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POLICY DISCUSSION PAPER SERIES | 2023-02

Taxation in Indian Country: An Overview of the Causes of Tax Inequity in Indian Country and Modern Reform Efforts

APRIL 2023

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April 2023

Abstract

Taxation is the primary mechanism state and local governments use to fund their operations and provide essential public goods—from police and fire protection to transportation infrastructure. In contrast, tribal governments face constraints to exercising taxation authority, forcing them to rely on federal programs and tribal enterprises for needed revenue. Legal impediments to tribal taxation authority undermine long-term economic development in Indian Country. As background for forthcoming work from the Center for Indian Country Development, this paper provides an overview of the causes of tax inequity in Indian Country and modern tax-reform efforts.

State and local governments rely on taxation to fund government operations and provide community services. Tribal governments, however, raise revenue primarily through federal programs and tribally owned business enterprises due to constraints on tribal taxation authority. Unlike the relatively stable tax base of other governments, tribal revenue streams can be unpredictable and uniquely vulnerable to changes in national budget priorities and economic shocks such as COVID-19.

The absence of a stable tribal revenue base means public infrastructure and human services remain chronically underfunded in large areas of Indian Country. Tribal members and surrounding communities often pay a steep price for the lack of predictable tribal tax revenues through insufficient business development, persistent unemployment, and poor socioeconomic outcomes. Addressing the barriers to exercising tribal taxation authority would enable tribes to make long-term investments in the health and prosperity of their own communities.

Causes of taxation inequity in Indian Country

In 1789 Benjamin Franklin famously wrote, "In this world nothing can be said to be certain, except death and taxes." But in Indian Country, it could be said that nothing is more uncertain than taxation. There are, to be sure, taxes. In that sense, Franklin was right. However, dual taxation and the associated patchwork of taxation authority in Indian Country have created uncertainty. Questions persist about which government imposes these taxes, in what amounts, and on whom.

Tribes face unique and persistent barriers to imposing taxes on certain kinds of businesses and transactions within their own reservations. At the same time, tribes face tax competition from outside governments with respect to taxes they can impose—resulting in the double taxation of certain businesses and transactions. This differs significantly from how federal law manages taxation of interstate commerce. Under federal Commerce Clause jurisprudence, state taxes impacting interstate commerce must only apply to activities with a substantial connection to the taxing state, must be fairly apportioned, must not discriminate against interstate commerce, and must be fairly related to the services provided by the state.[1] When it comes to Indian Country, concerns for tax fairness and free commerce are absent from federal law.

Barriers to tribal taxation authority

An array of federal judicial decisions, dating to the 1970s and continuing today, have diminished the inherent taxing authority of tribal governments. Among the most important of these decisions is *Montana v. United States,*[2] decided in 1981. In *Montana,* the U.S. Supreme Court held that while tribes have inherent governing authority over their own tribal members and tribally owned lands, that authority does not extend to the activities of non-tribal members on fee lands within reservation boundaries. According to the Court, the "exercise of [inherent] tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation."[3]

However, the Court recognized two important exceptions to this general rule. First, the Court recognized that "a tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter into consensual relationships with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements."[4] And second, the Court held that "a tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."[5]

In the four decades since the *Montana* ruling, judicial decisions concerning tribal taxation authority have been inconsistent. Although a full assessment of these cases exceeds the scope of this paper, the remainder of this section highlights some of the most important.

In 1982 the U.S. Supreme Court in *Merrion v. Jicarilla Apache Tribe* upheld a severance tax imposed by the tribe on non-tribal member lessees removing oil and gas from tribal trust lands.[6] Justice Thurgood Marshall delivered the opinion of the Court, holding:

> The power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management. This power enables a tribal government to raise revenues for its essential services. … [I]t derives from the tribe's general authority, as sovereign, to control economic activity within its jurisdiction, and to defray the cost of providing government services by requiring contributions from persons or enterprises engaged in economic activities within that jurisdiction.[7]

Justice Marshall's reasoning in *Merrion* affirms tribal tax authority as an essential tool of territorial management. But since *Merrion,* federal court decisions concerning tribal tax authority have been considerably less accommodating of tribal sovereign interests. Rather than relying on the reasoning in *Merrion,* the courts have instead relied on a narrow application of *Montana*.

