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SPECIAL RECENT DEVELOPMENTS

WHAT ABOUT COLVILLE?†

Bess Lee Chen*

On June 10, 1980, the United States Supreme Court handed down a significant decision in a case called *State of Washington v. Confederated Tribes of Colville Indian Reservation*.¹ The major issue in this case concerned state taxation on Indian lands—whether the state of Washington could impose taxes on cigarettes sold on Indian reservations to nonmember Indians and non-Indians.² This article will consider the background of this case, the main arguments brought before the Supreme Court by the Indian tribes and the state of Washington, the Court's decision, and the ramifications of that decision to Indians.

Historical Background

For some years, the Confederated Tribes of the Colville Reservation, *i.e.*, the Makah, the Lummi tribes, and the Confederated Bands and Tribes of the Yakima Indian Nation, have operated smoke shops on their reservations to sell cigarettes and tobacco to their tribal members as well as to the nonmember Indians and non-Indians. In the early 1970s, the state of Washington, in which all four tribes are located geographically, began to impose cigarette and tobacco products taxes, as well as retail sales taxes on the nonmember Indian and non-Indian customers of the tribal smoke shops.³ Further, the state began to seize as contraband the

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1. 100 S.Ct. 2069 (1980).

2. Omitted in the discussion in this article are two minor issues that involve (1) the tribal challenge to the Washington motor vehicle excise and mobile home, camper and travel trailer taxes, and (2) the tribal challenge to the state's assumption of civil and criminal jurisdiction over the Colville, Lummi, and Makah tribes. The United States Supreme Court briskly declined to consider the state's desire to levy a tax on the use of Indian-owned vehicles outside the reservation but within the state by saying that the state would have to present its case more substantially than just "mere nomenclature." As for the state's assumption of civil and criminal jurisdiction over the three tribes, the Court simply reversed the district court judgment that held such state assumption of jurisdiction unconstitutional by following the rationale in *Washington v. Yakima Indian Nation*, 439 U.S. 463 (1979). All three tribes consented at various times to the state's assumption of jurisdiction.

3. See WASH. REV. CODE § 82.24.020 (1976), authorizing the cigarette excise tax of

shipments of untaxed cigarettes destined for the reservations.⁴ In 1973 the four tribes filed suit against the state of Washington, challenging the state's right to impose such taxes on on-reservation Indian business activities.⁵

Tribal Arguments

The main complaint against the state had to do with economic considerations. It was argued that the state could not impose any state taxes on the non-Indians or nonmember Indians who had business transactions with the governing tribes on tribal lands for the following reasons:

(1) The Congress had enacted several federal statutes⁶ with the manifest intent that the federal policy was to help Indians develop self-sufficient economies and encourage Indian self-government.⁷ If the state of Washington was allowed to impose cigarette taxes on the tribal smoke shop operations, it would impede such tribal business activities and in effect jeopardize tribal economic development because such tribal business activities generated revenues needed by these tribal governments to run their reservation programs and economic development programs.

(2) The federal policy in Indian affairs had always been to encourage tribal self-government and economic development.⁸ The

\$1.60 per carton. *See also* WASH. REV. CODE § 82.08.020 (1976), authorizing 5% sales tax on sales of personal property. Cigarettes are considered personal property.

4. 100 S.Ct. 2069, 2071 (1980).

5. The Colville, Makah, and Lummi tribes filed a suit against the state of Washington in May, 1973. The United States, on behalf of the Yakima Tribe, filed a suit against the state of Washington in July, 1973. In April, 1974, the Yakima Tribe intervened as a plaintiff in the United States case. Both cases challenged the state's cigarette and tobacco products taxes on sales made by the smoke shops on Indian reservations and sought declaratory judgments and injunction barring the state from enforcing such statutes. A three-judge court was convened and heard the two cases in March, 1977. In February, 1978, it rendered its consolidated decision in favor of the tribes enjoining the state's enforcement of the statutes. *See* 446 F. Supp. 1339 (1978). The state of Washington moved for a new trial and the motion was denied. It appealed to the United States Supreme Court.

