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7 BEFORE THE BOARD OF EQUALIZATION
FOR THURSTON COUNTY

8 CTGW, LLC; CONFEDERATED TRIBES OF
9 THE CHEHALIS RESERVATION;

10 Petitioner,

11 v.

12 STEVE DREW, THURSTON COUNTY
13 ASSESSOR,

14 Respondent.
15

Thurston County Petition:
Parcel No. 99002085874
All Assessment Years

REPLY BRIEF

16 **I. INTRODUCTION**

17 CTGW, LLC (“CTGW”) is a limited liability company of the Confederated Tribes of the
18 Chehalis Reservation (“Tribe”). The Thurston County Assessor (“Assessor”) is thus
19 categorically barred from assessing any tax at all upon its personal property because it “interferes
20 [and] is incompatible with federal and tribal interests reflected in federal law.” *New Mexico v.*
21 *Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983). “Indian tribes and individuals generally are
22 exempt from state taxation within their own territory.” *Van Mechelen v. State of Washington*
23 *Dep’t of Revenue*, No. 08-011, 2009 WL 979712, at *16 (Wash. Bd. Tax. App. Feb. 26, 2009).
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1 Second, even if the state’s tax is found to fall upon a non-Indian entity, the tax is
2 preempted because it is directed at on-reservation value, vis-à-vis services provided by the Tribe
3 in connection with on-reservation value. *Mescalero*, 462 U.S. at 336-40.

4 Third, federal law, particularly 25 U.S.C. § 465, explicitly exempts “permanent
5 improvements” on Indian trust land as broadly defined by federal—not state—law. *Mescalero*
6 *Apache Tribe v. Jones*, 411 U.S. 145 (1973); *Seminole Tribe of Florida v. Florida*, No. 12-
7 62140, 2014 WL 4388143 (S.D. Fla. Sept. 5, 2014). That includes “cabin structures,” “walk-in
8 coolers,” and “water slides and climb-on structures.” Galanda Decl., Ex. L.

9 Finally, the state’s taxes are also preempted by the Tribe’s inherent right to make its own
10 laws and be ruled by them. *Ramah Navajo School Bd., Inc. v. Bureau of Revenue of New*
11 *Mexico*, 458 U.S. 832, 837 (1982).

12 **II. LAW AND ARGUMENT**

13 **A. The Taxes Are Barred Because CTGW is an Arm of The Tribe.**

14 The Assessor argues that CTGW is categorically not a “tribal entity, tribal corporation, or
15 arm of the [T]ribe” because “CTGW is a Delaware limited liability company.” Resp. Br., at 7.¹

16 For this proposition, the Assessor relies on an out-of-date treatise, the current version of
17 which actually says the opposite. *Id.* The current version of Cohen’s Handbook² actually refutes
18 the Assessor’s argument, and recognizes the authority cited by the Tribe as most persuasive:
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21 ¹ While the Assessor chides the Tribe for citing “[c]ourt decisions from other states, law review articles, and
22 treatises that do not create precedent to be followed” by the Board, Resp. Br., at 1, the Assessor cites to the same
types of secondary authority in making this argument, *id.* at 7—because there is no primary authority in this
jurisdiction.

23 ² The 1982 edition of Cohen’s Handbook cited by the Assessor has been criticized by many of the leading Indian tax
24 scholars. *See e.g.* Richard D. Pomp, *The Unfulfilled Promise of the Indian Commerce Clause and State Taxation*,
63 TAX LAW. 897, 906 n.11 (2010); William Walters, *Review Essay: Preemption, Tribal Sovereignty, and*
25 *Worcester v. Georgia*, 62 OR. L. REV. 127, 128 n.9 (1983). The 2012 version, on the other hand, has been lauded as
the more objective version. *See* M. Christian Clark, *Analytical Research Guide to Federal Indian Tax Law*, 105
LAW LIBR. J. 505, 522 (2013) (“Initial revisions [to Cohen’s Handbook] were biased The most recent 2005 and
2012 editions are more objective . . .”).

1 [A]uthority to tax often depends on the status of the person or entity liable for the
2 tax Courts have taken various positions on the question of whether a
3 corporation owned by a tribal member should be treated the same as a tribe or
4 tribal member for the purpose of exemption from state taxes. [One] court held
5 that the state could not tax the corporation, reasoning that Indian law principles,
6 as well as the state tax provision's limited application to business carried on
7 "within the state," prohibited the tax. Another court held that a corporation
8 incorporated under state law whose sole shareholder is a tribal member should
9 also be treated as a tribal member for the purpose of state tax immunity.