For example, the U.S. Supreme Court held in *Atkinson Trading Co. v. Shirley* that the Navajo Nation could not impose a hotel occupancy tax on non-tribal member guests staying in a hotel owned by a non-tribal member and located on fee lands within a reservation.[8] The Court held that because the transaction involved only nonmember activities on fee lands, the Navajo Nation had no inherent taxation authority, and neither of the two exceptions in *Montana* applied.[9] In response to the argument that the Navajo Nation provided emergency police and fire services to the hotel and its occupants, the Court held, "We think the generalized availability of tribal services patently insufficient to sustain the Tribe's civil authority over nonmembers on non-Indian fee land."[10]

The legal analysis in *Montana* and *Atkinson* diverges from the principle set forth in *Merrion* of taxation as a necessary instrument of tribal territorial management. Unlike state or local governments, which hold expansive governing authority over all persons and transactions within their territorial limits, tribal governing authority is not primarily defined by exterior boundaries. Rather, the federal courts have fashioned a novel framework that on the one hand recognizes inherent tribal authority over tribal members and tribally owned lands, but on the other hand deprives tribal governments of inherent authority over the activities of all persons and transactions within their own exterior boundaries. Within the American system of federalism—in which state governments exercise comprehensive territorial jurisdiction while cooperating with other states and the federal government on interstate commerce—the jurisdictional framework applied to Indian Country stands out as anomalous.

Double taxation of non-tribal member businesses

Judicial decisions have also led to the double taxation of non-tribal member businesses on reservations. Double taxation occurs when both a tribal and state or local government are authorized to impose taxes on the same person, entity, or transaction. Double taxation impedes economic development by increasing the costs of running a business on a reservation. In the face of full state taxation, tribal governments must choose between (1) imposing their own tax and risking stifling business development and (2) forgoing or decreasing their own taxes to maintain a competitive business environment.

To maintain employment and attract businesses that provide important goods and services to tribal members, tribes often choose to forgo or decrease their own taxes. The National Congress of American Indians (NCAI) estimates that double taxation has cost billions in potential tribal tax revenues.[11] On just one reservation, the Mandan, Hidatsa, and Arikara Nation in North Dakota, the state had collected nearly $1 billion in tax revenues from oil and gas development on Indian lands between 2008 and 2015—revenue that could have funded substantial services for tribal members and investment in tribal infrastructure.[12]

The legal mechanics of double taxation can best be understood through the lens of three important U.S. Supreme Court decisions: (1) *White Mountain Apache Tribe v. Bracker*,[13] decided in 1980; (2) *McClanahan v. Arizona State Tax Commission*,[14] decided in 1973; and (3) *Cotton Petroleum v. New Mexico*,[15] decided in 1989. The decision in *White Mountain Apache Tribe v. Bracker* describes a "test"—now known as the "*Bracker* balancing" test—for assessing the scope of state regulatory authority over non-tribal member activities within reservations. Pursuant to *Bracker* and other case law, determining whether a state law applies to the activities of non-tribal members requires a "balancing" of the state, federal, and tribal interests at stake. Under the balancing test, courts must assess (1) the state's interest in taxing or regulating the activity in question; (2) whether a comprehensive federal regulatory regime exists with respect to the issue in question; and (3) whether the state law impermissibly infringes on the "right of reservation Indians to make their own laws and be ruled by them."[16] If federal or tribal interests outweigh the state interest in regulating a certain activity, the state law or regulation is preempted and inapplicable. If state interests outweigh the federal or tribal interests, then the state tax or regulation applies. When a state or local government exercises its authority to tax a transaction involving a non-tribal member pursuant to the *Bracker* balancing test, and a tribal government exercises its authority to tax that same transaction pursuant to one of the exceptions in *Montana,* double taxation results.

