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Indians, Indian Tribes, and State Government

Third Edition

Indians, Indian Tribes, and State Government is a cooperative project by legislative analysts in the Research Department of the Minnesota House of Representatives. Topical questions should be addressed to the analyst who covers that subject.

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Contents

Introduction

This publication introduces Minnesota legislators to the major legal issues involved in the relationship between Indian* tribes, Indians, and state government. It is not intended to be a comprehensive or in-depth treatment of the subject.

The publication begins with some basic data on Indians in Minnesota today. Map 1 shows the locations of tribal reservations and current gaming facilities. Map 2, Figure 1, and Appendix I present population information from the 2000 census. Appendix II presents demographic and other information for each reservation in Minnesota.

Part One defines terms and explains concepts that are necessary for understanding the basic nature of state and federal power relative to Indians and Indian tribes.

Part Two contains a series of papers on specific legal issues relevant to policymakers. The topics are:

- Criminal Jurisdiction in Indian Country
- Civil Jurisdiction in Indian Country
- Gaming Regulation in Indian Country
- Liquor Regulation in Indian Country
- Control of Natural Resources in Indian Country
- Environmental Regulation in Indian Country
- Taxation in Indian Country
- Health and Human Services for Indians
- Education Laws Affecting Indian Students

* The term "Indian" was given to the indigenous people of North America by the European explorers when they first encountered the New World, mistakenly thinking they had reached the Indies. Indians prefer to be called by the names they call themselves in their own languages. The main groups of Indians in Minnesota are the Dakota and the Chippewa or Ojibway. This publication follows the convention used in nearly all federal and state laws, referring collectively to all the indigenous people of North America and Minnesota as "Indians."

Population of Indians in Minnesota

Minnesota has 11 federally recognized Indian reservations:

Anishinaabe Reservations (the Chippewa and the Ojibway)

- Bois Forte (Nett Lake)
- Fond du Lac
- Grand Portage
- Leech Lake
- Mille Lacs
- Red Lake
- White Earth

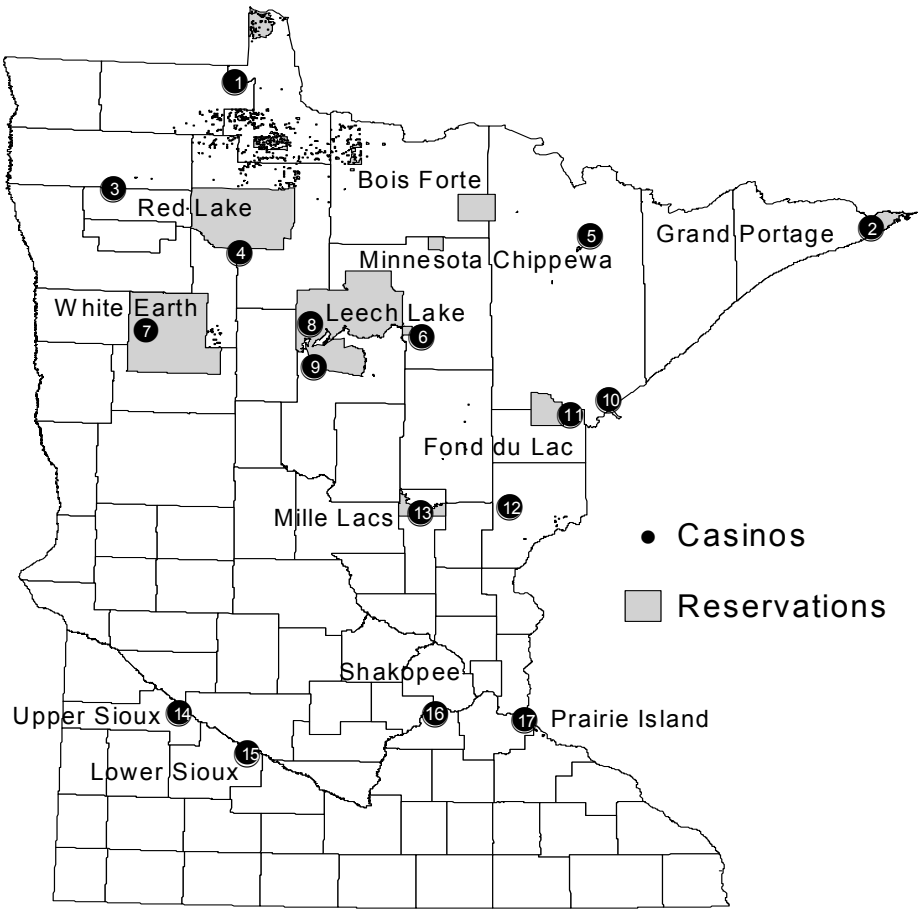
Dakota Communities (the Sioux)

- Lower Sioux
- Prairie Island
- Shakopee-Mdewakanton
- Upper Sioux

Map 1 shows the location of these reservations, as well as the location of Indian gaming facilities.

The 2000 census recorded 81,074 "American Indian and Alaska Native persons"[1] in Minnesota, approximately 1.6 percent of the population. This number includes persons who identified themselves solely as American Indian and Alaska Native, and persons who identified themselves as more than one race, including American Indian and Alaska Native.[2]

Map 1: Minnesota Indian Reservations and Casinos

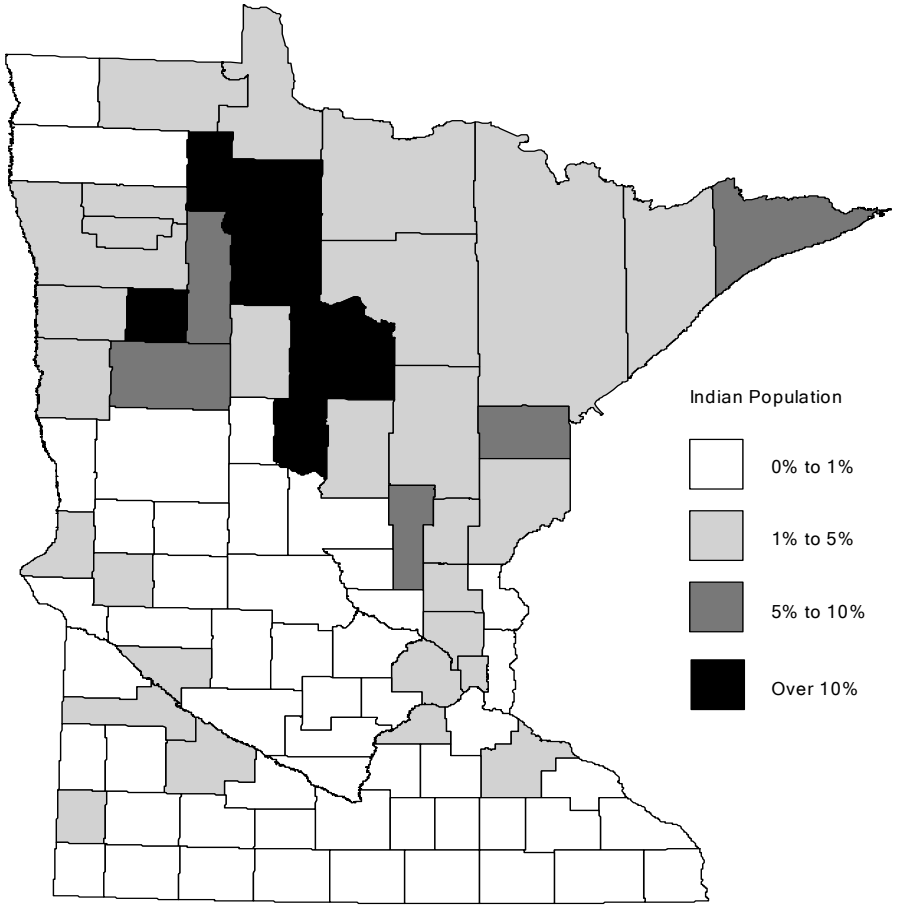


Casinos

1. Seven Clans Warroad Casino
2. Grand Portage Lodge and Casino
3. Seven Clans Thief River Falls Casino
4. Seven Clans Red Lake Casino and Bingo
5. Fortune Bay Resort Casino
6. White Oak Casino
7. Shooting Star Casino Hotel
8. Palace Casino Hotel
9. Northern Lights Casino
10. Fond-du-Luth Casino
11. Black Bear Casino
12. Grand Casino Hinckley
13. Grand Casino Mille Lacs
14. Firefly Creek Casino
15. Jackpot Junction Casino Hotel
16. Little Six Casino
    Mystic Lake Casino Hotel
17. Treasure Island Resort and Casino

Map 2: Indians as a Percent of County Population

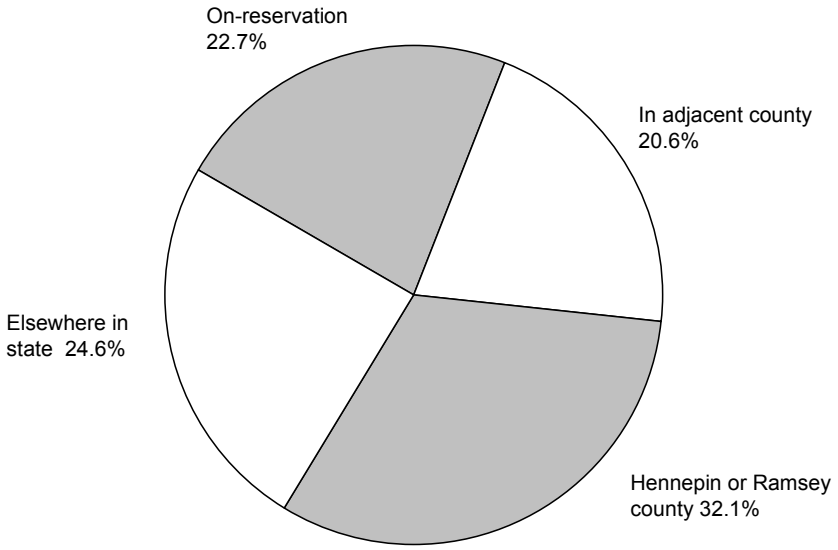
Map 2 shows what percentage of each county's total population is Indian. The table in Appendix I details Indian population by county.



Source: 2000 census

Figure 1: Where the Minnesota Indian Population Lives

Figure 1 shows where, according to the 2000 census, Indians in Minnesota live. In 2000, about 23 percent of the Minnesota Indian population lived on reservations. Approximately 20 percent of the population lived in the county in which the reservation is located, referred to as the "adjacent county" in Figure 1. Slightly more than 32 percent of the Minnesota Indian population lived in Hennepin or Ramsey County. Finally, nearly 25 percent of the Minnesota Indian population lived elsewhere in the state.



Source: 2000 census

Appendix II provides information specific to each reservation, including information regarding tribal enrollment, land, casinos, tribal colleges, and demographic data from the 2000 census.

ENDNOTES

[1] The census enumeration combines these two ethnic groups together and, using census data, we are unable to separate them. However, it is safe to conclude that in Minnesota nearly all of these persons are American Indians.

[2] For the 2000 census, the federal government changed the standards governing the categories used to collect and present federal data on race and ethnicity. In addition to the five race groups (White, Black or African American, American Indian and Alaska Native, Asian, and Native Hawaiian and other Pacific Islander), the standards permit respondents to select one or more races.

Part One: Terms and Concepts

Definition of "Indian"

Federal law defines "Indian" in a variety of ways for different purposes and programs. The National Tribal Chairman's Association examined the criteria of federal agencies in 1980 and found 47 definitions of "Indian." Census data simply counts individuals as Indians who identify themselves as such.

A crucial distinction is the differences among (1) tribal membership, (2) federal legal definitions, and (3) ethnological status or Indian ancestry.

An individual may not qualify under ethnological standards as an Indian (e.g., a person who is three-quarters Caucasian and one-fourth Indian), but nevertheless may be a tribal member or may be recognized as an Indian for various federal legal purposes.

As a general rule, an Indian is a person who meets two qualifications:
(1) has some Indian blood, and (2) is recognized as an Indian by members of his or her tribe or community.

To have Indian blood some of the individual's ancestors must have lived in North America before its discovery by Europeans. Many statutory and common law references to "Indian" refer to an individual's status as a member of an Indian tribe.

Tribes have the power to determine their membership.

Court decisions have held that determining tribal membership is a fundamental or basic power of tribes.[1] Minnesota tribes have differing rules for determining their membership.

Membership itself is a difficult term to define because membership can refer to a formal enrollment on a tribal roll of a federally recognized tribe, or to a more informal status as one recognized as a member of the tribal community. Enrollment is commonly a prerequisite for acceptance as a member of a tribal community, and it provides the best evidence of Indian status. Where formal enrollment is required, there can be no Indian without a tribe.[2]

Limiting membership and property sharing is accomplished in three ways: by patrilineal or matrilineal descent rules; by blood quantum; and by residency requirements. Where tribal eligibility for membership is determined through patrimonial or matrimonial lines, children of full-blooded Indians, in certain cases, may not be eligible for membership in any tribe. Individual tribes have varying blood requirements for enrollment, with the result that the general requirement of "some" blood may be substantially increased for persons seeking to establish status as members of certain tribes. Many tribes require one-fourth tribal blood. Some require as much as five-eighths. Congress has also often imposed a particular blood quantum requirement in addition to, or in lieu of, enrollment.

For example, the Minnesota Chippewa Tribe (MCT) requires that a member be at least one-fourth MCT blood and an American citizen. Application for enrollment is made within a year

after birth. The governing body of the MCT reservation makes the determination with an appeal process.[3]

Formal enrollment is a relatively recent concept in Indian law. Some Indian tribes historically treated all participating members of their community as tribal members and were therefore willing to incorporate into the tribal community non-Indians who married tribal members. The requirement of formal tribal rolls can be traced to the allotment policy—the process of allotting tribal lands to individual tribal members.

Coexisting with this abstract concept of tribal membership is an actual tribal community composed of persons who are not all enrolled tribal members, but who nevertheless fully participate in the social, religious, and cultural life of the tribe if not its political and economic processes. Formal rolls have a limited purpose, so many tribes have informal rolls. Although some statutes provide benefits to formally enrolled members of federally recognized tribes, many of the benefits accorded Indians under various statutes are available to Indians more broadly defined.[4]

The modern congressional trend is to define the term "Indian" broadly to include both formal and informal membership as well as requirements of a certain degree of Indian blood. Federal courts have generally deferred to congressional determinations of who is an Indian in recognition of Congress's broad power to regulate Indian affairs, which includes the power to determine which entities and people come within the scope of that power.

In 1924, Congress conferred citizenship upon all Indians born within the United States.[5]

Through the 14th Amendment, the grant of federal citizenship also made Indians citizens of the states in which they resided. This status as citizens of the United States and of the individual states in which they reside does not affect the special relationship between the tribes and the federal government.[6]

ENDNOTES

[1] *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 fn. 32 (1978). Furthermore, a person regarded as a member by the tribe may not be so regarded by the Secretary of the Interior, who claims the authority to determine membership for purposes of distributing property rights. *See* BIA Manual, Release 83-4, Part 8, *Enrollment*, § 8.2 (1959). Congress has the power to determine tribal membership, at least when tribal rolls are to be prepared for the purpose of determining rights to tribal property, and federal statutory membership provisions can be reviewed by federal courts.

[2] *See Epps v. Androus*, 611 F.2d 915 (1st Cir. 1979); *United States v. Heath*, 509 F.2d 16 (9th Cir. 1974) (where Congress has terminated a tribe's special relationship with the federal government, the individual members of that tribe are no longer Indians for the purposes of federal criminal jurisdiction).

[3] Ebbott, Elizabeth. *Indians in Minnesota.* 4th ed., ed. Judith Rosenblatt (Minneapolis: University of Minnesota Press, 1985) pp. 39-40.

[4] As a result, the Bureau of Indian Affairs often relies on informal rolls to determine which Indians are entitled to receive federal services, as opposed to those entitled to receive distributions. *See* BIA Manual, Release 83-4, Part 8, *Enrollment*, § 8.5 (1959).

[5] Citizen Act of 1924, ch. 233, 43 Stat. 253, codified at 8 U.S.C. § 1401(b). Several treaties and earlier statutes, such as the General Allotment Act, had already conferred citizenship on many Indians.

[6] *Winton v. Amos*, 255 U.S. 373 (1921); *United States v. Nice*, 241 U.S. 591 (1916).

Definition of "Indian Tribe"

In the legal-political sense, tribal existence results from recognition under federal law. Recognition has come from congressional or executive action that, for example, created a reservation for the tribe, negotiated a treaty with the tribe, or established a political relationship with the tribe such as providing services through the Bureau of Indian Affairs (BIA).

As with the definition of "Indian," the legal status of tribes must be distinguished from ethnological definitions.

Federal recognition of tribes does not necessarily follow ethnological divisions. For example, the federal government has combined separate ethnological tribes into one "legal" tribe or divided one ethnological tribe into separate legal tribes.[1]

In general, the Indian Commerce Clause of the U.S. Constitution authorizes Congress[2] to determine which groups of Indians will have recognized tribal status.

The courts generally will not question congressional or executive action in recognizing a tribe. Courts, however, will order the executive to honor tribal status for a particular purpose where it has been judged to have been the intent of Congress.[3] Courts will also not allow the federal government to confer tribal status arbitrarily on a group that has never displayed the characteristics of a distinctly Indian community.[4]

Department of the Interior regulations provide an administrative procedure for tribes seeking recognition.[5] Petitioners must be acknowledged as a tribe if they meet the following criteria:

(a) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900;

(b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present;

(c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present;

(d) The group must provide a copy of its present governing documents and membership criteria;

(e) The petitioner's membership consists of individuals who descend from a historical Indian tribe or tribes, which combined and functioned as a single autonomous political entity;

(f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe; and

(g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden recognition.[6]

Although required for many federal statutes, federal recognition is not essential to tribal status for all purposes. Federal statutes before 1934 rarely defined the term "Indian tribe." The recent congressional trend is to define the term "tribe" in particular statutes.

A tribe can abandon its tribal status, although this is not inferred easily. Congress can also terminate federal supervision of a tribe. This does not eliminate the tribe, but only its special relationship with the federal government. The terminated tribe retains its sovereignty to the extent consistent with the act terminating its status. No recognized tribes in Minnesota have been terminated.

ENDNOTES

[1] For example, the Shoshones and Arapahos, two ethnologically separate tribes, were combined into the Wind River Tribes for purposes of federal law. *See* Felix S. Cohen's *Handbook of Federal Indian Law* 6 (Washington: U.S. Government Printing Office, 1982) for several other examples.

[2] Congress has occasionally delegated this power to the executive branch.

[3] *Joint Tribal Council of Passamaquoddy Tribe v. Morton*, 528 F.2d 370 (1st Cir. 1975).

[4] *United States v. Sandoval*, 231 U.S. 28, 46 (1913).

[5] 25 C.F.R. Part 83.

[6] 25 C.F.R. § 83.7.

Indian Lands and Territories

Two concepts must be distinguished in discussing Indian lands: (1) tribal territory or "Indian country"—the area in which the tribe's power of self-government applies and state powers are restricted, and (2) land tenure—the ownership status of land within Indian country.

Tribal territory, or Indian country, is a crucial concept of Indian law.

Under federal law, tribal territory defines the jurisdiction of tribes, the federal government, and state government. It is generally within these areas that tribal sovereignty applies and state power is limited.[1] Although the public generally thinks of these areas as "reservations," the precise legal term is "Indian country."[2]

Federal law generally defines Indian country as including Indian reservations, dependent Indian communities, and Indian allotments.[3] Only Congress may decide to abandon the status of lands considered Indian country. Settlement by non-Indians does not withdraw land from Indian country status. Even land owned in fee simple by non-Indians as well as towns incorporated by non-Indians are still within Indian country if they are within the boundaries of a reservation.

Indian country is established by congressional action, treaty provisions, or executive action.

In some instances Congress defined the boundaries of reservations by legislation, while in others Congress authorized the executive branch to do so. In 1934, Congress delegated broad responsibility to the Secretary of the Interior to establish new reservations or add area to existing reservations. Land outside of a reservation that is purchased in trust for a tribe must be proclaimed a reservation by the Secretary of the Interior to acquire Indian country status.[4]

As will be discussed under individual sections in Part Two, Indian country status is important to determine criminal and civil jurisdiction, the power to impose state taxes, and to exercise other state powers. The definition of Indian country is important for land ownership and tenure considerations as well.

