

Native American Property Taxation – Treaty of 1854 Update

The following is the Wisconsin Department of Revenue's (DOR) responses to questions on implementing an August 15, 2022, decision by the United States Court of Appeals for the Seventh Circuit.

The decision relates specifically to the state's authority to impose property tax on land within the Bad River, Lac Courte Oreilles, Lac du Flambeau and Red Cliff reservations created by the 1854 Treaty of La Pointe between the United States and those bands of the Lake Superior Chippewa Indians of Wisconsin. The August decision became final on November 15, 2022, when no appeal was filed with the U.S. Supreme Court.

General

1. What is the impact of the decision?

- Under the decision, the Treaty of 1854 precludes the state from taxing all real property within the Bad River, Lac Courte Oreilles, Lac du Flambeau and Red Cliff reservations if that property is owned by the tribe or by one or more tribal members, regardless of any prior nontribal ownership.
- This reversed prior state practice, which allowed taxation of real property currently owned by a tribe or tribal member, if the property was previously owned by a nontribal member.

2. When do municipalities need to implement the decision?

The decision became final on November 15, 2022, and must now be implemented.

3. Is the municipal clerk required to remove qualifying 1854 Native American real property from the 2022 tax roll?

- Yes. Municipal clerks must follow state law and remove the exempt real property from the 2022 tax roll
- Sec. [70.73\(1m\)](#), Wis. Stats. allows the clerk to correct the 2022 tax roll for palpable errors on the current year (2022) tax roll only. Under sec. [74.33](#), Wis. Stats., it is a palpable error if the tax roll includes property that is exempt by law from taxation. Sec. [70.73\(1m\)](#), Wis. Stats., allows the clerk to complete these corrections AFTER the Board of Review (BOR) has adjourned for the year, and before calculating the property taxes that are due on the parcel.

Qualifying Property

4. What property now qualifies for exemption?

- The court's decision establishes two real property requirements for exemption from property tax – (1) location within the reservation boundaries, (2) current ownership by the tribe or a tribal member
- Location within the following reservation boundaries, see [Tribes of Wisconsin](#):
 - [Bad River](#): 124,655 acres in Ashland and Iron Counties
 - [Lac Courte Oreilles](#): 76,465 acres in Burnett, Sawyer and Washburn Counties
 - [Lac du Flambeau](#): 86,600 acres in Iron and Vilas Counties
 - [Red Cliff](#): 14,541 acres in Bayfield County
- Current ownership – the real property must be owned by:
 - One of the four tribes listed above, **or**
 - A member of one of those four tribes

5. How does a municipality know if a property is exempt under the 1854 Treaty?

- Confirm location within a [reservation boundary](#)
- Confirm qualifying current ownership by reviewing the deed:
 - Ownership by a tribe
 - Ownership by a tribal member – ask for a tribal identification card or contact the tribe to determine if an individual is a current tribal member ([Bad River](#), [Lac Courte Oreilles](#), [Lac du Flambeau](#), [Red Cliff](#))

6. What types of Native American-owned real property are exempt?

Any real property that is located within one of the four reservations and is owned by the tribe or a tribal member is exempt from Wisconsin property tax, without regard to the type of real property under sec. [70.32\(2\)\(a\)](#), Wis. Stats. (ex: residential, commercial, manufacturing, agricultural, undeveloped, agricultural forest, productive forest, or other)

7. If a property has multiple owners, what percentage ownership by a Native American tribe or tribal member is required to qualify the real property as exempt?

Any amount of ownership interest by one of the four tribes or a tribal member exempts the real property.

8. If one spouse is a tribal member, and the real property is held jointly or as marital property, is the real property subject to tax?

No. Any amount of ownership interest by one of the four tribes or a tribal member exempts the real property.

9. Is the land taxable if a tribal member owns a 1% interest in the land so it is owned jointly or as tenants in common?

No. The land is not taxable since one of the owners is a tribal member.

10. Is the real property taxable if owned by a Wisconsin LLC, of which a Tribal member holds 100% ownership interest?

Yes. The 1854 treaty only applies to ownership by the Tribe or Tribal members, not to a state business entity.

11. What if a non-tribal member sells land under a land contract to a tribal member, does the land remain taxable?

The land remains taxable until fulfillment of the land contract and the tribal member becomes the property owner.

12. What if a tribal member from a tribe other than one of these four tribes (ex: Ho-Chunk) owns land within the reservation of one of the four tribes (ex: Bad River)?

- The land is taxable
- The land must be within a [reservation boundary](#) of one of the four tribes and owned by that same tribe or a member of that same tribe ([Bad River](#), [Lac Courte Oreilles](#), [Lac du Flambeau](#), [Red Cliff](#))

13. What if a tribal member from one of four tribes (ex: Red Cliff) owns land within the reservation of another one of the four tribes (ex: Bad River)?

