

STATE BOARD OF EQUALIZATION



93 S.Ct. 1257
 36 L.Ed.2d 129
 (Cite as: 411 U.S. 164, 93 S.Ct. 1257)

Appeal Name: Clifford & Deanna Marshall

Case ID: 816195 ITEM # 04

Date: 5/27/15 Exhibit No: 5.7

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Supreme Court of the United States
 Rosalind McCLANAHAN, etc., Appellant,
 v.
 STATE TAX COMMISSION OF ARIZONA.

No. 71--834.

Argued Dec. 12, 1972.
 Decided March 27, 1973.

Action by Navajo Indian against State Tax Commission of Arizona for refund of state income taxes paid. The Court of Appeals of Arizona, Division One, 14 Ariz App. 452, 484 P.2d 221, affirmed judgment in favor of the Tax Commission and the Navajo Indian appealed. The Supreme Court, Mr. Justice Marshall, held that the Arizona state individual income tax was unlawful as applied to reservation Navajo Indians with respect to income derived wholly from reservation sources.

Reversed.

West Headnotes

[1] **Taxation** 933.1
371k933.1
 (Formerly 371k933)

[1] **Taxation** 940
371k940

The Arizona state individual income tax was unlawful as applied to reservation Navajo Indians with respect to income derived wholly from reservation sources. U.S.C.A. Const. art. 1, § 8, cl. 3; art. 2, § 2, cl. 2; Treaty with the Navajo Indians of 1868, 15 Stat. 667; Act June 20, 1910, 36 Stat. 557; A.R.S. §§ 43-102, subsec. a, 43-188, subsec. f.

[2] **Taxation** 936
371k936

The "federal instrumentality" doctrine does not prohibit state taxation of individuals deriving their income from federal sources.

[3] **Indians** 32(2)
209k32(2)
 (Formerly 209k5)

Generally, state laws do not apply to tribal Indians on Indian reservation except when Congress has expressly provided that state law shall apply. U.S.C.A. Const. art. 1, § 8, cl. 3; art. 2, § 2, cl. 2; 4 U.S.C.A. § 104 et seq.

[4] **Indians** 3(1)
209k3(1)
 (Formerly 209k3)

Federal authority over Indian matters derives from federal responsibility for regulating commerce with Indian tribes and for treaty making. U.S.C.A. Const. art. 1, § 8, cl. 3; art. 2, § 2, cl. 2.

[5] **Indians** 3(1)
209k3(1)
 (Formerly 209k3)

Treaty with the Navajos is not to be read as ordinary contract agreed upon by parties dealing at arm's length with equal bargaining positions. Treaty with the Navajo Indians of 1868, 15 Stat. 667.

[6] **Indians** 3(3)
209k3(3)
 (Formerly 209k3)

In interpreting Indian treaties, generally, doubtful expressions are to be resolved in favor of the Indians. Treaty with the Navajo Indians of 1868, 15 Stat. 667.

[7] **Indians** 12
209k12

The reservation of certain lands for the exclusive use and occupancy of the Navajo and the exclusion by treaty of non-Navajos from the prescribed area established the lands as within the exclusive sovereignty of the Navajos under general federal supervision. Treaty with the Navajo Indians of 1868, 15 Stat. 667.

[8] **Taxation** 197
371k197

Exemptions from tax laws should be clearly expressed.

[9] **Taxation** 933.1
371k933.1
 (Formerly 371k933)

Appellant's Exhibits
 B4

May 25, 2015

[9] Taxation 940
371k940

State of Arizona may not assume jurisdiction to impose state income tax upon individual Navajo Indians residing on the Navajo reservation in the absence of tribal agreement. U.S.C.A. Const. art. I, § 8, cl. 3; art. 2, § 2, cl. 2; Treaty with the Navajo Indians of 1868, 15 Stat. 667; Act June 20, 1910, 36 Stat. 557; A.R.S. §§ 43-102, subsec. a, 43-188, subsec. f.

[10] Indians 10
209k10

[10] Indians 32(2)
209k32(2)

(Formerly 209k6)

The state of Arizona totally lacks jurisdiction over both the Navajo people and the Navajo lands. U.S.C.A. Const. art. I, § 8, cl. 3; art. 2, § 2, cl. 2; Treaty with the Navajo Indians of 1868, 15 Stat. 667; Act June 20, 1910, 36 Stat. 557; A.R.S. §§ 43-102, subsec. a, 43-188, subsec. f.

****1258 *164 Syllabus [FN*]**

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

The State of Arizona has no jurisdiction to impose a tax on the income of Navajo Indians residing on the Navajo Reservation and whose income is wholly derived from reservation sources, as is clear from the relevant treaty with the Navajos and federal statutes. 1259--1267.

14 Ariz. App. 452, 484 P.2d 221, reversed.

Richard B. Collins, Window Rock, Ariz., for appellant.

Harry R. Sachse, New Orleans, La., for U.S., as amicus curiae, by special leave of Court.

James D. Winter, Phoenix, Ariz., for appellee.

*165 Mr. Justice MARSHALL delivered the opinion of the Court.

[1] This case requires us once again to reconcile the plenary power of the States over residents within their borders with the semi-autonomous status of Indians living on tribal reservations. In this instance, the problem arises in the context of Arizona's efforts to impose its personal income tax on a reservation Indian whose entire income derives from reservation sources. Although we have repeatedly addressed the question of state taxation of reservation Indians, [FN1] the problems posed by a state income tax are apparently of first impression in this Court. [FN2] The Arizona courts have ****1259** held that such state taxation is permissible. 14 Ariz. App. 452, 484 P.2d 221 (1971). We noted probable jurisdiction, 406 U.S. 916, 92 S.Ct. 1763, 32 L.Ed.2d 115 (1972), and now reverse. We hold that by imposing the tax in question on this appellant, the State has interfered with matters which the relevant treaty and statutes leave to the exclusive province of the Federal Government and the Indians themselves. The tax is therefore unlawful as applied to reservation Indians with income derived wholly from reservation sources.

FN1. See e.g., Oklahoma Tax Comm'n v. United States, 319 U.S. 598, 63 S.Ct. 1284, 87 L.Ed. 1612 (1943); Childers v. Beaver, 270 U.S. 555, 46 S.Ct. 387, 70 L.Ed. 730 (1926); United States v. Rickert, 188 U.S. 432, 23 S.Ct. 478, 47 L.Ed. 532 (1903); The Kansas Indians, 5 Wall. 737, 18 L.Ed. 667 (1867). Cf. Squire v. Capoceman, 351 U.S. 1, 76 S.Ct. 611, 100 L.Ed. 883 (1956).