6. Such as the Indian Reorganization Act of 1934, ch. 576, §§ 1-19, 48 Stat. 984, *codified at* 25 U.S.C. §§ 46-475; the Indian Financing Act of 1974, Pub. L. 93-262, § 2, 88 Stat. 77, *codified at* 25 U.S.C. §§ 1451 *et seq.*; and the Indian Self-Determination and Education Assistance Act of 1975, Pub. L. 293-638, § 3, 88 Stat. 2203, *codified at* 25 U.S.C. §§ 450a *et seq.*

7. 100 S.Ct. 2069, 2072 (1980).

8. Such as the Indian Reorganization Act of 1934, ch. 576, §§ 1-19, 48 Stat. 984, *codified at* 25 U.S.C. §§ 46-475; the Indian Financing Act of 1974, Pub. L. 93-262, § 2, 88 Stat. 77, *codified at* 25 U.S.C. §§ 1451 *et seq.*; and the Indian Self-Determination and

imposition of state taxes on Indian cigarette customers (except the tribal members) who had business transactions with Indian-owned smoke shops on Indian lands would adversely affect the Indian smoke shop businesses because most of the customers were non-Indians. The state tax regulations were in direct conflict with the congressional intent evidenced in such federal statutes. Thus, under the supremacy clause of the United States Constitution and the plenary power of Congress to regulate Indian affairs, the state tax laws should be viewed as void, invalid, and preempted.⁹

(3) If such state tax laws were not preempted by federal statutes for Indians, then they were preempted by the tribal laws of these four tribes.¹⁰ The tribal cigarette ordinances were passed by their tribal councils, which were legitimately formed and recognized under the Indian Reorganization Act of 1934.¹¹ Such ordinances also received federal administrative approval from the Secretary of the Interior. In this case, the state imposed taxes on these tribes that competed with the other tribes for non-Indian and nonmember Indian tax dollars. This imposition would frustrate tribal taxing efforts, decrease tribal tax revenues, and prevent the tribes from realizing full benefits from their own lands and resources. Such state action was in contrast to the federal policy of Indian economic development and Indian self-government. All of these tribal cigarette ordinances were enacted by the tribes with federal approval to generate revenues for tribal uses. Thus, the tribal laws should preempt the conflicting state laws.

Education Assistance Act of 1975, Pub. L. 93-638, §§ 3, 88 Stat. 2203, *codified at* 25 U.S.C. §§ 450a *et seq.*

9. 100 S.Ct. 2069, 2072 (1980). Preemption usually involves a federal law and a state law (or state action). The question to ask in preemption is whether such a state law depriving a citizen of a certain right is in direct conflict with a federal law that guarantees or recognizes such right. If the state law is found to be violating the federal law, such state law is preempted and invalid. A good example can be found in *Worcester v. Georgia*, 31 U.S. (6 Pet). 515 (1832). Georgia had a statute requiring that any non-Indian wishing to do business with Indians on an Indian reservation apply for a state passport first. Congress, in the meantime, had enacted several laws called the Federal Trade and Intercourse Acts to regulate the entry of non-Indians into Indian country and their trade with Indians. In this case, there were two laws: one federal law regulating the activities of non-Indians on Indian reservations, and another state law regulating the activities of non-Indians on Indian reservations. There was an apparent and direct conflict between these two laws. The United States Supreme Court found that the state passport requirement law violated the federal law. Under the plenary power of Congress to regulate Indian affairs, the state law was invalid.

10. 100 S.Ct. 2069, 2074 (1980).

