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Taxing Times in Native America

by Gabriel S. Galanda and Anthony S. Broadman

Adapted by Shana Brown

Legends. Emerald Queen. Quil Ceda Village. Two Rivers. Tribally owned and operated businesses seem to be all over the state. People born before you might even recall when they saw Indian tobacco shops cropping up all over neighboring reservations. Unfortunately, some people might think that Indians have special rights. Indians don't have to pay taxes like others have to. Indians have it easy. They may think that even though Indians have these businesses, they are not paying their fair share. After all, who pays for the building and repairing of roads in your community? Who pays for the public library and all its books and materials? Who pays the police and firefighters to do their jobs, public schools and teachers? For public health? The answer is not as simple as "the government does." And where Indian tribes are concerned, the answer might even surprise you.

While it is true that local, state, and federal governments pay for a lot of these services, they have to get their money from somewhere. They get most of their money in the form of taxes. To understand the relationship between tribes and taxes, we need first to understand how taxes work.

We all pay taxes. And it's not just adults who pay taxes. Every time you buy a candy bar or eat at your favorite fast food restaurant, governments add on a tax called *sales tax*. For each dollar you spend, there is a certain percentage added on top of the sale price. That's why when you buy something for \$1, you end up paying more than \$1.00. Almost everything we buy is taxed in some way.

We have different taxes, too. We pay *property tax* every year for the land and houses we own. That tax generates a lot of money for the government. We also get taxed on the money we make. That's the big one called *income tax* that goes directly to the federal government. In some cases, states collect their own state income taxes, like Oregon and California. In Washington there is no state income tax.

Businesses pay taxes, too. They pay local, state, and federal taxes for the money they make. That's a lot of taxes and a lot of money.

So how do tribes fit in?

If Indian tribes have their own governments, how do *their* taxes work? Does their tribal government collect taxes from them? Do they pay non-tribal, local, state, and federal taxes at all?

There is no easy answer, and, no single answer fits every tribe. However, there are some basic rules that can help you understand how taxes work for tribal people, tribes, and tribal businesses.

Indian Tax Ground Rules

Think of enrolled* tribal members as dual citizens: they are citizens of the United States and citizens the tribe in which they are enrolled. Indians pay federal taxes (except in very rare cases as outlined in the treaties of certain tribes). In 1787 the framers of the United States Constitution made some decisions about tribes and how they interact with states and the federal government. According to the Constitution tribes are sovereign, independent nations who answer to the federal government in property and money matters, not state governments (in most cases). So, the states cannot tax tribes and tribal members within tribal territory—this includes sales tax. But outside of tribal territory, Indians pay taxes just like everyone else.

Gabriel Galanda, an expert on tribal law and taxation in Washington State, says:

In general, unless they [Indian tribes] are exercising treaty rights or are otherwise immune, Indians conducting business outside Indian Country are likely subject to taxes like B&O, public utility, and sales taxes.

* A tribal person who is recognized as a member by the tribe from which he or she descended and the federal government. Usually this is determined by the amount of tribal ancestry of a particular tribe. This is known as "blood quantum." This controversial system was imposed by the federal government's Indian Reorganization Act. Read more about it in Roy Cook's article: [Heart of Colonialism Bleeds Blood Quantum](#). (Brown)

That's the only simple part of the answer. When taxes get more complicated, the rules around who pays taxes get more complicated, too.

Property Taxes on Tribal Governments

Think about what Chief Justice Marshall said in 1819, when taxes in Indian Country became an issue in the Supreme Court: "The power to tax involves the power to destroy." It was only 43 years earlier—well within his lifetime—that Great Britain had tried to subdue or overpower the 13 Colonies by taxing them too much, too often, and without their permission. What Justice Marshall says about taxes helping or hurting people, partly explains why states, tribes, and taxes become so complicated. What some people do not know is that states cannot control tribes, which means they cannot tax tribes without their consent. That means that tribes and tribal individuals do not pay taxes to the state for their tribal land or homes. Reservation and other tribal land and property are part of another nation—the Indian tribe—so it does not make sense that they would pay taxes to the state.