Although the Court in *Bracker* framed the jurisdictional assessment as a three-part balancing test, it has made clear that the balance is weighted against concerns for tribal self-governance. In *McClanahan*, the Court observed, "The trend has been *away from the idea of inherent Indian sovereignty* as a bar to state jurisdiction and toward reliance on federal pre-emption. 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"[17] (emphasis added). The reference to "platonic notions of Indian sovereignty" reveals an understanding of tribal governing capacity that is grounded in 1970s-era legal analysis. However, since 1973 when *McClanahan* was decided, the U.S. Congress has pursued a policy of supporting tribal self-determination, and the administrative sophistication of modern tribal governments has grown substantially. Despite this, the Court continues to diminish inherent tribal sovereignty in its *Bracker* balancing analyses.

The Supreme Court's 1989 decision in *Cotton Petroleum Corp. v. New Mexico*[18] illustrates how unpredictable and unbalanced the *Bracker* balancing test has become. In *Cotton Petroleum*, arising seven years after the *Merrion* decision and again involving the Jicarilla Apache

Reservation, the Supreme Court held that the State of New Mexico could impose its own severance and privilege taxes on non-tribal member lessees of the Jicarilla Apache Tribe extracting oil and gas from tribal trust lands—on top of the tribal taxes that the Court endorsed in *Merrion*.

The Court, in reaching its decision, dismissed the arguments of Cotton Petroleum that the double tax was contrary to the federal statute and extensive rules regulating Indian mineral development. The Court held that the federal statutory and regulatory framework did not entirely exclude or prohibit state taxation, and therefore the state taxes were not preempted—an interpretation that does not align with prior legal precedent on Indian Country preemption.[19]

Further, the Court endorsed the imposition of state taxes because New Mexico provided some services to Cotton Petroleum.[20] In arguing against the validity of the state taxes, Cotton Petroleum reasoned that from 1981 to 1985 it had received state services in the amount of $89,384, but had been taxed nearly $3 million.[21] The Court countered that the validity of the state tax scheme did not depend upon a "proportionality requirement"[22]—in other words, the state tax was valid even though the services provided were not equivalent to the taxes collected. It must be noted that in *Atkinson*, the Court held that the "generalized availability" of tribal services was "patently insufficient" to sustain tribal jurisdiction over non-tribal members. In *Cotton Petroleum*, however, the Court relied on the availability of minimal state services to validate the extraction of millions in state tax revenues from Indian lands.

The Court never substantially addressed the third prong of the *Bracker* balancing test: whether the state tax would impermissibly infringe on the right of reservation Indians to make their own laws and be ruled by them. *Cotton Petroleum* involved a lawsuit between a non-tribal member corporation and the State of New Mexico—the Jicarilla Apache Tribe was not a party. Although the tribe submitted an amicus brief, a full record on the impacts of the double tax on the Jicarilla Apache was not developed by any party. The Court therefore sidestepped the tribe's amicus arguments that the state taxes interfered with its ability to set its own tax rates and therefore its right to self-government. The Court, by negative inference, concluded there was no substantial interference: "There is simply no evidence in the record that the tax has had an adverse effect on the Tribe's ability to attract oil and gas lessees."[23]

As interpreted in *Cotton Petroleum* and other cases, the *Bracker* balancing test promotes state and local tax authority within reservation boundaries, while draining tribes of badly needed resources. In the ensuing years, *Cotton Petroleum* has caused significant uncertainty about whether tribes can prevent double taxation through court action. Litigating the issue to defend tribal sovereign authority strains tribes with limited treasuries. At the same time, tribes continue to lose billions in potential tax revenues that could be invested in their own communities. These investments would yield high returns both for tribes and regional economies, given the historic under-investment in these communities. Instead, taxation inequity keeps tribes in a state of limbo—leveraging limited tools to produce limited revenues, but unable to fully exercise their right to tax within their own jurisdictions.

