

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1139 (Garcia)
Version: June 7, 2023
Hearing Date: June 20, 2023
Fiscal: No
Urgency: No
CK

SUBJECT

Recognition of tribal court money judgments: tribal sales taxes

DIGEST

This bill applies the Tribal Court Civil Money Judgment to specified judgments relating to tribal taxes, and related interest and penalties.

EXECUTIVE SUMMARY

In 2014, the Judicial Council sponsored SB 406 (Evans, Ch. 243, Stats. 2014), which led to the enactment of the Tribal Court Civil Money Judgment Act (Act). The Act prescribes procedures for applying for recognition and entry of a judgement based on a tribal court money judgement, objecting to such a judgement, and guiding courts in determining whether to refuse to enter the judgment or grant a stay of enforcement.

California regulations provide for the imposition of certain sales taxes by recognized tribes within California. However, the Act specifies that it does not apply to money judgments for taxes, fines, or penalties.

In order to allow tribal court judgments for the failure to pay lawfully imposed taxes to be enforced in this state, the bill extends application of the Act to specified judgments relating to tribal taxes, and related interest and penalties.

This bill is sponsored by the Agua Caliente Band of Cahuilla Indians. It is supported by various tribes, including the Pechanga Band of Indians and the Tribal Alliance of Sovereign Indian Nations. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Tribal Court Civil Money Judgment Act. (Code Civ. Proc. § 1730 et seq.)
- 2) Provides that the Act governs the procedures by which the superior courts of California recognize and enter tribal court money judgments of any federally recognized Indian tribe. Determinations regarding recognition and entry of a tribal court money judgment pursuant to state law shall have no effect upon the independent authority of that judgment. To the extent not otherwise inconsistent with the Act, the Code of Civil Procedure applies. (Code Civ. Proc. § 1731(a).)
- 3) Provides that the Act does not apply to specified tribal court money judgments, including judgments for which federal law requires that states grant full faith and credit recognition and judgments for taxes, fines, or other penalties. (Code Civ. Proc. § 1731(b).)

This bill applies the Act to tribal court money judgments for tribal taxes, as described in 18 C.C.R. § 1616(d)(3)(B)(3), and related interest or penalties.

COMMENTS

1. State recognition of tribal court orders

Native American tribes are “nations that exercise inherent sovereign authority over their members and territories.” (Cal. Jur. 3d. Indians § 2.) For a tribal court to hear a case, it must have both *subject matter jurisdiction* (the power to hear the specific kind of claim that is brought to that court), and *personal jurisdiction* (the requirement that a defendant have certain minimum contacts with the forum in which the court sits) over the defendant.

At times, just as a party may seek to enforce another state’s judgment against a resident of California by bringing their judgment to a California court, a party who has obtained a tribal court judgment may turn to California courts to seek recognition and enforcement of the party’s tribal court judgment against a California resident. In contrast to the full faith and credit that is constitutionally required to be given to the judgments rendered by sister states’ courts, under existing law, California state courts generally recognize tribal court judgments under the principles of comity, as they do the judgments of foreign country tribunals.

Comity, as described by the Ninth Circuit in *Wilson v. Marchington* (9th Cir. 1997) 127 F.3d 805, 809-810, “is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other.” The court reasoned:

As a general policy, comity should be withheld only when its acceptance would be contrary or prejudicial to the interest of the nation called upon to give it effect.” At its core, comity involves a balancing of interests. “It is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.” Although the status of Indian tribes as “dependent domestic nations” presents some unique circumstances, comity still affords the best general analytical framework for recognizing tribal judgments.

The court made clear that “[c]omity does not require that a tribe utilize judicial procedures identical to those used in the United States Courts.”