Land tenure or landownership in Indian country falls in several basic categories:

- Tribal trust lands
- Allotted trust lands
- Fee lands

Tribal trust lands are held in trust by the federal government for a tribe's use. The federal government holds the legal title, and the tribe holds the beneficial interest.

This is the largest category of Indian land. Tribally owned trust land is held communally by the tribe in undivided interest, and individual members simply share in the enjoyment of the entire property with no claim to a particular piece of land. The tribe is treated as a single entity that owns the undivided beneficial interest.

The tribe cannot convey or sell the land without the consent of the federal government. The conveyance of tribal lands to the United States in trust for the tribe must be approved by the Secretary of the Interior. For a discussion of the issue see Appendix III.

Allotted trust lands are held in trust for the use of an individual Indian (or his or her heirs). The federal government holds the legal title and the individual (or his or her heirs) holds the beneficial interest.

In 1887, Congress enacted the General Allotment Act,[5] which divided up Indian reservations and allotted the partitioned land to individual Indians. The land was to be held in trust by the federal government for a period of years (originally 25 years), until the beneficial owner could show that he was competent to own the land in fee. In Minnesota, the Nelson Act of 1889 implemented the allotment process.[6] Many of the allotments passed out of trust status. Some land passed legitimately at the expiration of the "trial period," but most passed out of trust status and out of Indian hands through fraud and tax sales.[7] Most of the allotted land is no longer owned by Indians. In many cases, however, the trust period was extended by statute, and in 1934, with the passage of the Indian Reorganization Act (IRA), the trust status of the remaining allotments was extended indefinitely.[8] The IRA also allowed no more Indian land to be allotted. As a result, a significant amount of allotted land remains in trust today.

Fee lands are held by an owner, whether Indian or non-Indian, in fee simple absolute. Fee land within Indian country owned by non-Indians generally does not enjoy the sovereign immunity protection enjoyed by trust land, such as exemption from taxation.[9]

Other lands are held in Indian country by federal, state, and local (nontribal) governments. The federal government holds some land in fee simple absolute with no obligation toward Indians regarding the land. These include, for example, national forest lands which are wholly owned by the federal government, but which may be located within Indian country. The state or local governments similarly may own lands such as state parks, state natural and scenic areas, state forest land, and county parks located within Indian country.

Federal regulations require publication of notice of pending transfers in trust, at least 30 days before the transfers take effect.

This regulation[10] was promulgated in response to the decision in *South Dakota v. U.S. Dept. of Interior*.[11] It is intended to provide a procedure for judicial review of the secretary's decision to accept a transfer of land in trust.[12]

ENDNOTES

[1] Certain tribal powers—for example, the ability to take game and fish, or harvest native crops "off-reservation"—may apply outside of the area of Indian country under specific treaties or statutes.

[2] Indian country is the term that has been used consistently since 1948. 18 U.S.C. § 1151. *Cf. Mustang Production Co. v. Harrison,* 94 F.3d 1382 (10th Cir. 1996) *cert. den.* 520 U.S. 1139 (1997) (tribal power to impose severance tax applies to allotments, even though the reservation was disestablished).

[3] Id.

[4] Felix Cohen's *Handbook of Federal Indian Law* 45 fn 158 (Washington: U.S. Government Printing Office, 1982). However, other authority may suggest the land becomes a reservation without further action. Id.

[5] 25 U.S.C. §§ 331 et. seq. This is commonly referred to as the Dawes Act.

[6] 25 Stat. § 642.

[7] For example, only about 6 percent of the original acreage of the White Earth Reservation remains in Indian control. E. Peterson, *That So-Called Warranty Deed: Clouded Land Titles on the White Earth Indian Reservation in Minnesota*, 59 N.D.L. Rev. 159, 163 (1983).

[8] 25 U.S.C. § 462.

[9] *See County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 112 S. Ct. 683 (1992) and discussion on taxation, page 57.

[10] 61 Fed. Reg. 18,083 (1996) (to be codified as 25 C.F.R. § 151.12).

[11] 69 F.3d 878 (8th Cir. 1995) *vacated* 117 S. Ct. 286 (1996). In this case, the Court of Appeals held the underlying federal statute authorizing transfer of lands to the federal government was an unconstitutional delegation of legislative power. The Secretary of the Interior responded by promulgating a regulation requiring notice of proposed transfers in trust, thereby allowing judicial review of decisions to accept transfers in trust. The Supreme Court granted certiorari and vacated the lower court judgment with instructions to remand the matter to the Secretary of the Interior.

[12] 61 Fed. Reg. 18,082 (1996).

Tribal Sovereignty: Limits on State Power

Indian tribes have a special legal status derived from their status as sovereign nations under the U.S. Constitution and federal law. When the United States was founded, the tribes were self-governing, sovereign nations. Their powers of self-government and sovereign status were not fully extinguished by the Constitution. Establishment of the United States subjected the tribes to federal power, but did not eliminate their internal sovereignty or subordinate them to the power of state governments.[1] The tribes lost their "external sovereignty," that is, they were no longer able to deal with foreign nations. However, they still retain their sovereignty within their tribal territories.[2] The tribes retain the powers of self-government over their lands and members. In some ways, this gave the tribes equal status with states.

An important tenet of federal policy has been to protect the self-government rights and sovereignty of tribes.

Chief Justice Marshall characterized the federal-tribal relationship as one of "domestic dependent nations" to whom the federal government had essentially a fiduciary relationship.[3] One element of this fiduciary relationship has been to preserve tribes' status as self-governing entities within their territories, including protection from state interference.[4] For example, Chief Justice Marshall described the situation as follows:

> The Cherokee nation * * * is a distinct community * * * in which the laws of Georgia can have no force * * * but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress.[5]

As Congress has inconsistently accorded importance to sovereignty and tribal self-government, federal Indian affairs policy has varied significantly over the years. Assimilationist policies at times downplayed its importance. However, tribal sovereignty has been and continues to be an important theme of federal policy.

Under the Indian Commerce Clause, Congress has plenary authority over Indian affairs and tribes.

The Constitution gives Congress complete authority over Indian tribes, including the powers to repeal treaties, eliminate reservations, and grant states jurisdiction over particular tribes. The only constraints binding upon the federal government are the guarantees contained in the Bill of Rights and provisions of the 14th Amendment to the Constitution.

Tribal sovereignty and tribes' right of self-government is the important touchstone that affects tribal relations with state government.

In modern times the Supreme Court has stated variously that Indian relations are the exclusive concern of Congress[6] and that state sovereignty does not stop at the borders of a reservation but rather is stripped only by congressional act.[7] In either case, generally state power over tribal territory is limited to those powers which Congress has delegated to it, or which have not been

preempted by the exercise of federal or tribal law.

Sovereign Immunity

As an adjunct of tribal sovereignty, the courts have held that tribes and tribal organizations are protected by the doctrine of sovereign immunity.

The English common law doctrine of sovereign immunity prohibits a plaintiff from bringing a lawsuit against the "sovereign" (i.e., the government). In America, the doctrine was traditionally applied to foreign nations and the states, although more recent cases and legislation have curtailed its scope.

Since the 1940s, the courts have held Indian tribes and tribal governments are immune from suit under the doctrine.[8] Application of the doctrine reflects both the special sovereign status of tribes and the goal of protecting tribal resources. Two important qualifiers must be noted. It is possible that tribal immunity from actions for money damages does not extend to actions seeking equitable relief such as injunctions and declaratory judgments.[9] Further, the Supreme Court has pointed out that it has never held that tribal officers or agents are not liable for damages.[10]

Unless it is waived, sovereign immunity prevents assertion of contract, employment, tort, and other legal claims against tribes and tribal businesses.

The Supreme Court has construed the sovereign immunity of Indian tribes and organizations broadly. Sovereign immunity:

- extends to tribal business organizations, including for-profit business entities
- applies to off-reservation activities; and
- applies unless it is expressly waived.[11]

Under sovereign immunity, patrons of tribal businesses who are injured (e.g., a gambler at a tribal casino who slips and falls) will be unable to sue the business to recover for the injuries. Employees will be unable to bring suits for sexual harassment, labor law violations, or other injuries, unless tribal immunity has been waived by the underlying federal statute or by express act of the tribe. Contractors also will be unable to recover unless the tribe has consented to the suit.

The Supreme Court has explained that the doctrine of tribal sovereign immunity "developed almost by accident."[12] The doctrine has been retained by the Court on the theory that Congress wanted to promote tribal self-sufficiency and economic development. The Court has recognized arguments against sovereign immunity for tribes: that in our mobile society tribal immunity protects an area greater than is necessary to preserve tribal self-government. In fact, immunity can harm those who do not know they are dealing with a tribe, do not know about tribal immunity, or have no choice in the matter.[13] Nevertheless, the court has indicated it defers to Congress to make changes in the case doctrine since "Congress is in a position to weigh and accommodate the competing policy concerns and reliance interests."[14]

Tribal sovereign immunity can be waived by act of Congress or by a clear action taken by the tribe.

The Supreme Court has ruled that Congress may set aside tribal immunity if it "unequivocally" expresses that purpose.[15] Congress has limited tribal immunity in some cases.[16] If Congress does not subject a tribe to suit, the tribe itself can agree to be sued by clearly waiving its sovereign immunity.[17] The Supreme Court has indicated that while a waiver must be unambiguous, it need not use the words "sovereign immunity."[18] For example, a contract containing an agreement to arbitrate is a waiver of immunity from suit in state court for purposes of judicial enforcement of the award.[19]

The 11th Amendment prevents tribes from being sued for damages in federal courts, and prevents tribes from suing states in federal court.

The 11th Amendment to the U.S. Constitution has been construed by the U.S. Supreme Court to deal with various issues of sovereign immunity from suit in federal court that are not addressed by the express terms of the amendment.[20] For present purposes, the Court has ruled that the 11th Amendment prevents a state from suing an Indian tribe in federal court unless the tribe gives express consent or Congress abrogates the tribe's sovereign immunity.[21] On the other hand, the Supreme Court has ruled that Congress lacks the power under the Indian Commerce Clause to eliminate a state's 11th Amendment immunity from being sued by a tribe in federal court.[22] A state may, of course, waive this immunity. It must do so by "the most express language or by such overwhelming implication from the text as will leave no room for any other reasonable construction."[23]

The Court's reasoning in these cases is that tribes could not have agreed to surrender their sovereign immunity because they were not parties to the Constitutional Convention that drafted the Eleventh Amendment; and for the same reason, the states would not have given up their immunity to being sued by tribes.[24]

ENDNOTES

[1] The special status of Indian tribes is recognized in the language of the Constitution. For example, Congress was given authority "*[t]o regulate commerce with* foreign nations, and among the several states, and with *the Indian tribes.*" U.S. Const. art. I § 8 (emphasis added). This provision is commonly called the "Indian Commerce Clause." The Indian Commerce Clause has generally been held to vest power over Indian affairs exclusively in the federal government. *See, e.g., County of Oneida v. Oneida Indian Nation of New York State,* 470 U.S. 226 (1985).

[2] These basic principles of Indian law were established initially in *Worcester v. Georgia*, 31 U.S. 515 (1832). Some commentators now question whether recent Supreme Court decisions have abandoned this theory of "inherent sovereignty" in favor of a more limited power restricted to tribal members. *See, e.g.,* Gould, *The Consent Paradigm: Tribal Sovereignty at the Millennium,* 96 Colum. L. Rev. 809 (1996).

[3] *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *see generally* the discussion in Felix Cohen's *Handbook of Federal Indian Law*, at 232-37 (Washington: U.S. Government Printing Office, 1982).

[4] *Id.* at 234.

[5] *Worcester v. Georgia*, 31 U.S. 515, 561 (1832), cited in Cohen, *supra* note 3, at 235 (1982).

[6] *County of Oneida v. Oneida Indian Nation of New York State*, 470 U.S. 226, 234, 105 S. Ct. 1245, 1251

(1985).

[7] *Nevada v. Hicks*, 533 U.S. 353, 361, 121 S. Ct. 2304, 2311 (2001).

[8] *United States v. U.S. Fidelity & Guaranty Co*., 309 U.S. 506, 60 S.Ct. 653 (1940) is the first Supreme Court case.

[9] *Ibid.* 498 U.S. at 516, 111 S. Ct. at 913 (Stevens concurring).

[10] *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 514, 111 S. Ct. 905, 912 (1991).

[11] *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 118 S. Ct. 1700 (1998). This contrasts with the general trend to limit the sovereign immunity of foreign nations and states. It has been observed by both courts and commentators that applications of the sovereign immunity of tribes would not similarly extend to states. *See, e.g., In re Greene*, 980 F.2d 590, 598-600 (9th Cir. 1992), *cert. denied Richardson v. Mount Adams Furniture,* 510 U.S. 1039, 114 S. Ct. 681 (1994) (Rymer, J. concurring); Thomas McLish, Note, *Tribal Sovereign Immunity: Searching for Sensible Limits,* 88 Colum. L. Rev. 173, 179-80 (1988).

[12] *Kiowa Tribe*, *supra* note 11, 523 U.S. at 756, 118 S. Ct. at 1703.

[13] *Ibid.*, 523 U.S. at 757-58, 118 S. Ct. at 1704.

[14] *Ibid.*, 523 U.S. at 759, 118 S. Ct. at 1705.

[15] *C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411, 418, 121 S.Ct. 1589, 1594 (2001) (citation omitted).

[16] 25 U.S.C. §450f(c)(3) (mandatory liability insurance); §2710(d)(7)(A)(ii) (gaming activities).

[17] *C & L Enterprises, Inc*, *supra* note 15, 532 U.S. at 418, 121 S. Ct. at 1594 (citation omitted).

[18] *Ibid*., 532 U.S. at 420, 121 S.Ct. at 1595 (citation omitted).

[19] *Ibid.* 532 U.S. at 422, 121 S.Ct. at 1596. The Minnesota courts have held that express language, such as a "sue or be sued" clause, is sufficient to waive immunity. *See, e.g., Duluth Lumber and Plywood Co. v. Delta Development, Inc.,* 281 N.W.2d 377 (1979) (included in tribal ordinance). The federal courts have followed a similar rule generally. *See, e.g., Ramey Construction Co. v. Apache Tribe,* 673 F.2d 315 (10th Cir. 1982); *Parker Drilling Co. v. Metlakatla Indian Community,* 451 F. Supp. 1127 (D. Alaska, 1978). An open question is whether the tribal government itself must waive immunity, or whether a tribal corporation or business may do so.

[20] *Blatchford v. Native Village of Noatake*, 501 U.S. 775, 779, 111 S. Ct. 2578, 2581 (1991).

[21] *Oklahoma Tax Commission*, *supra* note 10.

[22] *Seminole Tribe of Florida v. State of Florida*, 517 U.S. 44, 116 S.Ct. 1114 (1996).

[23] *Santee Sioux Tribe of Nebraska v. State of Nebraska*, 121 F.3d 427, 430 (8th Cir. 1997) citing *Atascadero State Hospital v. Scanlon*, 473, U.S. 234, 241, 105 S.Ct. 3142, 3146 (1985).

[24] *Blatchford, supra* note 20, 501 U.S. at 782, 111 S. Ct. at 2583.

Public Law 280

In 1953, Congress enacted a law, commonly referred to as Public Law 280, which significantly expanded the criminal and civil jurisdiction of certain states over acts committed in Indian country. Although the scope of Public Law 280 has since been narrowed by congressional amendment and case law, its enactment remains a major event in the evolution of federal policy regarding Indian tribes and their relationship with state governments, particularly in Minnesota.

The federal law, as originally enacted, granted to the states of Wisconsin, Oregon, California, Minnesota, and Nebraska criminal and civil jurisdiction over individual Indians in most Indian lands[1] located within state boundaries.

Under a 1958 amendment, Alaska was granted similar criminal and civil jurisdiction. In addition, Public Law 280 originally contained a mechanism under which certain other states could choose to assert full or partial civil or criminal jurisdiction over Indian lands without the consent of the affected Indians or their tribes.[2] This mechanism was changed in 1968 when Congress amended the law prospectively to prohibit additional states from asserting jurisdiction over Indians without their consent. The 1968 amendments also permitted states to "retrocede" or grant back jurisdiction acquired under Public Law 280 to an Indian tribe; however, retrocession had to be initiated by the state and approved by the federal government.[3] The Indian tribes have no direct role in or control over the retrocession process.

Not all property rights are covered by Public Law 280's grant of criminal or civil jurisdiction. For example, the law does not affect trust or restricted real or personal property, including water rights. Moreover, Public Law 280 does not affect the supremacy of the federal-tribe relationship with regard to treaties, agreements, or federal statutes. Some of the important rights preserved by the law are preexisting tribal rights with respect to hunting, trapping, and fishing.

Public Law 280 grants jurisdiction over individual Indians, not tribes. Additionally, Public Law 280's grant of civil jurisdiction applies only to state laws of "general application." This means that a law of local or limited application, such as a zoning ordinance, may not be applied to Indian country under Public Law 280.

There are two important cases for interpreting Public Law 280.

The scope of jurisdiction granted by Public Law 280 has been limited by several Supreme Court decisions. Two of the most important decisions are discussed here.

First, in *Bryan v. Itasca County*,[4] the Court ruled that states could not tax an Indian's personal property located on federal trust lands, saying that if Congress had intended Public Law 280 to give the states general civil regulatory power, including the power of taxation, over reservation Indians, it would have expressly said so.

Second, in *California v. Cabazon Band of Mission Indians*,[5] the Court ruled that California could not enforce certain of its gambling laws in Indian country because these laws were regulatory in nature, not criminal. If the state generally prohibits a type of conduct, it falls within Public Law 280's grant of criminal jurisdiction; however, if the state generally permits the conduct at issue, subject to regulation, it is a civil/regulatory law and Public Law 280 does not authorize its enforcement on an Indian reservation.

ENDNOTES

[1] The Red Lake Reservation was excluded from this grant of jurisdiction in Minnesota.

[2] These states are Arizona, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Washington.

[3] In 1973, the state of Minnesota retroceded its criminal jurisdiction over the Bois Forte Reservation.

[4] 426 U.S. 373 (1976).

[5] 480 U.S. 202 (1987).

Special Rules for Interpreting Indian Law

The Supreme Court, in a series of decisions dating from the early 19th century, has held that the federal government has a special trust responsibility with the Indian tribes.[1] These trust principles have developed in several ways. One important result is that the Court has developed a special set of rules or "**canons of construction**" for construing treaties, statutes, and executive orders affecting Indian tribes and peoples. These rules of construction or interpretation are important in shaping the development of the law and, in particular, in establishing and protecting the rights of the tribes and their members.

The canons of construction initially grew out of rules for construing treaties with tribes.

They represent, in part, an acknowledgment of the unequal bargaining positions of the federal government and the tribes in negotiating these treaties. More importantly, the canons reflect the view, arising from the fundamental trust relationship, that the actions of Congress are presumed to be for the benefit and protection of the tribes and Indian peoples. Therefore, the canons assume that Congress—absent a "clear purpose" or an "explicit statement"—intended to preserve or maintain the tribal rights.

The canons are expressed in various ways.

In general, they provide that treaties, statutes, executive orders, and agreements are to be construed liberally in favor of establishing or protecting Indian rights and that ambiguities are to be resolved in favor of Indians.[2] For example, unless Congress clearly indicated, or an agreement or treaty specifically stated otherwise, it is presumed that tribal hunting, fishing, and water rights are retained.[3] As another example, it is presumed that Congress did not intend to abrogate tribal tax immunities, unless it "manifested a clear purpose" to do so.[4] Another formulation is that treaties are to be construed as Indians understood them.[5]

The canons are not binding on the Court. The Supreme Court has noted that the canons of construction are not mandatory.[6] Canons favoring tribes may be offset by canons promoting other societal values.[7]

ENDNOTES

[1] *See, e.g.*, *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832).

[2] *See generally* Felix Cohen's *Handbook of Federal Indian Law*, at 221-25 (Washington: U.S. Government Printing Office, 1982) for a discussion of the canons.

[3] *See, e.g.*, *Menominee Tribe v. United States*, 391 U.S. 404 (1968); *but see Hagen v. Utah,* 114 S. Ct. 958 (1994) (clear statement requirement apparently ignored in diminishing the boundaries of a reservation).

[4] *See, e.g.*, *Bryan v. Itasca County* 426 U.S. 373, 392-93 (1976).

