



Property Tax Advisory

Property Tax Advisories (PTA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. PTAs explain the Department's policy regarding how tax law applies to a specific issue or set of facts. They are advisory for taxing officials and taxpayers; however, the Department is bound by these advisories until they are superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the PTA.

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Transfer of land classified under chapter 84.33 or 84.34 RCW in trust to the United States by a federally recognized Indian Tribe

Question: Is compensating tax or additional tax due when land classified under chapter 84.33 or 84.34 RCW is transferred to the United States to be held in trust for a federally recognized Indian Tribe?

Answer: No. The United States Court of Appeals for the 9th Circuit determined in *Quinault Indian Nation v. Grays Harbor County*, 310 F.3d. 645 (2002), that the compensating tax imposed when designated forest land is transferred to the United States to be held in trust for the Tribe was more in the nature of an excise tax than a property or ad valorem tax, and thus the Tribe was not liable for the tax. The Department of Revenue has concluded that this decision should also be applied to land classified under chapter 84.34 RCW. The 9th Circuit Court effectively added to the list of transfers and transactions, set forth in RCW 84.33.140(13) and RCW 84.34.108(6), that are exempt from the payment of compensating and additional tax.

Specific Facts: In 1998, the Quinault Indian Nation purchased designated forest land, mostly in Grays Harbor County. The Tribe signed a notice of continuance at the time of sale, and the land remained designated forest land under chapter 84.33 RCW. As designated forest land, the land was valued on a reduced basis for property tax purposes.

In 2000, the Tribe sold the land to the U.S. government to be held in trust for the Tribe. Under RCW 84.33.140(5)(b), the county was required to remove the land from designation; that is, "sale or transfer to an ownership making the [designated] land exempt from ad valorem taxation" is one of the occurrences listed as triggering removal. Land belonging exclusively to the United States is exempt from property tax (see RCW 84.36.010). The county then imposed compensating tax in accordance with RCW 84.33.140(11) because the transfer was not within one of the exceptions listed in RCW 84.33.140(13).

The Quinault Nation believed that the county lacked the authority to levy this tax and filed suit in the United States District Court. The District Court ruled in favor of Grays Harbor County and held that the tax was a permissible "taxation of land" under the *Indian General Allotment Act of 1887*, 24 Stat. 388,

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as amended, 25 U.S.C. § 331 *et seq.* The Tribe appealed this decision to the U.S. Court of Appeals, 9th Circuit.

The 9th Circuit reversed the District Court on the basis that ambiguous statutes are to be construed in favor of the Indians. (See *County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 269 (1992).) The determining factor, in the judgment of the Court, was whether the compensating tax could be characterized as a permissible taxation of land, that is, a permissible “ad valorem tax,” or whether it was an impermissible “excise tax.”

The court felt the compensating tax was ambiguous in nature; it is not solely an ad valorem tax based on value, nor it is a straightforward excise tax. The court was most interested in the fact that the compensating tax was triggered by the sale or transfer of designated forest land. It found that the formula used to calculate the amount of compensating tax owed was a hybrid of market value and tax savings. Because the compensating tax had characteristics of both property and excise taxes, the 9th Circuit Court applied the rule of liberal construction in favor of tribal interests, and concluded the compensating tax was an impermissible excise tax on the Quinault Indian Nation.

Although the 9th Circuit Court did not address land classified in the Current Use Program under chapter 84.34 RCW in its decision, and despite the fact that there are some distinctions between chapter 84.33 and 84.34 RCW, given the similarities between the taxes imposed under the two chapters, the Department’s position is that the *Quinalt* decision applies to the additional tax imposed on transfers of land classified in the Current Use Program (chapter 84.34 RCW) as well as the compensating tax imposed on transfers of land under the Designated Forest Land Program (chapter 84.33 RCW).
