

The Connecticut General Assembly



Working Group to Examine the Taxation of Federally Recognized Tribal Nations

MEETING NOTES

TUESDAY, JULY 25, 2023

1:00 PM IN ROOM 1D OF THE LOB AND ZOOM AND YOUTUBE LIVE

Members in Attendance:

Jeffrey Beckham, OPM Secretary, Chair
Sen. Cathy Osten, Appropriations Committee
Rep. Toni Walker, Appropriations Committee
Rep. Maria Horn, Finance, Revenue and Bonding Committee
Rep. Holly Cheeseman, Finance, Revenue and Bonding Committee
Sen. Henri Martin, Finance, Revenue and Bonding Committee
Sen. MD Rahman, Planning and Development Committee
Betsy Conway, Senior Legal Counsel, Mashantucket Pequot Tribal Nation
Jean Swift, CFO, Mashantucket Pequot Tribal Nation
Chuck Bunnell, Chief of Staff, Mohegan Tribal Nation
Ronald McDaniel, Mayor, Town of Montville

Others:

Jody Cummings, General Counsel, Mashantucket Pequot Tribal Nation

The meeting was called to order at 1:00 pm by Secretary Beckham. Introduction of members was made.

Matthew Dayton, OPM Undersecretary for Legal Affairs, summarized the background regarding the taxation issues to be discussed:

Property taxation – reservation land is immune from real property taxation, as long as it is held in trust by the federal government.

Tangible Property Thereon – Mr. Dayton discussed two scenarios:

- If the legal incidence of a tax is on the tribe or a tribal member, it is exempt from taxation, unless there is expressed congressional authorization to tax it.

- For non-members, there is a two part test set forth by the Supreme Court in the *White Mountain Apache Tribe v. Bracker*:
 - Is the tax expressly preempted by federal law?
 - If not, does the taxation unlawfully infringe on the right of Native Americans to make their own laws and be ruled by them?

Mr. Dayton then discussed the case of *Mashantucket Pequot Tribe v. Town of Ledyard*, which involved the issue of the taxation of slot machines that are operated by the tribe, but are owned by a third party vendor. The 2nd Circuit Court established a weighted test to look at the interests of the tribe and the interests of the municipality. The court determined that the economic effect on the tribe was negligible, but the effect on the municipality was not. The town of Ledyard was allowed to impose personal property taxes on the slot machines.

Mr. Dayton shared that in a similar case in Oklahoma, the state Supreme Court disagreed with the 2nd Circuit decision and found that slot machines in a similar fact pattern were exempt.

With regard to recent legislation, Mr. Dayton stated that a bill was introduced in 2022 that would have exempted personal property and real property on the reservations from taxation. Had the legislation been enacted, the town of Ledyard would have lost \$600,000 in revenue, while the town of Montville would have lost \$700,000.

Betsy Conway thanked Mr. Dayton for his presentation, including the discussion of the Oklahoma case. She stated that the Oklahoma case points to how the balancing test can result in differing outcomes, which makes it challenging with regard to economic development. She shared that as a result, many states have developed their own laws regarding tax policy.

Mr. Bunnell suggested that the working group look at the issue of other restrictive agreements individual tribes may have and how these agreements would affect tribes regarding current and future taxation, as some of these agreements have been codified into federal law.

Mr. Cummings indicated that he was glad that Mr. Bunnell raised the issue of restrictive agreements as it was the subject of debate during the legislative session. However, Mr. Cummings explained that the issue for MPTN is taxation of non-Indian personal property located on trust lands and the issue related to restrictive agreements is a separate, distinct issue that can be resolved separately from the issue of dual taxation related to non-Indian personal property.

Senator Osten shared her thoughts regarding recognition that both tribes have their own governments that provide necessary services to their respective reservations, i.e., court systems, police and fire services, public works and utilities, services for children, which are funded by the tribes, rather than by the municipalities. She commented that the town of Ledyard receives approximately

\$786,000 for educational services associated with children whose families are affiliated in some manner with the Mashantucket Pequot tribal nation (Montville has not made a similar calculation). She also spoke of the impactful contributions made by the tribes to the surrounding communities, such as food banks, nonprofit organizations, and community activities, and noted that the Mashantucket Pequot tribal nation is a top 10 taxpayer to several neighboring towns.

