



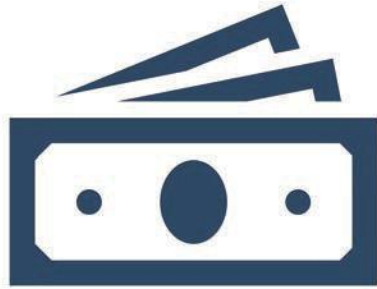
# INDIAN COUNTRY POLICY BASICS

JUNE 15, 2022

PRESTON PARISH

MONTANA BUDGET & POLICY CENTER

# TRIBAL NATIONS CONTRIBUTE TO STATE FISCAL HEALTH



Each year, tribal nations infuse **~\$1 BILLION** into the state economy.



Tribal colleges infused **\$76.2 MILLION** into the state economy in 2009.

# AGENDA

1. Tribal Nations and Peoples in Montana
2. Foundational Concepts
3. The State Budget and Legislation
4. Q&A



# TRIBAL NATIONS AND PEOPLES IN MONTANA

BY THE NUMBERS



~**65,000** (6.2 percent)  
AI/AN population



**8** tribal governments

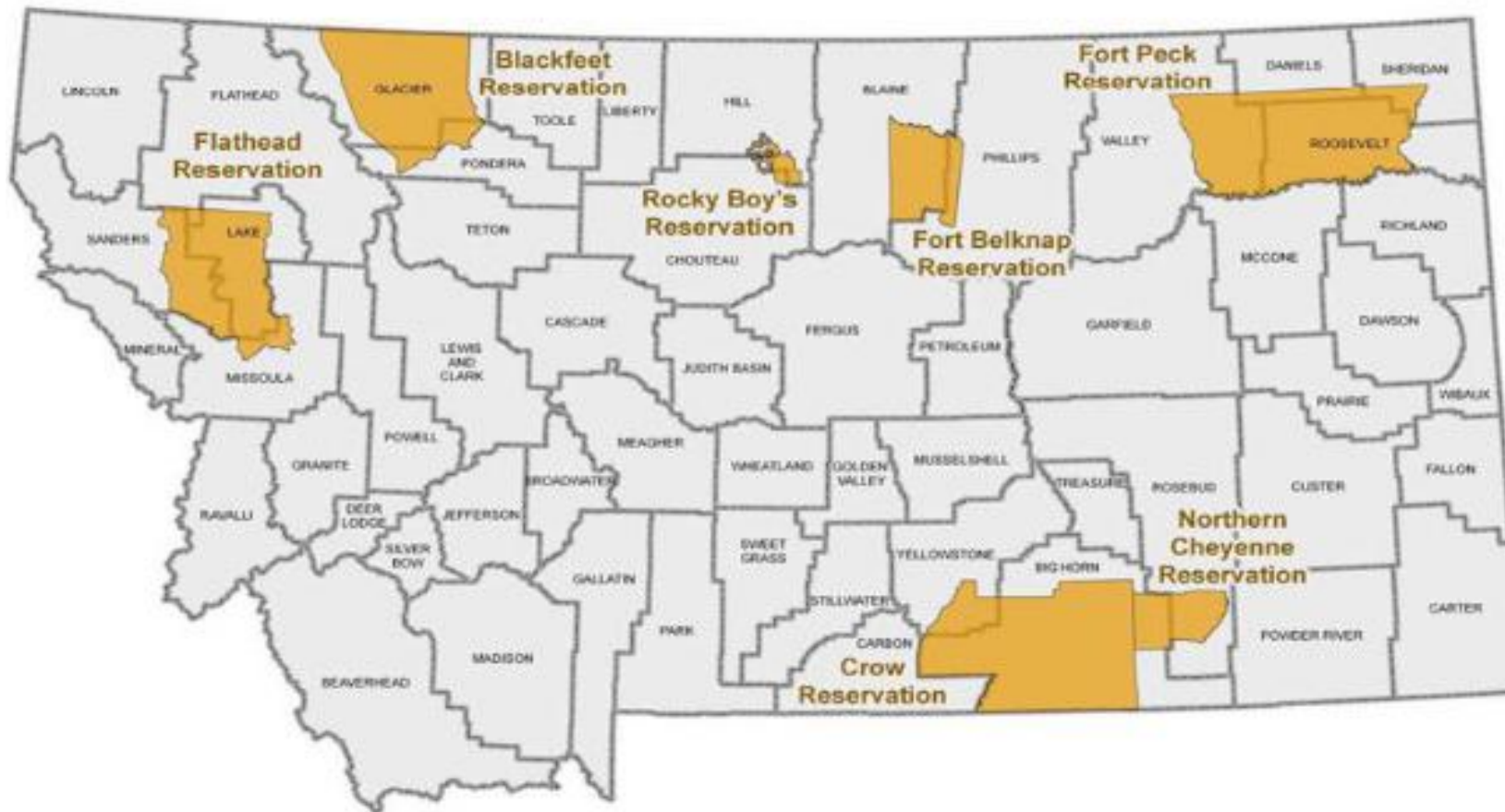


**7** reservations

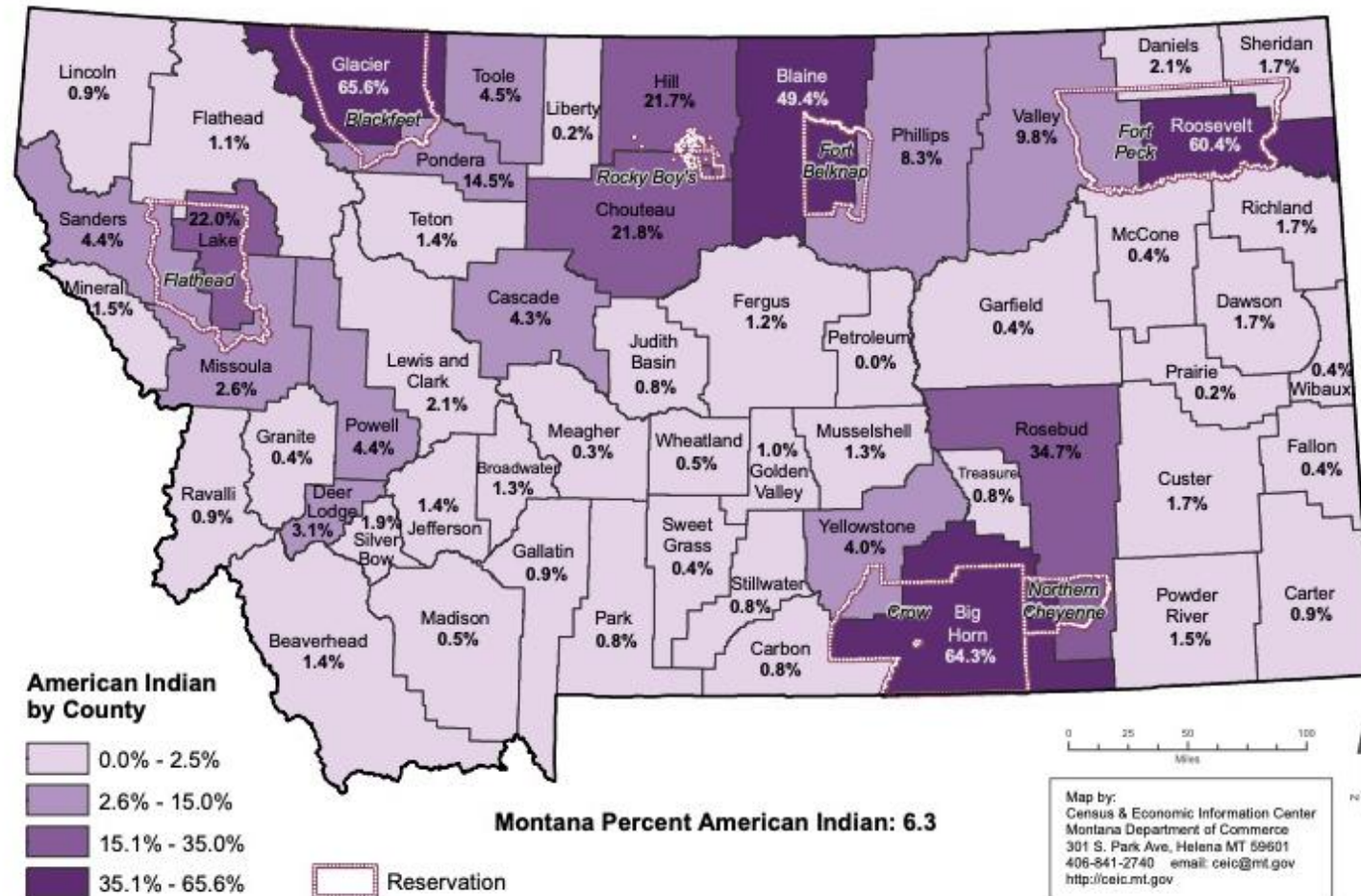
# TRIBAL NATIONS IN MONTANA

Reservation	Tribal Government	Tribes
Blackfeet Reservation	Blackfeet Nation	Blackfeet
Crow Reservation	Crow Tribe of Indians	Crow
Flathead Reservation	Confederated Salish and Kootenai Tribes	Salish, Kootenai, Pend d'Oreille
Fort Belknap Reservation	Fort Belknap Indian Community	Gros Ventre, Assiniboiné
Fort Peck Reservation	Fort Peck Tribes	Assiniboiné, Sioux
Northern Cheyenne Reservation	Northern Cheyenne Tribe	Northern Cheyenne
Rocky Boy's Reservation	Chippewa Cree Tribe	Chippewa Cree
Headquartered in Great Falls	Little Shell Tribe of Chippewa Indians	Little Shell Chippewa

