

[Assembly Bill 653](#) (Ridley-Thomas)

Date: 03/21/17

Program: Property Tax

Sponsor: Santa Ynez Band of Chumash Indians

Revenue and Taxation Code Section 238

Effective: Upon enactment, but first operative for fiscal year 2018-19.

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Summary: Creates a property tax exemption for Indian tribe fee-owned property during the fee-to-trust application period with the federal government.

Purpose: To exempt the property from tax pending approval of the fee-to-trust application.

Fiscal Impact Summary: Potentially hundreds of thousands of dollars per year.

Existing Law: In general, lands held in trust by the U.S. Government for Indian tribes and tribal members are immune from the property tax.¹ However, if tribes or individual members own lands in fee, even within the boundaries of a reservation, then the lands will be subject to property tax.²

Relevant to this bill, Indian tribe fee-owned property remains taxable until the property is placed in trust.

Proposed Law: This bill exempts from property tax property owned in fee by a federally recognized Indian tribe while a completed initial written request or trust application is under consideration with the U.S. Department of Interior. The exemption is limited to a period of five years. To qualify, the tribe must submit to the assessor documents establishing:

- the tribe is federally recognized, and
- the federal government considers the initial written request or trust application complete and under consideration.

The exemption would be revoked the earlier of:

- The lien date that occurs five years after the assessor grants the exemption.
- The lien date that occurs after the federal government denies the fee-to-trust request or application.

The bill is a tax levy effective immediately, but the exemption it creates becomes operative commencing with the lien date for fiscal year 2018-19.

In General: Generally, Indian tribe-owned property must be held in trust to be immune from property tax. Federal law provides the Secretary of the Interior with discretionary power to take land into trust. The federal government's [Fee-To-Trust handbook](#) explains:

The Indian Reorganization Act (IRA) [48 Stat. 984, 25 U.S.C. § 461 et seq. (June 18, 1934)] provides the Secretary with the discretion to acquire trust title to land or interests in land. Congress may also authorize the Secretary to acquire title to particular land and interests in land into trust under statutes other than the IRA.

The Secretary bases the decision to make a trust acquisition on the evaluation of the criteria set forth in Title 25 Code of Federal Regulations (CFR) Part 151 and any applicable policy. With the exception of certain mandatory acquisitions, the decision to acquire title requires Secretarial approval.

¹ 25 U.S.C. §5108. See BOE Property Tax [Annotation 525.0014](#).

² *County of Yakima v. Confederated Tribes and Bands of Yakima Nation* (1992) 502 U.S. 251.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

The application is filed with the [Bureau of Indian Affairs](#) and the process differs depending on whether it is an on-reservation discretionary acquisition or off-reservation discretionary acquisition. The process can be lengthy for off-reservation discretionary acquisitions if opposition arises.

Background: Property in Santa Barbara County purchased by the Santa Ynez Band of Chumash Indians has taken several years to complete the fee to trust process. In 2010, a 1,400 acre property in the Santa Ynez Valley, known as [Camp 4](#), was purchased for a reported \$42 million. This property was under a [Williamson Act](#) contract, which allows the property to be assessed at a specified capitalization of income method that restricts the property's assessment. In 2013, the tribe initiated the Williamson Act nonrenewal process with the county, a nine-year winding down period, which would return the property to assessment based on its Proposition 13 factored base year value (2010 acquisition value). Also in 2013 the tribe submitted an application to take the land into trust through the federal administrative process. In 2015, the tribe additionally pursued federal legislation ([H.R. 1157](#), LaMalfa, 2015-16) to take the land into trust. Previously, the tribe purchased another property in Santa Barbara County, which took 13 years to take into trust.

Commentary:

1. **Effect of Bill.** This bill allows Indian tribe fee-owned land to become tax exempt for the stated period of time while pending approval to be taken into trust.
2. **Issue.** The length of time to complete the fee-to-trust process varies. It can take years if the acquisition creates controversy and litigation commences. For property located in California, a review of information for 86 completed fee to trust applications filed since 2001 indicates: 36 were completed within a year or less; 39 between one and five years; and 11 between five and 13 years. A Chumash tribe purchase took the most time at 13 years.
3. **Immunity does not apply to fee-owned property.** Indian lands held in trust by the federal government are immune from property tax, as they are treated as federally owned property. Federal law expressly provides that when the Secretary of the Interior takes title to the land in the name of the United States in trust for the Indian tribe or individual tribe member for which the land is acquired, the lands or rights acquired shall be exempt from state and local taxation. However, for lands not held in trust, California's law does not provide an exemption. California's Constitution provides all property is taxable unless exempted by the California Constitution or federal law. While the Constitution extends an exemption to several types of property based on ownership or use, fee ownership by an Indian-tribe is not included.³
4. **Multiple Exemption Periods?** Could multiple five-year exemption periods apply to the same property? For instance, does the period restart if the first application is denied and a subsequent application is submitted? Does it restart when the application is withdrawn and a new application is submitted?
5. **Withdrawn Applications.** If a fee-to-trust application is withdrawn, would the exemption terminate prior to the end of the five-year exemption?
6. **Individual Tribe Member-Owned Land.** It does not appear this exemption applies to land owned in fee by an individual member of a Tribe.

³ Sections 1, 3 and 4 of Article XIII of the California Constitution.

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7. **Operative Date.** The exemption is designed as a lien date-based exemption granted to assessments made to the regular assessment roll. For property currently owned in fee on the January 1, 2018 lien date, the exemption could apply beginning with the regular assessment for fiscal year 2018-19 (July 1, 2018 – June 30, 2019). For property acquired after the January 1, 2018 lien date, or any lien date thereafter, the exemption would apply to the next lien date following submittal of the necessary documents to the assessor. The bill does not authorize the exemption to apply to a supplemental assessment, as with a newly acquired property or completion of new construction. Nor does the bill provide for a mid-year adjustment based on the date the necessary supporting documents are filed with the assessor.

Costs: The BOE will not incur any costs related to this bill.

Revenue Impact: Background, Methodology, and Assumptions. Estimating the revenue impact of this bill is difficult. We cannot estimate the number of properties that tribes will purchase in fee that will eventually be accepted into trust in the future. We also do not know the location, size, and value of those properties. However, a review of data received from the Bureau of Indian Affairs showing completed fee-to-trust applications since fiscal year 2001-02 gives us an idea of what exempting fee owned property during the fee-to-trust period would look like over that period. Staff estimates potential assessed value loss in the previous 15 years at over \$200 million; i.e. local revenue loss of more than \$2 million. If staff assumes future property purchases will be similar to past acquisitions and similar fee-to-trust pending periods, the magnitude of potential revenue loss can be estimated.

Summary. Based on available historical data, the revenue loss is potentially hundreds of thousands of dollars per year in local revenue loss.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.