FN2. State courts have disagreed on the question. Compare Ghahate v. Bureau of Revenue, 80 N.M. 98, 451 P.2d 1002 (1969), with Commissioner of Taxation v. Brun, 286 Minn. 43, 174 N.W.2d 120. See Powless v. State Tax Comm'n, 22 A.D.2d 746, 253 N.Y.S.2d 438 (1964); State Tax Comm'n v. Barnes, 14 Misc.2d 311, 178 N.Y.S.2d 932 (1958).

I

Appellant is an enrolled member of the Navajo tribe

who lives on that portion of the Navajo Reservation located within the State of Arizona. Her complaint alleges *166 that all her income earned during 1967 was derived from within the Navajo Reservation. Pursuant to Ariz.Rev.Stat. Ann. s 43--188, subsec. f (Supp.1972--1973), \$16.20 was withheld from her wages for that year to cover her state income tax liability. [FN3] At the conclusion of the tax year, appellant filed a protest against the collection of any taxes on her income and a claim for a refund of the entire amount withheld from her wages. When no action was taken on her claim, she instituted this action in Arizona Superior Court on behalf of herself and those similarly situated, demanding a return of the money withheld and a declaration that the state tax was unlawful as applied to reservation Indians.

FN3. The liability was created by Ariz.Rev.Stat. Ann. s 43--102 subsec. a (Supp. 1972--1973) which, in relevant part, provides; 'There shall be levied, collected, and paid for each taxable year upon the entire net income of every estate or trust taxable under this title and of every resident of this state and upon the entire net income of every nonresident which is derived from sources within this state, taxes in the following amounts and at the following rates upon the amount of net income in excess of credits against net income provided in ss 43--127 and 43--128.' Appellant conceded below that she was a 'resident' within the meaning of the statute, and that question, which in any event poses an issue of state law, is not now before us.

The trial court dismissed the action for failure to state a claim, and the Arizona Court of Appeals affirmed. Citing this Court's decision in *Williams v. Lee*, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959), the Court of Appeals held that the test 'is not whether the Arizona state income tax infringes on plaintiff's rights as an individual Navajo Indian, but whether such a tax infringes on the rights of the Navajo tribe of Indians to be self-governing.' 14 Ariz. App. at 454, 484 P.2d, at 223. The court thus distinguished cases dealing with state taxes on Indian real property on the ground that these taxes, unlike the personal income tax, infringed tribal autonomy.

*167 The court then pointed to cases holding that state employees could be required to pay federal income taxes and that the State had a concomitant

right to tax federal employees. See *Helvering v. Gerhardt*, 304 U.S. 405, 58 S.Ct. 969, 82 L.Ed. 1427 (1938); *Graves v. New York ex rel. O'Keefe*, 306 U.S. 466, 59 S.Ct. 595, 83 L.Ed. 927 (1939). Reasoning by analogy from these cases, the court argued that Arizona's income tax on individual Navajo Indians did not '(cause) an impairment of the right of the Navajo tribe to be self governing.' 14 Ariz. App. at 455, 484 P.2d at 224.

Nor did the court find anything in the Arizona Enabling Act, 36 Stat. 557, to prevent the State from taxing reservation Indians. That Act, the relevant language of which is duplicated in the Arizona Constitution, disclaims state title over Indian lands and requires that such lands shall remain 'under the absolute jurisdiction and control of the Congress of the United States.' 36 Stat. **1260 569. But the Arizona court, relying on this Court's decision in *Organized Village of Kake v. Egan*, 369 U.S. 60, 82 S.Ct. 562, 7 L.Ed.2d 573 (1962), held that the Enabling Act nonetheless permitted concurrent state jurisdiction so long as tribal self-government remained intact. Since an individual income tax did not interfere with tribal self-government, it followed that appellant had failed to state a claim. The Arizona Supreme Court denied a petition for review of this decision, and the case came here on appeal. See 28 U.S.C. s 1257(2).

II

It may be helpful to begin our discussion of the law applicable to this complex area with a brief statement of what this case does not involve. We are not here dealing with Indians who have left or never inhabited reservations set aside for their exclusive use or who do not possess the usual accoutrements of tribal self-government. *168 See, e.g., *Organized Village of Kake v. Egan*, supra; *Mettlakatla Indian Community v. Egan*, 369 U.S. 45, 82 S.Ct. 552, 7 L.Ed.2d 562 (1962); *Oklahoma Tax Comm'n v. United States*, 319 U.S. 598, 63 S.Ct. 1284, 87 L.Ed. 612 (1943). Nor are we concerned with exertions of state sovereignty over non-Indians who undertake activity on Indian reservations. See, e.g., *Thomas v. Gay*, 169 U.S. 264, 18 S.Ct. 340, 42 L.Ed. 740 (1898); *Utah & Northern R. Co. v. Fisher*, 116 U.S. 28, 6 S.Ct. 246, 29 L.Ed. 542 (1885). Cf. *Surplus Trading Co. v. Cook*, 281 U.S. 647, 651, 50 S.Ct. 455, 456, 74 L.Ed. 1091 (1930). Nor, finally, is this a case where the State seeks to reach activity undertaken by reservation Indians on nonreservation lands. See, e.g., *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 93 S.Ct. 1267, 36 L.Ed.2d 114. Rather, this case

involves the narrow question whether the State may tax a reservation Indian for income earned exclusively on the reservation.

The principles governing the resolution of this question are not new. On the contrary, '(t)he policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation's history.' Rice v. Olson, 324 U.S. 786, 789, 65 S.Ct. 989, 991, 89 L.Ed. 1367 (1945). This policy was first articulated by this Court 141 years ago when Mr. Chief Justice Marshall held that Indian nations were 'distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States.' Worcester v. Georgia, 6 Pet. 515, 557, 8 L.Ed. 483 (1832). It followed from this concept of Indian reservations as separate, although dependent nations, that state law could have no role to play within the reservation boundaries. 'The Cherokee nation . . . is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in *169 conformity with treaties, and with the acts of Congress. The whole intercourse between the United States and this nation, is, by our Constitution and laws, vested in the government of the United States.' Id. at 561. See also United States v. Kagama, 118 U.S. 375, 6 S.Ct. 1109, 30 L.Ed. 228 (1886); Ex parte Crow Dog, 109 U.S. 556, 3 S.Ct. 396, 27 L.Ed. 1030 (1883).

