

TAXING ENTITY	INDIVIDUALS/GROUPS TAXED	FEDERAL LAW	MAINE (MICA/MIA)	TASK FORCE RECOMMENDATIONS
Tribe	<i>Tribes and tribal members</i>	Tribes have inherent authority to impose taxes within their jurisdiction, and this authority is strongest for taxation of members	<p>The Penobscot Nation and the Passamaquoddy Tribe can enact and collect taxes as any other municipality of the State within their respective Indian territories. MIA, § 6206(1).</p> <p>The Maliseet Band does not have the powers or privileges of a municipality. MIA, § 6206-A.</p>	
	<i>Non-tribal members</i>	<p>Tribes have authority to impose taxes on non-Indians within their jurisdiction, provided that one of the following criteria from <i>Montana v. United States</i>, 450 U.S. 544 (1981), is satisfied:</p> <ul style="list-style-type: none"> • The tribe is taxing an activity of a non-member who has entered into a consensual relationship with the tribe or its members through commercial dealings, contracts, leases, or other arrangements. • The activity of the nonmember threatens or has some direct effect on the tribe’s political integrity, economic security, or health and welfare of the tribe. 	<p>The Penobscot Nation and the Passamaquoddy Tribe can enact and collect taxes as any other municipality of the State within their respective Indian territories. MIA, § 6206(1).</p> <p>The Maliseet Band does not have the powers or privileges of a municipality, MIA, § 6206-A.</p>	
State	<i>Tribes and tribal members</i>	<u>Tribal land</u>	With certain exceptions, the Maine tribes and their members (and all other tribes and	

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		<p>Categorically, States are not permitted to tax tribes or tribal members for activities on tribal land or property located within or on tribal land. This applies to sales tax, income tax, and property tax.¹ Determining whether the tax is categorically barred depends on the legal incidence of taxation (not the economic incidence).² When the legal incidence of the state tax falls on the tribe or its members, it is invalid.³</p> <p><u>Non-tribal land</u></p> <p>States may tax activities and lands of tribes and tribal members wholly outside of Indian country.⁴ Income earned by tribes and tribal members outside of Indian country is subject to tax.</p>	<p>their members) are “liable for payment of all other taxes and fees to the same extent as any other person or entity in the State.” MIA, § 6208(3).</p> <ul style="list-style-type: none"> • When the Penobscot Nation and the Passamaquoddy Tribes act in their business capacity (and not governmental capacity), they are “deemed to be a business corporation organized under the laws of the State and shall be taxed as such.” MIA, § 6208(3). • When the Penobscot Nation and Passamaquoddy Tribe act in their governmental capacity, they are treated as exempt from all taxes as another municipality would be. MIA, § 6206(1). • The Maliseets do not have the powers or privileges of a municipality. <p><u>Property taxes:</u></p> <ul style="list-style-type: none"> • The Penobscot Nation and Passamaquoddy Tribe shall make 	
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¹ *Cohen’s Handbook of Federal Indian Law*, §8.03[1][b] at pg. 697 (Neil Jessup Newton ed., 2012) (collecting cases finding immunity for tribes and tribal members in Indian country from state sales taxes, fuel taxes, vehicle registration excise taxes and registration fees, net income taxes, person property taxes, real property taxes, cigarette excise taxes, license fees, etc.).

² *Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450, 458 (1995); *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 482 (1976). The legal incidence test provides clarity for tax administrators. Express statutory language identifying the taxed party generally is dispositive. *Chickasaw Nation*, 515 U.S. at 461; cf. 36 M.R.S.A. § 1753 (2010) (“The [sales] tax imposed by this Part is declared to be a levy on the consumer.”). Absent express language, “the question is one of ‘fair interpretation of the taxing statute as written and applied.’” *Chickasaw Nation*, 515 U.S. at 461 (quoting *Cal. Bd. of Equalization v. Chemehuevi Tribe*, 474 U.S. 9, 11 (1985) (per curiam)).

