit of such services is considered to be realized at the location of the property. Therefore, if the real or tangible personal property is located in Indian country of the Tribe, the benefit of the services to the property is realized by the Tribe within Indian country

RULING NO. 2002-3 (cont'd)

of the Tribe and, because the legal incidence of the tax falls on the Tribe within Indian country of the Tribe, the tax on the services must fall. However, if the intended use of the property is outside of Indian country of the Tribe or if the property to which the services are performed is located outside of Indian country of the Tribe, the services, although received by the Tribe, are realized outside of Indian country of the Tribe and therefore are subject to Connecticut sales or use tax.

Unlike services to real or tangible personal property, the benefit of "other" services¹⁰ often is realized at a location other than where the services are performed. For purposes of this ruling, services purchased by the Tribe in connection with the operation of its Tribal government may be performed outside of Indian country of the Tribe. However, regardless of where performed, the Department recognizes that services purchased by the Tribe in connection with the operation of its Tribal government are realized by the Tribe at the seat of its Tribal government (i.e., within Indian country of the Tribe). Therefore, because the benefit of these services, like the services to real and tangible personal property located within Indian country of the Tribe, are realized by the Tribe within Indian country of the Tribe and the legal incidence of the tax falls on the Tribe within Indian country of the Tribe, the tax on such services must fall.

13. Fuel delivered to the Tribe within Indian country of the Tribe is not subject to Connecticut motor vehicle fuels tax or to Connecticut sales tax provided the fuel is used in tribally owned or leased motor vehicles that are garaged within Indian country of the Tribe and are either (1) specially-equipped or (2) dedicated exclusively to an essential governmental purpose (other than gaming).

In light of Conn. Gen. Stat. §12-458(a)(2) and the Connecticut Supreme Court's holding in *Wesson, Inc. v. Hychko*, 205 Conn. 51, 529 A.2d 714 (1987), it is clear that the burden of the motor vehicle fuels tax falls on purchasers, not distributors. In this case the Tribe is purchasing motor vehicle fuel. Furthermore, the fuel is being delivered to the Tribe within Indian country of the Tribe. In such situations, the Department has long recognized that "[w]hen the legal incidence of [a] tax is found to be on a tribe or its members for a sale within Indian country, state taxation of the transaction is categorically prohibited." Ruling No. 95-11 at p. 4. Accordingly, because the legal incidence of the motor vehicle fuels tax falls on the Tribe when it purchases fuel that is delivered to the Tribe within Indian country of the Tribe and used in tribally owned or leased motor vehicles that are garaged within Indian country of the Tribe and are either (1) specially-equipped or (2) dedicated exclusively to an essential governmental purpose (other than gaming), the tax is barred.

Conn. Gen. Stat. §12-412(15) provides an exemption from sales tax for motor vehicle fuel. Conn. Gen. Stat. §12-412(15), in pertinent part, exempts "[s]ales of and the storage, use or other consumption in this state of motor vehicle fuel (A) for use in any motor vehicle licensed or required to be licensed to operate upon the public highways of this state, whether or not the [motor vehicle fuels tax] has been paid on such fuel." Therefore, any fuel that is purchased by the Tribe and used in motor vehicles that are "licensed or required to be licensed to operate upon the

RULING NO. 2002-3 (cont'd)

public highways" of Connecticut will be exempt from sales tax pursuant to Conn. Gen. Stat. §12-412(15).

With respect to four of the remaining issues addressed by this Ruling, the Department has determined that the legal incidence of the tax in those situations does not fall on the Tribe. Accordingly, the determination of the proper tax treatment requires a balancing of the respective state, federal and tribal interests. These issues are discussed below with reference to their Ruling number.

1. Sales by the Tribe within Indian country of the Tribe of tangible personal property not produced within Indian country of the Tribe to other than enrolled members of the Tribe are subject to Connecticut sales tax and the Tribe, as a retailer, must collect and remit such tax to the State.

As discussed previously, "[t]he initial and frequently dispositive question in Indian tax cases . . . is who bears the legal incidence of the tax." Oklahoma Tax Commission v. Chickasaw Nation, at 458. In this situation, the Tribe is the retailer, not the purchaser. Therefore, having determined that the legal incidence of the sales tax falls on purchasers, not retailers, the burden of the sales tax in this situation does not fall on the Tribe and, thus, is not categorically barred. Therefore, the Department must balance the respective state, federal and tribal interests to determine whether the sales tax will apply in this situation.

When balancing the respective state, federal and tribal interests, the Department recognizes that it must find that the State's interest in imposing its tax outweighs the Tribe's and the federal government's interest in tribal self-government in order to impose the tax. To this end, the United States Supreme Court has stated:

While the Tribes do have an interest in raising revenues for essential governmental programs, that interest is strongest when the revenues are derived from value generated on the reservation by activities involving the Tribes and when the taxpayer is the recipient of tribal services. The State also has a legitimate governmental interest in raising revenues, and that interest is strongest when the tax is directed at off-reservation value and when the taxpayer is the recipient of state services.

Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134, 156-57 (1980). Thus, it appears that tribal interests will be considered strongest when the transactions being taxed are connected to or derived from Indian country or from tribal resources or services. In contrast, tribal interests will be less substantial where the tribe simply imports a finished product into Indian country and resells it to non-tribal members for use outside of Indian country.

RULING NO. 2002-3 (cont'd)

In several United States Supreme Court cases involving state taxation of retail sales of cigarettes by a tribe, where tribal retailers sold to non-tribal purchasers, the legal incidence of the sales tax fell on the non-tribal purchasers, and the products sold were manufactured outside of Indian country, state sales taxes have been deemed valid. Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. at 155-57; Moe v. Confederated Salish and Kootenai Tribes of the Flathead Reservation, 425 U.S. 463, 482-83 (1976). According to the United States Supreme Court, where the tribe is simply "marketing an exemption from state taxation to persons who would normally do their business elsewhere," and the value is not generated on the reservation, the sales tax will be upheld. Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. at 155.

This analysis has been applied by several federal circuit courts in the context of retail sales of other tangible personal property within Indian country. Yavapai-Prescott Indian Tribe v. Scott, 117 F.3d 1107, 1112 (9th Cir. 1997), cert. denied, 522 U.S. 1076 (1998) (room rentals and food and beverage); Gila River Indian Community v. Waddell, 91 F.3d 1232, 1236 (9th Cir. 1996) (tickets and concessionary items); Salt River Pima-Maricopa Indian Community v. Arizona, 50 F.3d 734, 736 (9th Cir. 1995), cert. denied, 516 U.S. 868 (1995) (retail goods at shopping mall); and Indian Country U.S.A., Inc. v. Oklahoma, 829 F.2d 967, 984, 986-87 (10th Cir. 1987) (sales tax on bingo activities). In each of these cases, the courts focused on the tribe's role and contribution to the value of the tangible personal property purchased and sold within Indian country.

In light of the United States Supreme Court cigarette tax cases and the application and interpretation of those cases by several federal circuit courts, the Department recognizes that if the tangible personal property being sold by a tribe to non-tribal members within Indian country of a tribe is produced and consumed within Indian country of the tribe, the state tax will be preempted. However, if the tangible personal property is simply imported into Indian country of a tribe and sold for off-reservation use, and the tribe has only minimal involvement, the Department recognizes that the state has a legitimate governmental interest in taxing such tangible personal property and, as a result, the tribe must collect and remit the tax on the tangible personal property sold.

In this situation, the Tribe is making retail sales of tangible personal property within Indian country of the Tribe to non-tribal members. Therefore, as explained previously, the burden of the sales tax does not fall on the Tribe. Rather, the legal incidence of the sales tax falls directly on the non-tribal members who are making purchases within Indian country of the Tribe. Furthermore, the tangible personal property being sold by the Tribe is not produced within Indian country of the Tribe. The tangible personal property is simply being imported into Indian country of the Tribe and is being resold to non-tribal members for use outside of Indian country of the Tribe. Consequently, after balancing the respective state, federal and tribal interests involved, it is clear that the Tribe has added minimal value, if it added any value at all, to the tangible personal property and the State's tax is "directed at off-reservation value." Washington v. Confederated

RULING NO. 2002-3 (cont'd)

Tribes of the Colville Indian Reservation, 447 U.S. at 156-57. Therefore, consistent with the United States Supreme Court cigarette tax cases and the application and interpretation of those cases by several federal circuit courts, the sales tax will apply to these transactions.

3. Sales by the Tribe of meals that are prepared and served within Indian country of the Tribe are not subject to Connecticut sales tax because the value of the meals is generated within Indian country of the Tribe.
4. Sales by the Tribe of lodging (i.e., rooms or other accommodations) located within Indian country of the Tribe are not subject to Connecticut sales tax because the value of the lodging is generated within Indian country of the Tribe.

In both of these situations, the Department must again balance the state, federal and tribal interests involved to determine whether the Connecticut sales tax will apply. As previously explained, when balancing the respective state, federal and tribal interests the Department must make a "particularized inquiry into the nature of the state, federal, and tribal interests at stake" and recognizes that it must find that the State's interest in imposing its tax outweighs the Tribe's and the federal government's interest in tribal self-government in order to impose the tax. White Mountain Apache Tribe v. Bracker, 448 U. S. 136, 145 (1980). Relying on the United States Supreme Court cigarette tax cases and the application and interpretation of those cases by several federal circuit courts, the Department, in undertaking the balancing, must apply the following principles: if the tangible personal property being sold by a tribe to non-tribal members within Indian country of a tribe is produced and consumed within Indian country of the tribe, the state tax will be preempted. However, if the tangible personal property is simply imported into Indian country of a tribe and sold for off-reservation use, and the tribe has only minimal involvement, the state will have a legitimate governmental interest in taxing such tangible personal property and, as a result, the tribe must collect and remit the tax on the tangible personal property sold.

Although the legal incidence of the tax in both of these situations (i.e., the sales of meals¹¹ and lodging) falls directly on the purchasers, the value of the meals and lodging being sold by the Tribe is being produced and consumed within Indian country of the Tribe. Moreover, the Tribe is heavily involved in the production of the meals and lodging and this involvement significantly contributes to the value of the meals and lodging. Most notably, the Tribe built, owns and operates all the restaurants at which the meals are served and all the facilities where lodging is provided, tribal employees prepare and serve all meals and the Tribe regulates food inspections and workplace and occupational safety. Accordingly, the Department recognizes that a substantial portion of the value of the meals and lodging is being generated within Indian country of the Tribe and that the Tribe is heavily involved in and contributes to the generation of that value. Therefore, when balancing the respective state, federal and tribal interests involved, it has been determined that the Tribe's interests outweigh the State's interests. Consequently, sales of meals and lodging by the Tribe within Indian country of the Tribe will not be subject to Connecticut sales tax.¹²

RULING NO. 2002-3 (cont'd)

12. Sales by the Tribe outside of Indian country of the Tribe of tangible personal property and services, including lodging and entertainment, are subject to Connecticut sales, use or admissions tax.

In this situation, the Tribe is making sales of tangible personal property and services outside of Indian country of the Tribe. The general rule in these situations is that such activities will be subject to nondiscriminatory state taxes. Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148 (1973). In Mescalero Apache Tribe v. Jones, the United States Supreme Court upheld a gross receipts tax on an off-reservation ski resort business wholly owned by a tribe, stating: "Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State." Id. at 148-49. The Department recognized this general principle in Ruling No. 95-11:

Indian tribes and their members, unlike the governments of the State of Connecticut or the United States, do not enjoy exemption and/or constitutional immunity from state taxation wherever in Connecticut they happen to be when otherwise taxable sales are made. Instead, the exemption from sales tax depends both on the identity of the purchasers (Indian tribes and their members) and where the sales to them take place (within Indian country). Implicit in the Supreme Court's bright-line test in Chickasaw Nation is the recognition that when Indians are on their own federally-recognized land they are generally beyond the jurisdictional reach of the states within which they are situated; but the land itself, without the tribe, and the Indians themselves, without the land, are not necessarily beyond the states' reach. Thus when title to tangible personal property is transferred to a tribe or its members at a Connecticut location outside of Indian country . . . the imposition of sales tax on such transaction is not federally preempted.

Ruling No. 95-11 at p. 2. Therefore, in light of the United States Supreme Court's holding in Mescalero Apache Tribe v. Jones, sales by the Tribe outside of Indian country of the Tribe of tangible personal property and services, including lodging and entertainment, are subject to sales, use or admissions tax.

However, as noted previously, there are exemptions to the admissions tax. See Conn. Gen. Stat. §12-541(a). One such exemption is Conn. Gen. Stat. §12-541(a)(3), which exempts charges "to any event . . . all of the proceeds from which inure exclusively to an entity which is exempt from federal income tax under the Internal Revenue Code, provided such entity actively engages in and assumes the financial risk associated with the presentation of such event." Because the Tribe is an entity that is exempt from federal income tax,¹³ any sales of entertainment made by the Tribe, whether such sales are made within or outside of Indian country of the Tribe, will be exempt provided the financial benefits and the risk of the event inure to the Tribe.

RULING NO. 2002-3 (cont'd)

With respect to the remaining issues addressed in this Ruling, the Department need not make a determination as to where the legal incidence of the tax falls. These remaining issues are discussed below and make reference to their Ruling number.

5. Sales by the Tribe of entertainment that is produced within Indian country of the Tribe, including when the Tribe contracts to have a third party produce an entertainment event at facilities developed and operated by the Tribe within Indian country of the Tribe, are not subject to Connecticut admissions tax.

As stated previously, the Tribe is an entity that is exempt from federal income tax. Consequently, any sales of entertainment made by the Tribe, whether such sales are made within or outside of Indian country of the Tribe, will be exempt from the Connecticut admissions tax provided the financial benefits and the risk of the event inure to the Tribe. See Conn. Gen. Stat. §12-541(a)(3).

8. Purchases of tangible personal property by the Tribe where title to the tangible personal property passes to the Tribe outside of Indian country of the Tribe or rentals of tangible personal property by the Tribe where delivery of the tangible personal property is made to the Tribe outside of Indian country of the Tribe are not subject to Connecticut sales or use tax provided the Tribe complies with the provisions of Conn. Gen. Stat. §§12-407(6) or 12-408c and the tangible personal property is ultimately used solely within Indian country of the Tribe.

In this situation, the Tribe is making purchases¹⁴ of tangible personal property outside of Indian country of the Tribe. Just as when the Tribe is making sales of tangible personal property or services outside of Indian country, the general rule in these situations is that such activities will be subject to nondiscriminatory state taxes. Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148. Consequently, in light of Mescalero Apache Tribe v. Jones, purchases of tangible personal property by the Tribe where title to the tangible personal property passes to the Tribe outside of Indian country of the Tribe or rentals of tangible personal property by the Tribe where delivery of the tangible personal property is made to the Tribe outside of Indian country of the Tribe will be subject to tax in Connecticut. However, provided the Tribe complies with the provisions of Conn. Gen. Stat. §12-407(6) or Conn. Gen. Stat. §12-408c, the Tribe may avail itself of these specific exclusions and the transactions will not be subject to tax.

Conn. Gen. Stat. §12-407(6) excludes from the definition of "storage" and "use"

keeping, retaining or exercising any right or power over tangible personal property shipped or brought into this state for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

RULING NO. 2002-3 (cont'd)

For purposes of Conn. Gen. Stat. §12-407(6), the Department considers Indian country of the Tribe to be "outside" of Connecticut. Therefore, if the Tribe purchases or rents tangible personal property from outside Connecticut, keeps or retains the property in Connecticut and subsequently transports the property into Indian country of the Tribe for use solely within Indian country of the Tribe, the Connecticut use tax does not apply.

Similar to Conn. Gen. Stat. §12-407(6) is Conn. Gen. Stat. §12-408c, which is also known as The "Buy Connecticut" Provision. See Special Notice 2001(5), The "Buy Connecticut" Provision. Conn. Gen. Stat. §12-408c allows taxpayers carrying on a trade, occupation, business or profession in Connecticut to request refunds of sales and use taxes paid on tangible personal property that is purchased from Connecticut retailers and is eventually shipped out of Connecticut for exclusive use outside Connecticut. See Conn. Gen. Stat. §12-408c(a). It also allows the Commissioner of Revenue Services to issue permits that enable qualified purchasers to purchase such property without payment of the sales and use taxes otherwise imposed by Chapter 219 of the Connecticut General Statutes. See Conn. Gen. Stat. §12-408c(b).