Although Worcester on its facts dealt with a State's efforts to extend its criminal jurisdiction to reservation lands, [FN4] the rationale of the case plainly extended to state taxation within the reservation as well. Thus, in 'The **1261 Kansas Indians, 5 Wall. 737 (1867), the Court unambiguously rejected state efforts to impose a land tax on reservation Indians. 'If the tribal organization of the Shawness is preserved intact, and recognized by the political department of the government as existing, then they are a 'people distinct from others,' capable of making treaties, separated from the jurisdiction of Kansas, and to be governed exclusively by the government of the Union. If under the control of Congress, from necessity there can be no divided authority.' Id. at 755. See also The New York Indians, 5 Wall. 761 (1867).

FN4. See also Williams v. United States,

327 U.S. 711, 66 S.Ct. 778, 90 L.Ed. 962 (1946); United States v. Chavez, 290 U.S. 357, 54 S.Ct. 217, 78 L.Ed. 360 (1933); United States v. Ramsey, 271 U.S. 467, 46 S.Ct. 559, 70 L.Ed. 1039 (1926).

[2][3] It is true, as the State asserts, that some of the later Indian tax cases turn, not on the Indian sovereignty doctrine, but on whether or not the State can be said to have imposed a forbidden tax on a federal instrumentality. See, e.g., Leahy v. State Treasurer of Oklahoma, 297 U.S. 420, 56 S.Ct. 507, 80 L.Ed. 771 (1936); United States v. Rickert, 188 U.S. 432, 23 S.Ct. 478, 47 L.Ed. 532 (1903). To the extent that the tax exemption rests on federal immunity from state taxation, it may well be inapplicable in a case such as this involving an individual *170 income tax. [FN5] But it would vastly oversimplify the problem to say that nothing remains of the notion that reservation Indians are a separate people to whom state jurisdiction, and therefore state tax legislation, may not extend. Thus, only a few years ago, this Court struck down Arizona's attempt to tax the proceeds of a trading company doing business within the confines of the very reservation involved in this case. See Warren Trading Post Co. v. Arizona Tax Comm'n. 380 U.S. 685, 85 S.Ct. 1242, 14 L.Ed.2d 165 (1965). The tax in no way interfered with federal land or with the National Government's proprietary interests. But it was invalidated nonetheless because 'from the very first days of our Government, the Federal Government had been permitting the Indians largely to govern themselves, free from state interference.' Id. at 686-687, 85 S.Ct. at 1243. [FN6] As a leading text on Indian problems summarizes the relevant law: 'State laws generally are *171 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.' U.S. Dept. of the Interior, Federal Indian Law 845 (1958) (hereafter Federal Indian Law).

FN5. The federal-instrumentality doctrine does not prohibit state taxation of individuals deriving their income from federal sources. See Graves v. New York ex rel. O'Keefe, 306 U.S. 466, 59 S.Ct. 595, 7 L.Ed.2d 573 (1939). Cf. Leahy v. State Treasurer of Oklahoma, 297 U.S. 420, 56

Federal source

S.Ct. 507, 80 L.Ed. 771 (1936). The doctrine has, in any event, been sharply limited with respect to Indians. See Oklahoma Tax Comm'n v. United States, 319 U.S. 598, 63 S.Ct. 1284, 87 L.Ed. 1612 (1943).

FN6. The court below distinguished Warren Trading Post as limited to cases where the Federal Government has pre-empted state law by regulating Indian traders in a manner inconsistent with state taxation. 14 Ariz.App. 452, 455, 484 P.2d 221, 224. But although the Court was, no doubt, influenced by the federal licensing requirements, the reasoning of Warren Trading Post cannot be so restricted. The Court invalidated Arizona's tax in part because 'Congress has, since the creation of the Navajo Reservation nearly a century ago, left the Indians on it largely free to run the reservation and its affairs without state control, a policy which has automatically relieved Arizona of all burdens for carrying on those same responsibilities.' Warren Trading Post Co. v. Arizona Tax Comm'n, 380 U.S. 685, 690, 85 S.Ct. 1242, 1245, 14 L.Ed.2d 165 (1965).

This is not to say that the Indian sovereignty doctrine, with its concomitant jurisdictional limit on the reach of state law, has remained static during the 141 years since Worcester was decided. Not surprisingly, the doctrine has undergone considerable evolution in response to **1262 changed circumstances. As noted above, the doctrine has not been rigidly applied in cases where Indians have left the reservation and become assimilated into the general community. See, e.g., Oklahoma Tax Comm'n v. United States, 319 U.S. 598, 63 S.Ct. 1284, 87 L.Ed. 1612 (1943). Similarly, notions of Indian sovereignty have been adjusted to take account of the State's legitimate interests in regulating the affairs of non-Indians. See, e.g., New York ex rel. Ray v. Martin, 326 U.S. 496, 66 S.Ct. 307, 90 L.Ed. 261 (1946); Draper v. United States, 164 U.S. 240, 17 S.Ct. 107, 41 L.Ed. 419 (1896); Utah & Northern R. Co. v. Fisher, 116 U.S. 28, 6 S.Ct. 246, 29 L.Ed.2d 542 (1885). This line of cases was summarized in this Court's landmark decision in Williams v. Lee, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959): 'Over the years this Court has modified (the Worcester principle) in cases where

essential tribal relations were not involved and where the rights of Indians would not be jeopardized . . . Thus, suits by Indians against outsiders in state courts have been sanctioned. . . . And state courts have been allowed to try non-Indians who committed crimes against each other on a reservation. . . . But if the crime was by or against an Indian, tribal jurisdiction or that expressly conferred on other courts by Congress has remained exclusive. . . . Essentially, absent governing *172 Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.' Id. at 219--220, 79 S.Ct., at 270 (footnote omitted).

