

MINUTES

ASSEMBLY COMMITTEE ON TAXATION  
FEBRUARY 22, 1977  
9:30 a.m.

Members Present: Chairman May  
Mr. Schofield  
Mr. Craddock  
Mr. Dreyer  
Mr. Harmon  
Mr. Horn  
Mr. Jacobsen  
Mr. Mann  
Mr. Murphy

Guests Present: Janet B. Allen, Nevada Indian Commission  
Lawrence Astor, Reno-Sparks Tribal Council  
Ronald T. Banta, Lyon County District Attorney  
Leslie L. Blossom, Chief, Te-Moak Bands  
Joe Braswell  
Linda D. Brown, Indian Commission  
Gordon Burnet, U & I Distributing  
Joseph E. DiGrazia, DiGrazia Wholesale, Wells  
Joseph E. Dini, Jr., Speaker of the Assembly  
Hy Forgeson, Red Cloud Smoke Shop  
George E. Glead, Western Cigar Co., Las Vegas  
John Hicks, Walker River Paiute Tribe, Schurz  
Bob Hunter, Bureau of Indian Affairs  
Edna McDonald  
Roger McDonald  
Joe Midmore, Tobacco Tax Council  
Elmer S. Miller, The Native Nevadan  
Robert Paisano, Bureau of Indian Affairs  
Marolyn Patton  
Roy A. Puccinelli, Southworth Tobacco Co.  
Bill Red Cloud  
Louis Vasconcelos, Glaser Bros.  
Inter-Tribal Council of Nevada: Dell Steve,  
Chairman, Randy Emm, Elton Jones, Harold  
Wyatt.  
Nevada Indian Legal Services: Don Christen-  
sen, Stephen B. Martin, Linda Anisman.  
Department of Taxation: Tom Kruse, Marilyn  
Paoli, John J. Sheehan, Bruce L. Smith.  
W. W. Vending, Las Vegas: Cotton Crutch-  
field, Jr., Jean Crutchfield, Joan Crutch-  
field.  
Yerington Paiute Tribe: Linda L. Howard,  
Chairman, Carolyn M. Kenton, Secretary,  
Elayne J. Aguilar, Gloria J. Brunette,  
Timothy E. Brunette, Jr., Ernestine Conway,  
Tim Conway, Walter Conway, Warren Emm,  
Evalina Picotte, Robert Picotte, Larrettea  
Reymers, Chertee Smith, Jr., Myra Smith,  
Archie Stevens, Mary L. Stevens.

Chairman May called the meeting to order at 9:33 a.m. He stated to those present that it is the duty and obligation of the Committee to get as much information as possible on the area being considered. He asked Mr. Sheehan of the Department of Taxation to speak first to explain the bill and the history behind it.

ASSEMBLY BILL 100

To begin with, Mr. Mann questioned the statement of a fiscal impact with regard to A.B. 100. He said that it was his understanding that a fiscal impact would reflect a loss where in this case, the loss is something that has not been collected. Mr. Sheehan defended the loss as something that is happening through the growing amount of sales of untaxed cigarettes on the reservations throughout the State.

Mr. Sheehan gave a brief history on "smoke shops." He said that this type of thing started in Oregon, Montana, and Idaho, several years ago. It became an issue in Nevada when Stephen King opened the first smoke shop in Nevada. He obtained a five-year lease to open a smoke shop on the Indian reservation.

Mr. Sheehan stated that his concern came from the statutes that say that no one can hold unstamped cigarettes unless that person is a dealer. He said an attempt was made to seize those cigarettes, but that the tax agents were confronted by the Indian police and escorted from the reservation. As a result, there was a rather insignificant change in the statutes. The issue went to the Federal Court and the ruling was in favor of the smoke shops. Furthermore, the court placed a restraining order on the Department of Taxation not to interfere with the Indians. There has not been any additional litigation since that time.

Approximately one year ago, the Supreme Court issued a ruling in the Moe Case. The Supreme Court held that while the states have no authority to involve themselves on the reservation lands, the State of Montana had a right to insist upon the tax to be paid on cigarettes sold on the reservation to non-Indians.

Mr. Sheehan said that he has never had the argument that the State had a right to interfere with inner-tribal transactions. However, he said that the benefit of this tax relief is going to many non-Indians. Because of the Moe Case, the whole entire purpose of this bill is to conform Nevada law to Montana law so that there must be tax paid when the sale is to non-Indians.

Mr. Sheehan stated that in Nevada the cigarette tax is imposed upon the wholesalers. In Montana, the legal incidence of the tax is upon the ultimate consumer. He felt that since the tax was upon the ultimate consumer, it could be collected as far as the Indians were concerned. Part of this bill would allow the Department of Taxation to obtain from wholesalers information showing how much of their product is being distributed to exempt entities.

Mr. Sheehan said that the Department of Taxation will now be licensing retail dealers. The present bill provides for a \$5 charge for the license, but Mr. Sheehan said that this appears that it will be more trouble than it is worth and said that he has an amendment already drafted to eliminate this charge.

Mr. Sheehan said that presently the cigarettes coming into Nevada are all coming from Oregon. Oregon has a permissive law that says the cigarettes can be passed out of the State without paying a tax in Oregon. He said that there are millions of dollars going to Oregon to buy these cigarettes. He said that the second main proposal of his bill is to stop this money going to Oregon and give the business to Nevada wholesalers.

Mr. Sheehan said that four years ago, members of the Legislature felt that the cigarette problem was a small one. However, in 1976, there were 1,148,000 cartons of cigarettes delivered to smoke shops throughout the State. That amounts to a loss of revenue of as much as \$1,148,000, which is \$1 tax on each carton of cigarettes. He estimated that the retail income for this amount of cigarettes would be about \$4,000,000. He said that the way these figures are computed is that Oregon has a law that the sale of cigarettes to places in Nevada must be reported to the Nevada Department of Taxation. Specific amounts are shown on Exhibit A.

Mr. Murphy asked if the single fact that these cigarettes were shipped to Nevada meant that they had all been sold. Mr. Sheehan said that they were shipped into the various smoke shops and that he has got to believe that they were sold.

Mr. Dreyer asked if passage of A.B. 100 would increase the price of cigarettes. Mr. Sheehan said that it would not.

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Mr. Dreyer asked about the part of A.B. 100 that says if any cigarettes are found in the possession of an individual, they will be seized by the Department of Taxation. Mr. Sheehan said that this part of the law has been there for years. He said that its main use in the past has been in the case of a truck hijack or perhaps a truck accident where cigarettes had been stolen. Mr. Sheehan said it was possible for him to stand outside of the smoke shop in Reno, stop people coming out, and confiscate their cigarettes, but that was something that he had not done.

Mr. Craddock asked if the Department had proposed regulations already drafted to carry out this legislation. Mr. Sheehan said that they did not at this time, but that he did have various ideas on what to include in such regulations.

Mr. Joe Midmore spoke next concerning A.B. 100. He said that passage of this bill would support the wholesalers in Nevada who would find their sales increased. He submitted to the Committee a legal brief on states' jurisdiction relating to Indians (Exhibit B). He said that it goes into several cases. He also said that he knew that there are areas where the wholesale cigarette business has been hurt measurably and said that he hoped some of the dealers might be able to tell the Committee how much they have been hurt because of the Indian businesses.

Mr. Cotton Crutchfield spoke in favor of A.B. 100. He said that over two years ago, his firm was selling about 200 cases of cigarettes a week. Now his firm is selling less than 100 cases per week. He said he buys about \$5600 in tax stamps each week, where in the past he bought anywhere from \$10,000 to \$12,000 per week.

Mr. George Gleed spoke next for A.B. 100. He did not have figures on how his business had lost business, but his support was on the basis of the \$1,148,000 in lost revenue to the State. He said that somewhere else this was having to be made up.

Mrs. Marolyn Patton was the next speaker. She said that she felt the cigarette tax was an ineffective tax. It is driving the citizen's to the Indian reservations to purchase their cigarettes. She said the dollar loss to the State, counties, schools, and cities is extremely high and will continue to grow. She felt that the tax should be eliminated if it could not be enforced correctly. She said that the State should be wary of other types of businesses beginning to operate on the reservations in a tax-exempt status.

Mr. Gordon Burnet said that he has compiled figures from three years back when he first took over the business. In 1974, he sold \$298,000 worth of cigarettes; in 1975, \$294,000; and in 1976, \$285,900. He said that he purchased 69,000 cartons and the Indians sold 115,000. He said that the seller on the reservation sells his cigarettes 5¢ cheaper than his company was even able to purchase the cigarettes. Mr. Burnet had a table showing comparisons which is attached as Exhibit C.

Mr. Joseph DiGrazia said the cigarette tax money is allocated back to counties and cities. The cigarette industry is in a declining market because of the sales on the reservations, and he said if there are not controls, the State would have to come up with a way to make up losses in revenue.

Mr. Lawrence Astor's comments as an opponent to A.B. 100 are attached as Exhibit D. Mr. Astor said that there are 23 different tribal groups in the State.

Mr. Dell Steve read a resolution from the Inter-Tribal Council against A.B. 100 which is attached as Exhibit E. His further remarks are attached as Exhibit F.

Mr. Leslie Blossom spoke next in opposition to A.B. 100. He said that one thing that had not been mentioned was that the Moe Case in Montana being implemented here would not be under the same effect. He said under retrocession, all tribes in Nevada except one in Ely had reverted back to Federal jurisdiction.