To satisfy the statutory requirements of Conn. Gen. Stat. §12-408c, the tangible personal property must be purchased from Connecticut retailers and subsequently shipped¹⁵ outside of Connecticut for use solely outside of Connecticut. As with Conn. Gen. Stat. §12-407(6), the Department considers Indian country of the Tribe to be outside of Connecticut for purposes of both the refund and exemption permit portions of Conn. Gen. Stat. §12-408c. See Special Notice 2001(5) at p. 4. Therefore, if, in accordance with Conn. Gen. Stat. §12-408c(b), the Tribe is issued a permit by the Department, it may purchase or rent tangible personal property from a Connecticut retailer exempt from sales or use tax and keep or retain the property in Connecticut, provided it eventually ships the property into Indian country of the Tribe for use solely within Indian country of the Tribe. If the Department does not issue the Tribe a permit, the Tribe may utilize the refund portion of Conn. Gen. Stat. §12-408c and file a claim for refund of the sales or use tax it paid on such property.

11. Purchases of tangible personal property outside of Indian country of the Tribe by contractors or subcontractors of the Tribe for use in projects for the Tribe within Indian country of the Tribe are not subject to Connecticut sales or use tax provided the contractors or subcontractors comply with the provisions of Conn. Gen. Stat. §§12-407(6) or 12-408c.

This issue was addressed by Ruling No. 95-11, which held that "[w]hen title to tangible personal property passes outside of Indian country or delivery of rented property is taken outside of Indian country, such sales or rentals are subject to sales and use taxes, whether made directly to the Tribe or to a contractor." Ruling No. 95-11 at p. 6. After the issuance of Ruling No. 95-11, however, the Connecticut General Assembly enacted Conn. Gen. Stat. §12-408c. See 1997 Conn. Pub. Acts 243, §48. As explained previously, the Department, in administering this provision, has recognized Indian country of the Tribe to be outside of Connecticut for purposes of Conn. Gen. Stat. §12-408c. See Special Notice 2001(5) at p. 4. Given the fact that the language of Conn.

RULING NO. 2002-3 (cont'd)

Gen. Stat. §12-408c is nearly identical to the language of Conn. Gen. Stat. §12-407(6), the Department has likewise recognized Indian country of the Tribe to be outside of Connecticut for purposes of Conn. Gen. Stat. §12-407(6).

Consequently, tangible personal property purchased by contractors or subcontractors of the Tribe outside Connecticut that is brought into Connecticut and subsequently shipped into Indian country of the Tribe for use solely within Indian country of the Tribe is not subject to use tax. See Conn. Gen. Stat. §12-407(6). Similarly, contractors or subcontractors of the Tribe which, in accordance with Conn. Gen. Stat. §12-408c(b), are issued a permit by the Department, may purchase or rent tangible personal property from a Connecticut retailer exempt from sales or use tax and keep or retain the property in Connecticut, provided they eventually ship the property into Indian country of the Tribe for use solely within Indian country of the Tribe. If the Department does not issue a contractor or subcontractor of the Tribe a permit, the contractor or subcontractor may utilize the refund portion of Conn. Gen. Stat. §12-408c and file a claim for refund of the sales or use tax it paid on such property.

LEGAL DIVISION

April 15, 2002

¹ All references to "tax" in this ruling are to Connecticut State taxes under Title 12 of the Connecticut General Statutes.

² This ruling does not address and, therefore, does not apply to transactions involving retail tenants of the Tribe or to transactions involving enrolled members of the Tribe.

³ The term "Indian country" is defined in 18 U.S.C. §1151. For purposes of this ruling, the Department has determined that Indian country of the Tribe means only that land that has been taken into trust by the United States for the benefit of the Tribe.

⁴ All references in this ruling to meals include non-alcoholic beverages.

⁵ The United States Supreme Court has recognized that Congress has broad power to regulate tribal affairs under the Indian Commerce Clause of the United States Constitution. See Article I, Section 8. The United States Supreme Court has stated that this congressional authority and the semi-independent position of Indian tribes has given rise to two independent but related barriers to the assertion of state regulatory authority over tribal reservations. The first barrier is that federal law may preempt the exercise of state authority. The second barrier is that state authority may unlawfully infringe on the right of reservation Indians to make their own laws and be ruled by them. The United States Supreme Court has stated that the two barriers are independent because either, standing alone, can be a sufficient basis for holding a state law inapplicable to an activity undertaken by a Tribe on its reservation. See Phillip Geller, J.D., *Validity, Under Federal Constitution, Statutes, and Treaties, of State or Local Tax as Affected by Its Imposition on Indians, Their Property or Activities, or in Connection with an Indian Reservation – Supreme Court Cases*, 73 L. Ed. 2d 1506 annot. at 1510. While the Department recognizes these two barriers to state regulation over Indian tribes, for purposes of this ruling, a detailed analysis and discussion of each barrier is not required. Because each of the transactions addressed by this ruling involve a federally recognized tribe, the Department need only consider these barriers when balancing the respective state, federal and tribal interests after it has been determined that the legal incidence of the applicable tax does not fall on the Tribe.

⁶ Although the sales and use taxes are closely related, the use tax exists apart from the sales tax. Hartford Parkview Associates Limited Partnership v. Groppo, 211 Conn. 246, 255-6, 558 A.2d 993 (1989); see also William Raveis Real Estate, Inc. v. Commissioner, Conn. Super. Ct. Tax Sess. (Shea, STR), No. CV-91-0387235-S (January 5, 1995). The

RULING NO. 2002-3 (cont'd)

two taxes "are different in conception . . . [and] are assessments upon different transactions" International Business Machines Corp. v. Brown, 167 Conn. 123, 129, 355 A.2d 236 (1974). The sales tax is imposed on a retailer "for the privilege of making any sale" in Connecticut and may therefore only be imposed on sales made in this state; the use tax is imposed on the use of an item when it is "purchased . . . for use" in Connecticut and is actually so used, and may be imposed on items purchased anywhere. While the "taxable moment" of the sales tax on sales of tangible personal property occurs when title to the property passes from seller to purchaser, and can be fixed in both time and space on that basis, the imposition of the use tax involves a purchase, wherever made, together with an element of intent to use the property in Connecticut by the purchaser, followed by action upon that intent by the purchaser. Magic II, Inc. v. Dubno, 206 Conn. 253, 537 A.2d 998 (1988); Stetson v. Sullivan, 152 Conn. 649, 211 A.2d 685 (1965).

⁷ Out-of-state retailers that are engaged in business in Connecticut **must** register with the Department to collect Connecticut tax. "Engaged in business in this state" means either the selling and leasing of tangible personal property in Connecticut or the rendering of taxable services in Connecticut. Engaged in business in Connecticut includes, but is not limited to, the following acts or methods of transacting business:

- maintaining, occupying or using, permanently or temporarily, directly or indirectly, through a subsidiary or agent any office, place of distribution, sales or sample room or place, warehouse, storage point or other place of business, or
- having any representative, agent, salesman, canvasser or solicitor operating in Connecticut for the purpose of selling or leasing, delivering or taking orders for tangible personal property or services.

Out-of-state retailers that are not engaged in business in Connecticut, but that make out-of-state sales or leases of tangible personal property for use, storage or other consumption in Connecticut or render taxable services in Connecticut, may also register with the Department for authorization to collect tax. Conn. Agencies Regs. §12-426-22.

⁸ For purposes of this ruling, patrons of the Tribe do not include enrolled members of the Tribe.

⁹ Examples of services to real or tangible personal property include, but are not limited to: services to industrial, commercial or income-producing real property, repair services to motor vehicles, electrical repair services, locksmith services, landscaping and horticulture services, maintenance services and janitorial services.

¹⁰ Examples of "other" services include: business analysis, management, management consulting and public relations services, computer and data processing services and services by employment agencies and agencies providing personnel services.

¹¹ Conn. Gen. Stat. §12-412(13) defines "meal" to mean "food products which are furnished, prepared or served in such a form and in such portions that they are ready for immediate consumption."

¹² The general tax rate is 6% for the sale of tangible personal property and enumerated services in Connecticut. However, sales of lodging in Connecticut are taxable at a rate of 12%. See Conn. Gen. Stat. §12-408. Conn. Gen. Stat. §12-408, in pertinent part, provides that "[f]or the privilege of making any sales, . . . at retail, in this state for a consideration, a tax is hereby imposed on all retailers at the rate of six per cent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail or from the rendering of any services . . . except, in lieu of said rate of six per cent, (A) at a rate of twelve per cent with respect to each transfer of occupancy, from the total amount of rent received for such occupancy of any room or rooms in a hotel or lodging house for the first period not exceeding thirty consecutive calendar days."

¹³ In a private letter ruling, the Internal Revenue Service ruled that the Tribe constitutes an Indian tribal government under 26 USC §7701(a)(40).

¹⁴ Conn. Gen. Stat. §12-407(7)(f) includes within the definition of "purchase" "any leasing or renting of tangible personal property."

¹⁵ For purposes of both the refund and exemption permit portions of Conn. Gen. Stat. §12-408c, tangible personal property that is purchased from Connecticut retailers **must** be shipped out of Connecticut within three years from the date of purchase.

Land Claim Settlement Agreement

State of CT

May 17, 1994

Exhibit 1

AGREEMENT

IT IS HEREBY AGREED between the parties that the various outstanding unresolved issues extant between them shall be finally settled in accordance with the terms of this Agreement (hereafter referred to as the "Agreement") and upon its approval by the United States Congress. For the purpose of this Agreement, the parties shall be named and defined, as follows:

The Mohegan Tribe of Indians of Connecticut (hereafter referred to as the "Mohegan Tribe") is recognized by the United States, pursuant to 25 C.F.R. § 83, and by the State of Connecticut, pursuant to Conn. Gen. Stat. § 47-59a(b), and is an American Indian tribe with a written Constitution and Bylaws and has existed as an Indian tribe in Connecticut from time immemorial. The Mohegan Tribe approves this Agreement through its duly recognized and authorized Tribal Council and its approval of this Agreement will bind the Mohegan Tribe and any predecessor or successor in interest and all members thereof.

The State of Connecticut, through its chief executive officer, approves this Agreement and its approval shall bind the State of Connecticut its agencies, political subdivisions,

constitutional officers and officials of its agencies and subdivisions.

The term "lands or natural resources," as used in this Agreement, shall mean any real property or natural resources, or any interest in or right involving any real property or natural resource, including but not limited to minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish.

WITNESSETH:

WHEREAS, the parties recognize that a resolution of the Tribe's land claim against the state could not have been reached without an extinguishment of any and all outstanding or potential claims the Mohegan Tribe might have against the State of Connecticut, which may have arisen at any time prior to the effective date of this Agreement; and

WHEREAS, the parties further recognize that implementation of this settlement will require action by the United States Congress; and

WHEREAS, it is the intent of this Agreement to resolve all outstanding land disputes and differences between the State of Connecticut and the Mohegan Tribe, and in particular, to extinguish all claims of the Mohegan Tribe presently in existence or arising out of any previous actions, inactions, or duties of the State of Connecticut, as well as to satisfy the need of the Mohegan Tribe for tribal lands, so that the future relations between the State of Connecticut, its citizens and the Mohegan

Tribe will be one of harmony, cooperation, friendship and peace,
and

WHEREAS, the parties also desire to avoid litigation concerning the existence and scope of the State's present obligation pursuant to the Indian Gaming Regulatory Act to negotiate with the Tribe in good faith to enter into a Tribal-State compact governing the conduct of gaming activities on the Tribe's lands, and concerning the scope of executive authority to enter into such a compact; and

WHEREAS, the parties recognize that a settlement of all disputes concerning the application to the Tribe of the Indian Gaming Regulatory Act is essential to permit a comprehensive settlement of the disputes between the parties including resolution of the Tribe's land claims; and

WHEREAS, the parties anticipate that if not promptly resolved by compromise such disputes would lead to litigation and would likely result in submission of the matter to binding mediation in accordance with the Indian Gaming Regulatory Act, at which time the State would be prepared to propose a Tribal-State gaming compact identical to the Proposal of the State of Connecticut for a Tribal-State compact between the Mashantucket Pequot Tribe and the State of Connecticut as submitted by the Attorney General on behalf of the State of Connecticut to Henry J. Naruk, Mediator, in Civil Action No. H89-717, United States District Court for the District of Connecticut, as modified at the request of the State as set forth in the Final Mashantucket Pequot Gaming Procedures, 56 Fed.Reg. 24996 (May 31, 1991), and the Tribe would be prepared

to propose a Tribal-State gaming compact on terms substantially different from such State proposal (including but not limited to an unqualified right to operate electronic gaming devices); and

WHEREAS, the Tribe is presently prepared to accept the State's proposal for a Tribal-State gaming compact as so defined in order to expeditiously settle all controversies regarding the application to the Tribe of the Indian Gaming Regulatory Act and the State is presently prepared to execute such a compact with the Tribe in order to settle such controversies and avoid the risks of litigation and mediation of such matters.

NOW, THEREFORE, THE MOHEGAN TRIBE AND THE STATE OF CONNECTICUT AGREE, AS FOLLOWS:

1. Commitments of the Mohegan Tribe. The Mohegan Tribe agrees:

a. To the extinguishment of any right, title, interest, or claim the Mohegan Tribe may now possess in any public or private lands or natural resources in Connecticut, other than certain "excepted interests" consisting of: (1) any lands conveyed to the United States in trust for the Mohegan Tribe as part of its initial Indian Reservation, as set forth in Exhibit B, pursuant to this agreement and (2) Fort Shantok State Park, as set forth in Exhibit A.

The rights, titles, interests and claims outside the "excepted interests" which are being extinguished or waived by the Mohegan Tribe, include:

(i) any and all claims the Mohegan Tribe might have to any

public or private lands or natural resources in Connecticut which are based upon claims of aboriginal title;

(ii) any and all other claims the Mohegan Tribe might have to any public or private lands or natural resources in Connecticut, such as claims or rights based on recognized title, including but not limited to: (1) any claim the Mohegan Tribe might have to the tribal sequestered lands bounded out to the Tribe in 1684, consisting of some 20,480 acres lying between the Thames River, New London bounds, Norwich bounds and Colchester bounds; (2) any claim the Mohegan Tribe might have based on a survey under the authority of the Connecticut General Assembly in 1736 of lands reserved and sequestered by the General Assembly for the sole use and improvement of the Mohegan Indian Tribe; (3) any claim the Mohegan Tribe might have based on any action by the State in 1860, 1861 or otherwise to allot, re-allot, and/or confirm any lands of the Mohegan Tribe to individual Indians or other persons.

b. To the extinguishment of any and all other claims, without regard to the "excepted interests" specified above in paragraph 1a:

(i) arising out of any alleged breach of fiduciary relationship between the Mohegan Tribe and the State of Connecticut, acting in a capacity as Trustees for the Mohegan Tribe, arising out of any actions or inactions by the State of Connecticut, prior to the date this Agreement is executed by the parties;

(ii) for trespass damages or use and occupancy of any lands or natural resources in the State of Connecticut occurring prior

to the date this Agreement is executed by the parties. The Mohegan Tribe also agrees to waive any and all claims arising between the execution and the effective date of this Agreement for trespass or use and occupancy of any lands or natural resources.

(iii) that might have been brought by the Mohegan Tribe against the State of Connecticut related to any of the matters listed in this paragraph 1, or arising out of any actions or inactions whatsoever by the State of Connecticut, including but not limited to tort, tax, contract or constitutional claims prior to the date this Agreement is executed by the parties.

c. To limit the location of any tribal Gaming operations as defined in section 2(k) of the compact referred to in subsection 2b below, to a single site not to exceed 700 acres.

d. To submit all gaming-related development, including but not limited to design, construction, renovation and demolition of any improvements and appurtenances to real property, buildings, plants, structures, systems, machinery, equipment, roads, sidewalks, streets, paths and ramps, to the regulation of the State Traffic Commission. Further, to adopt, enforce and amend from time to time, as to such gaming-related development, a Health and Safety Code and Fire and Building Code identical to or more stringent than the respective codes adopted by the State of Connecticut as they may be amended from time to time.

e. Upon enactment of federal legislation approving this Agreement and satisfaction of the State's commitments thereunder, to tender to the State of Connecticut, for filing with the United States District Court for the District of Connecticut, the

withdrawal of the Tribe's land claim against the State, Mohegan Tribe of Indians of Connecticut v. State of Connecticut, Civil Action No. H77-434, presently pending in the United States District Court for the District of Connecticut.

f. To make payments in lieu of taxes as described below. The Tribe will be purchasing, through its own resources, several tracts of land, including those parcels of land identified in Exhibit B, to comprise its initial Indian Reservation. The parties anticipate that the tribal land will be conveyed to the United States to hold in trust on the Tribe's behalf, thereby removing such lands from State and local taxation. The Tribe agrees that except for the Fort Shantok property and the initial Indian Reservation, which is to include the site of the Tribal Gaming operations, all additional tribal trust land shall be subject to tribal payments as follows:

The Tribe shall make payments in lieu of taxes on real property it acquires in an amount equal to the tax that would be paid on such property were the same not exempt from taxation, unless agreement is reached with a municipality for a lesser amount. The Tribe shall have the same right of appeal from any assessment made on real property as any person. In the event the Tribe acquires any real property, the Tribe may succeed to the interests of a predecessor in title in any agreement concerning the abatement of tax on the property.

g. The Mohegan Tribe of Indians agrees to and consents to the assumption by the State of Connecticut of criminal

jurisdiction over the Mohegan tribal members and all Indians on land or other natural resources presently owned by the Tribe, or which are included in any federal legislation relating to Mohegan tribe land claims, or any annexation thereto and any other land that may now or hereafter be owned by or held in trust for said Tribe or its members. Such criminal jurisdiction shall extend to the criminal laws of the State of Connecticut and to the criminal jurisdiction of the courts of the State of Connecticut to the same extent as such criminal law jurisdiction and criminal court jurisdiction which empower the State with respect to any other person or lands or other natural resources within and subject to the jurisdiction of the State of Connecticut.

h. The Mohegan Tribe of Indians agrees to and consents to the assumption of jurisdiction by the State of Connecticut State Traffic Commission over all gaming-related traffic control matters to the same extent as the State Traffic Commission has jurisdiction over traffic control within the State of Connecticut as set out in Chapter 249 of the Connecticut General Statutes, § 14-297 to § 14-314C.

