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Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the State of Oklahoma.

Dated: November 9, 2017.

**John Tahsuda,**

*Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Acting Assistant Secretary—Indian Affairs.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[189A2100DD/AAKC001030/  
A0A501010.999900]

#### HEARTH Act Approval of Coquille Indian Tribe Ordinance

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** On November 9, 2017, the Bureau of Indian Affairs (BIA) approved the Coquille Indian Tribe leasing regulations under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business site leases without further BIA approval.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW, MS-4642-MIB, Washington, DC 20240, at (202) 208-3615.

#### SUPPLEMENTARY INFORMATION:

##### I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into agricultural and business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Coquille Indian Tribe.

##### II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72,440, 72,447-48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with

equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 465, preempts State and local taxation of permanent improvements on trust land.

*Confederated Tribes of the Chehalis Reservation v. Thurston County*, 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)). Similarly, section 465 preempts state taxation of rent payments by a lessee for leased trust lands, because "tax on the payment of rent is indistinguishable from an impermissible tax on the land." See *Seminole Tribe of Florida v. Stranburg*, No. 14-14524, \*13-\*17, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of "traditional notions of Indian self-government," requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72,447-48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to "allow tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in tribal communities." 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes "flexibility to adapt lease terms to suit [their] business and cultural needs" and to "enable [Tribes] to approve leases quickly and efficiently." *Id.* at 5-6.

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. See *Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024,

2043 (2014) (Sotomayor, J., concurring) (determining that “[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding”). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 2043–44 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA’s surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Coquille Indian Tribe.

Dated: November 9, 2017.

**John Tahsuda,**

*Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.*

**Editorial Note:** This document was received at The Office of the Federal Register on March 23, 2018.

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

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**Land Acquisitions: The Shawnee Tribe**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The Secretary of the Interior made a final agency determination to acquire 102.98 acres, more or less, of land near the City of Guymon, Texas County, Oklahoma, in trust for the Shawnee Tribe for gaming and other purposes on January 19, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, MS–3657, 1849 C Street NW, Washington, DC 20240, telephone (202) 219–4066.

**SUPPLEMENTARY INFORMATION:** This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12(c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

On January 19, 2018, the Secretary of the Interior issued a decision to accept approximately 102.98 acres, more or less, of land near the City of Guymon, Texas County, Oklahoma, (Site) in trust for the Shawnee Tribe (Tribe), under the authority of the Indian Reorganization Act, 25 U.S.C. 5108. The Department previously determined on January 19, 2017, that the Tribe is eligible to conduct gaming on the Site pursuant to Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. 2719(b)(1)(A). On March 3, 2017, the Governor of the State of Oklahoma concurred with the Department’s finding.

The Principal Deputy Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title to the Guymon Site in the name of the United States of America in trust for the Tribe upon fulfillment of Departmental requirements. The 102.98 acres, more or less, are located in Texas County, Oklahoma, and are described as follows:

All that part of the Northwest Quarter (NW/4) of the Southwest Quarter (SW/4) and the South Half (S/2) of the Southwest Quarter (SW/4) lying South of the South Right-of-Way line of U.S. Highway 54 in Section Eleven (11), Township Two (2) North, Range Fourteen (14) East, Cimarron Base and

Meridian, Texas County, Oklahoma, being more particularly described in TRUE NORTH bearings as follows:

Beginning at the Southwest Corner of the SW/4 of said Section 11; thence N 00°18’19” E, a distance of 1,291.19 feet to the intersection between said West line of the SW/4 and the South line of a tract of land as described and filed in Book 983 at Page 434 in the Office of the Texas County Clerk; thence along the South line of said tract as filed in Book 983 at Page 434 for the following seven (7) courses:

1. Thence S 89°36’25” E, a distance of 41.40 feet;
2. Thence N 00°23’35” E, a distance of 8.74 feet;
3. Thence with a curve turning to the Right with an arc length of 81.63 feet, with a radius of 162.00 feet, with a chord bearing of N 14°49’42” E, with a chord length of 80.77 feet;
4. Thence N 29°15’47” E, a distance of 211.01 feet;
5. Thence with a curve turning to the Left with an arc length of 106.48 feet, with a radius of 238.00 feet, with a chord bearing of N 16°26’47” E, with a chord length of 105.59 feet;
6. Thence N 24°40’53” E, a distance of 179.39 feet;
7. Thence N 54°15’23” E, a distance of 1,305.47 feet to a point common with the West line of the NE/4 SW/4; Thence S 00°21’54” W, along the West line of the NE/4 SW/4, a distance of 1,270.87 feet to the Southwest Corner thereof; thence S 89°45’32” E, along the South line of the NE/4 SW/4, a distance of 1,321.40 feet to the Southeast Corner thereof; thence S 00°25’29” W, along the East line of the S/2 SW/4, a distance of 1,323.96 feet to the Southeast Corner thereof; thence N 89°44’49” W, along the South line of the SW/4, a distance of 2,640.03 feet to the True Point of Beginning, having an area of 102.98 Acres, more or less. Basis of Bearings are True North. Said being described by Obert D. Bennett, PLS. No. 1471 on October 6, 2014. Surface Only.

Dated: March 12, 2018.

**John Tahsuda,**

*Principal Deputy Assistant Secretary—Indian Affairs Exercising the Authority of the Assistant Secretary—Indian Affairs.*

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

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**HEARTH Act Approval of Little Traverse Bay Bands of Odawa Indians Business, Agricultural, Residential, Wind and Solar Resource, and Wind Energy Evaluation Leases**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.