Mr. Blossom felt that the statistics for the Las Vegas area were not correct. He said that since Las Vegas is located near the border, he was sure that much of the business was with out-of-state people. He said that this business benefits the State anyway because the profits made in these ventures were spent in the State. Mr. Blossom explained some of the various types of leases to clarify that a monthly lease payment was not the only income to the Indians derived from the smoke shops.

Mr. Horn asked what kind of financial impact was being talked about if A.B. 100 passed. Mr. Blossom said he could see a big impact on the State when they tried to enforce it.

Mr. Horn explained that he wished to know what the loss would be to the tribes. Mr. Blossom said that in some tribes income from the smoke shops is the only income they have.

Mr. Schofield commented that this same bill refers to the various military installations and that the tax exemption provided there applied only to military people. Civilians are not allowed to purchase goods at these military stores. He said that he was looking at a fair balance situation that all should address themselves to.

Mr. Blossom said that outside of the United States civilians were allowed to a certain extent privileges in the military sales areas. He also said that an American coming into the country can bring a certain amount of items that if sent into the country in quantity would be taxed. He felt that the same thing should apply to the reservations.

Mr. Blossom said that the American Indian population has dwindled down really low, and that the Indians had to take advantage of non-Indians to "make a little money."

Mr. Jacobsen asked what would be the reason for buying cigarettes from Oregon if the states had similar laws concerning the cigarette tax. Mr. Blossom said this would be because Oregon has no state sales tax. Mr. Jacobsen then asked if the Indians used the services of the areas where they lived. Mr. Blossom answered by saying that they pay tax in the State of Nevada every day: gas, food, and clothes. He said that Nevada Indians are not like the Navajos who have a lot of people and are pretty well off.

Mr. Jacobsen asked if white people were under the retrocession act as far as civil jurisdiction while they are on the reservation. Mr. Blossom said it is not clearly stated yet.

Mr. Bob Hunter spoke in opposition to A.B. 100 and his statement is attached as Exhibit G. He said that if the State found a way to enforce the sales of cigarettes to non-Indians and to Indians where the tax would be collected on sales to non-Indians, they would make every buyer of their cigarettes a member of the tribe.

Chairman May asked what tribes were operating or leasing the various smoke shops. Mr. Hunter said that in Schurz, it is the White River Paiute; Fallon, Fallon Shoshone Paiute; Moapa, Southern Paiute; Las Vegas, Southern Paiute; Owyhee, Shoshone Paiute Reservation; Reno, Reno-Sparks Tribal Council; Battle Mountain, Te-Moak Bands of the Western Shoshone; Carson City, a branch of the Washoe Tribe; and Gardnerville, also Washoe Tribe.

Mr. Joe Braswell spoke next in opposition, and his comments are attached as Exhibit H.

Mr. Ronald Banta spoke as the official representative from Lyon County. He said that the Board of Commissioners there have indicated that they are proponents of A.B. 100. He further said that as an individual and lifetime resident of Nevada, he felt that the present situation is unfair to local merchants who are not given the same break that comes on Indian reservations. He said that the thing that concerns him most was where do we go from here - liquor, groceries, and ultimately car dealerships. The impact that could be to the State would be greatly damaging.

Hy Forgeson spoke next representing Red Cloud Smoke Shop. He said that if the tax loss was so great to the various counties it was strange that only one of the seventeen counties had sent a representative to this meeting. Mr. Forgeson said that the Legislature would not be passing a statute similar to the Moe decision. He said that there is no reason to believe that the Supreme Court would allow the same thing in Nevada. He said if the bill is passed, enforcement would be sketchy at most.

Mr. Warren Emm spoke in opposition of A.B. 100. He said that the Constitution of the United States says that the states will not pass bills of attainder toward any certain race. He said that this bill is aimed directly at the Indian.

Mr. Emm further said that Stephen King has done the Indians a great service. He said that Indians are able to take advantage of the loophole Mr. King found in the tax structure. He said that when he talks to Indian groups, he says, "Let's go. Let's start a car dealership on the reservation or start a casino." Then after that the courts could decide the rights of Indians in those areas.

The area of retrocession was discussed and Mr. Sheehan said that the issue could go on for hours. He said that it would be up to the Supreme Court to decide if the retrocession act would apply or not.

Mr. Dreyer asked for a copy of the Montana bill and a copy of the Supreme Court ruling. Mr. Craddock asked for a copy of Public Law 280. Members of the opposition to A.B. 100 asked that a copy of S.B. 491 of the 57th Session be included in the minutes. This is attached as Exhibit I.

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Chairman May adjourned the meeting at 11:47 a.m.

Respectfully submitted,

*Carl R. Ruthstrom, Jr.*

Carl R. Ruthstrom, Jr.  
Secretary



# DIAN SMOKE SHOP IMPORTS

(COUNT)

DATE OPENED	(1) 1/12 KING	(2) 1/15 KING	(3) 1/15 MORAN HANDICAP	(4) 1/15 KING	(5) 1/15 DYCK VALLEY SMOKE SHOP	(6) 1/16 RENO SPARKS	(7) 1/16 Red Cloud SMOKE SHOP	(8) 8/16 INDIAN COLONY	(9) 9/16 McDONALD SMOKE SHOP	(10)	(11)	(12)	(13) MONTHLY TOTAL TAX \$
MONTH:	SCHURZ	FALLON	MORAN	L.V.	OWYHEE	RENO	BATTLE MTN.	CARSON CITY	GARDNERVILLE				
JANUARY	10080-	6720-	840-	35400-	201-								53,241-
FEBRUARY	6360-	6150-	1920-	47280-	195-								61,905-
MARCH	14160-	9600-	780-	64920-	262-								89,722-
APRIL	8010-	6540-	780-	48120-	222-								63,672-
MAY	12340-	9000-	720-	67000-	267-								91,229-
JUNE	10320-	4410-	420-	40410-	493-	3000-							89,053-
JULY	9240-	8550-	480-	74490-	236-	5010-	6000-						100,006-
AUGUST	10560-	7500-	N/A	78690-	309-	11520-	1380-	1860-					111,819-
SEPTEMBER	10920-	6360-	480-	77910-	70-	19650-	3015-	1020-	660-				120,085-
OCTOBER	8160-	5550-	720-	80040-	N/A	18480-	2160-	N/A	3150-				118,260-
NOVEMBER	9510-	7770-	780-	84330-	N/A	31500-	N/A	N/A	3660-				139,550-
DECEMBER	6150-	5160-	720-	66450-	N/A	26280-	N/A	N/A	3030-				109,790-
TOTALS	115,710-	83,310-	8,640-	791,040-	2,257-	115,440-	12,555-	2,880-	10,500-				614,332-

22

JANUARY  
 FEBRUARY  
 MARCH  
 APRIL  
 MAY  
 JUNE  
 JULY  
 AUGUST  
 SEPTEMBER  
 OCTOBER  
 NOVEMBER  
 DECEMBER

TOTALS

EXHIBIT A

Prepared By	Date
Approved By	

- 1979 -

	(1)	(2)	(3)	(4)	(5)	(6)	
	SCHURZ	FALLON	L.V.	MOAPA	OWYHEE	MONTH TOTAL TAX \$	
1	JAN	7830				7830 =	
2	FEB	7530				7530 =	
3	MAR	6960				6960 =	
4	APR	15480				15480 =	
5	MAY	11010				11010 =	
6	JUNE	9480				9480 =	
7	JULY	15990				15990 =	
8	AUG	12930				12930 =	
9	SEPT	15450				15450 =	
10	OCT	14850				14850 =	
11	NOV	9270				9270 =	
12	DEC	14490				14490 =	
13							
14							
15	1974 TOTALS	141,270				141,270 =	
16							
17							
18						= 1975 =	
19							
20	JAN	14190	2040		780	17010 =	
21	FEB	7440	2340		480	10,260 =	
22	MAR	11,850	2580		420	14,850 =	
23	APR	18,540	N/A		300	18,540 =	
24	MAY		NO BREAKDOWN AVAILABLE			18,540 =	
25	JUNE	26,820	N/A	3000	180	420	30,420 =
26	JULY	25,260	2400	12,420	840	276	41,206 =
27	AUG		NO BREAKDOWN AVAILABLE		1320	300	30,450 =
28	SEPT	20,250	8880	39,169	780	341	69,420 =
29	OCT	15,530	7770	36,150	720	306	59,476 =
30	NOV	11,550	6330	39,840	1560	195	59,775 =
31	DEC	11,010	7440	52,920	900	350	72,620 =
32							
33							
34							
35	1975 TOTALS	160,740	39,780	183,499	8280	2155	441,867 =
36							
37							
38							
39							
40							
41							
42							
43							

STATE REVENUES

CIGARETTE MONEY

Prepared By:	Initials:	Date:
Approved By:		

