
Frequently Asked Questions

Implementation of ESHB 1287: Subjecting federally recognized Indian tribes to the same conditions as state and local governments for property owned exclusively by the tribe

Q1. When did ESHB 1287 (Chapter 207, Laws of 2014) become effective and when does it expire?

A1. ESHB 1287 became effective on June 12, 2014. It is effective for taxes paid in 2015 and expires on January 1, 2022.

Property Tax Exemption

Q2. What is the impact of ESHB 1287 on property owned exclusively by federally recognized tribes and used exclusively for essential government services?

A2. RCW 84.36.010 provides an exemption to property owned exclusively by a federally recognized tribe and exclusively used for an essential government service. Prior to the passage of ESHB 1287, “economic development” was not recognized as an essential government service; however, with the passage of this bill, economic development is now recognized as an essential government service.

To clarify:

- Previously, “essential government services” meant “services such as tribal administration, public facilities, fire, police, public health, education, sewer, water, environmental and land use, transportation, and utility services.” The definition of essential government services was amended to include “economic development.”
- “Economic development” is defined as “commercial activities, including those that facilitate the creation or retention of businesses or jobs or that improve the standard of living or economic health of tribal communities.”
- Property acquired by the tribe after Mar 1, 2014 and used for economic development purposes is ineligible for exemption.

Additionally, ESHB 1287:

- Imposes an application filing deadline. To receive exemption in the following year all essential government services applications must be submitted on or before October 1.
- Imposes a renewal requirement on property used for economic development.
- May subject the occupant of economic development property to leasehold excise tax or a payment in lieu leasehold excise of tax.

Q3. What is Leasehold Excise Tax (LET) and when does it apply to tribal property?

A3. Generally, government owned property (public property) is exempt from property tax under RCW 84.36.010. Leasehold excise tax is a tax on the use of public property by a private party; this tax is in lieu of the property tax. Entities that lease/use public property are subject to leasehold excise tax.

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Similarly, property owned by a federally recognized Indian tribe and used for essential government services is exempt under RCW 84.36.010. Upon exemption, the parcel's occupant (tribe's tenant) becomes subject to leasehold excise tax. The Department will contact the occupant to determine their responsibility to pay leasehold excise tax.

Q4. What is a payment in lieu of leasehold excise tax (PILT) and when does it apply to tribal property?

A4. Generally, "Payments in Lieu of Taxes" (PILT) are state or federal payments to local governments that help offset losses in property taxes due to non-taxable government-owned lands within their boundaries.

Similarly, property owned by a federally recognized Indian tribe that is exempt from property tax under RCW 84.36.010 is subject to a payment in lieu of leasehold excise tax if:

- The property is used for economic development; and
- There is no taxable leasehold interest; and
- The property is located outside of the tribe's reservation; and
- The property is not otherwise exempt by federal law.

Q5. Is there a simplified way of determining which tribally owned property is eligible for this exemption?

A5. Yes, the following matrix outlines the treatment of tribal property owned in fee on or off a reservation.

Tribal Property Owned in Fee	Inside Reservation	Outside Reservation
Non-Economic Development Property ★ <i>Property owned by the tribe and used to provide an essential government service <u>other than</u> economic development.</i>	Eligible for exemption	Eligible for exemption
Economic Development Property ★ <i>Property owned by the tribe on or before March 1, 2014, and <u>occupied by the tribe</u> for economic development purposes.</i>	Eligible for exemption *Annual renewal required.	Eligible for exemption *PILT agreement is a requirement for exemption. *Annual renewal required.
Economic Development Property ★ <i>Property owned by the tribe on or before March 1, 2014, and <u>occupied by a tenant</u> for economic development purposes.</i>	Eligible for exemption *Upon exemption, non-tribal tenant is subject to LET. *Annual renewal required.	Eligible for exemption *Upon exemption, both tribal and non-tribal tenants are subject to LET. *Annual renewal required.
Economic Development Property ★ <i>Property acquired by the tribe after March 1, 2014 and occupied for economic development purposes</i>	Not eligible for exemption	Not eligible for exemption

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Q6. To be eligible for the property tax exemption, must the tribe have reservation land in Washington?

A6. No, if a tribe is federally recognized and has treaty rights in the state but does not have reservation land, it may apply for this exemption.

Q7. How does a tribe apply for a property tax exemption for property used for essential government services, including economic development properties?

A7. The application for Tribal Property Used to Conduct an Essential Government Service (form number [REV 63 0030e](#)) is available on the Department of Revenue's (Department) website. The form contains complete filing instructions.

