

Date of Hearing: April 7, 2025

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION

Mike Gipson, Chair

AB 1485 (Macedo) – As Amended April 1, 2025

Majority vote. Tax levy. Fiscal committee.

SUBJECT: Real property tax: documentary transfer tax: exemptions: Native American tribes

SUMMARY: Provides that certain uses of property by a federally recognized Indian tribe, as defined, are exempt from taxation, and provides that certain transfers of property to a "California Native American tribe" are exempt from the documentary transfer tax. Specifically, **this bill:**

- 1) Provides that property owned by a federally recognized Indian tribe, or a subsidiary the tribe wholly owns, and used exclusively for the preservation of natural resources or open space lands, as provided, qualifies under the welfare exemption.
- 2) Prohibits application of the restriction on the aggregate amount of welfare exempt conservation land, with certain exceptions, to a federally recognized Indian tribe, or its wholly owned subsidiary.
- 3) Exempts a "tribal land return transaction" from any documentary transfer tax.
- 4) Defines "tribal land return transaction" as a land return acquisition that transfers ownership of land to a federally recognized tribe in fee simple, is not federal trust land pursuant to Section 1151 of title 18 of the United States Code, and that includes restrictive covenants that prohibit the tribe from engaging in commercial activities on the land, and restricts the uses to cultural, educational, recreational, or conservation purposes.
- 5) Requires the reimbursement of local agencies and school districts if the Commission on State Mandates determines that this bill contains costs mandated by the state.
- 6) Takes immediate effect as a tax levy.

EXISTING FEDERAL LAW provides that land taken in trust for a Native American tribe or individual Native American shall be exempt from State and local taxation. (United States Code, Title 25, Section 5108.)

EXISTING STATE LAW:

- 1) Provides that all property is taxable unless otherwise provided by the California Constitution or the laws of the United States. (California Constitution, Article XIII, Section 1.)
- 2) Authorizes the Legislature to partially or fully exempt property used for certain purposes, including charitable purposes, owned by a nonprofit organization organized and operated for those certain purposes if no part of the organization's earnings inure to the benefit of any

private shareholder or individual. (California Constitution, Article XIII, Section 4.) Properties with buildings under construction, land required for convenient use of the buildings, and equipment in the buildings qualify for the exemption. (California Constitution, Article XIII, Section 5.) Existing statute implements this authorization by requiring that eligible property is irrevocably dedicated, and used, for the exempt purpose, and that property is used in an amount reasonably necessary to accomplish the exempt purpose. This exemption is commonly referred to as the "welfare exemption." (Revenue and Taxation Code (R&TC) Section 214(a).)

- 3) Provides that property is eligible for the welfare exemption if that property:
- a) Is used exclusively for the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific or educational interest, or open-space lands used solely for recreation and the enjoyment of scenic beauty;
 - b) Is open to the general public, as restricted, and is owned and operated by a scientific or charitable fund, foundation, limited liability company, or corporation, the primary interest of which is to preserve those natural areas; and,
 - c) Complies with existing law governing the welfare exemption.

An organization is limited to a maximum of 30,000 aggregate exempt acres under this exemption, unless the nonprofit organization holding the property is fully independent, as prescribed, from the owner of any taxable real property that is adjacent to the property otherwise eligible for this exemption. (R&TC Section 214.02)

- 4) Authorizes, under the Documentary Transfer Tax Act (DTTA), the board of supervisors of any county or city and county to enact an ordinance imposing a \$0.55 tax for each \$500 of value of a property that is transferred through a deed, instrument, or other writing transferring real property within the county. Cities may also impose a tax under the DTTA at \$0.275 for each \$500 of value. The total value of the property transferred must exceed \$100 to be subject to the tax. (R&TC Section 11911.)

FISCAL EFFECT: A revenue estimate by the State Board of Equalization is pending, but Committee Staff notes that this bill likely results in a revenue loss in excess of this Committee's Suspense File threshold.

COMMENTS:

- 1) The author has submitted the following statement in support of this bill:

Supporting the preservation of Indian ancestral lands is important to California's rich history. AB 1485 is a step in the right direction to ensure that federally recognized Indian tribes receive the same property tax exemptions as other entities engaged in conservation efforts. This bill removes financial barriers that currently make it more difficult for tribes to reclaim ancestral lands for cultural, educational, and conservation purposes. AB 1485 strengthens California's commitment to tribal sovereignty and environmental preservation.

2) Committee Staff Comments:

