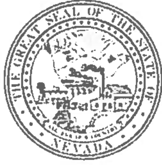

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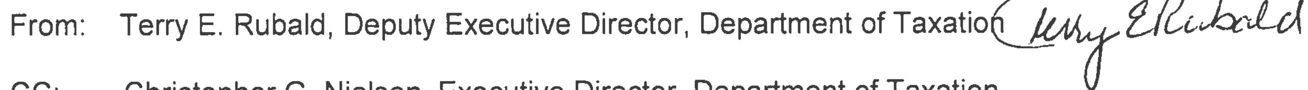
Guidance Letter 14-001

Date: September 17, 2014

To: Centrally-assessed Section, Division of Assessment Standards; County Assessors

From: Terry E. Rubald, Deputy Executive Director, Department of Taxation



CC: Christopher G. Nielsen, Executive Director, Department of Taxation

Subject: Taxability of real property located on tribal lands held in trust by the U.S. Government

SUMMARY:

This Guidance Letter is intended to clarify that real property located on lands held in trust by the U.S. Government on behalf of Indian tribes, is not taxable for purposes of property tax. This includes property owned by third parties unrelated to an Indian tribe. In the past, real and personal property owned by third parties, but located on trust lands, had been considered subject to property taxation in Nevada pursuant to NRS 361.045. Due to recent decisions by Federal courts, however, any permanent improvements owned by any person or company and located on trust lands, are not taxable property by the State of Nevada and its subdivisions. Personal property owned by unrelated third parties and located on trust lands, however, may continue to be considered taxable property by the State and its subdivisions. Possessory interests in property of any Indian tribe, band or community held in trust by the United States, continue to be exempt pursuant to NRS 361.157(2)(e).

AUTHORITY:

NRS 360.215(6): The Department shall continually supervise assessment procedures which are carried on in the several counties of the State and advise county assessors in the application of such procedures.

NRS 360.215(7) The Department shall carry on a continuing program to maintain and study the assessment of public utilities and all other property assessed by the Department to the end that the assessment is equalized with the property assessable by county assessors.

DISCUSSION:

NRS 361.045 provides that, except as otherwise provided by law, all property of every kind and nature whatever within this state shall be subject to taxation. Recently however, the 9th Circuit, U.S. Court of Appeals, ruled in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization et al (July 30, 2013)* that state and local governments lack the power to tax permanent improvements built on non-reservation land owned by the United States and held in trust for an Indian

tribe pursuant to 25 U.S.C. §465.[1] 25 U.S.C. §465 authorizes the Secretary of the Interior to acquire "any interest in lands, water rights, or surface rights to lands, within or without existing reservations," and to hold title to such lands and rights "in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired." The statute also provides that "such lands or rights shall be exempt from State and local taxation." The Court held that the exemption of trust lands from state and local taxation under §465 extends to permanent improvements on such lands. The Court concluded that the fact that the improvements were owned by a limited liability company, rather than by the tribe itself, was irrelevant.

The Bureau of Indian Affairs has also adopted 25 C.F.R. §162.017(a) which clarifies and confirms 25 U.S.C. §465:

> Subject only to applicable Federal law, 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 may be subject to taxation by the Indian tribe with jurisdiction.

Based on the rulings of the Federal courts and Federal regulation, real property such as buildings and improvements located on lands held in trust by the United States Government for an Indian tribe is not taxable property, even when owned by a person or entity other than the tribe. Such property owned by third parties is not exempt per se, because exemption implies that a property is subject to tax which later qualifies for exemption. It is simply not subject to taxation. However, calling such property "non-taxable" as opposed to "exempt" may be a distinction without much of a difference.

There is not a specific exemption in state law for property owned by third parties but located on trust lands. For example, NRS 361.050 specifically exempts all lands and other property *owned by the United States* "not taxable because of the Constitution or laws of the United States." NRS 361.157(2)(e) exempts otherwise taxable possessory interests in the property of any Indian or of any Indian tribe, band or community which is held in trust by the United States or subject to a restriction against alienation by the United States. Neither of these exemptions cover the property at issue.

APPLICATION:

1.) In order for the Department or assessors to determine whether the real property is non-taxable, it must be established that the property is located on lands owned by the United States held in trust for an Indian tribe. Title records must be checked to confirm said ownership of the land. In addition, the Taxpayer must provide a copy of the lease showing that the subject property is on property owned by the United States and held in trust for the Indian tribe.

2.) For centrally-assessed properties which use unitary valuation methods, the Taxpayer must provide sufficient information for the Department to determine what portion of the unitary assessment represents non-taxable property. The information must include a metes and bounds description of the location of the non-taxable property and a map in sufficient detail to show location in each section, township and range in which the property is located. The information must also include a list of the real property improvements located on trust lands, the date the improvement or structure was built or placed on tribal trust lands, and the portion of original book cost and current book cost less depreciation which represents non-taxable property located on trust lands.

3.) For centrally-assessed properties, the wire-miles or pipeline miles associated with non-taxable property must be separately indicated on wire-mile reports.

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[1] *See also United States v. Rickert,* 188 U.S. 432 (1903); and *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973).

4.) For purposes of tracking property for various reports, including the Statistical Analysis of the Roll and the AB 466 Tax Expenditure Report, assessors and the Department should categorize non-taxable property owned by third parties and located on Indian trust lands as "non-taxable" property. If the software used by the assessor is not currently capable of identifying property as "non-taxable," classification as "exempt" will be acceptable. For purposes of AB 466, the legal reference to use for classifying the property will be 25 CFR §162.017(a).

If you have any questions about this guidance letter, please call the Local Government Finance Section of the Division of Local Government Services, Department of Taxation at (775) 684-2100.

WEBSITE LOCATIONS:

Nevada Revised Statutes (NRS): http://www.leg.state.nv.us/NRS/
Nevada Administrative Code: http://www.leg.state.nv.us/NAC/CHAPTERS.html

Department of Taxation Guidance letters: http://www.tax.state.nv.us; then select "Publications;" then select Assessment Standards Publications and "Guidance letters."