

Approved _____
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION

The meeting was called to order by Joan Wagnon at _____
Chairperson

7:30 a.m. on Thursday, April 25, 1991 in room 521-S of the Capitol.

All members were present except:

Committee staff present:

Tom Severn & Chris Courtwright, Legislative Research;
Don Hayward & Bill Edds, Revisors;
Linda Frey, Committee Secretary & Douglas E. Johnston, aide

Conferees appearing before the committee:

Chairman Wagnon brought up HB 2637 for continued discussion and action.

Rep. Adam restated her motion of the previous meeting that the moratorium on the collection of sales and excise taxes on Indian lands end on January 1, 1992. Another representative restated his concern that a non-tribal merchant currently doing business on Indian land was earning approximately \$35,000 per month from untaxed gasoline sales and that neither the Indians nor the state of Kansas was benefiting.

The Chair suggested bifurcating the proposal so that reservations currently collecting a tax roughly equivalent to that of the state tax would have until January 31, 1992 to negotiate an agreement with the state of Kansas regarding the distribution of those revenues. Indian reservations that do not currently collect a tax roughly equivalent to that of the state tax would be given until July 1, 1992 to impose and collect such a tax. If at the end of the respective deadlines no agreements have been reached then the state would exercise its right to collect the tax as established by a recent U.S. Supreme Court decision.

With the consent of the second, Rep. Adam withdrew her motion.

Information was distributed from the Kickapoo Nation (attachments 1 through 4).

The Chair stated that she would request the negotiations be included in the interim calendar study and that regular progress reports be made to the legislature.

Rep. Smith stated that local areas were losing revenues because of the failure to collect the gasoline tax on the Indian reservations and that some replacement revenues would be necessary to supplement the loss. The Chair stated that any agreement or compact must include not only the local option

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TAXATION

room 521-S, Statehouse, at 7:30 a.m./~~pm~~ on Thursday, April 25, 1991

sales tax but also the local distribution portion of the gasoline tax.

Rep. Krehbiel moved and Rep. Harder seconded the proposal of Chairman Wagnon as an amendment to HB 2637. The motion carried.

Rep. Larkin moved and Rep. Adam seconded recommending HB 2637 as amended favorably for passage. The motion carried.

The Chair brought up SB 416 for discussion and action.

Rep. Crowell moved and Rep. Pottorff seconded incorporating the amendment requested by Rep. Elizabeth Baker in SB 416.

After discussion, with the consent of the second, Rep. Crowell withdrew his motion.

Rep. Snowbarger moved and Rep. Shore seconded the introduction of a bill having the same effect as the amendment to SB 416 suggested by Rep. Elizabeth Baker. The motion carried.

Rep. Snowbarger moved and Rep. Vancrum seconded recommending SB 416, as amended with two technical amendments requested by the revisor, favorably for passage. The motion carried.

The Chair brought up HCR 5025 and HCR 5017 for discussion and action.

Rep. Lowther moved and Rep. Snowbarger seconded amending HCR 5025 to allow by a vote of a county commission or by petition by 5% of the electors in a county eligible under other provisions of the resolution, to initiate a county referendum, to utilize local option property classification as provided for in the resolution. The motion carried.

Rep. Charlton moved and Rep. Grotewiel seconded amending HCR 5025 by eliminating lines 31 through 34 up to and including ". . . and manufacturer's inventories" on page 5.

Rep. Larkin made a substitute motion to include household goods as a taxable item. Rep. Krehbiel seconded the motion which failed.

Rep. Smith made a substitute motion to strike lines 38 through 40 on page 5 of HCR 5025. Rep. Shore seconded the motion which failed on division with 7 for and 10 against.

Rep. Shore stated that the motion would ensure that excise taxes would not be included as an optional taxable item.

Rep. Lowther made a substitute motion to eliminate the population requirement for eligibility in HCR 5025. Rep. Grotewiel seconded the motion which carried.

Rep. Reardon made a substitute motion to include manufacturers' machinery and equipment. Rep. Grotewiel seconded the motion which carried.

The committee adjourned at 9:00 a.m.

GUEST LIST

COMMITTEE: *Tapation*

DATE: *4/25/91*

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
MARK A. BURGHART	TOPEKA	REVENUE
JENNIE MILLER	"	A.G. OFFICE
Michelle Lester	"	John Peterson + Associates
Jim Ludwig	"	KPL GAS SERVICE
Bob Corkins	"	KCCI
Alan Steppat	"	Pete Mcbill + Associates
ARE BROWN	KCMO	KS. Lumber dealers ASSN
Carl Daugherty	Columbus	Empire District Electric
Curt Carpenter	Great Bend	Centel
Jackie Oakes	Topeka	
Mark Tallman	Topeka	KRFB
Tom Whitaker	Topeka	Ks Motor Carriers Assn
Trudy ARON	TOPEKA	Am Inst of Architects
GERRY RAY	Olathe	Johnson County
FRANCIS Kastner	Topeka	Ks Food Dealers Assn.
Kick McKee	Topeka	KLA
Don Schmauck	Topeka	KCJOGK
R Anderson	Ottawa	Mid Coast OCB
Jack Glaves	Wichita	Parkville East
Galen Westlund	Bendora	State Rep
B. Williams	Topeka	Governor office
Laver Cadon	Lawrence	"
KAREN FRANCE	TOPEKA	KAR