10 COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 8.06 (2012 ed.) (citing *Flat Ctr. Farms, Inc. v.*
11 *Mont. Dep't of Revenue*, 49 P.3d 578 (Mont. 2002); *Pourier v. S. Dak. Dep't of Revenue*, 658
12 N.W.2d 395 (S.D. 2003)).

13 Second, although it is true that Wash. Rev. Code § 25.15.070(2)(c) provides that "[a]
14 limited liability company . . . shall be a separate legal entity" for *liability* purposes, the statute
15 does not address *taxation*. See *In re: Rapid Settlements, Ltd.*, 271 P.3d 925, 930 (2012)
16 ("[A]lthough a . . . separate legal entity[']s liabilities are not attributable to its owners and
17 officers, the corporate separateness . . . may be disregarded under certain conditions.") (quotation
18 omitted); *Duke v. Absentee Shawnee Tribe of Oklahoma Housing Authority*, 199 F.3d 1123,
19 1125 (10th Cir. 1999) ("[T]he mere organization of such an entity under state law does not
20 preclude its characterization as a tribal organization as well."); *Giedosh v. Little Wound School*
21 *Bd., Inc.*, 995 F.Supp. 1052, 1059 (D.S.D. 1997) ("[T]he fact that the Board is incorporated . . .
22 under [state] law does not affect its status as an 'Indian tribe.'").

23 Indeed, while the Assessor is correct that, strictly speaking, Wash. Admin. Code § 458-20-
24 192(5)(d) applies to tribal member-owned corporate entities, it also disproves the Assessor's
25 argument that a state-chartered limited liability company is a *per se* separate legal entity for the
purpose of *taxation* under Washington State law. For the purpose of *taxation*, Wash. Admin.

1 Code § 458-20-192(5) stands for the general rule that “the State may not tax Indians or Indian
2 tribes in Indian country,” regardless of incorporation under state law.³ *Bercier v. Kiga*, 103 P.3d
3 232, 236 (Wash. Ct. App. 2004) (citing Wash. Admin. Code § 458-20-192(5)) (emphasis added).

4 Likewise, predominate state and federal statutory, common law and regulatory authority,⁴
5 stands for the supplementary rule that any corporate entity doing business upon Indian land,
6 “where the majority of the corporation’s stock is owned by Indians” or an *Indian tribe*,⁵ is to be
7 deemed an “Indian[] or [an] Indian tribe[] in Indian country” for the purpose of *taxation*,
8 regardless of incorporation under state law. *In re: Stuart B. Mills*, Op. No. 111, 1985 WL
9 168597, at *3 (Neb. A.G. Jul. 8, 1985); *Bercier*, 103 P.3d at 236.

11 Finally, the cases that the Assessor relies upon for his argument that state-chartered
12 corporate entities are *per se* non-Indian are either inapposite or no longer operative law. First,
13 the District Court’s holding that CTGW “is neither an Indian Tribe nor a tribal member” has of
14 course been reversed and is of no preclusive or other effect. *Confederated Tribes of Chehalis*
15 *Reservation v. Thurston Cnty. Bd. of Equalization*, No. 08-5562, 2010 WL 1406524 (W.D.
16 Wash. Apr. 2, 2010), *rev’d*, 724 F.3d 1153 (9th Cir. 2013); *see Hagel v. Portland State Univ.*,
17 237 F. App’x 146, 148 (9th Cir. 2007) (“[O]nce a decision has been reversed, it no longer has
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20 ³ Indeed, and quite telling, the Washington State Department of Revenue (“DOR”), the entity that promulgated
21 Wash. Admin. Code § 458-20-192(5), has concluded as well that CTGW is a nontaxable Indian entity, regardless of
22 state incorporation. *See* Resp. Br., at 3 (“DOR [has] opined that the Tribe’s membership in the CTGW joint venture
23 supported preemption of the property tax.”) (citing Declaration of Gabriel S. Galanda, Exhibit J).

24 ⁴ Wash. Admin. Code § 458-20-192(5)(d); *Eastern Navajo Industries, Inc. v. Bureau of Revenue*, 552 P.2d 805
25 (N.M. Ct. App. 1976); *Flat Ctr. Farms*, 49 P.3d 578; *Pourier*, 658 N.W.2d 395; *Duke*, 199 F.3d 1123; *Giedosh*, 995
F.Supp. 1052; 25 C.F.R. § 103.25(b); and 25 C.F.R. § 273.2(e).