From imbalance to certainty

Since the 1970s, Congress has pursued a policy of supporting tribal self-determination and self-governance. Pursuant to the Indian Self-Determination and Educational Assistance Act,[24] passed in 1975, tribal governments administer federal grant programs and provide community services in Indian Country. Dozens of other congressional enactments over the course of the last half-century affirm tribal sovereignty and empower tribal self-government.[25] Although tribes' administrative capacity and economic outcomes have improved during the self-determination era, they have yet to reach parity with other governments and communities. The lack of certainty inherent in the *Bracker* balancing test, and the resulting jurisdictional confusion, perpetuates adverse socioeconomic conditions in many parts of Indian Country.

Federal agencies, tribes, and some states increasingly recognize that jurisdictional uncertainty in Indian Country harms both tribes and non-tribal communities. At the same time, economic studies conducted by the Center for Indian Country Development, the Harvard Project on American Indian Economic Development (HPAIED), and others indicate that economic outcomes for Native peoples improve with the exercise of tribal sovereignty.[26] Tribal advocates and policymakers have recommended congressional action affirming expansive tribal tax authority within reservation boundaries for many years, although federal legislation has yet to gain traction. In the meantime, federal agencies, tribes, and some states are acting to reduce the jurisdictional uncertainties in Indian Country. While more work is needed for tribal governments to reach parity with state and local governments, this paper closes by highlighting efforts to overcome jurisdictional uncertainty by affirming tribal sovereignty.

Federal tax reform efforts in Indian Country

At the federal level, Indian Country tax reform efforts focus on proposed statutory initiatives as well as regulatory changes. Although federal courts have constrained the scope of tribal inherent authority, they must defer to congressional enactments that preempt state authority, and they must weigh federal regulatory frameworks in assessing the validity of state taxation in Indian Country.

Over the years, tribes and Native advocates have proposed federal statutory fixes, although none have yet made their way through Congress:

- NCAI has long advocated for tribal tax equity. In 2015 NCAI called on Congress to "enact legislation and promote Indian Self-Determination, Tribal Economic Development, and Tribal Self-Sufficiency in the area of Indian oil and gas development, protect tribal taxation and regulatory authority, and preempt state taxation on Indian oil and gas development and overturn the *Cotton Petroleum* case."[27]
- In 2016 the Native Nations Institute (NNI) and HPAIED recommended federal legislation eliminating state and local taxation in Indian Country, using a phased-in approach. Alternatively, NNI and HPAIED recommended that Congress enact a federal tax exemption for state taxes when an equivalent tribal tax exists.[28]
- In 2020 the U.S. Department of the Treasury Tribal Advisory Committee (TTAC) recommended that state taxation of online sales should not apply on tribal lands where a

tribal tax applies. Further, the TTAC recommended that any improvements, activities, or possessory interests on tribally leased lands be exempt from state taxation.[29]

- Many other tribes, organizations, and advocates have recommended federal action to preempt state taxation in specific areas, including natural resource severance taxes, online sales, property taxes, sales taxes, and excise taxes. However, no single proposal or approach for a federal legislative fix has gained wide acceptance.

