



Swinomish Tax Authority

Swinomish Indian Tribal Community

When the Ninth Circuit Court of Appeals ruled that state and local governments could not collect taxes on non-Indian homes and businesses built on trust lands, the Swinomish Indian Tribal Community moved quickly to establish its own tax authority. Paying attention to both tribal and nontribal stakeholders' needs, Swinomish developed a taxation system that provides clarity for reservation homeowners, predictability for the neighboring county, and resources to fund local services. The Swinomish Tax Authority cuts through the complexities and contentiousness that often characterize the allocation of tax jurisdiction in Indian Country.

TAXATION UNCERTAINTY

Located on Fidalgo Island in Puget Sound, 65 miles north of Seattle and across a narrow channel from the town of La Conner, Washington, the Swinomish Indian Tribal Community has a reservation population of approximately 851 Native residents and 2,200 non-Native residents. Swinomish's non-Native residents own homes, a golf course, and a marina. For decades, Skagit County collected property taxes on these assets, even though they were located on leased land subject to Swinomish's authority. While the tribe could levy property taxes, it did not do so in order to avoid creating a double taxation burden for homeowners. Unfortunately, the lack of tribal property tax revenue also meant that various programs and services—beneficial to all who reside within the reservation—were chronically underfunded.

In 2014, in a case colloquially known as “*Great Wolf Lodge*,” the Ninth Circuit Federal Court of Appeals clarified the legal framework for on-reservation taxation. In response, the state of Washington issued a Property Tax Advisory declaring that state and local property taxes could not be imposed on permanent improvements on leased federal trust land. The impact on Skagit County was significant: 942 homes and businesses located on the Swinomish Reservation would be suddenly removed from its property tax rolls. This threatened a financial crisis as the county depended on tax revenue to fund fire protection, the library, public schools, and other off-reservation services. Even more worrisome for county authorities, affected taxpayers could apply for up to three years of refunds—a potential \$6 million liability the county, schools, or library would not be able to finance.

Although the removal of Skagit County taxes removed an obstruction to Swinomish levying its own assessments, the tribal government had no existing tax law, taxation staff, or expertise. Non-tribal homeowners were anxious about the tribe's intentions, and many questioned its ability to develop and manage a property tax system. The legal situation was also uncertain; further litigation was possible and powerful vested interests were aligned against tribal tax jurisdiction. Swinomish needed to create a capable and legitimate system that would be recognized by reservation taxpayers and neighboring governments, and develop a strategy for addressing the uncertainties concerning its right to tax.



A TRIBAL TAX AUTHORITY

Following the court ruling, Swinomish established a special taxation working group—swift action which bore positive results. Less than two months after the state directed counties to remove affected properties from their tax rolls, the Swinomish Senate enacted Swinomish Tribal Code Title 17, Chapter 10, the Interim Trust Improvement Use and Occupancy Tax. This tax regime transition measure retroactively adopted Skagit County’s assessed valuations and tax rates for 2011-2014 so that the back taxes, which affected residents now owed to the tribe, equaled the amounts previously charged and collected by the county.

Swinomish and the county also negotiated an interlocal agreement in which the county was designated as the tribe’s agent for purposes of collecting and distributing the back taxes, and the parties mutually promised to cooperate on taxation. Swinomish encouraged non-Native reservation residents to pay their 2014 taxes to the county rather than to the tribe and fully credited any tax owed for the years 2011-2014 on the condition that taxpayers did not seek a refund from the county. County tax officials shared electronic data on assessments, debts, and delinquencies for relevant properties with the tribe. Interlocal agreements with Fire District 13, the La Conner Regional Library District, and the La Conner School District were yet another productive outcome of the working group’s efforts. Through these agreements, tribal leadership pledged contributions from Swinomish’s general fund to support off-reservation services.

With the immediate crisis averted, the tribe turned to building its own taxation program. Just two months after adopting the Interim Trust Improvement Use and Occupancy Tax to address the crisis in 2014, the Swinomish Senate adopted Swinomish Tribal Code Title 17, Chapter 11, Trust Improvement Use and Occupancy Tax, which established property taxation procedures for 2015 and onward. The tribe also established the Swinomish Tax Authority—a tribal government department that manages valuation, notices, billing, collection, and exemption approvals—and hired its first tax administrator. Dispute resolution mechanisms were also formalized. If taxpayers disagree with an assessment, they can appeal to the tribe’s tax hearing officer, and in the event of further disagreement, the Swinomish Tribal Court can resolve disputes and enforce payments. All revenue generated by the property taxes is deposited directly into the tribe’s general fund. The Swinomish Tax Committee, a committee of the Swinomish Senate, is responsible for guiding taxation policy and setting each year’s tax rates. Innovatively, Swinomish’s 2015 property tax law also provides for a Tribal-Taxpayer Consultation Council, a formal forum through which taxpayer representatives can dialogue with the decisionmakers on the Senate Tax Committee concerning the administration of taxes.

