

Office of the Attorney General  
State of North Dakota

Opinion No. 85-12

Date Issued: April 11, 1985

Requested by: Robert W. Holte  
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--QUESTION PRESENTED--

Whether real property owned in fee patent by an Indian tribe and located within the boundaries of the tribe's reservation is subject to county real property taxation.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that real property owned in fee patent by an Indian tribe and located within the boundaries of the tribe's reservation is not subject to county real property taxation.

--ANALYSIS--

There is no federal court decision which has directly answered this question. However, the United States Supreme Court has held that income, certain activities and personal property of reservation Indians, earned or located within an Indian reservation, are not subject to state taxation. *McClanahan v. Arizona State Tax Comm'*, 411 U.S. 164 (1973); *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973); *Moe v. Salish & Kootenai Tribes, etc.*, 425 U.S. 463 (1976); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).

The North Dakota Supreme Court followed the rationale of *McClanahan, supra*, when it held that North Dakota could not impose an individual income tax upon income earned on an Indian reservation by an Indian person residing on that reservation. *White Eagle v. Dorgan*, 209 N.W.2d 621, 623 (N.D. 1973).

In *Mescalero, supra*, the United States Supreme Court summarized the import of its companion case, *McClanahan, supra*:

. . . in the special area of state taxation, absent cession of jurisdiction or other federal statutes permitting it, there has been no satisfactory authority for taxing Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation, and *McClanahan v. State Tax Commission of Arizona, supra*, lays to rest any doubt in this respect by holding that such taxation is not permissible absent congressional consent. 411 U.S. at 148

The Arizona Supreme Court relied on this language when it held that land owned in fee by enrolled Navajo tribal members and located within the boundaries of a Navajo reservation was exempt from state ad valorem taxation. *Battese v. Apache County*, 630 P.2d 1027, 1029 (Az. 1981). However, the Arizona Court apparently did not consider the provisions of 25 U.S.C. § 349. This provision provides that land allotted to an Indian by the Secretary of Interior becomes taxable on issuance, acceptance, and recording of fee patent. The land in *Battese*, *supra*, was not allotted, but was homesteaded by a non-Indian.

If land owned by an individual member of the tribe and located within the boundaries of the tribe's reservation is held to be exempt from state property taxation, a stronger case could be made that land owned by an Indian tribe and located within the reservation is exempt from county real property taxation because this taxation would appear to be an unlawful infringement on tribal self-government. *White Mountain Apache Tribe v. Bracker*, *supra*; *New Mexico v. Mescalero Apache Tribe*, ---- U.S. ----, 103 S.Ct. 2378 (1983).

Therefore, real property owned in fee patent by an Indian tribe and located within the boundaries of the tribe's reservation is not subject to county real property taxation.

--EFFECT--

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

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