11. See *supra* note 6.

State of Washington's Arguments

The state of Washington countered the tribal position by arguing that it had the right to tax the non-Indian and the nonmember Indian customers because not taxing these persons who purchased the cheaper cigarettes from reservation smoke shops created a reservation tax haven.¹² These customers were utilizing the tax exemption benefit intended only for the tribal Indians on such reservations. The state, as a result, had lost a large amount of revenue that could have been used for state social programs for state residents. Further, the state had the right to seize the untaxed cigarettes as contraband when they were within the state territory in transit to the reservations.¹³ Moreover, in order to enforce and collect the state taxes on such persons, the tribal smoke shops had the responsibility of maintaining a record-keeping system for the state's inspection.¹⁴

United States Supreme Court Opinion

The tribes won the first round in the three-judge district court, and the state of Washington appealed directly to the United States Supreme Court. After hearing the arguments on both sides, the Supreme Court, in a narrow five-to-four opinion,¹⁵ decided in favor of the state's position on taxation. In essence, the opinion says:

(1) There is no direct conflict of interest between state taxation of tribal cigarettes sold to non-Indians and nonmember Indians and the federal statutes advocating Indian economic development and self-government.¹⁶ Under the federal statutes, Indian tribal members of the governing tribe are exempted from state taxes. However, such federal statutes have not yet expressly nor implicitly given state tax exemption to non-Indians and nonmember Indians who may or may not live on the lands of the governing tribe. The state of Washington is imposing its taxes only on non-Indians and nonmember Indians who purchase cigarettes

12. 100 S.Ct. at 2073.

13. *Id.* at 2074.

14. *Id.* at 2073.

15. Justice White delivered the opinion of the Court on *Colville*, in which Justices Burger, Blackmun, Powell, and Stevens joined. Justices Brennan and Marshall dissented but joined in Parts I, II, III, IV-B(1), IV-D, V, and VI. Justice Stewart joined in Parts I, II, III, IV (except IV-B(2)), and VI. Justice Rehnquist joined in Parts I, II, III, IV-C, IV-E, and VI. Justice Brennan, together with Marshall, Stewart and Rehnquist, all filed separate dissenting opinions.

from the governing tribe's smoke shops, not on tribal members. Therefore, the preemption doctrine does not apply here.

(2) There is no direct conflict between the tribal and state governments in each taxation on the cigarettes.¹⁷ Each government is free to impose its taxes without ousting the other. The tribal government has a legitimate interest in raising revenues for whatever purpose. The state also has a legitimate governmental interest in raising revenues for its purpose. The state, in this case, by enacting and enforcing its tax regulations on cigarettes sold on reservations, does not interfere with such taxing exercise by the tribal government. The state merely taxes the nonmembers, not the tribal members, who purchase cigarettes sold on reservations.

(3) The state may put a "minimal burden" on Indian smoke shop dealers to aid the state in collecting the state taxes.¹⁸ That means:

a. The tribal smoke shop operators should keep detailed records of both taxable and nontaxable sales by recording the number of taxable sales to nonmembers.

b. The tribal smoke shops should prepay the cigarette taxes before the time of sale to nonmembers.

c. The smoke shop operators should record and retain for state inspection the names of all Indian purchasers (who must present a tribal identification card when purchasing cigarettes unless the operators personally know the Indian purchasers), their tribal affiliations, the Indian reservation within which sales were made, the dollar amount, and dates of sales. If the tribes and their smoke shop operators do not cooperate in collecting the state taxes, the state of Washington can seize shipments of cigarettes traveling to the reservations from out-of-state wholesalers.

Ramifications of the Supreme Court's Opinion

In this decision the Court reaffirms the Indian tribal government's right to tax on the reservation anyone, member or not, and use tax revenues however the tribal government sees fit, whether it benefits all those taxed or not. The Court also reaffirms the tribe's right to limit sales to whomever it wants and in a manner it desires. However, the Court does not give the tribe the right to be the only taxing agent if non-Indians or nonmember In-

16. 100 S.Ct. at 2074.

17. *Id.*

18. *Id.* at 2073, 2074.

dians living on or off the reservations are the buyers being taxed. Instead, the Court affirms the right of the state in which the reservation is located to tax all its citizens who are not members of that particular tribe and who may or may not live on that particular reservation. In other words, the state may tax the nonmembers, but not the members, of the governing tribe. The state may do so because the taxes collected from these nonmembers are needed to provide services for these same nonmembers. The taxes the Indian tribal government collects from these nonmembers may be used as the Indians see fit for their own members. But, such tribally collected tax money may not likely benefit those nonmembers taxed.