- The land is taxable
- The land must be within a [reservation boundary](#) of one of the four tribes and owned by that same tribe or a member of that same tribe ([Bad River](#), [Lac Courte Oreilles](#), [Lac du Flambeau](#), [Red Cliff](#))

14. What if exempt real property is transferred from a member of one of the four tribes to a non-tribal member with no remaining tribal member ownership interest?

- The annual state property assessment and taxation process applies
- State law (secs. [70.01](#) and [70.10](#), Wis. Stats.), provides for an assessment and lien upon property each January 1. The property, in this case, would become subject to assessment and taxation the next January 1.
- Municipalities will need to monitor property transfers and place property back on the assessment and tax roll if ownership goes to an individual or entity that is not an 1854 Native American tribe or tribal member

Personal Property

15. What is the impact to taxable personal property?

The following summarizes information from the [Wisconsin Property Assessment Manual](#) and does not change with the court's decision:

- Personal property located on land that is not within a reservation and is not held in trust for a tribe or tribal member is taxable, without regard to whether the property is owned by Native Americans or non-Native Americans
- Personal property located within a reservation or on land held in trust for a tribe or tribal member, is:
 - Not subject to tax if the property is owned by a Native American or is an improvement to real estate
 - Subject to tax if the property is owned by a non-Native American and is not an improvement to real estate
- Where personal property is located within a reservation or on land held in trust for a tribe or tribal member, and the property is owned jointly by non-Native Americans and Native Americans, the:
 - Non-Native American owners will be required to pay tax on their proportional interest in the property
 - Native American owner's interest in the property may not be taxed

Property Taxes

16. What if real property transfers to a member of one of the four tribes, and the real property has unpaid real property taxes?

- All unpaid real property taxes must be settled as part of the closing process
- Any real property taxes remaining after closing are not collectible

17. Can municipalities provide real property tax refunds for December 2021 property tax bills, payable in 2022, and additional prior years?

- Only if the claimant timely file a protest under state law (sec. [74.35](#), Wis. Stats.). The law provides an annual process for property owners to contest taxability. The law, in part, requires the property owner to pay the tax timely and file the claim by January 31 of the year that the taxes are due.
- The time to contest December 2021 tax bills payable in 2022 expired on January 31, 2022. Municipalities may only refund taxes paid in 2022 if they were timely protested as of that date.

18. What if a tribe or tribal member wants to pay property tax?

The tribe or tribal member may make a charitable contribution to any government entity, including municipalities.

19. Are any levy adjustments available to a municipality?

No. State law does not provide exceptions to levy limits for exempt property.

20. Will counties continue to provide municipalities with settlement payments for the real properties that were subject to tax and did not pay any tax?

- No. Through the settlement process under sec. [74.29](#), Wis. Stats., counties effectively guarantee that municipalities receive all taxes levied, even if not paid by the taxpayer. The county then may seek to recover any unpaid delinquent property taxes through the tax deed and foreclosure.
- Starting in 2023, this process will no longer continue when real property determined to be exempt is not included in the tax roll. If real property is exempt, there are no taxes due. No real property located within any of the four reservations that is owned by any of the four tribes or by a tribal member is taxable. As a result, there will be no associated settlement payments from the county to the municipality for those properties.
- **Note:** if a municipality does not remove exempt property from the 2022 tax roll, state law (sec. [70.74\(2\)](#), Wis. Stats.) allows the county to charge back illegal or void taxes to the municipality where the property is located in the next apportionment of county taxes.

Managed Forest Land (MFL)

21. What is the impact to property enrolled in a Wisconsin Department of Natural Resources (DNR) forest program (ex: Managed Forest Land-MFL)?

- Generally, land enrolled in a DNR forest program is listed on the tax roll and pays tax at specific rates
- However, if land enrolled in a DNR forest program is located within one of the four reservations and is owned by the tribe or a tribal member, then the land is exempt from Wisconsin property tax and the municipality should remove the land from the 2022 tax roll

Notification to DOR

22. How does the municipality notify DOR when correcting the tax roll after the Board of Review under sec. [70.73\(1m\)](#), Wis. Stats.?

- The municipal assessor provides the value information to DOR on the Municipal Assessment Report (MAR)
- The municipal clerk provides the information to DOR on the Statement of Assessment (SOA)

23. When will the equalized values and apportionment have adjustments for the exempt real property?

- Assessors need to submit MARs to DOR with information on the real property now exempt
- The MAR submissions will be used to calculate corrections for application to 2023 equalized values and 2023 apportionment