



Taxation in Indian Country

February 27, 2014

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General Principles of Taxation in Indian Country

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General Concepts

- Indian tribe
- Indian: tribal member, non-member
- Indian Country
 - Reservation
 - Trust land, fee land
- Sovereignty
- Preemption

Federal Taxes in Indian Country

- **Federal taxes**
 - Generally apply unless expressly exempted
 - *Chickasaw Nation v. U.S.* (2001)
 - *Squire v. Capoeman* (1956)
- Tribe or tribal entity?
- IRS Rulings and Letter Rulings useful

State Taxes

- Application depends on several factors:
 - Identity of taxpayer
 - Identity of other parties to the transaction
 - Source of income (on or off reservation)
 - Nature of State's taxing authority
 - Nature of the state, federal, and tribal interests at stake
 - Federal law

State Income Taxes

- Two sources of taxing power: domicile and source of income
- Non-members generally taxable
- Tribal members who live on their own reservation not taxable on reservation sourced income
- Entities (corps, etc): need to determine if entity will be treated as a member

State Property Taxes

- Non-Indian property taxable
- Off-reservation property taxable
- Tribe and members generally not taxable on reservation, unless authorized by federal law
- State Constitutions: Ariz. Art. 20, par. 5 bars taxation of property owned or held by an Indian within a reservation

New Federal Regulation

- 25 CFR 162.017(a) and (c):
- (a) Subject only to applicable Federal law, permanent improvements on the leased land, without regard to ownership of those improvements, are not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Improvements may be subject to taxation by the Indian tribe with jurisdiction.
- (c) Subject only to applicable Federal law, the leasehold or possessory interest is not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Leasehold or possessory interests may be subject to taxation by the Indian tribe with jurisdiction.

Litigation Over New Federal Regulations

- *Desert Water Agency v. U.S.*, (C.D.Cal. CV 13-606): Suit against federal government dismissed on Jan. 21, 2014 as not being ripe.
- *Agua Caliente Band v. Riverside County* (C.D. Cal. CV 14-00007, filed Jan. 2, 2014): Seeks to enjoin the assessment and collection of taxes on possessory interests in reservation trust lands and permanent improvements thereon.
- *South Point Energy Center, Inc. v. Arizona Dep't of Revenue* (Ariz. Tax Court No. TX 2013-000522, filed October 10, 2013): Seeks a determination that power plant owned by non-Indian company on leased reservation land is not subject to state property tax.

Sales Taxes

- Incidence of Tax
- Tax not allowed on tribe or members, but collection requirements may be imposed if tax on nonmember.
- Tax likely to be preempted if ultimately paid by a tribe or members
- Preemption less likely when tax ultimately paid by nonmembers.

New Federal Regulation

- 25 CFR 162.017(b)
- “Subject only to applicable Federal law, activities under a lease conducted on the leased premises are not subject to any fee, tax, assessment, levy, or other charge (e.g., business use tax, privilege, public utility, excise, gross revenue taxes) imposed by any State or political subdivision of a State. Activities may be subject to taxation by an Indian tribe with jurisdiction.”

Tribal Taxes

- Tribes have inherent authority to tax
 - *Merrion v. Jicarilla Apache Tribe* (1982)
- Tribal taxes generally may not be imposed on non-Indians doing business on fee land within a reservation
 - *Atkinson Trading v. Shirley* (2001)
- Tribal taxing authority related to other aspects of civil jurisdiction