

# Special Notice

*Intended audience: Public entities that lease property to private lessees*

**July 2, 2014**

## **Subjecting federally recognized Indian Tribes to the same conditions as state and local governments for property owned exclusively by the tribe**

The 2014 Legislature passed the Engrossed Substitute House Bill (ESHB) 1287 and it took effect as of June 12, 2014. It applies to taxes levied for collection in 2015 and thereafter and expires on January 1, 2022.

### **Under current law**

The state constitution exempts property owned by federal, state, or local governments from property tax obligations. Federal law bars the state from taxing permanent improvements located on real property owned by the United States and held in trust for a tribe. All other real and personal property in the state is subject to property tax, unless specifically exempted by legislature. In RCW 84.36.010, Legislature exempts property exclusively owned in fee status by a federally recognized Indian tribe from property tax, if the property is used exclusively to conduct an essential governmental service. “Essential governmental services” was defined to include tribal administration, public facilities, fire, police, public health, education, sewer, water, environmental and land use, transportation, and utility services.

### **Under the new law**

ESHB 1287 revised RCW 84.36.010 to recognize “economic development” as an essential government service for purposes of qualifying tribally owned property for property tax-exempt status. “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. To qualify property used for economic development, the tribe must have owned the property prior to March 1, 2014. Depending on the location and occupancy of the

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exempted property, the occupant may be subject to leasehold excise tax (LET) or a payment in lieu of leasehold excise tax (PILT).

## Leasehold Excise Tax (LET)

Leasehold excise tax is a tax on the use of public property (government owned) by a private entity; this tax is in lieu of the property tax. Non-governmental entities that lease/use public property are subject to leasehold excise tax. Similarly, parcels owned by a tribal government and occupied by a non-tribal entity are eligible for a property tax exemption. Upon exemption, the parcel's occupant (tribe's tenant) may be subject to leasehold excise tax. The Department of Revenue (Department) will contact the tribe's tenant to determine their responsibility to pay leasehold excise tax.

## Payment In Lieu of Tax (PILT)

ESHB 1287 provides an exemption for tribal property used for essential government service and subjects that property to a PILT, if:

- the property is used exclusively for economic development;
- there is no taxable leasehold interest in the property;
- the property is outside of the tribe's reservation; and
- the property is not otherwise tax exempt under federal law.

The county where the property is located and the tribe must jointly determine the PILT amount through good faith negotiation. In [Charter Counties](#), the charter will prescribe which agency has the authority to negotiate and contract on behalf of the county. For non-charter counties, the county legislative authority will be the agency that negotiates and contracts on behalf of the county, subject to delegation by the agency, if it so chooses.

The PILT amount may not exceed the local portion of the leasehold excise tax that would apply if there were a leasehold interest in the property. The Department may determine the PILT amount, if the tribe and county cannot agree on the terms. The tribe must pay the PILT directly to the county and the county must distribute payment solely to the local taxing districts, including cities, in the same proportion that each district would have shared, if a leasehold excise tax had been levied.

## Essential Government Services Matrix

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

### Application requirement

To qualify in any year for the property tax exemption, a tribe must file an initial application with Department on or before October 1 of the prior year. Applications are available at the Department's website, form number [REV 63 0030](#).

NOTE: For tax-exempt property subject to a PILT, the application must include a declaration from the tribe and county confirming that an agreement has been made on the PILT payment amount.

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## Annual Renewal Requirement

- Annual Renewal - If the exemption is based on use for economic development, the tribe must file an annual renewal on or before October 1 of each year for the exemption to continue.
- Annual Survey - The tribal owner of exempt economic development property may be required to file an annual survey with DOR.

## Questions?

For questions about Leasehold Excise Tax, please call 360-705-6203.