Oklahoma Tax Comm’n v., 115 S. Ct. 2214, 2221, 132 L. Ed. 2d 400 (1995) and the first step in determining legal incidence is whether the statute

³ *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 475–481 (1976) (Montana’s cigarette sales tax imposed on retail consumers could not be applied to on-reservation retail sales to tribal members).

⁴ *Cohen’s Handbook of Federal Indian Law*, §8.03[1][b] at pg. 699 (Neil Jessup Newton ed., 2012); *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 150 (1973) (upholding income tax on tribe for income earned from off-reservation ski resort).

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		<p><u>Tribal and Non-tribal land</u></p> <p>When the activity taxed falls within and without of Indian country, the taxes must be prorated in order to be valid.</p> <ul style="list-style-type: none"> • Taxes on income earned inside and outside of Indian country by tribal members residing in Indian country must be prorated so that only income earned outside Indian country is taxed. • Taxes on income earned inside Indian country by tribal members residing outside of Indian country are valid.⁵ • Generally, State vehicle excise taxes and registration fees cannot be imposed on tribal members living on tribal land even if the vehicle will be used off tribal land. The residence of the vehicle owner controls. 	<p>payments in lieu of taxes (PILOTs) “on all real and personal property within their respective Indian territory [(defined by MIA, §§ 6205(1), (2))] in an amount equal to that which would otherwise be imposed by a county, a district, or State, or other taxing authority.” MIA, § 6208(2).</p> <ul style="list-style-type: none"> ○ Real or personal property used by Penobscot Nation and Passamaquoddy Tribe in their governmental capacity, is exempt from taxation to same extent as property owned by a municipality. MIA, §§ 6206(1), 6208(2). • The Maliseet Band shall make PILOTS on “Houlton Band Trust Land [(defined by MIA, § 6203(2))] in an amount equal to that which would otherwise be imposed by a county, a district, or State, or other taxing authority.” MIA, § 6208(2). No property is exempt. MIA, § 6206-A. <p><u>Miscellaneous state tax provisions affecting tribes</u></p> <ul style="list-style-type: none"> • 36 M.R.S.A. § 1504: excise taxes on watercraft owned by residents of Indian reservations paid to the tribal clerks • 36 M.R.S.A. § 1605: provision to return property taxes assessed on out parcels in Indian Township to the 	
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⁵ *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 462–63 (1995) (applying general rule that a State “may tax all the income of its residents, even income earned outside the taxing jurisdiction,” including income earned in Indian country).

			<p>Tribe from the Unorganized Territory Education and Services Fund.</p> <ul style="list-style-type: none"> • 36 M.R.S.A. § 1815: provision to return a portion of sales tax collected on Passamaquoddy reservation to the Tribe. 	
	<i>Non-tribal citizens</i>	<p><u>Tribal lands</u></p> <p>State taxes where the legal incidence of taxation falls on nonmembers in Indian country are valid unless preempted by federal law or if the state tax would interfere with the tribe’s ability to exercise its sovereign functions.⁶</p> <ul style="list-style-type: none"> • Preemption is not simply whether the activity is expressly prohibited, but requires examination of “relevant federal treaties and statutes in terms of both the broad policies that underlie them and the notions of sovereignty that have developed from historical traditions of tribal independence.” <i>Bracker</i>, 448 U.S. at 144-45. • “This inquiry is not dependent on mechanical or absolute conceptions of state or tribal sovereignty, but has called for a particularized inquiry into 	<p>The State’s power to tax non-tribal citizens is not affected by MIA or MICSA.</p>	

⁶ *Cohen’s Handbook of Federal Indian Law*, §8.03[1][d] at pg. 706 (Neil Jessup Newton ed., 2012); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980).

		<p>the nature of the state, federal and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law.” <i>Id.</i></p> <ul style="list-style-type: none">• Factors considered include extent of federal regulation, regulatory and revenue raising interest of the tribe and the State, and provision of services.⁷• The State should have a specific, legitimate regulatory interest in the activity taxed.		
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⁷ *Cohen’s Handbook of Federal Indian Law*, § 8.03[1][d] at pg. 707 (Neil Jessup Newton ed., 2012),