Since its inception, the Swinomish Tax Authority has achieved an annual average tax collection rate of 99.74%, which consistently surpasses the average collection rate for Skagit County. In the transition from the county to tribal tax rolls, only one taxpayer proceeded with a refund request from the county, evidence of the effectiveness of Swinomish’s processes. The tribe’s voluntary, discretionary contributions to neighboring districts under the interlocal agreements successfully



averted budget shortfalls and ensured the continuity of local services. Most importantly, however, reservation property taxes created a predictable revenue stream that Swinomish could direct toward its priorities, such as cultural programming and the protection of natural resources.

TAXATION SOVEREIGNTY

Tax collection is an essential governmental function through which communities raise revenue to fund public services. Although the Swinomish Indian Tribal Community always had the authority to levy taxes, as long as Skagit County was collecting taxes within the reservation borders, the tribe concluded that it was not practical to impose taxes that would result in double taxation. But when the state of Washington issued its taxation advisory, Swinomish was able to promptly and strategically convert these “paper rights” into actual sovereignty. Today, the Swinomish Indian Tribal Community handles every aspect of taxation, including valuation, administration, enforcement, and dispute resolution. Crucially, Swinomish makes tax revenue allocation decisions now and does so in accordance with tribal values and priorities. Property tax revenue helps finance Lushootseed language teachers, habitat restoration, and a variety of cultural activities.

The exercise of real Swinomish property tax jurisdiction represented a significant change in the administration of on-reservation taxation. The tribe carefully built support for its new role among taxpayers. Because most of the affected homeowners were not tribal citizens and could not vote in tribal elections, Swinomish mitigated confusion, disruption, and the possibility of pushback through communication and transparency. It equalized initial rates. It offered credit for taxes paid to the county rather than billing for back taxes and forcing taxpayers to seek county refunds. It emphasized due process for appeals and enhanced dispute resolution provisions beyond what the county had offered. It designed standardized tax bills that clearly showed each taxpayer’s liability and payment schedule. It created a tribal rate system similar to the Skagit County system and minimized increases, incorporating exemptions for elder, veteran, and other taxpayers similar to those of the state, but much easier to understand. And it established the Tribal-Taxpayer Consultation Council to ensure taxpayers could always have a voice in the process. The resulting high level of tax payment compliance attests that taxpayers perceive Swinomish governing institutions as legitimate and effective.

Swinomish’s collaborative approach helped diffuse potential disputes with neighboring jurisdictions. Past relations with Skagit County had sometimes been adversarial, particularly on issues surrounding the protection of salmon habitat. In contrast, the transition from county to tribal taxation proceeded smoothly as officials worked together towards the joint goal of avoiding budget deficits off-reservation and a tax-free zone on reservation. The tribal tax credit arrangement prevented the collapse of county budgets. Interlocal agreements communicated Swinomish’s intent to maintain a cooperative approach and be a reliable partner. The agreements also formalized the neighboring governments’ recognition that tribal taxation is a “necessary, lawful and valid exercise of the tribe’s power, authority and jurisdiction.” New, publicly visible funding relationships emphasize how tribal citizens’ lives intertwine with other local area residents. In the



public schools, for example, Swinomish helped finance roof repairs and paid for bleachers and a school bus; at the new La Conner Swinomish Regional Library, it contributed to construction financing and design elements, including a Swinomish story pole and canoe. Through such actions, the tribe has ensured that all parties have a mutual interest in the success of the Swinomish Tax Authority.

LESSONS

1. Early and consistent investments in creating codes, systems, and processes provide the necessary infrastructure for tribal nations to implement a tax authority.
2. Educating and building relationships with taxpayers and local leaders about sovereignty can result in high compliance rates.
3. Intergovernmental relations can be strengthened through voluntary investments in collective community resources, like the library and fire and school districts.