2. Commitments of the State of Connecticut. The State of Connecticut agrees:

a. To use its best efforts to support and to obtain state legislation to grant to the United States of America in trust for the Mohegan Tribe certain lands under the control of the State of Connecticut, as more particularly described in Exhibit A [Fort Shantok], and to support the application of the Mohegan Tribe

that title to those lands and to the lands, as set forth in Exhibit B, independently acquired by the Tribe be taken by the United States in trust for the Mohegan Tribe as part of its initial Indian Reservation and proclaimed as Indian Reservation lands under 25 U.S.C. § 461 et seq. The Initial Indian Reservation shall consist of Fort Shantok State Park, as set forth at Exhibit A and the 700 acres as set forth at Exhibit B.

b. To enter into a gaming compact, attached hereto as Exhibit C with the Mohegan Tribe pursuant to 25 U.S.C. § 2710, to support the Tribe's submission of the gaming compact to the United States Secretary of the Interior for approval and to use its best efforts to assist the Tribe in securing that approval.

c. To resolve with the Mohegan Tribe the matter reserved in Section 15(a) of the gaming compact referred to in subparagraph b above.

d. To pay the Mohegan Tribe the sum of \$1 (one dollar) and other valuable consideration.

e. To waive any rights it might have to appeal the Final Determination of the Assistant Secretary of the United States Department of the Interior acknowledging the existence of the Mohegan Tribe (59 Fed. Reg. 12140, March 15, 1994).

f. To waive any and all claims for offsets, including but not limited to tort or contract claims, which were or could have been asserted against the Mohegan Tribe by the State of Connecticut prior to the date of this Agreement is executed by the parties.

3. Cooperation of Parties. The parties agree to cooperate

fully in requesting and supporting passage by the United States Congress of the statute described in paragraph 4 and in implementing the executive action described in that paragraph.

The parties also agree that further proceedings in the Tribe's pending land claim against the State shall be stayed while such legislation is pending; provided, however, that this stay shall terminate on December 31, 1994, unless extended by agreement of the parties, or earlier if the Court, upon motion by either party, determines that favorable action by Congress within a reasonable time does not seem likely.

4. Effective Date. Subsections 1(c), 1(d), 2(b), 2(c), 2(e) and 3 shall be effective upon execution of this Agreement. The remaining provisions shall not become final and shall be without any binding force or effect until the later of:

a. The United States Congress enacts appropriate legislation, which approves this Agreement, including provisions that: (1) approve the conveyances to be made by or recognized by the Mohegan Tribe pursuant to this Agreement; (2) provide for the extinguishment of the claims of the Mohegan Tribe to lands or natural resources in Connecticut, as specified in this Agreement; (3) provide that the Mohegan Reservation, including all lands to be acquired by the United States in trust for the Mohegan Tribe pursuant to this Agreement is declared to be Indian country and subject to the Tribe's governmental authority, (4) include language materially identical to that contained in Section 8 of the draft legislation attached as Exhibit D to this agreement. A draft of this proposed federal legislation, which reflects the

intention of the parties, is attached hereto as Exhibit D.

b. The Governor of the State of Connecticut: enters into a compact with the Mohegan Tribe providing for the operation of tribal Gaming operations pursuant to 25 U.S.C. § 2710, and the compact has received all the federal approvals required to be fully effective.

c. The parties resolve the matter reserved in Section 15(a) of the Tribe's gaming compact with the State of Connecticut.

DONE AND EXECUTED as of the first date written below.

STATE OF CONNECTICUT



LOWELL P. WEICKER, JR.
GOVERNOR

5/17/94
(DATE)

MOHEGAN TRIBE OF INDIANS
OF CONNECTICUT



RALPH W. STURGES
CHIEF G'TINE'MONG

May 17, 1994
(DATE)

EXHIBIT A

FORT SHANTOK STATE PARK

EXHIBIT B

Mohegan Tribe -- Initial Indian Reservation

700 Acres, more or less, to include the following parcels:

Parcel 1: UNC Tract -- 244 acres, Montville, Connecticut

Parcel 2: Trading Cove -- 27 acres, Norwich, Connecticut

Parcel 3: Mohegan Church -- .400 acre, Montville, Connecticut

Such additional tracts as the Tribe acquires.

Mohegan Agreement with the State of CT

Signed true & p.2
again on 5/17/94

Mohegan Agreements



AGREEMENT

IT IS HEREBY AGREED between the parties that the various outstanding unresolved issues extant between them shall be finally settled in accordance with the terms of this Agreement (hereafter referred to as the "Agreement") and upon its approval by the United States Congress. For the purpose of this Agreement, the parties shall be named and defined, as follows:

The Mohegan Tribe of Indians of Connecticut (hereafter referred to as the "Mohegan Tribe") is recognized by the United States, pursuant to 25 C.F.R. § 83, and by the State of Connecticut, pursuant to Conn. Gen. Stat. § 47-59a(b), and is an American Indian tribe with a written Constitution and Bylaws and has existed as an Indian tribe in Connecticut from time immemorial. The Mohegan Tribe approves this Agreement through its duly recognized and authorized Tribal Council and its approval of this Agreement will bind the Mohegan Tribe and any predecessor or successor in interest and all members thereof.

The State of Connecticut, through its chief executive officer, approves this Agreement and its approval shall bind the State of Connecticut its agencies, political subdivisions,

constitutional officers and officials of its agencies and subdivisions.

The term "lands or natural resources," as used in this Agreement, shall mean any real property or natural resources, or any interest in or right involving any real property or natural resource, including but not limited to minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish.

WITNESSETH:

WHEREAS, the parties recognize that a resolution of the Tribe's land claim against the state could not have been reached without an extinguishment of any and all outstanding or potential claims the Mohegan Tribe might have against the State of Connecticut, which may have arisen at any time prior to the effective date of this Agreement; and

WHEREAS, the parties further recognize that implementation of this settlement will require action by the United States Congress; and

WHEREAS, it is the intent of this Agreement to resolve all outstanding land disputes and differences between the State of Connecticut and the Mohegan Tribe, and in particular, to extinguish all claims of the Mohegan Tribe presently in existence or arising out of any previous actions, inactions, or duties of the State of Connecticut, as well as to satisfy the need of the Mohegan Tribe for tribal lands, so that the future relations between the State of Connecticut, its citizens and the Mohegan

Tribe will be one of harmony, cooperation, friendship and peace, and

WHEREAS, the parties also desire to avoid litigation concerning the existence and scope of the State's present obligation pursuant to the Indian Gaming Regulatory Act to negotiate with the Tribe in good faith to enter into a Tribal-State compact governing the conduct of gaming activities on the Tribe's lands, and concerning the scope of executive authority to enter into such a compact; and

WHEREAS, the parties recognize that a settlement of all disputes concerning the application to the Tribe of the Indian Gaming Regulatory Act is essential to permit a comprehensive settlement of the disputes between the parties including resolution of the Tribe's land claims; and

WHEREAS, the parties anticipate that if not promptly resolved by compromise such disputes would lead to litigation and would likely result in submission of the matter to binding mediation in accordance with the Indian Gaming Regulatory Act, at which time the State would be prepared to propose a Tribal-State gaming compact identical to the Proposal of the State of Connecticut for a Tribal-State compact between the Mashantucket Pequot Tribe and the State of Connecticut as submitted by the Attorney General on behalf of the State of Connecticut to Henry J. Naruk, Mediator, in Civil Action No. 889-717, United States District Court for the District of Connecticut, as modified at the request of the State as set forth in the Final Mashantucket Pequot Gaming Procedures, 56 Fed.Reg. 24996 (May 31, 1991), and the Tribe would be prepared

to propose a Tribal-State gaming compact on terms substantially different from such State proposal (including but not limited to an unqualified right to operate electronic gaming devices); and

WHEREAS, the Tribe is presently prepared to accept the State's proposal for a Tribal-State gaming compact as so defined in order to expeditiously settle all controversies regarding the application to the Tribe of the Indian Gaming Regulatory Act and the State is presently prepared to execute such a compact with the Tribe in order to settle such controversies and avoid the risks of litigation and mediation of such matters.

NOW, THEREFORE, THE MOHEGAN TRIBE AND THE STATE OF CONNECTICUT AGREE, AS FOLLOWS:

1. Commitments of the Mohegan Tribe. The Mohegan Tribe agrees:

a. To the extinguishment of any right, title, interest, or claim the Mohegan Tribe may now possess in any public or private lands or natural resources in Connecticut, other than certain "excepted interests" consisting of: (1) any lands conveyed to the United States in trust for the Mohegan Tribe as part of its initial Indian Reservation, as set forth in Exhibit B, pursuant to this agreement and (2) Fort Shantok State Park, as set forth in Exhibit A.

The rights, titles, interests and claims outside the "excepted interests" which are being extinguished or waived by the Mohegan Tribe, include:

(i) any and all claims the Mohegan Tribe might have to any

public or private lands or natural resources in Connecticut which are based upon claims of aboriginal title;

(ii) any and all other claims the Mohegan Tribe might have to any public or private lands or natural resources in Connecticut, such as claims or rights based on recognized title, including but not limited to: (1) any claim the Mohegan Tribe might have to the tribal sequestered lands bounded out to the Tribe in 1684, consisting of some 20,480 acres lying between the Thames River, New London bounds, Norwich bounds and Colchester bounds; (2) any claim the Mohegan Tribe might have based on a survey under the authority of the Connecticut General Assembly in 1736 of lands reserved and sequestered by the General Assembly for the sole use and improvement of the Mohegan Indian Tribe; (3) any claim the Mohegan Tribe might have based on any action by the State in 1860, 1861 or otherwise to allot, re-allot, and/or confirm any lands of the Mohegan Tribe to individual Indians or other persons.

b. To the extinguishment of any and all other claims, without regard to the "excepted interests" specified above in paragraph 1a:

(i) arising out of any alleged breach of fiduciary relationship between the Mohegan Tribe and the State of Connecticut, acting in a capacity as Trustee for the Mohegan Tribe, arising out of any actions or inactions by the State of Connecticut, prior to the date this Agreement is executed by the parties;

(ii) for trespass damages or use and occupancy of any lands or natural resources in the State of Connecticut occurring prior

to the date this Agreement is executed by the parties. The Mohegan Tribe also agrees to waive any and all claims arising between the execution and the effective date of this Agreement for trespass or use and occupancy of any lands or natural resources.

(iii) that might have been brought by the Mohegan Tribe against the State of Connecticut related to any of the matters listed in this paragraph 1, or arising out of any actions or inactions whatsoever by the State of Connecticut, including but not limited to tort, tax, contract or constitutional claims prior to the date this Agreement is executed by the parties.

c. To limit the location of any tribal Gaming operations as defined in section 2(k) of the compact referred to in subsection 2b below, to a single site not to exceed 700 acres.

d. To submit all gaming-related development, including but not limited to design, construction, renovation and demolition of any improvements and appurtenances to real property, buildings, plants, structures, systems, machinery, equipment, roads, sidewalks, streets, paths and ramps, to the regulation of the State Traffic Commission. Further, to adopt, enforce and amend from time to time, as to such gaming-related development, a Health and Safety Code and Fire and Building Code identical to or more stringent than the respective codes adopted by the State of Connecticut as they may be amended from time to time.

e. Upon enactment of federal legislation approving this Agreement and satisfaction of the State's commitments thereunder, to tender to the State of Connecticut, for filing with the United States District Court for the District of Connecticut, the

withdrawal of the Tribe's land claim against the State, Mohegan Tribe of Indians of Connecticut v. State of Connecticut, Civil Action No. H77-434, presently pending in the United States District Court for the District of Connecticut.

f. To make payments in lieu of taxes as described below. The Tribe will be purchasing, through its own resources, several tracts of land, including those parcels of land identified in Exhibit B, to comprise its initial Indian Reservation. The parties anticipate that the tribal land will be conveyed to the United States to hold in trust on the Tribe's behalf, thereby removing such lands from State and local taxation. The Tribe agrees that except for the Fort Shantok property and the initial Indian Reservation, which is to include the site of the Tribal Gaming operations, all additional tribal trust land shall be subject to tribal payments as follows:

The Tribe shall make payments in lieu of taxes on real property it acquires in an amount equal to the tax that would be paid on such property were the same not exempt from taxation, unless agreement is reached with a municipality for a lesser amount. The Tribe shall have the same right of appeal from any assessment made on real property as any person. In the event the Tribe acquires any real property, the Tribe may succeed to the interests of a predecessor in title in any agreement concerning the abatement of tax on the property.

g. The Mohegan Tribe of Indians agrees to and consents to the assumption by the State of Connecticut of criminal

jurisdiction over the Mohegan tribal members and all Indians on land or other natural resources presently owned by the Tribe, or which are included in any federal legislation relating to Mohegan tribe land claims, or any annexation thereto and any other land that may now or hereafter be owned by or held in trust for said Tribe or its members. Such criminal jurisdiction shall extend to the criminal laws of the State of Connecticut and to the criminal jurisdiction of the courts of the State of Connecticut to the same extent as such criminal law jurisdiction and criminal court jurisdiction which empower the State with respect to any other person or lands or other natural resources within and subject to the jurisdiction of the State of Connecticut.

h. The Mohegan Tribe of Indians agrees to and consents to the assumption of jurisdiction by the State of Connecticut State Traffic Commission over all gaming-related traffic control matters to the same extent as the State Traffic Commission has jurisdiction over traffic control within the State of Connecticut as set out in Chapter 249 of the Connecticut General Statutes, § 14-297 to § 14-314C.

2. Commitments of the State of Connecticut. The State of Connecticut agrees:

a. To use its best efforts to support and to obtain state legislation to grant to the United States of America in trust for the Mohegan Tribe certain lands under the control of the State of Connecticut, as more particularly described in Exhibit A [Fort Shantok], and to support the application of the Mohegan Tribe

that title to those lands and to the lands, as set forth in Exhibit B, independently acquired by the Tribe be taken by the United States in trust for the Mohegan Tribe as part of its initial Indian Reservation and proclaimed as Indian Reservation lands under 25 U.S.C. §§ 461 et seq. The Initial Indian Reservation shall consist of Fort Shantok State Park, as set forth at Exhibit A and the 700 acres as set forth at Exhibit B.

b. To enter into a gaming compact, attached hereto as Exhibit C with the Mohegan Tribe pursuant to 25 U.S.C. § 2710, to support the Tribe's submission of the gaming compact to the United States Secretary of the Interior for approval and to use its best efforts to assist the Tribe in securing that approval.

c. To resolve with the Mohegan Tribe the matter reserved in Section 15(a) of the gaming compact referred to in subparagraph b above.

d. To pay the Mohegan Tribe the sum of \$1 (one dollar) and other valuable consideration.

e. To waive any rights it might have to appeal the Final Determination of the Assistant Secretary of the United States Department of the Interior acknowledging the existence of the Mohegan Tribe (59 Fed. Reg. 12140, March 15, 1994).

f. To waive any and all claims for offsets, including but not limited to tort or contract claims, which were or could have been asserted against the Mohegan Tribe by the State of Connecticut prior to the date of this Agreement is executed by the parties.

3. Cooperation of Parties. The parties agree to cooperate

fully in requesting and supporting passage by the United States Congress of the statute described in paragraph 4 and in implementing the executive action described in that paragraph.

The parties also agree that further proceedings in the Tribe's pending land claim against the State shall be stayed while such legislation is pending; provided, however, that this stay shall terminate on December 31, 1994, unless extended by agreement of the parties, or earlier if the Court, upon motion by either party, determines that favorable action by Congress within a reasonable time does not seem likely.

