

# FEE-TO-TRUST STUDY SUMMARY

## OVERVIEW

The State-Tribal Relations Committee (STRC) decided to examine this issue during the 2021-2022 interim after the matter was brought up at the committee's first meeting of the interim with the Confederated Salish and Kootenai Tribes (CSKT) Tribal Council in July of 2021 and due to the attention given to the Temporary Tribal Property Tax Exemption under 15-6-230, MCA, during recent legislative sessions.

Fee-to-trust refers to the federal process for converting property held in fee status by individual Indians or an Indian tribe (which is taxable) into trust status (which is not taxable).

This short study summary will briefly recap the committee's exploration of this topic; more information is available on the committee webpage: <https://leg.mt.gov/committees/interim/strc/>

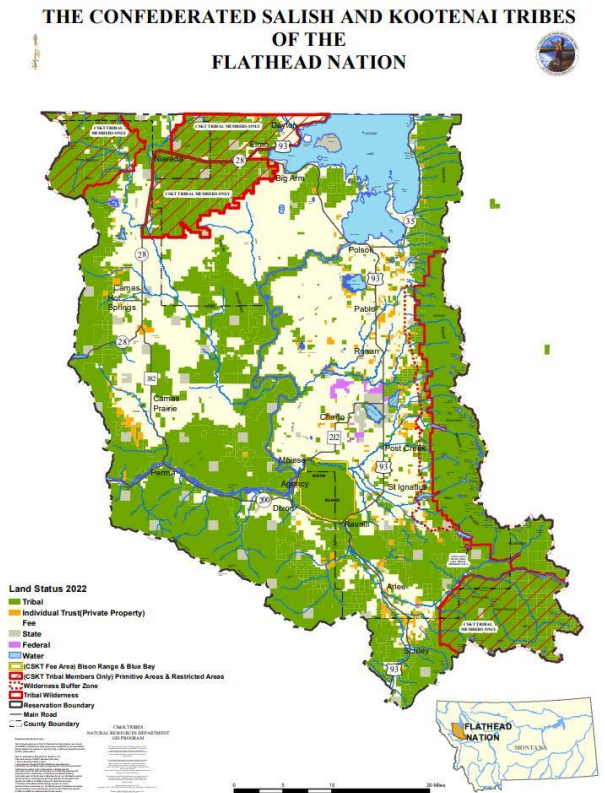
Fee-to-trust refers to the federal process for converting property held in fee status by individual Indians or an Indian tribe (which is taxable) into trust status (which is not taxable). Fee-to-trust conversion is a lengthy, multi-step federal process. Officials from the Bureau of Indian Affairs explained this process to STRC during a presentation in January 2022.

## TEMPORARY TRIBAL PROPERTY TAX EXEMPTION

The Temporary Tribal Property Tax Exemption applies to parcels owned in fee by an Indian tribe that the tribe is seeking to convert to trust status. The exemption is for up to five years. The 2021 Legislature considered two proposals related to the Temporary Tribal Property Tax Exemption, both by Senator Hertz of Polson. The first, SB 138, sought to repeal the exemption and was tabled in Senate Taxation. The second, SB 214, was enacted into law and modified the existing exemption in several ways, including implementing a recapture of property taxes on the property if the trust application is denied or not approved within 5 years. The Department of Revenue provided data on the historical use of the exemption to the committee.

## HISTORICAL CONTEXT

Prior to allotment under the Dawes Act of 1887 (and subsequent allotment acts for specific reservations) land within reservation boundaries was held in trust by the federal government for the collective benefit of the tribe(s) of that reservation. Allotment involved the allocation of parcels of land to individual tribal members. The parcels remained in federal trust for a period of time but generally became fee land that often and for various reasons was acquired by non-Indians. If reservation land remained after allocation to tribal members, it was often offered up for sale and settlement by non-Indians. Allotment ended with the Indian Reorganization Act of 1934, but nationwide nearly 2/3 of reservation lands were taken from the tribes during the federal allotment era. The two maps of the Flathead Reservation below (land status in 1855 to the left and in 2022 to the right) produced by the GIS Office of the CSKT Natural Resources Department, help illustrate the effects of allotment.



Allotment impacted each reservation in Montana differently and the table below demonstrates this variety. While Rocky Boy's is 100% in trust, less than half of Fort Peck's acreage is in trust.

#### Ownership Status of Land Within the Seven Reservations of Montana

Reservation	Total Acreage	% Trust Lands (tribal and individual)	% Fee Lands
Blackfeet	1.5 million	63	36
Crow	2.2 million	68	32
Flathead	1.3 million	56	32
Fort Belknap	697,617	97	3
Fort Peck	2.1 million	46	54
Northern Cheyenne	445,000	99	1
Rocky Boy's	122,259	100	0

Source: Montana Office of Public Instruction Division of Indian Education, [Montana Indians: Their History and Location](#).

## CONCLUSION AND POLICY CONSIDERATIONS

At great risk of oversimplification, from the tribes' perspectives, reacquiring land (to be owned in fee or trust status) within the reservation boundary lost due to allotment is viewed as righting one of many historical wrongs and as a way of increasing tribal sovereignty and self-determination. From a county perspective, the conversion of taxable fee land into nontaxable trust land raises concerns about the loss of property tax base.

While largely a federal issue, the state made a policy decision in 2011 to create the Temporary Tribal Property Tax Exemption to acknowledge the costs incurred by a tribe in seeking a fee-to-trust conversion. The state made a further policy decision to revise the exemption to add a "claw-back" provision in 2021.

Some states have made the policy decision to provide a property tax exemption for any tribally owned fee land within reservation boundaries. Idaho did so in 2013 through [House Bill No. 140](#).

Several county officials suggested that their concerns would be alleviated if the federal government provided some sort of financial assistance, perhaps akin to Payments in Lieu of Taxes (PILT). The STRC [examined the possibility of encouraging Congress](#) to provide assistance to local governments as compensation for nontaxable Indian trust lands, but did not seek this as a committee.