Opinion No. 238.

Taxation & Licenses—Automobiles—Indians and Indian Agency—Reservations.

HELD: 1. Automobiles whose permanent situs is on Reservation under exclusive jurisdiction of Federal Government are not subject to state and county taxation.

2. Automobiles owned by Patented Indians are subject to taxation.

3. Automobiles and other personal property of an unpatented Indian purchased with trust funds or on purchase order of Federal Government, are subject to taxation unless the Federal Government has restricted the domination and alienation of such property.

4. Automobiles and other personal property purchased by unpatented Indians with trust funds are imprest with the trust and not subject to taxation until such trust is released.

5. Indians, whether patented or unpatented, as well as all other owners and drivers of automobiles must procure license plates and drivers' permits.

January 14, 1938.

Mr. Harold G. Dean
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You have submitted the following questions:

1. "Are the cars which belong to owners who reside at the Agency and

which are owned by the Federal Government, subject to local taxes?

2. "Are cars which are owned by patented Indians subject to local taxes?

3. "Are cars which are owned by unpatented Indians subject to local taxes?

4. "If the Agency purchases a car for an Indian or gives him a purchase order to purchase a car with trust money, is the car subject to local taxes?

5. "If the Indians do not have to pay taxes on their cars, do they have to pay for their license plates?"

You have not definitely specified the facts embraced in Question No. 1, but your question assumes that the owners of the automobiles are employed and live at and upon the lands of the Flathead Indian Agency, now used and occupied by the government, and that said automobiles are situated, kept and stored upon said premises and have their situs at said place.

Section 12, Chapter 1495, United States Statutes at Large, Vol. 33, Part I, Page 305, is authority for the establishment and retention of the lands by the government which are now used and occupied by the Flathead Indian Agency.

The second division of the fourth section of our Enabling Act provides:

> "That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without the said states shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the states on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said states from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such acts of congress may prescribe."

The federal government has exclusive jurisdiction over said agency and all property situated thereupon, including automobiles, and said property is not subject to county or state taxation. Section 20, Revised Codes of Montana, 1935, provides:

> "Territorial jurisdiction, limitations on. The sovereignty and jurisdiction of this state extends to all places within its boundaries, as established by the constitution, excepting such places as are under the exclusive jurisdiction of the United States; but the extent of such jurisdiction over places that have been or may be ceded to, purchased, or condemned by the United States, is qualified by the terms of such cession, or the laws under which such purchase or condemnation has been or may be made."

It has been held that actual occupancy and original ownership of premises retained by the United States government stands in lieu of acquisition under authority of said Section 20, and the lands of the Flathead Indian Agency located near Dixon, Montana, were acquired by the government through original ownership and occupancy, and by reason thereof the exclusive jurisdiction for all purposes, including that of taxation, is vested solely in the federal government.

State v. Tully, 31 Mont. 365.

It has been held that personal property situated upon lands within the Fort Peck Government Reservation in

Valley County, which were acquired by the government prior to the year 1933, was not subject to local taxation. If the land in the Fort Peck Reservation was acquired pursuant to authority found in Section 24, which was enacted in the year 1895, it could not be taxed by the county, nor could personal property situated thereupon, but if the land were acquired under authority of Section 25.1, which was enacted in the year 1933, personal property situated thereupon would be subject to local taxation. (State v. Bruce, 69 Pac. 2nd, 97.) While the statutes establishing the rights of property owners in the Fort Peck Reservation are not generally applicable to the Flathead Indian Agency, yet a parallel reasoning exists, based upon a stronger foundation, we believe, than that resulting in the decision of the Bruce case, adjudicating the rights of taxation on the Fort Peck Reservation.

