



Policy Basics: Taxes in Indian Country

Part 1: Individual Tribal Members

July 2017

Taxes in Indian Country

Few people understand the nuances of how taxes work in Indian Country. As a result, taxation authority in Indian Country has been one of the most litigated issues between tribes, states, and local governments. Furthermore, there is much misinformation and many missed opportunities for innovative and mutually beneficial inter-governmental collaborations that respect tribal sovereignty.

This is the first in a series of policy basics reports on taxes in Indian Country. Part 1 provides a brief overview of the taxes that individual Indians in Montana pay. Part 2 focuses on tribal governments and the taxes they pay and assess. It delves deeper into the critical role taxes play in creating a reliable revenue stream to support government services and operations. Part 2 also reviews the state-tribal revenue sharing agreements made between the seven reservation governments and the Montana Departments of Revenue and Transportation. Revenue sharing agreements can provide governments with some level of certainty concerning the division of revenue while safeguarding against costly litigation, making them an effective, if temporary, solution to the ongoing taxation competitions between sovereigns.

Taxes and Tribal Members: What Taxes do Individual Tribal Members Pay?

According to the U.S. constitution's supremacy clause, the constitution, federal laws, and treaties override conflicting state laws. Additionally, a variety of U.S. Supreme Court rulings have recognized the absolute power of Congress to regulate Indian affairs and property. This means that in most instances state and local governments cannot tax tribal members, tribal governments, or their property.¹ However, tribal members living off their own reservation—as well as non-Indians residing on reservations—are subject to all state and local tax laws.

Income Taxes

Generally, individual tribal members are subject to **federal income taxes**. The exception to this is income derived directly from allotted trust lands or treaty fishing rights.² Allotted trust land is reservation land owned by an individual tribal member (and not the tribe) and held in trust by the federal government.³ Treaty fishing rights are subsistence rights secured to tribes by treaty.⁴ Any income received from the *reinvestment* of payments originally from allotted trust land or treaty fishing-related activities is subject to federal income tax.⁵

Tribal members are also subject to **state income taxes** if they live or work off the reservation where they are enrolled.⁶ In 2010, thirty-nine percent of American Indians resided off-reservation in Montana.⁷ Many more Americans Indians residing on their reservation work off the reservation in nearby communities.

FICA Taxes

Regardless of where they work or live, American Indians must also pay into **social security and Medicare**, referred to as Federal Insurance Contributions Act, or FICA, taxes. Employers, including tribal governments, are required to withhold FICA taxes from their employees' wages.⁸ The exception is wages paid to tribal members for treaty fishing-related activities. This exemption, however, corresponds to reduced benefits under these federal programs.⁹

Property Taxes

Tribal members must also pay state and local **property taxes on their privately owned land** held in fee simple status, even if their property is located on their reservation.¹⁰ All tribal lands and any individual allotments held in trust by the federal government are not subject to property tax assessments because federal law prohibits state and local governments from taxing tribal lands.¹¹

The title to **reservation trust land** is held by the federal government on behalf of an individual Indian landowner or tribe. Privately owned reservation land is held in a status known as fee simple.

Owners of **fee simple land** hold the full title to their property, which is subject to all state and local laws, regulations, codes, and taxation.

Source: Bureau of Indian Affairs Frequently Asked Questions (2017)

To help offset the loss of property taxes that support local public schools, districts located on reservations and other federal lands can apply for federal **Impact Aid**, also known as Title VII funds.¹² Through Impact Aid, seventy-one public schools in Montana received nearly \$55 million in federal aid in 2016. Fifty-nine of these schools were located on or near reservations and received almost \$54 million.¹³

Hotel Occupancy Taxes

Tribal members staying in an overnight lodging facility located on the reservation where they are enrolled are exempt from paying the state bed tax.¹⁴

