



TRIBAL GOVERNMENTAL BUSINESS LAW 2014 SCHEDULE

Day One - Wednesday, June 25, 2014

Session 1 – 8:50-Noon

Labor and Employment Law: Strategies for Preventing and Handling Problems in the Workplace

PowerPoint Handouts

In the 12 years since the Tenth Circuit Court of Appeals ruled in *N.L.R.B. v. Pueblo of San Juan* that the National Labor Relations Act (NLRA) does not apply to Indian tribes, the NLRB has continued to assert the applicability of the Act to tribes and achieved a significant victory in 2007 in the D.C. Circuit in *San Manuel Indian Bingo & Casino v. N.L.R.B.*. Following the San Manuel decision, the NLRB initiated litigation against a number of tribes in an effort to expand its reach. At the same time, tribes have been rapidly expanding and diversifying their business activity in order to improve their economies. Today, Tribal businesses, including gaming operations, employ upwards of a million people.

The NLRA is just one of many national laws dealing with employer and employee issues in which the applicability to tribes is an issue. Others include: the Americans with Disabilities Act (ADA); Family Medical Leave Act (FMLA); Occupational Safety and Health Act (OSHA); Fair Labor Standards Act (FLSA); the equal employment laws administered by the Equal Employment Opportunity Commission (EEOC). This session will provide participants with strategies and suggestions for preventing problems under these federal laws and resolving issues when they do arise.

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| 8:15 a.m. | Registration opens (coffee service) |
| 8:50 a.m. | Program Overview and Introduction – Eric Eberhard, Seattle University School of Law |
| 9:00 a.m. | <u>Labor and Employment Law: Strategies for Preventing and Handling Problems in the Workplace</u> - Michael Droke and Aaron Goldstein – Dorsey & Whitney LLP, Seattle, Washington |
| 10:15 a.m. | BREAK |
| 10:30 a.m. | <u>Labor and Employment Law: Strategies for Preventing and Handling Problems in the Workplace</u> - Michael Droke and Aaron Goldstein – Dorsey & Whitney LLP, Seattle, Washington |
| Noon | LUNCH (on your own) |

TRIBAL GOVERNMENTAL BUSINESS LAW 2014 SCHEDULE

Day One - Wednesday, June 25, 2014

Session 2 – 1:20-4:30 p.m.

The Supreme Court's Barriers to Land Acquisition

Greene PowerPoint Handouts

Collins PowerPoint Handouts

In 2009 and 2011 the Supreme Court issued opinions in *Carcieri v. Salazar* and *Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians v. Patchak* which have created significant uncertainty and imposed barriers to tribal efforts to place land in trust for economic development purposes. The Court's barriers were never intended by the Congress when it authorized the Secretary of the Interior to acquire land in trust for the tribes. This year the Court's decision in *Michigan v. Bay Mills* is widely anticipated to result in a diminishment of tribal sovereign immunity and continue the Court's steady erosion of the authority of tribes to govern their homelands and develop their economies. This session will explore the Court's direction in Indian law and assess the implications for tribes in the years ahead.

- 1:20 p.m. Introduction – Eric Eberhard – Seattle University School of Law
- 1:30 p.m. The Supreme Court's Barriers to Land Acquisition – Bruce R. Greene – Bruce R. Greene & Associates LLC, Boulder, Colorado & Professor Richard Collins, University of Colorado School of Law
- 2:45 p.m. BREAK
- 3:00 p.m. The Supreme Court's Barriers to Land Acquisition – Bruce R. Greene – Bruce R. Greene & Associates LLC, Boulder, Colorado & Professor Richard Collins, University of Colorado School of Law
- 4:30 p.m. End of Session
- End of Day One**

TRIBAL GOVERNMENTAL BUSINESS LAW 2014 SCHEDULE

Day Two - Thursday, June 26, 2014

Session 3 – 8:50-Noon

New Directions and Opportunities in Energy Development

O'Connell PowerPoint Handouts
Hovenkotter PowerPoint Handouts
Arnett PowerPoint Handouts

This session will cover the legal framework for the development of Energy Resources by Indian tribes, including business structures, financing considerations, deal points and the long term goals of the tribes together with case studies of the acquisition of the Kerr Hydroelectric Project by the Confederated Salish and Kootenai Tribes and a significant interest in the Pelton Round Butte Hydro Project on the Deschutes River by the Warm Springs Tribes.

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| 8:15 a.m. | On-site registration opens (coffee service) |
| 8:50 a.m. | Program Overview and Introduction – Eric Eberhard
Seattle University School of Law |
| 9:00 a.m. | <u>New Directions and Opportunities in Energy Development – The Legal Framework in Agreements for the Development of Tribal Energy Resources</u> – Michael O'Connell – Stoel Rives, Seattle, Washington |
| 10:15 a.m. | BREAK |
| 10:30 a.m. | <u>A Case Study in the Kerr Hydroelectric Project and the Pelton Round Buttes Hydro Project</u> – Joe Hovenkotter, General Counsel, Energy Keepers, Inc., Polson, Montana and Howard Arnett, Karnopp Petersen LLP, Bend, Oregon |
| Noon | LUNCH (on your own) |

TRIBAL GOVERNMENTAL BUSINESS LAW 2014 SCHEDULE

Day Two - Thursday, June 26, 2014

Session 4 – 1:20-4:30 p.m.