Senator Osten acknowledged that members of the legislative delegation are as concerned about the revenue impact to Ledyard and Montville as they are the tribal lands taxation issues. She expressed her enthusiasm for future discussions regarding the concerns of all parties.

Representative Horn concurred with Ms. Conway's remarks regarding the lack of clarity that the balancing test has created and the complexities of the test. She stated that as the tribal nations manage both their family entities and their business entities, the lack of clarity is difficult to navigate. Rep. Horn also concurred with Sen. Osten's comments regarding the need to consider the impact to the two municipalities. She shared that she looks forward to working on providing some level of clarity regarding the principle issues and the economic issues at stake.

Representative Cheeseman echoed the remarks of Rep. Horn. She also concurred with the comments of Sen. Osten regarding consideration of the economic impact changes in taxation policy would have on Ledyard and Montville. She stressed the importance of the municipalities having some certainty that any remedies that are proposed to keep them whole will be in place for as long as is necessary.

Representative Walker thanked the members for the concerns expressed regarding the issues before the working group and members' commitment to examining them. She spoke of the importance of looking at the sovereignty of the tribal nations and the issue regarding the fairness of laws that impact them, as well as the responsibility that state government has to the municipalities.

Mr. Bunnell added that the issues are far more complicated than can be resolved by a "simple fix". He stated that the working group deliberations will provide an opportunity to look at all of the different agreements affecting the tribal nations and to develop a pathway that ensures that no harm is done and that no disparities or lack of parity are created that will adversely affect either of the tribal nations.

Secretary Beckham remarked that there is another level of complexity in these deliberations – the need for representation regarding the state budget and state taxpayers. He stated that he intends to provide that representation in the discussions when necessary.

Secretary Beckham then discussed the proposition that is before the working group – the issue as to whether the municipalities can tax the tangible personal property of non-tribal members on tribal land. He informed the group that the US Treasury impaneled a Tribal Nation Advisory Committee that includes a subcommittee on dual taxation. The subcommittee issued a [report](#) on dual

taxation on December 9, 2020 (Senator Osten provided copies of the report to the members in attendance). Further, Secretary Beckham affirmed that the working group will be looking at the impact of the group's deliberations on the tribes, the State, and the municipalities.

Regarding agenda items for future meetings, Secretary Beckham suggested that the working group review the US Treasury report and that the tribes give presentations on their respective perspectives on the proposition before the panel.

Mr. Cummings concurred with Secretary Beckham's recommendations. He stated that the report lays out the problems associated with dual taxation, such as why it is bad policy and why the exemption being considered by the working group is considered good policy, as it helps with economic development on the tribal lands.

Secretary Beckham recommended that the group look at the federal report at the next meeting. He then laid out questions that he would like the tribes and towns to address at future meetings:

- The argument that the current policy is, in fact, dual taxation;
- The issue of having concessionaires on tribal property and the relationships between the concessionaires and the tribes; is that a taxation issue or simply a business relationship;
- The impact on both tribes if legislation was passed that created the level of exemption for personal property being discussed;
- Agreements that the towns currently have with the tribes and the impact that an exemption would have on the towns;
- What are the settled expectations of the municipalities;
- As this is a national issue on which Congress should be providing clarity and guidance, why should the State unilaterally take action before congressional action occurs.

Representative Horn requested that the Office of Legislative Research provide some background on what other states have done to address this issue.

Senator Osten informed members that the Office of Fiscal Analysis would be providing their fiscal note on the original 2022 legislation for future review and discussion.

Regarding the next meeting date, Secretary Beckham announced that he would work with the administrative staff to determine a date sometime in late August or early September.

Seeing no further business, the meeting was adjourned at 1:45 pm.

Respectfully submitted,

Susan Keane
Appropriations Committee Administrator

