

## STATE TAXATION IN INDIAN COUNTRY

“As a general rule, tribal sovereignty precludes states from taxing Indian tribes themselves for property owned in and activities conducted in Indian Country. This applies to sales tax on purchases by Indians on tribal lands, motor vehicle and gas taxes, property taxes or state income taxes.

Unless otherwise preempted by federal law, however, states can tax some non-Indian activities on tribal lands, and also tax Indians living, working, owning property, or operating business off tribal lands. Courts have also ruled that individual Indians are only exempt from taxation for activities on lands belonging to their own tribe. Since each tribe is considered an individual sovereign nation, the privileges of sovereignty only accrue to its own members.

### A Night Out: A Taxing Experience?

Jane Smith, Kirkland resident, receives a bonus of \$150. She decides to spend the windfall on a night out with her husband. They go to dinner at a Seattle Jazz club, spending \$20 for a cover charge and \$130 for drinks and dinner (taxes included). The following is the tax revenue that results.

Admission Tax	\$0.95
State sales tax	\$7.73
Local sales taxes	\$2.74
Food & beverage tax	\$0.59
State B&O tax	\$0.85
City B&O tax	\$0.33
Liquor taxes	\$1.00

Total taxes	\$14.19
Net to club	\$138.81

The total taxes exceed 10 percent of the net to the club. **Avoiding this “wedge”** is a competitive advantage for tribal casino/entertainment complexes of the 29 tribes in the State.

If the legal incidence of the tax is on the non-Indian, the next question is whether Congress has explicitly exempted the transaction from state taxation. For example, in the case of gambling, states are explicitly prohibited from taxing non-Indian businesses that contract with tribal casinos. Finally, if not explicitly

exempted, the taxability of the transaction turns on a balancing of competing federal/Indian and state interests. Consider the retail sale of products to non-Indians by an Indian-owned retail business located on tribal land. If the products were made outside of Indian country, the state's interest in raising revenue to fund government services predominates. On the other hand, if products or services contain considerable value added on tribal lands, the federal interest in promoting tribal economic development predominates and the sales are exempt from the state's retail sales tax, as affirmed in *Cabazon (California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

There is one final wrinkle: In cases where non-Indian customers are obliged to pay sales taxes, the state may have difficulty compelling Indian retailers to collect and remit the tax to the state. This has frequently been the case with tobacco taxes.

Washington' state and local governments get 46 percent of their tax revenues from taxes levied on businesses. In addition businesses serve as governments' agents in collecting the retail sales tax, which accounts for 27 percent of state and local revenue, as well as selective sales taxes on items such as cigarettes and gasoline. Taxes collected on and through businesses do not simply fund the government services that the businesses consume: these taxes float the whole government enterprise.” (Pg. 6-7).

## LAND USE AND ENVIRONMENTAL REGULATIONS

“Exemption from state and local land use regulations can result in significant cost savings for tribal businesses:

- SEPA review and appeals on a major development on non-tribal land can cost upward of \$1 million just in consulting and legal fees and stretch out for months or years.
- With no SEPA review, there will be no mitigation requirements, and tribes can choose whether and how to address impacts of their development.
- If they choose, tribal developments can cut costs on discretionary development standards like parking ratios, street widths, landscape requirements, design standards, etc.
- Tribal developments will pay no impact fees for local infrastructure, whether authorized through SEPA or the Growth Management Act.” (Pg. 7).

### Handout Prepared by: Citizens Equal Rights Alliance

*Citizens Equal Rights Alliance (CERA) believes that Federal Indian Policy is unaccountable, destructive, racist and unconstitutional. It is therefore CERA's mission to ensure the equal protection of the law as guaranteed to all citizens by the Constitution of the United States of America.*

