

**LETTER OPINION
2001-L-31**

August 14, 2001

Ms. Linda Hickman
Williams County State's Attorney
PO Box 2047
Williston, ND 58802-2047

Re: Taxation of Indian Land

Dear Ms. Hickman:

Thank you for your letter in which you ask about taxation of Indian-owned land.

Counties can tax Indian-owned land if it is owned in fee. Cass County v. Leech Lake Chippewa Indians, 524 U.S. 103 (1998); County of Yakima v. Confederated Tribes & Bands of Yakima Nation, 502 U.S. 251, 258 (1992). But trust land, that is, land owned in trust by the federal government for the benefit of an Indian, cannot be taxed. United States v. Rickert, 188 U.S. 432 (1903).

You present a situation in which a tract contains both taxable and non-taxable interests. An Indian may own an undivided interest in fee but the other interests in the tract are owned in trust and, therefore, are non-taxable. Thus, a tract might have a mix of taxable interests and non-taxable interests. You state that the taxable interests are typically small, ranging from 1/288 to 1/16. The issue is whether the county can, in fact, tax these fee interests.

I am unaware of any case law directly on point; nor do general principles of Indian law provide a clear answer.

The Supreme Court states that Indian-owned land becomes taxable "after the expiration of federal trust status" Cass County, 524 U.S. at 111. It can be argued that this

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means that the entire tract and all interests in it must be free of trust status before the county can exercise any taxation authority. Since the taxable interest is undivided, that is, it is not identifiable apart from the non-taxable interests, it may be impossible to separate the taxable fee interest from the non-taxable trust interest.

On the other hand, if the trust status of an undivided interest is terminated, there would seem to be no prohibition to taxing just that interest if all the non-taxable interests remain unaffected. If the ownership fractions were turned around, that is, if the lone non-taxable interest were a 1/288 interest it would seem odd if such a small interest were able to prevent taxation of all the fee interests.

Some decisions distinguish the taxable and non-taxable interests in a parcel and allow assessment of the taxable interests. In other words, these cases recognize that taxable interests should not acquire the immunity of the non-taxable interests. E.g. State v. Houston Lighting & Power Co., 609 S.W.2d 263 (Tex. Ct. App. 1980); Christian Business Men's Comm. v. State, 38 N.W.2d 803 (Minn. 1949); Ken Realty Co. v. Johnson, 138 F.2d 809 (5th Cir. 1943); Homestake Explor. Corp. v. Schoregge, 264 P. 388 (Mont. 1928).

In Houston Lighting & Power the City of Austin owned an undivided 16% interest in a power plant and the City of San Antonio owned an undivided 28% interest. Two private companies owned the remaining 56%, and they paid their share of the plant's assessed value. The court held that the cities qualified for a constitutional tax exemption given to cities. Thus, here is an instance in which some undivided interests in a property were taxed while others were not.

None of these cases, however, is an Indian law case, and so the principles they express are not precedents for Indian-owned land. Without governing case law there is uncertainty about the scope of Williams County's taxation authority. Even so, the above authorities provide some guidance that the county does have taxation authority over these interests.

Parcels with taxable and non-taxable interests should not be treated as a single unit. The mix of interests should not make the parcel either taxable or nontaxable in its entirety. Therefore, it is my opinion that the county can tax the taxable interest in a parcel even though there are other non-taxable interests in that parcel. This resolution satisfies both policy objectives -- taxation of fee interests and non-taxation of trust interests. The small size of the taxable interests mentioned in your letter, however, may not make the taxation effort worthwhile, but that is a policy decision for the county.

Your letter also asks a number of specific questions on taxation procedure and ends with a request for "a general opinion on the proper procedures" to use. I will be happy

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to address the procedural issues if, in light of this opinion, the county decides to enforce its right to tax the fee interest at issue.

Sincerely,

Wayne Stenehjem
Attorney General

cmc/vkk