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Gavel to Gavel: Tribal severance taxes in Oklahoma

By: William Stringer GableGotwals January 15, 2025



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With the dust settling in Oklahoma from the landmark *McGirt* decision, an issue that involves the state budget, Tribal governments, and powerful hydrocarbon producers has been given new life – tribal severance taxes.

As sovereigns, Tribal governments are given broad powers to regulate and govern conduct carried out in Indian Country, by both tribal and non-tribal members, subject only to the overriding power of the federal government. Practically speaking, this means that Tribal governments can create regulatory schemes and levy severance taxes on oil and gas producers operating on Tribal land. These severance taxes provide important revenue to Tribes, particularly those located in rural areas where other enterprises, such as gaming, are more difficult to scale.

Each Tribe takes a different approach to severance taxes, and each Tribal tax code is unique. Some place the tax burden directly on lessees, whereas others deputize the operator to collect and remit taxes on behalf of the lessees. The tax rate often mirrors the rate enacted by the state, but not always. Every Tribal tax commission is also distinct with its own procedures, methods, and approach.

The power of Tribes to enact severance taxes can often lead to conflict with state governments, which typically have their own taxation regime that overlaps geographically with the Tribal taxation regime. In addition to the desire for revenue, states typically also strive for a consistent regulatory and tax burden throughout the territorial boundaries of the state.

While each case is unique, Congress has generally not preempted state taxation of oil and gas leases in Indian Country, and therefore, producers have been left to navigate both state and Tribal tax regimes covering the same lessees, leading to dual taxation. Some states and tribes have addressed dual taxation with tax compacts, in which each sovereign agrees to work together, often by each reducing their tax rate, in order to lower the overall tax burden on Tribal land and attract economic investment. Other states have enacted statutory regimes that exempt interests subject to tribal severance taxes from the state regime or taxed such interests at a reduced rate.

It remains to be seen how this issue will be resolved in Oklahoma, but all parties are eager for a solution.

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