

TAXING "INDIANS NOT TAXED"

An Investigative Study Proposed by
Center for World Indigenous Studies

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The Center for World Indigenous Studies (CWIS) is an independent, non-profit, research and education organization established to advance the knowledge of indigenous peoples and promote constructive and cooperative relations between nations and between nations and states. CWIS conducts original social, economic and political research, conducts an education program that offers Professional Development Seminars, Certificates in traditional medicine and Fourth World Geopolitics, and advanced Graduate Studies in traditional health and sciences, the environment, Fourth World Studies and community arts. CWIS offers an electronic library on-line at its WEB page at www.halcyon.com/FWDP/ and on-line registration for seminars, tutorials and internships. The Center for World Indigenous Studies was founded in 1984 by Dr. Rudolph C. Ryser and Chief George Manuel in response to Indian government requests for a "think tank" that directly addresses the concerns and interests of indigenous peoples.

Project Summary:

The Center for World Indigenous Studies shall organize a research team to undertake a six-week investigation of taxation policies that directly affect the economic interests of individual Indians and Indian nations. The resulting report will be presented to participating tribal governments at a presentation in the seventh week of the project. American Indians individually, collectively pay taxes to municipalities, counties, state and the federal government on economic transactions which occur on and near Indian reservations in the State of Washington, every other state in the United States and in the District of Columbia. Meanwhile, non-Indians living on Indian reservations engage in economic transactions there and pay taxes to these same governments, but virtually none of these taxes goes to support Indian government. Taxation is a corner stone of governmental sovereignty, and any erosion of that power constitutes an erosion of sovereignty. Citizens of Canada and Indians coming from Canada may be exempt from paying retail and similar taxes on transactions occurring on and near Indian reservations. On what basis was the determination made that individual American Indians must pay taxes on transactions in the State of Washington? How are taxes imposed by state, county and municipal governments inside Indian reservations justified when imposed on non-Indians or on Indians? What alternative arrangements might be considered for Tribal Tax Policy on the reservation and in intergovernmental relations with state, county, and municipal governments? The "Study on Taxation of Indians Not Taxed" is an interdisciplinary study drawing on the fields of government, economics, and law to examine tax policy, and drawing conclusions about the affect of such policy on Indian governmental sovereignty; and recommendations for administrative or legislative measures that may clarify the economic and taxation concerns of Indian nations.

Scope

The "Study on Taxation of Indians Not Taxed" shall consider the imposition of taxes on individual Indians engaged in economic activities in off-reservation jurisdictions as well as on the reservation. Of similar importance is the extent of tribal government tax exposure to neighboring sovereigns. The study focuses on sales tax, but is not limited to this issue. It also considers use taxes (i.e., telephone, fuel) and economic activity taxes such as business and occupation. The Study examines these issues within an historical and a contemporary context and draws conclusions and makes recommendations. The Study directs its recommendations toward actions by individual Indian governments in the legislative and executive arenas as well as toward actions that may be considered intergovernmentally.

Significance of Study

In the thirty years since Indian nations decided to "strengthen tribal government," they have developed extensive capabilities to exercise their sovereign powers. Meanwhile, neighboring state, county, municipal governments as well as the US federal government have evolved laws that extend their governing powers into Indian territories while maintaining residual powers originally instituted before the growth of tribal government. The combined effect of these changes in the exercise of governmental powers has been growing tensions between governments. In no area of governmental power has there been greater change and greater tensions than in the field of tax policy. Since taxation is a corner stone of the exercise of sovereignty, there should be no surprise that economic and taxing activities should become a major issue of controversy

between neighboring governments.

Despite the immense change in the field of tax policy for Indian governments as well as neighboring sovereigns there have been surprisingly few studies concerning tax policy. This is particularly true as it affects Indian nations either as an exercise of tribal governmental power or the exercise of governmental powers by other sovereigns directed at Indian nations and their economic activity. Since few studies have actually been undertaken, a general understanding of tribal and non-tribal tax policies is not wide spread. A general lack of understanding concerning tax and economic policies as they relate to Indian nations within Indian and non-Indian governments may have contributed to an increase in conflict between Indian nations and neighboring sovereigns. There may as well have resulted a general erosion of Indian governmental sovereignty in the economic and tax fields. A new study can update understanding in Indian governments and provide the basis for refining economic and taxation relations between Indian nations and neighboring governments. A greater understanding of economic and taxation policies may also aid Indian governments in their efforts to prevent the erosion of tribal sovereignty. The study may also contribute to the development of a constructive dialogue on the future of intertribal and tribal/state discussions concerning the development of an intergovernmental conflict resolution mechanism.

Overview

“One of the powers essential to the maintenance of good government is the power to levy taxes,” wrote Felix Cohen in his *Handbook of Federal Indian Law* (1942: 142). Cohen’s principle applies equally to all governments exercising sovereign powers and certainly not less to Indian governments. An individual’s obligation or obligation of other personalities (organizations, businesses, governments, etc.) to pay taxes may vary depending on the economic activity taxed or the unique characteristics of the payee. It may be deemed appropriate and desirable by a government not to impose a tax on one person and still impose a tax on another person in consequence of whether such an arrangement serves the public good.