4. Effective Date. Subsections 1(c), 1(d), 2(b), 2(c), 2(e) and 3 shall be effective upon execution of this Agreement. The remaining provisions shall not become final and shall be without any binding force or effect until the later of:

a. The United States Congress enacts appropriate legislation, which approves this Agreement, including provisions that: (1) approve the conveyances to be made by or recognized by the Mohegan Tribe pursuant to this Agreement; (2) provide for the extinguishment of the claims of the Mohegan Tribe to lands or natural resources in Connecticut, as specified in this Agreement; (3) provide that the Mohegan Reservation, including all lands to be acquired by the United States in trust for the Mohegan Tribe pursuant to this Agreement is declared to be Indian country and subject to the Tribe's governmental authority, (4) include language materially identical to that contained in Section 8 of the draft legislation attached as Exhibit D to this agreement. A draft of this proposed federal legislation, which reflects the

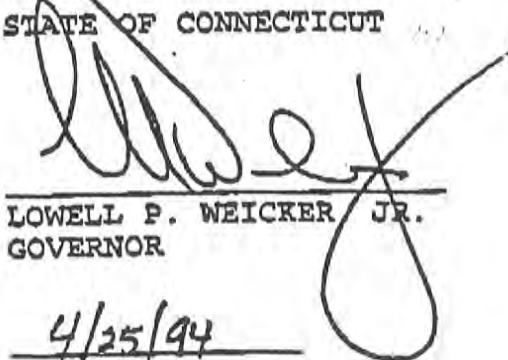
intention of the parties, is attached hereto as Exhibit D.

b. The Governor of the State of Connecticut: enters into a compact with the Mohegan Tribe providing for the operation of tribal Gaming operations pursuant to 25 U.S.C. § 2710, and the compact has received all the federal approvals required to be fully effective.

c. The parties resolve the matter reserved in Section 15(a) of the Tribe's gaming compact with the State of Connecticut.


DONE AND EXECUTED as of the first date written below.

STATE OF CONNECTICUT


LOWELL P. WEICKER JR.
GOVERNOR

4/25/94
(DATE)

MOHEGAN TRIBE OF INDIANS
OF CONNECTICUT


RALPH W. STURGES
CHIEF G'TINE'MONG

4/25/94
(DATE)

EXHIBIT A
FORT SHANTOK STATE PARK

EXHIBIT B

Mohegan Tribe -- Initial Indian Reservation

700 Acres, more or less, to include the following parcels:

Parcel 1: UNC Tract -- 244 acres, Montville, Connecticut

Parcel 2: Trading Cove -- 27 acres, Norwich, Connecticut

Parcel 3: Mohegan Church -- .400 acre, Montville, Connecticut

Such additional tracts as the Tribe acquires, which tracts shall be located within the Town of Montville.

Parcel 1
UNC Tract

Vol. 160 pg. 552

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS that UNITED NUCLEAR CORPORATION, a Delaware corporation acting herein by an officer, duly authorized, for diverse good causes and considerations thereunto moving, especially for valuable considerations received to its full satisfaction of UNC RESOURCES, INC., a Virginia corporation with a mailing address at c/o UNC Nuclear Products Division, 67 Sandy Desert Road, Uncasville, Connecticut 06382, has granted, released, and forever quit claimed, and does by these Presents, for itself and its successors and assigns, justly and absolutely remise, release and forever QUIT CLAIM unto the said Releasee, UNC RESOURCES, INC., its successors and assigns forever, all such right and title as it, the said Releasee, has or ought to have in or to a certain tract or parcel of land with buildings thereon situated in the Town of Montville, County of New London and State of Connecticut and were particularly described as follows:

Commencing at a point situated in the northeasterly corner of Sandy Desert Road and being in the southeasterly corner of land now or formerly of Lebanonia; thence S. 27° 35' W. across Sandy Desert Road 35.17 feet to a point; thence N. 75° 58' W. 244.94 feet to land now or formerly of Kerkis; thence S. 11° 21' W. 352.32 feet to a monument; thence W. 69° 37' W. 32.15 feet to a point; thence S. 9° 18' W. 182.0 feet to a monument; thence N. 69° 25' W. 219.0 feet to a monument; thence S. 9° 10' W. 124.0 feet to a point; thence S. 19° 3' W. 100 feet to a monument; thence N. 70° 42' W. 212.10 feet to a point; thence S. 17° 9' W. 100 feet to a monument; thence S. 27° 55' W. 125.22 feet to a monument; thence S. 27° 25' W. 132.24 feet to a monument; thence N. 67° 1' W. 209.5 feet to the easterly side of Route 11; thence S. 21° 25' W. 70 feet to a monument; thence S. 67° 1' E. 370.05 feet to a monument; thence S. 25° 59' W. 25 feet to a point; thence S. 67° 1' E. 11 feet to a point; thence S. 25° 59' W. 32.23 feet to a point; thence S. 67° 0' E. 191.50 feet to a monument; thence S. 67° 35' E. 200.5 feet to a monument; thence S. 67° 6' E. 200.97 feet to an iron pipe; thence S. 61° 49' E. 209.34 feet to a monument; thence S. 62° 35' E. 216.5 feet to a iron within a cedar post; thence S. 72° 10' E. 123.75 feet to a monument; thence S. 17° 37' W. 202.4 feet to a monument; thence S. 72° 32' E. 150 feet to a point; thence N. 17° 27' E. 35.0 feet to a point; thence S. 67° 33' E. 222.5 feet to a monument; thence S. 60° 14' W. 201.0 feet to a monument on the northerly side of Broad View Avenue; thence in a general easterly direction along the northerly side of Broad View Avenue 415.71 feet to a monument and land of Kerkis; thence N. 14° 17' E. 28.8 feet to an iron; thence N. 47° 59' E. 66.92 feet to an iron; thence N. 15° 38' E. 126.7 feet to a monument; thence S. 60° 0' E. 374 feet to a monument; thence S. 37° 45' E. 154.3 feet to a monument; thence S. 20° 52' E. 565.42 feet to a drill hole in a stone wall; thence in a general easterly direction along a stone wall 320.50 feet to a second wire fence and land formerly of Kerkis; thence S. 0° 32'

No Conveyance Tax collected

Town Clerk of Montville

No Conveyance Tax collected

Town Clerk of Montville

A318

Trading Cove

FIRST PIECE: 98 Lucas Park Road

A certain tract or parcel of land situated on the easterly side of Lucas Park Road in the Town of Norwich, County of New London and State of Connecticut, being bounded and described as follows:

Beginning at a point on the east side of Lucas Park Road at the southwest corner of land now or formerly of Harmon and Certinale Jowettly, thence on an arc deflecting to the left with a radius of 49.00' and running 12.99' to a monument; thence N 86°-24' E 70.73' to a monument; thence on an arc deflecting to the left with a radius of 125.00' and running 86.72' to a monument; thence running N 83°-31' E 73' to a point; thence S 78°-39' E 645' more or less to a point on the westerly boundary of land now or formerly of the Central Vermont Railroad, the last 2 courses bounded on the north by land now or formerly of the said Jowettly; thence running in a general southerly direction along land of the said Railroad and the Thames River 1101' more or less to the southeast corner of the increase described tract and the northeast corner of other lands of Vincent and Peter Wawrzynowicz; thence running general westerly direction 220' more or less to a point, said point being the northwest corner of other lands of the said Vincent and Peter Wawrzynowicz; thence southwesterly along other lands of the said Wawrzynowicz and lands now or formerly of Alfred L. Honick Jr. 210.4' more or less to a point; thence turning to the right and having an interior angle of 73° 40' and running northwesterly 333.8' more or less to the northwest corner of the Solomon Lucas Memorial Woods; thence turning to the left and running in a general southwesterly direction 670' more or less to the high water mark of Trading Cove, the last 2 courses bounded southerly and easterly by the said Solomon Lucas Memorial Woods; thence in a general northwesterly direction along the high water mark of Trading Cove 994' more or less to a point, said point being the southeast corner of lot 16 on a plan entitled "Final Plan showing Highland Terrace owned by Vincent, Gabriel and Peter Wawrzynowicz, Lucas Park Road, Norwich, Conn., Scale 1"=40', dated May 1963" and recorded in the Norwich Land Records, map volume 8, page 4; thence running N 70°-53' E 118' to a point on the southeast corner of lot 13 on said plan, the last course bounded westerly by lots 16, 5 and 4; thence turning to the left and running N 82°-07' W 175' to the easterly line of Lucas Park Road; thence on an arc deflecting to the left with a radius of 485' and running 100' to the southwest corner of lot 12 on said plan; thence turning to the right and running N 85°-43' E 382.10' to the southeast corner of lot 12 on said plan; thence turning to the left and running N 10°-28' W 217.93' to a point on the northeast corner of lot 11, the last course being bounded on the west by lots 12 and 1; thence turning to the left on an arc deflecting to the right with a radius of 175' and running 121.41' to a point; thence running N 86°-24' E 31.66 to a point; thence on an arc deflecting to the left with a radius of 30' and running 18.36' to a monument on the east side of Lucas Park Road; thence in a general northerly direction along the east side of Lucas Park Road 80' more or less to the point and place of beginning.

Being the premises conveyed to Grantor by Warranty Deed from Vincent Wawrzynowicz, Peter Wawrzynowicz, Gabriel Wawrzynowicz and Paul Wawrzynowicz dated December 22, 1907 and recorded in the Norwich Land Records in Volume 827, Page 5, and said premises are subject to taxes to the Town of Norwich on the Lists of October 1, 1991 and October 1, 1992, which taxes the Grantee assumes and agrees to pay.

FOURTH PIECE: 111 Lucas Park Road

That certain tract or parcel of land, located on Lucas Park Road, in the Town of Norwich, County of New London and State of Connecticut, being bounded and described as follows:

Beginning at the northwest corner of the within described tract being also the northwest corner of Lot 16; thence running S 42° 32' E, 134.08 feet along Lot 16 to a point; thence running S 67° 28' W, about 132 feet to Trading Cove, so-called; thence running westerly about 75 feet along Trading Cove to a point; thence running N 12° 04' E, about 122 feet along the Lot Owners beach area to Lucas Park Road; thence running 61.45 feet on an arc deflecting to the left with a radius of 60 feet to the point and piece of beginning.

The above described tract being Lot 17 on a plan entitled "Highland Terrace, Scale 1" = 40', Dated May 1963, Surveyed by Joseph Gernhard, Jr."

Said premises are conveyed together with certain rights of way and are subject to certain conditions and restrictions as set forth in a deed from Vincent Wawrzynowicz, et al dated June 19, 1968 and recorded in the Norwich Land Records in Volume 349 at Pages 103-105.

Said premises are also subject to building, building line, zoning, subdivision and wetlands ordinances and regulations of the Town of Norwich.

Being the premises conveyed to Grantor by Warranty Deed from A.D. Tripp Company dated October 25, 1988 and recorded in the Norwich Land Records in Volume 807, Page 20, and said premises are subject to taxes to the Town of Norwich on the Lists of October 1, 1991 and October 1, 1992, which taxes the Grantee assumes and agrees to pay.

FIFTH PIECE: 120 Lucas Park Road

A tract of land (sometimes called Perch Rock) on the Thames River off Lucas Park Road, described as follows:

Beginning at a bound on a large rock on the shore of the river Thames, north of the south of Trading Cove and near to the place in said River called Deep Water; thence by said River 4 1/4 rods; thence north 61° west 18 rods and 21 links; thence north 9° east 4 1/4 rods abutting on lands formerly of Henry W. Leach; thence south 81° east 18 rods and 20 links abutting on said Leach land to the point of beginning.

Said premises are subject to a license to the United States of America for maintaining the Perch Rock river light.

Said premises are subject to the rights of the Central Vermont Railroad, Inc. across said premises.

Being the premises conveyed to Grantor by Warranty Deed from Vincent G. Wawrzynowicz and Peter T. Wawrzynowicz dated December 22, 1987 and recorded in the Norwich Land Records in Volume 827, Page 10, and said premises are subject to taxes to the Town of Norwich on the Lists of October 1, 1991 and October 1, 1992, which taxes the Grantee assumes and agrees to pay.

RECEIVED FOR RECORD AT NORWICH COUNTY
OCT 30 1992 AT 12:05 PM
CLERK OF SUPERIOR COURT

A322

011094 PAGE290

SECOND PIECE: 109 Lucas Park Road

A certain tract or parcel of land located on the westerly side of Lucas Park Road, in the Town of Norwich, County of New London and State of Connecticut, more particularly bounded and described as follows:

Commencing at a point on the arc of a curve at the intersection of the westerly line of Lucas Park Road and the southerly line of Judgewood Court at the north-easterly corner of the within described premises; thence running southeasterly along the arc of said curve of Lucas Park Road, 13.69 feet; thence running S 7 degrees 53' W, 80.37 feet to a point; thence along the arc of a curve running southeasterly 37.05 feet to a point. The last three courses being the westerly line of Lucas Park Road. Thence S 53 degrees 58' W about 131 feet to Trading Cove; thence turning to the right and running in a general northwesterly direction along said Trading Cove about 101 feet; thence N 52 degrees 29' E about 208 feet to the point of beginning.

Said premises are shown as Lot No. 3 on a Plan entitled "Final Plan Showing Highland Terrace owned by Vincent, Gabriel and Peter Wawrzynowicz, Lucas Park Road, Norwich, Connecticut, Scale: 1" = 40', May, 1983", on file in the Norwich Land Records.

Being the premises conveyed to Grantor by Warranty Deed from Vincent Wawrzynowicz dated December 22, 1987 and recorded in the Norwich Land Records in Volume 827, Page 8, and said premises are subject to building restrictions as set forth in deeds for "Highland Terrace" as appear as of record and to taxes to the Town of Norwich on the Lists of October 1, 1991 and October 1, 1992, which taxes the Grantee assumes and agrees to pay.

THIRD PIECE: 111 Lucas Park Road

A certain tract or parcel of land located on the southerly side of the cul de sac of Lucas Park Road in the Town of Norwich, County of New London and State of Connecticut and bounded and described as follows:

Beginning at a point on the southerly side of the cul de sac of Lucas Park Road and being the northeast corner of the herein described parcel and thence running S 18° 04' W, 122' to the high water mark of Trading Cove, abutting easterly on Lot 17 of the hereinafter described plan; thence turning and running westerly along the high water mark of Trading Cove 110' more or less to a point on the southeasterly corner of a 10' drainage easement; thence turning and running N 32° 28' E, 120' more or less along said drainage easement to the southerly side of said cul de sac; thence turning and running easterly along the southerly side of said cul de sac 26.33' to the point and place of beginning.

The above described parcel of land being designated as "Beach Area" on a plan entitled "Final Plan showing Highland Terrace owned by Vincent, Gabriel & Peter Wawrzynowicz, Lucas Park Road, Norwich, Connecticut, Scale: 1" = 40' date May 1983."

The above described parcel of land is subject to the rights of others as described in each lot owner's deed of Highland Terrace:

Being the premises conveyed to Grantor by Warranty Deed from Vincent Wawrzynowicz, Peter Wawrzynowicz and Gabriel Wawrzynowicz dated January 28, 1989 and recorded in the Norwich Land Records in Volume 904, Page 80, and said premises are subject to taxes to the Town of Norwich on the Lists of October 1, 1991 and October 1, 1992, which taxes the Grantee assumes and agrees to pay.

A323

Parcel 3

Mohegan Church

Legal Description

All that certain piece or parcel of land, .400 acre, more or less, together with the buildings and improvements thereon, situated in the Town of Montville, County of New London and State of Connecticut and being more particularly described in that certain deed, dated March 30, 1831, wherein Lucy Teeconwas and Cynthia Roscott were the grantors and the Mohegan Tribe was the grantee, recorded in volume 14, page 271 of the land records at the Montville Town Clerk's Office.

EXHIBIT C

MOHEGAN TRIBE - STATE OF CONNECTICUT

GAMING COMPACT

MOHEGAN TRIBE - STATE OF CONNECTICUT

GAMING COMPACT

APPENDICES

EXHIBIT D

A BILL

To settle Indian land claims within the State of Connecticut, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Mohegan Nation of Connecticut Land Claims Settlement Act of 1994".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

Sec. 1. Congress finds and declares that --

(a) The Mohegan Tribe of Indians of Connecticut is the successor in interest to the aboriginal entity known as the Mohegan Indian Tribe which has existed in the State of Connecticut from time immemorial and for which certain lands were sequestered as tribal lands by the Colony and State of Connecticut;

(b) there is pending before the United States District Court for the Southern District of Connecticut a lawsuit by the Mohegan Indian Tribe which involves certain lands within the State of Connecticut;

(c) the pendency of the lawsuit may result in economic hardships for residents of the State of Connecticut by clouding the titles to lands in the State, including lands not now involved in the lawsuit;

(d) the State of Connecticut and the Mohegan Tribe have executed agreements for the purposes of resolving all disputes between them and settling the lawsuit, which agreements require implementing legislation by the Congress of the United States;

(e) In the agreements described above, the parties provide for the assumption by the State of Connecticut of criminal jurisdiction over the members of the Mohegan Tribe and on its lands and to the submission of all gaming-related development to the State of Connecticut State Traffic Commission; and

(f) Congress shares with the parties to such agreements a desire to settle all Mohegan Indian claims in the State of Connecticut and to remove all clouds on titles resulting from such lawsuits.

