
Chehalis Tribe/CTGW v.
Assessor: Parcel 99002085874

Thurston County Board of Equalization
September 29, 2014, 10 AM

Opening Statement

Exemption is Appropriate

1. CTGW is a Chehalis Tribal entity
 2. Profound federal & Tribal interests in the Lodge overwhelm *de minimis* state interests
 3. Chehalis Tribal Sovereignty is impinged by the County's "personal property" taxes
- For each of these legal reasons, exemption is appropriate, for both CTGW and its properties
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CTGW is a Chehalis Tribal Entity

➤ The Ninth Circuit Court of Appeals provides helpful guidance:

important because "the question of tax immunity cannot be made to turn on the particular form in which the Tribe chooses to conduct its business." *Mescalero*, 411 U.S. at 157 n.13. In light of this ruling, the question of immunity from the County's property tax assessments on the Great Wolf Lodge "cannot be made to turn on" the Tribe's decision to give ownership of the Lodge to its limited liability company for the duration of the lease. *See id.*

County Ex. R-2

CTGW is a Chehalis Tribal Entity

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CTGW is a Chehalis Tribal Entity

- State law, WAC 458-20-192(5)(d), also provides helpful guidance:
 - “A **state chartered corporation** comprised solely of Indians is not subject to tax...”
 - As to “partnerships or other entities...in the event the composition includes a family member who is not a member of the tribe...the business will satisfy the ‘comprised solely’ criteria **if at least half of the owners are enrolled members of the tribe.**”
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CTGW is a Chehalis Tribal Entity

- *Makah Indian Tribe v. Clallam County*, 73 Wn. 2d 667 (Wash. 1968):
 - “That [a non-Indian] might share indirectly in the tax immunity was an extralegal circumstance...The existence of a marital community on the reservation has no...effect on taxability of property located there.”
 - “The quantum of ownership between spouses [or LLC members] . . . does not affect its taxability if the property is on an Indian reservation exclusively kept there during the taxable period and if it is under the **management, control and ownership** of a tribal Indian with the authority of the tribe, or under the ownership of the tribe.”
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CTGW is a Chehalis Tribal Entity

- The “50/50” marital community in *Makah* has since been universally treated at Washington law as “Indian.”
 - *Chief Seattle Properties, Inc. v. Kitsap County*, 86 Wash.2d 7 (Wash. 1976) (*Makah* “involved taxation of personal property owned by **an Indian**”).
 - *Sohol v. Clark*, 78 Wash.2d 813 (Wash. 1971) (In *Makah*, “we considered almost identical property held by **an Indian lessee** under similar circumstances”).
 - Indeed, the *Makah* holding was codified in WAC 458-20-192(5)(d) (entity comprised solely of **Indians** “if at least half of the owners are enrolled members.”).
-

CTGW's Properties Are Exempt

- Perhaps most profoundly, and most *apropos* here, the *Makah* Court reasoned:
 - “[T]he property is on an Indian reservation exclusively kept there during the taxable period.”
 - “[I]n the instant case, the personal property sought to be taxed...had been **acquired through work, savings and borrowing . . . by a tribal Indian.**”
 - “[T]he tribal Indian used the property in a profitable business of providing food, lodging and equipment for... tourists—**thus employing the personal property in adapting the land to one of the uses for which it is best suited.**”
-

CTGW's Properties Are Exempt

- Accordingly, the *Makah* Court also declared exempt:
 - “[I]mprovements on real estate held in trust by the United States... and leased to [the Makah Indian], and equipment, furniture and furnishings used in connection with the improvements.”
 - More specifically, “removable buildings and structures and their contents, **including furniture, furnishings, restaurant furniture and equipment, motel furniture and furnishings.**”
-