CALENDAR YEAR

MONTH:	(1)	(2)	(3)	(4)	(5)	(6)
	COUNTY ALLOC.	REFUNDS	Adm. CHG.	4 1/2 DISCOUNT (FOR INFO ONLY)	TOTAL OF MONTH'S COLLECTIONS	TOTAL COLLECTIONS TO DATE
				FIGURE NOT INCLUDED IN TOTAL		
<b>1975</b>				(4)		
JAN.	880,634.41	467,789	5000 =	36,988.00	890,312.30	890,312.30
FEB	882,654.35	59,056.5	5000 =	37,212.00	893,559.40	1,783,871.70
MAR	843,741.23	25,674.2	5000 =	35,480.00	851,608.65	2,635,480.35
APRIL	883,262.32	5,011.48	5000 =	37,212.00	893,273.80	3,528,754.15
MAY	977,506.12	42,341.8	5000 =	41,100.80	956,746.30	4,515,494.45
JUNE	957,728.60	42,271.29	5000 =	41,459.20	996,995.89	5,512,490.34
JULY	909,435.58	2,606.72	7,750 =	41,272.00	990,792.30	6,503,282.64
AUG	1,054,768.70	43,932.25	7,750 =	44,436.00	1,066,911.95	7,570,194.59
SEPT.	956,160.74	2,216.06	7,750 =	40,240.00	966,126.80	8,536,321.39
OCT.	975,849.30	51,876.5	7,750 =	41,188.00	988,786.95	9,525,108.34
NOV	972,547.25	2,340.00	7,750 =	45,932.00	982,637.22	10,507,745.62
DEC	895,943.41	36,509.9	7,750 =	37,204.00	907,344.40	11,415,090.02
	11,190,232.04	48,357.98	76,500 =	475,324.00	11,415,090.02	BALANCE TO MY STATISTICAL REPORT (11)
<b>1976</b>						
JAN	885,264.29	46,048.3	7,750 =	37,238.00	897,619.70	897,619.70
FEB	906,612.45	31,114.55	7,750 =	39,392.00	945,477.00	1,843,096.70
MAR	836,953.52	5,527.58	7,750 =	35,368.00	859,231.10	2,699,327.80
APRIL	956,415.79	43,967.1	7,750 =	40,268.00	968,562.50	3,661,890.30
MAY	886,435.95	60,443.35	7,750 =	39,448.00	900,230.10	4,562,120.40
JUNE	972,637.42	47,476.8	7,750 =	40,968.00	985,135.10	5,547,255.50
JULY	994,434.57	15,233.33	8,000 =	41,768.00	1,003,957.90	6,551,213.40
AUG	951,460.14	38,721.6	8,000 =	40,088.00	963,332.30	7,514,545.70
SEPT.	990,721.52	46,685.9	8,000 =	41,800.00	1,003,390.10	8,517,935.80
OCT.	999,081.04	32,722.6	8,000 =	42,088.00	1,010,353.30	9,528,289.10
NOV.	932,268.75	47,316.5	8,000 =	41,368.00	995,003.42	10,523,289.52
DEC.	794,212.89	25,319.1	8,000 =	33,440.00	804,744.80	11,328,034.30
	11,156,498.71	77,035.59	94,500 =	471,284.00	11,328,034.30	BALANCE TO STATISTICAL REPORT (12)

STATES' JURISDICTION PERTAINING TO  
INDIANS AND INDIAN RESERVATIONS

WILLIAM D. DEXTER\*  
General Counsel, Multistate Tax Commission

and

MAX F. MOORE\*\*  
Supervisor, Compliance and Review Section  
Washington State Department of Revenue

The purpose of this paper is to discuss some basic questions in determining the extent of states' jurisdiction to impose state excise taxes on Indians engaging in commercial activities with non-Indians from business locations on trust or restricted land within the exterior boundaries of an Indian reservation. These involve questions of the scope of Indian immunity stemming from the doctrines of Indian sovereignty, federal preemption, implied governmental immunity, and inverse discrimination.

Indian sovereignty relates to the residual jurisdiction of the states over "Indians" and "Indian Reservations" absent any specific federal legislation or treaty provisions pertaining to this subject matter and the semi-autonomous status of Indian tribes on reservation lands. Stated otherwise, do the states, on their admission to the Union have residual jurisdiction (jurisdiction not preempted by Congress including state enabling legislation and treaty provisions not changed by subsequent congressional enactment) over Indians, as citizens and residents, and Indian country included within the territorial limits of the states, or is jurisdiction not exercised by the federal government lodged in the Indians?

It is the basic position of Indian counsel that the states have no residual jurisdiction over Indians within the exterior boundaries of an Indian reservation. This issue involves the fundamental relationship between Indians as residents and citizens of the states in which they reside and Indian reservations as part of the specific territory of the states. There are divergent lines of United States Supreme Court decisions dealing with this question. This issue, however, lies at the heart of state tax jurisdiction over reservation Indians in areas not preempted by Congress. Imposition of state cigarette taxes and

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\*Formerly, Assistant Attorney General, Washington Department of Revenue.

\*\*Presented by Max F. Moore.

other excises on Indians conducting business with non-Indians within the exterior boundaries of an Indian reservation on trust or restricted lands depends on the inherent jurisdiction of the sovereign states tested against federal preemption, Indian treaties and Indian sovereignty.

The question of federal preemption is dependent upon the examination of federal statutes governing Indians within the exterior boundaries of an Indian reservation stemming from federal treaty making and Indian commerce powers. This concerns the operative effect and scope of specific federal legislation including state enabling legislation, treaty provisions and general federal statutes such as the Buck Act, the Indian Traders Act, various federal allotment acts, the Indian Reorganization Act, and other federal legislation bearing on the question of federal versus state versus Indian tribal jurisdiction.

Application of the doctrine of implied governmental immunity is simply a determination of the scope of any immunity granted as a result of the basic relationship between the states, Indian tribal organizations and the federal government and tax immunity that can be implied from this basic relationship and any specific federal legislation.

An interesting question that has not been presented to any court is the question of inverse discrimination under the Fifth Amendment to the United States Constitution. Inverse discrimination involves a question of whether or not Indians, because of race or national origin, can be put in a preferred tax situation as compared to non-Indian competitors. Within the Fifth Amendment due process of law restrictions, can the Congress immunize Indians from state taxation based solely on race or ancestry?

A perplexing problem in the analysis of any of these basic legal principles is the fact that they have been variously relied upon. In many Indian tax immunity cases, immunity has been implied by some sort of composite consideration of these principles without delineating, in any way, on what basis actual immunity has been found to exist. On the other hand, decisions upholding state tax jurisdiction have turned upon the absence of any federal restrictions. Decisions have commingled the doctrine of Indian sovereignty, federal preemption and implied governmental immunity without an examination of the underlying basis or extent of the application of these doctrines. An examination of the reasoning employed by the court in arriving at the result in the McClanahan case is illustrative of this commingled type of treatment with the resultant implied lack of jurisdiction. Nevertheless, it seems that it is essential to understanding the

scope of a state's tax jurisdiction to examine each principle to determine the extent of the immunity granted by the application of each principle.

Do the States Possess Residual Jurisdiction  
Over Indians on Indian Reservations?

This question may be broken down for answer into two subsidiary questions, namely: (1) Are reservations within the territorial limits and jurisdiction of the states; and (2) If they are, to what extent do the doctrines of Indian sovereignty and federal preemption (federal legislation including treaties and enabling act restrictions) remove the reservations from state jurisdiction?

We will consider these questions in the order presented.

Are Indian Reservations Within the Territorial  
Jurisdiction of the States?

In attempting to give some definitive answer to this question, it is important to note that the United States Supreme Court decisions have taken divergent viewpoints on this issue. Premised on the early cases of Worcester v. Georgia (US), Kansas Indians (Blue Jacket v. Johnson) (US), New York Indians (Fellows v. Denniston) (US), and McClanahan, the argument has been made on behalf of the Indians that the states have no jurisdiction over Indian reservations except as expressly authorized by Congress. This argument has been best expressed in terms of geography, that is, an Indian reservation is "off limits" to state jurisdiction.

In applying the principles of Worcester v. Georgia, Kansas Indians, and New York Indians, in cases such as McClanahan, the court did not note the differences between the treaties involved in those early cases and in later cases such as McClanahan. In Worcester the provisions of several treaties between the United States and the Cherokee Indian Nation expressly denied any jurisdiction in Georgia over the territory of the Indian Nation. In a very real and express sense, the Cherokee lands were not a part of the state of Georgia. The original treaty (the treaty of Hopewell formed on November 28, 1875) agreed upon "the boundary line between the Cherokees and citizens of the United States." Subsequent treaties carried the same stipulation. These treaties were entered into as a result of hostilities where sections of territory were procured and boundaries agreed upon between the Cherokee Nation and the United States. The purpose of the Georgia Act declared unconstitutional was to add Cherokee territory to the boundaries of the state of Georgia.

Thus, a non-Indian going on the reservation was not subject to state jurisdiction. The same was true in reference to the treaties involving the Kansas Indians and the New York Indians. Thus, with due respect to the decisions of the Supreme Court of the United States, it is not so much that the principles of Worcester v. Georgia have been changed by subsequent cases. Rather, what have been changed are the rights guaranteed to the Indians by federal legislation of which treaties are only a part. It is equally interesting to note that even in these early cases the court was not aware of the problems that might result when the Indian reservation communities became intermingled with lands and communities over which the Indians had no jurisdiction. In fact, the treaties which set apart lands for the Indians at a place distant to the white man's settlements were in specific response to these problems.

In circumstances where "Indian country" was not excluded by treaty from the territory of the states, the cases have generally held that "Indian country" is not "off limits" to state jurisdiction.

