



# HOUSE BILL 912: Taxation of Tribal Land and Tobacco Products

2015-2016 General Assembly

**Committee:**

**Introduced by:**

**Analysis of:** S.L. 2015-262

**Date:**

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Staff Attorney

**SUMMARY:** *S.L. 2015-262 does the following three things:*

- *It exempts from property tax real and personal property located on lands held in trust by the United States for the Eastern Band of Cherokee Indians, regardless of ownership, effective for taxes imposed for taxable years beginning on or after July 1, 2016.*
- *It allows the Department of Revenue to enter into an agreement with the Eastern Band of Cherokee Indians regarding the excise tax on tobacco products.*
- *It clarifies the legislative intent of Section 4 of S.L. 2015-98 (ABC Omnibus Legislation) to provide that distillers who sell bottles of liquor at the distillery are not required to remit portions of the cost of the bottle to the State warehouse or the local ABC board. [For a more detailed explanation of this provision, please see the summary for S.L. 2015-98 (HB 909) in the ALCOHOLIC BEVERAGE CONTROL subject area].*

*Except as otherwise provided, this act became effective September 30, 2015.*

## CURRENT LAW AND BILL ANALYSIS:

Sections 1 and 2 of this act address two areas of taxation: the local property tax and the State excise tax on tobacco products. Section 1 exempts real and personal property located on lands held in trust by the United States for the Eastern Band of Cherokee Indians, regardless of ownership. Section 2 allows the Department of Revenue to enter into an agreement with the Eastern Band of Cherokee regarding the excise tax on tobacco products. Section 3 clarifies the intent of legislation enacted earlier this session and is explained in the summary for House Bill 909, S.L. 2015-98.

**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 if the property is 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 appears to be clear on this issue.

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

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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. Counties where the tribal lands are located do impose property taxes on personal property located on tribal land but owned by a non-tribal member. Examples of the property the counties tax may include slot machines owned by a nontribal entity and leased to a casino on the tribal land, and it may include personal property and improvements owned by a nontribal entity, such as a hotel chain, that is located on tribal land.

Section 1 of the act exempts from property tax real and personal property located on tribal lands, regardless of ownership. This section becomes effective for taxes imposed for taxable years beginning on or after July 1, 2016.

**Excise tax on tobacco products.** – The State imposes an excise tax on tobacco products and alcohol sold on tribal lands and to tribal members. The excise tax rate on cigarettes is 2.25¢ per cigarette; the excise tax rate on vapor products is 5¢ per fluid milliliter of consumable product; and the excise tax on other tobacco products is 12.8% of the cost price of the products.

Section 2 of the act authorizes the Department of Revenue to enter into an agreement with the Eastern Band of Cherokee Indians regarding the taxation of tobacco products. The legislation does not specify what the agreement must provide. In 1989, the General Assembly authorized the Department to enter into an agreement with the Tribe to refund motor fuel taxes paid by tribal members who reside on tribal land based on a formula in the Agreement.<sup>1</sup>

This section became effective when the act became law, September 28, 2015.

## **BACKGROUND:**

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. In addition to the excise taxes on tobacco products, North Carolina 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).

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<sup>1</sup> Chapter 753 of the 1989 Session Laws.

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- **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.