Opinion No. 21

Taxation—Automobiles—Indians—Crow Indian Reservation—Leases —Trust Patented Lands.

Held: 1. The State of Montana may tax automobiles purchased by Crow Indians with the funds received from leasing of trust patented lands provided that the automobiles are not purchased with restricted funds issued to non-competent Indians.

2. The individual Indian has the burden of establishing his exemption. The County Assessor must tax all automobiles and can only exempt property from taxation upon receipt of conclusive proof of non-taxability.

3. The County Assessor may use and require a certificate signed by an official of the Crow Reservation setting forth the restricted nature of the funds used to purchase the property for which an exemption is claimed.

May 10th, 1949.

Mr. Bert W. Kronmiller
County Attorney
Big Horn County
Hardin, Montana

Dear Mr. Kronmiller:

You have requested an opinion from this office upon the following questions:

1. Are automobiles which are purchased by Crow Indians from funds received by such Indians from rental on trust patented lands subject to taxation by the State of Montana?

2. Does the County Assessor of Big Horn County have the duty to determine whether the property is purchased with trust funds or is that duty upon the Indian, who owns the property, to make such proof?

3. Is it proper for the County Assessor to use and require a certificate from a Crow Indian signed by the Superintendent of the Crow Indian Reservation or some other person in authority showing that the property of the Indian is exempt from taxation, in order to determine whether or not the automobile is subject to taxation?

Trust patented lands are those tribal lands which are allocated to the individual Indians. The United States Government acts as trustee for the Indians, the legal title to the lands remaining with the United States and the individual Indian holding the equitable title.

It has long been settled that the trust patented lands themselves were not subject to State taxation. (19 Opinions of United States Attorney General 161; U. S. v. Rickert, 188 U. S. 432, 23 S. Ct. 478, 47 L. Ed. 532).

The question of whether personal property purchased with income from rental of such lands is subject to taxation by the State is not so well-settled. The conflicting interests of the State taxing power on the one hand and the paternalistic policy that the Federal Government has adopted towards the Indians on the other hand, have resulted in some confusion. The one time policy of the Federal Government is stated, obiter dictum, in the case of United States v. Gray, 201 Fed. 291 119 C. C. A. 529, wherein the court said:

"It has been and still is the policy of the United States to protect the property and rights of the Indians under its control, and to teach them agriculture and the arts of civilized life. The Indian reservations, the funds derived from the lease of their right of occupancy to their lands, the lands allotted to the individual Indians, but still held in trust by the United States during the period of restriction upon alienation, the leases of these lands made by the Indian superintendents or agents on the terms and conditions fixed by the Secretary of the Interior and approved by him, the tools, animals, houses, improvements, and other property furnished to these Indians by the United States, and the proceeds and income from all these, are the means by which the nation pursues its beneficient policy of protection and instruction and exercises its lawful powers of government. . . . The United States may maintain a suit to pre-

vent the officers of a State from subjecting any of these means, whether they consist of real property or of personal property, to taxation for State or County purposes."

In United States v. Thurston County, Neb., 143 Fed. 287, 74 C. C. A. 425, the court said:

"The civil and political status of the Indians does not condition the power of the government to protect their property or to instruct them. Their admission to citizenship does not deprive the United States of its power, nor relieve it of its duty, to control their property, to protect their rights from the rapacity and faithlessness of the members of the superior race, to discharge faithfully its legal and moral obligations to them, and to execute every trust with which it is charged for their benefit. Their personal property named in the bill of complaint is, in the opinion of the court, trust property, and an instrumentality lawfully employed by the United States in the exercise of its lawful governmental authority, and is therefore necessarily exempt from all taxes and interference."

Later cases followed the language and reasoning of the above quoted cases and gradually the Federal "Instrumentality Doctrine" became established. (United States v. Pearson, 231 Fed. 270; Dewey, County S. D. v. United States, 26 Fed. (2d) 434, Cert. den. 278 U. S. 649; dan United States v. Wright, 53 Fed. (2d) 300 cert. den. 285 U. S. 530.)

The Handbook of Federal Indian Law, compiled by Felix S. Cohen, has this to say of the Instrumentality Doctrine:

"Perhaps the most frequent reason stressed by the courts for the exemption of Indian property from State taxation is the Federal instrumentality 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."