Federal regulatory reform efforts have gained more traction than statutory initiatives but face an uncertain future:

- In 2013 the U.S. Department of the Interior (DOI) enacted new regulations concerning the taxation of activities on tribally leased lands. The regulations prohibit state or local taxation of (1) *permanent improvements* on tribally leased lands; (2) *activities* conducted pursuant to a tribal lease on the leased premises (for example, business use, privilege, public utility, excise, gross revenue taxes); and (3) the *leasehold or possessory interest* itself.[30] These regulations met with mixed success in subsequent federal litigation. Rather than giving the regulations dispositive preemptive effect, courts have accorded the regulations minimal deference as merely one element of the *Bracker* balancing test, to be weighed against state interests.[31]
- In 2017 the DOI announced tribal consultations on whether to amend the Indian Trader Regulations.[32] These regulations, first enacted in 1957, set forth the requirements for obtaining a license to "trade with the Indians," as well as prohibit certain kinds of trade. Federal courts have previously held these regulations to preempt state taxation of certain transactions in Indian Country involving tribal members.[33] Tribes and Native advocates believe that modernized regulations could address the problem of double taxation and enhance tribal economic self-determination. However, these amendments have not advanced since 2017.

State tax reform efforts in Indian Country

States have long pursued expansive state jurisdiction within Indian Country. In recent decades, however, the cost to state governments of protracted jurisdictional conflict with tribes has become increasingly apparent. Litigating with tribes over jurisdictional questions costs significant time and resources. For example, a dispute between the State of Montana and the Crow Tribe concerning state taxation of tribal coal lasted 38 years, journeying many times through federal district court, the Ninth Circuit Court of Appeals, and up to the U.S. Supreme Court. The Crow Tribe and the State of Montana settled the suit—first filed in 1978—in 2016.

Beyond the massive costs of litigation, the economic costs of jurisdictional uncertainty have also become apparent. Public investment in Indian Country lags far behind much of the rest of the country, with socioeconomic impacts beyond reservation borders. Many state governments have concluded that the value of tribes as regional economic partners outweighs any revenue from double taxation. The use of tribal-state tax compacts, and the enactment into state law of tax exemptions and credits with respect to Indian Country, are two avenues that some tribal and state governments are cooperatively pursuing:

- In the past two decades, tribal-state tax compacts have risen as an efficient means of addressing double taxation. No central repository of tax compacts exists, although there are likely hundreds in effect across the United States. While invaluable for tax administration in Indian Country, these compacts do not necessarily apportion tax revenues fairly. Depending upon the legal and factual circumstances of each compact negotiation, terms can sometimes put tribes at a disadvantage.[34]
- Many states have enacted various exemptions, credits, and other tax mechanisms with respect to transactions in Indian Country. A few examples include (1) New Mexico crediting the amount of a tribal tax against any state gross receipts, sales, or similar tax levied on a taxable transaction taking place on tribal land;[35] (2) Idaho exempting tribal-member-owned businesses from the state sales tax for sales occurring within the boundaries of a reservation located in the state;[36] and (3) Oregon making tax exemptions and credits available for qualified businesses in reservation enterprise zones.[37]

Tribal efforts to address tax inequity

Tribes have developed many strategies to address constraints on their taxation authority and impacts of double taxation:

- Tribes can benefit from ownership of economic enterprises taking place within reservation boundaries. Although states hold expansive taxation authority over the activities of non-tribal members within Indian Country, they generally have no power to tax tribes directly or tribal members inside Indian Country.[38] The Eastern Shoshone and Northern Arapaho tribes, for example, recently took full ownership of the oil and gas fields located within the Wind River Reservation after decades of leasing these lands to non-tribal member oil and gas companies. Because the operations are now tribally owned and located on tribal trust lands, state taxes no longer apply.[39]
- Tribes can manufacture products themselves or engage in value-added manufacturing. When a product is manufactured on-reservation by a tribe or tribal member and is sold in a transaction taking place on tribal land, the transaction is not taxable. Tribes have, for example, engaged in manufacturing cigarettes, blended motor fuels, and distilled alcohols for sale from tribal lands.

Conclusion

As citizens, we expect to pay taxes. We vote for our federal, state, and local representatives based, in part, on whether they will wisely exercise taxation authority. In return, we expect our government to provide public goods and services. Federal, state, and local governments can rely on consistent sources of tax revenue.