DEFINITIONS

Sec. 2. For purposes of this Act, the term --

(a) "Mohegan Tribe" means the Mohegan Tribe of Indians of Connecticut, a tribe of American Indians recognized by the United States pursuant to 25 C.F.R. § 83 and by the State of Connecticut pursuant to Conn. Gen. Stat. § 47-59(a)(b) and further described in section 2(a);

(b) "State of Connecticut" means the State of Connecticut, its agencies, political subdivisions, constitutional officers, officials of its agencies and subdivisions;

(c) "Secretary" means the Secretary of the Interior;

(d) "Lands or natural resources" means any real property or natural resources, or any interest in or right involving any

real property or natural resources including but not limited to minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish;

(e) "Lawsuit" means the action in the United States District Court for the District of Connecticut, entitled Mohegan Tribe of Indians of Connecticut v. State of Connecticut, et al., Case No. H77-434;

(f) "Agreement" means that document entitled "Agreement between the Mohegan Tribe and the State of Connecticut" executed on _____, 1994, by the Governor of the State of Connecticut and the Chief of the Mohegan Tribe, and filed with Secretary of State of the State of Connecticut;

(g) "Transfer" includes but is not limited to any sale, grant, lease, allotment, partition, or conveyance, any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition or conveyance, or any event or events that resulted in a change of possession or control of lands or natural resources.

FINDINGS BY THE SECRETARY

Sec. 3. Section 5 of this Act shall not take effect until the following events have occurred and the Secretary so finds --

(a) the Governor of the State of Connecticut has entered into a binding compact with the Mohegan Tribe providing for tribal Gaming operations, including class III gaming in accordance with the Indian Gaming Regulatory Act [25 U.S.C. §§ 2701 et seq.] and the compact has received all the federal approvals required to be

fully effective;

(b) The United States has accepted in trust for the Mohegan Tribe the lands the Tribe has designated for including in their initial Reservation as described in Exhibit B to the Agreement.

**APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT OF CLAIMS
AND ABORIGINAL TITLE INVOLVING THE MOHEGAN TRIBE**

Sec. 4. (a) If the Secretary finds that the conditions set forth in section 4 of this Act have been satisfied, he shall publish such findings and the Agreement in the Federal Register, and upon such publication:

(1) The transfers, waivers, releases, relinquishments and other commitments made by the Mohegan Tribe in paragraph 1 of its Agreement with the State of Connecticut shall be of full force and effect on the terms and conditions therein stated.

(2) The transfers, waivers, releases, relinquishments and other commitments validated by paragraph (1) of the Agreement and of this Section and the transfers and extinguishments approved and validated by subsections (b)(1) and (b)(2) shall be deemed to have been made in accordance with the United States Constitution and all laws of the United States that are specifically applicable to transfers of lands or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians (including but not limited to the Trade and Intercourse Act of 1790, Act of July 22, 1790, ch. 33, sec. 4, 1 Stat. 137, and any amendments thereto and all subsequent versions thereof), and Congress does hereby approve any such transfers effective as of the date of said transfers.

(b)(1) All claims to lands within the State of

Connecticut based upon aboriginal title by the Mohegan Tribe, or any predecessor or successor in interest, are hereby extinguished, as are any and all other claims the Mohegan Tribe might have to any public or private lands or natural resources in Connecticut, such as claims or rights based on recognized title, including but not limited to: (i) any claim the Mohegan Tribe might have to the tribal sequestered lands bounded out to the Tribe in 1684, consisting of some 20,480 acres lying between the Thames River, New London bounds, Norwich bounds and Colchester bounds; (ii) any claim the Mohegan Tribe might have based on a survey under the authority of the Connecticut General Assembly in 1736 of lands reserved and sequestered by the General Assembly for the sole use and improvement of the Mohegan Indian Tribe; (iii) any claim the Mohegan Tribe might have based on any action by the State in 1860, 1861 or otherwise to allot, re-allot, and/or confirm any lands of the Mohegan Tribe to individual Indians or other persons. Any transfer of lands or natural resources located anywhere within the State of Connecticut including but not limited to transfers pursuant to the statute or treaty of or with any State or the United States, by, from, or on behalf of the Mohegan Tribe, or any predecessor or successor in interest, shall be deemed to be in full force and effect, as provided in subsection (a)(2), provided, however, that nothing herein shall be construed as extinguishing any aboriginal right, title, interest, or claim to lands or natural resources solely to the extent of the rights or interests defined as "excepted interests" in paragraph 1a of the Agreement between the Mohegan Tribe and the State of Connecticut.

(2) By virtue of the approval of a transfer of lands or natural resources effected by this section, or an extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Mohegan Tribe, arising subsequent to the transfer and based upon any interest in or right involving the claims described in paragraph (1) above in lands or natural resources, including but not limited to claims for trespass damages or claims for use and occupancy, shall be regarded as extinguished as of the date of the transfer, provided that this limitation shall not apply to any interest in lands or natural resources subsequently and lawfully acquired by the Mohegan Tribe or its members.

(c) No provision of this section shall be construed to offset or eliminate the personal claim of any individual Indian which is pursued under any law of general applicability that protects Indians as well as non-Indians.

TRANSFER OF LANDS TO THE MOHEGAN TRIBE

Sec. 5. (a) The Secretary of the Interior is authorized and directed to accept the transfer to the United States of the lands described in Exhibits A and B to be held in trust for the use and benefit of the Mohegan Tribe of Indians of Connecticut as an Indian reservation, notwithstanding the existence of any clouds on title or any liens agreed to by the Tribe.

(b) The lands transferred to the United States in trust for the Mohegan Tribe under subsection (a) shall be subject to the

laws of the United States relating to Indian lands, including section 177 of this title.

STATE JURISDICTION OVER RESERVATION

Sec. 6. (a) Notwithstanding other provisions of federal law, including but not limited to 25 U.S.C. §§ 1321-1326, the Mohegan Tribe of Indians agrees to and consents to the assumption by the State of Connecticut of criminal jurisdiction over the Mohegan tribal members and all Indians on land or other natural resources presently owned by the Tribe, or which are included in any federal legislation relating to Mohegan tribe land claims, or any annexation thereto and any other land that may now or hereafter be owned by or held in trust for said Tribe or its members. Such criminal jurisdiction shall extend to the criminal laws of the State of Connecticut and to the criminal jurisdiction of the courts of the State of Connecticut to the same extent as such criminal law jurisdiction and criminal court jurisdiction which empower the State with respect to any other person or lands or other natural resources within and subject to the jurisdiction of the State of Connecticut. The Congress consents to this assumption of criminal jurisdiction by the State of Connecticut.

(b) Notwithstanding other provisions of federal law, including but not limited to 25 U.S.C. §§ 1321-1326, the Mohegan Tribe of Indians agrees to and consents to the assumption of jurisdiction by the State of Connecticut State Traffic Commission over all gaming-related traffic control matters to the same extent

as the State Traffic Commission has jurisdiction over traffic control within the State of Connecticut as set out in Chapter 249 of the Connecticut General Statutes, § 14-297 to § 14-314C. The Congress consents to this assumption of traffic control jurisdiction by the State of Connecticut.

GENERAL DISCHARGE AND RELEASE OF STATE OF CONNECTICUT

Sec. 7. Except as expressly provided herein, this Act shall constitute a general discharge and release of all obligations of the State of Connecticut and all of its political subdivisions, agencies, departments, and all of the officers or employees thereof arising from any treaty or agreement with, or on behalf of the Tribe of the United States as trustee therefor.

REVOCATION OF AGREEMENT

Sec. 8. In the event the Agreement between the Mohegan Tribe and the State of Connecticut is invalidated, or if the gaming compact provided in section 4(a) of this Act, or any implementing agreements between the parties thereto, is invalidated by a court of competent jurisdiction, the transfers, waivers, releases, relinquishments and other commitments made by the Mohegan Tribe in paragraph 1a of the Agreement shall no longer be of any force or effect, section 5 of this Act shall be inapplicable to the lands, interests in lands or natural resources of the Mohegan Tribe and its members as if never enacted, and the approvals of prior transfers and the extinguishment of claims and aboriginal title of the Mohegan Tribe otherwise effected by section 5 shall be void ab

initio. In any such event, the Mohegan Tribe shall have the right to reinstate its land claim within a reasonable time -- which period shall be defined as the later of six (6) months after the Mohegan Tribe receives written notice of such determination, or if appealed, six (6) months after entry of judgment by the court of last resort -- and, if the suit is reinstated within that time, no defense, such as laches, statute of limitations, law of the case, res judicata, or prior disposition shall be asserted based on the withdrawal of the lawsuit and commencement of the resumed litigation, nor shall the substance of discussions leading to the Agreement be admissible in any subsequent litigation; provided, however, that if any such suit is reinstated, any defense which would have been available to the State of Connecticut at the time the lawsuit was withdrawn may be asserted, and is not waived by anything in the Agreement or by subsequent events occurring between the withdrawal of the lawsuit and commencement of the resumed litigation.

JUDICIAL REVIEW

Sec. 9 Notwithstanding any other provision of law, any action to contest the constitutionality of this Act or the validity of any agreement entered into under the authority of this Act or approved by this Act shall be barred unless the complaint is filed within 180 days after _____. Exclusive jurisdiction over any such action is hereby vested in the United States District Court for the District of Connecticut.

EFFECTIVE DATE

Sec. 10. This Act shall take effect upon the date of its enactment.

Remarks by Mayor McDaniel
October 2023

Let me begin with a short history of the more salient points taken from the writings of Melissa Tantaquidgeon Zobel.

The Mohegans first petitioned for federal acknowledgement in 1978. In a 1989 “Proposed Finding,” the Tribe was denied federal status due to insufficient evidence regarding tribal social and political activities during the 1940s and 1950s. The system of Mohegan female sociocultural authority, prevalent during that time frame, had escaped the notice of government researchers who had limited their focus to male leadership.

The Tribe submitted more interpretive evidence in 1989 and the Federal Government conducted a Field Review of the Tribe in November 1993. During this time, the Town hired legal counsel in Washington D.C. to join in the State’s opposition to the Tribe’s recognition. Then on March 7, 1994, Mohegan Federal Recognition was approved in a “Final Determination” by the Assistant Secretary of the Interior for Indian Affairs, Ada Elizabeth Deer.

On May 15, 1994, sixty days after the publication of Mohegan Federal Recognition in the Federal Register, the Mohegans legally received the benefits and privileges of Federal status. For a personal perspective, I closed on my home on May 6, nine days earlier.

Following “Mohegan Recognition,” “Memorandums of Understanding” (or “Compacts”) were signed by the Mohegans and Mashantucket Pequot Tribes with the State of Connecticut. In their accord, the Mohegan Tribe agreed to terminate their ancient land claim suit. In that lawsuit, the State was cited for violating the 1790 Trade and Intercourse Act. The State agreed to not appeal the Tribe’s federal recognition and acknowledged the Tribe’s right to purchase lands to establish an initial reservation and pursue long-term economic development.

The Mohegans formally ended their land case in October of 1994 when their Federal Settlement Act was approved by the United States Congress and President Bill Clinton. In return for extinguishing their land claim, the Tribe received neither monetary compensation nor land. Rather, the State agreed not to challenge Mohegans' federal recognition and the State acknowledged the right to pursue the economic development of their choice on their traditional reservation.

The extinguishing of the land claims was critical to the town entering into our agreement with the Mohegan Tribe. I personally experienced the angst of potentially losing our home, along with hundreds of our neighbors who were understandingly nervous about their future. Further, I was forced to pay an exorbitant cost for extra title insurance as our lender had valid concerns about the Tribe making a land claim against our property.

In exchange for not challenging the Tribe's federal acknowledgement and establishment of tribal trust lands, the town entered into a agreement calling for an annual payment of \$500,000 to be used for capital improvements in the town, dollar for dollar payments in lieu of real estate taxes and personal property taxes for lands over 700 acres AND an agreement to pay personal property taxes with limited exclusions. Let us remember that the state and federal governments urged both parties to enter into this agreement to avoid litigation and pave the way for gaming enterprises and the slot revenue for the state. This agreement was approved by Congress which should trump state statute. As previously testified to, the Courts have repeatedly upheld the right of local governments to tax NON-NATIVE personal property.

We were previously given the report of the Treasury Tribal Advisory Committee's recommendations. I point to number 7:

Tribal tax codes, agreements and Tribal tax compacts with states and local governments, free from interest-balancing tests or dual taxation schemes, should serve as the legal basis relationships between tribes and federal, state and local governments.

This is exactly what the Town of Montville and the Mohegan Tribe have done. Now it seems the legislature is looking to overturn this compact that has been in place and working for 30 years. All we have asked, time and time again, is to protect the integrity of both Tribes, recognizing they have fully functioning sovereign governments, maintain a level playing field for both Tribes, and to hold Montville harmless and offer a solution to hold Ledyard harmless against future revenue loss as well. If action is taken to invalidate our agreement with the Mohegan Tribe, the Town of Montville would have no choice but to pursue legal remedy in the courts. Our agreement provides for binding arbitration to resolve any disputes with Mohegan and as elected officials of the Town it is our responsibility to uphold this agreement, even if it means litigation.

Meeting Minutes

July 25, 2023

The Connecticut General Assembly



Working Group to Examine the Taxation of Federally Recognized Tribal Nations

MEETING NOTES

TUESDAY, JULY 25, 2023

1:00 PM IN ROOM 1D OF THE LOB AND ZOOM AND YOUTUBE LIVE

Members in Attendance:

Jeffrey Beckham, OPM Secretary, Chair
Sen. Cathy Osten, Appropriations Committee
Rep. Toni Walker, Appropriations Committee
Rep. Maria Horn, Finance, Revenue and Bonding Committee
Rep. Holly Cheeseman, Finance, Revenue and Bonding Committee
Sen. Henri Martin, Finance, Revenue and Bonding Committee
Sen. MD Rahman, Planning and Development Committee
Betsy Conway, Senior Legal Counsel, Mashantucket Pequot Tribal Nation
Jean Swift, CFO, Mashantucket Pequot Tribal Nation
Chuck Bunnell, Chief of Staff, Mohegan Tribal Nation
Ronald McDaniel, Mayor, Town of Montville

Others:

Jody Cummings, General Counsel, Mashantucket Pequot Tribal Nation

The meeting was called to order at 1:00 pm by Secretary Beckham. Introduction of members was made.

Matthew Dayton, OPM Undersecretary for Legal Affairs, summarized the background regarding the taxation issues to be discussed:

Property taxation – reservation land is immune from real property taxation, as long as it is held in trust by the federal government.

Tangible Property Thereon – Mr. Dayton discussed two scenarios:

- If the legal incidence of a tax is on the tribe or a tribal member, it is exempt from taxation, unless there is expressed congressional authorization to tax it.

- For non-members, there is a two part test set forth by the Supreme Court in the White Mountain Apache Tribe v. Bracker:
 - Is the tax expressly preempted by federal law?
 - If not, does the taxation unlawfully infringe on the right of Native Americans to make their own laws and be ruled by them?

Mr. Dayton then discussed the case of Mashantucket Pequot Tribe v. Town of Ledyard, which involved the issue of the taxation of slot machines that are operated by the tribe, but are owned by a third party vendor. The 2nd Circuit Court established a weighted test to look at the interests of the tribe and the interests of the municipality. The court determined that the economic effect on the tribe was negligible, but the effect on the municipality was not. The town of Ledyard was allowed to impose personal property taxes on the slot machines.

Mr. Dayton shared that in a similar case in Oklahoma, the state Supreme Court disagreed with the 2nd Circuit decision and found that slot machines in a similar fact pattern were exempt.

With regard to recent legislation, Mr. Dayton stated that a bill was introduced in 2022 that would have exempted personal property and real property on the reservations from taxation. Had the legislation been enacted, the town of Ledyard would have lost \$600,000 in revenue, while the town of Montville would have lost \$700,000.

Betsy Conway thanked Mr. Dayton for his presentation, including the discussion of the Oklahoma case. She stated that the Oklahoma case points to how the balancing test can result in differing outcomes, which makes it challenging with regard to economic development. She shared that as a result, many states have developed their own laws regarding tax policy.