Thus, in State of New York Ray v. Martin, the Supreme Court noted, ". . . in the absence of a limiting treaty obligation or Congressional enactment each state had a right to exercise jurisdiction over Indian reservations within its boundaries. . . ."

Again, as stated in United States v. McGowan, "Enactments of the Federal Government passed to protect and guard its Indian wards only affect the operation, within the colony, of such state laws as conflict with the Federal enactments."

In Kake v. Egan, the court discarded the general notion expressed in Worcester v. Georgia and Kansas Indians that an Indian reservation is a distinct nation within whose boundaries state law cannot penetrate. It there noted "that a reservation was in many cases a part of the surrounding State or Territory, and subject to its jurisdiction except as forbidden by federal law. . . ."

If this were not true, cases such as United States v. McBratney, and Draper v. United States (1896), which upheld state jurisdiction, would have been erroneously decided.

In sum, Indian reservations are not "off limits" in a territorial sense unless they are excluded from state boundaries by state enabling legislation such as before the court in Worcester v. Georgia.

It is respectfully submitted that the referred to cases indicating that Indian territory is part of a state for jurisdictional purposes point out the proper direction and focus for in-

quiry. The states do have territorial (geographical) jurisdiction. The sole question is whether the states have subject matter jurisdiction. This depends on the limitations imposed by federal law including treaties and state enabling legislation and what remains of notions of Indian sovereignty. These cases further indicate that where jurisdiction has not been preempted by the Congress, the states do in fact have residual jurisdiction. Thus, jurisdiction not exercised by the federal government is not in the Indian tribes as sovereign nations but rather in the states as sovereign states. This principle has been modified, however, by notions of Indian sovereignty which we will consider next.

To What Extent Does the Doctrine of Indian  
Sovereignty Deny State Jurisdiction (Including  
Tax Jurisdiction) of Indians on Indian Reservations?

One of the most troublesome problems confronting the states in application of their excise taxes to commercial activities of Indians on Indian reservations is what has been referred to as platonic notions of Indian sovereignty. Broadly speaking the question is, what law governs: that is, tribal law of self-government or state law in the absence of controlling federal treaties or federal legislation?

In Cohen's Handbook of Federal Indian Law, Chapter 7, the question of the scope of tribal self-government is discussed. Cohen there makes the claim based upon the principles announced in Worcester v. Georgia, that those powers which are lawfully vested in an Indian tribe are not in general delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished. This, of course, is the basic claim of Indians and Indian tribal organizations. This line of reasoning would support the proposition that Indian tribal organizations within the exterior boundaries of an Indian reservation have jurisdiction not denied them by Congress by affirmative federal legislation.

Consistent with the principle that Indian reservations are within the territorial jurisdiction of the state unless expressly excluded therefrom by metes and bounds description or other language of like effect, the courts have uniformly upheld state jurisdiction over non-Indians dealing with non-Indians within the exterior boundaries of a reservation.

As stated in Cohen's Handbook of Federal Indian Law at page 121, "The mere fact that the locus of an event is on an Indian reservation does not prevent the exercise of state jurisdiction where the parties involved are not Indians and the subject matter of the transaction is not a federal concern."



Inconsistent with this principle, even after Indians were made full-fledged citizens and residents of the states and Indian reservations were broken up as a result of allotment acts, the courts have denied state jurisdiction in some cases where transactions involved Indians where the doctrine of federal preemption would appear to have no application because of the absence of any controlling treaty or federal statute provision. On the other hand, in some cases where transactions involved Indians the court has granted jurisdiction. What the controlling considerations in these two types of cases were is not clear from a reading of the decisions. It is difficult to ascertain to what extent, if any, the states have been denied state jurisdiction on the basis of the doctrine of Indian sovereignty rather than the application of the doctrine of federal preemption including the concomitant principle of implied governmental immunity. To the extent jurisdiction is denied on the basis of federal preemption or governmental immunity, there is a statutory and case law framework which can be applied to other circumstances and cases. However, there appears to be interwoven into the decisions denying state jurisdiction, concepts of Indian sovereignty. Examples of this are Williams v. Lee, and McClanahan. In Williams v. Lee the court, in commenting on the principles enunciated in Worcester v. Georgia, stated:

. . . Over the years this Court has modified these principles in cases where essential tribal relations were not involved and where the rights of Indians would not be jeopardized, but the basic policy of Worcester has remained. . . . Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them. . . .

Since in Williams v. Lee there was (i) no absence of territorial jurisdiction such as that involved in Worcester v. Georgia, and (ii) no controlling federal statute that preempted jurisdiction, Williams v. Lee must of necessity be an implied immunity case stemming from application of the doctrine of Indian sovereignty.

The McClanahan case is difficult to analyze in reference to the question of Indian sovereignty. In McClanahan the court initially noted that, "This case requires us once again to reconcile the absolute powers of the States over residents within their bodies with the semi-autonomous status of Indians living on tribal reservations. . . ."

In McClanahan, the court, after discussing the concept of Indian sovereignty stemming from Worcester v. Georgia, appropriately noted that the source of federal authority over Indian matters is the power which the federal government derives from fed-

eral responsibility for regulating commerce with Indian tribes and for treaty making. After stating that a bar to state jurisdiction rested on federal preemption rather than the idea of inherent Indian sovereignty, it stated, "The modern cases thus tend to avoid reliance on Platonic notions of Indian sovereignty and to look instead to the applicable treaties and statutes which define the limits of state power."

In McClanahan the Supreme Court seemingly rejected Indian sovereignty as a controlling principle and sought to rely instead on relevant treaties and federal statutes. It is also interesting to note that the court in McClanahan rejected the test applied to an Indian in Williams v. Lee. Arizona took the position in McClanahan that imposition of its income tax on McClanahan did not interfere with reservation self-government. The Supreme Court noted in reference to this argument that:

In fact, we are far from convinced that when a state imposes taxes upon reservation members without their consent, its action can be reconciled with tribal self-determination. But even if the state's premise is accepted we reject the suggestion that the Williams test was meant to apply in this situation. It must be remembered that cases applying the Williams test have dealt principally with situations involving non-Indians.

In the McClanahan case the court seemed to reject application of this principle to Indians by noting that McClanahan's "activity is totally within the sphere which the relevant treaties and statutes leave for the federal government and for the Indians themselves." The question thus posed is whether McClanahan is expressing a line of decisions beginning with Worcester v. Georgia based on principles of Indian sovereignty stemming from treaty rights which is inconsistent with cases such as State of New York ex. rel. Fay v. Martin, United States v. McGowan, and Kake v. Egan.

While it may be simple enough to state that Arizona lacked tax jurisdiction over Indians on the Navajo reservation, it leaves unanswered the jurisdiction of Arizona to administer and enforce those programs to which Indians are entitled to under due process and equal protection requirements. For example, does Arizona lack jurisdiction to enforce its statutes where an Indian erroneously or by fraud obtains financial assistance from Arizona such as Aid to Dependent Children? Obviously it would be impossible to administer a program where Indians are concerned and to which benefits they are entitled as residents and citizens of the state without jurisdiction over the Indians to carry out the purposes of the program. Furthermore, if Arizona does not in fact have jurisdiction over Indians on the Navajo reservation,

is there any basis in law and fact for assuming that Arizona has to assume any responsibility? Can Arizona in spite of the citizenship and residency of Navajo Indians and in spite of due process and equal protection requirements of the federal constitution deny the Navajo Indians the benefits conferred by Arizona on its other citizens and residents?

In this connection it seems that the burdens should follow the benefits. Privileges and immunities of residence and citizenship ought to carry the duties and obligations of that residency and citizenship. The Supreme Court of the United States has never really addressed itself to this problem but rather has assumed that the benefits of all state laws including various services are not applicable to Indians. In McClanahan the court said that the Navajo Indians received some state services. The answer to that is that they receive all state services the same as any other resident or citizen. The only thing exclusive about the Navajo Tribe is the exercise of self-government comparable to local self-government granted municipalities and counties.

The significance of the McClanahan case was considered by the court in Mescalero Apache Tribe v. Jones. The court in Mescalero rejected the broad assertion that the federal government has exclusive jurisdiction over the tribe for all purposes whether the tribal enterprise is located on or off tribal land. In so doing, it significantly noted that any such generalization

. . . has given way to more individualized treatment of particular treaties and specific federal statutes, including statehood enabling legislation, as they, taken together, affect the respective rights of States, Indians, and the Federal Government. The upshot has been the repeated statements of this Court to the effect that even on reservations state laws may be applied unless such application would interfere with reservation self-government or would impair a right granted or reserved by federal law. Even so, in the special area of state taxation, absent cession of jurisdiction or other federal statutes, permitting it, there has been no satisfactory authority for taxing Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation, and McClanahan v. State Tax Commission of Arizona, lays to rest any doubt in this respect by holding that such taxation is not permissible absent congressional consent."

If the above interpretation of McClanahan holding is correct, it would indicate that jurisdiction was denied on the basis that under the Navajo Treaty the reservation was set aside for the use

and occupation of the Navajo Tribe of Indians and that "no persons except those herein authorized to do, and except such officers, soldiers, agents, and employees of the federal government, or of the Indians, as may be authorized to enter Indian reservations in discharge of duties imposed by federal law, or the orders of the President, shall ever be permitted to pass over, settle upon, or reside in, the territory described in this article."

