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Joint Committee on Finance

Paper #710

Supplemental County and Municipal Aid -- Lac Courte Oreilles Federal Court Decision (Shared Revenue and Property Tax Relief -- Direct Aid Payments)

[LFB 2023-25 Budget Summary: Page 579, #5]

CURRENT LAW

In 2022, the U.S. 7th Circuit Court of Appeals ruled in *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin v. Evers* that under the 1854 Treaty of La Pointe, the state of Wisconsin and its political subdivisions are prohibited 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 one of the four Ojibwe tribes or one or more tribal members, regardless of whether the property had been previously owned by a non-tribal member.

DISCUSSION POINTS

1. The 1854 Treaty of La Pointe is a pact between the United States and four Ojibwe bands, and established the Bad River, Lac Courte Oreilles, Lac du Flambeau, and Red Cliff reservations. Among other things, the stated aim of this treaty was to provide a permanent home for the Ojibwe, and the treaty specified that the Ojibwe "shall not be required to remove from the homes hereby set apart for them." In its 2022 decision, the 7th Circuit Court of Appeals found that the treaty forbids the state or its political subdivisions from taxing property that is located on one of the reservations established by the treaty and owned by the tribe or a tribal member, regardless of whether the property had ever been owned by anyone who was not a tribal member. Prior to this decision, such property was only exempt from taxation if had been continuously owned by the tribe or a tribal member since its allotment under the 1854 Treaty. In other words, once property located on one of the reservations established under the treaty was transferred to a non-tribal member, it was then considered taxable, even if that property was later transferred back to the tribe or a tribal member.

2. The basis of the decision of the federal Court of Appeals was the treaty's promise of establishing a permanent home for the Ojibwe. The Court found that this promise was inconsistent with taxation of property on the reservations established under the treaty, as taxation "implies the government's ability to enforce the tax obligation, by liens, foreclosure, and eviction if necessary." As a result, the Court ruled that property located within one of these reservations is only taxable when it is owned by a non-tribal member. If the property is owned by the tribe or a tribal member, it is exempt from taxation, regardless of its past ownership and whether it had been taxable.

3. The result of the decision of the federal Court of Appeals, is that the amount of taxable property in seven towns and five counties that encompass parts of those reservations is reduced, as a portion of property that had previously been taxed is now exempt from taxation. The affected towns and counties are: (a) the Town of Gingles in Ashland County; (b) the Town of Sanborn in Ashland County; (c) the Town of White River in Ashland County; (d) the Town of Russell in Bayfield County; (e) the Town of Sherman in Iron County; (f) the Town of Bass Lake in Sawyer County; (g) the Town of Lac du Flambeau in Vilas County; (h) Ashland County; (i) Bayfield County; (j) Iron County; (k) Sawyer County; and (l) Vilas County. The amount of newly-exempt property for towns within each county equals the total exempt property for the overlying county government that include those towns. Using 2021(22) values, the tables below indicate the Administration's estimates of amount of property that has become exempt from taxation in each town and county as a result of the Court's ruling.

TABLE 1

Estimated Reduction in Taxable Property Values for Towns Within Each County

<u>County</u>	<u>Town</u>	<u>Total Property Value, 2021</u>	<u>Estimated Value of Exempt Property</u>	<u>Percent Reduction in Value</u>
Ashland	Gingles	\$61,659,700	\$12,331,940	20.0%
Ashland	Sanborn	37,509,400	32,000,000	85.3
Ashland	White River	58,662,700	192,000	0.3
Bayfield	Russell	42,220,900	6,333,135	15.0
Iron	Sherman	138,704,600	1,232,000	0.9
Sawyer	Bass Lake	584,702,600	625,000	0.1
Vilas	Lac du Flambeau	1,024,278,600	8,500,000	0.8

TABLE 2

Estimated Reduction in Taxable Property Values Within Each County

<u>County</u>	<u>Total Property Value, 2021</u>	<u>Estimated Value of Exempt Property</u>	<u>Percent Reduction in Value</u>
Ashland	\$1,270,618,600	\$44,523,940	3.5%
Bayfield	2,907,333,700	6,333,135	0.2
Iron	1,031,764,200	1,232,000	0.1
Sawyer	3,991,805,600	625,000	<0.1
Vilas	7,861,557,100	8,500,000	0.1

4. Other overlying taxing jurisdictions would also be impacted by the loss in taxable value. However, similar to county governments, due to the amount of overall value within these taxing jurisdictions, the percentage reduction in taxable value would be less than the municipal governments shown in Table 1. Assembly Bill 43/Senate Bill 70 (AB 43/SB 70) would not provide an aid payment to these other taxing jurisdictions.