KANSAS DEPARTMENT OF REVENUE
Office of the Secretary
 Robert B. Docking State Office Building
 Topeka, Kansas 66612-1588

June 23, 1989

Mr. Lance Burr
 Attorney at Law
 16 E. Thirteenth Street
 Lawrence, Kansas 66044

Dear Lance,

Pursuant to our meeting of June 23, 1989, this letter sets forth the Kansas Department of Revenue's policy on the jurisdictional question regarding the Prairie Band Potawatami Nation, the Sac & Fox Nation, the Kickapoo Nation and the Iowa Nation of Kansas and Nebraska. Presently, it is the Department of Revenue's position that the State of Kansas does not have civil jurisdiction over "federally recognized Indian Reservations" located within the boundaries of the state of Kansas. Due to the fact that the above mentioned Indian Nations are located within the boundaries of federally recognized Indian Reservations, the Kansas Department of Revenue can not require these Indian Nations to collect and remit excise taxes to the State of Kansas.

Specifically, the Potawatami, Sac & Fox, Kickapoo, and Iowa Nations are not required to collect state sales tax, motor fuel tax, or cigarette tax at their respective smokeshops as long as the smokeshops are located within the boundaries of these federally recognized Indian reservations.

If you have any further questions, please contact Melanie Caro at (913) 296-2381 or Cleo Murphy in the Business Tax Bureau at (913) 296-2461.

Sincerely,

Mark A. Burghart
 General Counsel
 Legal Services Bureau
 Kansas Department of Revenue

HOUSE TAXATION
 Attachment #1
 04/25/91

KICKAPOO TRIBE OF KANSAS

P.O. BOX 271 HORTON, KANSAS 66439-0271

PHONE: (913) 486-2131 FAX: 913/486-2801

April 24, 1991

Chairperson Joan Wagnon and Committee Members
House Committee on Taxation
State Capitol Building
Topeka, Kansas 66612

Re: House Bill No. 2637

Dear Chairperson Wagnon and Committee Members:

The Kickapoo Nation Tribal Council is concerned that certain information has not been made available to this committee. Would you please consider the following as you deliberate on the passage of House Bill No. 2637:

1. The Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma tax case decided by the United States Supreme Court on February 26, 1991, only deals with the issue of taxation of cigarettes. Other consumer items were not considered, nor were other types of taxes considered. The Court made no ruling on the taxation of other consumer items. In the area of Indian law, any intrusions on Indian sovereignty must be specific and all laws must be construed in favor of the Indian Nations. Therefore, please do not think that the Supreme Court case allows any state in the Union to impose a tax on non-Indians for the sale of any consumer item other than cigarettes. Gasoline is not covered, nor is candy, pop and other consumer items.
2. The United States Supreme Court did not authorize Oklahoma to impose taxes on the Indian Nation Reservations. They clearly stated that the State of Oklahoma has no enforcement powers with regard to the collection of cigarette taxes on the Reservations. Therefore, it only left the State with two alternatives: a) seize unstamped cigarettes from non-Indians when they come off the reservations; b) assess wholesalers who supplied unstamped cigarettes to the tribal stores. Several members of the committee had questions about this and those questions were not answered. See page 8 of the Citizen Band Potawatomi Indian tax case (last page).

HOUSE TAXATION
Attachment #2
04/25/91

Chairperson Joan Wagnon
and Committee Members
April 24, 1991
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3. The United States Supreme Court encouraged Indian Nations and the States to negotiate these matters. See page 8 (last page) of the Citizen Band Potawatomi Indian tax case where the Supreme Court suggested that "States may also enter into agreements with the tribes to adopt a mutually satisfactory regime for the collection of this sort of tax." The State of Mississippi has resolved this issue with the Mississippi Band of Choctaw Indian Nation by providing that if the Indian Nation has a tribal tax, then the state tax will not apply. They recognize that this revenue is desperately needed by the Indian Nation for their social programs and for operating their government. A copy of said legislative enactment and a summary is attached hereto. Other states have passed similar enactments.
4. Tribal officials and merchants of the four federally recognized Indian Nations that are surrounded by Kansas have been relying on the official government policy of the State of Kansas as set forth by the Department of Revenue in the attached letter addressed to me by Mark Burghart, General Counsel for the Department of Revenue. It is the understanding of all four Indian Nations that current Kansas law, as of April 25, 1991, is that which is outlined in this attached letter dated June 23, 1989.
5. A tremendous amount of time, effort, energy and money has been expended by all four Nations in their efforts to negotiate these matters with Governor Joan Finney's office through Mr. Bill McCormick and with the Attorney General's office through Julene Miller and Attorney General Bob Stephan. The State of Kansas is negotiating with four separate and distinct and sovereign Indian Nations and those negotiations cannot be completed in 60 or 90 days. The Kickapoo Nation urges that the committee provide them with at least one year in which to negotiate these matters.
6. As was pointed out by the Attorney General's office and the Department of Revenue, and others on the committee, these matters cannot be fully resolved until the legislature enacts legislation that will implement the compacts, agreements or other