⁵ For the purpose of taxation, members of Indian tribes and tribes themselves are *equally* nontaxable. *See Oklahoma*
Tax Comm’n v. Chickasaw Nation, 515 U.S. 450, 451 (1995) (“[A] State unable to enforce its tax [if] the legal
incidence falls on tribes or on Indians within Indian country.”); *id.* at 464 (“Indians and Indian tribes are generally
immune from state taxation”) (emphasis added; citing *McClanahan v. Arizona Tax Comm’n*, 411 U.S. 164
(1973)); *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 765 (1985) (only “Congress can authorize the
imposition of state taxes on *Indian tribes* and individual Indians”) (emphasis added).

1 preclusive effect.”) (citation omitted); *DeLeon v. Office of Pers. Mgmt.*, 11 F.3d 1069 (Fed. Cir.
2 1993) (parties have “no right to enforcement of a decision that has been reversed”); *Phrapa-*
3 *Phatana v. Cooper Tire & Rubber Co.*, No.03-1089, 2006 WL 2683629, at *6 n.3 (D. Ariz. Sept.
4 19, 2006) (“[C]iting a decision that has been reversed . . . is unprofessional.”).

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6 Second, the Assessor’s reliance on *Moline Properties, Inc. v. Comm’r of Internal Revenue*,
7 319 U.S. 436, 440, 63 S. Ct. 1132 (1943), is improper. While federal law may well determine
8 whether a federal corporate income tax can be attributed to a corporation’s shareholders, the
9 “rights and obligations” of corporations are generally “governed by state-law standards.”
10 *Lapidus v. Hecht*, 232 F.3d 679, 682 (9th Cir. 2000) (quotation omitted); *see also Burks v.*
11 *Lasker*, 441 U.S. 471, 478 (1979) (“Corporations are creatures of state law”) (quotation
12 omitted). And here, the state has determined that a state-chartered limited liability company is
13 *not* a *per se* separate legal entity for the purpose of *taxation*. *See e.g.* Wash. Admin. Code § 458-
14 20-192(5)(d). Other states, too, have come to a similar conclusion, based upon well-grounded
15 principles of Indian federal common law.⁶ *See e.g. Eastern*, 552 P.2d 805; *Flat Ctr. Farms*, 49
16 P.3d 578; *Pourier*, 658 N.W.2d 395; *Duke*, 199 F.3d 1123; *Giedosh*, 995 F.Supp. 1052.

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18 The Assessor’s citation to *Myrick v. Devils Lake Sioux Mfg. Corp.*, 718 F.Supp. 753
19 (D.N.D.1989), and *Airvator, Inc. v. Turtle Mountain Mfg. Co.*, 329 N.W.2d 596 (N.D. 1983), is
20 also misguided. In *Myrick*, the District Court of North Dakota was deciding whether to decline
21 jurisdiction over a dispute arising on an Indian reservation, where the plaintiff had not exhausted
22 tribal court remedies. *Id.* at 754. In so doing, the Court explicitly noted that the Tribe was not a

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25 ⁶ *See* Alex Tallchief Skibine, *The Dialogic of Federalism in Federal Indian Law and the Rehnquist Court: The Need for Coherence and Integration*, 8 TEX. F. ON C.L. & C.R. 1, 1 (2003) (“[M]uch of federal Indian law is still dictated from the judicial bench through federal common law.”).

1 party to the case. *Id.* at 755. Here, the Tribe is a party to the current proceeding.

