6-9-1988

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FEDERAL TAXATION OF RESORT DEVELOPMENT, COMMERCIAL FISHING, AND REINDEER

NATURAL RESOURCE DEVELOPMENT IN INDIAN COUNTRY

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A Short Course Sponsored by the
Natural Resources Law Center
University of Colorado

June 8-10, 1988
FEDERAL TAXATION OF RESORT DEVELOPMENT, COMMERCIAL FISHING, AND REINDEER

Steven C. Moore

I. Introduction

A. Summary:

Over the past decade the Internal Revenue Service of the U.S. Treasury Department has heightened its efforts to impose federal taxes upon income earned by individual Native people directly from the sale of products derived from trust property. Such a major shift has not resulted from the enactment of federal laws, but the creation of new federal policy by the Internal Revenue Service. The new policy has had a profound and chilling effect upon the stimulation of economic self-sufficiency by individual Native people, in contravention to Reagan Administration policy. From a legal perspective it pits the most sacred, fundamental principles of Federal-Indian trust relationship against canons of federal tax law. For these reasons it of course has spawned litigation and efforts at legislative relief. This short presentation will trace the major issues and themes in this area.

B. General References:


II. Federal Authority to Tax

A. Background – The Internal Revenue Code

See 26 U.S.C. §§1 et seq. General perception: Income from any source is subject to the imposition of federal taxation unless expressly exempted by federal treaty or statute.

B. Requirement of Express Exemption From Federal Tax Laws To Shield Income.

Cases:


2. Fishing: Strom v. Commissioner of Internal Revenue, 6 T.C. 621 (1946), aff'd per curiam, 158 F.2d 520 (9th Cir. 1947); Earl v. Commissioner of Internal Revenue, 78 T.C. 1014 (1982); Estate of Lucille Peterson A. v. Commissioner of Internal Revenue, 90 T.C. No. 18 (1988).
III. Federal-Indian Trust Relationship

A. Background: Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) (1831) General Precept: If Native property is held in trust by the United States, all income derived directly therefrom by the trust beneficiary is exempt from federal income tax; no express exemption (statutory or treaty) is necessary beyond that evinced by the fact that Native trust property is involved.

B. Establishment Of The Trust Relationship: Implicit Tax Exemption During The Period Of The Trust.

Cases:

1. Allotment cases: Squire, supra; Carpenter v. Shaw, 280 U.S. 363, 366-7 (1930); Stevens v. Commissioner, 452 F.2d 741 (9th Cir. 1971); Kirshling v. U.S., 746 F.2d 512 (9th Cir. 1984).


IV. Case Specifics:

A. Resort Developments:

2. Dillion v. U.S., 792 F.2d 849 (9th Cir. 1986),

B. Commercial Fishing:
1. Strom v. Commissioner of Internal Revenue, 6 T.C. 621 (1946), aff'd per curiam, 158 F.2d 520 (9th Cir. 1947).
4. Legislative Remedy: Status of H.R. 2792, a Bill to clarify Indian treaties, Executive orders and Act of Congress with respect to Indian fishing rights.

C. Reindeer:
3. Amendment to Reindeer Act via the Tax Reform Act of 1986, creating express exemption for income derived by Native Alaskan reindeer herders from the sale of reindeer and reindeer products.