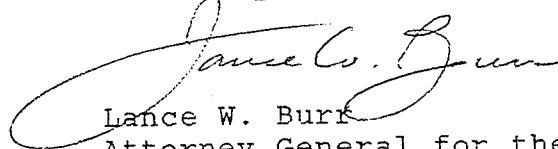
Chairperson Joan Wagnon
and Committee Members
April 24, 1991
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understandings between the State of Kansas and each of the four Indian Nations. If the negotiators for the State and the Indian Nations do not have a moratorium until at least the next session begins in 1992, then House Bill No. 2637 will be of no use because enforcement actions may take place before the legislature can even pass the necessary enactments.

7. The most important reason why you should pass this bill and give the Nations at least one year to work out these matters is because no one knows for sure exactly what items are subject to any state imposition of taxes and we are trying to avoid litigation so as to comply with the recommendations of the United States Supreme Court in working out compacts and negotiated settlements concerning these matters. If this legislation is not passed or if it is passed with too short a deadline, then you will be thwarting the efforts of those who have engaged in sincere negotiations up to the this point and you will be ignoring the recommendations of the United States Supreme Court.

Thank you very much for your consideration of the thoughts and feelings of the Kickapoo Nation Tribal Council.

Sincerely,



Lance W. Burr
Attorney General for the
Kickapoo Nation Surrounded
by Kansas

LWB:klh
Attachments

NOTE: Where it is feasible, a syllabus (headnote) will be prepared, as is being done in connection with this case, at the time the opinion is issued. 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. Davitt Lumber Co.*, 200 U. S. 221, 227.

SUPREME COURT OF THE UNITED STATES

Syllabus

OKLAHOMA TAX COMMISSION *v.* CITIZEN BAND POTAWATOMI INDIAN TRIBE OF OKLAHOMA

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT

No. 89-1882. Argued January 7, 1991—Decided February 26, 1991

Although, for many years, respondent Indian Tribe has sold cigarettes at a convenience store that it owns and operates in Oklahoma on land held in trust for it by the Federal Government, it has never collected Oklahoma's cigarette tax on these sales. In 1987, petitioner, the Oklahoma Tax Commission (Oklahoma or Commission), served the Tribe with an assessment letter, demanding that it pay taxes on cigarette sales occurring between 1982 and 1986. The Tribe filed suit in the District Court to enjoin the assessment, and Oklahoma counterclaimed to enforce the assessment and to enjoin the Tribe from making future sales without collecting and remitting state taxes. The court refused to dismiss the counterclaims on the Tribe's motion, which was based on the assertion that the Tribe had not waived its sovereign immunity from suit. The court held on the merits that the Commission lacked authority to tax on-reservation sales to tribal members or to tax the Tribe directly, and therefore that the Tribe was immune from Oklahoma's suit to collect past unpaid taxes directly, but that the Tribe could be required to collect taxes prospectively for on-reservation sales to nonmembers. The Court of Appeals reversed, holding, *inter alia*, that the lower court erred in entertaining Oklahoma's counterclaims because the Tribe enjoys absolute sovereign immunity from suit and had not waived that immunity by filing its action for injunctive relief, and that Oklahoma lacked authority to tax any on-reservation sales, whether to tribesmen or nonmembers.

Held: Under the doctrine of tribal sovereign immunity, a State that has not asserted jurisdiction over Indian lands under Public Law 220 may not tax sales of goods to tribesmen occurring on land held in trust for a federally recognized Indian tribe, but is free to collect taxes on such sales to nonmembers of the tribe. Pp. 3-8.

(a) The Tribe did not waive its inherent sovereign immunity from suit merely by seeking an injunction against the Commission's proposed tax assessment. *United States v. United States Fidelity and Guaranty Co.*, 809 U. S. 506, 511-512, 518. In light of this Court's reaffirmation, in a number of cases, of its longstanding doctrine of tribal sovereign immunity, and Congress' consistent reiteration of its approval of the doctrine in order to promote Indian self-government, self-sufficiency, and economic development, the Court is not disposed to modify or abandon the doctrine at this time. Nor is there merit to Oklahoma's contention that immunity should not apply because the Tribe's cigarette sales do not occur on a formally designated "reservation." Trust land qualifies as a reservation for tribal immunity purposes where, as here, it has been "validly set apart for the use of the Indians as such, under the superintendence of the Government." *United States v. John*, 487 U. S. 634, 648-649. *Mescalero Apache Tribe v. Jones*, 411 U. S. 145, 148-149, which approved nondiscriminatory state taxation of activities on non-reservation, nontrust Government land leased by Indians, is not to the contrary. Pp. 3-5.