Since the court found no specific treaty or statute which granted tax immunity apart from that implied from the treaties setting the Navajo reservation apart for the exclusive jurisdiction of the Indians, it is fair to conclude that McClanahan reservation source income tax exemptions stem solely from inherent sovereignty the court found by application of the treaty provisions peculiar to the traditional notion of Navajo Indian sovereignty. In this connection the court did not consider the effect, if any, of the general allotment act on Arizona's jurisdiction within the exterior boundaries of the Navajo Indian Reservation nor the effect of conferring citizenship on McClanahan.

Thus in spite of the language in McClanahan and the test asserted to be applicable in Mescalero, it seems that the question concerning inherent Indian sovereignty must be faced by the states. This statement is based upon the proposition that the court has implied immunity even though it was not an immunity granted by any federal legislation or expressed treaty provision.

In light of the Kennerly case and the principles enunciated by the Supreme Court in McClanahan and Mescalero, it appears that Indian sovereignty or Indian right to self-government must be tested against federal legislation including treaties. One must ascertain what is taken from the states by Congress and lodged either in the federal government or the Indian tribes, rather than proceed on the assumption that Indian tribes are sovereign within the exterior boundaries of an Indian reservation except to the extent that sovereignty is impinged upon by express federal legislation.

#### Recent Decisions

Two recent three-judge district court opinions bear on this question: Walker River Paiute Tribe and Stephen King v. John Sheehan, et al. (U.S.D.C. for Nevada), and The Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana et al. v. John C. Moe, et al. (U.S.D.C. for Montana).

In the Walker River Paiute Tribe case the court held that Stephen King, a licensed Indian trader, was not liable for Nevada's cigarette excise tax on retail sales of cigarettes to

Indians and non-Indians. King's retail outlet was on land leased by him from the tribe and located on the Walker River Paiute Tribe reservation which was created by executive order. In addition to imposing a tax on licensed wholesalers who are required to affix stamps to cigarette packages, Nevada law imposes a use tax on cigarettes which have not been taxed at the wholesale level. The court in rendering its judgment on May 3, 1974 premised the tax immunity of King on the following: (1) Congress has not authorized Nevada to impose excise taxes with respect to an Indian-owned business on the Walker River Reservation; (2) Congress has preempted the field of Indian trading; and (3) the cigarette tax would interfere with Indian rights and sovereignty.

In the Salish and Kootenai Tribes case, the court upheld Montana's cigarette excise tax to the extent it required a member of the tribe (Wheeler) to collect a cigarette use tax on sales to non-Indian consumers. The tribal member conducted cigarette retail activities on trust land leased from the tribe within the exterior boundaries of the Flathead Reservation. In arriving at this result the court construed McClanahan as prohibiting Montana from subjecting Wheeler to the cigarette tax licensing requirements or collecting a use tax from Indian consumers. In upholding use tax collection by Wheeler from non-Indians the court framed the issue as "does the established principle of federal pre-emption in taxation and regulations of Indian trading extend to the sale of cigarettes to non-Indians under this factual situation?"

In resolving this issue, the court distinguished Warren Trading Post, and noted that Indian country is within the general jurisdiction of the state. It found that the subject matter (use tax collection responsibility on sales to non-Indians) did not interfere with any expressed or known federal policy of protecting Indians on Indian reservations (federal preemption, implied governmental immunity or the tribe's right of self-government). It then concluded, "Under these facts the Indian seller in selling cigarettes to non-Indians is involved with non-Indians to a degree which would permit the State of Montana to require precollection of the tax imposed upon the non-Indians."

It is submitted that the Montana decision and not the Nevada decision is proper as pertains to trade with non-Indians. In fact, in the Nevada case, the trade was between a non-Indian trader with non-Indians, which has nothing to do with the Indian Traders Act (25 U.S.C. 264). Important for our purposes here is the fact that the Nevada district court found an absence of residual jurisdiction in the state by application of notions of Indian sovereignty and the absence of express Congressional consent, while the Montana District Court upheld state residual jurisdiction in the absence of conflicting federal legislation or policy.

Also, the Montana District Court appropriately noted that the issue involving state taxation of activities by Indians with non-Indians is still an open question under United States Supreme Court decisions.

If we are to look to federal law and to treaties to see what is reserved to the Indians, and look to enabling legislation to see what jurisdiction is granted to the states, it is necessary that these matters be considered in their proper sequence. In any event, McClanahan casts a long shadow over the question of state tax jurisdiction involving Indians concerning their activities within the exterior boundaries of an Indian reservation such as that established for the Navajos under the treaty. Furthermore, the McClanahan case is not consistent with the court's interpretation of the McClanahan case in the Mescalero case except to construe the Navajo treaty as excluding the Navajo reservation from the territory of Arizona as pertains to Indians.

Irrespective of the shadow cast by McClanahan and the Williams v. Lee test concerning tribal self-government, it seems that the states have no alternative but to proceed with the assumption that they do have jurisdiction to impose their excise taxes on Indians conducting commercial activities with non-Indians even though the Indians' activities are on trust or restricted lands within the exterior boundaries of a reservation. To not take this tack would mean that the states would concede that they have no tax jurisdiction or other jurisdiction on Indian reservation lands unless they can point to some specific federal statute that grants this jurisdiction.

U. & I DISTRIBUTING CO  
BOX 984  
YERINGTON, NEV.

**Total Cigarettes Sales**

1974 -----298,838.72  
1975 -----294,250.43 -----Down 4,588.29  
1976 -----285,969.43 -----Down 8,281.00

**Cigarette Stamped Purchased**

1974 ----- 76,800.00  
1975 ----- 69,120.00 ----- Down 7,680.00  
1976 ----- 66,240.00 ----- Down 2,880.00

**Cigarettes Purchased 1976**

U & I	Indian Sold At Schurs
69,120 Cartons	115,710

**Cigarette Cost**

**Kings**  
162.00 Per Case -----2.70 Per Carton Plus 1.00 Stamps 3.70  
**100's**  
168.00 Per Case-----2.80 Per Carton Plus 1.00 Stamps 3.80

Indian sells kings 5¢ cheaper than I can buy and stamp.

Indian sells 100's 15¢ cheaper than I can buy and stamp.

EXHIBIT D

Mr. Chairman and members of the committee.  
My name is Lawrence Astor, Chairman of the Reno-Sparks Tribal Council.

I am here this morning to testify on behalf of the Reno-Sparks Indian Colony ~~and other Indian Smoke Shop operators in the State of Nevada~~, opposing the proposed amendments to Chapter 370 of NRS in regards to Assembly Bill #100.

The bill contains language similar to the Moe decision handed down by the U.S. Supreme Court to the State of Montana; however, unlike Nevada, Montana has criminal jurisdiction on Indian Reservations within the State pursuant to Public Law 280.

The amendments place the cigarette tax directly on the ultimate consumer, however the burden of such tax collection is on the seller, again, due to the absence of Public Law 280 jurisdiction. the State of Nevada cannot legally put this burden on the Indian seller.

Word changing in the bill does not change the fact that collection of the tax is an application of state law on an Indian reservation, therefore, it is improper and unjust unless the state has such jurisdiction.

The proposed amendments are vague in many respects. Section 370.280 allows for refunds on sales to members of a recognized Indian tribe, but there is no explanation of:

Who gets to decide who is and who is not a member.  
What are the requirements for membership.  
What is a recognized tribe and what constitutes proof satisfactory to the department.  
As a practical matter, the State may well spend thousands of dollars and several years litigating these questions.

Smoke Shops are an important source of revenue for the tribes, the money derived from such sales often ends up being spent in the State and thus indirectly benefits the State. The monies also helps to increase the self-sufficiency of the tribes, which may also indirectly benefit the State.

The Tax Commission, in suggesting these amendments is relying exclusively on the Moe Decision, however; reliance on Moe may well be futile, since the U.S. Supreme Court did not explain how to enforce the tax. The cost to the State of enforcing these amendments may be greater than the amount of revenue that is generated.

Less than two years ago the Nevada State Legislature voted to allow the Indians to plan their own destiny by passing the Retrocession Bill, but this morning, Legislation is being presented to erode Tribal sovereignty by infringing and interfering in our Tribal rights.