For many years the courts gave a very broad interpretation to the Instrumentality Doctrine and when questions of Indian taxation arose the tendency was to give a blanket exemption under the Doctrine. More recently the trend has been away from the all embracing effect of the Doctrine. In the case of Shaw, Auditor, v. Gibson-Zahniser Oil Corporation, 276 U. S. 575, 48 S. Ct. 333, 72 L. Ed. 709, the Court said:

"The early legislation affecting the Indians had as its immediate object the closest control by the government of their lives and property. The first and principal need then was that they should be shielded alike from their own improvidence and the spoilation of others but the ultimate purpose was to give them the more independent and responsible status of citizens and property owners. The present statute which enabled Miller Tiger to become the owner of the lands leased to this plaintiff is typical of the latter course of

> Indian legislation, which discloses a purpose to accomplish that end not only by the gradual relinquishment of restrictions upon the lands originally allotted to the Indians but by encouraging their acquisition of other property and gradually enlarging their control over it until independence should be achieved."

The court went on to hold that where monies realized from the lease of restricted lands which had been allotted to an Indian were invested in other lands, the lands so purchased were not such instrumentalities of the government as to be immune from taxation.

The instrumentality Doctrine was also rejected in the case of Oklahoma Tax Commission v. United States, 319 U. S. 598, 63 S. Ct. 1264, 87 L. Ed. 1612, where after holding the Oklahoma inheritance tax statutes applied to Indians, the court went on to say:

> "It is true that our interpretation of the 1933 statute must be in accord with the generous and protective spirit which the United States properly feels toward its Indian Wards, but we cannot assume that Congress will choose to aid the Indians by permanently granting them immunity from taxes which they are as able as other citizens to pay. It runs counter to any traditional concept of the guardian and ward relationship to suppose that a ward should be exempted from taxation by the nature of his status, and the fact that the Federal Government is the guardian of its Indian Ward is no reason, by itself, why a State should be precluded from taxing the estate of the Indian."

See also Yarbrough v. Oklahoma Tax Commission, 200 Okla._____, 193 Pac. (2d) 1017, wherein the Oklahoma Supreme Court held that the estates of deceased full blooded, restricted Osage Indians, except the allotted homestead, are subject to the estate, or transfer, or inheritance tax levied by the State of Oklahoma and further said:

> "One of the best of reasons for again going into this issue, since our independent judgment was obstructed earlier, is the recent review and revision by the Supreme Court of the United States of some of the rules of law of the earlier Federal decisions on this branch of the law. The traditional Federal court view of the nontaxability of the property of Indians is illustrated by United States v. Rickert, 188 U. S. 432, 23 S. Ct. 478, 47 L. Ed. 532, and Childers v. Beaver, supra. The alteration in this view is disclosed by Shaw v. Gibson-Zahniser Oil Corporation, 276 U. S. 575, 48 S. Ct. 333, 72 L. Ed. 709, ...(citing other recent cases)."

The decision in the above quoted case was affirmed by the U. S. Supreme Court in West v. Oklahoma Tax Commission, 334 U. S. 717.

In view of the foregoing review of authorities it is my opinion that the personal property of an Indian, as described and identified herein, is subject to State taxation unless it can be definitely shown that such property is restricted and that it was the intention of the Federal Government or the Department of the Interior that it be restricted. To apply

this conclusion to the instant situation necessitates an inquiry as to how the lands in question are leased and how the rentals are handled.

The individual Indians are classified as competent or non-competent Indians. The competent Indian is allowed to negotiate the leasing of his trust patented lands subject only to the approval of the local Superintendent. The competent Crow Indian does not even need such approval. Section 171.28, Title 25, Vol. 6, Code of Federal Regulations. He contracts for the leases and the lease rentals are paid directly into his hands. The non-competent Indian cannot lease his lands himself, such lands are leased by the Superintendent of the Indian Reservation and the lease rentals from such lands are not paid directly to the Indian but are paid to the Superintendent for deposit to the allottee's credit as individual Indian monies.