2 Clearly, *Myrick* did not address whether a tribal corporation is considered a separate entity
3 for tax purposes—*Myrick* was a tribal court exhaustion case and is inapplicable here. *See Bales*
4 *v. Chickasaw Nation Indus.*, 606 F.Supp.2d 1299, 1307–08 (D.N.M. 2009) (distinguishing
5 *Myrick* on the basis that it involved a corporation that was not an arm of the tribe, and noting that
6 *Myrick* was neither precedential nor persuasive authority outside of its district and limited
7 holding); *Mastro v. Seminole Tribe of Florida*, No. 12-0411, 2013 WL 3350567, at *4 (M.D.
8 Fla. Jul. 2, 2013), *aff'd*, 13-13886, 2014 WL 4085819 (11th Cir. Aug. 20, 2014) (distinguishing
9 *Myrick* and noting that in *Myrick* “the court determined whether to decline jurisdiction over a
10 dispute involving the activities of non-Indians or Indians arising on Indian reservations if
11 plaintiff had failed to first exhaust tribal court remedies.”). *Airvator* was also a jurisdiction case,
12 likewise inapplicable here. *See Airvator*, 329 N.W.2d at 604 (holding that “[b]ecause it is a
13 distinct entity, a corporation, for the purposes of jurisdiction, is a citizen and is subject to the
14 jurisdiction of the courts of the state in which it is incorporated”) (emphasis added); *see also*
15 *Johnson v. Harrah's Kansas Casino Corp.*, 04-4142, 2006 WL 463138 (D. Kan. Feb. 23, 2006)
16 (same). As discussed above, taxation is a vastly different beast.

17 **B. CTGW is Nontaxable Under the *Bracker* Balancing Test.**

18 **1. The Interests Of The United States And The Tribe Are Significant.**

19 The Assessor makes several erroneous arguments in an attempt to undercut the Tribe and
20 the federal government’s interests in the assessed property.⁷ These are summarized and
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25 ⁷ The Assessor admits that “[t]he Tribe has zoning, building code, land use, and health and safety authority over the land where the Lodge is located”; that “[b]oth the United States and the Tribe have significant interests in the Tribe’s economic development, raising revenue, providing employment for members of the Tribe, and in the Tribe’s

1 examined as follows:

- 2 • “[T]he business activity performed on the property is the management and operation of the
3 Lodge by Great Lakes Services.” Resp. Br., at 12. This is not true. Tribal officials
4 exercise control over the administration and accounting activities of CTGW. The Tribe
5 is the managing member of the entity and has complete and full control over the
6 operating and capitol budgets, and comprehensively oversees and regulates CTGW and
7 its employees. Since the LLC’s restructuring in August of 2011, the Tribe has control
8 over the removal of CTGW’s governing body; Setting Annual Operating Budget; Setting
9 Annual Capital Improvement Budget; Hiring an Architect or General Contractor; Entering
10 Into a Partnership or Joint Venture; Acquiring a Direct or Indirect Interest in another
11 Entity Merging or Consolidating CTGW into any Entity; Debt Obligations beyond the
12 Construction Loan Commencement or Material Modification of any Environmental
13 Remediation; Modification, Amendment or Termination of the Business Lease;
14 Modification, Amendment or Termination of the Management Agreement; Modification,
15 Amendment or Termination of the Construction Management Agreement; Modification,
16 Amendment or Termination of the License Agreement; Entering into, Modification or
17 Termination of any Employment or Severance Agreement; Entering into any Union or
Collective Bargaining Agreement; Entering into or Enrolling Employees into any

18 self-determination”; and that “[t]he United States and Tribe have significant interests in employment for tribal
19 members.” Resp. Br., at 12-13. Because the Assessor does not address them, Appellants assume that the following
20 points are conceded as well: (1) “CTGW was formed to manage and develop tribal resources”; (2) “Federal policy
21 designed to protect Indian assets and tribal cultural autonomy is furthered by the extension of preemption to
22 CTGW”; (3) “The Tribe has legal ownership of the property used by CTGW, in that it possesses the beneficial title
23 to the federal trust land”; (4) “As with all of the Tribe’s trust lands, the use of the land upon which the hotel and
24 resort is located, and from which it conducts its business and derives its revenues, is regulated through the Tribe’s
25 land use regulations, including its Comprehensive Land Use Plan and related ordinances and directives”; (5) “The
Tribal 51% share of CTGW net profits *and* the Tribe’s tax revenues are quite literally ‘bounty’ from Chehalis Indian
land”; (6) “[T]he United States and the Tribe have very substantial interests in providing well-run entertainment to
patrons and in furnishing comfortable, clean, and attractive facilities” such that “[t]he imposition of a tax on the
personal property that allows the Tribe to provide this atmosphere would burden the tribal enterprise by increasing
the total cost of maintaining the Lodge and by imposing collection, remittance, and recordkeeping requirements”;
(7) “[T]he United States and the Tribe have significant interests in advancing the deeply rooted federal policy of
leaving Indians free from state jurisdiction and control”; (8) “The Tribe regulates every aspect of the at-issue
property.” Opening Br., at 20-21, 28-30 (quotation omitted).