RESOLUTION OF THE INTERTRIBAL COUNCIL OF NEVADA

AGAINST AB 100

Whereas the Intertribal Council of Nevada (ITC) is a membership corporation of the twenty-three tribes of the state of Nevada, and as such can represent the common interests of all the tribes, and

Whereas all but one of the tribes exercise their powers of self-government under federal jurisdiction to the exclusion of state jurisdiction, and

Whereas a number of the tribes are presently engaged in or contemplating the sale of tax-free cigarettes from smoke shops located on the reservations and colonies, and the sale of cigarettes from such smoke shops has not been and cannot legally be taxed by the state of Nevada, and

Whereas AB 100, in seeming to make only numerous small changes in the system of cigarette taxation is actually an obvious effort by the state of Nevada to copy the state of Montana and by subterfuge to impose taxes upon the sale of cigarettes from Indian smoke shops, and

Whereas the Indian tribes of Nevada and the United States have in common a long history of oppression by non-Indian governments and institutions, and the Indian tribes of Nevada have few, if any, sources of income to finance their governmental activities and secure benefits and advancement for their people, and

Whereas there has been no proof that the state of Nevada either has or will suffer a loss of tax revenue due to the sale of cigarettes from reservations, and

Whereas it is the opinion of legal counsel available to ITC that the system of taxation created by AB 100 cannot be enforced on the reservation since no agents of the state may enter the reservation, neither to precollect the tax imposed by AB 100 nor to inspect the records required by AB 100 to be kept nor to force Indian sellers of cigarettes to be licensed, nor to do any other act of enforcement of state law on a reservation, then it becomes obvious that the only enforcement procedure available to the state is to harass the individual customers of the smoke shops, by making arrests outside the reservations, and such harassment of smoke shop customers will be illegal and will foster expensive lawsuits, and

Whereas the United States constitution provides that the regulation of commerce with Indian tribes shall be the exclusive jurisdiction of the United States, and

Whereas the tribes have the right, either through the ownership or leasing of smoke shops or other means, to engage in beneficial economic activity free from harassment by the state of Nevada, and

Whereas the imposition of a system of taxation and enforcement as contemplated by AB 100 is intentionally and specifically for harassment and detriment to the economic and cultural well-being of the Indians and tribes of Nevada and as such is illegal, immoral and beneath the dignity of the state of Nevada,

Now, therefore, be it resolved; that the Intertribal Council of Nevada hereby condemns AB 100 as an act of oppression by the state of Nevada against the Indian tribes, as an effort by the state of Nevada to illegally assert jurisdiction in Indian country in contravention of its own laws, to deny Indian tribes the opportunity to engage in meaningful economic enterprise and to ignore the special distinctions and body of law that surround the relationship of Indians to the federal government, and

Be it further resolved that AB 100 should not be passed, and that the chairman of the executive board of the ITC of Nevada, Mr. Dell Steve, is hereby authorized to transmit this resolution to the Legislature of the state of Nevada.

CERTIFICATION:

I do hereby certify that the foregoing resolution was duly adopted at the regularly called meeting of the executive board of the ITC of Nevada held on February 19, 1977, at which eighteen of the twenty-three members, representing a quorum, were present, by a vote of eighteen in favor, zero against, with zero abstentions.

Date: Feb. 21, 1977

Kee Dale

Kee Dale, Deputy Director

FEBRUARY 22, 1977

TESTIMONY BY DELL STEVE CHAIRMAN OF ITC OF NEVADA

TESTIMONY AGAINST PASSAGE OF A.B. 100.

AS CHAIRMAN OF ITC OF NEVADA I WOULD LIKE TO EXPRESS SOME OTHER VIEWS RELATED TO A.B. 100.

AS MOST PEOPLE KNOW THE AMERICAN INDIAN HAS THE <sup>Highest</sup> ~~Lowest~~ UN-EMPLOYMENT RATE IN THE U.S. 40-80% DEPENDS ON WHAT RESERVATION YOU COME FROM.

THE LOWEST HEALTH RATE.

THE LOWEST EDUCATION RATE. RIGHT NOW OUR KIDS <sup>are</sup> FINALLY GOING ON TO HIGHER EDUCATION, TO ENTER THE DIFFRENT PROFESSIONAL FIELDS. AND TO BETTER OUR HUMAN AND NATURAL RESOURCES ON THE RESERVATION AND COLONY'S IN THE FUTURE.

BY THE INCOME FROM LEASES AND PROFITS FROM THE DIFFRENT SMOKE SHOPS WE CAN FUTHER DEVELOPE OUR RESOURCES AND EMPLOYMENT, AND BE ABLE TO CREATE OTHER BUSINESS ON THE RESERVATION AND COLONY'S.

BY TAXING THE SMOKE SHOP'S THE STATE IS ONLY TAKING AWAY THE LIMITED INCOME THAT RESERVATIONS AND COLONY'S HAVE TO DEVELOPE THEIR RESOURCES.

BY LETTING THE RESERVATION AND COLONY'S IN THE STATE SELL CIGERETTS THE STATE IS REALLY ASSISTING TRIBES FINANCIALLY, AND THE STATE RECEIVES SAME CAPITAL BUT IN ANOTHER FORM OF REVENUE.

THE RESERVATION AND COLONY'S GOALS ARE ACTUALLY TO TAKE OVER THE MANAGEMENT AND CONTROL OF SMOKE SHOP'S, AND USE 100% OF THEIR PROFITS FOR DEVELOPMENT.

THEREFORE I FEEL THE ASSEMBLY SHOULD GIVE THE RESERVATION AND COLONY'S TIME TO DEVELOPE THEIR GOALS, ~~AND~~ NOT ACT TO HASTILY AND TO DEFEAT A.B. 100.

  
DELL STEVE  
CHAIRMAN OF ITC OF NEVADA

MR. CHAIRMAN, DISTINGUISHED MEMBERS OF THE COMMITTEE. MY NAME IS ROBERT L. HUNTER, I'M A MEMBER OF THE WASHOE TRIBE, AND FOR THE PAST 2 YEARS I HAVE BEEN THE SUPERINTENDENT OF THE WESTERN NEVADA AGENCY OF THE BUREAU OF INDIAN AFFAIRS LOCATED AT STEWART, NEVADA.

THIS MORNING, ALONG WITH THE OTHER INDIAN PEOPLE WHO HAVE APPEARED BEFORE ME, I WANT TO VOICE MY CONCERNS ABOUT A.B. 100.

TESTIMONY ALREADY PRESENTED HAVE ADDRESSED THE ISSUES OF TRIBAL SOVEREIGNTY, ENFORCEMENT OF A.B. 100, AND THE LACK OF STATE JURISDICTION, SO I WILL ADDRESS MY COMMENTS TO THE PROBLEM OF DETERMINING MEMBERSHIP ON A RESERVATION OR COLONY. MEMBERSHIP ON A RESERVATION IS ADDRESSED IN SECTION 31, SUBSECTION 1, (C) WHICH STATES THAT UPON "PROOF SATISFACTORY...REFUNDS SHALL BE ALLOWED FOR THE FACE VALUE OF THE CIGARETTE REVENUE STAMP TAX PAID...TO...MEMBERS OF A RECOGNIZED INDIAN TRIBE IF SOLD AND DELIVERED ON AN INDIAN RESERVATION".

WITH NO FURTHER ELABORATION OR EXPLANATION OF THIS CLAUSE WE CAN FORESEE NUMEROUS PROBLEMS, FOR EXAMPLE:

- 1) WHAT IS A MEMBER OF A RECOGNIZED INDIAN TRIBE? WHO IS GOING TO DEFINE SUCH A PERSON? WHAT IS GOING TO BE THE BASIS FOR THIS DEFINITION?
  
- 2) IS THE DEFINITION GOING TO BE ALL ENCOMPASSING? ARE INDIANS WHO ARE MEMBERS OF INDIAN TRIBES ACROSS THE NATION GOING TO BE ELIGIBLE FOR THE REFUND OF THE CIGARETTE TAX OR IS THE REFUND ONLY FOR RESIDENT NEVADA INDIANS? IS THE REFUND FOR ONLY MEMBERS OF NEVADA INDIAN TRIBES? LET ME SUGGEST THAT THERE IS A WIDE DIFFERENCE BETWEEN AN INDIAN MEMBER OF A NEVADA TRIBE AND A RESIDENT NEVADA INDIAN.

IT IS WELL RECOGNIZED AND ACCEPTED THAT AN INDIAN TRIBE HAS THE  
ULTIMATE RIGHT TO DETERMINE ITS OWN MEMBERSHIP. THE TRIBE DETERMINES  
THE ELIGIBILITY CRITERIA AND THE METHOD OF ACCEPTANCE. ~~FOR~~<sup>IF</sup> THE STATE  
OF NEAVDA TO ATTEMPT<sup>IT</sup> TO DETERMINE TRIBAL MEMBERSHIP<sup>^</sup> IS OPENLY ASKING  
FOR AN INVITATION TO A COURT PROCEEDING.

I ASK THIS COMMITTEE TO SERIOUSLY CONSIDER THE QUESTIONS PRESENTED ON  
THE DEFINITION OF MEMBERSHIP AND TO RECONSIDER THE IMPACT WHICH A.B.  
100 WILL HAVE IF THESE CONCERNS ARE NOT ADDRESSED.

I WISH TO THANK YOU FOR LETTING ME APPEAR BEFORE YOU TODAY.

BOB HUNTER, SUPERINTENDENT  
WESTERN NEAVDA AGENCY

To: Assembly Committee on Taxation, 59th Session of the Nevada Legislature  
From: Joe Braswell  
Re: A.B. 100

I wish to comment on only two aspects of this proposed legislation, although I believe there are many other facets of the measure which also make it objectionable.

First, I believe the State of Nevada is trying to exceed its constitutional authority in interfering with commerce on Indian reservations. Section 13, page 3, lines 1-8, authorize the Nevada Department of Taxation to make regulations they deem necessary to administer the act. Regulations of any department of a state government are not enforceable on Indian reservations without the expressed consent of the tribal governing body or by expressed authority by the U.S. Congress. To attempt to do otherwise would be an encroachment on the remaining sovereign powers of tribal governments which have not been extinguished by treaty or act of congress. The same reasoning is applicable to Section 17, page 3, lines 37-43, as it pertains to Indian reservations. A license issued by the State of Nevada is of no force and effect on Indian reservations, whether it be issued free of charge or whether a license fee is paid.