(b) Nevertheless, the Tribe's sovereign immunity does not deprive Oklahoma of the authority to tax cigarette sales to nonmembers of the Tribe at the Tribe's store, and the Tribe has an obligation to assist in the collection of validly imposed state taxes on such sales. *Moe v. Confederated Salish and Kootenai Tribes*, 425 U. S. 463, 482, 488; *Washington v. Confederated Tribes of Colville Reservation*, 447 U. S. 184. This case is not distinguishable from *Moe* and *Colville* on the ground that Oklahoma disclaimed jurisdiction over Indian lands upon entering the Union and did not reassert jurisdiction over civil causes of action in such lands as permitted by Public Law 280. Neither of those cases depended on the assertion of such jurisdiction by the State in question, and it is simply incorrect to conclude that the Public Law was the essential (yet unspoken) basis for the Court's decision in *Colville*. Although the Tribe's sovereign immunity bars Oklahoma from pursuing its most efficient remedy—a lawsuit—to enforce its rights, adequate alternatives may exist, since individual Indians employed in "smoke-shops" may not share tribal immunity, and since States are free to collect their sales taxes from cigarette wholesalers or to enter into mutually satisfactory agreements with tribes for the collection of taxes. If these alternatives prove to be unsatisfactory, States may seek appropriate legislation from Congress. Pp. 6-8.

828 F. 2d 1808, affirmed in part and reversed in part.

REHNQUIST, C. J., delivered the opinion for a unanimous Court. STEVENS, J., filed a concurring opinion.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 89-1322

OKLAHOMA TAX COMMISSION, PETITIONER v. CITIZEN BAND POTAWATOMI INDIAN TRIBE OF OKLAHOMA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

[February 26, 1991]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The issue presented in this case is whether a State that has not asserted jurisdiction over Indian lands under Public Law 280 may validly tax sales of goods to tribesmen and nontribal members occurring on land held in trust for a federally recognized Indian tribe. We conclude that under the doctrine of tribal sovereign immunity, the State may not tax such sales to Indians, but remains free to collect taxes on sales to nontribal members.

Respondent, the Citizen Band Potawatomi Indian Tribe of Oklahoma (Potawatomis or Tribe), owns and operates a convenience store in Oklahoma on land held in trust for it by the Federal Government. For many years, the Potawatomis have sold cigarettes at the convenience store without collecting Oklahoma's state cigarette tax on these sales. In 1987, petitioner, the Oklahoma Tax Commission (Oklahoma or Commission), served the Potawatomis with an assessment letter, demanding that they pay \$2.7 million for taxes on cigarette sales occurring between 1982 and 1986. The Potawatomis filed suit to enjoin the assessment in the United States District Court for the Western District of Oklahoma.

Oklahoma counterclaimed, asking the District Court to enforce its \$2.7 million claim against the Tribe and to enjoin the

Attachment 3-3

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Potawatomis from selling cigarettes in the future without collecting and remitting state taxes on those sales. The Potawatomis moved to dismiss the counterclaim on the ground that the Tribe had not waived its sovereign immunity, and therefore could not be sued by the State. The District Court denied the Potawatomis' motion to dismiss and proceeded to trial. On the merits, the District Court concluded that the Commission lacked the authority to tax the on-reservation cigarette sales to tribal members or to tax the Tribe directly. It held, therefore, that the Tribe was immune from Oklahoma's suit to collect past unpaid taxes directly from the Tribe. Nonetheless, the District Court held that Oklahoma could require the Tribe to collect taxes prospectively for on-reservation sales to nontribal members. Accordingly, the court ordered the Tribe to collect taxes on sales to nontribal members, and to comply with all statutory recordkeeping requirements.

The Tribe appealed the District Court's denial of its motion to dismiss, and the court's order requiring it to collect and remit taxes on sales to nontribal members. The United States Court of Appeals for the Tenth Circuit reversed. 888 F. 2d 1803 (1989). That court held that the District Court erred in entertaining Oklahoma's counterclaims because the Potawatomis enjoy absolute sovereign immunity from suit, and had not waived that immunity by filing an action for injunctive relief. The Court of Appeals further held that Oklahoma lacked the authority to impose a tax on any sales that occur on the reservation, regardless of whether they are to tribesmen or nontribal members. It concluded that "because the convenience store is located on land over which the Potawatomis retain sovereign powers, Oklahoma has no authority to tax the store's transactions unless Oklahoma has received an independent jurisdictional grant of authority from Congress." *Id.*, at 1806. Finding no independent jurisdictional grant of authority to tax the Potawatomis, the

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Court of Appeals ordered the District Court to grant the Potawatomis' request for an injunction.

We granted certiorari to resolve an apparent conflict with this Court's precedents and to clarify the law of sovereign immunity with respect to the collection of sales taxes on Indian lands. 498 U. S. — (1990). We now affirm in part and reverse in part.

I

Indian tribes are "domestic dependent nations," which exercise inherent sovereign authority over their members and territories. *Cherokee Nation v. Georgia*, 5 Pet. 1, 17 (1831). Suits against Indian tribes are thus barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation. *Santa Clara Pueblo v. Martinez*, 436 U. S. 49, 58 (1978). Petitioner acknowledges that Indian tribes generally enjoy sovereign immunity, but argues that the Potawatomis waived their sovereign immunity by seeking an injunction against the Commission's proposed tax assessment. It argues that, to the extent that the Commission's counterclaims were "compulsory" under Federal Rule of Civil Procedure 18(a), the District Court did not need any independent jurisdictional basis to hear those claims.