For tribes, constraints on taxation authority preclude a reliable and consistent tax base. The limits on tribal authority set forth in *Montana*, and the uncertainty inherent in the *Bracker* balancing test, have put Indian Country decades behind in public investment. Tribal members and surrounding communities continue to pay a steep price for this lack of investment, including poor public infrastructure and underdeveloped private business sectors. Improved economic outcomes in Indian Country require tax certainty, fairness, and deference to tribal sovereignty.

[1] For example, see *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977); *South Dakota v. Wayfair, Inc*., 138 S.Ct. 2080 (2018).
[2] *Montana v. United States*, 450 U.S. 544 (1981).
[3] *Montana,* 450 U.S. at 564.
[4] *Montana,* 450 U.S. at 565–566.
[5] *Montana,* 450 U.S. at 566.
[6] *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982).
[7] *Merrion,* 455 U.S. at 137.
[8] *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001).
[9] *Atkinson,* 532 U.S. at 654–659.
[10]*Atkinson,* 532 U.S. at 655.
[11] National Congress of American Indians (NCAI) Resolution #SD-15-045, October 2015, https://www.ncai.org/attachments/Resolution_pmLuqCrTfDSNTWYJfSoWcGNXLesAZIFoJShRbLnbTsnktQZzdmj_SD-15-045.pdf.
[12] *White Paper of the Mandan, Hidatsa, and Arikara Nation on State Taxation of Indian Oil and Gas Development*, prepared by Fredericks, Peebles & Morgan, LLP, October 19, 2015.
[13] *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).
[14] *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164 (1973).
[15] *Cotton Petroleum Corp. v. New Mexico,* 490 U.S. 163 (1989).
[16] *Bracker*, 448 U.S. at 142–145; *Williams v. Lee*, 358 U.S. 217, 220 (1959).
[17] *McClanahan*, 411 U.S. at 172
[18] *Cotton Petroleum,* 490 U.S. 163.
[19] See *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).
[20] *Cotton Petroleum,* 490 U.S. at 185–186.
[21] *Cotton Petroleum,* 490 U.S. at 186–187.
[22] *Cotton Petroleum,* 490 U.S. at 185.
[23] *Cotton Petroleum,* 490 U.S. at 191.
[24] 25 U.S.C. §§5301, et seq.
[25] For example, see Indian Child Welfare Act, 25 U.S.C. §§1901, et seq. (1978); American Indian Religious Freedom Act, 42 U.S.C. §§1996, et seq. (1978); Indian Land Consolidation Act, 25 U.S.C. §§2201, et seq. (1991); National Indian Forest Resources Management Act, 25 U.S.C. §§3103, et seq. (1990); Indian Mineral Development Act, 25 U.S.C. §§2101, et seq. (1982); Tribally Controlled School Grants Act, 25 U.S.C. §§2501 et seq. (1988); Indian Education Act, 25 U.S.C. §§2601, et seq. (1988); Tribally Controlled Community College Assistance Act, 25 U.S.C. §§1801, et seq. (1978); Tribal Self-Governance Act, 25 U.S.C. §§450nn, et seq. (1994); Indian Gaming Regulatory Act, 25 U.S.C. §§2701, et seq. (1988); Indian Financing Act, 98 Stat. 1725 (1984); Native American Graves Protection and Repatriation Act, 25 U.S.C. §§3001, et seq. (1990); Native American Language Act, 25 U.S.C. §§2901, et seq. (1990); Tribal Law and Order Act, 124 Stat. 2261 (2010); Indian Tribal Governmental Tax Status Act, 26 U.S.C. §7871 (1982); Indian Tribal Regulatory Reform and Business Development Act, 25 U.S.C. §4301 (2000); Indian Community Economic Enhancement Act, 134 Stat. 3306 (2020).
[26] For example, see Laurel Wheeler, *More than Chance: The Local Labor Market Effects of Tribal Gaming*, CICD Working Papers 2023-02, Center for Indian Country Development, Federal Reserve Bank of Minneapolis, March 20, 2023, https://www.minneapolisfed.org/research/cicd-working-paper-series/more-than-chance-the-local-labor-market-effects-of-tribal-gaming; Randall Akee, *Sovereignty and Improved Economic Outcomes for American Indians: Building on the Gains Made Since 1990*, Washington Center for Equitable Growth, January 14, 2021, https://equitablegrowth.org/sovereignty-and-improved-economic-outcomes-for-american-indians-building-on-the-gains-made-since-1990; Joseph Kalt, Amy Besaw Medford, and Jonathan B. Taylor, *Economic and Social Impacts of Restrictions on the Applicability of Federal Indian Policies to the Wabanaki Nation in Maine*, The Harvard Project on American Indian Economic Development (HPAIED), December 2022, https://ash.harvard.edu/publications/economic-and-social-impacts-restrictions-applicability-federal-indian-policies; Stephen Cornell and Joseph Kalt, "Where's the Glue? Institutional and Cultural Foundations of American Indian Economic Development," *The Journal of Socio-Economics*, 29, no. 5, 2000, https://www.sciencedirect.com/science/article/pii/S1053535700000809; Randall Akee and Jonathan Taylor, *Social*