Mr. Bunnell suggested that the working group look at the issue of other restrictive agreements individual tribes may have and how these agreements would affect tribes regarding current and future taxation, as some of these agreements have been codified into federal law.

Mr. Cummings indicated that he was glad that Mr. Bunnell raised the issue of restrictive agreements as it was the subject of debate during the legislative session. However, Mr. Cummings explained that the issue for MPTN is taxation of non-Indian personal property located on trust lands and the issue related to restrictive agreements is a separate, distinct issue that can be resolved separately from the issue of dual taxation related to non-Indian personal property.

Senator Osten shared her thoughts regarding recognition that both tribes have their own governments that provide necessary services to their respective reservations, i.e., court systems, police and fire services, public works and utilities, services for children, which are funded by the tribes, rather than by the municipalities. She commented that the town of Ledyard receives approximately

\$786,000 for educational services associated with children whose families are affiliated in some manner with the Mashantucket Pequot tribal nation (Montville has not made a similar calculation). She also spoke of the impactful contributions made by the tribes to the surrounding communities, such as food banks, nonprofit organizations, and community activities, and noted that the Mashantucket Pequot tribal nation is a top 10 taxpayer to several neighboring towns.

Senator Osten acknowledged that members of the legislative delegation are as concerned about the revenue impact to Ledyard and Montville as they are the tribal lands taxation issues. She expressed her enthusiasm for future discussions regarding the concerns of all parties.

Representative Horn concurred with Ms. Conway's remarks regarding the lack of clarity that the balancing test has created and the complexities of the test. She stated that as the tribal nations manage both their family entities and their business entities, the lack of clarity is difficult to navigate. Rep. Horn also concurred with Sen. Osten's comments regarding the need to consider the impact to the two municipalities. She shared that she looks forward to working on providing some level of clarity regarding the principle issues and the economic issues at stake.

Representative Cheeseman echoed the remarks of Rep. Horn. She also concurred with the comments of Sen. Osten regarding consideration of the economic impact changes in taxation policy would have on Ledyard and Montville. She stressed the importance of the municipalities having some certainty that any remedies that are proposed to keep them whole will be in place for as long as is necessary.

Representative Walker thanked the members for the concerns expressed regarding the issues before the working group and members' commitment to examining them. She spoke of the importance of looking at the sovereignty of the tribal nations and the issue regarding the fairness of laws that impact them, as well as the responsibility that state government has to the municipalities.

Mr. Bunnell added that the issues are far more complicated than can be resolved by a "simple fix". He stated that the working group deliberations will provide an opportunity to look at all of the different agreements affecting the tribal nations and to develop a pathway that ensures that no harm is done and that no disparities or lack of parity are created that will adversely affect either of the tribal nations.

Secretary Beckham remarked that there is another level of complexity in these deliberations – the need for representation regarding the state budget and state taxpayers. He stated that he intends to provide that representation in the discussions when necessary.

Secretary Beckham then discussed the proposition that is before the working group – the issue as to whether the municipalities can tax the tangible personal property of non-tribal members on tribal land. He informed the group that the US Treasury impaneled a Tribal Nation Advisory Committee that includes a subcommittee on dual taxation. The subcommittee issued a [report](#) on dual

taxation on December 9, 2020 (Senator Osten provided copies of the report to the members in attendance). Further, Secretary Beckham affirmed that the working group will be looking at the impact of the group's deliberations on the tribes, the State, and the municipalities.

Regarding agenda items for future meetings, Secretary Beckham suggested that the working group review the US Treasury report and that the tribes give presentations on their respective perspectives on the proposition before the panel.

Mr. Cummings concurred with Secretary Beckham's recommendations. He stated that the report lays out the problems associated with dual taxation, such as why it is bad policy and why the exemption being considered by the working group is considered good policy, as it helps with economic development on the tribal lands.

Secretary Beckham recommended that the group look at the federal report at the next meeting. He then laid out questions that he would like the tribes and towns to address at future meetings:

- The argument that the current policy is, in fact, dual taxation;
- The issue of having concessionaires on tribal property and the relationships between the concessionaires and the tribes; is that a taxation issue or simply a business relationship;
- The impact on both tribes if legislation was passed that created the level of exemption for personal property being discussed;
- Agreements that the towns currently have with the tribes and the impact that an exemption would have on the towns;
- What are the settled expectations of the municipalities;
- As this is a national issue on which Congress should be providing clarity and guidance, why should the State unilaterally take action before congressional action occurs.

Representative Horn requested that the Office of Legislative Research provide some background on what other states have done to address this issue.

Senator Osten informed members that the Office of Fiscal Analysis would be providing their fiscal note on the original 2022 legislation for future review and discussion.

Regarding the next meeting date, Secretary Beckham announced that he would work with the administrative staff to determine a date sometime in late August or early September.

Seeing no further business, the meeting was adjourned at 1:45 pm.

Respectfully submitted,

Susan Keane
Appropriations Committee Administrator

Meeting Minutes
September 19, 2023

The Connecticut General Assembly



Working Group to Examine the Taxation of Federally Recognized Tribal Nations

MEETING NOTES

TUESDAY, SEPTEMBER 19, 2023

1:00 PM IN ROOM 1A OF THE LOB AND ZOOM AND [YOUTUBE LIVE](#)

Members in Attendance:

Jeffrey Beckham, OPM Secretary, Chair
Sen. Cathy Osten, Appropriations Committee
Rep. Toni Walker, Appropriations Committee
Rep. Tammy Nuccio, Appropriations Committee
Rep. Maria Horn, Finance, Revenue and Bonding Committee
Sen. Henri Martin, Finance, Revenue and Bonding Committee
Rep. Holly Cheeseman, Finance, Revenue and Bonding Committee
Rep. Eleni Kavros-DeGraw, Planning And Development Committee
Jody Cummings, General Counsel, Mashantucket Pequot Tribal Nation
Betsy Conway, Senior Legal Counsel, Mashantucket Pequot Tribal Nation
Jean Swift, CFO, Mashantucket Pequot Tribal Nation
Larry Roberts, Attorney General, Mohegan Tribal Nation
Ronald McDaniel, Mayor, Town of Montville
Fred Allyn, Jr., Mayor, Town of Ledyard

The meeting was called to order at 1:02 pm by Secretary Beckham.

Secretary Beckham asked for a motion to approve the July 25, 2023 meeting notes. Senator Martin asked for the meeting notes to be updated to reflect his attendance. A motion was made by Sen. Osten, seconded by Rep. Horn to approve the meeting notes, as updated. The motion carried.

Secretary Beckham then asked the team from the Mashantucket-Pequot Tribal Nation (MPTN) to give their presentation regarding the Tribe's perspective on taxation issues. The presentation was given by Jean Swift, Jody Cummings and Betsy Conway (link to presentation [here](#)).

Following the presentation by the MPTN team, a presentation was given by Jonathan Taylor, whom the MPTN invited to examine the economic development impact of dual taxation (link to presentation [here](#)).

Representative Horn commented on how focused she found the MPTN presentation and expressed her gratitude for the clarity it provided. She asked if local taxation posed issues to the Tribe's ability to self-govern. Betsy Conway replied that part of self-governance is the ability for the Tribe to create its own tax policy, so in that regard local taxation does hinder self-governing.

Representative Horn then asked Ms. Conway to explain the MPTN's taxation system for tribal-owned properties. Ms. Conway responded that with the exception of a minor tax on residential homes (\$75) there is no tax on tribal members on the reservation.

Ms. Conway added that, with regard to the non-Indian companies that do business on the reservation, the Town of Ledyard, not the Tribe, taxes all that is not considered real property. She added that any additional tax imposed by the Tribe would discourage companies from doing business with the MPTN.

Representative Walker expressed her appreciation of the presentations. She asked Ms. Conway how long the towns have been levying the taxes. Ms. Conway replied that at least since 2006, and that the tax has been increased since 2013. She stated that it was her understanding that as outside, non-Indian companies started doing business on the reservations, the premise was that the towns had the right to tax non-Indian owned property.

Representative Walker asked for confirmation that the federal government provides money to the municipalities for the education of tribal children. Ms. Swift confirmed that the Town of Ledyard receives \$1.6 million in impact aid. Mr. Cummings added that the federal impact aid is provided for "federally connected" children, which includes children on the reservation and children of military members. Ms. Conway explained that the money is going to the Town of Ledyard because the federal government chose to provide aid to help with the education funding of children whose families that are exempt from paying property taxes to the municipality.

Representative Walker then asked if there was representation by tribal members on the Ledyard Town Council or Board of Education (BOE). Ms. Swift replied that the tribal council has encouraged tribal members to serve on the Board of Education. She believes that 1 to 2 tribal members currently serve on the BOE, which is a newer development in the Tribe's involvement in Ledyard town government.

Rep. Cheeseman inquired as to what revenues are derived from the businesses that operate on the reservation. Ms. Swift responded that typically the lease agreements are hybrid – a base rate plus a percentage of sales that is usually laddered.

Rep. Cheeseman asked about the \$665,000 in personal property tax revenue currently collected by the Town of Ledyard, and if the revenue includes the Great Wolf project or if the tax is levied based on the current businesses that operate on the reservation. Ms. Swift responded that they are based on the current companies doing business.

Mayor Allen addressed the \$1.6 million in federal impact aid. He shared that their most recent number is 150 children coming from Mashantucket attend Ledyard schools. That amounts to \$5,240 of impact aid per child, while the per pupil costs in Ledyard are about \$16,500. He explained that accounting for the federal impact aid, monies received from the Education Cost Sharing (ECS) grant, and the personal property tax revenue collected, the sum total is still far below the \$4.9 million in educational expenses. Mayor Allen stated that if the Town of Ledyard were to be made whole regarding the educational expenses, there would be "a different story to be told". He offered to share the numbers on the calculation of educational expenses.

Mr. Cummings remarked that he would welcome seeing Ledyard's calculations. He asked if the \$4.9 million cited was the cost of educating just the tribal reservation children in Ledyard schools. Mayor Allen replied that the number includes the 150 children, plus special education costs. He added that the special education costs have been calculated at an average of \$50,000 per pupil.

Senator Martin asked Ms. Conway to explain the Department of Revenue Services (DRS) ruling regarding taxation on the reservation. Ms. Conway explained that the DRS revenue ruling provides the guidance in determining tax payments to the State. She stated that DRS had identified 11 or 12 issues, such as "Can the State tax meals on the reservation?", for which they determined that only the Tribe could tax meals. She added that the DRS ruling provides for the 6.35% state sales tax on clothing sold at the Tanger Outlets to be collected by the DRS.

Senator Martin inquired about the treatment of personal property in the DRS ruling. Ms. Conway responded that DRS did not address personal property in its ruling, just the sales and use tax. She added that DRS has stated that the issue of taxation of personal property is not their area to address because the agency sees it as an issue for the municipalities to consider, not the State.

Secretary Beckham then called on Larry Roberts, Attorney General of the Mohegan Tribal Nation (MTN), to give his presentation.

Attorney General Roberts stated that Mohegan Tribal Nation would be providing responses to the questions posed by Secretary Beckham at the July 25 meeting, and that he would be prepared to discuss them at the next working group meeting.

Mr. Roberts shared his professional background in working on tribal nation issues throughout the country. He spoke of his experiences working for the Justice Department on litigation issues. He stated that the takeaway from that work was

that litigation leads to acrimony, and that it is better for parties to sit around a table to find solutions.

He shared with the working group that the MTN is supportive of the group's efforts to bring fairness and parity to taxation on Indian lands. Further, he expressed the MTN's appreciation for the opportunity to engage with the various stakeholders at the table to reach a solution that will be fair and equitable.

With regard to the MTN's perspective on the Tribal Advisory Committee Report on Dual Taxation, Attorney General Roberts commented that the effort being undertaken by the working group is extremely important. He stated that taxation issues on the federal level involving the respective taxing authority of states in Indian country are difficult issues to address. He added that a contributing factor to the level of difficulty is the balancing of interests test applied by the courts, which is inherently inconsistent, as two judges can look at the same issue and arrive at different results.

Mr. Roberts shared that Congress has, from time to time, taken action that does not apply the courts' balancing of interests test. He cited as an example the Indian Gaming Regulatory Act, about which Congress looked at the unique interests of the various tribes and put the tribes on an equal and fair playing field.

Regarding potential federal action, Mr. Roberts informed the group that he was not aware of any pending federal legislation or rulemaking regarding dual taxation, which makes the work of this group very important.

Mr. Roberts stated that the Tribal Advisory Committee report reflects the federal approach of parity among tribal nations, taking into account the tribes' unique circumstances. He shared that federal law prohibits the federal Executive Branch from classifying, enhancing, or diminishing the rights of one tribe vis a vis another tribe. Further, Mr. Roberts commented that the report calls out the disparity among states regarding how they deal with the issue of dual taxation. He shared that the report contains examples of states such as Nevada that are working with tribes to meet their unique circumstances. Additionally, he remarked that the report not only highlights the economic impact of tribes, but addresses the importance of parity not only among states, but the need for tax parity among tribes. Mr. Robert stated that the MTN seeks parity and fairness. He cited the recent sports betting legislation as an example of the legislature treating both the MPTN and MTN with parity and fairness.

Mr. Roberts then spoke of the recent history of the Mohegan Tribal Nation. In 1977, the Tribe filed a land claim to against the State to return its aboriginal lands that were unlawfully taken in violation of federal law. While the Mohegan government pre-dates the United States, it had to petition the Department of the Interior for federal acknowledgement in 1978, which was a long and slow process that was met by strong opposition from the State of Connecticut's Office of the Attorney General and the Town of Montville. In 1994, the Department of the Interior recognized the Mohegan Tribe for its inherent sovereignty that it had and continued to maintain from the time of first non-Indian contact to today.

He then shared that in the wake of the opposition of the State and the Town of Montville, the Tribe was presented with a "Hobson's Choice" – enter into signed agreements with the State and the Town of Montville to resolve the challenges or don't sign the agreements and face lengthy litigations. Mr. Roberts stated that under the settlement agreement with the State of Connecticut, the Tribe did not receive land. In addition, the agreement required the Tribe to pay the State \$3 million to repurchase its burial grounds. Further, the Tribe agreed to extinguish claims to its homelands and agreed to make payments in lieu of taxes on any real property over the 700 acres placed in trust, dollar for dollar unless otherwise provided in a local agreement. Mr. Roberts pointed out that 700 acres is not a lot of land and makes Mohegan one of the smallest reservations in the country. He continued by sharing the issues agreed to by the State and the issues agreed to by the Town of Montville.

Mr. Roberts stated that the agreements talk about taxation. He shared that Mohegan's concern is that the CT General Assembly will pass legislation that does not address the agreements the Tribe has with the Town of Montville, which would put the MPN into litigation with the town.

He reiterated Mohegan's support of the ending dual taxation and finding a solution that works for all parties and that is fair and equitable. Mr. Roberts stated that through the working group the legislature is trying to resolve wrongly decided litigation and unfair settlement agreements. He ended his remarks by stating that Mohegan is committed to finding a solution.

Secretary Beckham asked for confirmation from Mr. Roberts that the MTN would seek resolution regarding their settlement agreements in order to support the end of dual taxation. Mr. Roberts responded that without taking the settlement agreements into account, he believes that the legislation would create litigation.

Secretary Beckham then discussed the use of the term "dual taxation" in these discussions, stating the issue is not truly dual taxation, rather that the MPTN desires that they have the sole authority to tax or not. Ms. Conway replied that the term "dual taxation" is used because it addresses the threat of an entity being dually taxed.

Representative Walker asked Attorney General Roberts for clarification of what the MTN would need resolved in order to support legislation. AG Roberts stated that Mohegan's concern is that the Town of Montville would seek to enforce its agreements with Tribe if those settlement agreements are not addressed first. He added that Montville would want to be made whole for the lost revenue, which Mohegan would support. Rep. Walker stated that there is a myriad of issues and concerns that will have to be looked at as the legislature seeks a resolution. Mr. Roberts reiterated Mohegan's concern that they not be placed in a situation where they are engaged in litigation with the Town of Montville.

Representative Walker stated her belief that allowing one entity to impose taxes on another and then not provide services to the taxed entities is wrong. She shared that she has been shocked to learn that the MPTN does not receive municipal services for the tax dollars they are assessed.

Rep. Horn asked if either tribe had taken a position on Nevada's taxation policies. Mr. Cummings replied that the MPTN has not had internal discussions regarding Nevada's approach. Mr. Roberts commented that the Mashantucket team had done a wonderful job of laying out options employed by other states. He commented on the Michigan model, where the state not only has uniform agreements with the tribes, but also has individual agreements that consider the unique circumstances of the tribes.