One may look to the legal history of relations between Indian nations and the United States to find an explanation of how taxes are imposed, and one may also turn to the political history of Indian and US relations for the same purpose. The primary emphasis of this study is on the political history and political relations between Indian nations and the United States and its individual states.

Taxation of individual Indians and Indian nations generally was thought impermissible under US laws and interpretations of treaties until the late 1940s though individual Indians had been taxed on their property, economic activity and income as a direct consequence of their having been made citizens incrementally through out the 19th century and generally in 1924. Since the imposition of taxes on Indian and Indian nation economic activity and property constitutes an encroachment on an Indian governmental prerogative and has a direct affect on the ability of Indian governments to exercise their sovereignty Indian governments require a thorough and updated assessment of tax policies and their political consequences. The proposed study will provide that updated and thorough assessment needed to formulate new Indian government policy.

Description

A team of CWIS Researchers led by Principle Investigator Dr. Rudolph C. Rýser shall undertake an intensive and thorough investigation of economic, political and legalistic factors influencing the institution of taxes imposed on individual and tribal economic activities by external sovereigns.

A period of six weeks is projected for conduct and completion of the study and a final (seventh) week for Indian government presentation. Researchers shall conduct a historical review and an examination of current tax policies in the first three weeks and then undertake an examination of intergovernmental tensions and efforts at conflict mediation for two weeks. Researchers shall, in the sixth week prepare findings, comments and recommendations. The report on “Taxation of Indians Not Taxed Study” shall be published immediately following final editing.

Researchers will undertake an extensive review of the literature concerning taxation of Indian nations and collate samples of Indian governmental taxation policies as well as policies formulated by external sovereigns.

The Study shall result in a fully documented report with an Executive Summary, Analysis and Discussion, Findings and Recommendations for Indian government actions in the Executive and Legislative arenas. The format of the report is tentatively outlined as follows, subject to changes resulting from various investigations.

“Study on Taxation of Indians Not Taxed”

- ◆ **Table of Contents**
- ◆ **Executive Summary**
- ◆ **Statement and Analysis of the Question**
- ◆ **Historical Review of Taxation Policies – “Indians Not Taxed”**
 - ◆ Indian Nations as “distinct political societies”
 - ◆ US encroachments on Tribal Sovereignty
 - ◆ Federal and State Taxation and “foreign nations”
 - ◆ Taxing Indian tribes
- ◆ **Examination of Current Tax Policies**
 - ◆ US/Indian Treaties, Compacts and other Agreements and Taxation
 - ◆ State of Washington Taxation, Constitutional Prohibitions and Public Law 280
 - ◆ Indian Constitutions and Taxation
- ◆ **Examination of Tensions between Indian Nations and State Government over Tax and Economic Policies**
- ◆ **Measures for Mediating Intergovernmental Conflicts over Economic and Tax Relations**
- ◆ **Findings**
- ◆ **Comment and Recommendations**
- ◆ **Annexes**
 - ◆ Sample Taxation Policies
 - ◆ Bibliography
 - ◆ Sources

Project Cost

The Center for World Indigenous Studies proposes to undertake a seven-week study entitled “Taxation of Indians Not Taxed” at a cost of \$28,416.00 including expenses for personnel, consultants, travel, copy and printing, supplies, insurance, telephone, postage and goods and services.

Center for World Indigenous Studies

1001 Cooper Point Road SW 140-214

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290 Fourth World Documentation Program

296-5 "Taxing Indians 'Not Taxed' Study - Taxation on and Near Indian Reservations -
United States of America

November 22 1998 - January 9, 1999

Activities	Rates		TOTAL
PERSONNEL			
R. Ryser, Ph.D.		\$	6,346
L. Korn, Ph.D.		\$	3,846
D. Notaro, MA		\$	2,308
Fringe	12.00%	\$	1,500
TOTAL			\$ 14,000
PERSONNEL EXPENSES			
Consultants			
Legal Consultant		\$	2,250
Researcher 1		\$	2,000
Researcher 2		\$	750
Researcher 3		\$	1,000
Researcher 4		\$	400
Travel TOTAL>>>>			\$ 2,994
Airline		\$	1,098
Surface		\$	696
Per Diem		\$	1,200
Printing		\$	712
Supplies		\$	240
Equipment		\$	450
Goods & Services		\$	120
Administration	25% S&W	\$	3,500.00
TOTAL PROJECT COST			\$ 28,413.00

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PERSONNEL		
EXPENSES		
Consultants		
Legal		\$ 2,250
Consultant		
Researcher 1		\$ 2,000
Researcher 2		\$ 750
Researcher 3		\$ 1,000
Researcher 4		\$ 400
Travel		\$ 2,994
TOTAL>>>>		
Airline		\$ 1,098
Surface		\$ 696
Per Diem		\$ 1,200
Printing		\$ 712
Supplies		\$ 240
Equipment		\$ 450
Goods & Services		\$ 120
Administration	25% S&W	\$ 3,500.00
TOTAL PROJECT COST		\$ 28,416.00