Governments Without Property Tax Bases

Remember earlier when we talked about how property taxes generate a lot of money for the governments that collect them? Indian tribes in general do not collect property taxes from tribal members. Without a way to make a lot of money like non-Indian governments do, many tribes have difficulty providing lots of the things that other governments do (like libraries, drivable roads, and schools). Some tribes cannot provide anything at all for their members.

However, tribes as sovereign governments do have the power to tax non-Indian individuals and businesses when they enter into business relationships with the tribes. This includes sales taxes as well as other business taxes like the ones described earlier. This is one way tribes can generate money for much needed government and social services.

Tribes and Members: Sovereignty, Taxpayers, and Gaming

Money earned by a tribe on or off tribal land is not taxed, but individual tribal members pay federal income taxes—whether or not they earn their money from tribal businesses. The only exception is when tribal members earn their money through treaty protected fishing rights, like tribal fisheries programs. For example, tribal members who work for their tribe's casino still pay federal income tax. Even if that casino is off the reservation, the money they earn that goes back to the tribe (not to individual tribal members) is not taxed. This system is a result of the Indian Gaming Regulatory Act of 1988, a federal law. But sometimes tribal businesses greatly impact the state's ability to collect taxes. In those cases, the state and tribes often enter into agreements to ensure that both governments get their share of the "tax pie." For example, Washington State and tribes often agree to state gaming compacts to make sure that one business is not getting an unfair advantage over another. But that's only one example of tax compact between state and tribal governments.

Tribal-State Tax Agreements

Other examples are tribal gas and tobacco businesses. Since gas and tobacco are taxed more than other retail items, the purchase of these items generates more money for the state. The state can collect taxes for tobacco and fuel that nontribal members buy on the reservation, but it is difficult to collect these taxes, because states cannot put state tax collectors in every tribal business. So tribes often charge their own sales tax on cigarettes to make their price similar to the state's price. This makes it less likely that nontribal members will travel to reservations to purchase tobacco to avoid paying taxes. The taxes collected by the tribe remain with the tribe.

Conclusion

Ten years ago, researchers at the Evergreen State College stated that Washington tribal governments were contributing an estimated \$140 million annually to the state and local tax structure. Today the numbers are likely far greater, because tribal businesses have grown beyond gaming and tobacco. Tribes are in a new era of nation-building that benefits Indians and non-Indians alike.¹ When we all understand

¹ For example, many tribes employ non-tribal people, provide services like law enforcement for communities that surround their reservation, and make generous charitable contributions to community, state, and federal non-profit organizations that benefit tribal and non-tribal people in their area. (Brown)

tribal treaty rights, we understand why Indians have the tax structure they do. They *do* pay taxes, and they *do* contribute to our economies. When we all have a better understanding of how Indians contribute to the economy of state and federal governments as well as the people of their own nations, we break down harmful stereotypes and misconceptions that only serve to hurt us all.

Gabriel S. Galanda and Anthony S. Broadman are partners with Galanda Broadman PLLC, a Seattle law firm focusing on issues critical to Indian Country (www.galandabroadman.com/). Mr. Galanda is past chair of the WSBA Indian Law Section and is an enrolled Round Valley tribal member. He can be reached at 206-300-7801 or gabe@galandabroadman.com. Mr. Broadman is the current chair-elect of the WSBA Administrative Law Section and can be reached at 206-321-2672 or anthony@galandabroadman.com. Shana Brown is a teacher in the Seattle Public Schools and contracted curriculum writer for the Indian Education office of the Office of the Superintendent of Public Instruction. She is a descendant of the Yakama Nation and has written curriculum for the Washington State Historical Society and the University of Montana's Regional Learning Project. She can be reached at srbrown@seattleschools.org.