We rejected an identical contention over a half-century ago in *United States v. United States Fidelity & Guaranty Co.*, 309 U. S. 506, 511-512 (1940). In that case, a surety bondholder claimed that a federal court had jurisdiction to hear its state-law counterclaim against an Indian tribe because the tribe's initial action to enforce the bond constituted a waiver of sovereign immunity. We held that a tribe does not waive its sovereign immunity from actions that could not otherwise be brought against it merely because those actions were pleaded in a counterclaim to an action filed by the tribe. *Id.*, at 513. "Possessing . . . immunity from direct suit, we are of the opinion [the Indian nations] possess a similar immunity from cross-suits." *Ibid.* Petitioner does not argue that it received congressional authorization to adjudicate a counter-

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claim against the Tribe, and the case is therefore controlled by *Fidelity & Guaranty*. We uphold the Court of Appeals' determination that the Tribe did not waive its sovereign immunity merely by filing an action for declaratory relief.

Oklahoma offers an alternative, and more far-reaching, basis for reversing the Court of Appeals' dismissal of its counterclaims. It urges this Court to construe more narrowly, or abandon entirely, the doctrine of tribal sovereign immunity. Oklahoma contends that the tribal sovereign immunity doctrine impermissibly burdens the administration of state tax laws. At the very least, petitioner proposes that the Court modify *Fidelity & Guaranty*, because tribal business activities such as cigarette sales are now so detached from traditional tribal interests that the tribal-sovereignty doctrine no longer makes sense in this context. The sovereignty doctrine, it maintains, should be limited to the tribal courts and the internal affairs of tribal government, because no purpose is served by insulating tribal business ventures from the authority of the States to administer their laws.

A doctrine of Indian tribal sovereign immunity was originally enunciated by this Court, and has been reaffirmed in a number of cases. *Turner v. United States*, 248 U. S. 354, 358 (1919); *Santa Clara Pueblo v. Martinez*, *supra*, at 58. Congress has always been at liberty to dispense with such tribal immunity or to limit it. Although Congress has occasionally authorized limited classes of suits against Indian tribes, it has never authorized suits to enforce tax assessments. Instead, Congress has consistently reiterated its approval of the immunity doctrine. See e. g., Indian Financing Act of 1974, 88 Stat. 77, 25 U. S. C. § 1451 *et seq.*, and the Indian Self-Determination and Education Assistance Act, 88 Stat. 2208, 25 U. S. C. § 450 *et seq.* These Acts reflect Congress' desire to promote the "goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development." *California v. Cabazon Band of Mission Indians*, 480 U. S. 202, 216 (1987). Under

these circumstances, we are not disposed to modify the long-established principle of tribal sovereign immunity.

Finally, Oklahoma asserts that even if sovereign immunity applies to direct actions against tribes arising from activities on the reservation, that immunity should not apply to the facts of this case. The State contends that the Potawatomis' cigarette sales do not, in fact, occur on a "reservation." Relying upon our decision in *Mescalero Apache Tribe v. Jones*, 411 U. S. 145 (1978), Oklahoma argues that the tribal convenience store should be held subject to State tax laws because it does not operate on a formally designated "reservation," but on land held in trust for the Potawatomis. Neither *Mescalero* nor any other precedent of this Court has ever drawn the distinction between tribal trust land and reservations that Oklahoma urges. In *United States v. John*, 437 U. S. 634 (1978), we stated that the test for determining whether land is Indian country does not turn upon whether that land is denominated "trust land" or "reservation." Rather, we ask whether the area has been "validly set apart for the use of the Indians as such, under the superintendence of the Government." *Id.*, at 648-649; see also *United States v. McGowan*, 302 U. S. 585, 589 (1938).

Mescalero is not to the contrary; that case involved a ski resort outside of the reservation boundaries operated by the tribe under a 80-year lease from the Forest Service. We said that "[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." 411 U. S., at 148-149. Here, by contrast, the property in question is held by the Federal Government in trust for the benefit of the Potawatomis. As in *John*, we find that this trust land is "validly set apart" and thus qualifies as a reservation for tribal immunity purposes. 437 U. S., at 649.

II

Oklahoma attacks the conclusion of the Court of Appeals that the sovereign immunity of the Tribe prevents it from being liable for the collection of state taxes on the sale of cigarettes to nonmembers of the Tribe. The Tribe, in turn, argues that this issue is not properly before us. It observes that the only issue presented in its prayer for an injunction was whether Oklahoma could require it to pay the challenged assessment for previously uncollected taxes. The complaint did not challenge Oklahoma's authority to require the Tribe to collect the sales tax prospectively, and thus, the Tribe argues, that question was never put in issue.

We do not agree. The Tribe's complaint alleged that Oklahoma lacked authority to impose a sales tax directly upon the Tribe. The District Court held that the Tribe could be required to collect the tax on sales to nonmembers. The Court of Appeals reversed the decision of the District Court on this point. While neither of these courts need have reached that question, they both did. The question is fairly subsumed in the "questions presented" in the petition for certiorari, and both parties have briefed it. We have the authority to decide it, and proceed to do so. See *Vance v. Terrazas*, 444 U. S. 252, 258-59, n. 5 (1980).