[5] *Mille Lacs Band of Chippewa Indians v. Minnesota*, 861 F. Supp. 784, 822 (D. Minn. 1994), 526 U.S. 172, 196 (1999).

[6] *Chickasaw Nation v. United States*, 122 S.Ct. 528, 535 (2001).

[7] *Ibid*. (trade off between benefiting tribes and not finding a tax exemption unless clearly expressed in statute).

Minnesota Indian Affairs Council

The Indian Affairs Council is a state board created by statute.[1] It operates to advise the legislature and the executive branch on policies and services relating to Indians. It also serves as a liaison between national, state, and local units of government and the Indian population in the state. The council consists of 13 voting members representing Indian reservations, tribal councils, and boards (including two at-large members), and 16 *ex officio* members representing units of state government.

ENDNOTE

[1] Minn. Stat. § 3.922.

Part Two: Background Papers

Criminal Jurisdiction in Indian Country

by Joe Cox (651-296-5044)

Criminal jurisdiction in Indian country is a complex issue. Federal, state, and tribal government all have a role—sometimes exercising exclusive authority and sometimes having concurrent authority. Determining the entity that has jurisdiction depends on a number of factors including where the incident took place, what type of law was violated, and whether either the perpetrator or the victim was a member of an Indian tribe.

Constitutional basis for determining jurisdiction. The fundamental legal basis for determining which level of government has jurisdiction over crimes committed in Indian country is located in article I, section 8, of the U. S. Constitution. According to this constitutional provision, Congress has the power to regulate commerce with foreign nations, among the states, and with Indian tribes. Based on this language, the Supreme Court declared that Indian tribes are domestic dependent nations subject to the plenary power of Congress and that Congress, therefore, has the power to determine, through law and treaty, who has criminal jurisdiction over crimes committed in Indian country.[1]

Pursuant to its plenary constitutional power, Congress has enacted a number of statutes defining and redefining criminal jurisdiction in Indian country. Some of these laws were prompted by historical changes in the relationship between the federal government and the Indian tribes; others were enacted in response to Supreme Court rulings on jurisdictional issues.

Federal crimes of nationwide application. First, it is important to note that the federal government has jurisdiction over federal crimes of nationwide application no matter where the incident occurred. Federal authority to investigate federal crimes relating to drug trafficking or terrorism, for example, is the same in Indian country as it is everywhere else in the state.

General rule in Minnesota. Outside of the nationwide federal authority, the general rule in Minnesota is that the state of Minnesota has jurisdiction to prosecute and punish criminal law violations committed in Indian country. The primary exception to this rule is crimes committed by or against Indians on the Red Lake or Bois Forte (Nett Lake) Reservations. Jurisdiction over crimes committed on these two reservations generally resides with the federal government, although the state or tribal government may have jurisdiction in some cases depending on the nature of the crime, and/or the Indian status of either or both of the parties. The other main exception to this rule relates to offenses committed by Indians in Indian country that, while technically crimes, have a civil or regulatory nature or purpose (a more detailed explanation of this exception is given below).

"Indian country" is the term used in federal law for the jurisdictional territory of tribal governments. *See* 18 U.S.C. §1151. Federal law defines it as Indian reservations, dependent Indian communities, and Indian allotments. Status as Indian country does not depend upon the trust status or ownership of land. See the discussion under "Indian Lands" in Part One.

The following charts illustrate the level of government that has criminal jurisdiction over various types of offenses committed in Indian country in Minnesota.

Criminal Jurisdiction in Indian Country other than Red Lake/Bois Forte

Victim	Indian Offender	Non-Indian Offender
Indian	State	State
Non-Indian	State	State
Other: License Offenses; Status Offenses; Government Victim	State or Tribe	State

Criminal Jurisdiction on Red Lake/Bois Forte Reservation

Victim	Indian Offender	Non-Indian Offender
Indian	Federal (major crimes) or Tribe (minor crimes)	Federal
Non-Indian	Federal	State
Other: License Offenses; Status Offenses; Government Victim	Tribe	State

State Criminal Jurisdiction

Non-Indian offenses. As mentioned earlier, the Supreme Court ruled in a series of cases beginning in the late 19th century that all states have criminal jurisdiction over crimes committed on Indian lands where both the perpetrator and the victim are non-Indians.[2] The Court's reasoning was two-fold. First, it reasoned that states have inherent power over Indian lands within their borders as a consequence of their admission into the union without an express disclaimer of jurisdiction. Second, it reasoned that the nonward status of both the perpetrator and the victim divests the federal government of any jurisdiction over the matter.

Public Law 280. While the federal jurisdiction applicable on the Red Lake and Bois Forte Reservations applies to many Indian reservations throughout the nation, it is the exception within the state of Minnesota. Due to changes in Indian policy enacted by Congress during the 1950s, the state of Minnesota, along with five other states, was required to assume complete criminal jurisdiction and limited civil jurisdiction over most Indian reservations located within its boundaries.[3] Under Public Law 280, Minnesota's criminal jurisdiction extends to all Indian reservations within the state except the Red Lake Reservation.

Public Law 280 also permitted states to "retrocede" or give up all or part of the criminal jurisdiction over Indian lands that they assumed under the law. In 1973, at the request of the Nett Lake (Bois Forte) band of Chippewa, the Minnesota Legislature retroceded its criminal jurisdiction over the Bois Forte Reservation, thereby returning the reservation to federal criminal jurisdiction.[4]

As a result, federal jurisdiction does not apply to Indian reservations in Minnesota except for crimes committed on the Red Lake or Bois Forte Reservations. The state has jurisdiction over the majority of Indian country.

However, the authority granted to the state of Minnesota under Public Law 280 is not comprehensive. Under that law, Minnesota does not have the authority to prosecute offenses that are "civil/regulatory" in nature or purpose.[5]

Public Law 280: The Criminal/Prohibitory and Civil/Regulatory Distinction

The breadth of criminal jurisdiction conferred on states by Public Law 280 is limited by the Supreme Court's ruling in *California v. Cabazon Band of Mission Indians*.[6] This case limited the authority of California to enforce certain of its gambling laws on Indian land. The Supreme Court ruled that the state could not do so because these gambling laws were regulatory in nature, not criminal. In its decision, the Court outlined the following test for determining whether a law was criminal/prohibitory or civil/regulatory:

> [I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub. L. 280 does not authorize its enforcement on an Indian reservation. The shorthand test is whether the conduct at issue violates the State's public policy.[7]

Thus, Public Law 280's grant of criminal jurisdiction over Indian land to states like Minnesota is limited to conduct that violates the general criminal laws of the state and does not include laws that merely regulate conduct, even if violations of such regulatory laws are subject to criminal penalties.[8]

In December 1997, the Minnesota Supreme Court articulated a two-step test for applying the *Cabazon* test to determine whether a particular Minnesota law is civil/regulatory or criminal/prohibitory.[9]

Step one. The first step of this state test relates to the question of whether the scope of the conduct at issue is to be defined broadly (i.e., driving) or narrowly (i.e., drinking and driving). The answer to this question is important because it often will determine whether the conduct generally is prohibited by state law or is merely regulated by it. The Minnesota Supreme Court stated that the reviewing court must focus on the broad conduct unless the narrow conduct presents substantially different or heightened public policy concerns. If the latter is the case, then the court must focus on the narrow conduct.

Step two. The second step of the state test applies the *Cabazon* test to the conduct at issue, as it is defined under step one. This step requires the reviewing court to decide whether state law generally permits the conduct or not; that is, whether the conduct violates the state's public criminal policy. If the answer to this question is clearly yes, the law is civil/regulatory. If the answer is clearly no, the law is criminal/prohibitory. If the answer is unclear, the court must look to the following factors in deciding the issue:

- the extent to which the activity directly threatens physical harm to persons or property, or invades the rights of others;
- the extent to which the law allows for exceptions and exemptions;
- the blameworthiness of the actor; and
- the nature and severity of the potential penalties for a violation of the law.

Using this test, the Minnesota Supreme Court ruled that the state law prohibiting the consumption of alcohol by individuals under the age of 21 is criminal/prohibitory and, therefore, the state has jurisdiction to enforce it on Indian land.[10] The Minnesota Supreme Court also indicated, in *dicta*, that the laws prohibiting drunk driving and careless or reckless driving are likewise criminal/prohibitory.[11]

In contrast, the Minnesota Supreme Court also used its new two-part test to rule that the state lacks jurisdiction to enforce many traffic-related violations against Indians on Indian land.

The following table highlights criminal and civil offenses as deemed by Minnesota courts.

Criminal/Prohibitory	Civil/Regulatory
▸ Marijuana possession (more than a small amount)[12] ▸ Obstruction of legal process[13] ▸ Driving after cancellation as inimical to public safety (cancelled due to multiple DWI offenses)[14] ▸ Fifth-degree assault[15] ▸ Disorderly conduct[16] ▸ Underage drinking[17]	▸ Driving after suspension (suspended for failure to pay child support)[18] ▸ No proof of insurance/No insurance[19] ▸ Driving after revocation (revoked for failure to provide proof of insurance)[20] ▸ Expired registration[21] ▸ No driver's license/Expired driver's license[22] ▸ Speeding (petty misdemeanor) [23] ▸ Failure to wear seatbelt[24] ▸ No child restraint seat[25] ▸ Failure to yield to an emergency vehicle[26]

Federal Criminal Jurisdiction

Enclave and Assimilative Crimes Act provisions. In addition to federal crimes of nationwide application, the federal criminal code contains crimes that apply in those areas of the country under the sole and exclusive jurisdiction of the United States government. These areas are known as "federal enclaves" and include places like military installations and national parks. In 1816, Congress enacted a jurisdictional law[27] providing that, with certain exceptions, federal criminal laws apply in Indian country to the same extent that they apply in other federal enclaves.

In 1825, Congress enacted a second jurisdictional statute known as the Assimilative Crimes Act. This act provides that state criminal laws not otherwise included in the federal criminal code are incorporated into federal law by reference and apply in federal enclaves.[28] Many years later, the Supreme Court ruled that this law applies in Indian country.[29] Thus, the criminal laws applicable to Indian country and subject to federal jurisdiction include both federal enclave crimes as well as state crimes not otherwise included in the federal criminal code.

However, the scope of these jurisdictional statutes is sharply limited by two statutory exceptions and one judicially created exception. First, the statutes exempt offenses committed by one Indian against the person or property of another Indian.[30] Second, the statutes exempt offenses over which criminal jurisdiction has been conferred on a particular tribe by treaty. Third, according to Supreme Court cases, the statutes do not apply to crimes committed in Indian country by a non-Indian against another non-Indian. Instead, state court is the proper forum for prosecuting such a crime.[31]

In short, federal jurisdiction under the Enclave and Assimilative Crimes Acts extends only to crimes in which an Indian is involved either as a defendant or as a victim.

Major Crimes Act. Congress's policy of not asserting federal criminal jurisdiction over intra-Indian crimes was reversed in 1885 by the passage of the Major Crimes Act.[32] According to this federal law, the federal government has jurisdiction to prosecute certain enumerated crimes[33] when committed on Indian land by an Indian. Unlike the Enclave and Assimilative Crime Acts, federal jurisdiction under the Major Crimes Act does not depend on the race of the victim; rather, it covers major crimes committed in Indian country by an Indian against the person or property of another Indian or other person. Today, the Major Crimes Act is the primary federal jurisdictional statute for major offenses committed by Indians on Indian lands.[34]

Tribal Jurisdiction

Oliphant decision. Until recently, it was believed that an Indian tribe retained sovereign powers unless specifically removed by federal statute or relinquished by treaty. However, in 1978 the Supreme Court further limited tribal powers by ruling that powers not "inherent" or historically held by tribes do not exist unless delegated to the tribes by Congress. Specifically, the Court ruled that, absent congressional authority, tribes may not exercise criminal jurisdiction over crimes committed against Indians on Indian land by non-Indians.[35] The effect of this ruling is that jurisdiction over such crimes resides with the federal government or, if Public Law 280

applies, with the state government.

Jurisdiction over minor crimes. Tribal jurisdiction over crimes committed on the Red Lake and Bois Forte Reservations in Minnesota is further limited in two ways. First, under federal law, these tribes may only prosecute minor crimes committed by one Indian against another Indian. The perpetrator need not be a member of the tribe that is asserting jurisdiction; as long as both the parties are Indians, the tribe may assert jurisdiction over crimes committed on the tribe's lands.[36] Second, the Indian Civil Rights Act[37] limits the punishment these tribes may impose to a maximum of one-year imprisonment and/or a maximum $5,000 fine. As a practical matter, this means that the tribes may only prosecute minor crimes (misdemeanors and gross misdemeanors) committed on their lands.

Tribal criminal code. If an Indian band has a criminal code of its own and its provisions do not overlap the state or federal criminal code, the band may enforce that code against tribal members on lands over which the band has jurisdiction.

Law enforcement authority. The tribal law enforcement agencies on the Red Lake and Bois Forte Reservations are funded and administered by the federal Bureau of Indian Affairs. Tribal police officers are professional officers trained at the Indian Police Academy in Utah.[38]

Additionally, the 1991 Minnesota Legislature granted certain law enforcement powers to the Mille Lacs Band of Chippewa Indians. Although the state did not retrocede its criminal jurisdiction over land located within the Mille Lacs Reservation or trust lands, it did grant to the band concurrent law enforcement jurisdiction, with the Mille Lacs County sheriff's department, over the following:

- all persons in the geographical boundaries of the band's or tribe's trust lands
- all tribal members within the boundaries of the reservation
- all persons within the boundaries of the reservation who commit or attempt to commit a crime in the presence of a band peace officer

The sheriff of the county in which the violation occurred is responsible for receiving persons arrested by the band's peace officers, and the Mille Lacs County attorney is responsible for prosecuting such violators.[39]

The Minnesota Legislature granted similar law enforcement authority to the Lower Sioux Indian Community (in Redwood County) in 1997.[40]

ENDNOTES

[1] See *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Johnson v. McIntosh*, 21 U.S. 543 (1823). *See also* the discussion in Part One, pages 18 to 20.

[2] *United States v. McBratney*, 104 U.S. 621 (1881); *Draper v. United States*, 164 U.S. 240 (1896); *New York ex rel. Ray v. Martin*, 326 U.S. 496 (1946).

[3] 18 U.S.C. § 1162. The other states that were required to assume criminal jurisdiction over Indian reservations within their boundaries are Alaska, California, Nebraska, Oregon, and Wisconsin. Pub. L. 280 also authorized other states to assume criminal jurisdiction over Indian lands at their discretion. While the original law did not require the consent of Indian tribes to such state assumptions of jurisdiction, the law was amended in 1968 to require tribal consent to any future state decisions to assume jurisdiction. *See also* the discussion in Part One, pages 22 to 23.

[4] Laws 1973, ch. 625.

[5] *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

[6] 480 U.S. 202 (1987).

[7] 480 U.S. at 209 (1987). This case ultimately led to Congress's enactment in 1988 of the Indian Gaming Regulatory Act, which provides a federal regulatory scheme to govern various forms of gambling on Indian reservations. 25 U.S.C. §§ 2701-2721.

[8] 480 U.S. at 211 (1987).

[9] *State v. Stone*, 572 N.W.2d 725 (Minn. 1997); *see also State v. Robinson,* 572 N.W.2d 720 (Minn. 1997).

[10] *State v. Robinson*, 572 N.W.2d 720 (Minn. 1997).

[11] *State v. Stone*, 572 N.W.2d 725 (Minn. 1997).

[12] *State v. LaRose*, No. C1-01-1706 (Minn. App. May 14, 2002), *unpublished opinion.*

[13] *State v. LaRose*, No. C6-99-1165 (Minn. App. March 21, 2000), *unpublished opinion.*

[14] *State v. Busse*, 644 N.W.2d 79 (Minn. 2002).

[15] *State v. Wilson*, Nos. C8-98-1058; C2-98-1069 (Minn. App. May 4, 1999), *unpublished opinion.*

[16] *State v. Reese*, No. CX-97-984 (Minn. App. March 3, 1998), *unpublished opinion*.

[17] *State v. Robinson*, 572 N.W.2d 720, 724 (Minn. 1997).

[18] *State v. Aune*, No. C2-99-143 (Minn. App. August 31, 1999), *unpublished opinion.*

[19] *State v. Stone*, 572 N.W.2d 725 (Minn. 1997).

[20] *State v. Johnson*, 598 N.W.2d 680 (Minn. 1999).

[21] *State v. Stone*, 572 N.W.2d 725 (Minn. 1997).

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *State v. Robinson*, 572 N.W.2d 720 (Minn. 1997).

[27] 18 U.S.C. § 1152.

[28] 18 U.S.C. § 13.

[29] *Williams v. United States*, 327 U.S. 711 (1946).

[30] This policy was changed with respect to certain major crimes with enactment of the Major Crimes Act in 1885.

[31] *United States v. McBratney*, 104 U.S. 621 (1881); *Draper v. United States*, 164 U.S. 240 (1896); *New York ex rel. Ray v. Martin*, 326 U.S. 496 (1946).

[32] 18 U.S.C. § 1153. This law was passed in response to a Supreme Court ruling that the federal courts lack jurisdiction to prosecute an Indian who had already been punished by his tribe for killing another Indian. *Ex Parte Crow Dog*, 109 U.S. 556 (1883). The punishment meted out by the tribe—restitution to the victim's family—was

viewed by many non-Indians as an insufficient punishment for the crime of murder and Congress responded by granting the federal courts jurisdiction over violent crimes committed on Indian reservations.

[33] These crimes include murder, manslaughter, attempted murder, conspiracy to commit murder, kidnapping, rape, statutory rape, robbery, arson, assault, maiming, larceny, receiving stolen property, and false pretenses/fraud on the high seas.

[34] Insofar as the Major Crimes Act covers offenses committed by an Indian against the person or property of a non-Indian, it overlaps the jurisdiction conferred on the federal courts by the Enclave and Assimilative Crimes Acts. This overlap has created some legal confusion and uncertainty, particularly with respect to the applicability of the Assimilative Crimes Act to Major Crimes Act prosecutions. For a discussion of this issue, see Clinton, *Criminal Jurisdiction Over Indian Lands: A Journey Through a Jurisdictional Maze,* 18 Ariz. L. Rev. 503, 520-52 (1976).

[35] *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

[36] Congress has only recently affirmed tribal authority over crimes committed against Indians by nonmember Indians. Congress did so in response to the Supreme Court's ruling in *Duro v. Reina*, 495 U.S. 676 (1990), that tribes lack the power to prosecute such cases. Pursuant to its plenary power over the Indian tribes under the Constitution, Congress amended the Indian Civil Rights Act to affirm the inherent right of tribes to assert criminal jurisdiction over this and other types of intra-Indian offenses. 25 U.S.C. § 1301.

[37] 25 U.S.C. § 1302.

[38] Ebbott, Elizabeth. *Indians in Minnesota.* 4th ed., ed. Judith Rosenblatt. Minneapolis: University of Minnesota Press, 1985.

[39] Minn. Stat. § 626.90.

[40] Minn. Stat. § 626.91.

Civil Jurisdiction in Indian Country: State Courts and State Laws; Tribal Courts and Tribal Codes

By Deborah K. McKnight (651-296-5056)

Federal Public Law 280 granted specific states, including Minnesota, civil jurisdiction over individuals on Indian lands, with exceptions. By the express terms of Public Law 280, Minnesota state civil jurisdiction does not apply to the Red Lake Reservation.[1] In 1968, the act was amended to allow states with civil jurisdiction over Indian country to retrocede (give back) that jurisdiction to the federal government. Minnesota retroceded jurisdiction over the Bois Forte Reservation.[2]

It is important to note that Public Law 280 specifically addresses state court jurisdiction over actions involving Indians, not Indian tribes. Case law discussed on page 18 of this publication reviews the sovereign immunity of tribes and tribal organizations from state and federal court actions.