# RESERVATIONS IN MONTANA



## Census 2010: MONTANA Percent American Indian By County



Source: U.S. Census Bureau, Census 2010, PL 94-171, 2011

April 2011 - IndianByCounty2010.mxd





# FOUNDATIONAL CONCEPTS

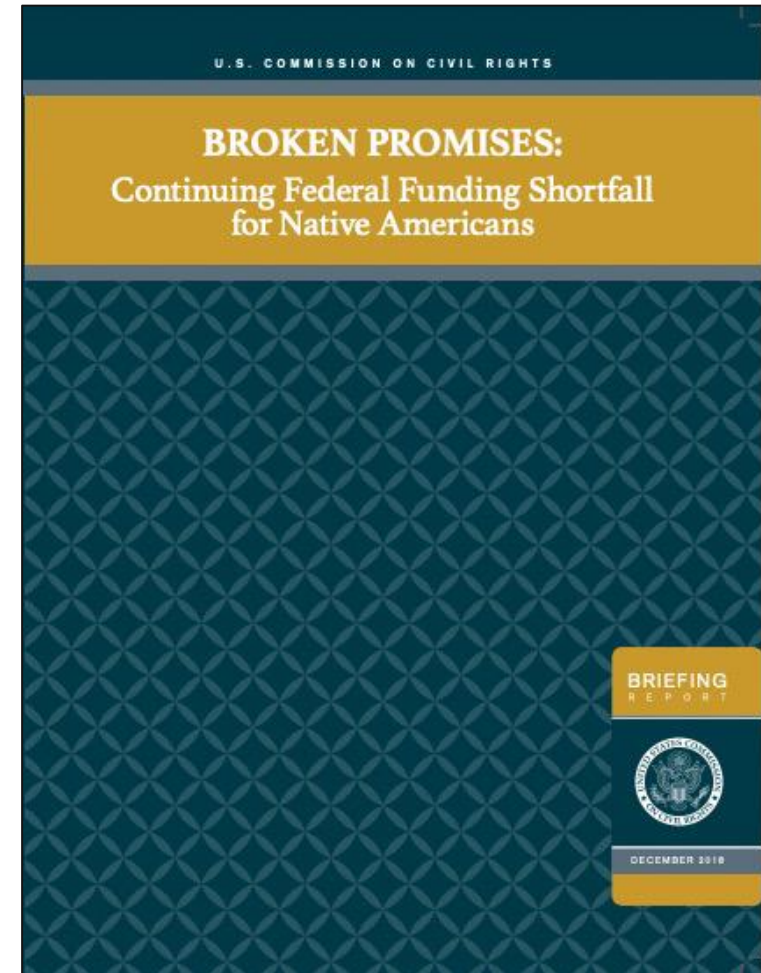
SOVEREIGNTY. CITIZENSHIP. LAND. JURISDICTION. TAXATION AUTHORITY

# SOVEREIGNTY: INHERENT TO TRIBAL NATIONS

- **Sovereignty:** The **inherent** right of tribal nations to self-govern their people and territory.
- **Tribal sovereignty** includes the rights for tribal nations to:
  - Establish their own form of government,
  - Determine citizenship requirements,
  - Enact legislation, and
  - Establish law enforcement and court systems.

# FEDERAL TRUST RESPONSIBILITY

- Treaties established the principles of the **federal trust responsibility**:
  - Protects tribal lands and self-governance and
  - Provides federal assistance to tribal nations.
- Unfulfilled **legal obligation** of the federal government.



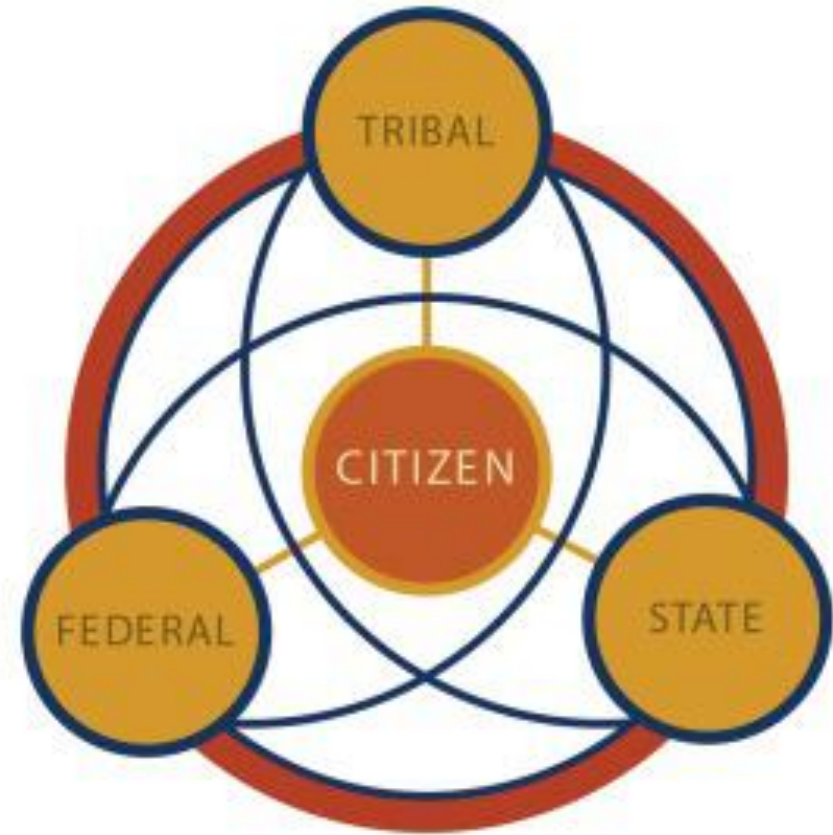
# THE STATE-TRIBAL RELATIONSHIP

## Select Advancements

- 1951 – Legislature creates Coordinator of Indian Affairs position.
- 1981 – Legislature enacts the State-Tribal Cooperative Agreements Act.
- 1989 – Legislature establishes the Committee on Indian Affairs.
- 1999 – Legislature creates Indian Education for All.
- 2011 – Legislature creates a five-year property tax exemption for tribal fee land.