The Court uses the balancing of interests test to come to this decision. It specifies that there are two main factors to determine which interest is stronger—the tribal interest or the state interest. The Court says: “Interest is strongest when the revenues are derived from value generated on the reservation by activities involving the Tribes and when the taxpayer is the recipient of tribal services.”¹⁹ The Court goes on to state that: “Washington’s taxes are reasonably designed to prevent the tribes from marketing their tax exemption to non-members who do not receive significant tribal services and who would, otherwise, purchase their cigarettes outside the reservation.”²⁰

Therefore, the right of a tribe to tax on its own reservation does not mean the tribe can prevent the state from collecting taxes from persons who have business transactions with the tribe’s enterprises on the reservation. This in effect is double taxation. However, the Court deems that the state can legally do so because the state, if it is to provide services for the nonmembers, must collect revenues from them to help finance these services. This, in essence, is the controlling factor in the Court’s decision in *Colville* in favor of the state of Washington.

We might compare this resolution of the matter to the state of affairs in taxation between two adjacent states. Both states may levy whatever taxes they legislate on their own residents and spend the tax revenues as they see fit. But, a state cannot ask or demand another state to collect a double tax on one of its residents if the person travels to the other state to take advantage of whatever differences there are in tax rates on various commodities. If, for example, the tobacco tax, the liquor tax, or the

19. *Id.* at 2074.

20. *Id.*

gasoline tax is less in one state than an adjacent one, a resident cannot be taxed twice if he chooses to cross the state line to buy any one or all of these items. Purchasers may consider that state a tax haven and may wish to buy all of those less expensive items there. They could thereby avoid all such taxes of that kind in their own state. The resident's own state would have no way to force the other state to collect a second tax. A resident's own state, therefore, might have to provide services to that resident with monies not at any time collected from the person for those purposes. What this comparison obviously demonstrates is that in the opinion of the Supreme Court at least, tribal governments do not share equal status with state governments, and because they are lesser legal entities they may be asked to take on tax burdens and responsibilities demanded by states that no state could ask of another.

The practical effect of the decision will be to decrease the revenues generated for the tribes through taxes on tobacco and cigarettes. As dissenting Justices Brennan and Marshall point out,²¹ allowing the state of Washington to impose taxes likely will force the nonmember Indians and non-Indians to journey to off-reservation communities to purchase cigarettes and avoid the double taxation. This could result in a severe loss of revenues to the governing tribes. For example, the Yakima Tribe has a population that is one-fourth enrolled tribal members and three-fourths nonmembers living on the reservation.²² The three-fourths nonmember reservation residents form the majority of the cigarette purchasers at the Yakima smoke shops. With the state cigarette taxes—the imposition of double taxation—many of these nonmembers probably would not patronize the smoke shops on the reservation. What recourse does the Yakima Tribe have? It could either decide to remain as is, with the two governmental taxes, and thus lose customers and witness its annual income dwindle, or try to remain competitive by not imposing tribal taxes (or by reducing the already low tribal taxes) on such cigarette sales, thus foregoing revenues needed to provide public services for its own tribal members.

The Yakima tribal economy does not depend entirely on the income received from the cigarette sales.²³ The tribe, fortunately, has some other resources from which it can draw revenues, such

21. *Id.* at 2090.