1 Employee Benefit Plan or Termination of Such Plan; and Permitting Activities requiring
2 a Gaming License.⁸ Declaration of David Burnett (“Burnett Decl.”), Exhibit A.

- 3 • “[T]he Tribe lacks legal authority to maintain criminal charges against individuals at the
4 Lodge who are not members of the Tribe.” Resp. Br., at 13. This is not true. The
5 Tribe’s criminal jurisdiction is not limited to members of the Tribe. *United States v.*
6 *Lara*, 541 U.S. 193 (2004). In addition, even “[w]here jurisdiction to try and punish an
7 offender rests outside the tribe, tribal officers may exercise their power to detain the
8 offender and *transport him to the proper authorities.*” *U.S. v. Terry*, 400 F.3d 575, 579
9 (8th Cir. 2005) (emphasis added; quotation omitted); *see also State v. Schmuck*, 850 P.2d
10 1332, 1339 (Wash. 1993) (“[A] tribe’s proper response to a crime committed by a non-
11 Indian on the reservation is for the tribal police to detain the offender and deliver him or
12 her to the proper authorities.”). In short, state and local law enforcement have no valid
13 reason to enter the Lodge. The Tribe provides primary law enforcement at the Lodge,
14 has criminal jurisdiction over many of the Lodge’s patrons, and can transport persons
15 who breach the peace to local authorities if need be.⁹ *See also* Burnett Decl., ¶6 (“The
16 Tribe provides governmental services and programs to Tribal members, *as well as its*
17 *non-Indian neighbors*, including . . . law enforcement, judicial services, social services,
18 [and] drug and alcohol abuse programs . . .”) (emphasis added).
- 19 • “[T]he United States has little involvement with CTGW.” Resp. Br., at 13. This is not
20 true. The federal government comprehensively regulates the at-issue property. The
21 property is regulated and subject to a myriad of generally applicable federal laws and

21 ⁸ CTGW, of course, owns the at-issue property and is the party that the Assessor has named as responsible for the
22 taxes thereupon. Burnett Decl., Ex. A. The fact that Great Lakes Services might vacuum around, *e.g.*, hotel beds
23 and chairs, does not make it responsible for “[t]he business activity performed on the property.” Resp. Br., at 12.

24 ⁹ The Assessor appears to hang his hat on this law enforcement argument. *See e.g.* Resp. Br., at 15 (“If the Sheriff
25 did not provide law enforcement . . . it is unlikely that CTGW would continue to attract the same level of customers
to the waterpark and hotel.”); *see also generally id.* at 5, 13, 14, 17. But the assumption is mistaken. The Tribe has
its own “law enforcement, judicial services, social services, [and] drug and alcohol abuse programs” that service
Indians and non-Indians alike. Burnett Decl., ¶6. If the Tribe does not have jurisdiction over a criminal matter, it
will transfer the suspect to a jurisdiction that does. This is no different than the an Oregon jurisdiction transferring a
suspect to a Washington jurisdiction—the State of Oregon, of course, does not pay Washington taxes for providing
this service; nor should the Tribe.

1 regulations. See *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113, 1115 (9th Cir.
2 1985) (“[F]ederal laws . . . apply with equal force to Indians on reservations.”) (quoting
3 *United States v. Farris*, 624 F.2d 890 (9th Cir.1980), *cert. denied*, 449 U.S. 1111 (1981)).

- 4 • “There is no evidence that the property tax would increase the total cost of maintaining the
5 Lodge.” Resp. Br., at 13. This is not true. The Tribe has produced ample evidence that
6 taxes paid as operational expenses of CTGW would absolutely reduce “Available Cash”
7 for distribution to the Tribe “in proportion to [its] respective Proportionate Share.”
8 Burnett Decl., Exs. A, C; Galanda Decl., Ex. R; *cf. Squaxin Island Tribe v. Wash.*, 781
9 F.2d 715, 720 (9th Cir. 1986) (taxes paid by a non-Indian party or lessor made a tribe’s
10 business relationship less favorable or more expensive, but did not cut into its actual
11 revenue stream).
- 12 • “[T]he property tax supports the public school system, including the Rochester School
13 District which has provided the education for individuals employed at the Lodge.” Resp.
14 Br., at 14. This may be true, but it is a stretch. Other than providing education to minor
15 children—something that the public school system is constitutionally required to do
16 *throughout the state*, see *Tunstall ex rel. Tunstall v. Bergeson*, 141 Wash. 2d 201, 221, 5
17 P.3d 691, 702 (2000) (“[A]ll children in Washington have a right to be amply provided
18 with an education [and] that right is constitutionally paramount and must be achieved
19 through a general and uniform system of public schools.”) (quotation omitted)—there are
20 “no other services that the school district supplies to CTGW.” Declaration of Jane
21 Futterman (“Futterman Decl.”), Exhibit R-9, at 4.