# TRIBAL CITIZENSHIP

- Determined by tribal nations.
- Does **not** derive from race or ethnicity.
- "Indians are state citizens and **are entitled to the full rights and privileges** as a result of that citizenship."
  - Tribal Nations in Montana: A Handbook for Legislators



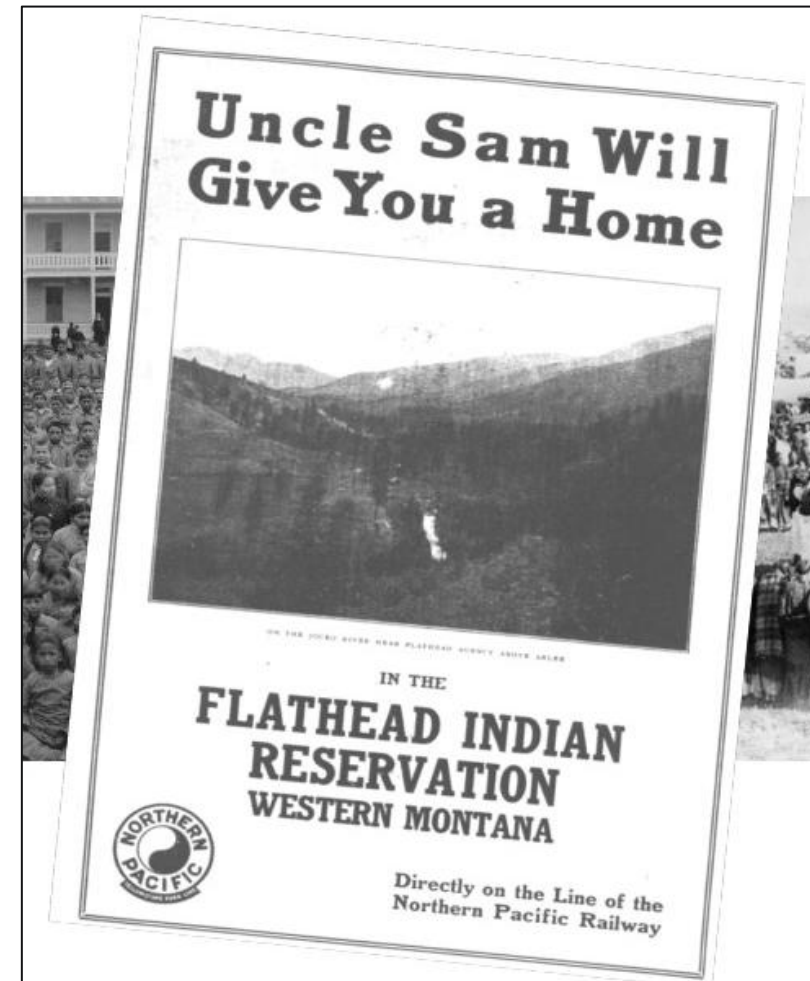
Source: National Congress of American Indians, "Tribal Nations and the United States."

# TRIBAL LANDS

- **Indian Country:** Area over which the federal government and tribal nations exercise primary jurisdiction.
  - Includes land owned by non-Indians and towns incorporated by non-Indians.
  - Where tribal sovereignty is strongest and where state authority is most limited.
- Tribal nations have the right and authority to regulate activities on their lands independently from the state.

# TRIBAL LANDS: ALLOTMENT

- **General Allotment Act of 1887:** Opened reservation lands to non-Indian settlers.
- Part of federal government's efforts to eliminate tribal sovereignty, abolish reservations, and assimilate American Indians.



# TRUST LAND VS. FEE LAND

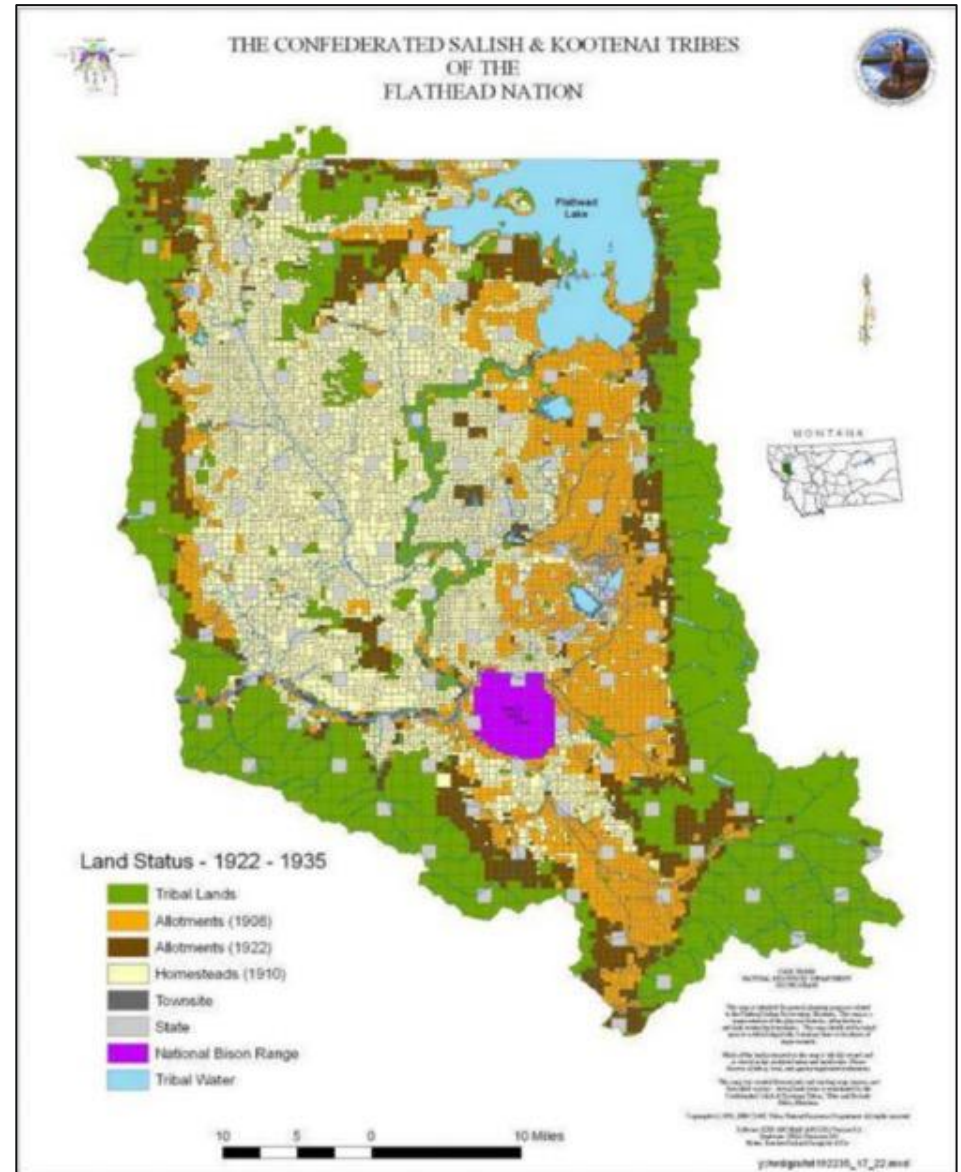
## TRUST LAND

- Held in trust by the federal government for tribal nations and citizens
- Exempt from property taxes