The grant of jurisdiction affects when state law applies. Public Law 280 provides that state civil laws of general application apply to causes of action between Indians, or to which Indians are parties, and which arise in Indian country; except as those laws affect trust or restricted real or personal property, including water rights. There has been litigation under Public Law 280 to clarify what constitutes a civil law of general application for purposes of allowing the state to have jurisdiction over actions involving individuals in Indian country. Statewide laws affecting private transactions and relationships, such as contracts, marriage, divorce, and torts, have been held to apply in Indian country.[3]

However, courts have held that state civil regulatory laws are not included in the grant of state jurisdiction over Indian lands. For example, a state traffic regulation that is civil rather than criminal in nature has been held not applicable to Indian country.[4] Similarly, a state law regulating bingo that was civil rather than criminal was held not authorized by Public Law 280.[5]

Because Public Law 280 requires a state law to be of statewide application in order to apply in Indian country, no local ordinance applies in Indian country.[6]

Aside from whether a given state law applies in Indian country, an important related question is whether state court or tribal court has power to decide civil cases arising in Indian country. Congress authorized the creation of tribal courts when it passed the Indian Reorganization Act of 1934,[7] which recognized the right of Indian tribes to adopt their own code of laws. When Public Law 280 was enacted in 1953, it had the effect of slowing tribal court development. This occurred when the BIA concluded it no longer needed to fund tribal courts in

"Indian country" is the term used in federal law for the jurisdictional territory of tribal governments. *See* 18 U.S.C. §1151. Federal law defines it as Indian reservations, dependent Indian communities, and Indian allotments. Status as Indian country does not depend upon the trust status or ownership of land. See the discussion under "Indian Lands" in Part One.

Minnesota and the other Public Law 280 states. Tribal court development accelerated after Congress passed the Indian Child Welfare Act in 1978 because the act gave tribal courts jurisdiction over disputes involving Indian children both within and outside Indian country.

However, the Minnesota Chippewa Tribe was not able to develop its own courts until 1994. Before that time, the Department of the Interior took the position that the tribal constitution did not allow the bands to create their own courts. The current 12 tribal courts in Minnesota are listed in Appendix IV.

Tribal courts blend traditional tribal dispute resolution approaches with many due process elements taken from the federal Constitution. Although the Supreme Court has held that the Bill of Rights and the 14th Amendment do not apply to tribal powers of local self-government,[8] the federal Indian Civil Rights Act of 1968[9] requires tribes to include various due process provisions. In addition, as tribal operations have greater impact on non-Indians, tribal courts have adopted more elements of American due process in part so that their decisions will be recognized by state and federal court systems.

There is extensive case law on whether tribal court or state court has jurisdiction over particular cases. The Supreme Court has explained that tribal courts are not courts of general jurisdiction because tribal court authority does not exceed a tribe's legislative authority.[10] A tribe's inherent power does not exceed what is needed to protect self-government or to control internal relations. Thus, "Indian tribes retain their inherent power [to punish tribal offenders,] to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members. . .."[11] Tribal courts also have "considerable control over nonmember conduct on tribal land."[12] However, tribal land ownership is not alone enough to support jurisdiction over nonmembers when a considerable off-reservation state interest is balanced against a minimal interference with tribal self-government.[13]

Unless a treaty, federal statute, or administrative decision provides otherwise, Indian tribes and tribal courts have only limited authority over activities of nontribe members on non-Indian fee lands within Indian country.[14] The Supreme Court has recognized exceptions that give a tribal court sole jurisdiction in such a dispute if it involves (1) non-Indians in "consensual relationships with [a] tribe or its members through commercial dealing, contracts, leases, or other arrangements,"[15] or (2) "conduct that threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."[16]

State court must be available to an Indian who invokes its jurisdiction against a non-Indian, even if the dispute arises in Indian country.[17] State courts may take jurisdiction of civil actions arising in Indian country and involving only tribal members if there is no tribal court,[18] if the tribal court lacks jurisdiction of the subject under its tribal law,[19] or if an Indian party is found to have voluntarily submitted to state court jurisdiction by filing a petition there.[20] If the state court has concurrent jurisdiction with a tribal court over a dispute, the state court may decide to hear the case if a combination of factors are present[21] or may decline jurisdiction for public policy reasons.[22]

Many states are addressing the issue of full faith and credit for tribal court and state court decisions. The full faith and credit clause of the federal Constitution requires each state to recognize the acts, records, and judicial proceedings of other states.[23] The clause is necessary to allow a federal system to function, so that litigation does not go on endlessly. It does not apply to tribal courts either by its express terms or by case law or federal legislation. However, the concept has become an issue among state court systems as tribal courts have been established around the country. Since tribal courts have increased in sophistication and are handling larger numbers of cases, many state court systems want to formalize their relationships. States have varied in whether the legislative or judicial branch has taken the lead in addressing the matter.

In states where the issue of giving effect to tribal court decisions has been addressed by statute, full faith and credit may be granted to all tribal court judgments,[24] only judgments in certain kinds of cases,[25] or only judgments where specified conditions are met.[26]

Some state courts have ruled that giving full faith and credit to tribal court decisions is within the court's inherent judicial authority under the doctrine of comity.[27] Comity is a judicial concept that grows out of the respect one court has for another court's authority and jurisdiction. It also seeks to promote efficiency by preventing multiple proceedings on the same matter.

Finally, the most common way states have dealt with full faith and credit for tribal court decisions is by court rule. For example, North Dakota adopted a rule drafted by the State Court Committee on Tribal and State Court Affairs. Consideration of a court rule on full faith and credit is underway in Minnesota as this edition is being published.

Update: The Minnesota Supreme Court declined to adopt a rule in response to a petition filed by the Minnesota Tribal Court/State Court Forum. Instead, the court indicated it would explore rules to recognize and enforce tribal orders and judgments where there is a legislative basis for doing so. (In re Proposed Amendments to the Minnesota General Rules of Practice for the District Courts (Minn. March 5, 2003).)

ENDNOTES

[1] 28 U.S.C. § 1360.

[2] 40 Fed. Reg. 4026 (1975).

[3] *Bryan v. Itasca County*, 426 U.S. 373, 96 S. Ct. 2102 (1976).

[4] *Confederated Tribes of Colville Reservation v. State of Washington*, 938 F. 2d 146 (9th Cir. 1991), *cert. denied* 503 U.S. 997, 112 S. Ct. 1704 (1992). *See also* the discussion of *State v. Robinson*, 572 N.W.2d 720 (Minn. 1997), in the section on Criminal Jurisdiction in Indian Country, pages 28 to 35.

[5] *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 107 S. Ct. 1083 (1987).

[6] *Segundo v. City of Rancho Mirage*, 813 F.2d 1387 (9th Cir. 1987) (after remand on another issue), 873 F.2d 1277 (9th Cir. 1989).

[7] 25 U.S.C. §§ 461-79.

[8] *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56, 98 S.Ct. 1670, 1676 (1978) (citation and footnote omitted).

[9] 25 U.S.C. §§ 1301-1303.

[10] *Nevada v. Hicks*, 533 U.S. 353, 367-68, 121 S. Ct. 2304, 2314 (2001).

[11] *Strate v. A-1 Contractors*, 520 U.S. 438, 459, 117 S. Ct. 1404, 1416 (1997).

[12] *Ibid*., 520 U.S. at 454, 117 S. Ct. at 1413.

[13] *Nevada v. Hicks*, 533 U.S. 353, 362-65, 121 S. Ct. 2304, 2311-13 (2001).

[14] *Strate*, *supra* note 11.

[15] *Montana v. United States*, 450 U.S. 544, 565 101 S. Ct. 1245, 1258 (1981).

[16] *Ibid*., 450 U.S. at 566.

[17] *Three Affiliated Tribes v. Wold Engineering,* 467 U. S. 138 (1984) *(Wold I),* 476 U.S. 877 *(Wold II). But see Neadeau v. American Family Mutual Insurance Company,* 1993 WL 302127 (Minn. App. unpublished opinion) *pet. for rev. denied* (Minn. September 21, 1993) (affirmed state court decision that it lacked jurisdiction over action by tribe member against corporation).

[18] *Becker County Welfare Department v. Bellcourt*, 453 N.W.2d 543 (Minn. App. 1990).

[19] *Desjarlait v. Desjarlait*, 379 N.W.2d 139 (Minn. App. 1985), *pet. for rev. denied* (Minn. Jan. 31, 1986).

[20] *Ibid.*

[21] *Granite Valley Hotel Limited Partnership v. Jackpot Junction Bingo and Casino*, 559 N.W.2d 135 (Minn. App. 1997) (contract between tribe and nontribal business was performed off reservation, tribe explicitly waived sovereign immunity and consented to state court jurisdiction, and court did not need to interpret tribal documents to resolve the issues). *Cf Klammer v. Lower Sioux Convenience Store*, 535 N.W.2d 379 (Minn. App. 1995) (dispute arose on Indian reservation and tribe did not explicitly waive sovereign immunity or consent to state court jurisdiction).

[22]*In re Custody of K.K.S.*, 508 N.W.2d 813, 816-817 (Minn. App. 1993), *pet. for rev. denied* (Minn. January 27, 1994) (state court declined jurisdiction to avoid possible conflicting custody decrees and decline in tribal court authority in matter involving Indian child who had lived both on and off the reservation).

[23] US Const. art. IV, § 1, cl. 1.

[24] Wis. Stat. Ann. 806.245.

[25] Ark. Code Ann. 9-15-302 (tribal court protection orders); S.C. Code Ann. 27-16-80 (tribal court tort judgments).

[26] Okl. Stat. ti. 12, 728 (recognizing tribal court judgments if tribal court reciprocates on state court judgments); Wyo. Stat. Ann. 5-1-111 (recognition granted if, among other factors, a tribal court is a court of record, has an appellate process, has contempt powers, and grants full faith and credit to state court judgments).

[27] *Jim v. CIT Financial Services Corp.*, 87 N. M. 362, 533 P.2d 751 (1975); *Mexican v. Circle Bear*, 370 N.W. 2d 740 (S.D. 1985).

Gaming Regulation in Indian Country

by John Williams (651-296-5045)

Nationally, Indian gambling is authorized by the federal Indian Gaming Regulatory Act (IGRA) of 1988. This law generally allows Indian tribes in any state to conduct on Indian land the forms of gambling that the state allows for non-Indians. Instead of being bound by state law in these operations, Indian gambling is subject to either federally approved tribal ordinances or negotiated tribal-state compacts, depending on the types of gambling involved.

The 1988 federal law was not a radical change in policy but rather an attempt to regularize and codify a series of federal court decisions in the 1970s and 1980s that recognized the rights of Indian tribes to conduct gambling free of state regulation.

Under the federal law, gambling can be conducted on "Indian land."

Federal law defines Indian land as land that is either:

- part of a federally recognized Indian reservation, or
- off a reservation but held in trust for an Indian tribe by the federal government, or under the jurisdiction of an Indian governing body.

As this definition points out, it is not necessary for land to be actually part of a reservation for gambling to be conducted on it. In theory, an Indian tribe could buy land anywhere in a state and operate a casino on it by transferring it to the Secretary of the Interior in trust for the tribe. However, such a designation of Indian trust land for gambling purposes also requires the concurrence of the state governor.

Federal law provides for two distinct types of gambling on Indian land and provides separate regulatory mechanisms for each.

Class II gambling consists of bingo, keno, pull-tabs, punchboards, and nonbanking card games (games where players play against each other rather than against the house). Class II gambling is governed by a tribal ordinance that must meet federal guidelines and be approved by the National Indian Gaming Commission.

"Indian country" is the term used in federal law for the jurisdictional territory of tribal governments. *See* 18 U.S.C. §1151. Federal law defines it as Indian reservations, dependent Indian communities, and Indian allotments. Status as Indian country does not depend upon the trust status or ownership of land. See the discussion under "Indian Lands" in Part One.

Class III gambling consists of common casino games such as roulette, craps, chemin de fer, baccarat, and banking card games such as blackjack. The term also includes all mechanical or electronic gambling machines such as slot machines and video poker devices. Class III gambling is conducted under a compact that each tribe negotiates with the government of the state in which it is located. Compacts can specify which party has civil and criminal jurisdiction over gambling enforcement. The compacts can apply those state laws to class III gambling that each party believes necessary for regulation.

(Class I gambling, which includes traditional Indian ceremonial games, is controlled exclusively by the tribes.)

An Indian tribe does not have complete authority to conduct any type of gambling it wishes. The state must already permit a type of gambling for any non-Indian before it can be conducted on Indian land. The non-Indian gambling need not be commercial or profit-making; gambling by nonprofit organizations for charitable purposes, or even private social betting, can provide a basis for Indians to claim the right to conduct comparable forms of gambling.

States have limited rights to regulate or prohibit Indian gambling.

Under the IGRA a state cannot ***prohibit*** Indian gambling if it is a type of gambling that the state allows for non-Indians. The states' right to ***control*** Indian gambling is sharply limited under federal law.

The states have no role in regulating bingo and other class II games except that only those class II games that are legal for non-Indians in a state may be conducted by tribes in that state. If a state allows blackjack, slot machines, and other class III games for non-Indians, the state cannot refuse to negotiate a compact with an Indian tribe that requests it. Under the federal law, a state's refusal to negotiate gives the tribe the right to go to federal court to seek a court order requiring further negotiations. If further negotiations still fail to result in a compact, each side must submit a proposal to a court-appointed mediator who selects the proposal that is the more consistent with the federal law. A state that objects to the mediator's decision may appeal to the Secretary of the Interior. At that point the secretary prescribes the compact, taking into consideration the mediator's decision, state law, and federal law. Thus, a state's refusal to negotiate in good faith does not prevent a compact from being written, but can result in the state's being eliminated from the process of writing the compact.

A 1996 Supreme Court decision (*Seminole Tribe of Florida v. State of Florida*)[1] invalidated the provisions of the IGRA that allow tribes to sue states that are not negotiating in good faith towards a tribal-state compact. Although the case prohibits tribal suits against states, it does not eliminate tribal rights to conduct gambling that a state authorizes for non-Indians. If a state fails to negotiate in good faith, tribes will still be able to go to the Department of the Interior for a final ruling on the terms of a compact.

States cannot tax Indian gambling.

The federal law specifically prohibits states from imposing taxes or fees on Indian gambling, except for fees that the tribe agrees to. These fees are intended to compensate the state for its costs in performing inspections and other regulation under the tribal-state compact. In other words, states cannot raise general revenue by taxing Indian gambling. This does not prohibit states from requiring tribes to pay a share of gambling proceeds to the state in return for a state concession, such as a guarantee of tribal monopoly on some forms of gambling. Both Connecticut and Michigan have such arrangements with tribes within their borders.

Income earned by employees at Indian casinos is taxable if the employee is a non-Indian. Income earned at an Indian casino by tribal members is nontaxable by the state.

Minnesota's tribal-state compacts allow blackjack and slot machines.

The class III games permitted under compacts between Minnesota Indian tribes and the state are blackjack and video games of chance. The compacts provide for inspection and approval of machines by the state Department of Public Safety, licensing of casino employees, standards for employees (no prior felony convictions, etc.), machine payout percentages, and regulation of the play of blackjack. In addition, if off-track betting on horse racing is ever permitted in Minnesota (the law authorizing it was declared unconstitutional by the state supreme court) there could be one Indian off-track betting establishment for each non-Indian establishment in the state.

These compacts are in effect until renegotiation.

Both types of compacts (video games and blackjack) provide that they remain in effect until the two parties renegotiate them. Either party can request a renegotiation at any time.

It is difficult to know how much money Minnesota's Indian casinos take in.

Indian casinos are not required to report their revenues or earnings to any state agency, so exact figures are unavailable. The most recent estimate is that gross wagering at tribal casinos amounts to at least $2.5 billion, according to the 1996 final report of the State Advisory Council on Gambling.

There is no agreement on the outcome of Indian gambling if Minnesota were to prohibit gambling by non-Indians.

The federal law says that if a state allows a form of gambling by any person for any purpose, Indians in that state have the right to conduct that form of gambling. It makes no mention of what happens if a state repeals that authorization after a compact is negotiated.

In Minnesota, the state and the Indian tribes hold opposing views of what would happen if the state were to prohibit a form of gambling for non-Indians that a compact authorizes for Indians. The state takes the position that a repeal of a gambling form for non-Indians would mean that Indians would lose their rights to that form, while each tribe believes that a legislative action would not affect the validity of the compacts. In the blackjack compacts, each party states its position but does not attempt to impose it on the other party. If either the state or a tribe wanted to have the issue finally decided it would almost certainly end up in the federal courts.

In fact, the Minnesota Legislature has already repealed the law on which the video game compact was based, that being the law that legalized and licensed "video games of chance" without allowing betting on them. At the same time the legislature also said that its repeal was not intended to affect the validity of tribal-state compacts that authorized video machines. The state has therefore passed up, at least for the time being, its chance to test whether a legislative repeal would affect Indian gambling.

Minnesota currently has 18 Indian casinos.

There are several reasons why Minnesota has significantly more tribal casinos than most other states:

- Minnesota tribes were involved in legal gambling operations several years before the passage of the 1988 federal act. These activities were permitted under federal court decisions upholding Indian sovereignty. Although these operations were on a much smaller scale than today's casinos, they laid an economic base for rapid expansion after passage of the federal act.

- Several Indian tribes have benefited from their reservations being located close to the metropolitan area, close to the Canadian border, or in prime tourism areas. An estimated 15 percent of casino visitor-days are by non-Minnesotans.

- Minnesota was far ahead of other state governments in beginning and completing the compact negotiation process.

- Minnesotans have demonstrated an enthusiasm for legal gambling, as the state's billion-dollar charitable gambling industry indicates. This created a ready market for casino gambling and gave tribes the confidence to take risks in opening and expanding casinos.

ENDNOTE

[1]116 S. Ct. 1114 (1996).

Liquor Regulation in Indian Country

by John Williams (651-296-5045)

Federal law prohibits the possession of alcoholic beverages in and introduction of alcoholic beverages into Indian country. However, it also makes an important exception to this prohibition. Sale and possession of alcoholic beverages in Indian country is legal if it conforms with **both** state law **and** Indian tribal ordinance. This means that an establishment can sell alcoholic beverages within a reservation only if both state and tribal law allow it.

State Law on Alcoholic Beverages

Prior to 1985, liquor establishments in Indian country were in the same situation as liquor establishments elsewhere in the state: in order to legally sell alcoholic beverages it was necessary to obtain a retail license from the city or county in which the establishment is located. The legislature in 1985 enacted a special provision[1] that dealt specifically with licenses in Indian country. This law is intended to adopt a system of "dual recognition," whereby the state recognizes licenses issued in Indian country by an Indian tribe if the tribe recognizes licenses in Indian country issued by cities or counties.

Tribal licenses. The state law recognizes the validity of licenses issued by an Indian tribe to a tribal member or tribal entity for establishments located in Indian country. A tribal government issuing a tribal license must notify the state Department of Public Safety. On receipt of the notification the department must issue the licensee a retailer's identification card, also called a "buyer's card." All retailers must have this card in order to purchase alcoholic beverages from Minnesota-licensed beer and liquor wholesalers.

An establishment that is owned by a tribal member or tribal entity and has a tribal license is not required to obtain a retail license from the city or county in which it is located.

City and county licenses. Cities and counties may issue retail alcoholic beverage licenses to establishments that are in Indian country and also within the city or county. Under the "effective date" section of the 1985 state law, these licenses must be recognized by the Indian tribe that has jurisdiction over the territory, in order for that same tribe to have its own licenses recognized under state law. These licenses are intended to be issued to non-Indians who do business on reservations; Indian tribal members who own liquor establishments on reservations could apply for a local license if they wish, but they do not have to if they already have a tribal license.

"Indian country" is the term used in federal law for the jurisdictional territory of tribal governments. *See* 18 U.S.C. §1151. Federal law defines it as Indian reservations, dependent Indian communities, and Indian allotments. Status as Indian country does not depend upon the trust status or ownership of land. See the discussion under "Indian Lands" in Part One.

State liquor laws. Minnesota liquor laws, such as the laws prohibiting sales to minors and prescribing days and hours of sale, are criminal laws and may therefore be enforced on Indian reservations. However, neither the state nor a local unit of government has the authority to suspend or revoke a tribal license for a violation of any law or regulation. Licenses issued by cities or counties in Indian country may be revoked or suspended by the issuing authority and, in some cases, by the state.

Liquor liability. The state "dram shop" law, which makes liquor sellers liable for damages if they cause intoxication that later leads to an injury, is a civil law that applies in Indian country as a result of the federal government's Public Law 280. However, its only application would be to individuals, Indian or non-Indian, who operate liquor establishments. Tribal government entities that have licenses (whether issued by tribes or by local governments) are generally immune from lawsuits under the doctrine of tribal sovereign immunity, which has been upheld on several occasions by Minnesota and federal courts.[2]

Summary

The present Minnesota law on alcoholic beverages in Indian country represents a "live and let live" approach. In order to avoid disputes between local governments and Indian tribes that might otherwise have conflicting jurisdiction over the same establishments, state law provides for mutual recognition of authority that at the same time avoids duplication of regulatory effort.