Insofar as the competent Indian is concerned, it is my opinion that any automobile that he purchases with the rentals from leasing of trust patented lands is subject to State taxation. The rule enunciated in Shaw v. Gibson-Zahniser Oil Corporation, Supra, specifically covers such a situation. By no stretch of the imagination can such funds be said to be restricted. They belong to the competent Indian, he can do whatsoever he chooses with them and answer to no one. The Instrumentality Doctrine is no longer strong enough to reach out and exempt such funds and resultant property from taxation.

As to the non-competent Indians, it is my opinion that the power of the State to tax automobiles purchased with rentals from leasing of trust patented lands must depend upon the manner in which the Indian Agency released such funds to the Indians.

Section 221.5 Title 25, Vol. 6, C. F. R. is as follows:

> "Competent adults' funds. Disbursing agents are hereby auauthorized to turn over without restriction to reasonably competent adult Indians not to exceed $500 in any one year, this section to be cited as authority therefore. The purpose of such payments to adult Indians not incapacitated by age or physical or mental infirmity is that they may be encouraged to assume personal responsibility and to acquire that self-reliance and practical business experience which will enable them to become independent and progressive members of the community."

This section applies to funds of non-competent Indians. The section heading is unfortunate as it might lead one to believe that the section applies only to competent Indians. That is not the case, as section 221.6, Title 25, Vol. 6, C. F. R. is the section that deals with the funds of competent Indians. In asmuch as Section 221.5 authorizes the Indian Agents to release unrestricted funds to the individual Indians, it is my opinion that any personal property, including automobiles, purchased with such unrestricted funds are taxable by the State.

On the other hand if the monies held by the Agency for the non-competent Indian are released to him as restricted funds, then it is my

opinion that property purchased with such funds is also restricted and cannot be taxed by the State.

By way of answering your second question dealing with the problem of upon whom is placed the burden of determining that the property is purchased with trust funds, the County Assessor or the Indian who owns the property, I quote from 51 Am. Jur., Taxation, Section 527:

> "Tax exemptions in favor of private persons depend upon an express grant by constitutional provisions or legislative enactment, and, when granted, are to be strictly construed against the one who asserts the claim of exemption; every reasonable doubt is resolved in favor of the taxing power and against exemption from taxation, and it logically follows that the burden of proof is upon one who claims an exemption from taxation to establish his right to an exemption. He who asserts that his property is immune from a tax sought to be imposed thereon has the affirmative of the issue, and he must show the precise extent of his exemption and his right thereto by clear proof."

The rule that a person claiming exemption from taxation has the burden to show that property claimed to be exempt belongs to the class which is specifically exempt is well settled in Montana. Buffalo Rapids Irr. Dist. v. Colleran, 85 Mont. 466, 279 Pac. 369; Poorman v. State Board of Equalization, 99 Mont. 543, 45 Pac. (2d) 307.

It is the duty of the County Assessor to assess all property within the County subject to taxation. (Section 2002, Revised Codes of Montana, 1935). He can only take property off the tax list when it has been established that such property is not taxable. In light of the above cited authorities, it is my opinion that it is incumbent upon the Indian claiming the exemption to demonstrate that his property is not taxable and that the onus is not on the County Assessor.

My answer to question three is that the County Assessor may properly use and require a certificate from a Crow Indian signed by the Superintendent of the Crow Indian Reservation or some other person in authority showing that the property of the Indian is exempt from taxation before the Assessor determines whether or not the automobile is subject to taxation and issues an automobile license therefore. The records of the Agency will show to what individuals restricted funds were released and it will be a simple matter for the Indian to secure a certificate to the effect that the funds used to purchase his automobile were restricted, if such be the case.

It is my view that such automobile is not ipso facto exempt by reason of such certificate, but it may be used by the County Assessor as evidence of exemption, a matter he must determine from facts within his knowledge, or from competent evidence submitted to him. Such certificate will be strong evidence that the property is exempt from taxation, and will prima facie, be sufficient to authorize the Assessor not to make the assessment.

It is therefore my opinion that automobiles purchased by Crow Indians from funds received from rental of trust patented lands are taxable by the State of Montana except for those automobiles purchased with restricted funds issued to non-competent Indians by the Indian Agency, and that the Indian rather than the County Assessor has the duty of establishing the non-taxability of the automobile, and that it is proper for the County Assessor to use and require a certificate of exemption signed by an official of the Crow Indian Reservation, in determining whether or not such automobile is subject to taxation.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.