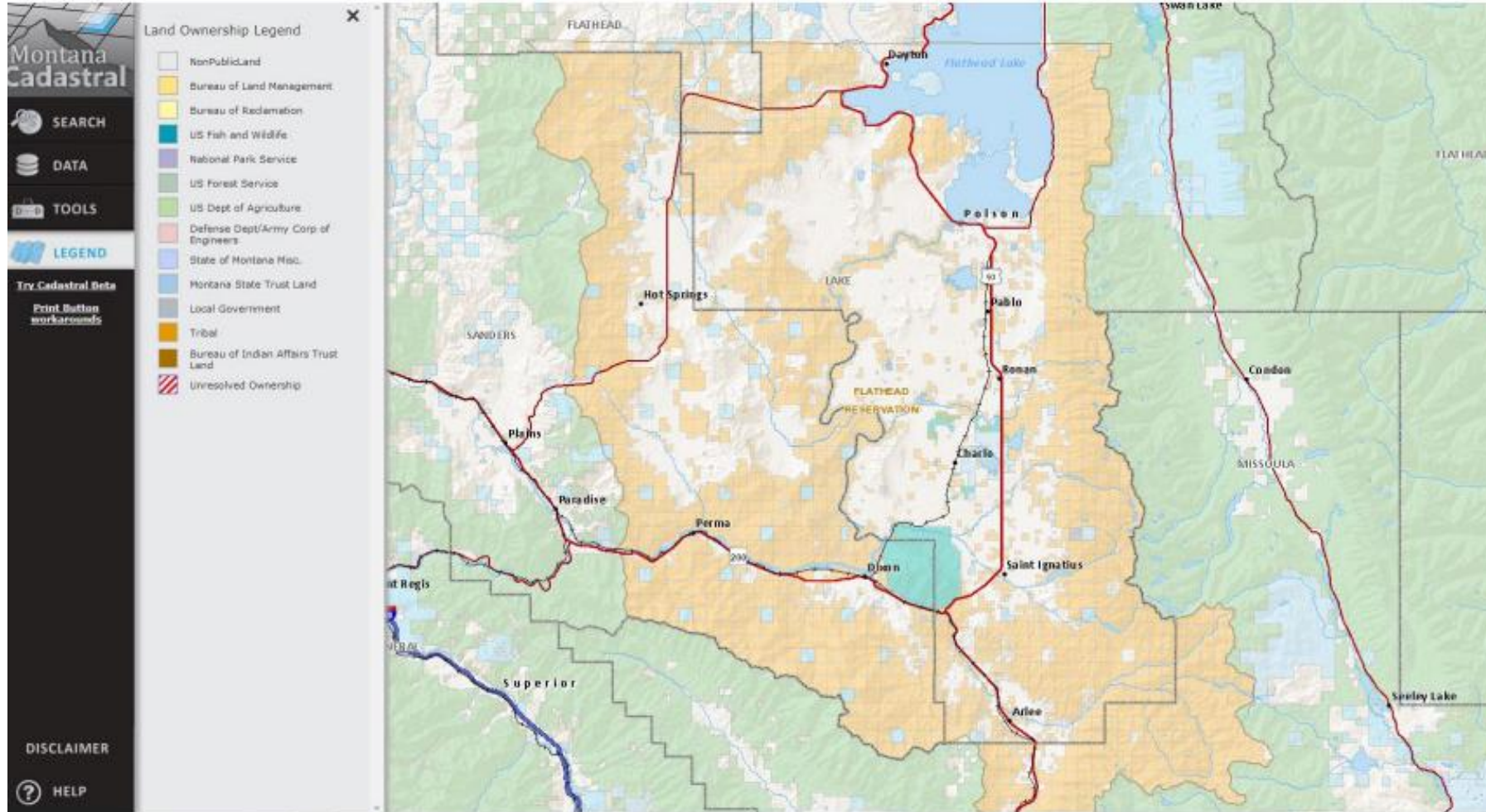
## FEE LAND

- Generally private property
- Can be owned by American Indians and non-Indians
- Subject to property taxes





## Flathead Reservation 56% Trust

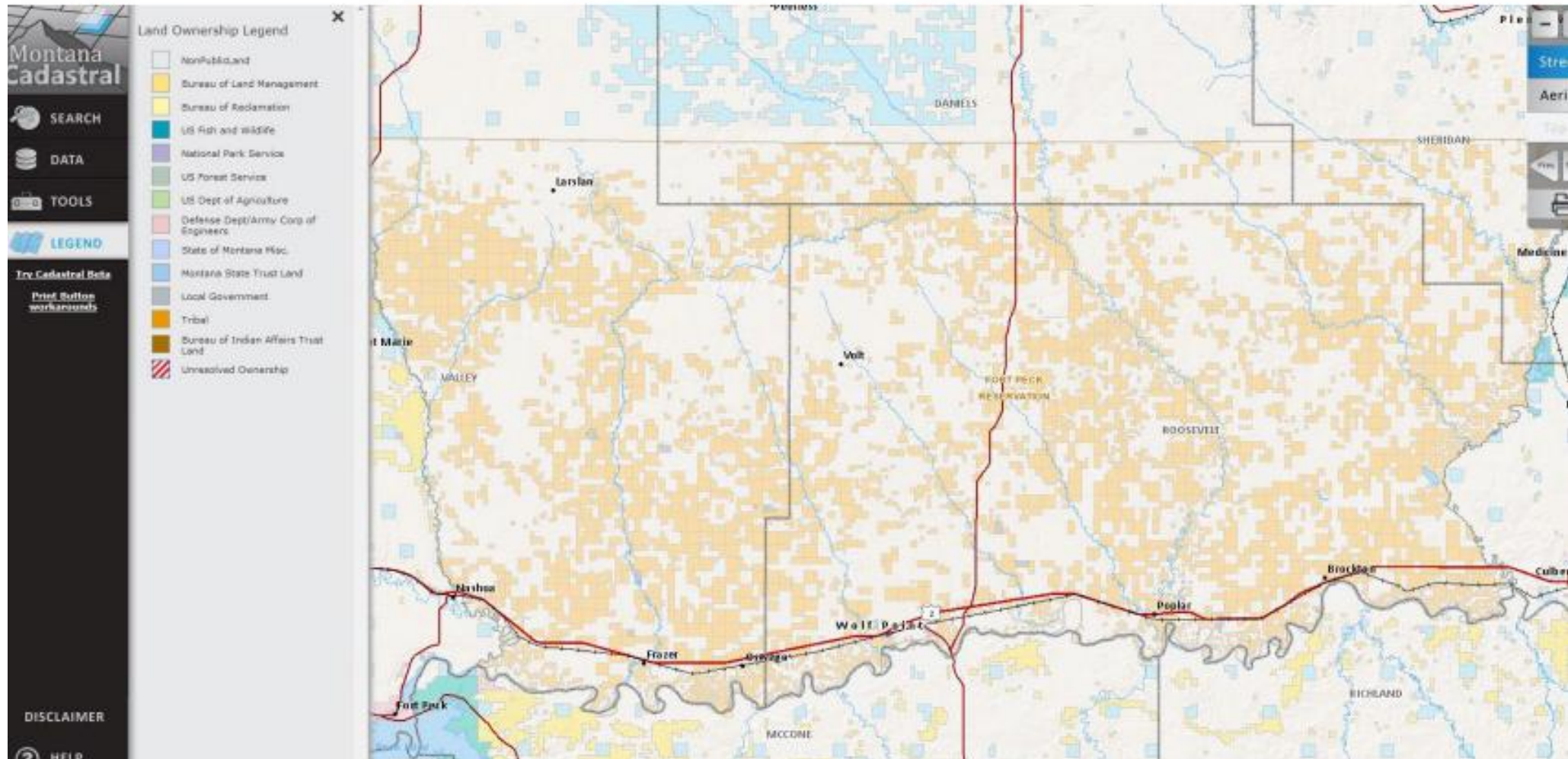


All Montana Cadastral screenshots taken Sept 2021

Source: McCracken, P., "Fee-to-Trust: Big Picture Background," State-Tribal Relations Committee



## Fort Peck Reservation 46% Trust



Source: McCracken, P., "Fee-to-Trust: Big Picture Background," State-Tribal Relations Committee

# TRIBAL LANDS TODAY

Land Status of Reservations in Montana			
Reservation	Total Acreage	% Trust Land	% Fee Land
Blackfeet	1.5 million	63	36
Crow	2.2 million	68	32
Flathead	1.3 million	56	32
Fort Belknap	697,617	97	3
Fort Peck	2.1 million	46	54
Northern Cheyenne	445,000	99	1
Rocky Boy's	122,259	100	0

Source: Legislative Services Division and Margery Hunter Brown Indian Law Clinic, "Tribal Nations in Montana: A Handbook for Legislators," Oct. 2016.

# JURISDICTION IN INDIAN COUNTRY

- **Indian Country:** Tribal sovereignty is strongest here. State authority is most limited.
- Tribal governments have both civil and criminal jurisdiction.
- Tribal, federal, state, and local governments all share some level of jurisdiction in Indian Country.