Makah Considered Government Interests

- In *Makah*, the Court considered federal, Tribal and state interests, ruling in favor of preemption as to both the marital community and the properties.
 - As to federal and Tribal interests:
 - The Court recognized, as far back as 1968, “the discernible federal policy of encouraging Indians to become economically self-sufficient on their reservations.”
 - “We are simply adapting this [federal] policy of encouragement to property acquired by Indians as the fruits of their own work, labor and enterprise as well as to the property given by the United States in aid of tribal Indians.”
 - “As we understand federal policy, it is...the government’s desire to foster successful business enterprises on reservations.”
-

Makah Disregarded The State's Interests

- In *Makah*, the Court considered the state's interests:
 - “the state and its subdivisions provide important...tax-supported services
 - public schools
 - aid through the Department of Public Assistance
 - hospitals and courts in cases of mental illness...
 - the state judicial system in matters of juvenile delinquency, dependency and adoptions.”
 - Based in large part on these state interests, the trial court judge reasoned against personal property exemption. But the Supreme Court was not compelled by these interests, and reversed.
 - The Supreme Court discounted these countywide services because “the taxable event upon which the tax is levied has not occurred within the territorial jurisdiction of Clallam County.”
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Makah Has Always Supported Exemption

- In January 2008, the Tribe met with the Assessor, and handed them the *Makah* case.

Westlaw
440 P.2d 442
73 Wash.2d 677, 440 P.2d 442
(Cite as: 73 Wash.2d 677, 440 P.2d 442)

MAKAH INDIAN TRIBE v. CLALLAM COUNTY
WASH 1968.

Supreme Court of Washington, En Banc.
The MAKAH INDIAN TRIBE, as a tribe and as a Federal Corporation, on its own behalf and on behalf of each of its members, and Esther H. Elvrum, a Makah Indian, Appellants,
v.
CLALLAM COUNTY, a municipal corporation; Frank A. Feeley, Clallam County Assessor and Jane Doe Feeley, his wife; and Robert J. Clark, Clallam County Treasurer and Jane Doe Clark, his wife, Respondents.
No. 39013.
May 2, 1968.
Rehearing Denied June 21, 1968.

Action by Indian and Indian tribe seeking determination that personal property of Indian kept on reservation was exempt from county personal property tax. The Superior Court, Clallam County, Joseph H. Johnston, Jr. found for defendants and appeal was taken. The Supreme Court, Hale, J., held that plaintiff who had one-quarter Makah Indian blood, who was enrolled in official census of Makah Tribe and whose status as Indian was not denied by defendants was Indian for purpose of case, and that if personal property of husband and Indian wife was used and maintained on reservation, it was not taxable by county even though one spouse was not Indian.

Reversed with instructions.
West Headnotes
[1] Indians 209 C(10)
209 Indians
209 In General
209,101 k. Who Are Indians or Native Americans. Most Cited Cases (Formerly 209k1)
Taxation 371 C(2273)
371 Taxation

211(1) Property Taxes
211(1)(1) Public Property and Institutions
211(1)(2) k. Indian Lands and Property. Most Cited Cases (Formerly 209k1)
Plaintiff who had one-quarter Makah Indian blood, who was enrolled in official census of Makah Tribe and whose status as Indian was not denied by defendants was Indian for purpose of case in which she sought determination that her personal property on Indian reservation was exempt from county personal property tax. Treaty with the Makah Tribe, 12 Stat. 939; Wheeler-Howard Act, § 1 et seq., 23 U.S.C.A. § 461, et seq.

[2] Pleading 302 C(129(1))
302 Pleading
302(1) Responses or Responsive Pleadings in General
302(1)(C) Traverses or Denials and Admissions
302,129 Admissions by Failure to Traverse or Deny
302,129(1) k. In General. Most Cited Cases
Allegations of fact not effectively denied, either by pleadings or in pretrial hearing or otherwise, are deemed admitted for purposes of cause on trial. CR 8(d).