and Economic Change on American Indian Reservations: A Databook of the U.S. Censuses and the American Community Survey 1990–2010, (Sarasota, FL: The Taylor Policy Group, 2014), https://static1.squarespace.com/static/52557b58e4b0d4767401ce95/t/5379756ce4b095f55e75c77b/1400468844624/AkeeTaylorUSDatabook2014-05-15.pdf; HPAIED, *The State of Native Nations: Conditions Under U.S. Policies of Self-Determination* (New York: Oxford University Press, 2008), 111–143.

[27] NCAI, Resolution #SD-15-045.

[28] K.S. Croman and J.B. Taylor, "Why Beggar thy Indian Neighbor? The Case for Tribal Primacy in Taxation in Indian Country," *Joint Occasional Papers on Native Affairs* 2016-1 (Tucson, AZ, and Cambridge, MA: Native Nations Institute and Harvard Project on American Indian Economic Development, May 4, 2016).

[29] *Treasury Tribal Advisory Committee Subcommittee on Dual Taxation Report*, Treasury Tribal Advisory Committee Subcommittee on Dual Taxation, U.S. Department of the Treasury, December 9, 2020, https://www.indianz.com/News/wp-content/uploads/2021/04/12/ttacdualtaxation.pdf.

[30] 25 C.F.R. § 162.017 (2012).

[31] For example, see *Seminole Tribe of Florida v. Stanburg*, 799 F.3d 1324, 1338–43 (11th Cir. 2015).

[32] 25 C.F.R. § 140.

[33] *Central Machinery Co. v. Arizona Tax Comm'n*, 448 U.S. 160 (1980); *Warren Trading Post Co. v. Arizona Tax Comm'n*, 380 U.S. 685 (1965).

[34] For more on the emergence of tribal-state tax compacts, see Jacqui Baldwin-LeClair, Andy Huff, Casey Lozar, and Caryn Mohr, "Tribal-State Tax Compacts Rise as a Tool for Tax Clarity in Indian Country," Center for Indian Country Development, Federal Reserve Bank of Minneapolis, September 26, 2022, https://www.minneapolisfed.org/article/2022/tribal-state-tax-compacts-rise-as-a-tool-for-tax-clarity-in-indian-country.

[35] N.M. Stat. Ann. § 7-9-88.1 (2003).

[36] Idaho Code Ann. § 63-3622Z (1988).

[37] ORS § 285C.320 (2010).

[38] For example, see *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450 (1995).

[39] See "Wyoming Tribes Take Over Ownership of the Circle Ridge Oil and Gas Field," *Native Business Magazine*, June 7, 2021, https://www.nativebusinessmag.com/wyoming-tribes-take-over-ownership-of-the-circle-ridge-oil-and-gas-field.