Q8. Is there a deadline to submit my application for exemption to the Department?

A8. Yes. The initial application must be filed with the Department on or before October 1 of the prior year. For example, to receive exemption of taxes due and payable in 2015, the tribe must file an exemption application on or before October 1, 2014.

The Department understands that the fully executed documents and agreements needed to file a complete application may at times be difficult for the tribe obtain. As long as the tribe submits a "best effort" application by the filing deadline and provides the missing documents no later than December 31, the Department will consider the application to be filed timely.

Q9. Who determines if the property is used exclusively for an essential government service?

A9. The Department's Property Tax Division processes the property tax exemption application and will work with the tribe to determine that the property is used exclusively for essential government services.

Q10. What is the definition of "economic development?"

A10. Economic development is defined as "commercial activities, including those that facilitate the creation or retention of businesses or jobs, or that improve the standard of living or economic health of tribal communities."

Q11. If a tribe owns property off the reservation but does not yet use it for economic development purposes; does it qualify for an essential government services exemption?

A11. It is important to remember that this exemption is based on use. To qualify for a property tax exemption the tribe must demonstrate that the property is *used exclusively* for essential government services. Each application/property will be reviewed on a case-by-case basis. It is the tribe's responsibility to demonstrate that the property meets the "use" requirements of statute.

Q13. Once my property has been approved for an exemption, how long is the exemption in effect?

A13. Property tax exemptions are granted either for a single year or indefinitely, depending on whether the property is used for economic development. The exempt status of the property was determined using strict criteria involving the use of the property and the ownership of the property at the time of application. The tribe is required to notify the Department within a reasonable amount of time should the property experience a change

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in these areas. Annually in August, the Department sends each tribe a listing of its exempt property. Generally, tribes use this listing to review and report any changes regarding their essential government services properties to the Department.

The exemption for non-economic development essential government services properties is automatically renewed or continued unless the tribe notifies the Department of a change and along with the Department, determines that the property no longer qualifies for the exemption.

The exemption for economic development essential government services properties are not automatically renewed or continued. Tribes must apply each year to continue the exemption of its economic development properties through a *renewal* process. Annually, the Department's Property Tax Division will mail a reminder postcard to the tribe. The postcard contains link to instructions which will guide the tribe in completing the renewal using an online system. Tribes should confirm the Department's Property Tax Division has complete and accurate contact information to ensure the renewal notices are delivered to the correct tribal staff member.

The exemption provided for economic development properties expires January 1, 2022.

Q14. Can my exemption for economic development property be applied retroactively?

A14. No. The exemption took effect on June 12, 2014 and is prospective only.

Q15. Can my exemption on non-economic development property be applied retroactively?

A15. Yes, for a short period of time. It is important to remember that ESHB 1287 introduced a filing deadline for **all** (both non-economic and economic development) essential government services applications. To be exempt from property taxes due and payable in the following year, the tribe must file its application by October 1 of the prior year.

Example: For exemption of taxes due and payable in 2015, the application must be filed no later than October 1, 2014.

The filing deadline imposed by the bill applies to taxes due and payable in 2015 and beyond. Tribes may still apply for and receive a retroactive exemption for taxes due and payable in 2014 and earlier for non-economic development essential government services properties.

Property tax refunds are limited to the current year plus the three previous years calculated from the date the taxes were due; currently and continuing through October 31, 2014 the second half taxes of 2011, plus 2012, 2013 are eligible for a refund. To receive the best retroactive exemption possible, tribes should submit their application for any remaining non-economic development essential government services properties as soon as possible, but no later than October 1, 2014.

Example: A tribe submits an application/declaration for exemption of management forest lands in September 2014 seeking exemption from taxes due and payable in 2015. In the declaration, the tribe shows that the property was acquired in 2012 and immediately used for essential government services. The

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exemption will be granted for the 2013, 2014, 2015 tax years. If the taxes were paid for those two earlier years, the treasurer is authorized to issue a refund.

Q16. Who can I call if I have more questions related to the property tax exemption?

A16. For information on property tax exemptions for tribal property, contact the Property Tax Division at (360) 534-1400.

Department of Revenue contacts for more information:

For information on Property tax exemptions for tribal property used for essential government services, contact the Property Tax Division at (360) 534-1400.

For more information about leasehold excise tax applicability to leasehold interests of tribally owned property, contact the Special Programs Division at (360) 534-1502, Option 4.