- a) *"Manifest destiny" and its origin:* Throughout the 19th Century, the relationship between Native American tribes and various jurisdictions of the United States was openly hostile. Spurred on by the concept of "manifest destiny," or the dogmatic belief that the United States and its citizens were manifestly destined to expand across North America, settlers began migrating westward in an effort to realize this belief. Manifest destiny, however, sprang from an earlier legal doctrine first carried to the Americas by European colonial settlers. The "Doctrine of Discovery" was a set of international legal principles that, in essence, automatically granted property rights in native lands to Europeans as they settled. On what could be described as a "first-come, first-serve" basis, Europeans arriving in and settling an area granted those settlers governmental, political, and commercial rights over the land and its indigenous inhabitants, without those inhabitants' consent. Thus, the physical acts of planting a flag or setting up boundary markers to delineate a plot were not simply symbolic or practical; those acts held legal weight. In fact, the "doctrine of discovery" remains international law to this day¹.
- b) *Taxation of tribes:* Pursuant to the Commerce Clause in Article 1, Section 8, Clause 3 of the United States Constitution, Congress is vested with the power "to regulate commerce with foreign nations, among states, and with the Indian tribes." Thus, states generally do not have jurisdiction to tax tribal land on reservations. Additionally, existing law exempts from taxation lands held in trust by the United States for the benefit of a Native American tribe or individual Native Americans. Generally, however, Indian lands not held in trust or not on a reservation are not exempt from taxation. Ruling in favor of the defendants, the United States Court of Appeals for the Ninth Circuit affirmed the lower court's ruling that the *ad valorem* real and personal property taxes imposed on an off-reservation property were constitutional, if the taxes were nondiscriminatory².
- c) *California acts to redress historical inequities:* In 2020, the Governor signed Executive Order N-82-20, which directed certain agencies to partner with various entities, including California tribes, to combat the biodiversity and climate crises. Subsequently, the Legislature enacted SB 101 (Committee on Budget and Fiscal Review), Chapter 12, Statutes of 2023, which directed the California Natural Resources Agency (CNRA) to develop a Tribal Nature-Based Solutions program, and appropriated \$41 million across the CNRA and the California Conservation Corps for the purpose of supporting tribal programs and activities that promote conservancy. Last year, the Legislature appropriated an additional \$10 million for the Tribal Nature-Based Solutions Program by authorizing SB 867 (Allen), Chapter 83, Statutes of 2024. These appropriations augmented a separate allocation to the CNRA of \$175 million across fiscal years 2022-23 and 2023-24 to support nature-based conservancy solutions generally. As a result, the CNRA has announced nearly \$108 million available to fund 33 projects and support the return of approximately 39,000 acres of land to California Native American tribes.
- d) *DTTA:* A county board of supervisors is authorized to, by ordinance, impose a tax on each document that transfers real property within a county. The tax is limited to a rate of

¹ Miller, *American Indians, the Doctrine of Discovery, and Manifest Destiny*, Wyoming Law Review: Vol. 11: No. 2, article 2.

² *Salt River Pima-Maricopa Indian Community v. Yavapai County*, 50 F.3d 739 (9th Cir. 1995).

\$0.55 for each \$500 of property transferred if the price of the transferred property exceeds \$100. Statute provides for a number of exemptions to the DTTA, including documents to secure debt, documents transferring assets in bankruptcy, and documents transferring community property, among others.

- e) *This bill:* As currently drafted, this bill makes two changes to existing law. The first adds a federally recognized Indian tribe, or its wholly owned subsidiary, to the list of entities eligible for the welfare exemption on property used for conservation purposes, and exempts those entities from the aggregate acreage restriction that an entity may exempt under the conservation welfare exemption. The second exempts any tribal land return transaction from the DTTA.

The author intends for this bill to promote the general redress of historical inequities currently ongoing with the CNRA's land returns under the Tribal Nature-Based Solutions Program by exempting these transfers from property taxation and documentary transfer taxes. The existing property tax exemption for conservation of open space lands rests within the welfare exemption. The welfare exemption requires that, in order for a property to qualify, that property must meet certain criteria, including that the property be used exclusively for the exempt purpose, that the property is owned by a qualifying nonprofit, and that no private benefit inure to any person. Thus, it is unclear whether simply adding a federally recognized Indian tribe, or its wholly owned subsidiary, would qualify under the general provisions of the welfare exemption even if the transferred property otherwise complies with the requirements of the welfare exemption.

- f) *Committee's tax expenditure policy:* SB 1335 (Leno), Chapter 845, Statutes of 2014, added R&TC Section 41, which recognized that the Legislature should apply the same level of review used for government spending programs to tax credits introduced on or after January 1, 2015. AB 263 (Burke), Chapter 743, Statutes of 2019, extended the requirements in R&TC Section 41 to all tax expenditure measures under the Personal Income Tax Law, the Corporation Tax Law, and the Sales and Use Tax Law introduced on or after January 1, 2020. While existing statute does not require that property tax expenditures be subject to the same treatment, this Committee's policy requires application of R&TC Section 41 to property tax expenditures. A tax expenditure proposal must outline specific goals, purposes, and objectives that the tax expenditure will achieve, along with detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets those stated goals, purposes, and objectives. In addition to the R&TC Section 41 requirements, this Committee's policy also requires that all tax expenditure proposals contain an appropriate sunset provision to be eligible for a vote³. Sunsets are required because eliminating a tax expenditure generally requires a 2/3 vote. These requirements must be satisfied before a bill can receive a vote in this Committee. This bill does not comply with either requirement.
- g) *Previous legislation:* SB 155 (Committee on Budget and Fiscal Review), Chapter 258, Statutes of 2021, allocated \$175 million to CNRA for the purposes of developing nature-based conservancy programs.

³ An "appropriate sunset provision" shall mean five years, except in the case of a tax expenditure measure providing relief to California veterans, in which case "appropriate sunset provision" shall mean 10 years.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: Harrison Bowlby / REV. & TAX. / (916) 319-2098