Although the doctrine of tribal sovereign immunity applies to the Potawatomis, that doctrine does not excuse a tribe from all obligations to assist in the collection of validly imposed state sales taxes. See *Washington v. Confederated Tribes of Colville Reservation*, 447 U. S. 184 (1980). Oklahoma argues that the Potawatomis' tribal immunity notwithstanding, it has the authority to tax sales of cigarettes to nontribal members at the Tribe's convenience store. We agree. In *Moe v. Confederated Salish and Kootenai Tribes*, 425 U. S. 463 (1976), this Court held that Indian retailers on an Indian reservation may be required to collect all state taxes applicable to sales to non-Indians. We determined that requiring the tribal seller to collect these taxes was a minimal burden

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justified by the State's interest in assuring the payment of these concededly lawful taxes. *Id.*, at 488. "Without the simple expedient of having the retailer collect the sales tax from non-Indian purchasers, it is clear that wholesale violations of the law by the latter class will go virtually unchecked." *Id.*, at 482. Only four years later we reiterated this view, ruling that tribal sellers are obliged to collect and remit state taxes on sales to nontribal members at Indian smoke-shops on reservation lands. *Colville, supra*.

The Court of Appeals thought this case was distinguishable from *Moe* and *Colville*. It observed the State of Washington had asserted jurisdiction over civil causes of action in Indian country as permitted by Public Law 280. Pub. L. 83-280, 67 Stat. 588. The court contrasted *Colville* to this case, in which Oklahoma disclaimed jurisdiction over Indian lands upon entering the Union and did not reassert jurisdiction over these lands pursuant to Public Law 280. The Court of Appeals concluded that because Oklahoma did not elect to assert jurisdiction under Public Law 280, the Potawatomis were immune from any requirement of Oklahoma state tax law.

Neither *Moe* nor *Colville* depended upon the State's assertion of jurisdiction under Public Law 280. Those cases stand for the proposition that the doctrine of tribal sovereign immunity does not prevent a State from requiring Indian retailers doing business on tribal reservations to collect a state-imposed cigarette tax on their sales to nonmembers of the Tribe. *Colville's* only reference to Public Law 280 relates to a concession that the statute did not furnish a basis for taxing sales to tribe members. 447 U. S., at 142, n. 8. Public Law 280 merely permits a State to assume jurisdiction over "civil causes of action" in Indian country. We have never held that Public Law 280 is independently sufficient to confer authority on a State to extend the full range of its regulatory authority, including taxation, over Indians and Indian reservations. *Bryan v. Itasca County*, 426 U. S. 373 (1976);

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see also *Rice v. Rehner*, 463 U. S. 713, 734, n. 18 (1983); *Cabazon*, 480 U. S. at 208-210, and n. 8. Thus, it is simply incorrect to conclude that Public Law 280 was the essential (yet unspoken) basis for this Court's decision in *Colville*.

In view of our conclusion with respect to sovereign immunity of the Tribe from suit by the State, Oklahoma complains that, in effect, decisions such as *Mos* and *Colville* give them a right without any remedy. There is no doubt that sovereign immunity bars the State from pursuing the most efficient remedy, but we are not persuaded that it lacks any adequate alternatives. We have never held that individual agents or officers of a tribe are not liable for damages in actions brought by the State. See *Ex parte Young*, 209 U. S. 123 (1908). And under today's decision, States may of course collect the sales tax from cigarette wholesalers, either by seizing unstamped cigarettes off the reservation, *Colville*, *supra*, at 161-162, or by assessing wholesalers who supplied unstamped cigarettes to the tribal stores, *City Vending of Muskogee, Inc. v. Oklahoma Tax Comm'n*, 898 F. 2d 122 (CA10 1990). States may also enter into agreements with the tribes to adopt a mutually satisfactory regime for the collection of this sort of tax. See 48 Stat. 987, as amended, 25 U. S. C. § 476. And if Oklahoma and other States similarly situated find that none of these alternatives produce the revenues to which they are entitled, they may of course seek appropriate legislation from Congress.

The judgment of the Court of Appeals is accordingly

Affirmed in part and reversed in part.

§ 27-65-201

TAXATION AND FINANCE

Cross references—

As to duties of county tax collectors, generally, see § 27-1-5, 27-1-7, 27-1-13.
As to tax upon sale of tangible personal property, generally, see § 27-65-17.
As to seller's duty to collect tax, see § 27-65-31.
As to penalties for failure to comply with chapter, see § 27-65-33.
As to exemption from tax on motor vehicles those sold at retail and exported from Mississippi within 48 hours and registered and first used in another state, see § 27-65-111.