Representative Cheeseman sought further clarity regarding the Mohegan's concerns concerning the potential of litigation should the legislature end dual taxation. She asked AG Roberts if she was correct in her understanding that Mohegan's position is that, if the terms of the MPN's agreement with Montville were to be violated due the legislature ending the ability of the town to tax real personal property on tribal land, the Tribe fears that the result would be litigation unless the State of Connecticut committed, in perpetuity, to make Montville whole. AG Roberts responded that Rep. Cheeseman's understanding of Mohegan's concern is correct. With regard to the remedy needing to be in perpetuity, Mr. Roberts stated that the government entities involved would negotiate to work through the issues to find a solution that may or may not necessitate the solution be adopted in perpetuity.

Mayor Allyn and Ms. Conway discussed the imposition of a sales tax by the MPTN on the sale of clothing at the Tanger Outlets, with Mayor Allyn questioning if that practice was, in fact, dual taxation. Ms. Conway stated that the practice does amount to two sovereigns taxing the same thing. She added that, to date, it appears that the practice has not decreased competition for retail sales. Ms. Swift clarified that the Tribe institutes a 7.35% sales tax, and then forfeits to the State the tax revenue equal to the state sales tax rate of 6.35%

Secretary Beckham posited that if the dual taxation regarding real personal property were to be eliminated, wouldn't that beg the question regarding the dual taxation of retail sales items. Ms. Conway replied that in order to avoid litigation, the MPTN made an agreement with the State to forego the sales tax on retail items as described by Ms. Swift. She further explained that the revenue ruling looked at retail sales as a product being brought on the reservation and then being taken off the reservation. Ms. Conway added that the issues involved in the revenue ruling are examples of sovereigns coming together to find solutions in a fair and equitable manner. She stated that the issue for the MPTN regarding the taxation of real personal property is that another sovereign (Ledyard) is taking tax revenues without providing services to the reservation, which the Tribe deems unfair and not equitable.

Secretary Beckham then raised the issue of the state income tax. Ms. Conway replied that as the income tax applies to tribal members, there could be an issue. She agreed that all of the taxes would have to be looked at, as there are issues inherent in each one.

Secretary Beckham asked Ms. Swift to discuss MPTN's operating and capital budgets. Ms. Swift explained that the \$25 million cited is the amount budgeted for

the operation and provision of services on the reservation. Funding for the capital budget is derived from the earnings the Tribe receives from tribal businesses. She further explained that the Tribe has had to defer maintenance, resulting in areas of their infrastructure being strained.

Secretary Beckham asked if the need for additional tax revenue is related to infrastructure or as an economic development tool to incentivize businesses. Ms. Swift responded that the primary issue is about tax sovereignty to make those decisions. She stated that while she would anticipate the Tribe taking a hybrid approach, as CFO she would want to see deferred maintenance be made a priority. Ms. Conway added that the Indian Gaming Regulatory Act is prescriptive on how gaming revenues are to be used to support the tribal government services. Tribal nations need to find other sources of revenue through businesses or taxes when they can to fund other activities. Mr. Roberts concurred with Ms. Conway's remarks, and spoke of the unmet needs that each tribal nation faces, with housing being one of the greatest needs for the MTN.

Secretary Beckham suggested the agenda for the next meeting include the perspectives of the mayors of Ledyard and Montville. AG Roberts confirmed that he will submit written responses to the July 25 questions prior to the next meeting. The administrative staff was charged to schedule the next meeting in approximately 30 days.

Seeing no further business, the meeting was adjourned at 2:54 pm.

Respectfully submitted,

Susan Keane
Appropriations Committee Administrator

Meeting Minutes
October 17, 2023

The Connecticut General Assembly



Working Group to Examine the Taxation of Federally Recognized Tribal Nations

MEETING NOTES

TUESDAY, OCTOBER 17, 2023

1:00 PM IN ROOM 1A OF THE LOB AND ZOOM AND [YOUTUBE LIVE](#)

Members in Attendance:

Jeffrey Beckham, OPM Secretary, Chair
Sen. Cathy Osten, Appropriations Committee
Rep. Toni Walker, Appropriations Committee
Rep. Maria Horn, Finance, Revenue and Bonding Committee
Sen. Henri Martin, Finance, Revenue and Bonding Committee
Rep. Holly Cheeseman, Finance, Revenue and Bonding Committee
Rep. Eleni Kavros-DeGraw, Planning And Development Committee
Jody Cummings, General Counsel, Mashantucket Pequot Tribal Nation
Betsy Conway, Senior Legal Counsel, Mashantucket Pequot Tribal Nation
Jean Swift, CFO, Mashantucket Pequot Tribal Nation
Larry Roberts, Attorney General, Mohegan Tribal Nation
Chuck Bunnell, Chief of Staff, Mohegan Tribal Nation
Ronald McDaniel, Mayor, Town of Montville
Fred Allyn, Jr., Mayor, Town of Ledyard

The meeting was called to order at 1:01 pm by Secretary Beckham.

Secretary Beckham asked for a motion to approve the September 19, 2023 meeting notes. A motion was made by Rep. Horn, seconded by seconded by Sen. Osten. The motion carried.

Secretary Beckham then called on the team from the Mohegan Tribal Council to present their responses regarding the taxation issues being discussed. Mr. Bunnell offered opening remarks. He stated that the Mohegan Tribal Council is deeply committed to communication and transparency in this process, and it is in that spirit that he and Attorney General Roberts offer the insight through their presentation on the Mohegan experience. Further, he stated that the tribal

council is committed to finding solutions together with the membership of the working group that work for everyone and don't create unintended consequences, given the complexities of the issues being discussed. Mr. Bunnell shared that the Mohegan Tribal Council fully stands behind the elimination of dual taxation, while maintaining parity for the two federally recognized tribes. He stressed the importance of recognizing that there are agreements in place that need to be acknowledged and dealt with in efforts to work toward fair and equitable solutions.

Attorney General Roberts and Mr. Bunnell delivered the presentation on behalf of the Mohegan Tribal Council (MTC) (link to presentation is [here](#)).

Secretary Beckham offered comments for the record regarding his stance on making any changes to the status quo. He commented that the issues being considered by the working group pose a "considerable and undetermined" fiscal impact to the State. He spoke of the two year budget that is in balance and under the spending cap and his concerns regarding making any changes to the status quo. Secretary Beckham further commented that he has not prejudged the issues and will wait for the group to complete its consideration of information.

Following the MTC presentation and discussion, Secretary Beckham called on Mayor Fred Allyn to offer the perspectives of the Town of Ledyard (link to presentation [here](#)). Senator Osten asked Mayor Allyn to review the education numbers presented with School Superintendent Hartling, so that they reflect recent changes.

Ms. Conway requested that the Mashantucket Pequot Tribal Nation be allowed to submit responses to some of the issues presented/discussed during the working group meeting.

Mayor Ronald McDaniel then offered perspectives on behalf of the Town of Montville (link to remarks [here](#)). Senator Osten asked for the follow-up information on the following items:

- Mayors McDaniel and Allyn to provide a status of in-fee land in their respective towns.
- Mr. Bunnell to provide information on the regional water system put into place by the Mohegan Tribal Nation.
- Mayor McDaniel to provide background information regarding the Southeastern CT Regional Resources Recovery Authority.
- Mayor Allyn to provide information regarding police incidents.

Ms. Conway stated that the focus of the MPTN is the taxation of non-Indian personal property. Additionally, she stated that each tribal nation has distinct issues of concern. Ms. Conway offered that both tribes have had difficult histories and that the MPTN faced litigation in each step pursued.

Representative Walker expressed her appreciation for the conversations shared to date. She shared her belief that the issues regarding equity are as important as the fiscal considerations.

Representative Horn asked that a future agenda item be a discussion of the implications of the congressional status of the Montville Agreement in order for the working group to understand the legal implications of such status and what options may or may not be considered by the State of Connecticut. Attorney General Roberts offered to address the issue at the next meeting.

Secretary Beckham charged the administrative staff with scheduling the next meeting in approximately 30 days.

Seeing no further business, the meeting was adjourned at 2:47 pm.

Respectfully submitted,

Susan Keane
Appropriations Committee Administrator

Meeting Minutes
November 14, 2023

The Connecticut General Assembly



Working Group to Examine the Taxation of Federally Recognized Tribal Nations

MEETING NOTES

TUESDAY, NOVEMBER 14, 2023

1:00 PM IN ROOM 1A OF THE LOB AND ZOOM AND [YOUTUBE LIVE](#)

Members in Attendance:

Jeffrey Beckham, OPM Secretary, Chair
Sen. Cathy Osten, Appropriations Committee
Rep. Toni Walker, Appropriations Committee
Rep. Maria Horn, Finance, Revenue and Bonding Committee
Rep. Holly Cheeseman, Finance, Revenue and Bonding Committee
Rep. Eleni Kavros-DeGraw, Planning And Development Committee
Jody Cummings, General Counsel, Mashantucket Pequot Tribal Nation
Betsy Conway, Senior Legal Counsel, Mashantucket Pequot Tribal Nation
Jean Swift, CFO, Mashantucket Pequot Tribal Nation
Larry Roberts, Attorney General, Mohegan Tribal Nation
Chuck Bunnell, Chief of Staff, Mohegan Tribal Nation
Leonard Bunnell, Mayor, Town of Montville

Others:

Anthony Casdia, Sr. VP for Business Development, Mohegan Gaming & Entertainment
John J. Rich, Chief, Ledyard Police Department

The meeting was called to order at 1:03 pm by Secretary Beckham.

Secretary Beckham thanked the Mashantucket Pequot Tribal Nation (MPTN) for hosting a tour of their facilities. He shared that he found the tour "illuminating".

Secretary Beckham asked for a motion to approve the October 17, 2023 meeting notes. A motion was made by Rep. Cheeseman, seconded by Sen. Osten. The motion carried.

Secretary Beckham then called on Ms. Conway and Ms. Swift to present the MPTN responses to issues presented at the October meeting. Ms. Conway, on behalf of the Tribal Council, thanked the working group for the in-depth analysis it is conducting regarding the "dual taxation" issue. She and Ms. Swift proceeded with the MPTN presentation (link to presentation [here](#)). Attorney Conway concluded the presentation by offering the following regarding the working group's required report to the General Assembly:

- MPTN endorses a Work Group recommendation to enact a tax exemption (add to C.G.S. Sec. 12-81) for "non-Indian owned personal property located on lands held in trust by the United States for the benefit of a federally recognized Indian tribe".
- MPTN supports Mohegan Tribe's efforts to revisit settlement agreements as a separate issue not linked to or dependent on the personal property exemption.

Mr. Bunnell thanked Ms. Conway for her thoughts regarding potential litigation issues between the Mohegan Tribe and the town of Montville should the tax exemption be enacted. He shared that the Mohegan Tribal Council (MTC) has been in discussions with attorneys and with the town, and it is believed that Montville will litigate the tax exemption. Attorney General Roberts stated that he did not think that this meeting was an appropriate forum in which to delve into the issue of potential litigation. He added that if the focus of deliberations is solely on the issue of non-Indian personal property on trust lands, he believes that it creates a "vastly unique" situation, where the tribe would be paying personal property tax on its trust lands, but the non-Indian entities with whom the tribe would have lease agreements would not pay the tax. General Roberts believes that passage of the tax exemption alone would exacerbate the "unicorn" that is the Mohegan-Montville agreement.

Mr. Bunnell stated that Mohegan has agreements that need to be looked at in global discussions. While the MTC will join in discussions regarding finding global solutions, focusing on the tax exemption alone is not acceptable to the Mohegan tribal government.

Attorney Conway reiterated that the MPTN supports the state discussing the Mohegan settlement agreements, but the Mashantucket Pequot Tribal Council does not believe that the tax exemption and the settlement agreements should be interconnected or dependent.

Chief John Rich of the Ledyard Police Department commented on the MPTN presentation by clarifying that on Routes 2 and 214 in Ledyard, police coverage is provided by the Ledyard PD.

Secretary Beckham called on Senator Osten to present the data she has been collecting and the matters for consideration and conclusions offered in her presentation. He informed working group members that there would be an opportunity at a later date for members to offer updates on the information provided by Senator Osten (link to presentation [here](#)).

Anthony Casdia thanked Senator Osten for her presentation. He stated that some of the data presented regarding tribal government costs would need to be augmented or corrected. He cited the following examples:

- Health Services – he clarified that Mohegan provides approximately \$14.3 million in support for social services, pharmacy care, family care and elder care.
- Utilities – the \$946,000 included in the presentation represents the administrative cost only. Mr. Casdia stated that the cost of providing the utilities themselves is \$20.3 million per year.

Mr. Casdia stated that he would review the slide deck to make sure that the data presented is accurate on an "apples to apples" basis.

Representative Cheeseman expressed concern that, while reimbursing Ledyard and Montville for lost revenue from the Mashantucket Pequot and Mohegan Fund (MPMF) would solve the problem today, the towns would not be reimbursed for any future revenue lost due to tax increases. Ms. Swift suggested adding a COLA factor to payments to those municipalities. Senator Osten disagreed with Ms. Swift's suggestion, as the legislature may look to change a policy that did not recognize the sovereignty of the tribal nations. She stated that she does not believe that the state has an obligation to "take on the ills of that policy forever".

With regard to the fiscal impact of changes to current statute, Secretary Beckham shared that the Office of Policy and Management (OPM) is working with the Governor on midterm adjustment recommendations for Fiscal Year 2025. In addition, OPM and the Office of Fiscal Analysis recently completed their consensus revenue update. He spoke about the "softening" of revenues and of deficiency appropriations that will need to be addressed. Secretary Beckham shared that his greatest concern is keeping state expenditures under the spending cap. He stated that given the potential fiscal issues that may lie ahead, he is skeptical in making changes to policies that will necessitate new appropriations. Further, given the complicated relationships between the federal government, the state government, the towns, and the tribal nations, he's very skeptical in this forum of coming up with a taxation solution without considering what the "spillover" effects may be.

Senator Osten responded to Secretary Beckham's comments, stating that the General Assembly and the Executive Branch always look at legislation to correct inequities. She shared her thoughts on what it would mean to not the address the inequities that have existed regarding how the state has dealt with the tribal nations. She spoke about the revenue generated by the tribal enterprises and the need to recognize that they are the top two businesses in the state. She believes that the state has an obligation to correct the inequities regarding taxation and settlement agreements, while not punishing the towns for following state policy. Senator Osten added that the cost to making the towns whole is \$1 million, which she believes can be addressed within the budget adjustments.

Ms. Conway added that she believes the reimbursement to towns could be handled within the Mashantucket Pequot Mohegan Fund.

Secretary Beckham then called on Attorney General Roberts to address the implications of congressional status regarding the Mohegan agreement. AG Roberts stated that the presentation was, in large part, a response to Rep. Horn's questions (link to presentation [here](#)). The members then discussed the Mohegan proposal to provide the tribes a dollar-for-dollar credit to the Mashantucket Pequot and Mohegan Fund for the payment of real estate and personal property taxes paid by the tribes or non-Indians on trust lands to local governments. Ms. Conway stated that the problem with the proposal from the Pequot perspective is that Ledyard and Montville would still be allowed to tax on the reservations and to set their own tax policies, as opposed to allowing each tribe to make those decisions on their reservation. The proposal would address the money issue, not the sovereignty issue. Ms. Swift concurred with Ms. Conway's remarks, and added that the proposal does not address the determinant of economic development by non-Indians on the reservations.

Mr. Bunnell raised the issue of how sovereignty is defined. He posited that it is a tribal government's sovereign right to decide for themselves what is acceptable to them, and it is not the place of other governments to tell a sovereign government what is right for them.

Representative Horn and Senator Osten discussed the various issues associated with the elimination of the policy of the taxation of non-tribal property. In response to Rep. Horn's request for clarification, Sen. Osten confirmed that she suggests the use of MPMF dollars to hold Ledyard and Montville harmless should a policy change be enacted and her support of providing funds to make the towns whole. She expressed her concerns regarding the Mohegan proposal, as she believes that the change in policy should be at the forefront of consideration before the fiscal issues are addressed. Additionally, she spoke of the need for Montville and Mohegan to have discussions about changes to their agreement and the nature of their relationship going forward. Representative Horn agreed that whatever action is taken should incentivize the towns and the tribes to continue their good relationships.

Mr. Bunnell shared that Mohegan talks with Montville on a regular basis, and that the parties have talked about the Montville agreement repeatedly. He stated that Montville has asked Mohegan to "be a better neighbor and double the money".

Senator Osten offered that she suggested the removal of Section 1F from the agreement between the State and Mohegan, as she believes that the section "set up this bad policy", as that agreement was signed first. She stated that the section "cannot stand any longer".