Claims to recognize money judgments of foreign country tribunals, including of tribal courts, were traditionally governed by the Uniform Foreign Country Money Judgment Act (California’s Uniform Act), Code of Civil Procedure Section 1713 et seq. That process, however, was considered costly and time-consuming. In 2012, the Judicial Council, upon recommendation of several of its committees, including the California Tribal Court/State Court Forum and the Civil and Small Claims Advisory Committee, adopted a proposal that would provide “a discrete procedure for recognizing and enforcing tribal court civil judgments, providing for swifter recognition of such judgments while continuing to apply the principles of comity appropriate to judgments of sovereign tribes.”¹

Based on that proposal, Senator Evans, then the Chair of this Committee, authored a bill, SB 406 (Evans, Ch. 243, Stats. 2014), sponsored by Judicial Council and Blue Lake Rancheria, that established a new legal framework known as the Tribal Court Civil Money Judgment Act. The Act provides the rules and procedures for seeking recognition of a tribal court money judgment in California state courts. The Act does a number of things, including the following: (1) provides timelines for both submitting an application for recognition and timely objecting to recognition; (2) provides rules for proper venue; (3) specifies notice requirements; (4) lists the requisite contents of an application and supporting documentation; (5) mandates grounds for declining recognition and provides discretionary grounds for declining recognition; and (6) specifies grounds for staying enforcement of a judgment.

¹ Report to the Judicial Council: Judicial Council-sponsored Legislation: Tribal Court Civil Judgment Act (October 26, 2012) <https://www.courts.ca.gov/documents/jc-20121214-itemG.pdf>. Available as of June 7, 2023.

In response to due process concerns, SB 406 required the California Law Revision Commission (CLRC) to conduct a study of the due process requirements in both the Act and California's Uniform Act. CLRC released that report entitled *Recognition of Tribal and Foreign Court Money Judgments*. AB 905 (Maienschein, Ch. 168, Stats. 2017) implemented some of the recommendations found in that report, amending both the Act and California's Uniform Act. It also made changes to how certain discretionary grounds for nonrecognition of judgments are treated.

Just last session, AB 627 (Waldron, Ch. 58, Stats. 2021) further expanded the Act and established procedures for California courts to recognize tribal court family law orders involving the division of retirement and other deferred compensation benefits.

2. Extending the Act to cover money judgments for taxes

The Act explicitly identifies certain tribal court money judgments to which it does not apply. This includes taxes, fines, and other penalties. This exclusion of taxes, fines, and penalties derives from longstanding case law espousing that federal courts do not enforce foreign penal or revenue laws; Judge Learned Hand states the general principle:

Generally it is, of course, true that a liability arising under the law of a foreign state will be recognized by the courts of another, and it is not here relevant whether foreign liability is enforced, or another, precisely similar, raised by the law of the forum. A recognized exception is in the case of criminal and penal liabilities. . . .

While the origin of the exception in the case of penal [liabilities] does not appear in the books, a sound basis for it exists, in my judgment, which includes liabilities for taxes as well. Even in the case of ordinary municipal liabilities, a court will not recognize those arising in a foreign state, if they run counter to the "settled public policy" of its own. Thus a scrutiny of the liability is necessarily always in reserve, and the possibility that it will be found not to accord with the policy of the domestic state. This is not a troublesome or delicate inquiry when the question arises between private persons, but it takes on quite another face when it concerns the relations between the foreign state and its own citizens or even those who may be temporarily within its borders. To pass upon the provisions for the public order of another state is, or at any rate should be, beyond the powers of a court; it involves the relations between the states themselves, with which courts are incompetent to deal, and which are [entrusted] to other authorities. It may commit the domestic state to a position which would seriously embarrass its neighbor. Revenue laws fall within the same reasoning; they affect a state in matters as vital to its existence as its criminal laws. No court ought to undertake an inquiry which it cannot

prosecute without determining whether those laws are consonant with its own notions of what is proper.²

However, the relationship between California and California's tribes has been a collaborative one in this area. As indicated, they are authorized to negotiate a legal framework for handling money judgments, including those for taxes. In fact, one example is the adoption of Regulation 1616. Recent amendments to it clarify the proper imposition of state sales and use taxes on specified sales and purchases of meals, food, and beverages for consumption on Indian reservations. Regulation 1616 enables Indian tribes to tax such transactions in specified circumstances. However, simply the ability to impose such taxes does not produce the intended benefits. As stated by the Agua Caliente Band of Cahuilla Indians, the sponsor of the bill:

In recent years, California has made notable progress in tribal tax administration. In 2021, after years of hearings and deliberation, the state enacted Regulation 1616, which enables Indian tribes, in lieu of the state, to tax food and beverage transactions that take place in Indian country.