# Overview of Criminal Jurisdiction in Indian Country

Identity of Alleged Defendant	Identity of Alleged Victim	Major Crimes as Defined by the Major Crimes Act	All Other Crimes
Indian	Indian	Federal* and Tribal	Tribal
Indian	Non-Indian	Federal* and Tribal	Federal* and Tribal
Non-Indian**	Indian	Federal* (pursuant to the General Crimes Act because the Major Crimes Act applies only to Indian defendants)	Federal*
Non-Indian	Non-Indian	State	State
Indian	Victimless / Consensual	N/A	Tribal, possibly Federal***
Non-Indian	Victimless / Consensual	N/A	State

\*Under PL 280, states can assume federal jurisdiction within Indian Country. In Montana, only the CSKT consented to PL 280 jurisdiction. Currently, the CSKT have exclusive jurisdiction over misdemeanor crimes committed by Indians and concurrent state-tribal jurisdiction over felony crimes committed by Indians.

\*\*The Violence Against Women Act allows tribes to assume federal jurisdiction over non-Indian perpetrators of specific domestic violence-related crimes as long as they meet certain procedural guarantees.

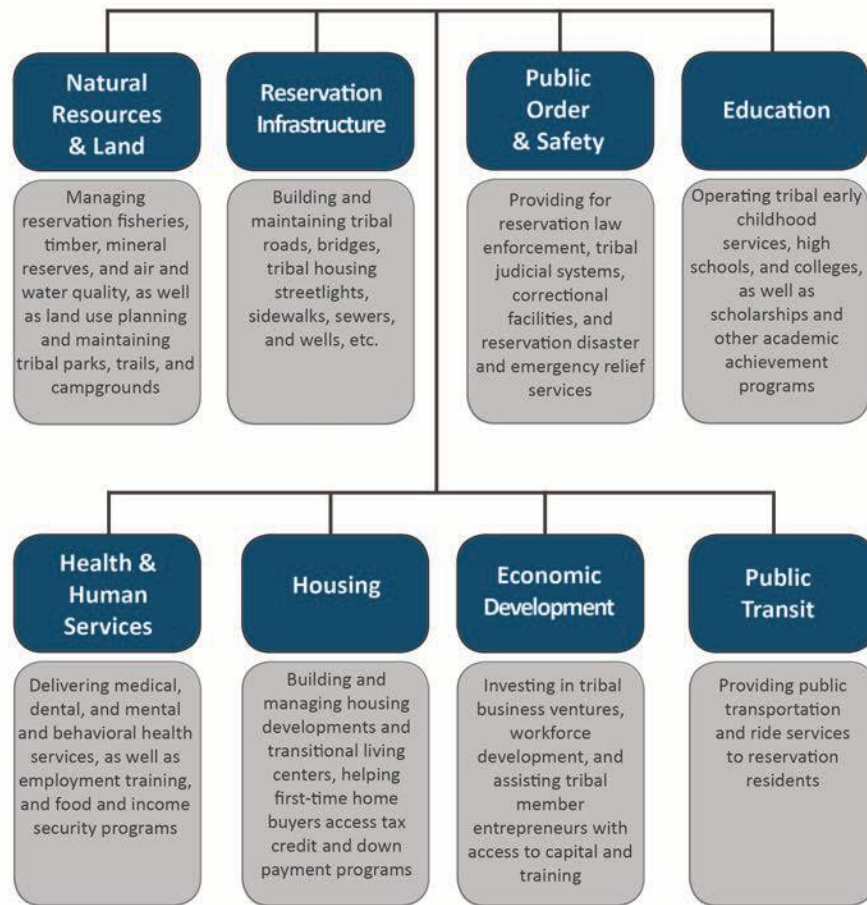
\*\*\*See *U.S. v. Marcyes*, 557 F.2nd 1361 (9th Cir. 1977); but see *U.S. v. Quiver*, 241 U.S. 602 (1916).

Source: "Tribal Nations of Montana: A Handbook for Legislators"



# TRIBAL TAXATION AUTHORITY

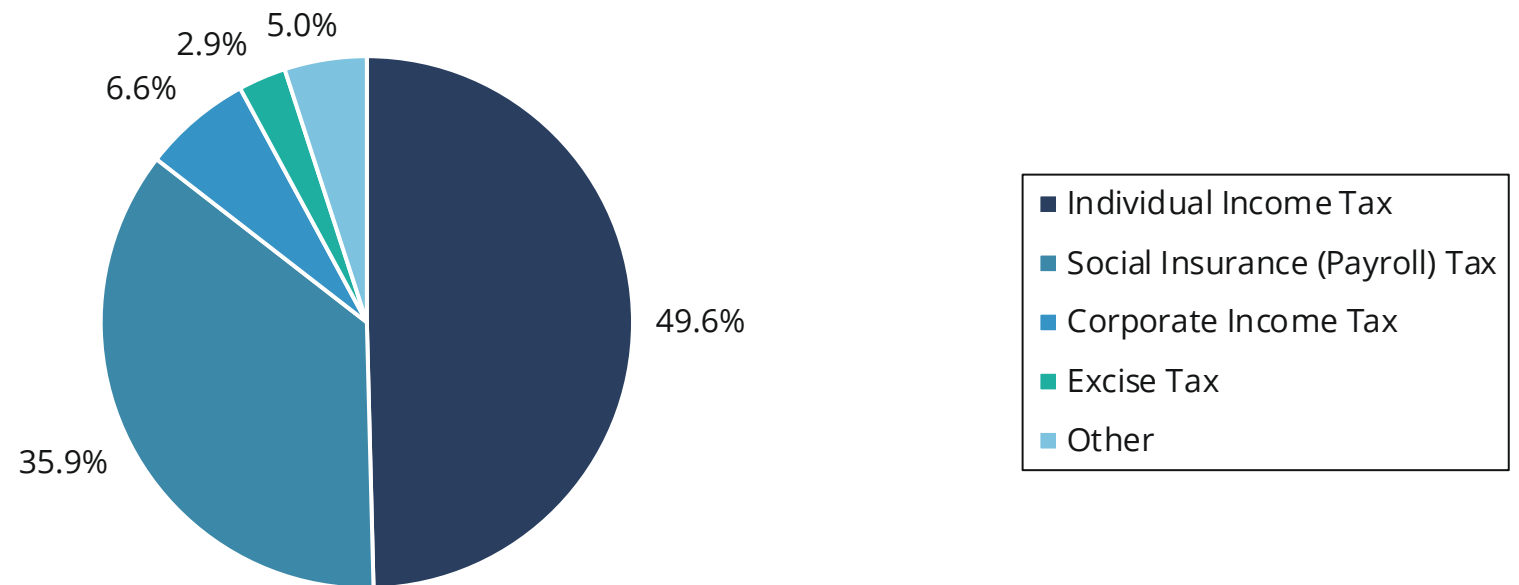
## Tribal Government Services



- The power to tax is inherent to sovereignty.
- Like any government, tribal governments need revenue.
- Tribal governments must provide many of the same services as other governments, **except without the usual tax revenue on which those governments rely.**

