



This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 912: Exclusive Taxing Authority of Cherokee

2015-2016 General Assembly

Committee:	House Finance	Date:	May 6, 2015
Introduced by:	Reps. West, Hager, Saine, Brawley	Prepared by:	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 912 would restrict the State's taxing authority by recognizing the exclusive authority of the Eastern Band of Cherokee Indians to levy taxes within its jurisdiction. The State is currently restricted by federal law from imposing certain taxes on tribal lands and tribal members. Under this bill, the State would restrict itself beyond the current limitations imposed by federal law.

CURRENT LAW: The ability of states to tax tribes and tribal members is a complex issue under federal law. Although states are restricted from assessing certain taxes on tribes and tribal members, the Supreme Court has upheld the rights of states to assess tax in certain circumstances.

North Carolina imposes an excise tax on tobacco products and alcohol sold on tribal lands. It imposes corporate income and franchise tax on businesses located on tribal lands and owned by non-tribal members. It imposes personal income tax on non-tribal members who reside on tribal land, on tribal members whose income is not derived from activities on tribal land, and on tribal members who do not live on tribal lands. It imposes sales tax on transactions that are not subject to the Tribal Gross Receipts tax and on items purchased by a tribal member if the member takes delivery of the item off tribal land. It imposes motor fuel tax on motor fuel sold on tribal lands.

The restrictions on the State's authority to impose taxes on tribal land and tribal members are generally contained in the specific tax schedule affected, and are as follows:

- **Income tax.** – Deduction for income received by tribal member who lives on tribal land and derives the income from activity on tribal land. This deduction codified the federal restriction. It does not go beyond the federal restriction. G.S. 105-153.5(b)(6).
- **Sales tax.** – Exemption for sales made on tribal land, regardless of who the purchaser is, if a comparable tax is paid to the Tribal Council. Federal law prohibits sales tax on items purchased by tribal members on tribal land. This exemption is broader than is required by federal law. G.S. 105-164.13(25).
- **Motor fuel tax.** – The Department of Revenue entered into an Agreement with the Eastern Band of Cherokee Indians to refund motor fuel taxes paid by tribal members who reside on tribal land based on a formula in the Agreement. The General Assembly authorized the Department to enter into the agreement in Chapter 753 of the 1989 Session Laws.
- **Property tax.** – A county cannot tax real property or improvements to real property located on tribal land, regardless of ownership. A county cannot tax personal property located on tribal land and owned by a tribal member. The property tax exemption statutes do not address the issue, but federal law and the regulations and case law interpreting the federal law is clear on this issue.

BILL ANALYSIS: House Bill 912 would include a statement applicable to all the State's tax schedules recognizing the exclusive authority of Eastern Band of Cherokee Indians to tax within its jurisdiction. Its

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jurisdiction is the land held in trust for the Eastern Band of Cherokee Indians by the United States. Arguably, the State is conceding its authority to impose many of the taxes it currently imposes that involve tribal land and tribal members.

EFFECTIVE DATE: The bill is effective when it becomes law.

BACKGROUND: Harrah's Cherokee Casino and Resort is one of the twenty largest casinos in the world. Later this year, the Eastern Band of Cherokee Indians will open a new casino on tribal land. It appears the tribe may lease some of the personal property, such as slot machines, from non-tribal entities. Jackson and Cherokee Counties have imposed property taxes on personal property located on tribal land but owned by a non-tribal member. The School of Government published a property tax bulletin on the ability of the counties to tax this personal property in March 2015, No. 168. The bulletin notes the following:

- Federal law, and federal regulations and case law interpreting federal law, clearly prohibit property tax on real property and improvements to real property located on tribal land, regardless of who owns the property.
- A county cannot tax personal property located on tribal land and owned by a tribal member.
- A county may likely be able to tax personal property located on tribal land and owned by a non-tribal member. Lower courts that have looked at this issue have applied a balancing test. Different taxes on different types of property have produced different results. The appellate court in the 2nd Circuit ruled that a local government in Connecticut may impose a property tax on slot machines used in a tribal casino but owned by non-tribal member.

The current property tax statutes do not address the taxation of real or personal property located on tribal land. House Bill 845, in the House Rules Committee, would exempt from property tax real and personal property located on tribal lands, regardless of ownership.