[4] Finally, the trend has been away from the idea of inherent Indian sovereignty as a bar to state jurisdiction and toward reliance on federal pre-emption. [FN7] See Mescalero Apache Tribe v. Jones, 411 U.S. 145, 93 S.Ct. 1267, 36 L.Ed.2d 114. The modern cases thus tend to avoid reliance on platonic notions of Indian sovereignty and to look instead to the applicable treaties and statutes which define the limits of state power. Compare, e.g., United States v. Kagama, 118 U.S. 375, 6 S.Ct. 1109, 30 L.Ed. 228 (1886), with Kennerly v. District Court, 400 U.S. 423, 90 S.Ct. 480, 27 L.Ed.2d 507 (1971). [FN8]

FN7. The source of federal authority over Indian matters has been the subject of some confusion, but it is now generally recognized that the power derives from federal responsibility for regulating commerce with Indian tribes and for treaty making. See U.S. Const. Art. I, s 8, cl. 3; Art. II, s 2, cl. 2. See also Williams v. Lee, 358 U.S. 217, 219, 79 S.Ct. 269, 270, 3 L.Ed.2d 251 n. 4 (1959); Perrin v. United States, 232 U.S. 478, 482, 34 S.Ct. 387, 389, 58 L.Ed. 691 (1914); Federal Indian Law 3.

FN8. The extent of federal pre-emption and residual Indian sovereignty in the total absence of federal treaty obligations or legislation is therefore now something of a moot question. Cf. Organized Village of Kake v. Egan, 369 U.S. 60, 62, 82 S.Ct. 562, 564, 7 L.Ed.2d 573 (1962); Federal Indian Law 846. The question is generally of little more than theoretical importance, however, since in almost all cases federal treaties and statutes define the boundaries of federal and

state jurisdiction.

The Indian sovereignty doctrine is relevant, then, not because it provides a definitive resolution of the issues in this suit, but because it provides a backdrop against which the applicable treaties and federal statutes must be read. It must always be remembered that the various Indian tribes were once independent and sovereign nations, and that their claim to sovereignty long predates that of our own Government. Indians today are American*173 citizens. [FN9] They have the right to vote, [FN10] to use state courts, [FN11] and they receive some state services. [FN12] But it **1263 is nonetheless still true, as it was in the last century, that '(t)he relation of the Indian tribes living within the borders of the United States . . . (is) an anomalous one and of a complex character. . . . They were, and always have been, regarded as having a semi-independent position when they preserved their tribal relations; not as States, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or of the State within whose limits they resided.' United States v. Kagama, 118 U.S., at 381--382, 6 S.Ct., at 1112.

[FN9] See U.S.C. s 1401(a)(2).

[FN10] See, e.g., Harrison v. Laveen, 67 Ariz. 337, 196 P.2d 456 (1948).

[FN11] See, e.g., Felix v. Patrick, 145 U.S. 317, 332, 12 S.Ct. 862, 867, 36 L.Ed. 719 (1892).

[FN12] The court below pointed out that Arizona was expending tax monies for education and welfare within the confines of the Navajo Reservation. 14 Ariz.App. at 456--457, 484 P.2d at 225--226. It should be noted, however, that the Federal Government defrays 80% of Arizona's ordinary social security payments to reservation Indians, see 25 U.S.C. s 639, and has authorized the expenditure of more than \$88 million for rehabilitation programs for Navajos and Hopis living on reservations. See also 25 U.S.C. ss 13, 309, 309a.

Moreover, '(c)onferring rights and privileges on these Indians cannot affect their situation, which can only be changed by treaty stipulation, or a voluntary abandonment of their tribal organization.' The Kansas Indians, 5 Wall., at 757.

III

When the relevant treaty and statutes are read with this tradition of sovereignty in mind, we think it clear that Arizona has exceeded its lawful authority by attempting to tax appellant. The beginning of our analysis must be with the treaty which the United States Government *174 entered with the Navajo Nation in 1868. The agreement provided, in relevant part, that a prescribed reservation would be set aside 'for the use and occupation of the Navajo tribe of Indians' and that 'no persons except those herein so authorized to do, and except such officers, soldiers, agents, and employe s of the government, or of the Indians, as may be authorized to enter upon Indian reservations in discharge of duties imposed by law, or the orders of the President, shall ever be permitted to pass over, settle upon, or reside in, the territory described in this article.' 15 Stat. 668.

[5] The treaty nowhere explicitly states that the Navajos were to be free from state law or exempt from state taxes. But the document is not to be read as an ordinary contract agreed upon by parties dealing at arm's length with equal bargaining positions. We have had occasion in the past to describe the circumstances under which the agreement was reached. 'At the time this document was signed the Navajos were an exiled people, forced by the United States to live crowded together on a small piece of land on the Pecos River in eastern New Mexico, some 300 miles east of the area they had occupied before the coming of the white man. In return for their promises to keep peace, this treaty 'set apart' for 'their permanent home' a portion of what had been their native country.' Williams v. Lee, 358 U.S., at 221, 79 S.Ct., at 271.

[6][7] It is circumstances such as these which have led this Court in interpreting Indian treaties, to adopt the general rule that '(d)oubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith.' Carpenter v. Shaw, 280 U.S. 363, 367, 50 S.Ct. 121, 122, 74 L.Ed. 478 (1930). When this canon of construction is taken together with the tradition of Indian independence

described above, it cannot be doubted that the reservation of certain lands for the exclusive use and occupancy of *175 the Navajos and the exclusion of non-Navajos from the prescribed area was meant to establish the lands as within the exclusive sovereignty of the Navajos under general federal supervision. It is thus unsurprising that this Court has **1264 interpreted the Navajo treaty to preclude extension of state law-- including state tax law--to Indians on the Navajo Reservation. See Warren Trading Post Co. v. Arizona Tax Comm'n, 380 U.S., at 687, 690, 85 S.Ct., at 1243, 1245; Williams v. Lee, supra, 358 U.S., at 221--222, 79 S.Ct., at 271.

Moreover, since the signing of the Navajo treaty, Congress has consistently acted upon the assumption that the States lacked jurisdiction over Navajos living on the reservation. [FN13] Thus, when Arizona entered the Union, its entry was expressly conditioned on the promise that the State would 'forever disclaim all right and title to . . . all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States.' Arizona Enabling Act, 36 Stat. 569. [FN14]

[FN13] 'Congress has . . . acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation. . . . Significantly, when Congress has wished the States to exercise this power it has expressly granted them the jurisdiction which Worcester v. Georgia had denied.' Williams v. Lee, 358 U.S. at 220--221, 79 S.Ct. at 271 (footnote omitted).