# FEDERAL GOVERNMENT REVENUE

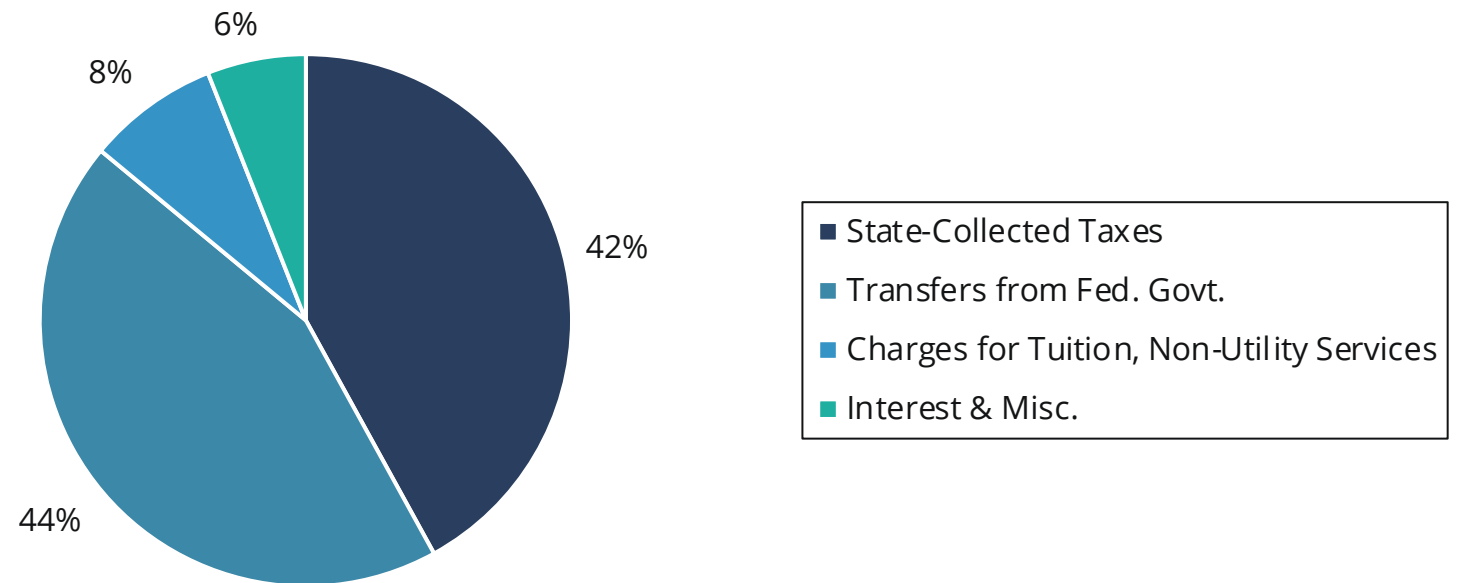
## Federal Tax Revenue (FY 2019)





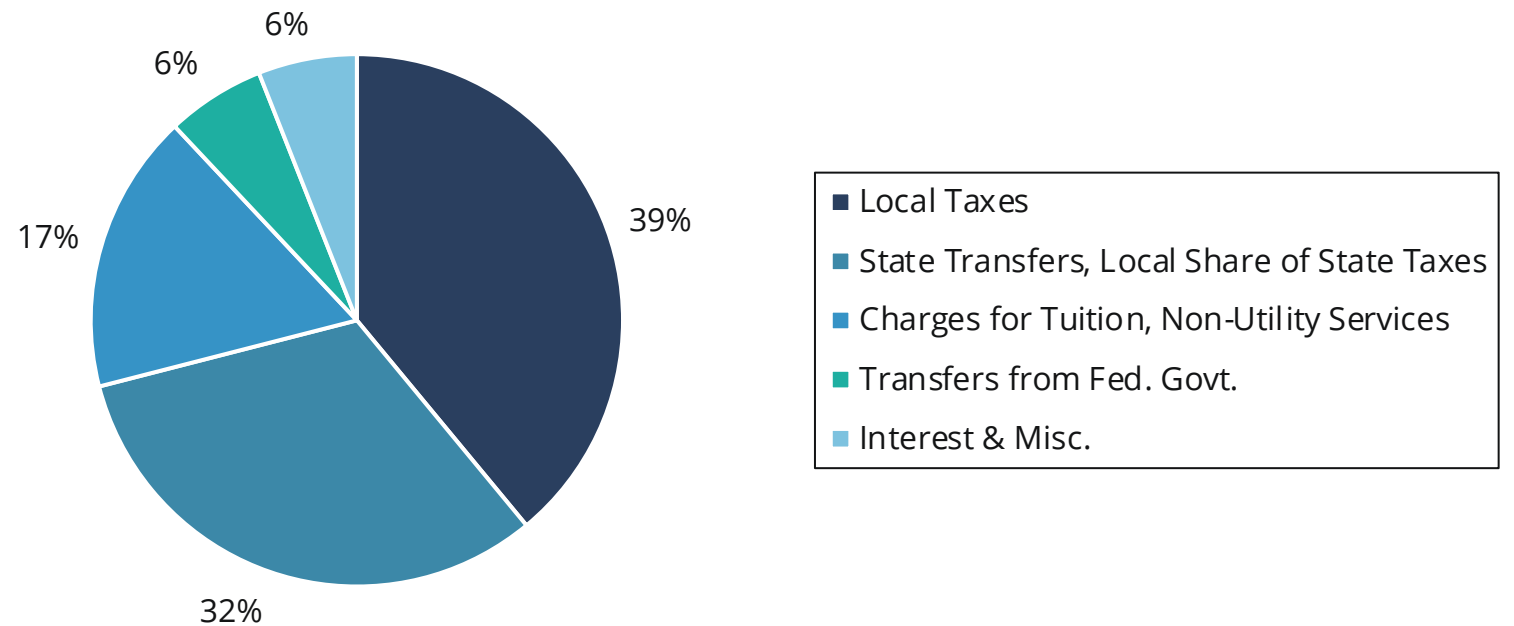
# MONTANA STATE REVENUE

State Revenue (FY 2018)



# MONTANA LOCAL GOVERNMENT REVENUE

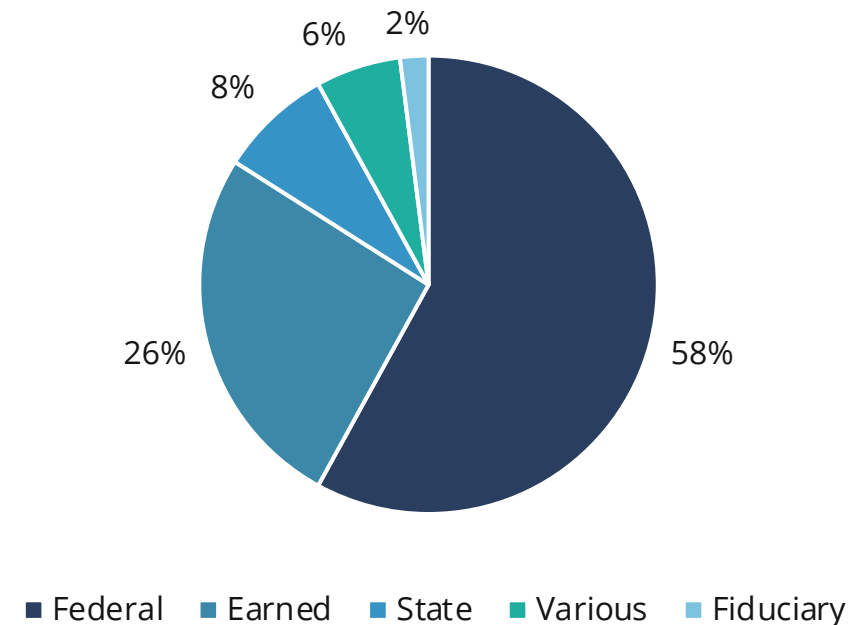
**Local Revenue (FY 2018)**



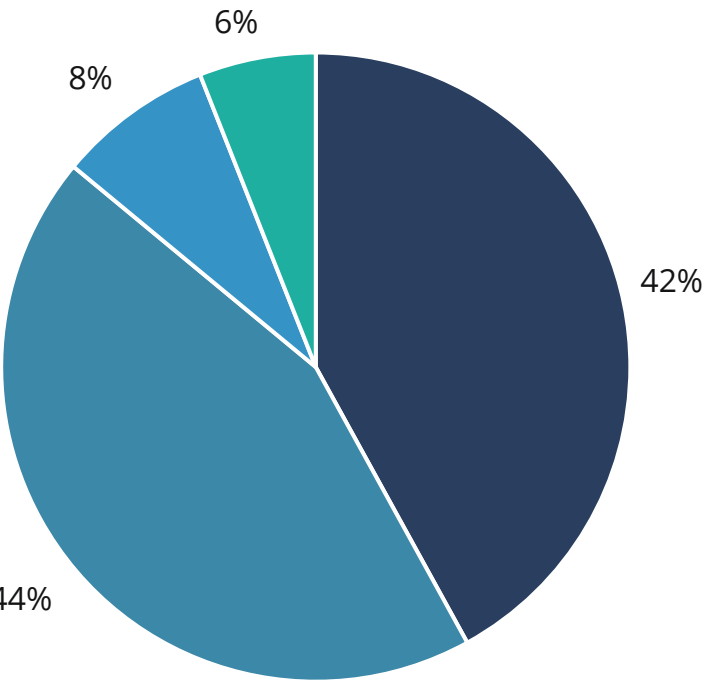
# MONTANA TRIBAL GOVERNMENT REVENUE

- Federal funding is the largest revenue source for tribal governments. **Most of this funding to tribal nations stems from the federal government's trust responsibility.**

