VOLUME NO. 42 OPINION NO. 11

INDIANS - Applicability of personal property and motor vehicle taxes to interest jointly held by member and nonmember;
MOTOR VEHICLES - Applicability of motor vehicle taxes or fees to interest jointly held by nonmember and member of an Indian tribe;
PROPERTY, PERSONAL - Applicability of personal property taxes to interest jointly held by nonmember and member of an Indian tribe;
TAXATION AND REVENUE - Applicability of personal property and motor vehicle taxes to interest jointly held by nonmember and member of an Indian tribe;
MONTANA CODE ANNOTATED - Sections 61-3-303, 61-3-312, 61-3-422, 61-3-501 to 61-3-542;
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 90 (1986), 39 Op. Att'y Gen. No. 45 (1981), 37 Op. Att'y Gen. No. 122 (1978).

HELD: The interest of a nonmember in motor vehicles, mobile homes, or personal property, whose tax situs is within the exterior boundaries of the Blackfeet Indian Reservation and which is held in joint tenancy or tenancy in common with a member of the Blackfeet Tribe, is subject to those state taxes generally applicable to such property.

19 March 1987

James C. Nelson
Glacier County Attorney
Glacier County Courthouse
Cut Bank MT 59427

Dear Mr. Nelson:

You have requested my opinion concerning the following question:

> Should motor vehicles, mobile homes, and other taxable personal property, whose tax situs is within the exterior boundaries of the Blackfeet Indian Reservation and which is owned in joint tenancy or in tenancy in common by a tribal member and a nonmember, be assessed and taxed at the full value of the nonmember's interest in such property?

I conclude that the nonmember's interest should be assessed at its full value.

Many forms of personal property, including mobile homes, are subject to annual ad valorem taxation. See §§ 15-6-101 to 146, MCA. Some motor vehicles are similarly taxed on an ad valorem basis, while others are subject to scheduled annual fees based on the vehicle's age and, in certain instances, weight. See §§ 61-3-501 to 542, MCA. It is well established that property taxes in Montana are the personal liability of the property owner and that "the property is resorted to for the purpose of ascertaining the amount of the tax and for the purpose of enforcing its payment where the owner makes default." O'Brien v. Ross, 144 Mont. 115, 121, 394 P.2d 1013, 1016 (1964); accord Calkins v. Smith, 106 Mont. 453, 457, 78 P.2d 74, 76 (1938); Christofferson v. Chouteau County, 105 Mont. 577, 583, 74 P.2d 427, 430 (1937); see 41 Op. Att'y Gen. No. 90 (1986) ("[a] tax lien attaches to the taxpayer's property which has been assessed and to any other personal property in his possession"). Although the taxation of most motor vehicles differs from that applicable to other forms of personal property, registration and reregistration requirements--which include payment of the motor vehicle fees--are imposed upon the vehicle's owner. See, e.g., §§ 61-3-303, 61-3-312, 61-3-422, MCA. Thus, the incidence of the involved taxes or fees falls on the property owner. An individual with a joint tenant or tenant-in-common interest has a right to the enjoyment of the entire property and must accordingly be viewed, along with his cotenants, as possessing an undivided ownership interest in the whole thereof. E.g., First Westside National Bank v. Llera, 176 Mont. 481, 485, 580 P.2d 100, 103-04 (1978); Hennigh v. Hennigh, 131 Mont. 372, 377, 309 P.2d 1022, 1025 (1957); Lindley v. Davis, 7 Mont. 206, 217-18, 14 P. 717, 722 (1887).

It is equally well established that states may not, absent express federal authorization, tax property whose tax situs is located within the exterior boundaries of an Indian reservation and which is owned by a member of the tribe inhabiting such reservation. E.g., Montana v. Blackfeet Tribe, 105 S. Ct. 2399, 2403 (1985); Moe v.

Confederated Salish & Kootenai Tribes, 425 U.S. 463, 475-76 (1975); McClanahan v. Arizona Tax Commission, 411 U.S. 164, 170-71 (1973). Because no explicit federal authorization exists for imposing taxes on members of the Blackfeet Tribe as to the types of property at issue here, a tribal member's interest therein is immune from such taxation. See 39 Op. Att'y Gen. No. 45 at 176 (1981); 37 Op. Att'y Gen. No. 122 at 526 (1978); Assiniboine & Sioux Tribes v. Montana, 568 F. Supp. 269, 271 (D. Mont. 1983); Valandra v. Viedt, 259 N.W.2d 510, 512 (S.D. 1977).

The question becomes whether the tribal member's exemption is vicariously shared by a nonmember co-owner. A state's authority to impose otherwise lawful taxes on nonmembers engaging in on-reservation conduct has, under modern authority, been held subject to "a particularized inquiry" into the involved state, federal, and tribal interests. White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 144-45 (1980); accord Three Affiliated Tribes v. Wold Engineering, 106 S. Ct. 2305, 2309-10 (1986); New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 333 (1983); Ramah Navajo School Board v. Board of Revenue, 458 U.S. 832, 837-38 (1982). As a general matter, state taxation jurisdiction will be preempted if it impermissibly interferes with a comprehensive federal statutory scheme or an established tradition of tribal self-governance. Rice v. Rehner, 463 U.S. 713, 719-20 (1983); Ramah, 458 U.S. at 838; White Mountain, 448 U.S. at 143-44; see Burlington Northern Railroad Company v. Department of Public Service Regulation, 43 St. Rptr. 1005, 1007-08, 720 P.2d 267, 269-70 (1986). The simple fact that a particular on-reservation activity may be validly taxed by a tribe does not, however, preclude state taxation of the same activity. Washington v. Confederated Tribes of Colville, 447 U.S. 134, 158 (1980); Fort Mojave Tribe v. County of San Bernardino, 543 F.2d 1253, 1258 (9th Cir. 1976), cert. denied, 430 U.S. 983 (1977). Consequently, when the incidence of a state tax falls on a nonmember and the tax is supported by legitimate state interests, a persuasive argument can be made that preemption is not present in the absence of compelling contrary federal or tribal interests. See California State Board of Equalization v. Chemehuevi Indian Tribe, 106 S. Ct. 289 (1985) (per curiam); Colville, 447 U.S. at 156-57.

Imposition of the property and motor vehicle taxes or fees at issue against a nonmember's interest is not precluded by federal statute. While the Ninth Circuit recently commented in Chemehuevi Indian Tribe v. California State Board of Equalization, 800 F.2d 1146, 1149 (1986), that "[t]he federal government has an

interest as a consequence of the general federal goals of strengthening Indian governments and encouraging tribal economic development," taxation of a nonmember has no effect on federal concerns. The tribe's sovereignty interest does not negate state authority over nonmember activity. The state interest here is substantial since the revenue generated by the affected taxes is allocated for essential services, such as education, road maintenance, and law enforcement, which directly benefit all county residents, including members and nonmembers residing within the Blackfeet Reservation. Modern Indian law preemption analysis thus militates strongly in favor of the validity of the taxes when imposed solely on the nonmember's property interest.

THEREFORE, IT IS MY OPINION:

> The interest of a nonmember in motor vehicles, mobile homes, or personal property, whose tax situs is within the exterior boundaries of the Blackfeet Indian Reservation and which is held in joint tenancy or tenancy in common with a member of the Blackfeet Tribe, is subject to those state taxes generally applicable to such property.

Very truly yours,

MIKE GREELY
Attorney General