[FN14] This language is duplicated in Arizona's own constitution. See Ariz. Const., Art. 20, 4, A.R.S. It is also contained in the Enabling Acts of New Mexico and Utah, the other States in which the Navajo Reservation is located. See New Mexico Enabling Act, 36 Stat. 558--559; Utah Enabling Act, 28 Stat. 108.

[8] Nor is the Arizona Enabling Act silent on the specific question of tax immunity. The Act expressly

provides *176 that 'nothing herein, or in the ordinance herein provided for, shall preclude the said State from taxing as other lands and other property are taxed any lands and other property outside of an Indian reservation owned or held by any Indian.' Id., at 570 (emphasis added). It is true, of course, that exemptions from tax laws should, as a general rule, be clearly expressed. But we have in the past construed language far more ambiguous than this as providing a tax exemption for Indians. See, e.g., Squire v. Caposman, 351 U.S. 1, 6, 76 S.Ct. 611, 614, 100 L.Ed. 883 (1956), and we see no reason to give this language an especially crabbed or restrictive meaning. [FN15]

[FN15] There is nothing in Organized Village of Kake v. Egan, 369 U.S. 60, 82 S.Ct. 562, 7 L.Ed.2d 573 (1962), to the contrary. In Egan, we held that 'absolute' federal jurisdiction is not invariably exclusive jurisdiction,' and that this language in federal legislation did not 'preclude the exercise of residual state authority. See id., at 68, 82 S.Ct. at 567. But that holding came in the context of a decision concerning the fishing rights of nonreservation Indians. See id., at 62, 82 S.Ct. at 564. It did not purport to provide guidelines for the exercise of state authority in areas set aside by treaty for the exclusive use and control of Indians.

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. s 104 et seq., which provides comprehensive federal guidance for state taxation of those living within federal areas. Section 106(a) of Title 4 U.S.C. grants to the States general authority to impose an income tax on residents of federal areas, but s 109 expressly provides that '(n)othing in sections 105 and 106 of this title shall be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed.' To be sure, the language of the statute itself does not make clear whether the reference to 'any Indian not otherwise taxed' was intended to apply to reservation Indians earning their income on the reservation. But the legislative **1265 history makes plain that this proviso was *177 meant to except reservation Indians from coverage of the Buck Act, see S.Rep.No.1625, 76th Cong., 3d Sess., 2, 4 (1940); 84 Cong.Rec. 10685, and this Court has so interpreted it. See Warren Trading Post Co. v. Arizona Tax Comm'n,

380 U.S. at 691 n. 18, 85 S.Ct. at 1245. While the Buck Act itself cannot be read as an affirmative grant of tax-exempt status to reservation Indians, it should be obvious that Congress would not have jealously protected the immunity of reservation Indians from state income taxes had it thought that the States had residual power to impose such taxes in any event. Similarly, narrower statutes authorizing States to assert tax jurisdiction over reservations in special situations are explicable only if Congress assumed that the States lacked the power to impose the taxes without special authorization. [FN16]

FN16 See, e.g., 25 U.S.C. s 398 (congressional authorization for States to tax mineral production on unallotted tribal lands). Cf. 18 U.S.C. s 1161 (state liquor laws may be applicable within reservations); 25 U.S.C. s 231 (state health and education laws may be applicable within reservations).

Finally, it should be noted that Congress has now provided a method whereby States may assume jurisdiction over reservation Indians. Title 25 U.S.C. s 1322(a) grants the consent of the United States to States wishing to assume criminal and civil jurisdiction over reservation Indians, and 25 U.S.C. s 1324 confers upon the States the right to disregard enabling acts which limit their authority over such Indians. But the Act expressly provides that the State must act 'with the consent of the tribe occupying the particular Indian country,' 25 U.S.C. s 1322(a), [FN17] and must 'appropriately (amend *178 its) constitution or statutes.' 25 U.S.C. s 1324. Once again, the Act cannot be read as expressly conferring tax immunity upon Indians. But we cannot believe that Congress would have required the consent of the Indians affected and the amendment of those state constitutions which prohibit the assumption of jurisdiction if the States were free to accomplish the same goal unilaterally by simple legislative enactment. See Kemmerly v. District Court, 400 U.S. 423, 91 S.Ct. 480, 27 L.Ed.2d 507 (1971). [FN18]

FN17. As passed in 1953, Pub.L. 280, 67 Stat. 588, delegated civil and criminal jurisdiction over Indian reservations to certain States, although not to Arizona. 18 U.S.C. s 1162; 28 U.S.C. s 1360. The original Act also provided a means whereby other States could assume jurisdiction over Indian reservations without the consent of

the tribe affected. 67 Stat. 590. However, in 1968, Congress passed the Indian Civil Rights Act which changed the prior procedure to require the consent of the Indians involved before a State was permitted to assume jurisdiction. 25 U.S.C. s 1322(a). Thus, had it wished to do so, Arizona could have unilaterally assumed jurisdiction over its portion of the Navajo Reservation at any point during the 15 years between 1953 and 1968. But although the State did pass narrow legislation purporting to require the enforcement of air and water pollution standards within reservations, Ariz. Rev. Stat. Ann. ss 36--1801, 36--1865 (Supp.1972), it declined to assume full responsibility for the Indians during the period when it had the opportunity to do so.

FN18. We do not suggest that Arizona would necessarily be empowered to impose this tax had it followed the procedures outlined in 25 U.S.C. s 1322 et seq. Cf. 25 U.S.C. s 1322(b). That question is not presently before us, and we express no views on it.

Arizona, of course, has neither amended its constitution to permit taxation of the Navajos nor secured the consent of the Indians affected. Indeed, a startling aspect of this case is that appellee apparently concedes that, in the absence of compliance with 25 U.S.C. s 1322(a), the Arizona courts can exercise neither civil nor criminal jurisdiction over reservation Indians. See Brief for Appellee 24--26. [FN19] But the appellee nowhere explains **1266 how, without such jurisdiction, the State's tax may either be imposed or collected. Cf. Tr. of Oral Arg. 38--39. Unless the State is willing to defend the position *179 that it may constitutionally administer its tax system altogether without judicial intervention, cf. Ward v. Board of County Comm'rs, 253 U.S. 17, 40 S.Ct. 419, 64 L.Ed. 751 (1920), the admitted absence of either civil or criminal jurisdiction would seem to dispose of the case.