The question as to whether the situs of the automobile is at the Flathead Agency is a question of fact. The situs of the automobile and the domicile of the owner are not synonymous. Merely passing through, or upon the grounds of the agency in a temporary manner on January 1, 1938, is insufficient. There must be permanent characteristics involved. If the owner is employed at the agency and his car is kept off the agency grounds, it would not have its situs at the agency and would be subject to a county tax—otherwise, not. (Attorney General's Opinions, Vol. 17, No. 215; Coburn Cattle Co. v. Small, 35 Mont. 394; State ex rel. Rankin v. Harrington, 68 Mont. 1.) Likewise, if the situs is at the agency, mere casual operation outside would not establish the right of local taxation.

2. By act approved June 21, 1924, congress declared: "That all noncitizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States." The court said, in the case of State v. Big Sheep, 75 Mont. 219, at page 230: "On the other hand it is clear that an Indian who has obtained patent in fee to his allotment not only is a citizen of the United States, but has all rights, privileges, and immunities of citizens of the United States, and is subject to the civil and criminal laws of the State of Montana. He is no longer a ward of the government. His allotment is free from government restraint and control." The sovereignty of the State of Montana over the patented Indian has been conceded by the federal government, and thus his property is a proper subject of taxation, which would include his automobile, subject to that condition set forth in my answer to Question No. 4.

3. As hereinbefore noted, our Enabling Act, which is annexed to our constitution and which constitutes a binding contract between the State of Montana and the United States Government, disclaims any jurisdiction over Indian lands, and the federal government retains sole jurisdiction over the same; said lands, and property with a situs thereon, cannot be locally taxed. The same parity of reasoning is applicable to unpatented allotments as is applicable to the lands situated in the Fort Peck and Flathead Indian Agency. If personal property, with a situs upon those lands, cannot be taxed locally, neither can property with a situs on unpatented Indian lands be locally taxed, and if the automobile has its situs upon the unpatented Indian lands it is not subject to the property tax by the county. If the situs of the automobile is off the unpatented land, and upon lands which are patented, or which are not under the exclusive jurisdiction of the federal government, which is always a question of fact, it is subject to local property taxation, except as is limited by that condition set forth in our answer to Question No. 4 herein.

4. Ordinarily an automobile of a patented Indian is subject to taxation, whether the same be purchased with trust money or upon a purchase order of the federal government. The disbursement of funds to the patented Indian is ordinarily made unconditionally and absolutely. Accordingly, in so far as a patented Indian is concerned, when the automobile is purchased the trust character to the funds which were used to purchase it cease, and the ownership of the patented Indian to the automobile is complete, with full power of domination and alienation of the same. No doubt the federal government can restrict said powers and continue to impose a trust character upon the automobile purchased with trust funds, but ordinarily, and gen-

erally, it has not seen fit to do so. The county officer should tax the automobile of the patented Indian regardless of the source of the purchase price of the same, unless it can be clearly and affirmatively shown by the Indian that the government has restricted the domination and alienation of the automobile purchased with the trust money, and has continued the imposition of the trust.

An unpatented Indian who purchases the automobile with trust funds cannot be locally taxed unless the government has released its restriction of the trust and permitted the purchaser to acquire the automobile unrestrictedly. Accordingly, the purchase of an automobile by an unpatented Indian with trust funds purchases the same with the funds earmarked and imprest upon the automobile, and although the trust funds are changed in form, and merge into the automobile, nevertheless, the trust is a continuing one and the automobile is also trust property. The court said in the case of United States v. Pearson, 231 Fed. Rep., pp. 277, 278:

"* * * Clearly, therefore, all property issued under said section 17 of the act of 1889 remained under the supervision and control of the United States, and was held by the United States in trust for the benefit of the Indians. These cattle, purchased by the government and issued to the Indians of a tribe, were not theirs absolutely and unconditionally, but were issued for the purpose of promoting their civilization and improvement and to encourage them in the habits of industry. And it has been held that it was the right and duty of the government to protect such conditional ownership. McKnight v. United States, 130 Fed. 659, 65 C. C. A. 37.