**Tribal Revenue (FY 2003-2009)**

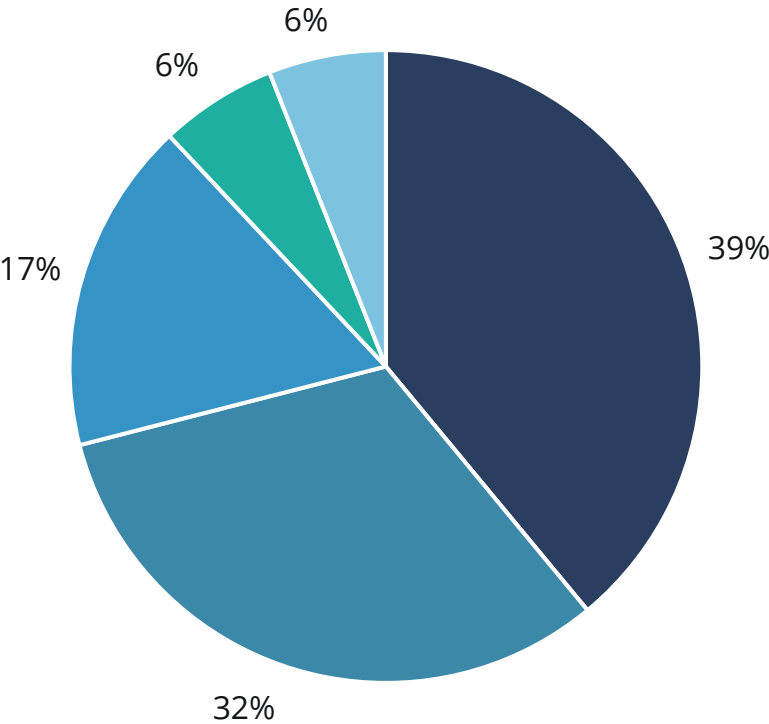


State Revenue (FY 2018)



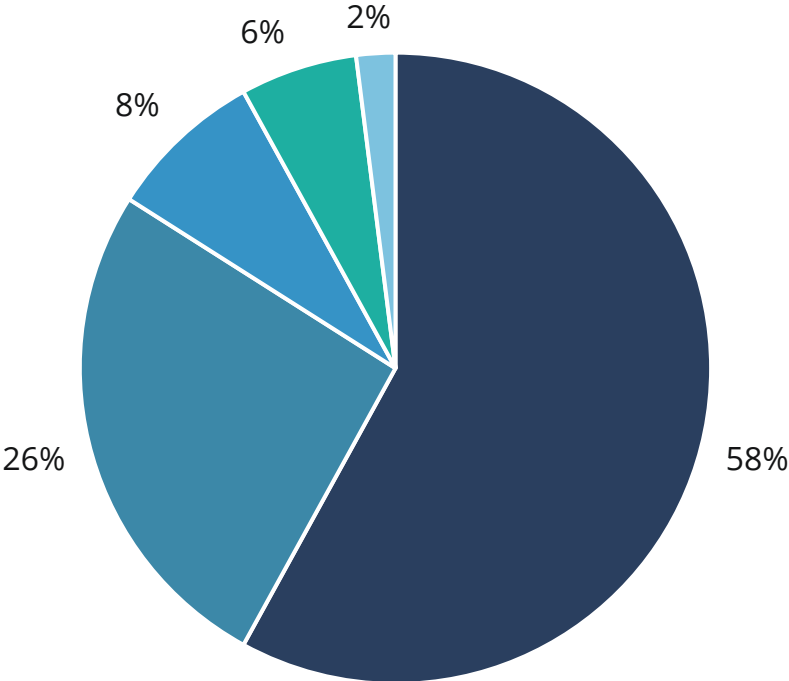
- State-Collected Taxes
- Transfers from Fed. Govt.
- Charges for Tuition, Non-Utility Services
- Interest & Misc.

Local Revenue (FY 2018)



- Local Taxes
- State Transfers, Local Share of State Taxes
- Charges for Tuition, Non-Utility Services
- Transfers from Fed. Govt.
- Interest & Misc.

Tribal Revenue (FY 2003-2009)



- Federal
- Earned
- State
- Various
- Fiduciary

# TAXES AND TRIBAL GOVERNMENTS

- Taxes tribal governments **assess**:
  - Alcohol
  - Tobacco
  - Fuel and severance taxes on natural resource development
- Taxes tribal governments **pay**:
  - Federal income taxes
  - Property taxes
  - Federal payroll taxes
  - Some federal excise taxes



**Tribal  
Governments  
Retain Their  
Sovereign  
Power to  
Tax**

# REVENUE-SHARING AGREEMENTS IN MONTANA

- Agreements between the state and respective tribal governments to split revenue on certain excise taxes (alcohol, tobacco, oil & natural gas).
- **Purpose:** To avoid legal controversy, possible litigation, and dual taxation.

## BLACKFEET NATION - MONTANA ALCOHOLIC BEVERAGES TAX AGREEMENT

The Blackfeet Nation - Montana Alcoholic beverages Tax Agreement ("Agreement") is entered into this 29<sup>th</sup> day of July, 2005, by and between the State of Montana ("State"), and the Blackfeet Nation of the Blackfeet Reservation ("Nation").

The Blackfeet Tribal Business Council ("Council") is the governing body of the Nation and is authorized by Article VI, Section 1(a) of the Constitution and By-Laws for the Blackfeet Nation of the Blackfeet Indian Reservation of Montana to enter into this Agreement.

The State is authorized pursuant to the State-Tribal Cooperative Agreements Act, Title 18, chapter 11, MCA, to enter into this Agreement.

The State and the Nation agree as follows:

1. General Purposes of Agreement. The purposes of this Agreement are to minimize legal controversy and possible litigation over the taxation of alcoholic beverages within the exterior boundaries of the Blackfeet Reservation ("Reservation"), to mitigate the effects of dual taxation on the sale of alcoholic beverages by both the Nation and the State, and to provide an effective means by which revenues generated by the state and tribal taxes on the sale of alcoholic beverages may be shared and distributed. In order to accomplish these purposes, the State and the Nation agree that the same level of taxation shall be imposed on the sale of alcoholic beverages both within and outside the boundaries of the Reservation. For purposes of this Agreement, the term "alcoholic beverages" shall mean alcoholic beverages and alcoholic beverage products as those terms are defined by state law. This section shall be interpreted consistently with the terms and conditions set forth in Section 13 of this Agreement.

# TRIBAL TAXATION AUTHORITY: WHO IS SUBJECT?

- Tribal citizens
- Non-Indians
  - Commercial transactions (on **trust land**)
  - Commercial transactions (on **fee land**) when:
    - A contractual agreement is in place.
    - The taxed activity threatens or affects the political integrity, economic security, or health or welfare of the tribal nation.

# STATE TAXATION AUTHORITY IN INDIAN COUNTRY

- The state **cannot** tax tribal nations or citizens on their own reservations.
  - Exception: property taxes, income taxes in some cases
- The state **can** levy certain taxes on non-Indians in Indian Country when:
  - Federal law does not explicitly prohibit the tax, and
  - The tax does not interfere with the tribal nation's ability to perform governmental functions.



# INDIGENOUS PEOPLE PAY TAXES

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

# RECAP OF FOUNDATIONAL CONCEPTS

1. **Sovereignty**: Inherent to tribal nations. Not subordinate to the state.
2. **Citizenship**: Tribal citizens are citizens of Montana.
3. **Land**: Indian Country is where tribal sovereignty is strongest.
4. **Jurisdiction**. Complicated. Jurisdictional authorities overlap.
5. **Taxation Authority**: Inherent power of tribal nations. State and local governments challenge tribal taxation authority.