FN19. In light of our prior cases, appellee has no choice but to make this concession. See, e.g., Kemmerly v. District Court, 400 U.S. 423, 91 S.Ct. 480, 27 L.Ed.2d 507 (1971); United States v. Kagama, 118 U.S. 375, 6 S.Ct. 1109, 30 L.Ed. 228 (1886).

IV

When Arizona's contentions are measured against these statutory imperatives, they are simply untenable. The State relies primarily upon language in *Williams v. Lee* stating that the test for determining the validity of state action is 'whether (it) infringed on the right of reservation Indians to make their own laws and be ruled by them.' 358 U.S. at 220, 79 S.Ct. at 271. Since Arizona has attempted to tax individual Indians and not the tribe or reservation as such, it argues that it has not infringed on Indian rights of self-government.

In fact, we are far from convinced that when a State imposes taxes upon reservation members without their consent, its action can be reconciled with tribal self-determination. But even if the State's premise were accepted, we reject the suggestion that the *Williams* test was meant to apply in this situation. It must be remembered that cases applying the *Williams* test have dealt principally with situations involving non-Indians. See also *Organized Village of Kake v. Egan*, 369 U.S. at 75-76, 82 S.Ct. at 570-571. In these situations, both the tribe and the State could fairly claim an interest in asserting their respective jurisdictions. The *Williams* test was designed to resolve this conflict by providing that the State could protect its interest up to the point where tribal self-government would be affected.

[2] The problem posed by this case is completely different. Since appellant is an Indian and since her income is derived wholly from reservation sources, her activity is totally within the sphere which the relevant treaty and *180 statutes leave for the Federal Government and for the Indians themselves. Appellee cites us to no cases holding that this legislation may be ignored simply because tribal self-government has not been infringed. [FN20] On the contrary, this Court expressly rejected such a position only two years ago. [FN21] In *Kennerly v. District Court*, 400 U.S. 423, 91 S.Ct. 480, 27 L.Ed.2d 507 (1971), the Blackfoot Indian Tribe had voted to make state jurisdiction concurrent within the reservation. Although the State had not complied with the procedural prerequisites for the assumption of jurisdiction, it argued that it was nonetheless entitled to extend its laws to the reservation since such action was obviously consistent with the wishes of the Tribe and, therefore, with tribal self-government. But we held that the *Williams* rule was inapplicable and that '(t)he unilateral action of the Tribal Council was

insufficient to vest Montana with jurisdiction.' *Id.* at 427, 91 S.Ct. at 482. If Montana may not assume jurisdiction over the Blackfeet by simple legislation even when the Tribe itself agrees to be bound by state law, it surely follows that Arizona **1267 may not assume such jurisdiction in the absence of tribal agreement.

[FN20. *Organized Village of Kake v. Egan*, 369 U.S. 60, 82 S.Ct. 562, 7 L.Ed.2d 573 (1962), is not such a case. See n. 15, supra.

[FN21. Indeed, the position was expressly rejected in *Williams* itself, upon which appellee so heavily relies. *Williams* held that 'absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.' 358 U.S. at 220, 79 S.Ct. at 271 (emphasis added).

[10] Nor is the State's attempted distinction between taxes on land and on income availing. Indeed, it is somewhat surprising that the State adheres to this distinction in light of our decision in *Warren Trading Post Co. v. Arizona Tax Comm'n*, supra, wherein we invalidated an income tax which Arizona had attempted to impose *181 within the Navajo Reservation. However relevant the land-income distinction may be in other contexts, it is plainly irrelevant when, as here, the tax is resisted because the State is totally lacking in jurisdiction over both the people and the lands it seeks to tax. In such a situation, the State has no more jurisdiction to reach income generated on reservation lands than to tax the land itself.

Finally, we cannot accept the notion that it is irrelevant 'whether the . . . state income tax infringes on (appellant's) rights as an individual Navajo Indian,' as the State Court of Appeals maintained. 14 *Ariz.App.* at 454, 484 P.2d, at 223. To be sure, when Congress has legislated on Indian matters, it has, most often, dealt with the tribes as collective entities. But those entities are, after all, composed of individual Indians, and the legislation confers individual rights. This Court has therefore held that 'the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.' *Williams v. Lee*, supra, 358 U.S. at 220, 79 S.Ct. at 271.

93 S.Ct. 1257
36 L.Ed.2d 129

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(Cite as: 411 U.S. 164, 93 S.Ct. 1257)

(emphasis added). In this case, appellant's rights as a reservation Indian were violated when the state collected a tax from her which it had no jurisdiction to impose. Accordingly, the judgment of the court below must be reversed.

Reversed.

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Topash v. Commissioner of Revenue

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291 N.W.2d 679 (1980)

Bernard W. TOPASH, Relator, v. The COMMISSIONER OF REVENUE, Respondent.

No. 50030.

Supreme Court of Minnesota.

March 28, 1980.

*680 Bernard P. Becker, St. Paul, Richard B. Collins, Native American Rights Fund, Boulder, Colo., for relator.

Warren Spannaus, Atty. Gen., and Paul R. Kempainen, Sp. Asst. Atty. Gen., Dept. of Revenue, St. Paul, for respondent.

James W. Moorman, Asst. Atty. Gen., Edward J. Shawaker and Judith Welch Wegner, Attys., Dept. of Justice, Washington, D. C., amicus curiae.

Heard, considered, and decided by the court en banc.

WAHL, Justice.

A writ of certiorari was granted by this court to allow taxpayer Bernard Topash to challenge a decision of the Minnesota Tax Court denying his claim for refund of Minnesota income tax paid by him in 1973. The issue presented is whether the State of Minnesota has jurisdiction over income earned within the Red Lake Indian Reservation by an Indian residing within the reservation but enrolled in a tribe other than the Red Lake Band of Chippewa Indians. We reverse.

Bernard Topash is an enrolled member of the Tulalip Tribe of Indians in the State of

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Minnesota income tax was withheld from his wages by his employer. He filed a 1973 state tax return and, after receiving a refund, paid a net income tax of \$626.69 to the state for 1973. On May 5, 1977, as taxpayer-relator, he filed a claim for refund of these taxes paid. His claim for refund was denied by the Commissioner of Revenue in March 1978, whereupon he appealed to the Minnesota Tax Court, which affirmed the Commissioner's order. He seeks reversal of the Tax Court's decision, alleging that, as an Indian, he was exempt from state income taxation.