22 **2. The Interests Of The State Are De Minimis.**

23 Relying principally, again, upon the District Court’s reversed opinion, the Assessor argues
24 that “significant services funded by the [personal] property tax are provided directly to CTGW
25 and the Lodge.” Resp. Br., at 14. These include, according to the Assessor, law enforcement
and associated services; emergency medical services; maintenance to county roads and

1 emergency response to ice and snowstorms; and education to children of CTGW employees. *Id.*
2 As discussed above, however, law enforcement and education are red herrings. The Tribe has its
3 own law enforcement and does not require the state's; the state is required to provide education
4 to all children, regardless of where their parents are employed. As to emergency medical
5 services, and similar services, the Assessor's assertion is factually incorrect:
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7 The Tribe provides, either on its own or through fee-for-service arrangements, all
8 governmental services to the [Lodge]. For example, it contracts with Thurston
9 County for sewer, sanitation, and water services, for which it paid substantial
10 connection fees. The County and Tribe negotiated water and sewer usage by
11 memorandum of understanding. The Tribe also has funded, designed, managed
12 and constructed sewer and water lines to and from the Trust Property. Garbage
13 collection is contracted by CTGW with a private company. The Tribe provides
14 the Lodge with 24-hour daily police protection. Additionally, the Tribe contracts
15 for fire protection and emergency services on a fee-for-service basis.

16 Declaration of David Burnett in Support of Motion to Intervene, at ¶ 4. To the extent that other
17 services are tangentially or hypothetically offered to CTGW,¹⁰ at this time CTGW does not
18 benefit directly from these services and they cannot be given any weight. *See Hoopa Valley*
19 *Tribe v. Nevins*, 881 F.2d 657, 661 (9th Cir. 1989), *cert. denied*, 494 U.S. 1055 (1990) (“[A]
20 state's general interest in revenue collection is insufficient”); *Ute Mountain Ute Tribe v.*
21 *Rodriguez*, 660 F.3d 1177, 1201 (10th Cir. 2011) (state services must be “connected to the on-
22 reservation activity in some substantial way”).

23 3. Federal and Tribal Interests Outweigh Those of the State.

24 In sum, reliance upon the District Court's opinion alone does not suffice to prove that the

25 ¹⁰ Petitioner is unaware of the other services that might be offered to the Tribe and CTGW that are funded by the state's property taxes. According to DOR, the state's property taxes are distributed as follows: Schools 55.9%; Counties 16.2%; Cities and Towns 13.2%; Regional Libraries, Parks and Recreation, Emergency Medical, and Hospital Districts 7.4%; Fire 5.3%; Ports 1.6%. WASHINGTON STATE DEP'T OF REVENUE, HOMEOWNER'S GUIDE TO PROPERTY TAX 3. CTGW does not benefit from these services directly. To the extent that CTGW benefits from any of these services, it benefits from the Tribe's fee-for-service arrangements.

1 state's interests outweigh those of the Tribe and the federal government. First, the District
2 Court's opinion has been reversed and is of no preclusive effect. Second, the corporate structure
3 of CTGW was changed in 2011 to provide even more authority to the Tribe. Third, the state has
4 provided no evidence that any services funded by the state's personal property tax are provided
5 *directly* to CTGW in any meaningful manner. To the extent that the *Bracker* balancing test even
6 applies here, the federal and tribal interests far outweigh those of the state.
7