ENDNOTES

[1] Minn. Stat. § 340A.4055 (1992).

[2] *See* discussion in Part One, pages 18 to 20.

Control of Natural Resources in Indian Country

by John Helland (651-296-5039)

The U.S. Supreme Court and the Minnesota Supreme Court have consistently upheld Indians' rights to hunt and fish free of state regulation on Indian reservations. These rights were implicitly included in reservation grants because of the important role these activities play in Indian life and culture. The rights can only be eliminated by very specific treaty language or congressional action expressing an intent to do so.

Three significant agreements have been ratified by statute, and a fourth agreement was reached as a separate federal land settlement act involving the state and certain Chippewa bands. The first ratification occurred in 1973 with the agreement between the Leech Lake band of Chippewas and the state Department of Natural Resources.[1] The original agreement exempted band members from state law on hunting, fishing, trapping, bait-taking, and wild rice gathering on the Leech Lake Reservation. It also included the creation of special licenses and fees for hunting, fishing, trapping, or bait-taking by non-Chippewas on the reservation. This latter provision was amended to provide that the Leech Lake band receive a payment equal to 5 percent of all revenue from licenses sold in the state for fishing, hunting, trapping, and bait-taking. This amendment eliminated the special license fee.

Authority for a similar agreement between the state and the White Earth band of Chippewas was passed in 1980.[2] The White Earth band would have received 2.5 percent of all revenue from licenses sold in the state for fishing, hunting, trapping, and bait-taking. The legislature authorized an agreement with White Earth in 1980, but it never has been completed.[3]

A separate state law was enacted in 1984 in an effort by the state to work with Congress to reach a settlement over disputed lands within the White Earth Reservation. The Department of Interior had proclaimed that land owners' titles to 100,000 acres on the reservation were not valid and that those lands belonged to Indian allottees or their heirs.

In response, Congress passed the White Earth Land Settlement Act of 1986 (WELSA) Pub. Law No. 99-264. The state agreed to transfer 10,000 acres to the United States to be held in trust for the band. The state also agreed to provide an increased land base to the White Earth band in return for having the titles cleared. A list of lands covered by WELSA was published in the Federal Register. The state also agreed to provide technical assistance needed by the Department of the Interior to administer the settlement.

"Indian country" is the term used in federal law for the jurisdictional territory of tribal governments. *See* 18 U.S.C. §1151. Federal law defines it as Indian reservations, dependent Indian communities, and Indian allotments. Status as Indian country does not depend upon the trust status or ownership of land. See the discussion under "Indian Lands" in Part One.

In 1988, the so-called 1854 Treaty Area Agreement was ratified in statute over natural resource rights with the Grand Portage, Bois Forte, and Fond du Lac bands of Chippewa.[4] The Fond du Lac band voted to opt out of the state agreement in 1989. Each year since then, the remaining two bands received approximately $1.6 million each to forego some of their treaty rights. The Fond du Lac band entered into litigation with the state over its rights under the 1854 treaty and has litigated the extent of its rights under an 1837 treaty; those claims were consolidated with the Mille Lacs case discussed below.

1837 Treaty and Mille Lacs Band Lawsuit

The Mille Lacs band of Chippewa filed a 1990 lawsuit to assert its hunting, fishing, and gathering rights in the 1837 Treaty-ceded territory, which includes most of Mille Lacs Lake. The state responded by proposing an out-of-court settlement in which the Mille Lacs band would agree to prohibit commercial fishing in Mille Lacs Lake in exchange for a single payment of $10 million and several thousand acres of land. The settlement was taken to the legislature for ratification, but was rejected.

A trial took place in 1994 and Judge Murphy found that the band retained rights to hunt, fish, and gather under the 1837 treaty in the 1837-ceded territory.[5] The court also ruled that the band has the right to commercially harvest natural resources, except timber, and to adopt its own conservation code to regulate its members. Finally, harvest of natural resources by the band under the 1837 treaty may only be regulated by the state for conservation, public safety, and public health concerns. The Fond du Lac band and six Wisconsin bands of Chippewa were allowed to join the lawsuit in 1995.[6]

Judge Davis issued a final decision in a second phase of this trial in January 1997.[7] This decision made the case ready for appeal. The extent of state regulation and allocation of the natural resources in the ceded territory affected by the 1837 treaty were determined in this phase. Key elements of this decision were:

- Band members may harvest game and fish resources pursuant to their band code. A court-approved stipulation includes a detailed conservation code for band members outlining the regulations for fish and game harvest; an order that protects threatened and endangered species; regulations prohibiting harvest in state parks and scientific areas; band fisheries and wildlife harvest plans for the years 1997-2001; and a provision authorizing Department of Natural Resources (DNR) conservation officers to enforce the band code.

- Band members may only exercise treaty harvest rights on public lands and a very few acres of other lands open to public hunting by law. State trespass law applies to private lands within the ceded territory.

- Treaty harvest begins as soon as a band has adopted the regulations in the stipulation and deputized state conservation officers to enforce the code. It may be regulated by the state only for conservation, public safety, or public health concerns.

- The court made no allocation of the resources between the bands and the state.[8] The court affirmed the bands' five-year harvest management plan which limits the amount of harvest each year. Some examples of the 1997 limit are 40,000 pounds of walleye on Mille Lacs Lake (out of an average 450,000 pounds) and 900 deer. In 2002, the walleye limit for band members rose to 353,000 pounds; for nonband members it is 370,000 pounds.

The phase-two decision in the Mille Lacs lawsuit was appealed by the state, nine counties, and several landowners in the Mille Lacs area. The 8th Circuit Court of Appeals affirmed the lower court rulings in all respects.

The case was then appealed to the U.S. Supreme Court, and in 1999, the Court ruled that the 1837 treaty rights continue to exist. In a closely divided opinion of five to four, the Supreme Court affirmed the lower court rulings. The majority opinion rejected the state's arguments that the 1837 rights had been revoked by Executive Order in 1850 and that a later treaty in 1855 sought to extinguish the rights previously granted.[9]

Court decisions in other states have recognized the existence of Indian rights in similar cases. In Wisconsin, under previous litigation, the federal court ruled that Chippewa bands there retained their rights under the same 1837 treaty. The court determined in that case that the Wisconsin bands were entitled to 50 percent of the annual harvestable surplus of game and fish in a large geographical area of the state.

Late in 2002, in order to avoid a possible court dispute between the eight Chippewa bands and the state, a mediated agreement on fishing was reached. The agreement and a new five-year walleye management plan for Mille Lacs Lake include less restrictive fishing regulations for non-band anglers, penalties for the state and anglers for exceeding the safe walleye harvest quota in 2002, and places a cap on future walleye limits.

ENDNOTES

[1] Minn. Stat. §§ 97A.151, 97A.155.

[2] Minn. Stat. § 97A.161.

[3] On reservations, i.e., Leech and White Earth, harvest rights are implicit unless clear language in federal law says they are not. The sections below addressing the 1837 and 1854 treaties pertain to ceded territories; i.e., Indian lands ceded to the federal government pursuant to a treaty. In ceded territories, bands retain no harvest rights, or anything else, unless explicitly stated. Ceded territories are not Indian country. In Minnesota, only the 1837 and 1854 treaties have language reserving harvest rights in the respective ceded territories. Harvest rights in ceded territories are unrelated to harvest rights on reservations. The White Earth land claims issues do not deal with harvest rights.

[4] Minn. Stat. § 97A.157.

[5] *Mille Lacs Band of Chippewa Indians v. Minnesota*, 861 F.Supp. 784 (D.Minn. 1994).

[6] Both the 1837 and 1854 treaty lawsuits were litigated in two phases. Phase I dealt with the question of whether the treaty harvest rights is valid, and Phase II dealt with defining that right, i.e., who harvests what, when, where, and how. It was Phase I of the Mille Lacs case (1837 treaty) that was appealed to the U.S. Supreme Court. Phase II was resolved partially by stipulated settlement. In the FDL case (1854 treaty), the federal district court has found the treaty harvest right to be valid (Phase I). The parties currently are negotiating Phase II.

[7] *Mille Lacs Band v. Minnesota*, 952 F.Supp. 1362 (D.Minn. 1997).

[8] Initial harvest allocations were agreed to by the parties as part of a separate Phase II stipulation.

[9] *Minnesota v. Mille Lacs Band*, 524 U.S. 915, 118 S.Ct. 2295 (1998) (certiorari granted); *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 119 S.Ct. 1187 (1999) (judgment affirmed).

Environmental Regulation in Indian Country

by Mike Bull (651-296-8961)

This section discusses the application of federal and state environmental law to Indian lands. As used here, environmental law includes, for the most part, only pollution control laws. The term "Indian country" is synonymous with the term "Indian lands" for the purposes of environmental regulatory law.

Basic Rule

Federal and tribal, not state, regulatory environmental laws apply on Indian lands. Federal regulatory environmental laws apply to Indian lands. State regulatory environmental laws, to the extent that they differ from federal law, do not apply on Indian lands, including Indian lands owned by non-Indians. This basic rule is generally applied by Congress, the Environmental Protection Agency (EPA), and the courts.

Recognized tribes generally have the authority to regulate pollution activities on Indian lands in the absence of or beyond federal law (regardless of Indian or non-Indian ownership of property within the Indian lands boundaries). This authority stems from the residual sovereignty held by recognized tribes as well as "tribes as states" provisions in the federal laws.

Regulatory Versus Prohibitory Laws

The difference between a "prohibitory" and a "regulatory" statute is not clear in the environmental area. Beyond the general federal statutory scheme of environmental regulation, it is not entirely clear how to make the distinction between a state law that is "regulatory" as opposed to civil or criminal. Under Public Law 280, Minnesota has the authority to enforce criminal laws in Indian country, except on the Red Lake Reservation, and Minnesota courts may assume jurisdiction over civil causes of action to which Indians are parties.[1] However, Public Law 280 does not give Minnesota broad civil regulatory authority over Indian country.[2] The state authority under Public Law 280 is concurrent with the authority of a tribe to enforce civil and criminal law.

Some states, including Minnesota, have begun to prohibit some pollution behaviors and impose civil or criminal sanctions for violations. Whether a court would characterize these state laws as "regulatory" and therefore not applicable in Indian country is uncertain. The best guidance in

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this area comes from *California v. Cabazon Band of Mission Indians*, in which the Supreme Court said:

> If the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, ... Pub. L. 280 does not authorize its enforcement on an Indian reservation.[3]

Under this language it appears that Minnesota's laws prohibiting placement of waste tires, major appliances, automobile batteries, and specified items containing mercury in or on the land or in the garbage, probably apply on Indian lands. Similarly, the criminal statute that makes it a gross misdemeanor for a commercial waste hauler to dump garbage in an unpermitted location also probably applies on Indian lands (even though the permitting authority may not be the state). These kinds of environmental laws depart in different degrees from the traditional regulatory approach in environmental law, which is to permit the polluting activity but regulate how it is done or how the resulting pollution is controlled. Whether courts will make the distinction between the regulatory approach and the prohibitory statutes in the environmental area remains unclear.

Minnesota's "prohibitory" environmental laws may apply on Indian lands.

Nearly all of Minnesota's environmental statutes are clearly regulatory and therefore do not apply on Indian lands. Most of the statutes are parallel to federal statutes or are in addition to them. Many of the state statutes are the basis for state implementation of the federal statutes in Minnesota. In addition, the broad authority given the Minnesota Pollution Control Agency to protect human health and the environment is almost entirely regulatory.

State laws that are clearly regulatory include those governing surface and groundwater pollution, air pollution, solid and hazardous waste management, environmental cleanup, wetlands regulation, mining reclamation, land use planning and environmental analysis of development projects, noise pollution, power plant siting, and radioactive waste management.

Over time, however, Minnesota has enacted prohibitions on various polluting activities that may be applicable to Indian lands under Public Law 280 and the language of the *Cabazon Band* case. These statutes include prohibitions on:

- sale or use of certain pesticides[4]
- sale or distribution of misbranded pesticides[5]
- certain fertilizer activities[6]

- locating a hazardous or radioactive waste disposal facility near potable waters or below ground[7]
- placement of certain waste items in or on the land [8]
- packaging materials that contain intentionally introduced lead, cadmium, mercury, or hexavalent chromium[9]
- littering (with a civil penalty of not less than twice or more than five times the cost of proper disposal)[10]
- sale or use of cleaning agents containing more than the maximum permissible level of nutrients, and household laundry or dishwashing compound not labeled with the percentage of phosphorus contained in the compound[11]
- sale of items containing PCBs[12]
- sale of certain CFC products[13]
- sale of CFC-processed packaging[14]
- construction or operation of a radioactive waste management facility without express authorization of the legislature[15]

The above list is not exhaustive, but indicative of the kinds of prohibitions that may apply to the whole state, including Indian lands. Other enforcement of the environmental laws arises out of the regulatory efforts of the state and would likely be seen as part of the regulatory law (such as, criminal penalties for deliberate misinformation on a hazardous waste manifest or label, or penalties for failure to comply with air, water, or waste permit conditions).

Federal Environmental Regulatory Scheme and Indian Lands

Federal laws apply on Indian lands. Courts have held, even in the absence of specific statutory or treaty language, that the major federal environmental statutes apply on Indian lands to the same extent that they apply across the country.[16] The rationale for this holding is the necessity for baseline, consistent environmental standards with which everyone in the country must comply.

Tribes may administer federal environmental statutes "in lieu of" federal administration. The federal statutes generally:

- set minimum federal standards for allowable pollution and polluting behavior;

- envision state administration and enforcement with federal financial and technical assistance; and

- allow states to set more strict pollution standards or controls on polluting behavior (but not less strict standards).

The operative programs of the federal statutes are generally structured as "in lieu of" programs. Under varying program-specific criteria, a state can submit a plan to the EPA and, depending on the adequacy of the plan and the state's enforcement ability, the EPA will authorize the state to act in lieu of the EPA. The EPA always retains residual authority and may step in if a state fails to implement a program or adequately enforce standards.

In relation to Indian lands, most of the federal statutes now contain a "tribes as states" provision. Most of these provisions have been added in later versions of the statutes. The only major federal environmental statute that does not yet have a "tribes as states" provision is the Resource Conservation and Recovery Act (RCRA), which governs solid and hazardous waste management.[17] Even so, the Ninth Circuit Court of Appeals has held that states have no authority to administer RCRA on Indian lands and that the EPA is responsible for that administration.[18]

A "tribes as states" provision clarifies who administers the law on Indian lands and allows a qualified tribe to receive the same financial and technical assistance the states receive for "in lieu of" implementation.

Tribes are treated "government-to-government" by the EPA. Even in the absence of specific "tribes as states" provisions, the EPA relates to recognized Indian tribes on a "government-to-government" basis. In 1983, President Reagan announced his administration's Indian policy:

> Our policy is to reaffirm dealing with Indian tribes on a government-to-government basis and to pursue the policy of self-government for Indian tribes without threatening termination.[19]

This policy was reaffirmed by President Clinton in 1994.[20] In response to the 1983 Federal Indian Policy, the EPA adopted its Indian policy in 1984.[21] The overall policy has been to treat tribes as states and to delegate environmental programs to the tribes wherever possible. Further, when a tribe cannot or does not seek to implement an environmental program, the EPA has consistently taken the position, affirmed by various courts, that only it has authority for environmental programs on that tribe's lands and that a state cannot fill the void left by lack of local (tribal) implementation.[22]

Not all tribes are eligible to implement federal environmental statutes. Generally the "tribes as states" provisions in the federal laws require a tribe to meet three criteria to qualify for implementing a program in lieu of the EPA. The most recently enacted "tribes as states" provision is in the Clean Air Act Amendments of 1990.[23] The statute authorizes a tribe to act as a state for the purposes of the act only if:

- the Indian tribe has a governing body carrying out substantial governmental duties and powers;

- the functions exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

- the Indian tribe is reasonably expected to be capable, in the judgement of the EPA administrator, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this act.

There are a number of environmental regulatory programs that may be implemented by qualified tribes. All of the major federal pollution control statutes, except the RCRA have either "tribes as states" provisions or express authorization for tribes to implement specific programs.

The following is an incomplete list of the types of programs that may be implemented by qualified tribes.

Water pollution control programs under the Clean Water Act (CWA)[24]

- planning for and funding of wastewater treatment facilities; granting and enforcing permits for discharge of pollutants into surface and ground water; controlling pollution from "nonpoint" sources such as agricultural land runoff; establishing water quality standards

Air pollution control programs under the Clean Air Act (CAA)[25]

- granting permits for emissions of pollutants to the air; enforcing air pollution standards; designating air quality areas; administering of the mobile sources (vehicles) and clean fuels programs; establishing a small business compliance assistance program

Pesticide programs under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)[26]

- registering pesticides and pesticide producers; regulating application and certifying applicators; regulating import, export, transportation, and disposal

Protection of drinking water supplies under the Safe Drinking Water Act (SDWA)[27]

- setting and enforcing drinking water standards; regulating the injection of fluids into the ground (underground injection control); protecting water wellhead areas

Regulation of surface mining and reclamation of abandoned mines under the Surface Mining Control and Reclamation Act (SMCRA)[28]

- administering the abandoned mine reclamation program

Cleaning up hazardous waste sites under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund)[29]

- administering the cleanup provisions of Superfund, collecting compensation from those responsible for the contamination; also, paying to clean up sites where the tribe is a responsible party

Summary

Federal regulatory environmental statutes apply on Indian lands. In the absence of federal statutes, or in addition to them, tribal law applies. State regulatory environmental statutes do not apply on Indian lands. Qualified tribes may implement most of the programs in the federal statutes in lieu of the federal government on their own lands, including Indian land owned by non-Indians. Not all tribes qualify and not all tribes will seek this authority. The federal government retains the authority to implement and enforce the laws on Indian lands where a tribe does not do so.

State laws that prohibit specific polluting behavior and impose civil or criminal penalties for violation probably apply on Indian lands to the same extent they apply in the rest of the state. This is not, however, a settled area of the law.

ENDNOTES

[1] Act of August 15, 1953, Pub. L. No. 83-280, 67 Stat. 588, as amended by the Indian Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 78.

[2] *Bryan v. Itasca County*, 426 U.S. 373 (1976).

[3] 480 U.S. 202, at 209 (1987).

[4] Minn. Stat. §§ 18B.11 and 18B.115 (TCDD and chlordane).

[5] Minn. Stat. § 18B.13.

[6] Minn. Stat. § 18C.201.

[7] Minn. Stat. §§ 115.063 and 115.067.

[8] Minn. Stat. §§ 115A.904 (waste tires), 115A.915 (motor vehicle batteries), and 115A.916 (used motor vehicle fluids).

[9] Minn. Stat. § 115A.965.

[10] Minn. Stat. § 115A.99.

[11] Minn. Stat. §§ 116.23 and 116.27.

[12] Minn. Stat. § 116.37.

[13] Minn. Stat. § 325E.38.

[14] Minn. Stat. § 116.72.

[15] Minn. Stat. § 116C.72.

[16] *Federal Power Commission v. Tuscarora Indian Nation*, 362 U.S. 99 (1960).

[17] 42 U.S.C. §§ 6901-6991.

[18] *Washington Department of Ecology v. U.S. Environmental Protection Agency*, 752 F.2d 1465 (9th Cir. 1985).

[19] 19 Weekly Comp. Pres. Docs. 98, 99 (1983).

[20] 59 Fed. Reg. 22951 (April 29, 1994).

[21] U.S. Environmental Protection Agency, *EPA Policy for the Administration of Environmental Programs on Indian Reservations 2* (1984).

[22] *Washington DOE*, *see* note 18.

[23] 42 U.S.C.A. § 7601(d).

[24] 33 U.S.C. §§ 1251-1376.

[25] 42 U.S.C. §§ 7401-7642.

[26] 7 U.S.C. §§ 136-136y.

[27] 42 U.S.C. §§ 300f-300j-11.

[28] 30 U.S.C. §§ 1201-1328.

[29] 42 U.S.C. §§ 9601-9675.

