

Office of the Attorney General
State of North Dakota

Opinion No. 83-49

Date Issued: December 29, 1983
Requested by: Kent Conrad
State Tax Commissioner

--QUESTION PRESENTED--

Whether special fuels utilized for heating purposes and sold to Indians within the exterior boundaries of Indian reservations within the State of North Dakota are subject to the special fuels tax levied pursuant to Chapter 57-43.2 of the North Dakota Century Code.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that special fuels utilized for heating purposes and sold to Indians within the exterior boundaries of Indian reservations within the State of North Dakota are not subject to the special fuels tax levied pursuant to Chapter 57-43.2, N.D.C.C.

--ANALYSIS--

In the case of *McClanahan v. State Tax Commissioner of Arizona*, 411 U.S. 164 (1973), the United States Supreme Court summarized principles of state taxation of Indians on reservations. Citing a treatise on Federal Indian Law, the Court said:

State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply. It follows that Indians and Indian property on an Indian reservation are not subject to State taxation except by virtue of express authority conferred upon the State by act of Congress. 411 U.S. 170, 171.

In that same opinion, the Court referred to the Buck Act:

Indeed, Congress' intent to maintain the tax-exempt status of reservation Indians is especially clear in light of the Buck Act, 4 U.S.C. § 104 et. seq., which provides comprehensive federal guidance for state taxation of those living within federal areas. 411 U.S. 176.

That portion of 4 U.S.C. § 104(a) relevant to this inquiry provides:

All taxes levied by any State . . . with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels may be levied, in the same manner and to the same extent, with respect to such fuels when sold by or through . . . filling stations, licensed traders, and other similar agencies, located on United States military or other reservations. . . .

The question, then, is whether special fuels utilized for heating purposes fall within the category of 'gasoline or other motor vehicle fuels' referred to in § 104(a). That is, has Congress allowed taxation by the states of special fuels utilized for heating purposes if sold to Indians within the exterior boundaries of Indian reservations?

It is a rule of statutory construction that when the wording of a statute is clear and free of ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. Sections 1-02-05 and 1-02-02, N.D.C.C., provide that words in any statute are to be understood in their ordinary sense, unless a contrary intention appears. The terms 'gasoline or other motor vehicle fuels' do not, in their ordinary sense, embrace special fuels utilized for heating. And, although the terms are not specifically defined by that statute, they do not appear to be ambiguous. Therefore, pursuant to the rules of statutory construction noted above, special fuels utilized for heating purposes would not ordinarily be encompassed within the term 'gasoline or other motor vehicle fuels.'

In addition, the Buck Act, referred to above, amended the Hayden-Cartwright Act which was the origin of 4 U.S.C. § 104(a). As it analyzed the Hayden-Cartwright Act, the Court noted, in *Minnesota v. Keeley, et al*, 126 F.2d 863 (1942), that the language of 4 U.S.C. § 104(a) was adopted pursuant to a resolution of the Western Association of State Highway Officials. That resolution, in pertinent part, read:

Whereas this conference views with alarm the continued sale of motor vehicle fuels on Government military and other reservation, upon which no State Tax has been collected, such tax-free fuel being used on public highways. 126 F.2d 854 N.6 (Emphasis supplied.)

It is aparent, therefore, that the language was intended to allow state taxation of fuel utilized on public highways. That same Court explained:

The general purpose of the Hayden-Cartwright Act clearly was to further and extend the program of highway improvement which had been initiated by the Federal Aid Highway Act of 1916, 39 Stat. 355, through the matching of federal and state funds. 126 F.2d 864.

In another case interpreting the Hayden-Cartwright Act, the Court noted:

The United States' consent to such a tax can be expressed only by a statute. Such a statute should be strictly construed, and the state taxing authority cannot go beyond the letter of such consent. *State of Minnesota v. Ristine*, 36 F. Supp. 3, 6 (1940).

It is also important to note, in this context, that if there is an ambiguity in a statute removing Indian tax immunity, such ambiguity must be resolved in favor of Indians. *Bryan v. Itasca County, Minnesota*, 426 U.S. 373, 393, 394 (1976). And it is generally true that any ambiguity in a statute imposing a tax must be resolved in favor of a taxpayer. *Geo Resources, Inc. v. Tax Commissioner*, 288 N.W.2d 54 (N.D. 1980). Therefore, whether 4 U.S.C. § 104(a) is regarded as imposing tax liability upon or as removing tax immunity from Indians, any ambiguity which may exist must be resolved in favor of the Indians.

Therefore, special fuels utilized for heating purposes are not subject to the special fuels tax when sold to Indians within the exterior boundaries of reservations in North Dakota.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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