The issue raised is one we did not address in *Commissioner of Taxation v. Brun*, 286 Minn. 43, 174 N.W.2d 120 (1970), where we held that the State of Minnesota may not levy income taxes on wages earned on the Red Lake Indian Reservation by an enrolled member of the Red Lake Band of Chippewa residing on the Red Lake Reservation. The taxpayer contends that federal Indian jurisdiction, which preempts state taxing power within the Red Lake Reservation, includes Indians of all tribes and is not confined to Indians of the local tribe. Amicus Curiae, the Government of the United States, strongly supports this position. The state, in seeking to tax Mr. Topash, relies on the "inherent right" of the sovereign state to tax and argues that, although the Red Lake Band has jurisdiction over Mr. Topash for purposes of regulating his conduct, and although he would be subject to federal criminal law pertaining to Indians while on the reservation, the state can tax his income because he is not a member of the Red Lake Band.

The leading case on income tax immunity of Indians, *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164, 93 S.Ct. 1257, 36 L.Ed.2d 129 (1973), held that a Navajo Indian, residing on the Navajo Reservation, was not subject to state income tax for money earned on the reservation. *McClanahan* does not directly answer the question raised by the instant case, because the court, though repeatedly stating that "reservation Indians" are exempt from tax, does not define "reservation Indian." The Commissioner argues that the term means only enrolled members of the tribe living on the reservation, as was the taxpayer in that case. It is more likely, however, that the court's use of the phrase "reservation Indian" was used to distinguish *McClanahan* from its companion case, *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973), decided the same day, wherein the court held that the state does have jurisdiction to tax activities carried on by Indians outside the boundaries of the reservation unless forbidden by federal law. *681 Specific language in *McClanahan* also supports the view that the Commissioner's interpretation is too narrow: "Since appellant is an Indian and since her income is derived wholly from reservation sources, her activity is totally within the sphere which the relevant treaty and statutes leave for the Federal Government and for the

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enrolled member of the Navajo tribe working on the Navajo reservation was based on principles of federal preemption against an historical "backdrop" of Indian sovereignty. The court examined applicable treaties and statutes defining the limits of state power, while remaining cognizant of the deeply-rooted policy of leaving Indians free from state interference. Broadly speaking, the McClanahan case stands for the proposition that absent cessation of jurisdiction or other federal statutes permitting it, a state may not tax Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation. *Mescalero Apache Tribe v. Jones*, 411 U.S. at 148, 93 S.Ct. at 1270.

Statutes and treaties applicable to the instant case do not expressly discuss the status of tribal Indians residing on reservations other than their own. The U.S. treaties of 1863 and 1864 with the Red Lake Chippewa contain no language granting or denying jurisdiction to the state to tax members or nonmembers of the Red Lake Band.[1] Nor are there any provisions in Minnesota's enabling legislation, Minn.Stat. §§ 290.03, 290.17 (1978), addressing the issue of the state's power to tax Indians of any tribe. Therefore, although the Commissioner is correct that no statutory authority can be found which expressly denies Minnesota jurisdiction to tax an Indian who does not belong to the Red Lake band, neither is there authority which confers that jurisdiction on Minnesota. While normally a state has inherent power to tax all subjects over which its sovereign power extends, *International Harvester Co. v. Wisconsin Dept. of Taxation*, 322 U.S. 435, 445, 64 S.Ct. 1060, 1065, 88 L.Ed. 1373 (1944), "Indians stand in a special relation to the federal government from which the states are excluded unless the Congress has manifested a clear purpose to terminate [a tax] immunity and allow states to treat Indians as part of the general community." *Bryan v. Itasca County*, 426 U.S. 373, 392, 96 S.Ct. 2102, 2113, 48 L.Ed.2d 710 (1976), quoting *Oklahoma Tax Commission v. United States*, 319 U.S. 598, 613-14, 63 S.Ct. 1284, 1291, 87 L.Ed. 1612 (Murphy, J., dissenting).[2]

Federal statutes and regulations in general do not expressly distinguish between Indians belonging to different tribes.[3] "Indian" is defined throughout the code and regulations as a person of Indian descent who is a member of "an," or "any," recognized Indian tribe.[4] In 25 U.S.C. § 479 *682 (1976), "tribe" is defined as "any Indian tribe, organized band, pueblo, or the Indians residing on one reservation." (Emphasis supplied.) The statutes relied on by the court in *McClanahan*, Pub.L. 280[5] and the Buck Act,[6] refer to "Indians" without distinguishing between tribes. The broad general policy is to protect Indians, of whatever tribe, from state government interference. See *United States v. Kagama*, 118 U.S. 375, 384, 6 S.Ct. 1109, 1114, 30 L.Ed. 228 (1886); *Cook v. State*, 88 S.D. 102, 215 N.W.2d

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benefit of Indians, like Indian treaties, must be liberally construed, doubtful expressions being resolved in favor of the Indians. *Bryan v. Itasca County*, 426 U.S. at 392, 96 S.Ct. at 2112. Considering this principle and the related requirement from *Bryan* that congressional intent to terminate Indian tax immunities must be clear, there is little basis for Minnesota's assertion of jurisdiction over taxpayer here.

Furthermore, the Red Lake Reservation is expressly excepted from those Indian areas over which Minnesota has civil and criminal jurisdiction by 28 U.S.C. § 1360 (1976) and 18 U.S.C. § 1162 (1976).[7] The *683 fact that Arizona did not have jurisdiction over the Navajo reservation was important to the holding in *McClanahan*, 411 U.S. at 178-79, 93 S.Ct. at 1265-1266.