Motor Vehicle Taxes

As a rule, tribal members are subject to all **state motor vehicle taxes** if they live off the reservation where they are enrolled. Consistent with federal law and court rulings, tribal members residing on their own reservation are exempt from paying a portion of state motor vehicle taxes, including the new vehicle sales tax, personal property tax, or any added county tax options. Regardless of residency, all tribal members must pay vehicle registration fees that consist of vehicle registration, vehicle disposal, weed control, county motor vehicle computer, and where applicable, the gross vehicle weight fees.¹⁵

Excise Taxes on Alcohol, Tobacco, and Fuel

Excise taxes are indirect taxes paid by consumers when they purchase certain goods or engage in certain activities. In general, excise taxes are "prepaid" by producers and wholesalers who pass the tax on to consumers by including it in the sale price of the item.¹⁶

Tribal and state governments have each asserted their right to collect excise taxes on reservations, leading to years of costly litigation and tension. As a result, the state of Montana and the seven reservation tribal governments have negotiated a variety of revenue sharing agreements for excise taxes on alcohol, tobacco, and fuel (and in once instance oil and natural gas taxes).¹⁷ The goal of these agreements is to “prevent the possibility of dual taxation by governments while promoting state, local, and tribal economic development.”¹⁸

In Montana, the state collects all taxes on alcohol, tobacco, and fuel sold on the reservations and then returns to each reservation tribal government a portion of the tax. The portion of tax revenue remitted to tribal governments is determined by multiplying the number of enrolled tribal members living *on* the reservation by the per capita tax receipts statewide for each tax.¹⁹

American Indians, like other citizens of Montana, pay **excise (or sales) taxes on alcohol, tobacco, and fuel** that they purchase. The single exception is members of the Confederated Salish and Kootenai Tribes (CSKT), who do not pay the state tax on cigarettes they purchase on the Flathead Reservation.²⁰ Because of this, the CSKT government does not receive a share of this particular tax from the state; instead, they receive a limited number of tax-free cigarettes according to quotas set by Montana law. However, any sales above the quota are taxed.²¹

In 2016, tribal governments derived more than \$5.7 million from alcohol and tobacco tax sharing agreements with the Department of Revenue and \$5.2 million from fuel tax sharing agreements with the Department of Transportation.²² You can learn more about the state-tribal revenue sharing agreements in Part 2 of this MBPC Policy Basics series.

The table below provides a visual snapshot of the taxes that American Indians (AIs) in Montana pay. The yes-no answers paint a clear picture of what in reality is a complex statutory issue that is still being worked out between governments, Congress, and the courts.

Tax	AIs living and working on their reservation	AIs living off and working on their reservation	AIs living on and working off their reservation
Federal Income Taxes	Yes	Yes	Yes
State Income Taxes	No	Yes	Yes
FICA	Yes	Yes	Yes
Property Taxes	Yes, on Fee Lands	Yes	Yes, on Fee Lands
Hotel Occupancy Taxes	Yes, if off their reservation	Yes, if off their reservation	Yes, if off their reservation
Motor Vehicle Taxes	Yes, some	Yes	Yes, some
Alcohol, Tobacco, Fuel Taxes	Yes	Yes	Yes