Research and Practice References—

68 Am Jur 2d, Sales and Use Taxes § 64 et seq.
60 CJS Motor Vehicles § 134(1).

ALR and L Ed Annotations—

Validity of provision in tax statute requiring one person to collect tax imposed upon another. 4 L Ed 2d 1974.
Sales and use taxes: exemption of casual, isolated, or occasional sales. 43 ALR3d 292.
Sales or use tax on motor vehicles purchased out of state. 45 ALR3d 1270.
Sales and use taxes on leased tangible personal property. 2 ALR4th 869.

TRIBAL TAX BY MISSISSIPPI BAND OF CHOCTAW INDIANS

§ 27-65-211. Definitions.

As used in Sections 27-65-211 through 27-65-221, the following terms shall have the following meanings, unless the context clearly indicates a different meaning:

- (a) "Reservation lands" mean those defined as Indian country under the provisions of 18 U.S.C. 1151(a) or (b).
- (b) "Tribal tax" means any tax imposed by the Mississippi Band of Choctaw Indians on persons subject to the band's taxing powers.

SOURCES: Laws, 1966, ch. 322, § 1, eff from and after passage (approved March 13, 1966).

Federal Aspects—

As to provisions of 18 USC § 1151(a) or (b), see 18 USCS § 1151(a) or (b).

Research and Practice References—

41 Am Jur 2d, Indians §§ 63 et seq.
42 CJS, Indians §§ 11, 12, 24-27.

§ 27-65-213. Legislative findings.

The Legislature finds that the public interest of both Indians and non-Indians is best served by close cooperation between the state government and the Mississippi Band of Choctaw Indians. The Legislature finds this cooperation to be especially important in the area of taxation. Accordingly, the Legislature hereby authorizes the State Tax Commission to enter into tax collection agreements with the Mississippi Band of Choctaw Indians.

SOURCES: Laws, 1966, ch. 322, § 2, eff from and after passage (approved March 13, 1966).

Research and Practice References—

41 Am Jur 2d, Indians §§ 63 et seq.
42 CJS, Indians §§ 11, 12, 24-27.

§ 27-65-215. Exemption from sales or gross receipts tax.

The State of Mississippi hereby relinquishes any jurisdiction it may have to levy and collect within reservation lands the sales or gross receipts tax imposed by Chapter 65 of Title 27, Mississippi Code of 1972, as it applies to sales by merchants on reservation lands of the Mississippi Band of Choctaw Indians when such merchants are authorized to do business on the reservation lands and are paying tribal sales taxes to the Mississippi Band of Choctaw Indians.

SOURCES: Laws, 1966, ch. 322, § 3, eff from and after passage (approved March 13, 1966).

Research and Practice B
41 Am Jur 2d, Indians §
42 CJS, Indians §§ 11, 12

ALR and L Ed Annotation
United States District Co
§ 1962, 64 ALR, Fed 649.

§ 27-65-217. Entry.

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SOURCES: Laws, 1966, ch

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41 Am Jur 2d, Indians §
42 CJS, Indians §§ 11, 12

§ 27-65-219. Appr

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SOURCES: Laws, 1966, ch

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41 Am Jur 2d, Indians §
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27-67-4. Mail order sal

HOUSE TAXATION
Attachment #4
04/25/91

USE OR COMPENSATING TAXES

§ 27-87-1

77-1-7, 27-1-13.
see § 27-65-17.

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trial and exported from Missis-
sippi, see § 27-65-111.

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sales. 42 ALR3d 292.
ALR3d 1270.
LR4th 859.

CHOCTAW INDIANS

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acts (approved March 13, 1966).

(P. Miss. Supp.)

Research and Practice References—

41 Am Jur 2d, Indians ¶ 63 et seq.
42 CJS, Indians ¶ 11, 12, 24-27.

ALR and L Ed Annotations—

United States District Court jurisdiction of action brought by Indian tribe under 28 USC
§ 1362. 64 ALR Fed 649.

§ 27-65-217. Entry into tax collection agreements.

The State Tax Commission may enter into tax collection agreements with
the Mississippi Band of Choctaw Indians. These agreements may provide for
the collection by the State Tax Commission for the Indian tribe of any tribal
sales or gross receipts tax from reservation lands which are hereby autho-
rized to be imposed subject to the provisions of Sections 27-65-211 through
27-65-221.

SOURCES: Laws, 1966, ch. 322, § 4, eff from and after passage (approved March 13, 1966).

Research and Practice References—

41 Am Jur 2d, Indians ¶ 63 et seq.
42 CJS, Indians ¶ 11, 12, 24-27.

§ 27-65-219. Approval of tax collection agreements.

Any tax collection agreement entered into pursuant to Sections 27-65-211
through 27-65-221 shall be binding and effective only upon approval of the
Tribal Chief of the Mississippi Band of Choctaw Indians, the Governor and
the Attorney General of the State of Mississippi.

SOURCES: Laws, 1966, ch. 322, § 5, eff from and after passage (approved March 13, 1966).

Research and Practice References—

41 Am Jur 2d, Indians ¶ 63 et seq.
42 CJS, Indians ¶ 11, 12, 24-27.

§ 27-65-221. Duration and renewal of tax collection agreements.

Any tax collection agreements between the State Tax Commission and the
Mississippi Band of Choctaw Indians shall be for a term not to exceed ten
(10) years; however, such agreements shall be renewable upon expiration by
the mutual consent of the parties.