While narrowly tailored, this significant action acknowledged that tribes, like state and local governments, rely on taxes to fund major services such as reservation infrastructure and public safety, which benefit all reservation residents and visitors, tribal members, and non-members alike. The enactment of Regulation 1616 also benefits nearby non-Indian communities by keeping tax revenue local.

Unfortunately, despite having the express right to collect the lawful sales and use tax under California law, tribes have no mechanism to enforce this right in California's judicial system, as the current statutory law has not been update to reflect the enactment of Regulation 1616. Without updating the law, a non-compliant retailer would likely be able to violate Regulation 1616 and avoid the payments of any sales or use tax – harming both state and tribal government, and the communities that they serve.

This bill amends the Act to specify that it applies to tribal court money judgments for specified tribal taxes, as described in Regulation 1616, and related interest or penalties.

According to the author:

This bill takes an important step toward establishing collaborative government-to-government relations between the State of California and

² *Moore v. Mitchell* (2d Cir. 1929) 30 F.2d 600, 604 (conurrence opinion; internal citations omitted), *aff'd*, 281 U.S. 18 (1930); *see also Her Majesty Queen in Right of Province of British Columbia v. Gilbertson* (9th Cir. 1979) 597 F.2d 1161, 1164-1165.

Indigenous Tribes. Like state and local governments, a notable portion of tribal services, such as reservation infrastructure and public safety, are provided for the benefit of all reservation residents and visitors, tribal members, and non-members alike. AB 1139 would allow California state courts to recognize tribal court tax judgments promoting comity between state courts and tribal courts and advancing collaborative government-to-government relations.

Writing in support, the Tribal Alliance of Sovereign Indian Nations states:

The bill respects tribal sovereignty and protects reservation economies by addressing and closing a loophole in the Tribal Court Civil Money Judgment Act. AB 1139 would remove a large roadblock to economic self-reliance for California's tribes, while protecting the integrity of the state and tribal tax system.

In recent years, California has made notable progress in tribal tax administration. In 2021, the state enacted regulations that enable Indian tribes, in lieu of the state, to tax food and beverage transactions that take place in Indian country. This significant action acknowledged that tribal governments, like state and local governments, rely on taxes to fund major services such as reservation infrastructure and public safety, which benefit all reservation residents and visitors, tribal members, and non-members alike.

Unfortunately, despite having the express right to collect the lawful sales and use tax under California law, tribes have no mechanism to enforce this right in California's judicial system. AB 1139 would close this loophole by amending the Tribal Court Civil Money Judgment Act to expressly allow state courts to recognize tribal court money judgements.

SUPPORT

Agua Caliente Band of Cahuilla Indians (sponsor)
Pechanga Band of Indians
San Manuel Band of Mission Indians
Tribal Alliance of Sovereign Indian Nations

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 81 (Ramos, 2023) adds to the state’s findings and declarations related to child custody proceedings pursuant to the Indian Child Welfare Act by stating that, the State of California is committed to protecting essential tribal relations by recognizing a tribe’s right to protect the health, safety, and welfare of its citizens. It also declares that provisions of the Family Code, Probate Code, and the Welfare and Institutions Code that apply to proceedings involving an Indian child, as defined, are to be collectively known as the California Indian Child Welfare Act. AB 81 is pending referral in the Senate.

Prior Legislation:

AB 627 (Waldron, Ch. 58, Stats. 2023) *See* Comment 1.

AB 905 (Maienschein, Ch. 168, Stats. 2017) *See* Comment 1.

SB 406 (Evans, Ch. 243, Stats. 2014) *See* Executive Summary & Comment 1.

PRIOR VOTES:

Assembly Floor (Ayes 71, Noes 0)
Assembly Judiciary Committee (Ayes 11, Noes 0)