Other courts, considering whether tax exemptions apply to Indians living on reservations other than their own, have held that membership in a particular tribe is not important. *Fox v. Bureau of Revenue*, 87 N.M. 261, 531 P.2d 1234 (N.M.App.1975), state cert. denied, 88 N.M. 318, 540 P.2d 248 (1975), U.S. cert. denied, 424 U.S. 933, 96 S.Ct. 1147, 47 L.Ed.2d 341 (1976), held that a Commanche Indian residing on the Navajo Reservation was not subject to state income tax for earnings as an employee of the BIA. The Montana Supreme Court came to the same conclusion about the income of nonmember Indians living on the Fort Peck Indian Reservation in *LaRoque v. Montana*, 583 P.2d 1059, 1063 65 (Mont. 1978). See also *Dillon v. Montana*, 451 F.Supp. 168 (D.Mont.1978) (state has no jurisdiction to impose income tax on nonmember Indians living on Crow Reservation, where Crow treaty creates reservation for Crows and other Indians whom they choose to admit onto reservation). In *Confederated Salish and Kootenai Tribes v. Moe*, 392 F.Supp. 1297, 1312 (D.Mont.1974), *aff'd* on other grounds, 425 U.S. 463, 96 S.Ct. 1634, 48 L.Ed.2d 96 (1976), the court held that the state had no jurisdiction to impose taxes on residents of the Flathead Reservation, whether they are members of the tribe or not. This ruling, not challenged on appeal, was left undisturbed by the Supreme Court. 425 U.S. at 480 n. 16, 96 S.Ct. at 1645 n. 16. The Supreme Court affirmed the lower court's rulings that a state's personal property tax on property located within the reservation, a vendor license fee applied to an Indian conducting a cigarette business for the tribe on reservation land, and a cigarette sales tax applied to on-reservation sales by Indians to Indians, were impermissible.

Our analysis of the U.S. Supreme Court cases and relevant federal statutes and regulations persuades us that the position of Mr. Topash and the U.S. Department of the Interior is a sound one. We hold, therefore, that federal Indian jurisdiction includes Indians

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to non-enrolled Indians.

The decision of the Tax Court is reversed.

NOTES

[1] See Treaty with the Chippewa-Red Lake and Pembina Bands, 1863, 13 Stat. 667; Treaty with the Chippewa-Red Lake and Pembina Bands, 1864, 13 Stat. 689. For a well-documented discussion supporting the thesis that most Indian treaties contain no provision providing that Indians may not be taxed because such a provision was unnecessary in view of the historical rule that all Indian lands and income are tax exempt, see J. V. White, *Taxing Those They Found Here* (1972).

[2] The Supreme Court's previous test for determining the validity of state action was whether the action infringed on the right of reservation Indians to self-government. *Williams v. Lee*, 358 U.S. 217, 220, 79 S.Ct. 269, 270, 3 L.Ed.2d 251 (1959). *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164, 93 S.Ct. 1257, 36 L.Ed.2d 129 (1973) expressly limited the proper application of this test to situations involving non-Indians, and therefore, to the extent this test was relied on by the Tax Court below, the court was in error. 411 U.S. at 179-80, 93 S.Ct. at 1266.

[3] Congress differentiates between tribes when making per capita payments to members of specific tribes, see 25 U.S.C. §§ 681-690 (1976), but these provisions, cited by the Commissioner, are not relevant to the question facing this court.

[4] See, e. g., 25 U.S.C. § 479 (1976), 25 U.S.C. § 450b (1976), 25 C.F.R. §§ 11.2(c), 20.1(p) (1979), 42 C.F.R. § 36.12(a) (1979). Courts have held that enrollment in a tribe is not determinative of status as an "Indian." See, e. g., *United States v. Dodge*, 538 F.2d 770, 786 (8th Cir. 1976), cert. denied, 429 U.S. 1099, 97 S.Ct. 1118, 51 L.Ed.2d 547 (1977); *United States v. Ives*, 504 F.2d 935, 953 (9th Cir. 1974), cert. denied, 429 U.S. 1103, 97 S.Ct. 1130, 51 L.Ed.2d 554 (1977).

[5] Act of Aug. 15, 1953, Pub.L. 83-280, 67 Stat. 588, codified at 18 U.S.C. § 1162, and 28 U.S.C. § 1360, granted jurisdictional authority to certain states, including Minnesota. A method whereby other states could assume jurisdiction over Indian reservations is provided by the Indian Civil Rights Act, 25 U.S.C. §§ 1321-26 (1976). Section 1360 of Title 28 provides as follows:

(a) Each of the States or Territories listed in the following table shall have jurisdiction over

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EXISTENT AND SUCH STATE OR TERRITORY HAS JURISDICTION OVER OTHER CIVIL CAUSES OF ACTION, AND those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
AlaskaAll Indian country within the Territory.
CaliforniaAll Indian country within the State.
MinnesotaAll Indian country within the State, except the Red Lake Reservation.
NebraskaAll Indian country within the State.
OregonAll Indian country within the State, except the Warm Springs Reservation.
WisconsinAll Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

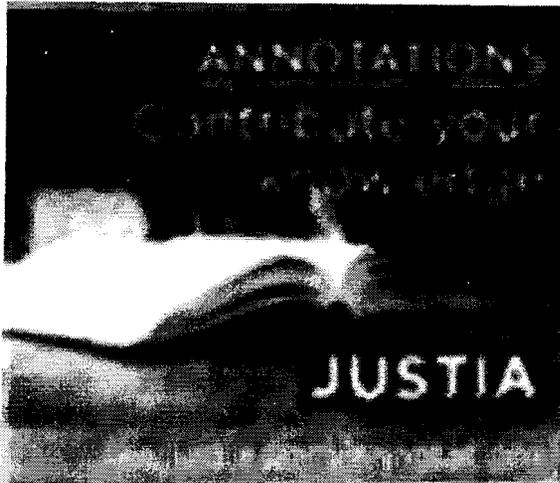
Section 1162 of Title 18 of the U. S. Code grants state jurisdiction over criminal offenses committed by or against Indians in Indian country. The language of the section is parallel to that of 28 U.S.C. § 1360, and thus the Red Lake Reservation is not subject to state criminal jurisdiction pursuant to the statute. The U. S. Supreme Court held in *Bryan v. Itasca County*, 426 U.S. 373, 96 S.Ct. 2102, 48 L.Ed.2d 710 (1976), that 28 U.S.C. § 1360 is not a congressional grant of power to the states to tax reservation Indians not expressly excluded by the statute's terms.

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needed to authorize the collection of any tax on any Indian not otherwise taxed.

[7] It is unclear, however, whether Minnesota lacks jurisdiction over nonmembers of the Red Lake Band of Chippewa. Article VI, § 5 of the Constitution of the Red Lake Band, which asserts general tribal jurisdiction over members of the band and Indians from other tribes, considered in conjunction with the fact that the Red Lake Indians retain an unusually well-protected right to self-government and sovereignty, *Commissioner of Taxation v. Brun*, 286 Minn. 43, 174 N.W.2d 120 (1970), leads to the conclusion that the state probably has no jurisdiction over nonmember Indians living on the Red Lake Reservation. If this is so, then the state would have no means to impose or collect an income tax on a nonmember Indian.



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