SOURCES: Laws, 1966, ch. 322, § 6, eff from and after passage (approved March 13, 1966).

Research and Practice References—

41 Am Jur 2d, Indians ¶ 63 et seq.
42 CJS, Indians ¶ 11, 12, 24-27.

CHAPTER 67

Use or Compensating Taxes

New Sections Added

Sec.
27-87-4. Mail order sales.

ARTICLE 1

USE TAX

§ 27-87-1. Title of article.

Cross references—

As to requirement that an applicant for a first certificate of title to a motor vehicle provide
evidence relative to liability for a use tax under this article, see § 63-21-15.

(P. Miss. Supp.)

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Summary

The meeting began with an introduction by Alan Parker, Director of the National Indian Policy Center. Mr. Parker explained the Center's purpose and plans for the future. The Center's purposes include supporting tribal government by providing tribal and other governmental decision makers with sound policy analysis of critical problems which emerge in the pursuit of tribal objectives. The Center's plan for the future is to become a permanent institution, authorized by congressional enactment, and able to provide policy analysis on a continuing basis as needs arise. The Center is interested in providing such assistance to the Oklahoma tribes who are now dealing with a serious tax conflict with the State. The urgency of the problem, and the critical need for the tribal tax and cigarette shop revenues which this conflict puts in jeopardy, indicate the need for the Center to provide assistance, which is being done as part of a demonstration project.

After an introduction by Mr. Parker, Douglas Endreson of Sonosky, Chambers, Sachse & Endreson presented an overview of tribal-state tax agreements which have served to resolve tax conflicts between tribes and states in several locations.

This discussion began with an examination of the three problems which typically result from tribal and state efforts to tax and regulate the same event or transaction. The first is the

economic impacts of double taxation, which occurs when both sovereigns tax the same transaction. The second is the regulatory confusion and inefficiency which results when both sovereigns seek to tax and regulate commerce within the same geographical region without regard to the other. The third is the desire of each sovereign to insure that a reasonable competitive balance exists between their own vendors and those of the other sovereign.

Tax agreements between tribes and states typically focus on these three problems. Following an examination of these problems, Mr. Enderson discussed the manner in which these problems have been addressed in agreements between tribes and states in Nevada, Louisiana, Florida, and Wisconsin, among other places. This discussion indicated that the current trend is for the state to forgo any claim to tax revenues generated by on-reservation sales when the tribe itself has enacted a tax which is comparable to the state's.

Discussion among the group then focussed on problems which are presented in the current tax conflict between the Tribes in Oklahoma and the State Tax Commission. The first problem is that the tax conflict between the Tribes and the State is now viewed out of context. The conflict is now seen by many decision makers and the public as involving simply State taxes on cigarettes. This narrow view of the tribal-state relationship

ignores the substantial contribution which the Tribes make to the State's economy, both through the revenues which result from their presence within the State, and as a result of the contribution to the State economy made by Tribal enterprises. It was agreed that the current tax conflict is properly viewed as only a part of the economic relationship between the Tribes and the State. It was also agreed that the preparation and presentation of a study demonstrating the Tribal contribution to the State economy would be helpful.

The second problem, also generally recognized by the group, is that neither State officials, nor the public understand or recognize the importance of tribal tax revenues to the Tribes' ability to meet the needs of reservation residents. Tribal taxes are generally collected on sales of cigarettes on reservation and other trust lands. However, this fact has not been generally made known. It was agreed that a substantial effort is needed to make it clear to State officials and the media that tribal taxes serve a critical role in the Tribes' ability to meet their governmental responsibilities.

In sum, State legislators and other State officials aware of the tax controversy are only getting a part of the picture. Their perception must be changed if the tax conflict is to be addressed on a fair and reasonable basis.

Later discussion indicated that there is substantial interest on the part of the Governor in working with the Tribes to address the tax conflict. The Governor has expressed to State Senator Haney his interest in meeting with the Tribes in the immediate future to discuss how the tax conflict might be addressed, possibly through a "model tribal-state tax agreement." It was agreed that if these discussions are to go forward, the State should agree -- as an indication of its commitment to these discussions -- not to undertake enforcement activities during the pendency of such discussions.

In discussion of the State's enforcement efforts, a number of legal questions were raised about the State's power and ability to conduct certain enforcement activities. It was suggested that these questions be referred to the tribal attorneys for their review and advice to the tribes.

There was also discussion of the possibility of seeking a congressional solution to the tax conflict. However, at present, the congressional interest is in furthering tribal-state efforts to resolve tax conflicts, rather than in seeking a federal solution. It was also noted that seeking a federal solution has the risk that if the effort fails, the problem may become more difficult to solve.

At the close of the meeting it was agreed that a formal

expression of interest in a economic study showing the contribution of the Tribes to the State economy would be sought by the Tribes in Oklahoma in the near future. Alan Parker indicated that the Center would, if requested by tribal leaders, continue to work to provide assistance to the Tribes in examining the policy aspects of the tax conflict as part of a demonstration project conducted by the Center.