The second aspect I wish to address is that of enforcement. Section 30, pages 6 and 7, makes it unlawful for any person to accept or hold in possession unstamped packages, packets, or containers of cigarettes. The Nevada Department of Taxation is authorized to seize and confiscate unstamped cigarettes. Is this to be accomplished by setting up road blocks outside every Indian reservation? It appears to me that if enacted this bill will lead to much litigation. This will mean the expenditure of state tax dollars that could be better used elsewhere, and as a taxpayer I object to this useless waste of my tax dollars. Since state statutes are not applicable to Indian reservations, it seems to me that the attempts to enforce this type of law as it relates to trade on Indian reservations, and the litigation that would ensue, could only be interpreted as unwarranted harrassment of Indian tribes and individuals.

In closing I would like to make some observations about what has been called the free enterprise system. As I understand it, a merchant is free to choose where he can do business to his best advantage, and I as a consumer am free to do business with the merchant of my choice, whether that merchant happens to be in Nevada, California, or anywhere else. Each state exercises control over commerce within their jurisdiction, but does not control commerce in other jurisdictions. For instance, Nevada can not tell Montana to collect sales tax on goods sold to Nevada residents, since Montana has no state sales tax. Nor does the citizens of Nevada have to pay sales tax to Nevada on the retail merchandise purchased in Montana. I ask you this question, why should the so-called free enterprise system work for everyone except Indian residents of reservations?

I would urge that this legislation not be reported out to the full Assembly for action, unless each and every reference to Indian, Indian tribe, and reservation is removed by amendment.

Senate Bill No. 491—Senator Wilson

## CHAPTER.....

AN ACT to provide for the assumption and retrocession of jurisdiction of the State of Nevada over areas of Indian country in the state with the consent of the Indians occupying such areas; providing for an election to determine such consent; affording certain rights to Indians subject to the jurisdiction of the state; and providing other matters properly relating thereto.

*The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*

SECTION 1. NRS 41.430 is hereby amended to read as follows:

41.430 1. Pursuant to the provisions of section 7, chapter 505, Public Law 280 of the 83d Congress, approved August 15, 1953, and being 67 Stat. 588, and sections 401 to 403, inclusive, of Title IV, Public Law 284 of the 90th Congress, approved April 11, 1968, and being 82 Stat. 78, et seq., the State of Nevada does hereby assume jurisdiction over public offenses committed by or against Indians in the areas of Indian country in Nevada, as well as jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country in Nevada, subject only to the conditions of [subsection 2] subsections 3 and 4 of this section.

2. [This section shall become effective 90 days after July 1, 1955, and shall apply to all the counties in this state except that, prior to the effective date, the board of county commissioners of any county may petition the governor to exclude and except the area of Indian country in that county from the operation of this section and the governor, by proclamation issued before the effective date of this section, may exclude and except such Indian country.

3. In any case where the governor does exclude and except any area of Indian country, as provided in subsection 2 of this section, he may, by subsequent proclamation at the request of the board of county commissioners of any county which has been excluded and excepted, withdraw and remove the exclusion and exception and thereafter the Indian country in that county shall become subject to the provisions of this section. Any tribal ordinance or custom adopted by an Indian tribe, band or community in the exercise of any authority possessed by it shall, if not inconsistent with any applicable civil law of this state, be given full force and effect in the determination of civil causes of action pursuant to this section.

3. This section applies to all areas of Indian country within this state wherein the Indian tribe occupying any such area has consented to the continuation of state jurisdiction over such area in the manner provided in sections 6 to 14, inclusive, of this act, or has consented to the assumption of state jurisdiction over such area in the manner provided by section 406 of Title IV of Public Law 284 of the 90th Congress, approved April 11, 1968, and being 82 Stat. 80.

4. This section does not apply to any area of Indian country within this state wherein the Indian tribe occupying any such area has failed or refused to consent to the continuation of state jurisdiction over such area

*in the manner provided in sections 6 to 14, inclusive, of this act; and the State of Nevada hereby recedes from and relinquishes jurisdiction over any such area.*

SEC. 2. Chapter 233A of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 5, inclusive, of this act.

SEC. 3. *Indians subject to the jurisdiction of the State of Nevada pursuant to the provisions of NRS 41.430 and 194.040 are entitled to all services of the State of Nevada, including without limitation, correctional legal aid, public defender, probational and psychiatric services afforded to any other persons who are defendants in criminal actions or parties to civil actions in the courts of this state.*

SEC. 4. *The provisions of NRS 41.430 and 194.040 do not preclude Indian tribes who are recognized by the United States as possessing powers of self-government from enacting their own laws, regulations and ordinances, and enforcing them by their own tribal courts in accordance with their rules of procedure, but no person subject to the jurisdiction of such tribal court or governmental organization shall be denied any rights guaranteed by the constitutions of the United States or the State of Nevada.*

SEC. 5. *The provisions of NRS 41.430 and 194.040 do not increase the power of administrative agencies of the State of Nevada to exercise their jurisdiction over persons living and residing upon tribal or Indian country with the consent of the Indian tribe having jurisdiction over that country, but the extent to which such jurisdiction of administrative agencies existed prior to July 1, 1974, shall remain the same and in full force and effect.*

SEC. 6. 1. For the purpose of determining the consent of the Indian tribe occupying each particular area of Indian country in this state to the continuation of state jurisdiction over such area pursuant to NRS 41.430, the Indian affairs commission shall cause a referendum election to be conducted in each such area of Indian country in this state over which the State of Nevada has jurisdiction on a date designated by it, which shall be no later than June 4, 1974.

2. Except as otherwise provided in this act, such election shall be conducted as nearly as practicable in conformity with the general election laws of this state.

3. The Indian affairs commission shall adopt such regulations, consistent with applicable law, for the registration of voters and the conduct of the election as it may deem necessary to assure the fairness, purity and efficient conduct of such election.

4. The Indian affairs commission may appoint such election officials and other election workers as it may deem necessary for the registration of voters and the efficient conduct of such election. The county clerk of any county in which an election is to be held is authorized to cooperate with and assist the Indian affairs commission in carrying out the purposes of sections 6 to 14, inclusive, of this act.

SEC. 7. A person is qualified to vote in such election if he:

1. Is 18 years of age or older;
2. Is a member of the Indian tribe occupying the particular area of Indian country in which he seeks to vote;



3. Has registered to vote in such election in accordance with the provisions of this act and election regulations adopted by the Indian affairs commission; and

4. Was a resident of the particular area of Indian country in which he is registered for a period of not less than 6 weeks immediately preceding the date of registration, and has continuously resided in such area of Indian country between the date of registration and the date of the election.

SEC. 8. 1. The Indian affairs commission shall provide for the registration of all persons eligible to vote in such election in each particular area of Indian country, and may prescribe the times and places at which such persons may register, but registration shall be closed not later than 60 days preceding the date of the election.

2. Each registrant shall execute under oath an affidavit of registration which shall include:

(a) His full name;

(b) His place of residence and post office address with sufficient particularity to identify it and the particular area of Indian country in which he resides;

(c) His social security number, if any;

(d) His occupation;

(e) The date and place of his birth; and

(f) The name of the Indian tribe of which he is a member.

3. The affidavit of registration shall be delivered to the Indian affairs commission as soon as practicable after it has been executed and shall be retained in the permanent records of the commission.

SEC. 9. Not later than 30 days preceding the date of the election, the Indian affairs commission shall furnish to each person registered to vote in such election the following:

1. A notice containing the date of the election, the place at which such person may cast his vote and the hours within which voting will be permitted.

2. A sample ballot containing the question to be voted on as provided in section 10 of this act.

3. A copy of this act, together with an explanation thereof and an explanation of the question to be voted on, as approved by the attorney general.

SEC. 10. 1. All ballots to be used at the election shall contain a statement of the question to be voted on and two squares adjacent to the question for the voter to mark either "Yes" or "No."

2. The form of the question shall be substantially as follows:

"Shall the State of Nevada retain jurisdiction over that area of Indian country occupied by the (insert name of tribe) and known as (insert name by which the area is generally known)?"

3. The ballot shall also contain appropriate instructions for marking it.

SEC. 11. 1. Immediately after the closing of the polls at each polling place the ballot boxes shall be sealed and delivered into the custody of the Indian affairs commission, and shall remain sealed until opened as provided in subsection 2.

2. As soon as practicable after the closing of the polls, the Indian affairs commission shall meet for the purpose of counting and recording the votes cast and declaring the results of the election. In so doing, the commission shall proceed as follows:

(a) Each ballot box from each polling place in each particular area of Indian country in which an election was held shall be unsealed and opened separately, its contents counted, and the number of votes both for and against the question and the total number of votes cast shall be recorded separately.

(b) When all votes cast have been separately counted and recorded as provided in paragraph (a), the commission shall prepare a summary of votes cast in each particular area of Indian country within a single county, which shall show the number of votes both for and against the question and the total number of votes cast at each polling place, and the total number of votes both for and against the question and the total number of votes cast at all polling places in each particular area of Indian country within each single county.

(c) A copy of the vote summary prepared pursuant to paragraph (b) shall be posted in each polling place in each particular area of Indian country within the county.

3. The Indian affairs commission shall be the sole judge of the validity of any ballot cast in the election.

SEC. 12. No infirmities in the conduct of the election or any matter relating thereto shall invalidate the election or the results thereof if the provisions of sections 6 to 14, inclusive, of this act were substantially complied with and the election was conducted fairly.

