



STATE OF WASHINGTON
DEPARTMENT OF REVENUE

November 15, 2013

TO: All County Assessors

FROM: Kathy Beith, Assistant Director
Property Tax Division

SUBJECT: **GUIDANCE ON THE APPLICATION OF THE FEDERAL NINTH
CIRCUIT COURT OF APPEALS DECISION IN *CONFEDERATED
TRIBES OF THE CHEHALIS RESERVATION V. THURSTON COUNTY
BOARD OF EQUALIZATION***

You have asked the Department of Revenue (Department) to provide guidance on the application of the Federal Ninth Circuit Court of Appeals Decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization* so that you may move forward in calculating levies to complete the 2014 tax rolls.

Before issuing final guidance on this matter, the Department wishes to seek input from assessors, the Tribes, and any other interested parties that desire to provide input and analysis to the Department regarding the decision and its potential impact.

To respond to your request in the short term, we are providing the attached interim guidance. We anticipate publishing a Property Tax Advisory within four to six months.

Additionally, our goal is to have ongoing and in-person discussions with you hopefully beginning with the upcoming WACO Legislative Conference in January to gather your comments. We also invite you to have your Prosecuting Attorneys submit their interpretations or analysis of the Ninth Court's decision prior to the conference.

If you have any questions, please contact David Saavedra at (360) 534-1404 or by email at DavidS@dor.wa.gov.

KB:slc
Attachment

Interim Guidance to County Assessors regarding the Application of the Federal Ninth Circuit Court of Appeals Decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*

Chronology and Background

In its opinion for the case *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*, No. 10-35642, 724 F.3d 1153 (9th Cir., 2013), the federal Ninth Circuit Court of Appeals addressed whether permanent improvements at the Great Wolf Lodge are subject to property tax.

The appellate court reversed the district court, which had granted summary judgment to Thurston County. The Court, relying on *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973), explained that “the question of tax immunity cannot be made to turn on the particular form in which the Tribe chooses to conduct its business.” The Court then held that under *Mescalero* and 25 U.S.C. § 465, state and local governments cannot tax permanent improvements built on non-reservation land owned by the United States and held in trust for an Indian Tribe, stating that:

Under *Mescalero*, § 465’s exemption from state and local taxation applies to the permanent improvements on that land. Thus, neither Thurston County nor any other state or local entity can tax the Great Wolf Lodge or other permanent improvements on that land. Thurston County’s property taxes on the Grand Mound Property are therefore invalid under § 465 and *Mescalero*. *Confederated Tribes*, 724 F.3d at 1157.

Facts of the Case

The Great Wolf Lodge is located in Thurston County on land owned by the United States and held in trust for the Chehalis Tribe, and the Lodge itself (i.e., the permanent improvements and buildings on the property) is owned by CTGW, LLC, an entity in which the Chehalis Tribe has a 51 percent ownership interest.

Interim Guidance

Prior to issuing final guidance, the Department will be seeking input from all interested stakeholders regarding the property tax implications of the Ninth Court’s decision. The Department’s intent is to issue a Property Tax Advisory on the application of the decision within six months. In the interim, county assessors should apply the decision based on the specific facts presented to the Ninth Circuit. That is, the immunity from state and local taxation provided by *Mescalero* and 25 U.S.C. § 465 should be afforded to permanent improvements located on land held in trust by the United States for a Tribe or Tribal member that is leased to a Tribe, individual Indian, or an entity in which the Tribe or Indian has at least a 50 percent ownership interest.