5. The total levies that each of these jurisdictions could collect under state law would not be affected by the federal Court of Appeals ruling. However, as mentioned the Court's decision effectively reduced the amount of taxable property for the seven towns and five counties that include parts of the affected reservations. This has resulted in a shift in property taxes to the remaining taxable properties for all taxing jurisdictions within those towns and counties. This shift first occurred for property taxes levied in 2022 and payable in 2023. This occurs as taxing jurisdictions continue to levy the same allowable amount to fund their government, but a smaller number and value of taxable properties are having to pay that levy.

6. As shown in Table 1 above, the Town of Sanborn in Ashland County saw a more dramatic reduction in its taxable property values than any other town or county as a result of the federal Court of Appeals decision. As an example of the property tax shift described earlier, a home owned by a non-tribal member and valued at \$100,000 in the Town of Sanborn would have had a gross tax bill of \$2,043 in 2021(22). If the federal court ruling had been in place that year, the corresponding tax shift would have resulted in an estimated tax bill of \$4,517, or an increase of \$2,474. For the remaining governments shown in in Tables 1 and 2, because the percentage loss in taxable property resulting from the Court's decision is less, the shift in property taxes is less pronounced.

7. Assembly Bill 43/Senate Bill 70 would direct the Department of Administration to estimate the amount of county and municipal property taxes that would have been levied in 2022(23) on any property that became exempt from taxation as a result of the federal Court of Appeals decision in each affected town and county. An aid payment equal to that amount would be provided to each affected county and municipal government in 2023-24. This would effectively hold the local government harmless for the loss in property value and prevent the shift in taxes to remaining taxable properties. Beginning in 2024-25, and each year thereafter, that initial payment would be reduced by 10%, and would be phased out entirely by 2032-33. [Alternative 1]

8. As noted, the estimated amount of property that is currently exempt from local property taxation, as a result of the federal Court's ruling impact the taxes paid by the remaining taxpayers. Further, additional taxable property within the boundaries of the four affected reservations could become tax exempt in the future, if it is purchased by the tribe or a tribal member. The loss of this value would be ongoing, as long as a tribe or tribal member would own the property. In order to continue to mitigate the effect of the Court's decision on property taxes paid by the owners of the remaining taxable property in each municipality or county, the same level of aid provided in the first year could be continued each year rather than phased-out as under AB 43/SB 70. This treatment would be similar to the aid payments the state makes to local taxing jurisdictions for exempt computer property and personal property, both of which continue at same payment amount each year. [Alternative 2]

9. Under AB 43/SB 70, towns and counties could reduce their overall levies by the amount of the aid payment, but would not be required to do so absent a levy limit adjustment. Under current law, the personal property aid payment, which was created post levy limits, is added to a county's or municipality's base levy for the purposes of calculating the allowable levy amount using the change in net new construction each year. Subsequently, these aid payment amounts are subtracted from the allowable levy after that calculation is made. One purpose of this adjustment is to make certain that local governments do not have the benefit of that aid payment and a corresponding levy increase. Another aspect of this adjustment is that the aid payment is added to the prior year levy as though the property had not been exempt, which allows this amount to be used in the calculation of the allowable levy growth each year. Creating a similar adjustment for the recommended aid would treat this aid payment the same as the current personal property tax aid payment for the purposes of levy limits by limiting the allowable growth in levies while allowing the aid amounts to be used in the calculation allowable levy growth each year. [Alternative 3(a)]

10. If the recommendation to phase-out the aid payment over a 10-year period is approved, an additional levy limit adjustment could be provided that would allow the towns and counties to increase their allowable levy by an amount equal to the amount of the annual reduction in aid. This would result in the sum of the allowable levy and aid payment remaining more constant over time as aid is reduced, although a larger share would come from the levy each year. The adjustment would be similar to the current law adjustment for utility aid paid on decommissioned plants, which is also phased-out over time. The adjustment assists local governments in maintaining more stable budgets as aid is phased-out by allowing them to levy for the incremental loss in aid over the phase-out period. However, any levy associated with this adjustment would be paid by the owners of properties that remain taxable. Nonetheless, this adjustment would more effectively hold counties and municipalities harmless in the long term for the loss in taxable property value. [Alternative 3(b)]

11. As indicated above, the exemption of property owned by the tribe or tribal members from taxation stems from the inability to enforce the collection of property taxes through the delinquent property tax procedures outlined under current law. These procedures include the possibility of foreclosure and eviction, which the court ruled is incompatible with the guarantee provided by the 1854 Treaty that the Ojibwe "shall not be required to remove from the homes hereby set apart for them."