Taxation in Indian Country

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This chapter discusses (1) state tax immunities that arise from the special status of Indian tribes and territory, and (2) tribal governments' power to impose taxes. The principal focus is on tax immunities. Tax immunities affect the state's ability to tax income, property located in, and transactions occurring in tribal territories. However, the tribal power to tax is also important, because it can result in a double tax burden if both state and tribal taxes apply to the same property, income, or transaction. In addition, imposition of tribal taxes may preempt state taxes.

Two general principles apply:

(1) The federal laws establishing Indian country and their two-fold purposes—preserving tribal sovereignty and providing economic support for Indian communities—preempt the state's ability to tax tribal members, lands, and some activities within Indian country.

(2) The tribes as sovereign governments, conversely, have the power to tax property, individuals, and transactions within their territories.

These two general principles become less clear when applying state or tribal taxes to specific situations that involve non-Indians, commercial activities between tribes or tribal members and non-Indians, and properties owned by non-Indians or fee properties on reservations. A further complication arises from the way some state taxes are collected. Some taxes are imposed at the distributor or wholesaler level (e.g., excise taxes on cigarettes). These individuals or entities are typically non-Indian businesses located outside of Indian territory. However, part or all of the burden of the tax may fall on tribes or Indians who are immune from state tax.

Tribal immunity may make it practically impossible for the state to collect taxes on transactions in Indian country.

The converse situation arises where the tax burden falls on non-Indians, who are not immune from the state tax, but the collection obligation falls on a tribal business. In this situation, the legal immunity of the tribal business may make it practically impossible to collect the tax obligation. For example, the Supreme Court has held that purchases by non-Indians from tribal businesses in Indian country are subject to sales tax.[1] However, the tribe is immune from lawsuits and most of the standard legal collection mechanisms used by the state to collect its taxes.[2]

"Indian country" is the term used in federal law for the jurisdictional territory of tribal governments. *See* 18 U.S.C. §1151. Federal law defines it as Indian reservations, dependent Indian communities, and Indian allotments. Status as Indian country does not depend upon the trust status or ownership of land. See the discussion under "Indian Lands" in Part One.

Congress may authorize states to impose taxes within Indian country.

In some instances, federal law specifically authorizes state taxation of property or activities within Indian country.[3] These grants are read narrowly under the general principle that Indian laws and treaties are to be construed liberally and ambiguities are to be resolved in the favor of Indians. Indian tax immunities are generally only lifted when Congress has indicated "a clear purpose" to do so.[4]

Numerous Supreme Court cases have established a complex set of rules governing state and tribal authority to tax Indians and activities in Indian country.

The authority to impose state taxes in Indian country has been, and continues to be, frequently litigated. The Supreme Court regularly—nearly every term of the Court—has before it an issue of the application of state taxes to transactions or property in Indian country. This pattern seems likely to continue.

Given the multiplicity of types of taxes and ways in which they are collected, the issues and rules can be complex and confusing. To provide a simplified guide to these rules, the tables in this chapter display the legal authority to apply state or tribal taxes to tribal members, to Indians who are not tribal members, to non-Indians, and to property in Indian country. The "yes-no" answers given in the tables, in many instances, oversimplify complex constitutional or statutory issues. Therefore, these entries should be viewed with some caution. The notes to the tables provide case authority for the rules outlined in the tables and give some flavor of the complexity involved.

Income Taxation

States, in general, may not tax the income of tribes or income of an enrolled member that is derived from Indian country sources. States, however, may tax the income of enrolled members from sources outside of Indian country or the income of other Indians. States also may tax the reservation income of nonenrolled members. Although tribal governments generally do not do so, they have the authority to impose income taxes on reservation income of tribal members. Tribal governments may also, in some limited circumstances, be able to tax reservation source income of nonmembers. These income tax rules are listed in Table 1 and its notes. References in the table to "Indian country" refer to the tribe's reservation, allotments, and dependent community; in other words, it is specific to the applicable tribe, not all of Indian country. References in Table 1 to individuals who are "in" or "outside" of Indian country refer to the place of their residency.

Table 1
Authority to Impose Income Taxes

	Governmental Unit Imposing Tax		
Subject of tax	Federal	State	Tribal[5]
Tribe			
Indian country source income	Waived[6]	No	N.A.
Non-Indian country income	Waived[7]	Yes[8]	N.A.
Passive income	Waived[9]	No	N.A.
Tribal member[10] in Indian country			
Indian country source income	Yes	No[11]	Yes
Non-Indian country income	Yes	Yes[12]	Probably yes[13]
Passive income	Yes	No[14]	Probably yes[15]
Tribal member outside Indian country			
Indian country source income	Yes	Yes[16]	Probably yes[17]
Non-Indian country income	Yes	Yes	Probably yes[18]
Passive income	Yes	Yes	Probably yes[19]
Nonmember Indian in Indian country			
Indian country source income	Yes	Probably yes[20]	Unclear[21]
Non-Indian country income	Yes	Yes	No[22]
Passive income	Yes	Yes	No[23]
Nonmember Indian outside Indian country			
Indian country source income	Yes	Yes[24]	No[25]
Non-Indian country income	Yes	Yes	No
Passive income	Yes	Yes	No
Non-Indian in Indian country			
Indian country source income	Yes	Yes	Unclear[26]
Non-Indian country income	Yes	Yes	No[27]
Passive income	Yes	Yes	No[28]
Non-Indian outside Indian country			
Indian country source income	Yes	Yes	No[29]
Non-Indian country income	Yes	Yes	No
Passive income	Yes	Yes	No

Sales and Excise Taxes

States may not impose sales and excise taxes on sales or use of goods among tribes, tribal businesses, and tribal members in Indian country; but Indian country sales between tribes or tribal members and nonmembers are subject to state tax. States may tax sales transactions involving nonmembers in Indian country, and tribes have an obligation to collect these taxes on behalf of the states. But the doctrine of sovereign immunity prevents states from using the courts to enforce this obligation in Indian country on tribes, tribal businesses, and tribal members. Tribal governments may, and occasionally do, impose sales and excise taxes on general sales or specific goods, such as cigarettes or alcoholic beverages. These rules are presented in Table 2.

Table 2
Authority to Impose Sales & Excise Taxes on Transactions in Indian Country

Tax/Transaction	Entity legally subject to tax		
	Tribe	Indian[30]	Non-Indian[31]
State Taxation			
Cigarette excise tax	No[32]	No[33]	Yes[34]
Severance tax on minerals			
Leases under pre-1938 law[35]	Yes	Yes	Yes
Leases under post-1938 law[36]	No	No	Yes[37]
General sales tax	No[38]	No[39]	Yes[40]
Motor vehicle license	No	No	No[41]
Gross receipts of contractor with tribe	N.A.	No	No[42]
Alcohol excise[43]	No	No	Yes
Motor fuel sales to Indian retailer on reservation	N.A.	N.A.	No[44]
Motor fuel use	No	No	No[45]
Tribal Taxation			
Cigarette excise	N.A.	Yes[46]	Yes[47]
Alcohol excise	N.A.	Yes[48]	Yes[49]
General sales	N.A.	Yes[50]	Yes[51]
Oil and gas severance	N.A.	Yes[52]	Yes[53]

Property Taxation

Indian trust lands, whether held in trust for the tribe or allotted for individual tribal members, are exempt from ad valorem property taxation. By contrast, fee lands, whether owned by the tribe or an individual member, are generally taxable.

Indian lands generally can be divided into trust lands and allotted or fee lands. Trust lands are held by the federal government "in trust" either for the tribe or an individual Indian. They are exempt from state and local taxation, based on their status as federal government property. Fee lands are owned directly by the tribe or individual Indians who can sell or transfer them. The property taxation of fee lands, held by tribal governments or individual Indians within reservations, was not always clear. Before 1992 in Minnesota, tribally owned lands were generally treated as exempt from taxation. In 1992, the U.S. Supreme Court held in *County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*[54] that fee lands allotted to individual Indians were subject to state and local ad valorem property taxes. After this decision, the Minnesota Department of Revenue advised counties that fee lands were generally taxable. As a result, most counties began taxing fee lands. However, questions remained as to whether the tax status depended upon the specific terms of the allotment act and whether it authorized state taxation. These questions were largely resolved by a 1998 decision in *Cass County v. Leech Lake Band of Chippewa Indians*. The Supreme Court held that the alienability of the lands was of "central significance."[55] The decision, thus, makes it clear that essentially all fee lands in Minnesota are subject to property tax. Tribes will need to have their land transferred in trust to the federal government to be exempt from property taxes.

Although most tribal governments do not impose property taxes on properties, they do have this authority. Table 3 outlines the rules governing real property taxation.

Table 3
Real Property Taxation

Type of Property	Entity Imposing Tax: State[56]	Tribal
Trust land		
Tribal	No[57]	N.A.
Allotted to individual Indian	No[58]	Yes[59]
Fee land – on reservation		
Tribally owned	Yes[60]	N.A.
Owned by enrolled Indian	Yes[61]	Yes[62]
Owned by nonenrolled Indian	Yes	No[63]
Owned by nonIndian	Yes	No[64]
Tribal fee land – off reservation	Yes[65]	N.A.

Table 4 displays the amount of tax-exempt Indian trust lands by county. The land values are from the 1998 tax-exempt abstract. (This is the most recent version; the next abstract is due in 2004). Scott County has the highest amount of tax-exempt value (over $70 million). Scott County is home to the Mystic Lake Casino, the largest tribal casino in Minnesota. However, this

amount is small relative to Scott County's tax base (1.7 percent) and population ($899 per capita). Indian trust lands constitute the largest share of Mahnomen County's tax base (13.9 percent), reflecting the low tax base of the county and the large portion that the White Earth reservation constitutes of the county. (The Shooting Star Casino in Mahnomen County pays property taxes because the tribe has not yet transferred it into trust status.[66] It is the only tribal casino in Minnesota to do so, although some facilities ancillary to Grand Casino in Hinckley are also taxable.) Cook County has the largest per capita amount ($7,440) of exempt Indian trust land. This data is now four years old, and it is likely the 2004 assessment will show increases, reflecting additions and improvements to tribal casinos that have been made by tribes, as well as trust transfers.

Table 4
Tax-Exempt Indian Trust Lands by County
1998 Assessment

County	Market value of exempt Indian lands	% of taxable market value	Per capita
Aitkin	$3,047,000	0.37%	$216
Becker	18,533,100	1.50%	626
Beltrami	9,324,500	0.96%	246
Carlton	65,788,700	6.70%	2,089
Cass	91,598,900	5.17%	3,664
Clearwater	3,484,500	1.10%	414
Cook	33,486,100	6.87%	7,440
Crow Wing	34,000	0.00%	1
Goodhue	27,560,700	1.10%	637
Houston	293,500	0.04%	15
Hubbard	49,800	0.01%	3
Itasca	5,528,600	0.29%	126
Koochiching	4,700	0.00%	0
Lake of the Woods	10,731,400	6.26%	2,357
Mahnomen	25,732,900	13.94%	4,958
Mille Lacs	48,887,000	6.90%	2,325
Pennington	417,500	0.11%	31
Pine	49,604,600	5.46%	2,072
Redwood	37,005,000	3.45%	2,144
Roseau	1,717,300	0.31%	105
St. Louis	22,206,900	0.36%	111
Scott	70,029,200	1.74%	899
Yellow Medicine	2,653,100	0.43%	229

Sources: Exempt market values and taxable market values are from the Department of Revenue; populations are from the State Demographer's county population estimates for 1998

Local governments have expressed concern about the potential loss of property tax base as profits from Indian gaming enterprises are used to acquire lands that are then transferred into trust and exempted from property tax.

Large-scale Minnesota tribal gaming enterprises have been in operation for a little longer than a decade.[67] By most accounts, these enterprises have proven to be financially successful. An independent consultant estimated the total gaming revenues of Minnesota tribes to be $867 million for 2001.[68] The success of Indian casinos has provided some tribes with resources to begin repurchasing lands on reservations that passed from Indian ownership under the allotment policy of the late 19th and early 20th centuries. Some tribes have made reacquiring these lands a priority.

Local government officials from areas that include reservations have expressed concerns about this practice. Since trust lands are exempt from property taxation, acquisition of substantial amounts of property and transfers into trust status could significantly reduce local tax bases. Many of the areas of the state containing Indian reservations already have relatively low property tax bases.

Based on House Research surveys of assessors, 9,000 acres with a market value of $7.5 million were transferred into trust status between 1992 and 1998.

It is difficult to assess how much the amount of exempt Indian land is increasing as a result of transfers into trust. To test whether gaming revenues have resulted in a significant increase in trust transfers, in 1996 and 1998 House Research surveyed county assessors to gather information on the amount of land transferred into trust between 1992 and 1998. These surveys show that about 9,000 acres were transferred into trust; this property had a market value of $7.5 million and paid taxes of about $141,000.[69] A substantial amount of the property was already exempt before the transfer.

These trust transfers comprise a relatively small share of the local tax bases of the affected counties. Trust transfers were made in 15 counties. The most acres transferred (4,112) were in Becker County. Cass County ($3.5 million) and Cook County ($1.3 million) had the highest amounts of market value of property transferred into trust. These transfers constituted relatively small shares of the property tax bases of the affected counties. The largest share was in Mahnomen County; the trust transfers equaled less than 0.4 percent of the county's tax base.

The pattern of trust transfers is not, of course, the full story of the possible impact of a successful new casino business on the local property tax base. A successful casino business in a county may have other, more indirect effects on the property tax base, both positive and negative. The casino may stimulate other businesses (typically service or tourism enterprises) that could increase the local tax base. Or the casino operation may lure customers away from existing, taxable businesses, depressing the property tax base. These effects are not necessarily captured by the data on transfers into trust. They likely will vary from locality to locality.

Indian tribes own considerable fee lands that continue to pay Minnesota property taxes.

Although most tribal lands are held in trust status, Indian tribes also own a significant amount of fee lands that pay state and local property taxes. It seems reasonable to expect that at some point all or part of these properties will be transferred into trust and become exempt from property taxation. The 1996 and 1998 House Research surveys of assessors attempted to gather information on the value of the lands, which were owned by tribes and which were still taxable. Table 5 displays the results of these surveys, broken down by property class. *The data is incomplete; not all assessors provided this information for counties in which tribal governments own property.* Nevertheless, the information provides an impression of the value of property in the late 1990s that could be transferred into trust in the future. Tribal governments are also likely to have used earnings from their casino operations to buy more properties since 1998. In addition, some of these lands reported in Table 5 may now have been transferred into trust.

Table 5
Property Owned by Tribal Government and Subject to Property Taxes

Property Type	Acres	Market Value*	Property Tax*
Agricultural	7,952	$2,080,200	$36,903
Apartment	NA	33,700	1,876
Commercial	450	22,815,400	1,559,794
Residential	855	1,705,400	39,587
Seasonal	3,004	2,534,400	65,240
Timber	2,057	357,700	5,899
TOTAL	**14,318**	**$29,526,800**	**$1,709,299**

* Most market values and taxes are for pay 1998.
This data is incomplete; not all assessors provided this data.

Minnesota and some other states have entered into tax agreements with tribes to provide for collection of state taxes and distribution of the revenues.

The twin difficulties outlined at the beginning of this chapter—(1) the impracticality of the state collecting state tax legally owed by non-Indians for transactions in Indian country, and (2) the potential for illegally imposing state tax on immune tribal members or businesses—has led to agreements between tribal governments and the state. These agreements attempt to preserve the tribes' and tribal members' immunities, while collecting the state tax legally owed by nontribal members and dividing these revenues between the state and the tribes.

The Minnesota Department of Revenue has entered agreements with ten of the 11 Minnesota tribal governments. (No agreement applies to Prairie Island.) The agreements cover the following taxes:

- Sales and use taxes
- Cigarette and tobacco products taxes
- Alcoholic beverage excise taxes (i.e., the taxes on liquor, wine, and beer)
- Motor fuels taxes (e.g., the gas tax)

These agreements all follow a similar pattern. The taxes are paid at the regular state rate to the Department of Revenue. The department, in turn, refunds part of the taxes to the tribal government. These refunds have two basic components:

- **A per capita payment** intended to refund the tax paid by members living on (or adjacent to) the reservation. Under federal law, these transactions are exempt from tax.

- **A revenue sharing payment** dividing the tax paid by nonmembers on the reservation equally between the tribal government and the state. The agreements also refund half of the sales tax paid by members on their off-reservation purchases.

Table 6 lists the per capita amounts by tax type for each tribal government. Table 7 describes the formulas used to calculate revenue sharing agreements by tax types. These formulas are generally the same for all of the tribal governments.

In 2001, the legislature authorized the Department of Revenue to enter into agreements with tribes to collect state fees for on-reservation activities and to provide for refund or sharing of the proceeds of the fees.[70] This authority would permit the Commissioner of Revenue to enter into agreements with a tribal government to collect the petroleum fees that fund the cost of the underground tank release cleanup program and the petroleum inspection fee. An agreement could enable a tribe to participate in the petrofund cleanup program, enabling it to receive grants for the cost of cleanup of leaking underground petroleum storage tanks. So far, the department has not used this authority to enter into agreements with any tribal government.

Table 6
Per Capita Distributions to
Tribal Governments Under State Tax Agreements
Calendar Year 2001

Tribal Government	Sales & Use	Cigarette & Tobacco	Alcoholic Beverage	Motor Fuels*
Bois Forte Band	$50.82	$38.68	$10.62	$54.48
Fond du Lac Band	48.17	38.68	10.62	54.48
Grand Portage Band	49.03	38.68	10.62	39.18
Leech Lake Reservation Tribal Council	88.42	38.68	10.62	54.48
Lower Sioux Indian Community	23.30	38.68	10.62	39.22
Mille Lacs Band	45.22	38.68	10.62	38.68
Prairie Island Community	No tax agreement			
Red Lake Band	84.70	38.68	5.31	Entire amount
Shakopee Mdewakanton Indian Community	15.45	38.68	10.62	54.48
Upper Sioux Indian Community	29.64	38.68	10.62	Not applicable†
White Earth	84.71	38.68	10.62	54.48

Source: Minnesota Department of Revenue
* In addition, tax paid by tribal government on its purchases is refunded.
† There are no sales on the reservation.

Table 7
Revenue Sharing Under State-Tribal Tax Agreement
Formulas to Calculate Tribal Governments' Share
Calendar Year 2001

Tax Type	Formula
Sales & Use	(Sales tax paid for on-reservation sales + tax paid off-reservation by members - per capita refund) ÷ 2
Cigarette & Tobacco	(Cigarette excise tax for on-reservation sales - per capita refund) ÷ 2
Alcoholic Beverage	(Alcoholic beverage excise tax for on-reservation sales - per capita refund) ÷ 2
Motor Fuels	(Tax paid for on-reservation sales - per capita refund - tax paid by tribal government) ÷ 2

Source: Minnesota Department of Revenue

Table 8 lists the amount of payments made to the ten tribal governments in calendar year 2001 by tax type.

Table 8
Payments to Tribal Governments Under State Tax Agreements
Calendar Year 2001

Tribal Government	Sales & Use	Cigarette & Tobacco	Alcoholic Beverage	Motor Fuels	Total
Bois Forte Band	$380,777	$92,361	$25,339	$155,195	$653,672
Fond du Lac Band	687,179	303,618	38,266	217,275	1,246,339
Grand Portage Band	129,705	31,397	8,567	141,307	310,976
Leech Lake Reservation Tribal Council	1,559,063	456, 439	156,298	755,899	2,927,699
Lower Sioux Indian Community	491,652	162,607	12,351	65,410	732,019
Mille Lacs Band	1,187,432	1,058,572	16,502	78,560	2,341,066
Red Lake Band	789,376	346,502	49,602	344,035	1,529,515
Shakopee Mdewakanton Indian Community	1,157,785	780,971	41,443	715,099	2,695,298
Upper Sioux Indian Community	78,233	74,809	3,563	0	156,605
White Earth	1,604,223	366,159	86,634	447,817	2,504,833
Total	$8,065,425	$3,673,435	$438,565	$2,920,597	$15,098,022

Source: Minnesota Department of Revenue

The state pays aid to counties with Indian gaming casinos, if the tribal government has a tax agreement with the state.