Internet Gaming: Peril and Promise in Cyberspace

PowerPoint Handouts

Articles

- Memorandum Opinion for the Assistant Attorney General, Criminal Division: Whether Proposals By Illinois And New York To Use The Internet And Out-Of-State Transaction Processors To Sell Lottery Tickets To In-State Adults Violate The Wire Act
- Game On for Internet Gambling: With Federal Approval, States Line Up to Place Their Bets

Indian tribes have enjoyed a significant measure of success in the area of casino gaming. Today, Indian gaming is a \$27 billion dollar a year industry. Indian gaming facilities are operated by 237 tribes in 28 states and employ over 600,000 people. Since the enactment of the Indian Gaming Regulatory Act in 1988, Tribes have borrowed and invested billions of dollars in land, gaming facilities, hotels, entertainment venues and convention facilities. The combined gross revenue from all of those facilities exceeds \$30 billion dollars annually. It is estimated that the tribes engaged in gaming generate about \$9 billion annually in federal tax payments and savings on federal social safety net programs and services and another \$2.4 billion in state taxes and revenue sharing payments.

In recent years there has been a surge of interest in Internet gaming around the world. Gambling on the Internet is now legal in over 80 countries and generates over \$30 billion a year in revenues, including about \$6 billion from the United States, in spite of the limitations on such activity under the Unlawful Internet Gaming Enforcement Act (UIGEA) 31 U.S.C. §§ 5361 et seq. During 2011, the U.S. Department of Justice issued an opinion interpreting the scope of the Wire Act (18 U.S.C. § 1084) and UIGEA which concluded that the Wire Act only applies to sports betting that is illegal under state law. The opinion had the effect of eliminating one of the primary barriers to intrastate Internet gaming. As a result several states have either initiated Internet gaming or are in the process of doing so and the manufacturers of gaming devices and technology have begun to make a major investment in the hardware and software necessary for Internet gaming in the United States. In February of this year, Nevada and Delaware entered into an agreement to facilitate interstate Internet gaming. Meanwhile financial institutions have been reluctant to process online gaming payments which may be the cause for lower than expected gaming revenue in New Jersey.

For the last five years the Congress has considered various legislative proposals to regulate Internet gaming. The Indian Gaming Regulatory Act requires all tribal gaming to take place on Indian lands, which is generally understood to mean that tribes have little or no access to Internet gaming. It seems clear that the investment tribes have made in gaming facilities could be at risk if the gaming market moves toward Internet based gaming. It also seems clear that changes will need to be made in federal law for interstate gaming to become possible in the U.S.

This session will focus on the history of Internet gaming, the laws that are involved, proposals to change federal law and the technology, intellectual property, security and business issues that arise in Internet gaming

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| 1:20 p.m. | Introduction – Eric Eberhard – Seattle University School of Law |
| 1:30 p.m. | <u>Internet Gaming: Peril and Promise in Cyberspace – Overview of the History and Legal Framework for Internet Gaming on Indian Lands</u> Lael Echohawk – Garvey Schubert Barer, Seattle, WA |
| 2:45 p.m. | BREAK |

TRIBAL GOVERNMENTAL BUSINESS LAW 2014 SCHEDULE

3:00 p.m. Internet Gaming: Peril and Promise in Cyberspace – Developments the States, Federal Legislative Proposals and the Emerging Technology – Lael Echohawk; Ehren Richardson, Joseph Eve, Vancouver, British Columbia; Scott Warner, Garvey Schubert Barer, Seattle, Washington

4:30 p.m. End of Session

End of Day Two

TRIBAL GOVERNMENTAL BUSINESS LAW 2014 SCHEDULE

Day Three - Friday, June 27, 2014

Session 5 – 8:50 a.m.-Noon

Trends and Developments in Taxation

PowerPoint Handouts

Articles

- INDIAN TAX LITIGATION UPDATE – A SUMMARY OF RECENT CASES
- 26 CFR 601.601: Rules and regulations.
- (Also Part I, § 61.)
- IRS Issues Final Revenue Procedure Addressing Application of General Welfare Exclusion to Tribal Government Programs
- IRS Notice 2014-17 - Per Capita Distributions of Funds Held in Trust by the Secretary of the Interior
- Dorsey Memo on IRS Notice 14-17
- HR 3030
- Analysis of HR 303, The Tribal Tax and Investment Reform Act of 2013
- HR 3043

Taxation affecting tribal economic development activity and the revenues derived from that activity is an area of the law that is constantly evolving. Many states continue to assert the authority to impose their taxes in a manner that burdens tribes and tribal enterprises. The Internal Revenue Service has sought in recent years to provide more guidance to tribes in areas of uncertainty, while also increasing its enforcement activities in Indian country, and there are efforts underway in the Congress to overhaul the federal tax code in ways that could directly affect tribes. Some tribal governments wish to develop their own tax bases, yet may be constrained in their exercise of sovereignty by the realities of competing federal and state tax burdens. This session of the program will review the full range of activity that is occurring in the area of Tribal, State and Federal taxation and the implication of recent administrative, legislative, and case law developments for the tribes and their business entities.

8:30 a.m.	Registration opens (coffee service)
8:50 a.m.	Program Overview and Introduction – Eric Eberhard Seattle University School of Law
9:00 a.m.	<u>Trends and Developments in Taxation – A Comprehensive Review the Changes Taking Place in Federal, State and Tribal Taxation</u> – Skip Durocher and Mary Streitz, Dorsey &Whitney LLP, Minneapolis, Minnesota
10:15 a.m.	BREAK
10:30 a.m.	<u>Trends and Developments in Taxation – A Comprehensive Review the Changes Taking Place in Federal, State and Tribal Taxation</u> – Skip Durocher and Mary Streitz, Dorsey &Whitney LLP, Minneapolis, Minnesota
12:00 p.m.	Program Ends (evaluations)

End of Day Three