12. A concern exists that non-tribal members who own property that is located within one of the four reservations created by the 1854 Treaty, may transfer a portion of the ownership of their property to a tribal member, in order to claim the property tax exemption from taxation. Under current law, co-owners of property are jointly and severally liable for payment of delinquent property taxes. According to staff of the Legislative Council, pursuant to the federal Court of Appeals decision, various authorities have concluded that fractional ownership by a tribal member renders the property exempt from taxation. For example, guidance issued by the Department of Revenue indicates that if a tribal member owns a 1% interest in the property, the property is not taxable and should not be included on the tax roll.

13. The extent to which such fractional transfers of property exist or would occur in the future is not known. If such transfers occur, the taxable value within the affected towns and counties

indicated in the tables above would be further eroded, resulting in additional tax shifts within those jurisdictions.

14. Two current law processes may be utilized by local taxing jurisdictions to recover delinquent property taxes. First, the statutes prescribe a series of procedures that may be undertaken to issue a tax certificate for the delinquency, and issue a tax deed for the property on which the delinquency relates, and ultimately foreclose on the property. Secondly, following the issuance of a tax certificate, a civil action regarding personal liability for the tax delinquency may be commenced against the owners of the property. For co-owned properties, the co-owners are jointly and severally liable for the payments of the amounts that may be collected under the civil action.

15. According to staff of the Legislative Council, in situations where a qualifying tribal member is a fractional owner of a property in a joint tenancy or tenancy in common, it appears the Wisconsin statutes could be amended to specify that tax liability associated with co-owned property rests with the non-tribal member. This would reconcile state statute with the requirements of the federal Court of Appeals ruling, while retaining general taxability of the co-owned property. The Council staff notes that the civil action statute could be amended to specify that qualifying tribal members are exempt from liability, retaining joint and several liability for the non-tribal owners. In addition, the statutes relating to foreclosure of a tax deed could be amended to allow an ownership interest of a qualifying tribal member to survive the foreclosure, and specify that a tribal member may not be removed from the property as a result of the foreclosure. [Alternative 4 (a) and/or (b)]

16. The decision of the federal Court of Appeals became final in November, 2022, and was effective immediately. As a result, 2022(23) property taxes were not able to be levied on properties that became exempt from taxation following the Court of Appeals' decision, and were instead levied only on those properties that remained taxable. While some additional property may become tax exempt in future years, any future shift in property taxes will not likely be as significant as the property tax shift that has already occurred. [Alternative 5]

ALTERNATIVES

1. Provide \$578,000 GPR in 2023-24 and \$520,200 GPR in 2024-25 and create a sum certain appropriation to provide payments to the towns and counties that experienced a reduction in taxable values following the 2022 decision of the federal Court of Appeals. Direct the Department of Administration to calculate the amount of property tax revenue that would have been collected by each affected town and county on the property if it had not become exempt, and provide a payment in 2023-24 equal to that amount. Specify that the payment provided in 2024-25 and each year thereafter would be reduced by 10% annually.

ALT 1	Change to Base
GPR	\$1,098,200

2. Provide \$578,000 GPR annually and create a sum certain appropriation to provide payments to the towns and counties that experienced a reduction in taxable values following the 2022

decision of the federal Court of Appeals. Direct the Department of Administration to calculate the amount of property tax revenue that would have been collected by each affected town and county on the property if it had not become exempt, and provide a payment in 2023-24 and each year thereafter equal to that amount [no payment phase-out would occur].

ALT 2	Change to Base
GPR	\$1,156,000

3. Adopt one or both of the following:

a. Create a levy limit adjustment associated with the aid payment that specifies that for the purpose of calculating the county or municipal allowable levy, the base levy would be set equal to the sum of the prior year levy and the amount of this aid payment. Further, require counties and municipalities that receive this aid payment to also subtract the amount received from the newly-created appropriation from their calculated levies in order to determine their allowable levies.

b. If the phase-out of the aid payment is approved, create a levy limit adjustment associated with the aid payment to allow counties and municipalities to increase their base levy by the amount of the reduction in their annual payment that is phased out each year, for the purposes of calculating their allowable levy.

4. Specify one or both of the following:

a. that any member of the Ojibwe tribe that is party to the 1854 Treaty of La Pointe would be exempt from liability under civil action for the collection of any delinquent property tax, if that tribal member co-owns property within one of the reservations created under that Treaty with individuals who are not tribal members and that joint and several liability for collection of delinquent property tax is retained for the co-owners of the property who are not tribal members;

b. that the ownership interest of a qualifying tribal member would survive any foreclosure on a given property that is within one of the reservations created under the 1854 Treaty, and that an owner who is a qualifying tribal member may not be removed from such property as a result of foreclosure.

5. Take no action.

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