Under this aid program, 10 percent of the state share of the taxes paid under the agreement with the tribe are paid to the county government. If the tribe has casinos in two counties, the payments are divided equally between the two counties. The Mille Lacs Band has casinos in both Mille Lacs and Pine counties. As a result, each county receives 5 percent shares (one-half of the otherwise applicable 10 percent). This aid program was enacted in 1997; the legislature has made several changes in the program since it was enacted, in particular expanding the counties that qualified for aid.[71]

Table 9 below shows the amount of aid paid in 2001 by county. The largest payment, $230,775, went to Scott County. Four counties with tribal casinos, Beltrami, Pennington, Roseau, and St. Louis, did not receive payments because taxes paid under the agreements with the tribes did not generate revenues for the state.

Table 9
State Aid to Casino Counties
Calendar Year 2001

County	Tribe	County Payment
Carlton	Fond du Lac	$13,847
Cass	Leech Lake	43,621
Cook	Grand Portage	12,375
Itasca	Leech Lake	21,810
Mahnomen	White Earth	113,469
Mille Lacs	Mille Lacs	85,364
Pine	Mille Lacs	85,364
Redwood	Lower Sioux	61,844
St. Louis	Fond du Lac	13,844
Scott	Shakopee	230,775
Yellow Medicine	Upper Sioux	11,490
Total		$692,520

Source: Minnesota Department of Revenue

ENDNOTES

[1] *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980).

[2] *See Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991). In *Potawatomi Indian Tribe* the Court stated that the tribe had an obligation to collect the state cigarette excise tax for on-reservation sales to nonmembers. However, if it failed to do so, the tribe was immune from suit by the state to enforce this obligation to collect. In response to the state's complaint that it had a "right without a remedy," the Court suggested three options for the state to enforce its tax collection obligation: (1) seizing untaxed cigarettes off the reservation, (2) assessing wholesalers who sell unstamped cigarettes to Indian tribes, or (3) entering agreements with the tribe for collection of the tax.

Another option for cigarette excise taxes may be to use the federal Contraband Cigarette Trafficking Act, 18 United States Code, sections 2341 to 2346. Under this law, the federal government can seize cigarettes that do not bear state tax stamps. Unlike state government entities, federal agencies can enter on Indian lands to enforce legal process. *See Grey Poplars Inc. v. One Million Three Hundred Seventy-One Thousand One Hundred Assorted Brands of Cigarettes*, 282 F.3d 1175 (9th Cir. 2002) (holding the federal government can use the Contraband Cigarette Trafficking Act to seize cigarettes in Indian country for the failure to have state tax stamps on cigarettes for sale to nonmembers).

[3] *See*, e.g., *County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251 (1992) (Burke Act, one of several "allotment" acts, provided that allotted lands would be free from restrictions on taxation) and federal law authorizing state taxation of mineral production described in note 35.

[4] *See*, e.g., *Bryan v. Itasca County*, 426 U.S. 373 (1976), and the discussion in Part One, page 22. However, as with any canon of construction, it may be honored as much in the breach as in the observance. *See, e.g.*, *Chickasaw Nation v. United States*, 534 U.S. 84 (2001) where the Court stated, "Nonetheless, these canons do not determine how to read this statute. For one thing, canons are not mandatory rules. * * * And other circumstances evidencing congressional intent can overcome their force." The Court concluded based on legislative history and other reasons to construe the statute against the interests of the Indian tribe.

[5] There is no good source of data on the number or types of taxes imposed by tribes, either in Minnesota or nationally. The conventional wisdom is that tribes exercise the power to tax in very few circumstances. References to tribal taxes in the case law seem to be becoming more common. *See Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114, 118, *rehearing denied* 509 U.S. 933 (1993) (opinion notes tribe imposed tribal earnings or income tax on members and a motor vehicle excise tax); *Thompson v. Crow Tribe of Indians,* 962 P.2d 577 (Mont. 1998) (suit by non-Indian business to extinguish tribal tax liens barred by tribe's sovereign immunity); and cases cited and discussed in notes 21 and 62.

[6] *See* Indian Tribal Governmental Tax Status Act of 1982, Pub. L. No. 97-473, 96 Stat. 2608, codified as amended at 26 U.S.C. § 7871 and scattered sections of 26 U.S.C. This act treats Indian tribes like states and local governments for certain federal tax purposes, including tribal issuance of tax-exempt bonds to finance governmental projects. Under the act, tribal income, including commercial or business revenues of a tribe, is not subject to federal taxation.

[7] *See* note 6.

[8] If an Indian tribe undertakes to operate a business outside of Indian country, it may be subject to state taxation. *See Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973).

[9] *See* note 6.

[10] The "tribal member" is used through the tables to refer to natural individuals. Corporations with members as shareholders raise separate issues that are not addressed. Corporations generally are not allowed to be members of most tribes. However, some tribal governments provide for chartering of tribal corporations. Some courts have held that corporations, even though exclusively owned by tribal members, do not qualify for the tax immunities that would be available if the natural individuals who own the corporation carried on the activities. Other courts have extended the immunity to corporations that are exclusively owned by tribal members. *Compare Baraga Products, Inc. v. Commissioner of Revenue*, 971 F. Supp. 294 (D. Mich. 1997), *aff'd* 156 F.3d 1228 (6th Cir. 1998) (immunities do not apply to corporation) *with Flat Center Farms, Inc. v. State*, 49 P.3d 578 (Mont. 2002) (corporation wholly owned by tribal members and operating exclusively on reservation exempt from business license tax). It may make a difference if the tribe chartered the corporation. *Id.* at 586 (basis for concurring opinion).

[11] *See Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114, *rehearing denied* 509 U.S. 933 (1993) (state income tax may not be applied to earnings of tribal members who live in and earn the income in Indian country); *McClanahan v. Arizona Tax Commission*, 411 U.S. 164 (1973) (states lack power to tax income of tribal members earned on the tribe's reservation); *Bryan v. Itasca County*, 426 U.S. 373 (1976) (Pub. L. 280 is not a grant of regulatory or taxing jurisdiction over Indian reservations).

[12] States may assume jurisdiction over individual Indians once off the reservation. *See Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973) (absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the state). *Littlewolf v. Girard*, 607 N.W. 2d 464 (2000) (income from winning lottery ticket purchased on-reservation, but cashed off reservation held taxable). However, the income must be earned in the state that is imposing the tax. *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Zeuske*, 145 F. Supp. 2d 969 (D. Wis 2000) (income earned from personal service performed in another state not taxable).

[13] Tribes have always been assumed to have power to tax their own members. This power has generally not been exercised due to traditional Indian hostility to taxation and the poverty of a large part of the tribal populations.

[14] The state would seem unlikely to have any legal basis for asserting authority to tax this income, if it was derived from intangibles (e.g., stocks, bonds, and so forth). The usual basis for state authority to tax this income would be residency. *See* 2 Hellerstein & Hellerstein, *State Taxation* § 20.03 for a general discussion. However, the state could not make this assertion for a tribal member who is a resident of the reservation. *See Lac du Flambeau Band of Lake Superior Chippewa Indians v. Zeuske*, 145 F. Supp. 969 (D. Wis 2000) where the state sought to tax a member who was a resident of the reservation on earnings from another state. The court held that the state could not tax this income: "Congress has never authorized the states to tax tribal members living on reservations solely because of their residence within the taxing state; without such authorization, Wisconsin has no legal right to tax Jackson or any other tribal member similarly situated." *Id.* at 977. This principle would seem to apply with equal force to an effort to tax income for intangibles. The direct issue has apparently never been litigated. *See* H. Duncan, *Federation of Tax Administrators: Issues in State-Tribal Taxation* (report prepared for NCSL, State-Tribal Tax Issues Conference, Washington, D.C., Oct. 23, 1991). By contrast, passive income earned from real or tangible property located outside of the reservation would likely be sourced as off-reservation income and be taxable by the state in which the property is located under standard sourcing principles.

[15] *See* note 13.

[16] *Oklahoma Tax Commission v. Chickasaw Nation*, 115 S. Ct. 2214 (1995) (earnings of tribal members living outside of Indian country held subject to state taxation, even though employer was tribe). Specific treaties or federal laws may, however, provide exemptions. *Cf. Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114, *rehearing denied* 509 U.S. 933 (1993). *Brun v. Commissioner of Revenue,* 549 N.W.2d 91 (Minn. 1996), upheld the imposition of the Minnesota state income tax on on-reservation earnings of tribal members who lived off the reservation. *Cf. Jefferson v. Commissioner of Revenue,* 631 N.W. 2d 391 (2001), *cert. denied* 122 S.Ct. 1304, *rehearing denied* 122 S.Ct. 1955 (2002) (Indian Gaming Regulatory Act did not preempt state's power to tax per capita payments made from gaming operations to a member living outside of Indian country).

[17] *See* note 13.

[18] *See* note 13.

[19] *See* note 13.

[20] The U.S. Supreme Court has not addressed this issue, but it has been litigated in several state courts. In *Topash v. Commissioner of Revenue*, 291 N.W.2d 679 (Minn. 1980), the Minnesota Supreme Court held that an enrolled member of another tribe living on the reservation was exempt from state income tax on the income earned on the reservation. The court reserved the question whether this rule applied to an Indian who is not an enrolled member of any tribe. The continued validity of *Topash* is called into question by the decision in *Washington v. Confederated Tribes of the Colville Indian Reservation.* 447 U.S. 134 (1980). In *Colville* the Court held, in the context of sales, cigarette excise, and personal property taxes, that immunity from state taxes extended only to members of the tribe and that other Indians were subject to taxes to the same extent as non-Indians. This rule may apply in the context of individual income taxation, but it is not completely clear. The Minnesota Supreme Court has stated: "Our reasoning in *Topash* is specifically refuted by the Supreme Court's decision in *Colville* where the Court reached the opposite result. *See Colville, 447 U.S. at 161.* Because Supreme Court cases conflict with part of our decision in *Topash* we conclude that *Topash* is no longer controlling on this issue [the distinction between member and nonmember Indians]." *State v. RMH,* 617 N.W. 2d 55, 64 (2000). *RMH* involved enforcement of traffic laws under Public Law 280, but the reasoning of the case certainly calls into serious question the continued validity of *Topash* as applied to income taxes. The Wisconsin and New Mexico Supreme Courts have both concluded that the state may impose income taxes on nonmember Indians living on the reservation. *See New Mexico Taxation and Revenue Dept. v. Greaves* 864 P.2d 324 (1993); *LaRock v. Wisconsin Department of Revenue,* 621 N.W.2d 907 (2001).

[21] This specific question has not been addressed as it applies to income taxation. Although the courts have generally upheld tribes' power to tax, it seems unlikely in light of recent decisions that there are many circumstances

in which a tribe could impose income taxes on nonmembers. The Supreme Court has stated that the inherent sovereignty of tribes (and hence their power to tax) is limited to "their members and their territory." *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 651 (2001). In *Atkinson Trading Co.* the Court held that a tribal hotel occupancy tax could not be applied to a hotel within the borders of the reservation, but owned by a nonmember and located on non-Indian fee land. The tribe could extend its taxing power beyond its "territory and members" only if either of two conditions were met: (1) The nonmember had entered a consensual relationship with the tribe, such as commercial dealings, contracts, and so forth; or (2) the conduct "threatens or has some direct effect on the political integrity, the economic security, or health or welfare of the tribe." *Id.* at 651, citing *Montana v. United States*, 450 U.S. 544 (1981) (tribe had no jurisdiction over non-Indian hunting and fishing on non-Indian lands within the reservation when no significant tribal interest was shown). Prior decisions upholding tribal taxes on nonmembers appear to fit into these exceptions. *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980), upheld the imposition of a tribal cigarette tax on nontribal purchasers, indicating that federal courts had long acknowledged the power of tribes to tax non-Indians entering the reservation to engage in economic activity. The purchasers had consensual dealings with the tribe or tribal businesses. In *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982) the Court held that the power of exclusion was sufficiently broad to support a tribal severance tax applied to a non-Indian lessee who mined oil and gas on the reservation. Given this, it seems somewhat unlikely that the Court would uphold an income tax on nonmembers unless they at least lived on trust or tribal land. Moreover, it may also be necessary to have a "consensual relationship" with the tribe or a tribal business (e.g., work for the tribe or have a commercial relationship with the tribe or a tribal business). Since none of the Minnesota tribes impose income taxes, this is largely an academic issue at this time.

[22] *See* note 21.

[23] *See* note 21.

[24] *See* note 16.

[25] *See* note 21.

[26] *See* note 21.

[27] *See* note 21.

[28] *See* note 21.

[29] *See* note 21.

[30] Refers to enrolled members of the tribe, since the Supreme Court generally has treated Indians who are not enrolled members of the governing tribe as non-Indians for tax immunity purposes. *See Washington v. Confederated Tribes of the Colville Indian Reservation,* 447 U.S. 134 (1980). As discussed in note 10, the table entries are limited to describing the rules applicable to natural individuals. Corporations, whether organized under state law or tribal law, may raise special issues.

[31] This includes Indians who are not enrolled members of the tribe governing the reservation in which the transaction occurs. *See* note 30.

[32] "If the legal incidence of an excise tax rests on a tribe or tribal members for sales made inside Indian country, the tax cannot be enforced absent clear congressional authorization." *Oklahoma Tax Commission v. Chickasaw Nation,*115 S. Ct. 2214, 2220 (1995) (legal incidence of motor fuels tax on tribe and members living in Indian country invalid); *Oklahoma Tax Commission v. Sac & Fox Nation*, 508 U.S. 114, *rehearing denied* 509 U.S. 933 (1993) (same for motor vehicle excise tax); *Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463 (1976) (same).

[33] *See* note 32.

[34] *See Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980) (state may not collect sales and cigarette taxes from Indian retailers located on reservation land who sell to tribal members. However, state may collect taxes on sales to non-Indians and nonenrolled Indians residing on the reservation); *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991) (immunity

precluded the state from taxing sales of goods to tribal members, but the state was free to collect taxes on sales to nonmembers); *Oklahoma Tax Commission v. City Vending of Muskogee, Inc.*, 835 P.2d 97 (Okla. 1992) (state may validly collect cigarette tax from wholesaler who sold cigarettes to Indian retail outlets located on reservation land that resold the cigarettes to nontribal members as well as). In *Judybill Osceola v. Florida Dept. of Revenue*, 893 F.2d 1231 (11th Cir. 1990), *cert. denied,* 498 U.S. 1025 (1991) plaintiff Indian brought a class action suit seeking refunds of sales and franchise taxes collected by the state for goods and services purchased off the reservation but delivered or taken to her residence on the reservation. The Court found that the state's law provided a "plain, speedy, and efficient remedy for any alleged constitutional violations," and the Tax Injunction Act barred the plaintiff from challenging the state tax in federal court. The Court further declined to extend the act's instrumentality exception (which permits Indian tribes or tribal governing bodies to bring suit in federal court for unlawful state exactions) to individual Indians.

[35] Two federal laws, passed by Congress in 1924 and 1927, specifically consent to state taxation of certain mineral production on Indian reservation lands. *See* Act of May 29, 1924, ch. 210, 43 Stat. 244, codified at 25 U.S.C. § 398; Act of Mar. 3, 1927, ch. 299 § 3, 44 Stat. 1347, codified at 25 U.S.C. § 398c. These laws were, in effect, superseded by a 1938 mineral leasing act. Act of May 11, 1938, ch. 198, 52 Stat. 347, codified at 25 U.S.C. §§ 396a-396g. The Interior Department makes leases under the new law and interprets the earlier tax consents to be inapplicable. *See, generally,* Felix S. Cohen's *Handbook of Federal Indian Law* 408-10 (Washington: U.S. Government Printing Office, 1982) for a discussion of these issues.

[36] *Montana v. Blackfeet Tribe*, 471 U.S. 759 (1985) (in the absence of an explicit provision, a state may not tax royalties from mineral leases on trust land, and since the 1939 Indian Mineral Leasing Act contained no such authorization, the royalties after 1938 are not taxable by a state). *See also* discussion in note 35.

[37] *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989) (state may impose severance tax on non-Indian severance of oil and gas from reservation trust land).

[38] *See* note 32.

[39] *See* note 32.

[40] *Washington v. Confederated Tribes of the Colville Indian Reservation,* 447 U.S. 134 (1980). *See* discussion in note 34.

[41] *See White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980) (federal government's regulation of the harvesting of timber for tribal lands is comprehensive and sufficiently pervasive to preclude state taxes on non-Indian logging company. The Court also noted that the state's interest in raising revenue was weak because it provided no service benefiting the tribal roads, and the roads at issue were built, maintained, and policed exclusively by the federal government, the tribe, and its contractors).

[42] See *Ramah Navajo School Board. v. Bureau of Revenue*, 458 U.S. 832 (1982) (federal law preempts state tax on gross receipts of a non-Indian contractor hired by a tribe to build a school on the reservation, where the construction was federally funded, regulated, and subject to approval of the BIA).

[43] Although the authors found no cases specifically dealing with alcohol excise taxes, the rules applicable to cigarette excise taxes should apply as well. See the table entries above and notes 32 and 34.

[44] *Oklahoma Tax Commission v. Chickasaw* Nation, 115 S. Ct. 2214 (1995) (motor fuel tax where legal incidence on tribe is invalid). There has been extensive litigation over the taxation of motor fuels. The Court in *Chickasaw Nation* explicitly declined to decide whether the Hayden-Cartwright Act authorized state taxation of motor fuels, because the issue had not been briefed and argued in the lower courts. One state court has decided that the Act does not authorize state motor fuel taxation on Indian reservations. *Goodman Oil Co. of Lewiston v. Idaho State Tax Commission*, 28 P.3d 996 (Id. 2001), *cert. denied* 122 S. Ct. 1068 (2002). The state of Kansas has been involved in protracted litigation over its taxation of motor fuels sold on Indian reservations. The state initially lost under a holding, following *Chickasaw Nation*, that the legal incidence of its tax was on the retailer (i.e., the tribal business) and was therefore invalid. *Kaul v. State*, 970 P.2d 60 (Kan. 1998), *cert. denied* 528 U.S. 812 (1998). The Kansas Legislature amended the statute to shift the legal incidence of the tax to the distributor. The revised tax was

upheld against a challenge by tribes. *Sac and Fox Nation of Missouri v. Pierce*, 213 F. 3d 566 (10th Cir. 2000), *cert. denied* 531 U.S. 1144 (2001). However, efforts to enforce the revised Kansas tax against tribal businesses that have now entered the distribution business are in litigation. *Winnebago Tribe of Nebraska v. Stovall*, 216 F. Supp. 2d 1226 (D. Kan. 2002) (granting preliminary injunction to enjoin jeopardy assessments, seizure of tribal distributor's property, and so forth).

[45] *See* note 41.

[46] Tribal governments have always been assumed to have the power to tax their own members.

[47] *See Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980) (upholding imposition of a tribal cigarette tax on non-tribal purchasers).

[48] *See* note 46.

[49] This result follows from the reasoning of *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980).

[50] *See* note 46.

[51] *See* note 47.

[52] *See* note 46.

[53] *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989) (tribe may impose severance tax on non-Indian severance of oil and gas from reservation trust land; tribal and state taxing jurisdiction is concurrent); *Mustang Production Co. v. Harrison,* 94 F.3d 1382 (10th Cir. 1996), *cert. denied* 117 S. Ct. 1288 (1997) (tribal taxing authority extends to allotted, nontrust lands in Indian country).

[54] 502 U.S. 251 (1992).

[55] *Cass County v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103, 113 (1998). In the wake of *Cass County*, there has been litigation in both Montana and Michigan to determine whether contrary final decisions by lower courts rendered before *Cass County* continued to bind the local governments (granting property tax exemptions for tribal and individual Indian fee lands) under principles of *res judicata* or other theories. Both courts concluded these earlier decisions did not bind the state taxing authorities for future taxes. *Baraga County v. State Tax Commission*, 645 N.W.2d 13 (Mich. 2002); *Jefferson v. Big Horn County*, 4 P.3d 26 (Mont. 2000).

[56] This column lists the authority of either the state or its political subdivisions to impose property taxes within Indian country or on tribal property outside of Indian country. In Minnesota, the state tax applies only to commercial-industrial, public utility, and seasonal-recreational properties.

[57] *The New York Indians*, 72 U.S. 761 (1866); *The Kansas Indians*, 72 U.S. 737 (1866) (Indians are immune from state taxation, whether their land is held tribally or in allotments). The federal trust status of these lands also prevents state taxation.

[58] *See* note 57.