22. See Appendix A.

23. See U.S. COMMERCE DEP'T, FEDERAL AND STATE INDIAN RESERVATIONS AND INDIAN TRUST AREAS 576-77 (1974).

as timber sales. Not too many Indian tribes are endowed with natural resources in use. Some Indian tribes receive their annual income primarily from the operation of their smoke shops. A few of them depend entirely on their annual income from such businesses.²⁴ With the permitted imposition of state taxes on the cigarette sales on reservations, the attraction for nonmembers to patronize the smoke shops is eliminated. Thus, the tribal revenues for less fortunate tribes will no longer exist. There will be more dependency for survival on the federal government. The federal policy to encourage Indian commercial growth and Indian self-government will be thwarted by the outcome of this decrease.²⁵

In the long run, the ramifications of the *Colville* decision may become even more serious if states begin pressing Indian tribal governments to assess a state tax on any commodity or resource sold on Indian lands to nonmembers or to nontribally controlled corporations. This case may apply directly to taxes on liquor sales on Indian reservations. It may even be cited in areas involving the sale of minerals taken from Indian lands by non-Indian mineral developers. States may be allowed to impose severance and sales taxes on the minerals produced on Indian reservations. The developers would pass the taxes along to the Indians by offering them lower royalties on the minerals extracted. Should such state taxes be permitted, the Indian tribal government's chances for income will be severely curtailed or diminished. Under current circumstances, most tribes have little enough resources or opportunities for generating revenues for their own purposes. If the states can exact taxes on what few things the Indians have to sell, the Indians will have little chance to develop economically or to sustain a government for themselves.

A possible recourse for the Indians may lie in the observations made by the Court in considering the arguments offered by the

24. Such as the Southern Paiutes of the Las Vegas Colony in the state of Nevada.

25. A number of Indian tribes in Washington state now concentrate on economic development alternatives since their smoke shops began gradually closing out after the *Colville* decision. According to unofficial reports published in the local Indian newspapers in Washington state, the smoke shop closings have created losses of tribal revenues of as much as \$200,000 for some of the tribes. Some tribal business managers are planning to begin selling liquor and DMSO, a pain reliever not yet approved by the Federal Drug Administration, as possible alternatives. For example, the Lummi Tribe has been operating liquor shops for less than a year now. According to its business manager, the liquor sales have been up and down, depending in part on the degree of harassment from the Washington State Liquor Control Board. Some of the tribes are also investigating the possibility of levying a business and occupation tax against non-Indian business operations and residences on reservations.

four tribes insofar as the federal policy of encouraging Indian economic development and tribal self-government is concerned. The Court stated that in balancing the interests of the tribal governments against those of the state of Washington, the Court would have given more weight to the tribes' argument if, instead of only stating what the federal policy toward the Indians was, they had produced concrete, statistical evidence (or projections) of the economic losses they would suffer if the Court ruled in favor of the state. To this effect the Court said:

[The tribes] argued that if a credit is not given, the tribal retailers will actually be placed at a competitive disadvantage, as compared to retailers elsewhere, due to the overlapping impact of tribal and state taxation. *While this argument is not without force, we find that the tribes have failed to demonstrate that business at the smokeshops would be significantly reduced by a state tax without a credit as compared to a state tax with a credit. . . .* Some non-members of the tribes living on the reservations would possibly travel elsewhere to purchase cigarettes if a state credit were not given, and smokeshop business would, to this extent, be decreased as compared to the situation under a credited tax. *But the tribes have not shown whether or to what extent this would be the case, and we cannot infer on the present records.*²⁶

In future cases in this area of state taxation, the Court, which seems to be sympathetic to the federal government's interest in providing Indian economic development and self-determination, may rule more favorably for the Indian tribal governments if they can show with detailed figures how severely some imposed state taxations would damage their economic standing and, thereby, their opportunity for growth and economic health. Seemingly, the Court would rather see the Indians generate their own income than depend on federal government taxes handed back down to them. Certainly, states in most cases have more potential sources of income available to them than the Indian tribal governments do, so that what resources the Indians do have should be protected. But, what the resources are that the Indians do have must be spelled out in specific detail if the courts are to listen to their arguments about keeping state governments from taxing the activities supported by their lands.

26. 100 S.Ct. at 2074 (emphasis added).

Appendix A

The following is background information about four Indian tribes involved in this case at the time of litigation.

