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This letter is in response to your inquiry of February 20, 1981, concerning the property tax ramifications of Indian allotted land. Specifically, you ask the following questions:

1. Do Indians living on reservation land have a right to a property tax exemption if they are living on their own allotted land or that of another Indian?
2. Would any such exemption apply to improvements, land, or both?
3. Does a developer of reservation property under a lease from the Indians have a taxable possessory interest?
4. Are Indians subject to the change of ownership requirements of Revenue and Taxation Code Section 480, et seq?

In Agua Caliente Band of Mission Indians v. County of Riverside, 442 F2d 1184 (1971), the court discussed the legal status of the Indian land in the Palm Springs area. The Secretary of Interior allotted to the Agua Caliente Band of Mission Indians (hereinafter the Band) over 26,000 acres in the Palm Springs area. The legal title to the lands is in the United States in trust.

According to 25 USCA 465, when title to land is taken in the name of the United States in trust for an Indian tribe or individual Indian, the land and rights are exempt from state and local taxation. The reason for this exemption is discussed in Agua Caliente Band of Mission Indian v. County of Riverside, supra, at p. 1185, where the court, citing Federal Indian Law, Department of Interior, 1958, stated:

Perhaps the most frequent reason stressed by the courts for the exemption of Indian property from State taxation is the Federal Instrumentally doctrine. The doctrine in its application to Indians and Indian property is founded upon the premise that the power and duty of governing and protecting tribal Indians is primarily a Federal function and that a state cannot impose a tax which will substantially impede or burden the functioning of the Federal Government.

The Federal Instrumentally doctrine prohibits a tax imposition on The Band that would not be allowed on the government. As a result, courts have interpreted the exemption to apply to a use tax, but not an income tax derived from the land. See Mescalero Apache Tribe v. Jones 411 US 145 (1973). An Indian is thus exempt from the direct taxation of federal land. It is the opinion of the Board that a member of The Band is not subject to tax if he resides on the land held in title by the United States in trust. We believe a tax imposed on The Band in any form relating to the occupancy of Federal land, whether allotted to them individually or not, would substantially frustrate the intent of Congress at 25 USCA 465.

The next question concerns the extent of the exemption. The Supreme Court addressed the issue in Mescalero Apache Tribe v. Jones, supra at p. 125, wherein it stated in pertinent part:

[U]se of permanent improvements upon land is so intimately connected with use of the land itself that an explicit provision relieving the latter of state tax burdens must be construed to encompass an exemption of the former.

The third question concerns the ability to impose a property tax on a possessory interest of the master lessee-developer. Agua Caliente Band of Mission Indians v. County of Riverside, supra, held the imposition of a property tax on a possessory interest of a lessee was valid. The court stated that The Band was entitled to no more protection than the Federal Government. The court cites United States v. City of Detroit 355 US 466 (1958) where it was held that a tax similar to the California possessory interest tax was imposed properly upon a lessee of the Federal Government. (See also United States v. Fresno County, 429 US 452; Fort Mojave Tribe v. San Bernardino County, 543 F2d 1253 (1976)).

The sublease by the developer to the individual member of The Band does not relieve the developer of his burden under the law. In Ohrbach's Inc. v. County of Los Angeles 190 Cal. App. 2d 575 (1961), the plaintiff leased property to a tax-exempt organization. The court held the plaintiff was not relieved of his duty under the law, wherein it stated:

If the leasehold interest of the state was exempt from taxation, it would not follow that the owner or lessor would also be entitled to such an exemption with respect to the leased portion.

The final question concerned the application to The Tribe of the change of ownership statement and its pertinent enforcement sections, Revenue and Taxation Code Section 480, et seq. Our research indicated no case directly on point, however, Confederated Tribes of Colville v. State of Washington, 446 F. Supp. 1339 (1978), contained an approach which is somewhat parallel to the current situation. The case involved the state's authority to require individuals conducting business on reservations to register with the state taxing agency, collect and remit sales taxes when applicable, and keep records detailing taxable and non-taxable sales transactions.

The court found the state has an interest insuring the collection of taxes validly imposed on non-Indians. To achieve this interest, the state has some regulatory power over reservation. Indians concerning on-reservation transactions with non-Indians. The extent of the regulation must be such that it is "reasonably necessary to ensure payment of taxes which it does have power to impose..." while "...minimizing the impact on Indians..." See Confederated Tribes at pp. 1372-73.

The court analyzed the regulations differently for taxable and non-taxable transactions. A taxable transaction would occur when the legal incidence of the tax falls on a non-Indian. When regulating a taxable transaction, the court states at p. 1373; "The state is merely entering into an area in which it has recognized, albeit very limited, power. Such regulations are presumed reasonable necessary...."

In the area of California Property Tax Law, a re-appraisable event generally occurs upon a sale or disposition of property. The legal incidence of this tax falls upon the purchaser/owner. Thus when an Indian sells to a non-Indian a re-appraisable transaction occurs and the state has an interest in the sale and clearly may require the change of ownership form from the non-Indian purchaser.

A non-taxable (re-appraisable) event occurs when the legal incidence of the tax falls on the Indian. In requiring application of Revenue and Taxation Code Section 480 to Indians in such situation. "the state is placing a burden upon Indian[s]...with respect to transactions over which it normally would have no power, and which pertains only indirectly to taxable sales." The regulation must be reasonably necessary to insure payment of taxes over which it does have the power to regulate; i.e., a sale to non-Indians. The burden of proof is on the State. The court stated the need to create an audit trail to prevent fraudulent tax avoidance may be enough to uphold the record keeping requirement. However, the same may not be true in the property tax field. Because the change of ownership forms are required of every purchaser, the state has a means to insure reappraisal and collection of taxes from non-Indians. It is entirely possible a court of law would find the change of ownership requirements inapplicable to the Tribe. In any event, the issue is yet to be decided. Assuming Revenue and Taxation Code Section 480, et seq. are upheld, the applicability of the enforcement provisions is also indoubt. In Confederated Tribes, the court expressly withheld decision on the matter of enforcement provisions because it stated it had no reason to assume the Indians would not comply. Any opinion on the validity of the enforcement provisions would be pure speculation. However, I personally think they would be unenforceable.

Finally, we spoke with Mr. William Wirtz of the U.S. Attorney's Office in Sacramento. He states their office would "probably" not oppose an attempt to get The Tribe to comply with the change of ownership forms; however, he indicated a strong possibility of litigation over the enforcement section. He suggested you get together with The Tribe and attempt to arrange voluntary compliance with the section.

If you have any further inquiries, please let me know.

Very Truly Yours,

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