

**2014 16th Annual Tribal Tax Conference  
National Intertribal Tax Alliance**

# **Utility Tax Issues**

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Montana v. United States gives three bases for tribal jurisdiction over non-Indian Parties:

1. Express consent
2. Implied consent from consensual relationships
3. Threat to or direct effect on the tribe's political integrity, economic security, or health and welfare

For jurisdiction not based on express consent,  
Two principles must always be considered:

- Situs
- Nexus

Big Horn County Electric Cooperative invalidated a tribal property tax on utility rights-of-way on the reservation on two grounds:

- Rights-of-way are generally considered non-reservation land
- Montana requires that tribal taxes on non-Indian parties be based on activities, not property ownership

How can a tribe avoid the  
Big Horn County Electric Cooperative  
Limits on tribal taxes on utilities?

# 1. Get express consent to the tribe's taxing jurisdiction

- Contractual provision
- Business license

## 2. Establish implied consent to tribal taxation

- Base the tax on the non-Indian party's on-reservation activity (transmission, franchise, income taxes)
- Contractual provision
- Property interest (easement, lease, license)

3. Show threat to or direct effect on the tribe's political integrity, economic security, or health and welfare
  - Much harder to show in practice