8 **C. The Assessed Taxes Are Explicitly Preempted By Federal Law.**

9 The Assessor asserts, without argument, that the assessed property "does not include
10 buildings, structures, or associated infrastructure attached to the leased premises." Resp. Br., at
11 19. As defined by *federal law*,¹¹ though, the assessed property *does include* infrastructure
12 attached to the leased premises. See *Whiteco Industries Inc. v. C.I.R.*, 65 T.C. 664, 672 (U.S.
13 Tax Ct. 1975) (listing factors to consider); *Consolidated Freightways, Inc. v. C.I.R.*, 708 F.2d
14 1385 (9th Cir. 1983) (adopting the *Whiteco* factors in the Ninth Circuit); see also WASHINGTON
15 STATE DEP'T OF REVENUE, *supra*, at 1 (2014) ("The primary characteristic of personal property is
16 mobility."); cf. Second Galanda Decl., Ex. A; Galanda Decl., Ex. L.¹²
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18 All of the property in parcel 99002085874 is nontaxable for the foregoing reasons. But
19 even if the Board ignores federal law and finds that CTGW is not a tribal entity, and that *Bracker*
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23 ¹¹ See Second Declaration of Gabriel S. Galanda ("Second Galanda Decl."), Exhibit B (DOR FAQ stating that
24 "[w]ith respect to permanent improvements located on trust land, federal law applies. Whether property is classified
as real property or personal property under Washington law is not determinative for purposes of this exemption.").

25 ¹² Petitioner's Opening Brief mistakenly listed "walk-in freezers/coolers" as included in the Assessor's list of taxed
personal property for "Ice Cream Shops." Petr. Br., at 36. The remaining items on the list provided by Petitioners,
though, is correct. Cf. Galanda Decl., Ex. L.

1 does not preempt the Assessor's taxes, it must find that the vast majority of 99002085874 is
2 nontaxable under 25 U.S.C. § 465 because it is inarguably permanent.¹³

3 In addition, to the extent that the Assessor is attempting to assess "water slides and
4 climb-on structures" found at the Lodge, Galanda Decl., Ex. L, such as the "Howlin' Tornado"
5 and associated pools, that issue was already litigated before the District Court; the County lost
6 that issue too and the Assessor is barred from attempting to relitigate it. *See e.g.* Plaintiff's
7 Motion for Summary Judgment, *Confederated Tribes of the Chehalis Reservation v. Thurston*
8 *County Board of Equalization*, No. 08-5562 (W.D. Wash. Jan. 4, 2010), ECF No. 113-2; Second
9 Galanda Decl., Ex. C, at 6 (listing the "Indoor Water Park," including "pools and Tornado" as
10 permanent improvements and part of Parcel No. 99740331400); *id.* at 33, 50 (same). In
11 reversing the District Court, the Ninth Circuit has held that, at minimum, the "Howlin' Tornado"
12 and associated pools are permanent improvements that are nontaxable, per federal law.¹⁴

13 Petitioners will produce evidence at the hearing showing, without question, that most of the property the Assessor
is targeting is permanent under federal law.

14 In fact, the taxes assessed upon the "Howlin' Tornado" and associated pools have already been exempted by this
Board, per the Parties' agreement:

On July 30, 2013, the Ninth Circuit Court of Appeals ruled in *Confederated Tribes of the
Chehalis Reservation, et al. v. Thurston County Board of Equalization, et al.*, 274 F.3d 1153 (9th
Cir. 2013), that the permanent improvements to land owned by the United States in trust for the
Confederated Tribes of the Chehalis Reservation, which improvements are listed by the Assessor
as Parcel No. 99740331400, are not subject to state and local taxation. Said decision of the Ninth
Circuit is binding on the Thurston County Assessor, the Board of Equalization, the Thurston
County Treasurer, and all other agents of Thurston County.

The Parties agree that Parcel No. 99740331400 is not subject to state and local property tax
assessment or taxation.

The Parties further agree that the Ninth Circuit's above-referenced decision that permanent
improvements built on Indian lands that are held in trust by the federal government are not subject
to state and local property taxation, operates to bar the property tax assessment and taxation by
Thurston County of the permanent improvements assessed as Parcel No. 99740331400.

Stipulated Decision and Order Re: Parcel No. 99740331400.

1 **D. The Assessed Taxes Are Preempted By The Tribe's Inherent Right To Make Its**
2 **Own Laws And Be Ruled By Them.**

3 State taxes are prohibited where they would interfere with a tribe's ability to exercise
4 sovereign functions. *See Ramah*, 458 U.S. at 837 (“[T]he exercise of state authority over
5 commercial activity on an Indian reservation” is barred where state’s authority “may interfere
6 with the tribe’s ability to exercise its sovereign functions.”); *Bracker*, 448 U.S. at 136 (“The
7 tradition of Indian sovereignty over the reservation and tribal members must inform the
8 determination whether the exercise of state authority has been preempted by operation of federal
9 law.”); *Petr. Br.*, at 38-39. “Tribal sovereignty contains a significant geographic component, and
10 tribes have the power to manage the use of their territory and resources by both members and
11 nonmembers.” *Crow Tribe of Indians v. State of Mont.*, 819 F.2d 895, 896 (9th Cir. 1987), *aff’d*
12 *sub nom.*, 484 U.S. 997 (1988).