# THE STATE BUDGET AND LEGISLATION

FROM THEORY TO PRACTICE

# PROPERTY TAX LEGISLATION

## SB 138

- **Bill Title:** Repeal temporary tribal property tax exemption
- **Bill Summary:** In 2011, the Legislature passed SB 412 to create a temporary (5-year) property tax exemption that tribal nations use to facilitate fee-to-trust transfers. SB 138 would have repealed the exemption.
- **Outcome:** Tabled in committee

## SB 214

- **Bill Title:** Revise laws related to temporary tribal property tax exemption
- **Bill Summary:** SB 214 allows counties to capture back taxes on tribal property should 1) the federal govt. deny the trust application or 2) the exemption expire.
- **Outcome:** Enacted

# RECREATIONAL CANNABIS TAX REVENUE

- **Bill Title:** Revise distribution of marijuana revenue and provide tribal government allocations
- **Bill Summary:** HB 621 would distribute 8.4 percent of recreational cannabis tax revenue to a newly created state-tribal marijuana revenue-sharing account for the Department of Revenue to provide tribal governments with grants for tribal operations.
- **Outcome:** Tabled in committee

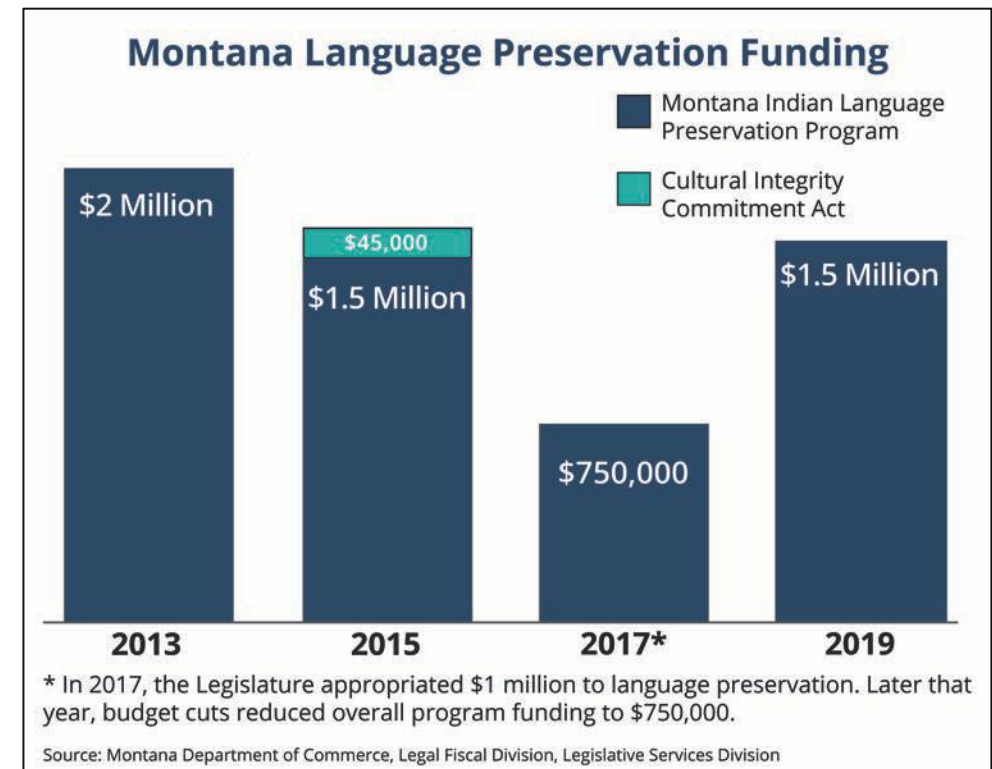
# INDIAN COUNTRY ECONOMIC DEVELOPMENT PROGRAM

- **Purpose:** Since its inception in 2005, the ICED program has aimed to increase economic opportunity in tribal communities by providing tribal governments, organizations, and citizens with funding and technical assistance to carry out economic development activities.
- 2023 biennium: **\$1.75 M OTO**

**According to a 2018 report, 84 percent of IEF grant recipients remain in operation after five years, whereas just 20 percent of small businesses nationally succeed.**

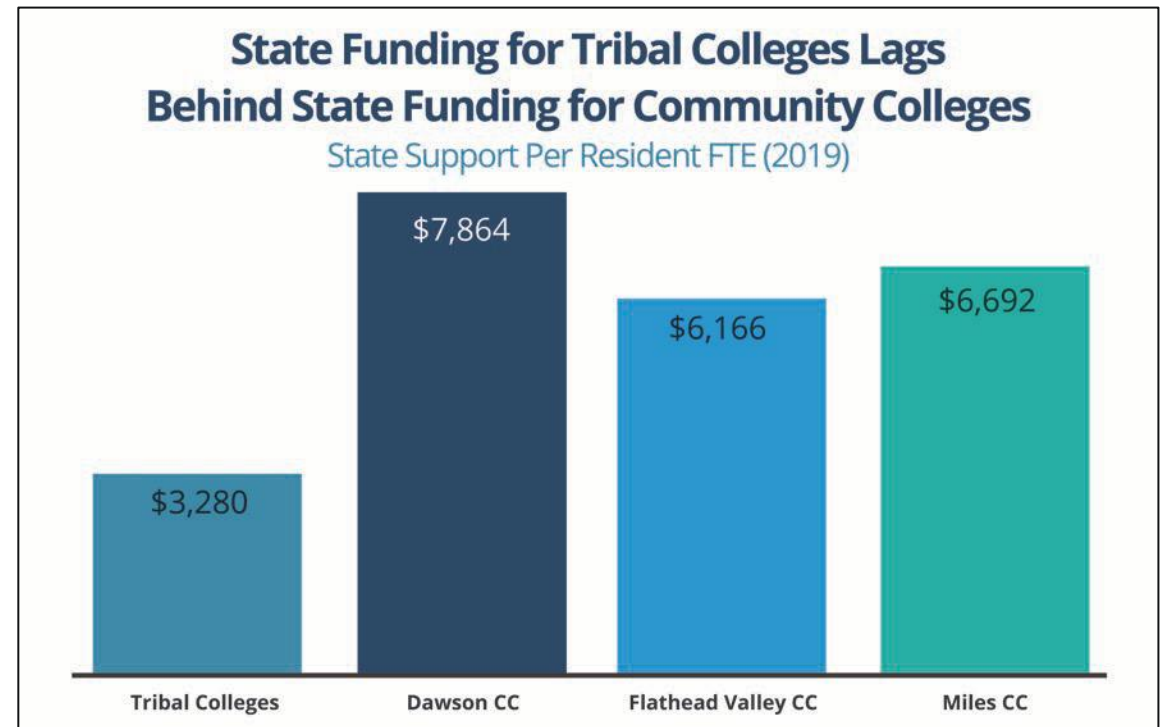
# MONTANA INDIAN LANGUAGE PRESERVATION PROGRAM

- **Purpose:** Since its inception in 2013, the MILP program supports language preservation efforts by tribal governments.
- 2023 biennium: **\$1.5 M OTO**



# TRIBAL COLLEGE ASSISTANCE PROGRAM

- **Purpose:** The program provides financial support for tribal colleges to educate resident nonbeneficiary students.
- 2023 biennium: ~\$2 M, including OTO funding of \$350,000 for tribal colleges to administer the HiSET.





# WHAT WE COVERED

1. Tribal Nations and Peoples in Montana
2. Foundational Concepts
3. The State Budget and Legislation

# RESOURCES

- **Montana Budget & Policy Center**
  - Policy Basics: What Is Tribal Sovereignty?
  - Policy Basics: What Is Tribal Citizenship?
  - Policy Basics: Land Status of Indian Country
  - Policy Basics: Jurisdiction in Indian Country
  - Policy Basics: Taxation Authority in Indian Country
- **Legislative Services Division**
  - Tribal Nations in Montana: A Handbook for Legislators

# INDIGENOUS PEOPLE PAY TAXES

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



Tribal nations  
contribute roughly  
**\$1 billion** annually  
to the Montana  
economy.



# QUESTIONS?

JUNE 15, 2022

PRESTON PARISH

[PPARISH@MONTANABUDGET.ORG](mailto:PPARISH@MONTANABUDGET.ORG)

MONTANA BUDGET & POLICY CENTER