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
<table>
<thead>
<tr>
<th>Reservation</th>
<th>Tribal Government</th>
<th>Tribes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blackfeet Reservation</td>
<td>Blackfeet Nation</td>
<td>Blackfeet</td>
</tr>
<tr>
<td>Crow Reservation</td>
<td>Crow Tribe of Indians</td>
<td>Crow</td>
</tr>
<tr>
<td>Flathead Reservation</td>
<td>Confederated Salish and Kootenai Tribes</td>
<td>Salish, Kootenai, Pend d'Oreille</td>
</tr>
<tr>
<td>Fort Belknap Reservation</td>
<td>Fort Belknap Indian Community</td>
<td>Gros Ventre, Assiniboine</td>
</tr>
<tr>
<td>Fort Peck Reservation</td>
<td>Fort Peck Tribes</td>
<td>Assiniboine, Sioux</td>
</tr>
<tr>
<td>Northern Cheyenne Reservation</td>
<td>Northern Cheyenne Tribe</td>
<td>Northern Cheyenne</td>
</tr>
<tr>
<td>Rocky Boy’s Reservation</td>
<td>Chippewa Cree Tribe</td>
<td>Chippewa Cree</td>
</tr>
<tr>
<td>Headquartered in Great Falls</td>
<td>Little Shell Tribe of Chippewa Indians</td>
<td>Little Shell Chippewa</td>
</tr>
</tbody>
</table>
RESERVATIONS IN MONTANA
Census 2010: MONTANA
Percent American Indian By County

Map by Census & Economic Information Center
Montana Department of Commerce
301 S. Park Ave, Helena MT 59601
406-444-3743  email: ceic@mt.gov
http://dceic.mt.gov

American Indian by County
- 0.0% - 2.5%
- 2.6% - 15.0%
- 15.1% - 35.0%
- 35.1% - 66.8%

Montana Percent American Indian: 6.3

Source: U.S. Census Bureau, Census 2010, PI, 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.
- 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 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

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

<table>
<thead>
<tr>
<th>Reservation</th>
<th>Total Acreage</th>
<th>% Trust Land</th>
<th>% Fee Land</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blackfeet</td>
<td>1.5 million</td>
<td>63</td>
<td>36</td>
</tr>
<tr>
<td>Crow</td>
<td>2.2 million</td>
<td>68</td>
<td>32</td>
</tr>
<tr>
<td>Flathead</td>
<td>1.3 million</td>
<td>56</td>
<td>32</td>
</tr>
<tr>
<td>Fort Belknap</td>
<td>697,617</td>
<td>97</td>
<td>3</td>
</tr>
<tr>
<td>Fort Peck</td>
<td>2.1 million</td>
<td>46</td>
<td>54</td>
</tr>
<tr>
<td>Northern Cheyenne</td>
<td>445,000</td>
<td>99</td>
<td>1</td>
</tr>
<tr>
<td>Rocky Boy’s</td>
<td>122,259</td>
<td>100</td>
<td>0</td>
</tr>
</tbody>
</table>

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

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

*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.

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)

- Individual Income Tax: 49.6%
- Social Insurance (Payroll) Tax: 35.9%
- Corporate Income Tax: 6.6%
- Excise Tax: 2.9%
- Other: 5.0%

(FY 2019 Federal Tax Revenue)

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MONTANA STATE REVENUE

State Revenue (FY 2018)

- State-Collected Taxes: 42%
- Transfers from Fed. Govt.: 8%
- Charges for Tuition, Non-Utility Services: 6%
- Interest & Misc.: 44%
MONTANA LOCAL GOVERNMENT REVENUE

Local Revenue (FY 2018)

- Local Taxes: 39%
- State Transfers, Local Share of State Taxes: 32%
- Charges for Tuition, Non-Utility Services: 17%
- Transfers from Fed. Govt.: 6%
- Interest & Misc.: 6%
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.
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
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.
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.
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.
<table>
<thead>
<tr>
<th>Tax</th>
<th>Als living and working on their reservation</th>
<th>Als living off and working on their reservation</th>
<th>Als living on and working off their reservation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Income Taxes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>State Income Taxes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>FICA</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Property Taxes</td>
<td>Yes, on Fee Lands</td>
<td>Yes</td>
<td>Yes, on Fee Lands</td>
</tr>
<tr>
<td>Hotel Occupancy Taxes</td>
<td>Yes, if off their reservation</td>
<td>Yes, if off their reservation</td>
<td>Yes, if off their reservation</td>
</tr>
<tr>
<td>Motor Vehicle Taxes</td>
<td>Yes, some</td>
<td>Yes</td>
<td>Yes, some</td>
</tr>
<tr>
<td>Alcohol, Tobacco, Fuel Taxes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
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.


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
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
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

<table>
<thead>
<tr>
<th>Tax</th>
<th>Yes living and working on their reservation</th>
<th>Yes living off and working on their reservation</th>
<th>Yes living on and working off their reservation</th>
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<tbody>
<tr>
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Tribal nations contribute roughly $1 billion annually to the Montana economy.