14 The Assessor argues that the decision in *Crow Tribe* is narrowly limited to instances
15 where a tribe’s interest includes an interest in natural resources. *Resp. Br.*, at 20-22. A plain
16 reading of the case does not support this interpretation. The Ninth Circuit Court of Appeals
17 found, when determining that the coal was the Crow Tribe’s property, that the coal “brings
18 revenue that represents value generated by tribal activities and in which the Tribe has a
19 substantial interest.” *Id.* at 899. Here, the Lodge represents a joint venture that the Tribe
20 undertook in order to facilitate determination and economic self-development. *Galanda Decl.*,
21 *Ex. A*, at 2-3. Here, value generated from the Lodge, and the personal property included in the
22 Lodge, constitutes value generated by the Tribe.
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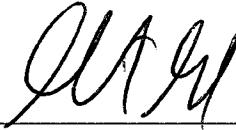
1 The Assessor further argues that concurrent state jurisdiction would not interfere with
2 tribal sovereignty. Resp. Br., at 20-22. The Assessor cites *Cotton Petroleum Corp. v. New*
3 *Mexico*, 490 U.S. 163 (1989). In that case, however, the Court was determining whether the
4 state could impose taxes on a **non-Indian lessee**. The company was an oil and gas producer,
5 whose operations were located on an Indian reservation. The Jicarilla Apache Tribe was not
6 even a party to the appeal. *Id.* at 193. The Court deemed the Tribe’s interest “**indirect and . . .**
7 **insubstantial**” and that the impact of a state tax would merely cause interference with the
8 demand and value of on-reservation leases. *Id.* at 187 (emphasis added); *see also Ramah Navajo*
9 *Sch. Bd., Inc. v. New Mexico Taxation & Revenue Dep’t*, 977 P.2d 1021 (N.M. App. 1999), *cert.*
10 *denied*, 981 P.2d 1207 (1999), *cert. denied*, 528 U.S. 928 (1999) (distinguishing *Cotton*
11 *Petroleum* because it concerned a “non-Indian lessee” and noting that the holding was narrow,
12 only applying to “preemption of a severance tax on oil and gas produced on a reservation, not
13 preemption of all taxation”); *Arizona Dep’t of Rev. v. Blaze Construction Co.*, 526 U.S. 32, 37
14 (1999) (noting that the “particularized examination” “weighing the respective state, federal, and
15 tribal interest” is applied only “where the legal incidence of the tax fell on a nontribal entity
16 engaged in a transaction with tribes”).

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19 Here, the facts are easily distinguished from *Cotton Petroleum*. As majority owner of
20 CTGW, the tax falls on the Tribe, rather than on a non-Indian lessee. Further, unlike in *Cotton*
21 *Petroleum*, the Tribe is a party to the current proceeding, as the outcome of the proceeding has
22 the ability to significantly impact the Tribe. The Tribe’s interest is not “indirect” or
23 “insubstantial.”
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1 **III. CONCLUSION**

2 Because CTGW is an entity of the Tribe, the Assessor is categorically barred from
3 assessing any tax at all upon its personal property. Further, the tax is preempted under *Bracker*
4 and the Tribe's the inherent right to make its own laws and be ruled by them. But even if the tax
5 was not preempted, 25 U.S.C. § 465 explicitly exempts "permanent improvements" on Indian
6 trust land, as broadly defined by federal—not state—law.

7 Signed this 19th day of September, 2014.

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10 Gabriel S. Galanda, WSBA #30331
11 Anthony S. Broadman, WSBA #39508
12 GALANDA BROADMAN PLLC
13 P.O. Box 15416
14 8606 35th Avenue NE, Suite L1
15 Seattle, WA 98115
16 PH: 206-557-7509
17 FX: 206-299-7690
18 gabe@galandabroadman.com
19 anthony@galandabroadman.com
20 Attorneys for Petitioners Confederated Tribes of the
21 Chehalis Reservation and CTGW, LLC
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