

OPINION
50-179

April 26, 1950 (OPINION)

TAXATION

RE: Income Tax - Indians

Your letter of April 14, 1950, has been referred to the undersigned for answer.

In your letter you state:

A question has arisen as to whether the State of North Dakota may subject to its income tax statute income which Indians residing on Indian reservations receive from employment by the Federal Government."

You then go on to explain the reasons why, in your opinion, the income of Indians residing on the reservation and deriving their income from salaries paid to them by the federal government should not be subject to the North Dakota income tax.

We cannot agree with your interpretation.

Section 57-3802, N.D.R.C. 1943, provides:

ANNUAL TAX ON INDIVIDUALS. The tax imposed by this chapter shall be levied, collected, and paid annually with respect to the entire net income not hereinafter exempted received by every resident individual."

As regards the North Dakota law, therefore, the tax must be paid unless it can be shown that the income is specifically exempted by the laws of North Dakota, or that the income is not that of a resident individual.

Neither of these facts can be demonstrated in the present case. Nowhere do the North Dakota income tax laws provide an exemption on the basis that the person affected is an Indian. Nor can there be any doubt that an Indian residing on a reservation located within the confines of the state of North Dakota is a "resident individual," as the term is used in section 57-3802, supra.

The other consideration is whether or not this tax is prohibited by federal law.

This does not appear to be the case. In *Leahy v. State Treasurer of Oklahoma*, 297 U.S. 240, 80 L.ed. 771, the Supreme Court of the United States upheld an Oklahoma state income tax levied against an Oklahoma Indian on income derived from a government controlled fund held for the benefit of the Osage Tribe.

In that case the court said: "As Leahy was entitled to have the income paid to him and was free to use it as he saw fit, no reason appears why it should not be taxable also by the state."

There are, in addition, two federal statutes which would appear to sanction the imposition of an income tax upon North Dakota Indians living on a reservation and employed by the federal government.

The first one of these is the Public Salary Act of 1939, section 4 which provides:

Sec. 4. The United States hereby consents to the taxation of compensation received after December 31, 1938, for personal services as an officer or employee of the United States, any Territory or possession or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any one or more of the following by any duly constituted taxing authority having jurisdiction to tax such compensation if such taxation does not discriminate against such officer or employee because of the source of such compensation."

The second is one which confers jurisdiction upon the state to tax persons living in federal areas and can be found in 4 U.S.C.A., sec. 106, or 61 Stat. 641. This section provides:

(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area, or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area."

For the above reasons it is the opinion of this office that the state of North Dakota may levy an income tax upon the income of Indians residing upon a reservation located within the state of North Dakota where said income is derived from salaries received from the federal government.

WALLACE E. WARNER

Attorney General