-
- ¹ U.S. Constitution, Article 6, Clause 2; *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903). *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450, 458 (1995); *Oklahoma Tax Commission v. Sac & Fox Nation*, 508 U.S. 114, 126 (1993); *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 475 (1976); *Lummi Indian Tribe v. Whatcom County*, 5 F.3d 1355, 1357 (9th Cir. 1993); *Standing Rock Sioux Tribe v. Janklow*, 103 F. Supp. 2d 1146, 1153-54 (D.S.D. 2000).
- ² U.S. Internal Revenue Service, "Employment Tax for Indian Tribal Governments." <https://www.irs.gov/pub/irs-pdf/p4268.pdf>; Yule Kim, "Federal Taxation of Indian Tribes and Members," Congressional Research, October 26, 2007, <http://congressionalresearch.com/RL34220/document.php?study=Federal+Taxation+of+Indian+Tribes+and+Members>
- ³ Bureau of Indian Affairs, "Frequently Asked Questions." <https://www.bia.gov/FAQs/>.
- ⁴ U.S. Code, Title 26, Subtitle F, Chapter 80, Subchapter C, Section 7873, "Income derived by Indians from exercise of fishing rights." <https://www.law.cornell.edu/uscode/text/26/7873>.
- ⁵ U.S. Internal Revenue Service, "Tribes and Fishing Rights-Related Activities." <https://www.irs.gov/government-entities/indian-tribal-governments/tribes-and-fishing-rights-related-activities>.
- ⁶ Bureau of Indian Affairs, "Frequently Asked Questions." <https://www.bia.gov/FAQs/>.
- ⁷ "Montana's Native American Populations On & Off Reservations," Montana Department of Commerce. 2012. On file with author.
- ⁸ Yule Kim, "Federal Taxation of Indian Tribes and Members," Congressional Research, October 26, 2007, <http://congressionalresearch.com/RL34220/document.php?study=Federal+Taxation+of+Indian+Tribes+and+Members>.
- ⁹ U.S. Internal Revenue Service, "Tribes and Fishing Rights-Related Activities." <https://www.irs.gov/government-entities/indian-tribal-governments/tribes-and-fishing-rights-related-activities>.
- ¹⁰ Bureau of Indian Affairs, "Frequently Asked Questions." <https://www.bia.gov/FAQs/>. See also *County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation* (1992).
- ¹¹ *County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251 (1992).
- ¹² U.S. Department of Education Office of Elementary and Secondary Education, About Impact Aid." <https://www2.ed.gov/about/offices/list/oese/impactaid/whatisia.html#2>.
- ¹³ "Montana School Districts Receiving Impact Aid," Montana Office of Public Instruction. 2016. On file with author.
- ¹⁴ Montana Department of Revenue, "Lodging Facility Use and Sales Taxes: Lodging Tax Guide." <https://revenue.mt.gov/Portals/9/businesses/taxes/Lodging%20Facilities%20Sales/Lodging%20-%20Lodging%20Guide.pdf>.
- ¹⁵ Joseph P. Mazurek, "48 Op. Att'y Gen. No. 24." <https://dojmt.gov/wp-content/uploads/2000/01/48-024.pdf>.
- ¹⁶ U.S. Internal Revenue Service, "Excise Tax." <https://www.irs.gov/businesses/small-businesses-self-employed/excise-tax>.
- ¹⁷ Andrew Huff, "State-Tribal Revenue Sharing Memorandum to State-Tribal Interim Relations committee," October 18, 2015. <http://leg.mt.gov/content/Committees/Interim/2015-2016/State-Tribal-Relations/Meetings/Oct-2015/huff-memo.pdf>
- ¹⁸ Montana Code Annotated 18-11-101 (3). <http://leg.mt.gov/bills/mca/18/11/18-11-101.htm>.
- ¹⁹ Andrew Huff, "State-Tribal Revenue Sharing Memorandum to State-Tribal Interim Relations committee," October 18, 2015. <http://leg.mt.gov/content/Committees/Interim/2015-2016/State-Tribal-Relations/Meetings/Oct-2015/huff-memo.pdf>
- ²⁰ *Moe v. Salish & Kootenai Tribes*, 425 U.S. 463 (1976). <https://supreme.justia.com/cases/federal/us/425/463/case.html>.
- ²¹ Montana Code Annotated 16-11-111. http://www.leg.mt.gov/bills/mca/title_0160/chapter_0110/part_0010/section_0110/0160-0110-0010-0110.html.
- ²² Montana Governor's Office of Indian Affairs, "Partners in Building a Stronger Montana: 2016 State-Tribal Relations Report." https://tribalnations.mt.gov/Portals/34/TribalAffairs_AR_2016bWEB.pdf.