[3] Indians 209 C(101)
209 Indians
209 In General
209,101 k. Who Are Indians or Native Americans. Most Cited Cases (Formerly 209k1)
Indian status depends on substantial percentage of Indian blood and recognition as Indian.

[4] Husband and Wife 265 C(249(4))
265 Husband and Wife
265(1) Community Property
265,249 Property Acquired During Marriage in General
265,249(2) Particular Property or Circumstances of Acquisition

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Thurston County 000479

MAKAH INDIAN TRIBE v. CLALLAM COUNTY WASH 1968.

Thurston County 000479

Makah Has Always Supported Exemption

- The Tribe then emailed an exposition of *Makah*.

From: Scott Cushing
To: Futterman, Jane
Date: 1/17/2008 4:30 PM
Subject: Fwd: Follow up on my discussion with you the other day

From Chesnin ...

>>> <pateus@aol.com> 1/17/2008 4:13 PM >>>

I think that I might not have articulated my thoughts concerning the Makah case very well. In the Makah case, it was a husband and wife, only one of whom was a tribal member and the other was a non-Indian. Since the property was subject to the community property interests of both spouses and they held the property 50-50, this is a more extreme situation than the Behalis / GW interests in CTGW, LLC, which is 51-49. In fact, the non-Indian certainly had a complete, legal right to dominion and control over the marital community property, a circumstance which is not present with GW. Even under such extreme circumstances, where one spouse could exercise such dominion and control of the property, even though the other spouse had an equal interest, the Court found that the tax did not apply.

I am hopeful that this helps the County when viewing the narrower circumstances of the property in question.

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Makah Has Always Supported Exemption

- But the Assessor feigned ignorance of *Makah*.

>>> <pateus@aol.com> 1/19/2008 7:16:09 AM >>>

-----Original Message-----

From: Scott Cushing <Cushins@co.thurston.wa.us>

To: pateus@aol.com

Sent: Fri, 18 Jan 2008 4:37 pm

Subject: meeting scheduled for Jan. 28

1/19/2008

when we last spoke, you indicated, to my surprise, that you
had the *Makah* case all along.

In addition, when we last spoke, you indicated, to my surprise, that you and Ms. Futterman had the *Makah* case all along. Yet neither you nor Ms. Futterman saw fit during the course of the negotiations to either discuss the case with the Tribe or distinguish the case from the County's perspective. In fact, when we delivered the case at the last meeting between the County and the Tribe, Ms. Futterman did not even acknowledge that she had seen the case. She merely ignored it.

Makah Has Always Supported Exemption

- Instead, the County “merely ignored [*Makah*]” and “decided to let the Courts do the work.”

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Makah Has Always Supported Exemption

- Now nearly 7 years later, *Makah* should lead the Board towards the conclusion that both CTGW and its properties are exempt.
-

Exemption is Appropriate

- The County defends the requested exemption on grounds that “petitioners have not filed the listings for personal property required in RCW 84.40.070.”
- State guidance suggests otherwise:

Q. Does a property owner need to apply for the exemption?

A. No. These improvements are exempt because they are located on tribal trust land.

- Petitioners have expressly disclaimed County regulatory authority in every petition filed since since 2007. *Makah* (“the taxable event upon which the tax is levied has not occurred within the territorial jurisdiction of [the] County”)

County Ex. R-1; Petitioners Ex. B (Galanda 2nd Declaration)

Exemption is Appropriate

- By a preponderance of evidence, Petitioners have already shown, and will further show through the testimony of Chehalis Tribal Chairman/CTGW President David Burnett, that both CTGW and its properties are **exempt**.
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Closing Statement

CTGW and the Property Are Exempt

- CTGW, the owner of the properties, is “controlled and managed” by the Chehalis Tribe. *Makah*. CTGW is exempt.
 - As are the “improvements and...equipment, furniture and furnishings used in connection with the improvements,” all of which the Tribe employed “in adapting the land to one of the uses for which it is best suited.” *Id.*
 - Exemption is appropriate.
-