

525.0000 INDIANS AND INDIAN LANDS

See Mobilehome

Timber Yield Tax

Tribal Housing Exemption

525.0001 Bingo Management Agreement. A management agreement whereby a non-Indian is to conduct a bingo operation on federal land held in trust for Indians can result in a possessory interest in the property subject to property taxation. Such an interest can be created and exist without the approval of the Secretary of the Interior, since it is possession and valuable use that is crucial in determining the existence of a taxable possessory interest, not whether the instrument under which possession and valuable use are exercised is valid. C 3/14/85.

525.0002 Bingo Management Agreement. A business manager/operator of an Indian tribe's bingo operation on Indian land has a taxable possessory interest in the land and improvements used in conjunction therewith. C 5/7/87; C 1/28/88.

525.0003 Bingo Management Agreement. An agreement between an Indian tribe and a business concern hiring the latter as a "management consultant" to oversee a bingo game operation on tribal land results in a taxable possessory interest if the agreement provides the "consultant" the right to use Indian property on a sufficiently exclusive, durable and independent basis and results in a private benefit, i.e., an opportunity to make a profit to the "consultant". The terms of the agreement, not the label assigned to the person or firm hired, determine whether or not a possessory interest has been created. C 7/27/93.

525.0005 Developer Of Indian Lands. A master lessee-developer of Indian lands has a taxable possessory interest therein, even though it may thereafter sublease some or all of its interest. C 4/14/81.

525.0006 Developer of Indian Lands. Improvements constructed on an Indian reservation and owned by a partnership (general or limited) to be used for bingo are assessable unless the partnership qualifies as an "Indian organization" i.e., one in which all partners are Indians. If one partner is a non-Indian, the partnership is not an "Indian organization." C 11/8/84.

525.0008 Equipment. Business equipment that is owned by a Native American and that has situs on the reservation is not assessable by the county assessor even though the property is used off the reservation. Because the reservation is comprised of Indian lands held in trust by the federal government, such that the situs of the property is on tax-exempt federal land, the property is not locally assessable. C 6/24/2002.

525.0008.005 Equipment. Business equipment that is leased to a tribe and used on the reservation is not assessable to the Indian tribe by the county assessor. The state is preempted by federal law from imposing such a tax on Indian lessees of leased equipment located on Indian lands. However, the leased equipment may be assessable to the lessor provided that the tax would not impose a burden on tribal activity that is subject to comprehensive federal regulation. C 8/11/2003.

525.0009 Federal Tax Exemption Status. Internal Revenue Code section 17871 and section 305.7871-1 of the Income Tax Regulations provide that Indian tribal governments (or subdivisions thereof) will be treated as states for *specified federal tax purposes*. However, the recognition as an Indian tribal government does not necessarily establish that property of the tribal government qualifies for a particular tax benefit. Furthermore, there is no

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evidence that Congress intended to treat Indian tribal governments as a state or local government with respect to state taxation. Thus, the fact that an Indian tribal government may be treated as a state for certain federal tax purposes, it does not give rise to any state tax exemption for land not within a reservation and not held in trust. Such property does not qualify for a California property tax exemption and is not otherwise immune to such taxation. C 8/5/2003.

525.0010 Government Lands. Land and improvements held by the government in trust for Indians are not subject to property taxation, and Indians residing thereupon are similarly not subject to such taxation. C 4/14/81; C 7/10/2003.

525.0011 Housing Authority. The fact that real property is owned by an Indian housing authority is not sufficient, in and of itself, to exempt the property from taxation. Such property will be either immune or exempt from property taxation only if there is a specific reason for such immunity or exemption; for example, the property is held by the federal government in trust for an Indian tribe or the property has been exempted under the welfare exemption. C 11/24/98.

525.0012 Indian Lessees. Property which is not located on an Indian reservation, is owned by non-Indians, and is leased to a tribal health organization to provide health care services to Indians is not immune or exempt from property taxation. The local government's interest in taxation of such property outweighs federal and tribal interests in self-determination. Thus, the local government's jurisdiction to tax property is not preempted by federal and tribal jurisdiction over Indian affairs. A tribal health organization is not a federal instrumentality whose owned property is immune from state and local taxation; and, even if it were a federal instrumentality, property which it leases would not be immune. With regard to the welfare exemption and eligibility therefore, in cases where property is owned by one entity but operated by another entity, both entities must file a claim for and qualify for the welfare exemption. C 4/14/97.