The Colville Tribe, the Makah Tribe, and the Lummi Tribe:

- Each tribe is a federally recognized tribe having a tribal or business council as the governing body.
- The tribal council enacted tribal ordinances regulating the sale, distribution, and taxing of cigarettes in the tribal smoke shops. Such ordinances were approved by the Secretary of the Interior.
- The tribe purchased cigarettes from out-of-state wholesalers who were federally licensed Indian traders. The tribe acted as a retailer, retaining and distributing the cigarettes upon their sale. The on-reservation smoke shop dealers were also federally licensed Indian traders. The tribe imposed tribal taxes over the wholesale distribution price and a sales tax of 40¢ to 50¢ per carton.

The Colville Tribe:

- Colville had approximately 5,800 enrolled members. About 3,200 (80% of the total membership) lived on-reservation.
- Approximately 51% of the reservation's population were non-members.
- The tribe had an annual income of approximately \$3 million.
- Between 1972 and 1976, the tribe realized \$266,000 from its cigarette sales. Annual average for those years was \$53,200, which amounted to about 1/60 of the total tribal income.

The Makah Tribe:

- Makah had approximately 1,000 enrolled members. 900 (90%) lived on-reservation.
- 27% of its inhabitants were nonmembers.
- The tribe had an annual income of approximately \$260,000, derived mostly from forestry, lease income, and interest.
- Between 1972 and 1976, the tribe realized \$13,000 from its sales of cigarettes. Annual average for those years was \$2,600, which amounted to 1/100 of the total tribal income.

The Lummi Tribe:

- The tribe had approximately 2,000 members. 1,250 (84%) lived on-reservation.
- Between 1972 and 1976, the tribe realized \$54,000 from its sales of cigarettes. Annual average for those years was \$10,800.

The Yakima Tribe:

- Yakima is a federally recognized tribe with a legitimate tribal council to run tribal businesses.

- The tribe enacted tribal ordinances regulating the sale, distribution, and taxing of cigarettes with the approval of the Secretary.
- The tribe functioned as a wholesaler. It purchased cigarettes from out-of-state wholesalers and then sold them to its licensed retailers.
- The tribe imposed tribal taxes over the cigarette wholesale price from those distributors, and also a sale tax of 22.5¢ a carton.
- The tribe had approximately 6,000 members. 5,000 (80%) lived on the reservation.
- About 80% of the reservation's population were nonmembers. Approximately 1,500 of this 80% were nonmember Indians and more than 20,000 were non-Indians.
- The tribe had an annual income of \$4 to \$5 million, deriving mostly from timber sales.
- In 1975 the tribe earned \$278,000 from its cigarette business. This was 1/16 of the tribe's total annual income.

Appendix B

In order to understand the rationale behind the Supreme Court's decision in *Colville*, it will be helpful to peruse the rulings by the Court on some major cases concerning state taxation on non-Indians who have business transactions with Indians on Indian lands.

Thomas v. Gay, 169 U.S. 264 (1898): The Court held that the state could tax non-Indians on the reservation. This case is one of the earliest examples of judicial approval of a state tax over on-reservation non-Indian lessees.

Morris v. Hitchcock, 194 U.S. 384 (1904): The Court upheld the right of the tribe to impose a sales tax on a non-Indian trader doing business on reservation lands. This is a leading case sustaining tribal authority to tax within a reservation on white-owned cattle grazing within tribal territory.

Buster v. Wright, 135 F. 947 (8th Cir. 1905), *appeals dismissed*, 203 U.S. 599 (1906): The Court upheld the tribal authority to tax on-reservation non-Indians, sustaining a business license fee on white-owned business which traded with Indians within tribal territory.

Oklahoma Tax Commission v. Texas Co., 336 U.S. 342 (1949): The Court held that the indirect financial burden (*i.e.*, the state tax) on non-Indian mineral lessees of Indian land, which might be placed on the tribe, would not by itself justify the invalidation of

the state tax. See 25 U.S.C. § 398, which abrogated the tax immunity enjoyed by non-Indian lessees.