"The purpose and object of the government in its dealings with these Indians, and in the relation that it maintains toward them and their property, is to encourage them to undertake the cultivation of the soil, the raising of stock, or engage in pastoral pursuits, enabling them to support themselves, and as a means of obtaining a livelihood. 130 Fed. 663, 65 C. C. A. 37; United States v. Rickert, 188 U. S. 432, 23 Sup. Ct. 478, 47 L. Ed. 532.

"These Indians named in the bill of complaint are yet wards of the nation, in a condition of pupilage or dependency, and have not been discharged from that condition. They each of them occupy allotments, with the consent and authority of the United States, as a part of the national policy by which the Indians are to be maintained, as well as prepared for assuming the habits of civilized life and ultimately the privileges of citizenship. To tax cattle or personal property issued to these Indians by the government of the United States, as a part of the national policy by which the Indians are to be maintained, as well as prepared for assuming the habits of civilized life, and ultimately the privileges of citizenship, is, in my judgment, to tax an instrumentality employed by the United States for the benefit and control of this dependent race, and to accomplish beneficent objects with reference to a race, over which the Supreme Court of the United States has said that: 'From their very weakness and helplessness, so largely due to the course of dealings of the federal government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power.' United States v. Rickert, 188 U. S. 437, 23 Sup. Ct. 480, 47 L. Ed. 532; United States v. Kagama, 118 U. S. 375, 6 Sup. Ct. 1109, 30 L. Ed. 228.

"One of the questions submitted to the Supreme Court of the United States, in United States v. Rickert, was as follows: Was the personal property, consisting of cattle, horses, and other property of like character, which had been issued to these Indians by the United States, and which they were using upon their allotments, liable to assessment and taxation by the officers of Roberts county? Answering this question, the court says: 'The answer to this question is indicated by what has been said in reference to the assessment and taxation of the land and the permanent improvements thereon. The personal property in question was purchased with the money of the government—was furnished to the Indians in order to maintain them on the land allotted to them during the period of trust estate, and to induce them to adopt the habits of civilized life. It was, in

fact, the property of the United States, and was put into the hands of the Indians to be used in execution of the purpose of the government in reference to them. The assessment and taxation of the personal property would necessarily have the effect to defeat that purpose.' "

Of course, if the unpatented Indian has purchased the automobile from sources other than the trust funds, and the automobile is not situated upon the unpatented land, it is subject to taxation. In the Pearson case, supra, the court said:

"* * * I may say, however, that I am of the opinion that any property in the possession of these Indians that cannot be so traced and identified as issue property, the increase of issue property, as property proceeds of the sale of issue property, property purchased with the proceeds of the sale of the increase of issue property, as property for which similar issue property has been exchanged for similar use, as the increase of property received in such exchange, as the increase of issue property exchanged for similar property for similar use, or property purchased with money given to the Indians by the United States, is not impressed with the trust, and therefore is subject to taxation. * * *"

It is suggested that the county assessor, in establishing proofs of the non-taxability of any of this property of these different classes of persons, require that person to have certified such facts from his respective Indian Agent.

5. Chapter 72 of the 1937 Session Laws requires every owner of a motor vehicle operated or driven upon the public highways of the state to register and secure license plates, as well as driver's license, and all persons referred to herein, including the owners residing at the agency, patented or unpatented Indians, and all classes of persons referred to in this opinion, must pay the required license and registration fee, including the driver's license, the same as any other person.

It has been called to our attention that the easement, granted to the state and county for right-of-way for public roads across Indian private lands and allotments, contained a stipulation that Indians would be exempt from all vehicle taxes and license fees of any nature while using the roads within the reservation.

We have made diligent search for data upon this phase, and our search discloses that no right-of-way easements issued, up to this time, over Indian lands to the State Highway Department, contains such stipulation. Under the authority of our Enabling Act, which is a binding contract between the Federal Government and the State, we do not believe that any power or authority exists enabling the Federal Government, or its departments, to make a legal stipulation to that effect, particularly upon a reservation which has been opened to settlement, such as the Flathead Indian Reservation. We have been further informed that the Indian Bureau is not likely to endeavor to promulgate such a rule within the State of Montana.