525.0013 Indian Owned Land. *Confederated Tribes and Bands of the Yakama Nation v. Yakima County, et al.* (1990) 903 F.2d 1027 (later 502 U.S. 251), holds that 25 U.S.C. Sec. 349 manifests congressional intent to permit state and/or local property taxation of fee patented lands owned by enrolled tribal members and located within an Indian reservation. C 5/7/90; C 5/22/90; C 2/18/2000; C 7/10/2003.

525.0014 Indian Owned Land. Indian tribal-owned lands not within a reservation and not held in trust for Indians by the United States are subject to nondiscriminatory taxes, including local property taxes. C 5/27/92; C 2/18/2000.

525.0015 Indian Tenant of Indian Housing Authority. The possessory interest of an Indian tenant residing in a unit of an Indian Housing Authority project is exempt from property taxation. C 10/22/76; C 9/20/79.

525.0016 Leases of Tribal Lands to Non-Indians. Until there is an appellate level decision holding that leases of tribal lands to non-Indians are governed by federal law only or that assessments of possessory interests to non-Indian lessees infringe upon the tribal right of self-government, such interests should be assessed. Authority for such assessments is found in section 1 of article XIII of the California Constitution, Revenue and Taxation Code sections 104, 107, and 201, and cases such as *The Agua Caliente Band of Mission Indians v. Riverside County* (1971) 442 F.2d 1184, and *The Fort Mojave Tribe v. San Bernardino County* (1976) 543 F.2d 1253. C 5/8/92.

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[525.0017](#) **Leases to Non-Indians.** If a property is taken in trust by the federal government for a member of an Indian tribe, the property will not be subject to property taxation and the Indian tribe member's use of the property will not constitute a taxable possessory interest. However, if the property is taken in trust by the federal government and thereafter used by a non-Indian lessee, then a taxable possessory interest may be imposed upon such subsequent use. C 6/24/99.

[525.0018](#) **Off Reservation Indian Housing.** The general rule is that, absent express law to the contrary, Indians going beyond reservation boundaries are subject to non-discriminatory state laws, including tax laws that are applicable to all citizens of the state. Thus, off-reservation, nonexempt rental housing units should not be valued or taxed differently merely because of the presence of Indian tenants. C 1/27/2001.

[525.0019](#) **Partnerships.** The property of a partnership is not immune from taxation merely because the majority partner is an Indian. Under California property tax law, it is the partnership as an entity which holds title to the partnership assets (property), which partnership is a separate "person" and must establish its own immunity (if any) distinct from that (if any) of its partners. C 9/1/95.

[525.0020](#) **Possessory Interest Tax.** While a possessory interest tax is not preempted by the federal Indian leasing statute, the sovereignty analysis in *Gila River Indian Community v. Waddell* (1996) 91 F.3d 1232 and in *Segundo v. City of Rancho Mirage* (1987) 813 F.2d 1387 is nevertheless instructive and relevant to the application of a possessory interest tax to a non-Indian residential lessee of Indian land. Because of the concern for Indian sovereignty and economic self-sufficiency, automatically imposing the tax on any non-Indian possessory interest in Indian land is no more appropriate than automatic refusal to impose the tax on the grounds of preemption. Consideration should always be given to factors such as the role, if any, of the tribe and its members in generating value for the leasing operation, the importance of the revenues produced by the leases to the economic self-sufficiency of the tribe, and the importance of state and county services, such as law enforcement and the judicial system. C 11/9/2000.

[525.0025](#) **Tribal Tax on State-Assessed Utility Property on Indian Land.** Where property owned and used by a public utility traverses Indian land, that property may be assessed by both the State Board of Equalization for local property taxation and be subject to a property tax imposed by the Indian tribe without violating the prohibition against double taxation. Double taxation occurs only when two taxes of the same character are imposed on the same property, for the same purpose, by the same taxing authority, within the same jurisdiction and during the same taxing period. C 1/9/98.

[525.0030](#) **Trust Patent.** Land held by an Indian under a trust patent granted by the government is not subject to property taxation. C 3/31/78; C 7/10/2003.