Iron Crow v. Oglala Sioux Tribe, 231 F.2d 89 (9th Cir. 1956): The Court held that the tribe could tax both Indians and non-Indians for grazing privileges within the tribal territory.

Williams v. Lee, 358 U.S. 217 (1959): The Court held that the state of Arizona was precluded from exercising its jurisdiction over a civil matter arising in Indian country between a non-Indian creditor and an Indian debtor. This case set forth the test of whether state jurisdiction interferes with the Indians' right to govern themselves, which was used in the *McClanahan v. Arizona Tax Commission*, 411 U.S. 164 (1973), *infra*.

Warren Trading Post Co. v. Arizona Tax Commission, 380 U.S. 685 (1965): A unanimous Court held that the state could not impose a transaction privilege tax on the operator of a federally licensed retail trading post located on a reservation.

Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973): The Court held that federal policy exempting the on-reservation Indians from direct taxation by the state could not be extended to create off-reservation tax havens because of the Indian financial involvement in that off-reservation enterprise. This case involved a Mescalero Apache snow ski enterprise in New Mexico, established on a piece of land acquired by the tribe under the authority of the Indian Reorganization Act of 1934 (48 Stat. 984, codified at 25 U.S.C. §§ 46-475).

McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973): The Court held that state could not tax Indians on reservations for state income tax. The Court used the federal preemption doctrine to test the validity of the state income tax against a Navajo woman and concluded that the state tax was unlawful as applied to Navajo Indians. By analogy, if the wholesaler or retailer is an Indian, the state cannot impose any sales tax on such person but can on the non-Indian user/purchaser of whatever the Indian wholesaler/retailer sells.

United States v. Mazurie, 419 U.S. 544 (1975): The Court held that the federal government had delegated authority to tribal governments through the Indian Reorganization Act of 1934 (48 Stat. 984, codified at 25 U.S.C. §§ 46-475), § 16 to regulate liquor sales on tribal lands.

Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 463 (1976): The state of Montana was applying its cigarette tax to both Indian and non-Indian buyers of cigarettes on the Flathead Indian Reservation. There was no tribal tax on cigarettes. The

Court held that there was no exemption of state cigarette sales tax for non-Indian buyers.

Fort Mojave v. San Bernadino County, 543 F.2d 1253 (9th Cir. 1976), cert. denied, 430 U.S. 983 (1977): The tribe litigated the enforceability of the California county tax. The Court rejected the preemption doctrine on a county possessory interest tax imposed on non-Indian lessees of Indian land even though the tribe taxed those same lessees. The Fort Mojave Reservation is located in three states, California, Arizona, and Nevada. Only California imposed such tax.

Ute Indian Tribe v. State Tax Commission, 574 F.2d 1007 (10th Cir. 1978), cert. denied, 439 U.S. 965 (1978): The Ute Tribe sought a declaratory judgment that the state could not levy or collect tax on the sales of personal property on the Uintah or Ouray reservations. The court of appeals, basing its holding on *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463 (1976), held that the state sales tax could be applied to non-Indian purchasers on the reservation.

State of Washington v. Confederated Tribes of the Colville Indian Reservation, 100 S.Ct. 2069 (1980).

White Mountain Apache Tribe v. Bracker, 100 S.Ct. 2578 (1980): Arizona imposed motor carrier license tax and the fuel tax on a non-Indian contractor who operated solely and continuously on the Indian reservation with a tribal logging enterprise. The Court held that the state taxation amounted to double taxation, preempted by federal Indian statutes.

Central Machinery Co. v. Arizona Tax Commission, 100 S.Ct. 2592 (1980): Arizona imposed a tax of doing business in the state on a non-Indian corporation for its sale of farm machinery to an Indian tribe. This single sale took place on the reservation. The corporation was not a federally licensed trader doing business with Indians. The Court held that the Indian trader statutes (25 U.S.C. §§ 261-264) and their implementing regulations (25 C.F.R. Part 251) preempted the asserted state tax.