Representative Cheeseman offered that, while she respects Senator Osten's position on the policy concerns, she believes that the issue is ultimately about the money – how the towns would be affected, the effects on tribal economic development, and the fiscal impact to the state. She shared her view that the working group cannot absent the issue of the money, as worthy as the other issues are, from a purely practical standpoint. Ultimately, a solution will need to be found on how to fix the fiscal implications.

Senator Osten informed the group that legislation was enacted to allow for 100% payment to towns regarding in-trust lands. She added there are other issues

associated with tribal lands that the various parties will need to look at, including that the reservation lands in Ledyard and Montville are assessed differently by the town assessors. She reiterated her position that current policy cannot continue and that the state cannot allow the sovereign nations to be treated as though they do not exist. Senator Osten suggested that discussions between the town of Montville and Mohegan include the town councilors.

Attorney General Roberts reiterated Mohegan's position that the policy change would not address the Mohegan situation, only the Pequot situation, and would lead to litigation between Mohegan and Montville. He offered that potential legislation could be drafted to address the unique circumstance of both tribes separately:

- Mashantucket issue – eliminate the taxation of non-Indian personal property.
- Mohegan issue – provide for Mohegan to have an offset against the funds it pays to the MPMF.

Secretary Beckham asked members to provide draft recommendations for circulation by Friday, December 1. The next meeting of the working group will be scheduled for the week of December 11. In addition to the discussion of proposed recommendations, the Mohegan team will be given the opportunity to provide updated data to Senator Osten's presentation.

Seeing no further business, the meeting was adjourned at 2:47 pm.

Respectfully submitted,

Susan Keane
Appropriations Committee Administrator

Meeting Minutes
December 11, 2023

The Connecticut General Assembly



Working Group to Examine the Taxation of Federally Recognized Tribal Nations

MEETING MINUTES (draft)

MONDAY, DECEMBER 11, 2023

1:00 PM IN ROOM 1A OF THE LOB AND ZOOM AND [YOUTUBE LIVE](#)

Members in Attendance:

Jeffrey Beckham, OPM Secretary, Chair
Sen. Cathy Osten, Appropriations Committee
Rep. Toni Walker, Appropriations Committee
Sen. Eric Berthel, Appropriations Committee
Rep. Tammy Nuccio, Appropriations Committee
Sen. John Fonfara, Finance, Revenue and Bonding Committee
Rep. Maria Horn, Finance, Revenue and Bonding Committee
Sen. Henri Martin, Finance, Revenue and Bonding Committee
Rep. Holly Cheeseman, Finance, Revenue and Bonding Committee
Rep. Eleni Kavros-DeGraw, Planning and Development Committee
Sen. Ryan Fazio, Planning and Development Committee
Rodney Butler, Chairman, Mashantucket Pequot Tribal Nation
Jody Cummings, General Counsel, Mashantucket Pequot Tribal Nation
Betsy Conway, Senior Legal Counsel, Mashantucket Pequot Tribal Nation
Jean Swift, CFO, Mashantucket Pequot Tribal Nation
Larry Roberts, Attorney General, Mohegan Tribal Nation
Chuck Bunnell, Chief of Staff, Mohegan Tribal Nation
Leonard Bunnell, Mayor, Town of Montville
Fred Allyn III, Mayor, Town of Ledyard

Others:

Anthony Casdia, Sr. VP for Business Development, Mohegan Gaming & Entertainment

The meeting was called to order at 1:02 pm by Secretary Beckham.

Secretary Beckham asked for a motion to approve the November 14, 2023 meeting notes. A motion was made by Sen. Osten, seconded by Rep. Nuccio. The motion carried.

Secretary Beckham then reviewed his draft recommendations submitted to the working group on December 1 (link to recommendations [here](#)). He shared that he has learned a lot during the working group's deliberations regarding the matters of concern to the various parties. He stated that the issue of sovereignty and how the State deals with the sovereign nations within its borders is a function of federal law, as Congress and the federal courts have jurisdiction regarding these issues. Secretary Beckham pointed out in his document that federal jurisdiction is another venue for the issues being considered. His draft recommendations also note that the two sovereign nations have different points of view, and he does not see a single solution to each tribal nation's concerns. Secretary Beckham's memo also raises his concern regarding the precedent a change to the status quo could set regarding the State's tax policy. As he has at previous meetings, Secretary Beckham stated that the State's fiscal situation is in flux due to changes in state revenue and the end of federal funding provided during the pandemic. He stated the OPM recommends 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.

Senator Osten shared that she has been concerned regarding Secretary Beckham's comments with regard to state tax policy. She stated that there is an agreement between the Administration and both federally recognized tribal nations relative to the sales tax and the income tax, so any changes regarding the taxation of non-Indian personal property on tribal lands would not affect either the sale tax or the income tax. She stated for the record that the sales tax and income tax policies are already decided, and the personal property tax issue remains to be resolved.

Representative Horn sought clarification regarding the sales tax and income tax agreement. Attorney Conway clarified that it is a revenue ruling from the State Department of Revenue Services (DRS). She explained that both tribes worked with DRS in the early 2000's and came to an agreement, the form of which became a DRS ruling. She stated that both tribes have lived under that ruling since it was issued.

Representative Horn then asked for an explanation regarding how to differentiate outcome and avenues of pursuit with the revenue agreement versus a court case, such as the 2nd Circuit decision. She wanted to know what about the revenue agreement demonstrates that the tribes have agreed to live by it and that the agreement on the ruling will remain in place. Ms. Conway responded that the 2nd Circuit case involved a "fact intensive" balancing test, while the DRS ruling is a statement of how the agency views taxing issues. She explained that should the tribes take a different stance on what taxes they will collect, they would have to go to DRS to explain the reasons why they were no longer willing to collect those taxes. Further, she explained that that scenario has not occurred because the parties all came to an agreement. Attorney Conway stated the factors are very different in a sales and use tax case versus a property tax case versus an income tax case. The DRS pursued the issuance of a ruling to avoid litigating each case.

Secretary Beckham added that this discussion illustrates the observation made in OPM's recommendations regarding the role of the federal government. He laid out that the federal court could still act in the area of taxation, that the tribal nations could still bring action to change taxation, and that whatever state action might be taken could

create a precedent involving other taxes. He posited that while the DRS ruling has settled things until now, it does not settle the taxation issues for all time. Secretary Beckham stated that he believes that every action taken "moves the ball" one way or another; therefore, his recommendation is to hold with the status quo.

Senator Osten offered comments regarding the discussion of the 2nd Circuit decision. She stated that the legislature often addresses issues ruled upon by the courts and has enacted legislation in response to decisions on which it does not agree with the courts. She cited the legislature enactment of reproductive health legislation that was passed in response to the Dobbs decision. Further, she stated that not all issues need to be addressed by Congress and can be done on the state level, as the various responses among states has shown regarding Dobbs.

Representative Nuccio asked Secretary Beckham if his recommendation to maintain the status quo came from a revenue perspective. Secretary Beckham clarified that his concern was in regard to the reimbursement of lost revenue that the towns would seek if there was a change in the policy regarding the taxation of non-Indian personal property.

Representative Horn agreed with Sen. Osten that the legislature has the capacity to correct what it deems to be "not correct" federal rulings. She again expressed her concern with regard to being able to see the agreement regarding the tax rules. Attorney Conway responded that the ruling is in writing ([link here](#)), and DRS alone can change it, not the tribes. Mr. Bunnell offered a historical perspective on the development of the agreement. He stated that the Mohegan Tribe was a party to the creation of the agreement, and that the tax ruling was not "dropped" on the tribes.

Attorney General Roberts asked to provide a clarification to OPM's statement in their recommendations document that " 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." AG Roberts stated that Mohegan is subject because Congress ratified the Montville Agreement, and that Mohegan is paying on anything over 700 acres real and personal property. Secretary Beckham responded that the OPM document would be corrected per AG Robert's clarification.

Senator Osten offered her findings and recommendations ([link to recommendations here](#)). Rep. Nuccio asked if the funding that would be needed to hold Ledyard and Montville harmless would be static or would they increase over time. Sen. Osten replied that the funding would remain static. She added that significant adjustments have been made in PILOT payments to the towns, as well as additional funding from the Mashantucket Pequot and Mohegan Fund (MPMF) to recognize their host town status, and more ECS funding to support education services in those communities. Rep. Cheeseman asked what impact, if any, Sen. Osten's recommendations would have on the Montville Agreement. Sen. Osten replied that her recommendations do not change the Montville Agreement. Secretary Beckham added that Sen. Osten's proposal addresses compensation to Ledyard and Montville for the loss of non-Indian personal property taxes on Mashantucket Pequot and Mohegan tribal lands. AG Roberts clarified that while Sen. Osten's proposal does address the assessment of non-Indian personal property taxes, it does not address the provision of the Montville

Agreement that calls for Mohegan to pay personal property taxes on its trust lands over 700 acres. That remains a concern to Mohegan and the potential for litigation should Sen. Osten's proposal be enacted.

Secretary Beckham then called on Attorney Cummings to present the Mashantucket Pequot recommendations (link to recommendations [here](#)). Attorney Cummings pointed out that the chart presented on page 3 addresses the municipal expenses that Ledyard identified at a previous meeting. He also reviewed the alternative recommendations presented on page 5. He offered additional information regarding AG Roberts clarifying remarks regarding the language in OPM's recommendations. Attorney Cummings raised a concern about the characterization of amounts the Mohegan Tribe agreed to pay the Town of Montville in connection with trust lands located outside of Mohegan's Land Claim Reservation Lands and Mohegan-owned personal property located on those trust lands. He indicated that the trust land and Mohegan-owned personal property were not subject to tax, and that the amounts to be paid by Mohegan per its agreement with Montville should be described as payments in lieu of taxes.

Secretary Beckham inquired about the MPTN alternative recommendation that the legislature 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. He asked if that agreement could include a provision for the tribal nation to make a town whole for the tax loss. Attorney Cummings replied that it would depend on the terms of the agreement, stating that there would have to be discussion concerning the towns' ability to "prove up" that there are costs that the tribes are creating for which the towns would need to be compensated.

Representative Horn asked Attorney Cummings to elaborate on language included in the MPTN document that states, "If it were about money, the Pequot Tribe would have come to an agreement with the other impacted stakeholders long ago." Attorney Cummings explained that the language means that MPTN's solution is about removing the authority of a town to "reach in" to tribal lands, which would be a recognition by the State of Connecticut that towns do not have the jurisdiction to impose taxation on non-Indian personal property. He stated that MPTN is looking for a solution that recognizes the tribes' sovereignty and jurisdiction to the exclusion of other governments.

Representative Horn then asked if the MPTN alternative recommendation would impact gaming. Attorney Cummings stated that it would not.

Mayor Allyn expressed his concern regarding the recommendation to use the MPMF to make Ledyard and Montville whole. He remarked that while all of the State's municipalities receive the benefit of the fund, not all 169 municipalities have direct costs associated with it.

Representative Cheeseman asked if the MPTN alternative recommendation would open the door to the tribes collecting sales and/or income taxes. Attorney Cummings

responded that he could see the terms of the DRS ruling becoming incorporated into a tax agreement. Ms. Swift added that any legislation could limit the scope of taxation. She informed the group that she has seen such limitations in other jurisdictions. Rep. Cheeseman remarked that she feels it is important going forward that the interests of Ledyard and Montville be acknowledged. She stated the legislature should seek the input of the towns and their agreement to any action ultimately taken.

With regard to the MPMF, Sen. Osten stated that the host and impact communities were given top priority in the design of the distribution formula. She spoke of her efforts to transfer additional dollars into the fund and pledged to continue those efforts.

Representative Nuccio asked Attorney Cummings to elaborate on the recommendation regarding annual payments to Ledyard and Montville of \$600,000 each over a three year period. Attorney Cummings responded that the amount is approximately what the towns are receiving in personal property tax from non-Indian vendors. He said that the timeframe would be within the legislature's discretion to establish.

Attorney General Roberts commented that he needed to take issue with the characterization of "agreed to, not imposed. Further, he stated that there are many federal land claim settlements that are referred to as "restrictive settlement acts", and the notion that all of those tribes agreed to those types of agreements as opposed to them being imposed is antiquated. AG Roberts shared that the Montville Agreement does provide for payment in lieu of taxes, but it is essentially a tax, as it provides dollar for dollar. Regarding litigation risk, he stated that there is always the risk of litigation in these matters. He then offered that Mohegan has submitted a proposal that recognizes the sovereignty of both tribes and allows for each tribe to exercise their sovereignty in different ways to meet the needs of their communities.

Mayor Bunnell reviewed several of the comments offered by former Mayor McDaniel at the October meeting (link [here](#)). He stated that the town of Montville has been severely impacted by the need to increase services due to the casinos. He expressed his concern regarding providing funding from the MPMF, as he believes that any monies provided from the fund could be changed over time, while the Montville Agreement provides for a fixed amount.

Secretary Beckham then called on Attorney General Roberts to review the Mohegan recommendation (link to recommendation [here](#)). AG Roberts stated that Mohegan's proposal was in the form of a bill, which the Mohegan Tribal Council believes offers an approach that satisfies the goals of both tribes – 1) it makes clear that real and personal property located on land held in trust is exempt from taxation as a matter of state law; 2) Subsection (b) takes into account Mohegan's unique situation regarding the Montville Agreement. AG Roberts explained that under the proposal, Mohegan would receive a dollar for dollar credit based on payments made to the town of Montville for real or personal property as required under the agreement. He stated that while he understands the concerns expressed regarding the fiscal impact the Mohegan proposal would have to the State, he believes that the issue at hand is a matter of providing an equal, level playing field for both tribes and providing an outcome for both tribes that recognizes their unique circumstances.

Mr. Bunnell shared that the Mohegan Tribal Council met and asked him to read a statement into the record (link to Statement [here](#)). Working group members then discussed the Mohegan proposal. AG Roberts clarified several points of inquiry.

Rep. Horn asked Mayor Bunnell if it is his position that the Montville Agreement permits the town of Montville to tax/continue taxing non-Tribal property located on tribal lands, both on the 700 acres and beyond should the 700 acre limitation be exceeded. Mayor Bunnell responded that the courts have upheld the right of local governments to impose taxes on non-Native personal property. Ms. Conway clarified that the 2nd Circuit case was based on state law at that time, which was silent on the issue of taxation by towns. She explained that if the State had enacted legislation that did not allow municipalities to tax on reservation land, there would be no 2nd Circuit decision.

Representative Walker thanked the members of the working group for their efforts over the past four months and for the information shared. She spoke of the complexities of the issues being considered and the need for fairness and equity in a solution. Rep. Walker stated her view that the working group had not yet reached the point of identifying an outcome that would address each tribe's concerns. She also expressed her concern regarding the potential fiscal impact to the State at a time when the State is confronting some financial issues. Rep. Walker stated that she agreed with Secretary Beckham's recommendation to continue the conversation.

Representative Walker then made a motion to adopt Secretary Beckham's recommendation 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". She explained that she finds this recommendation to be the "safest" course of action at this time. Sen. Berthel seconded the motion. After discussion, the working group members decided not to vote on the recommendation, and the motion and second were withdrawn.

Mr. Bunnell stated that it is important for Montville to be included in future discussions because of the agreements involving Mohegan and the town. Further, he expressed the importance of the State being at the table to assist in those discussions.

Senator Berthel aligned his remarks with those of Rep. Walker. He observed that there is a lot of work that can be done and that it is incumbent upon the legislative leaders serving on the working group to take on that work.

The members then discussed the content of the final report. It was agreed that the report would include a cover letter from Secretary Beckham, along with the meeting minutes and the recommendations submitted by Secretary Beckham, Sen. Osten, the MPTN team and the MTN team.

Senator Martin expressed his thanks for the information shared during the working group's deliberations. He commented that he believes that the taxation issue is a federal issue. He added that he would like future deliberations to include legal tax incidents. In addition, Sen. Martin spoke of the need to find a solution that satisfied both tribal nations.

Representative Nuccio stated that she would appreciate a deeper understanding of how each tribe's history regarding agreements. Attorney Cummings and AG Roberts offered to meet with her to share their respective tribal histories. She recommended that there be a high level discussion of those histories in the final report. Secretary Beckham suggested that the presentations offered at previous meetings be included in the report, as each tribe addressed their respective path.

Senator Osten shared her understanding of the paths pursued by both tribal nations. She stated that the underlying issue, for her, has not been about casinos; rather, it has been about the tribal nations having a business enterprise that allows them to support themselves.

Secretary Beckham reviewed the contents of the final report:

- Cover letter
- Table of Contents
- Recommendations Submitted by Members
- Meeting Minutes
- Materials Submitted

Seeing no further business, the meeting was adjourned at 2:36 pm.

Respectfully submitted,

Susan Keane
Appropriations Committee Administrator