County can tax Great Wolf Lodge

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Thurston County can assess and collect property taxes on Great Wolf Lodge, a federal judge ruled Friday in a decision that could have ramifications for future joint development projects between tribes and nontribal companies.

The 15-page decision by U.S. District Judge Benjamin Settle dismisses a lawsuit filed by the Chehalis Indian Tribe to stop efforts by the county to tax it. The tribe holds a 51 percent interest in the joint venture that owns the hotel and indoor water park.

Settle concluded that the state’s interest in taxing the improvements outweighs the federal and tribal interest in pre-empting such taxation in Indian Country.

In 2005, the Chehalis Indian Tribe and Great Wolf Resorts Inc., a publicly traded company, formed CTGW LLC under Delaware law to develop and operate the lodge. The tribe leases its tribal land to CTGW. The lodge is on a 43-acre parcel between Interstate 5 and Old Highway 99 in South Thurston County.

The property is exempt from property taxes because it’s tribal land, but there has been disagreement about whether the improvements on the property are subject to taxes. The tribe sued the county in September 2008, after Costello moved to tax the improvements.

The federal government has no significant regulatory role over the lodge aside from the approval of the lease by the Bureau of Indian Affairs and a single federal health inspection, Settle wrote.

He wrote that the tribe doesn’t have direct ownership interest in the improvements owned by CTGW, a non-Indian entity, and the majority of the funding for its development came from nontribal and nonfederal sources.

He also wrote that the tribe has limited day-to-day control of its operation.

He rejected the tribe’s argument that paying the tax would impair its interest in economic self-sufficiency and its ability to decrease its reliance on federal funding to provide essential services.
Settle wrote that he found scant evidence that would happen and cited a decision in another case that noted, “It is clear that a state tax is not invalid merely because it erodes a tribe’s revenues, even when the tax substantially impairs the tribal government’s ability to sustain itself and its programs.”

Settle agreed that the local government services paid for by the property taxes weigh heavily against pre-emption.

“Although some services supported by the instant tax are provided to, but arguably not used by, the Tribe, this fact does not dictate pre-emption of the taxes because the federal and tribal interests in this case are relatively weak and it would be inappropriate to require such narrow tailoring of the county taxes to the county service,” he wrote.

The lodge is estimated to generate about $1 million a year in property taxes. Costello has argued exempting Great Wolf Lodge would shift the tax burden to other property owners.

The case appears to be the first of its kind and could significantly affect the feasibility of future joint projects between tribes and nontribal companies.

Indian tribes are looking to expand their economies beyond casinos. The tribe’s lawyer has argued during oral arguments last month that it’s difficult for small tribes such as the Chehalis to develop these projects without bringing in a partner with expertise and significant financial resources.

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