SEC. 13. 1. Within 10 days after the date of the election the Indian affairs commission shall certify the results of the election to the secretary of state. The question voted upon shall have been answered in the affirmative if a majority of the votes cast within the particular area of Indian country in a single county were voted in the affirmative. The question voted upon shall have been answered in the negative if a majority of the votes cast within the particular area of Indian country in a single county were voted in the negative.

2. Separate certifications of election results shall be provided for each particular area of Indian country within each county wherein the question was voted upon. Each certification shall include:

(a) A statement of the question voted upon;

(b) A statement that the question voted upon was answered in the affirmative or the negative, as the case may be;

(c) A particular description of the area of Indian country affected by the result of the election; and

(d) A summary of votes cast as provided in paragraph (b) of subsection 2 of section 11 of this act.

SEC. 14. Upon receipt of the certificates referred to in section 13 of this act, the secretary of state shall deliver a certified copy of each certificate to the legislative counsel and shall deliver a certified copy of each certificate pertaining to a particular area of Indian country located within a particular county to the board of county commissioners of that county.

SEC. 15. The provisions of sections 1 to 5, inclusive, of this act shall

not impair or affect any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred, prior to July 1, 1974, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent as if such sections of this act had not been enacted.

SEC. 16. The provisions of sections 1 to 5, inclusive, of this act shall become effective on July 1, 1974.

INDEX OF MEASURES IN ASSEMBLY COMMITTEE ON TAXATION  
February 22, 1977

<u>Bill or Resolution Number</u>	<u>Date Referred To Committee</u>	<u>Introducer's Name</u>	<u>Summary</u>	<u>Date Scheduled Hearing</u>	<u>Committee Action</u>	<u>Assembly Action</u>	<u>Senate Action</u>	<u>Governor's Signature</u>
A.B. 53	1/19/77	Howard	Authorizes deduction of property taxes from taxable mine proceeds.	2/3/77	Ind. Post.			
A.B. 99	1/20/77	Committee on Taxation	Deletes requirement for Multistate Tax Compact advisory committee to hold annual meetings.	1/27/77 2/10/77	Do Pass	Passed 2/14/77		
A.B. 100	1/20/77	Committee on Taxation	Places cigarette taxes directly upon ultimate consumer.	2/22/77				
A.B. 101	1/20/77	Committee on Taxation	Creates Department of Taxation Bond Trust Fund and raises bond limits for motor vehicle fuel dealers.	1/27/77 2/10/77	Amend; Do Pass as Amended	Passed 2/17/77		
A.B. 102	1/20/77	Committee on Taxation	Creates intergovernmental trust fund and aviation fuels tax revolving account.	2/3/77 2/4/77	Do Pass; Rerefer to Ways/Mean Do Pass	Passed 2/8/77		
A.B. 103	1/20/77	Committee on Taxation	Requires sales and use tax collections to be deposited to account of State Treasurer.	1/27/77	Do Pass	Passed 1/31/77	Passed 2/8/77	2/11/77
A.B. 104	1/20/77	Committee on Taxation	Changes prescribed boat lights; requires counties to pay Fish and Game Department for boat registration and tax services.	2/8/77	Amend; Do Pass as Amended	Passed 2/21/77		
A.B. 161	1/26/77	Committee on Taxation	Clarifies administrative powers of Department of Taxation.	2/10/77	Do Pass	Passed 2/14/77		
A.B. 174	1/27/77	Committee on Taxation	Changes latest dates for county assessors to file tax roll and segregation of roll with State Board of Equalization.	2/10/77	Do Pass	Passed 2/14/77		

<u>Bill or Resolution Number</u>	<u>Date Referred To Committee</u>	<u>Introducer's Name</u>	<u>Summary</u>	<u>Date Scheduled Hearing</u>	<u>Committee Action</u>	<u>Assembly Action</u>	<u>Senate Action</u>	<u>Governor's Signature</u>
A.B. 175	1/27/77	Weise	Provides abatement of taxes on all real property acquired by State.	2/10/77				
A.B. 277	2/7/77	Wagner	Provides property tax allowance for structures with renewable resource heating or cooling systems.	2/15/77 2/17/77 2/21/77*				
A.B. 292	2/9/77	Robinson	Provides tax exemption for certain property used to conserve or produce energy.	2/15/77 2/17/77 2/21/77*				
A.J.R. 7	1/18/77	Harmon	Proposes constitutional amendment to permit property tax exemption for conservation of energy.	2/15/77 2/17/77 2/21/77*				
A.J.R. 9	1/19/77	Robinson	Proposes constitutional amendment to permit property tax exemption for conservation of energy or production of energy from renewable natural resources.	2/15/77 2/17/77 2/21/77*	Amend*			
A.J.R. 12	1/20/77	Committee on Taxation	Proposes to amend Nevada Constitution by authorizing Legislature to impose tax upon motorboats in lieu of property tax.	1/27/77 2/8/77				
A.J.R. 10/ 58th Session	1/17/77	Committee on Commerce	Proposes constitutional amendment to exempt business inventories from property taxation and allow Legislature to exempt any other personal property.	2/1/77 2/8/77	Do Pass	Passed 2/10/77		

<u>Bill or Resolution Number</u>	<u>Date Referred To Committee</u>	<u>Introducer's Name</u>	<u>Summary</u>	<u>Date Scheduled Hearing</u>	<u>Committee Action</u>	<u>Assembly Action</u>	<u>Senate Action</u>	<u>Governor's Signature</u>
A.J.R. 21/ 58th Session	1/17/77	Committee on Taxation	Proposes constitutional amendment for progressive exemption of busi- ness inventories from property taxation and legislative exemption of other personal property.	2/1/77 2/8/77				
A.C.R. 8	1/27/77	May	Directs Legislative Commission to study assessment and taxation of geothermal resources.	2/1/77	Be Adopted; Rerefer to Leg. Func.			

\*In Subcommittee

GUEST LIST

<u>NAME</u> (Please print)	<u>REPRESENTING</u>	<u>WISH TO SPEAK</u>	
		Yes	No
Rabert Pissard	BIA		X
BOB HUNTER	BIA	X	
Linda Anisman	Nevada Indian legal <sup>Services</sup>		X
Dell Steer	Chairman TTC of Nev.	X	
LAURENCE ASTOR	RENO-SPARKS TRIBAL Council	X	
Kessie L. Blossom	Chief - TE-MOAC Bands	X	
Elmer D. Miller	the Native Nevada		X
Marilyn Paoli	Dept. of Taxation		X
Janet B. Allen	Nevada Indian Comm.		X
Ope Braswell	Self -	X	
Elton Jones	ITCN		X
Tom Kruse	Dept. of Taxation		X
John J. Sheehan	Dept. of Taxation	X	
Hy Forgeron	RED CLOUD SMOKE SHOP	X	
JOHN Hicks	WALKER RIVER SCHURZ PAIUTE TRIBE		X
Linda Brown	Indian Commission		X
Bruce L. Smith	DEPT OF TAXATION		P
Cotton Crutchfield Jr	W-W. Vending & V.	X	
Joan Crutchfield	W W Vending & V.		X
Joan Crutchfield	" "		X
Joe Midmore	Tobacco Tax Council	X	
Bird Red Cloud	No Zupfer		X
Marilyn Patton	Self	X	
Gordon Burnett	U&I DISTRIBUTING	X	

GUEST LIST

<u>NAME</u> (Please print)	<u>REPRESENTING</u>	<u>WISH TO SPEAK</u>	
		Yes	No
George E Glead	Western Cigar Co.	<del>✓</del>	X
Joseph E. Dibrozzi	Dibrozzi Wholesale	<del>✓</del>	✓
Roy Luccinelli	Southworth Tob. Co.		X
Louis Vasconcelos	Glenn Bros.		X
Walter Green	Youngton Paiute Tribe		
Randy Emms	Inter-Tribal Council Nev.		X
Logan McLaughlin	Self		X
Edna McDonald	Self		
Don Christensen	nev. Indian Lgl. Service		X
Stephen B. Martin	Nevada Indian Legal Service		X
Joseph Dini	Assemblyman		
Linda L Howard	Chairman Youngton Paiute Tribe		X
Carolyn M. Kenton	Youngton Paiute Tribal Secretary		X
Loretta Meyers	Self Youngton Paiute Tribe		
Evahna Picotte	Youngton Paiute Tribe		X
Mary J. Stevens	PT Youngton		X
Dorothy J. Brunette	Youngton Paiute Tribe		X
Timothy E. Brunette Sr.	Youngton Paiute Tribe		X
Cherita Smith Jr.	Youngton Paiute Tribe		X
Esmeralda J. Aguilar	" " "		X
Megra Smith	" " "		X
Robert Picotte	" " "		X
Terri Conway	" " "		X
Walter Conway	" " "	160	X





ASSEMBLY COMMITTEE ON TAXATION  
FIFTY-NINTH SESSION, 1977

MEETING ROLL CALL

MEETING DATE: TUESDAY, FEBRUARY 22, 1977

	PRESENT	ABSENT	LATE	EXCUSED
Chairman May	✓			
Mr. Schofield	✓			
Mr. Craddock	✓			
Mr. Dreyer	✓			
Mr. Harmon	✓			
Mr. Horn	✓			
Mr. Jacobsen	✓			
Mr. Mann	✓			
Mr. Murphy	✓			