[59] This power flows from the tribe's authority to tax its own members. *See* note 13. Because ownership of trust land is in the federal government, the tax would need to be imposed on the members' beneficial interest in the allotted trust land. The tribe would be unable to enforce the tax by imposing a lien on the real property. The tax would be similar to the property tax that Minnesota imposes on private leasehold interests on federal lands. *See, e.g.,* Minn. Stat. §§ 272.01, subd. 2; 273.19 (2002).

[60] *Cass County v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103 (1998), held that fee lands, whether owned by the tribe or individual members, are generally subject to state ad valorem property taxes. Minnesota law contains a statutory exemption for Indian lands. This issue was not raised or litigated in *Cass County*. Minn. Stat. § 272.01, subd. 1, provides that "All real and personal property in this state * * * is taxable, except Indian lands * * *." The exact scope of this statutory exemption is not clear; the most plausible interpretation is that it means tribal and individual allotments of trust lands. It is possible that the exemption also extends to tribally owned land which is not

held by the federal government in trust. Individual treaties or federal laws may provide property tax exemptions for fee land that is alienable, however. *See, e.g., Oneida Indian Nation of New York v. City of Sherrill*, 145 F. Supp.2d 266 (D. N.Y. 2001) (holding fee simple land was exempt from property tax under treaties and a variety of federal acts). The authors are aware of no similar situation that would apply to tribal fee lands in Minnesota.

[61] *See* note 60.

[62] A tribe can likely tax fee land within the boundaries of its reservation, if a tribal member owns the land and jurisdiction to tax can, thus, be based on tribal membership.

[63] Although there is no definitive U.S. Supreme Court case, it seems unlikely that a tribe can tax fee lands owned by a nonmember. Recent Supreme Court cases clearly imply that the authority to tax nonmembers on fee land is narrowly limited. Two nontax cases state that tribes' civil authority (e.g., to regulate or adjudicate) over nonmember conduct on non-Indian fee land "exists only in limited circumstances." *Strate v. A-1 Contractors*, 520 U.S. 438, 445 (1997) (tribal court had no jurisdiction to adjudicate tort suit arising out of incident involving two nonmembers on a public highway that the Court concluded was fee land because an easement had been granted by the tribe to the state); *Montana v. United States*, 450 U.S. 544 (1981) (tribe did not have authority to regulate hunting and fishing by nonmembers on non-Indian fee land). In 2001, the Supreme Court extended this principle to limit the authority to impose sales tax on nonmembers on fee lands within the boundaries of the reservation. *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 651 (2001). The Court described the tribe's power to tax nonmembers as "sharply circumscribed." *Id.* at 650. At least one lower federal court has applied this principle to proscribe a tribal property tax on fee lands owned by nonmembers. *Big Horn County Electric Coop., Inc. v. Adams*, 219 F.3d 944 (9th Cir. 2000) (public utility property tax, easements granted over trust land to utility held to be fee lands, following *Strate* rule). Under *Montana* and *Atkinson Trading Co.*, the Court has held that taxation may be justified if one of two conditions is met: (1) the nonmember has a consensual relationship with the tribe or its member or (2) when the conduct threatens or has some direct effect upon "the political integrity, the economic security, or the health or welfare of the tribe." *Atkinson Trading Co. v. Shirley,* 532 U.S. at 651. Neither of these exceptions seems likely to have much application to property taxation of fee lands, given the narrow way in which the Court has described them. The Court has said the consensual relationship must have some nexus to the tax itself. *Id.* at 656. The hotel's status as an Indian trader in *Atkinson Trading Co.* did not satisfy the criterion. Nor did it matter in *Big Horn Electric* that half of the public utility's customers were tribal members or that the tribe had granted the easement for the power lines. *Big Horn County Electric Coop., Inc. v. Adams*, 219 F.3d at 948, 951. With regard to the second exemption, it is not clear how it will be applied in the context of taxation. In *Atkinson Trading Co.* it did not matter that the hotel and trading operation was a very large part of the reservation economy (employing 100 tribal members). The Court was concerned that allowing an exception for taxation because it is "necessary" to self-government would, in effect, allow the exception to swallow the general rule. *Atkinson Trading Co. v. Shirley*, 532 U.S. at 657, note 12. The *Big Horn County Electric* court was unpersuaded by the claim that eliminating the tax would "irreparably" harm the tribe's treasury and ability to provide services. It felt the tribe was free to enact a different tax that complied with *Montana*. *Big Horn County Electric Coop., Inc. v. Adams*, 219 F.3d at 951. It seems likely that circumstances in which a tribal property tax can be applied to fee lands owned by nonmembers are very limited, perhaps nonexistent.

[64] *See* note 63.

[65] *See* note 63.

[66] The Shooting Star Casino in Mahnomen has apparently not been transferred into trust because part or all of the casino is subject to a mortgage, which must be satisfied before the federal government will accept a transfer into trust.

[67] The federal law formally authorizing these operations was adopted in 1988. Minnesota compacts were negotiated shortly thereafter in 1989 and 1991.

[68] Meister, Alan. *The Economic Impact of Indian Gaming in the United States* (May 2002). Public data is not available on the actual revenues of these enterprises. These estimates were prepared from a variety of sources; it is unclear how accurate they are. Revenues are not publicly reported by the Minnesota tribes and it is unclear how

reliable the estimates are. The state Advisory Council on Gambling estimated in 1996 that gross wagering at tribal casinos was at least $2.5 billion. This a broader measure, however, than gross revenues.

[69] For more detail on the results of these surveys, *see* the House Research information brief *Update: Property Taxation of Indian Lands* (February 1999). This information brief shows the transfers into trust by property type, county, and market value.

[70] Laws 2001, 1st spec. sess., ch. 5, art. 7, § 5, codified at Minn. Stat. § 270.60, subd. 5 (2001 Suppl.).

[71] The original aid program was limited to "qualified counties." A county qualified, if it had below average personal income (80 percent or less than the state average) or if an above average share of the property in the county (more than 30 percent) was exempt from taxation. Four counties with casinos, Goodhue, Redwood, Scott, and St. Louis, did not meet these criteria. Goodhue County also would not have qualified because the tribe (Prairie Island) did not have a tax agreement with the state. The 1998 Legislature repealed the restriction to qualified counties, allowing payments to be made to any county. Laws 1998, ch. 389, art. 16, § 11. The qualification rules were retained to allocate payments, if the aid payments exceeded the $1.1 million limit on the aid appropriation. In 2002, the legislature completely repealed the limit on the appropriation.

Health and Human Services for Indians

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Chemical Dependency Treatment

The state Department of Human Services may enter into agreements with federally recognized tribal units to pay for chemical dependency treatment services and provide prevention, education, training, and community awareness programs.[1] A special American Indian Advisory Council assists the agency in formulating policies and procedures relating to chemical dependency and the abuse of alcohol and other drugs by Indians.[2] There is also a special allocation of funds for treatment of Indians within the Chemical Dependency Consolidated Treatment Fund.[3]

Civil Commitment

Red Lake Band of Chippewa Indians. A special provision in Minnesota's Civil Commitment Act authorizes contracts between the Commissioner of Human Services and the federal Indian Health Service, so that individuals committed as mentally ill, mentally retarded, or chemically dependent by a tribal court of the Red Lake Band of Chippewa Indians can be admitted to regional treatment centers for treatment. The act guarantees individuals all of the patient rights under Minnesota Statutes section 253B.03. In addition, the law requires that the commitment procedure utilized by the tribal court provide due process protections for proposed patients, similar to those under the state's civil commitment laws.[4]

Health Grants

Diabetes Prevention

The Department of Health receives a biennial appropriation to fund a school-based intervention program aimed at reducing the risk of diabetes among Indian school children in grades one through four. This program is called the WOLF Program (Work Out Low Fat). As directed by law, the Department of Health has also convened an American Indian Diabetes Prevention Advisory Task Force to advise the commissioner on adapting and implementing school curricula to provide information on diabetes prevention to these children.[5]

Health Care Programs

Indians are eligible for the Medical Assistance (MA), General Assistance Medical Care (GAMC), and MinnesotaCare programs, if they meet income, asset, and other eligibility requirements. State law governing these programs contains several provisions specific to the delivery of health care services to Indians.

Child and teen checkups. The Department of Human Services is allowed to contract with federally recognized Indian tribes to provide child and teen checkup administrative services under MA.[6]

Facility reimbursement. Indian Health Service facilities and health care facilities operated by a tribe or tribal organization funded under the Indian Self-Determination and Education Assistance Act (P.L. 93-638) are reimbursed for inpatient hospital services at rates set by the Indian Health Service, rather than at the MA rate. These facilities have the option of being reimbursed at the Indian Health Service rate, rather than the MA rate, for outpatient health care services.[7]

Prepaid health care. Indians enrolled in the Prepaid Medical Assistance Program (PMAP) or county-based purchasing are allowed to receive services on a fee-for-service basis from Indian Health Service facilities and health care facilities operated by a tribe or tribal organization.[8]

Provider participation. Health care professionals credentialed by a federally recognized Indian tribe to provide health care services to its members within a Minnesota reservation are classified as vendors of medical care for purposes of participating in the MA program.[9]

Grants to Eliminate Health Disparities

The Department of Health administers a grant program to reduce health disparities between American Indians and populations of color, as compared with whites. Health disparities to be targeted are immunization rates for adults and children; infant mortality rates; and morbidity and mortality rates from breast and cervical cancer, HIV/AIDS and sexually transmitted diseases, diabetes, and accidental injuries and violence. Some grant funds must be awarded to American Indian tribal governments. In addition, the commissioner must consult with the Indian Affairs Council and tribal governments in developing and implementing a plan to reduce health disparities in the targeted areas, and in determining the effectiveness of the program in reducing health disparities.[10]

Indian Health Grants

The Department of Health is authorized to provide grants to community health boards to establish, operate, or subsidize health clinics and services, in order to provide health care services to Indians residing off of reservations.[11]

Tobacco Use Prevention Grants

The Department of Health distributes funds from the Tobacco Use Prevention and Local Public Health Endowment Fund as grants for local and regional projects to prevent tobacco use among youth and reduce other, related high-risk youth behaviors. Indian tribes are specifically designated as eligible to apply for these grants.[12]

Health-Related Occupations: Licensing Exceptions

State law exempts members of certain health-related occupations from specified state licensure requirements if they practice according to standards established by tribes or are employed by tribes. Alcohol and drug counselors who are licensed to practice alcohol and drug counseling according to standards established by federally recognized tribes and are practicing under tribal jurisdiction are exempt from state licensing requirements, but they are afforded the same rights and responsibilities as counselors licensed by the state.[13] In addition, until July 1, 2004, a person practicing alcohol and drug counseling under tribal jurisdiction who wants to be licensed may obtain a license without having to satisfy the written case presentation and oral examination requirements, if other requirements are met.[14] Licensure is voluntary for social workers who are employed by federally recognized tribes.[15] Licensure is also voluntary for marriage and family therapists who are employed by federally recognized tribes.[16]

Indian Child Welfare Laws

The Federal Indian Child Welfare Act

In 1978, Congress passed the federal Indian Child Welfare Act.[17] The statute restricts state courts' powers to place Indian children in nonparental custody, whether the placement is voluntary or involuntary on the part of the parents. The act covers foster care placement, termination of parental rights, preadoptive placement, and the adoption of Indian children by non-Indians. The intent of the act is to preserve the cultural identity of Indian children and to promote the stability and security of Indian tribes and families. The act does not apply to custody disputes between parents, such as in a divorce, though it has been held to apply to intra-family custody disputes between parent and grandparent.[18] The act also does not apply to placements for juvenile delinquency where the delinquent act would be a crime if committed by an adult.

The act requires notice to tribes and Indian custodians of an involuntary, covered out-of-home placement of an Indian child. If there is a tribal court, the court may take jurisdiction in the matter. If there is a tribal court and the child lives on the reservation, the matter must be transferred to tribal court. In other cases the tribe may intervene in a matter being conducted in state court.

Whether the placement is voluntary or involuntary, the court must find that "active efforts" have been made to keep the child with a parent. This is higher than the "reasonable efforts" standard that applies in cases involving placement of non-Indian children. If a child placement is involuntary, a witness expert in Indian child placement issues must be consulted on the question of possible serious emotional or physical damage to the child from the existing or proposed placement. The burden of proof for involuntary foster care is clear and convincing evidence. The standard of proof for involuntary parental rights termination is "beyond a reasonable doubt," the criminal law standard, which is higher than the standard applied in parental rights terminations involving non-Indians.

Finally, the act contains a preference for placing the child with extended family members, other members of the child's tribe, or other Indian families, if the child cannot remain with a parent.

The State Indian Family Preservation Act

In 1985, Minnesota adopted a state version of the federal Indian Child Welfare Act, which is known as the Minnesota Indian Family Preservation Act.[19] The state law was intended to call the controlling federal law to the attention of state courts and professionals in child placement proceedings. It also enacted some more stringent requirements than the federal law. For example, the state statute requires notice to the tribe whenever a child covered by the Indian Child Welfare Act is being placed outside the home, not just when the placement is involuntary, as federal law provides. The state law provides funding in the form of direct grants to Indian tribes, Indian organizations, and tribal social services agency programs located off-reservation for various Indian family preservation and child welfare services.

Child Welfare Funding

Counties receive funds for child welfare services through the Minnesota Family Preservation Act.[20] A special provision of the act authorizes special grants for placement prevention and family reunification programs for American Indian and minority children.[21]

Indian Elders

The Minnesota Board on Aging maintains an Indian elder position for the purpose of coordinating efforts with the National Indian Council on Aging and working toward development of a comprehensive statewide service system for Indian elders.[22]

Ombudsperson for Families

Legislation which passed in 1991 established an ombudsperson's office to operate independently from, but in collaboration with, the Indian Affairs Council. The ombudsperson for families is specifically charged with the duty of monitoring state and local agency compliance with all laws governing child protection and placement, as they affect children of color.[23]

Welfare Reform

Federal

Federal welfare reform legislation enacted in 1996 (Pub. L. 104-193) replaced Aid to Families with Dependent Children (AFDC) with a block grant program for states called TANF (Temporary Assistance for Needy Families). Under this legislation, federally recognized Indian tribes are eligible to apply to the U.S. Department of Health and Human Services to create and administer welfare programs under the TANF block grant. If a tribal plan is approved, tribes receive federal funds out of the state's federal TANF block grant allocation to implement separate tribal TANF programs. In structuring a separate TANF program, tribes have the flexibility to establish their own work participation rates and time limits for receipt of benefits which may differ from the federal requirements with which states must comply.

State

In 1997, Minnesota enacted welfare reform legislation to implement the requirements of TANF. Minnesota's reform program is the Minnesota Family Investment Program (MFIP). One provision of the MFIP legislation requires county governments to cooperate with tribal governments in implementing MFIP.[24] Another provision of the legislation authorizes the Commissioner of Human Services to enter into agreements with tribal governments to provide employment and training services.[25] One Minnesota tribe, the Mille Lacs Band of Ojibwe, applied for and received federal approval to operate a separate tribal TANF program. The program began operating January 1, 1999, in a six-county area covering Aitkin, Crow Wing, Morrison, Benton, Mille Lacs, and Pine counties. It serves TANF-eligible families where one or more of the eligible adults is a member of the band.

ENDNOTES

[1] Minn. Stat. § 254A.031.

[2] Minn. Stat. § 254A.035.

[3] Minn. Stat. § 254B.09.

[4] Minn. Stat. § 253B.212.

[5] Laws 1997, ch. 203, art. 1, § 3, subd. 2.

[6] These services are also known as early and periodic screening, diagnosis, and treatment services (EPSDT). Minn. Stat. § 256B.04, subd. 1b.

[7] Minn. Stat. §§ 256.969, subd. 16, and 256B.0625, subd. 34.

[8] Minn. Stat. § 256B.69, subd. 26.

[9] Minn. Stat. § 256B.02, subd. 7.

[10] Minn. Stat. § 145.928.

[11] Minn. Stat. § 145A.14, subd. 2.

[12] Minn. Stat. § 144.396.

[13] Minn. Stat. § 148C.11, subd. 3, para. (a).

[14] Minn. Stat. § 148C.11, subd. 3, para. (c).

[15] Minn. Stat. § 148B.28, subd. 5.

[16] Minn. Stat. § 148B.38, subd. 3.

[17] 25 U.S.C. §§ 1901 to 1963.

[18] *In re Custody of A.K.H.,* 502 N.W.2d 790 (Minn. App. 1993), *rev. denied* (1993).

[19] Minn. Stat. §§ 260.751-260.835.

[20] Minn. Stat. ch. 256F.

[21] Minn. Stat. § 256F.08.

[22] Minn. Stat. § 256.975, subd. 6.

[23] Minn. Stat. §§ 257.0755-257.0769.

[24] Minn. Stat. § 256J.315.

[25] Minn. Stat. § 256J.645.

Education Laws Affecting Indian Students

by Lisa Larson (651-296-8036) and Kathy Novak (651-296-9253)

State Laws

American Indian Education Act of 1988[1]

The purpose of the act is to provide Indian people with education programs that meet their unique education needs. To that end, the act encourages districts and schools to provide elementary and secondary language and cultural education programs that include: instruction in American Indian language, literature, history, and culture; staff support components; research projects examining effective communication methods; personal and vocational counseling; modified curriculum, instruction, and administrative procedures; and cooperative arrangements with alternative schools that integrate American Indian culture into their curricula.

The act directs the Board of Teaching to grant to eligible individuals teaching licenses in American Indian language and cultural education. Districts may seek exemptions from the licensing requirement if compliance would make it difficult to hire qualified teachers. The act requires districts and schools that provide a language and cultural education program to try to hire persons who share the culture of the Indian children enrolled in the program. Indian schools and school districts in which there are ten or more enrolled Indian children must consult with a parent committee regarding curriculum that affects Indian education and the educational needs of the students.

Under the act, a school district with at least ten enrolled Indian children may retain an Indian teacher who is a probationary teacher or who has less seniority than other, non-Indian teachers the district employs when placing teachers on unrequested leaves of absence.[2]

Pine Point School

The Minnesota Legislature gave the White Earth Reservation Tribal Council control of the K-8 Pine Point public school. The school is to provide Indian children with a supportive educational environment that integrates Ojibway culture and history into the school's curriculum and teaching practices. The tribal council has the same powers and duties as a school board. It may cooperate with other school districts to purchase or share education-related services. The school is subject to the same standards for instruction as other public schools. It is eligible to receive federal aids and grants, as well as the same aids, revenues, and grants that local school districts receive.[3]

State Indian Scholarships and Grants

The legislature has appropriated money for Indian scholarships and grants. The amounts for fiscal years 2002 and 2003 are displayed in the table.

Indian Education Programs
Fiscal Years 2002 and 2003 Appropriations

Program	Amount	
	2002	2003
Indian Scholarships (Minn. Stat. § 124D.84)	$1,875,000	$1,875,000
Indian Teacher Preparation Grants: Eligible recipients include the University of Minnesota at Duluth and the Duluth school district; Bemidji State University and the Red Lake school district; Moorhead State University and a school district within the White Earth Reservation; and Augsburg College and the Minneapolis and St. Paul school districts (Minn. Stat. § 124D.63)	$190,000	$190,000
Tribal Contract Schools (Minn. Stat. § 124D.83)	$2,147,000	$2,221,000
Early Childhood Programs at Tribal Schools (Minn. Stat. § 124D.83, subd. 4)	$68,000	$68,000
Success for the Future Grants (Minn. Stat. § 124D.81)	$1,924,000	$1,987,000
TOTAL	$6,204,000	$6,341,000

Free Tuition at University of Minnesota, Morris [4]

State law requires admission of qualified American Indian students to the Morris branch of the University of Minnesota free of tuition charges and on an equal basis with white students. This requirement dates back to 1909 when Minnesota accepted the Morris Indian school lands from the United States.[5] Under the terms of the transfer, the property must remain a school that admits American Indian students without charge and on the same basis as white students. The Morris school became a campus of the University of Minnesota in 1960. In 1961, the legislature enacted this statutory provision to continue the guarantee of free tuition and equal access for American Indian students.

In the 2002-2003 school year, 125 American Indian students enrolled at the University of Minnesota, Morris—121 are undergraduates in degree programs. The college requires an American Indian tribe to verify the American Indian status of all students who receive a tuition waiver.

Unique Needs and Abilities of American Indian People [6]

State law requires public post-secondary governing boards and institutions to have American Indian advisory committees, recognize student competency in American Indian languages, and recognize competency in American Indian culture when hiring faculty for instructional and noninstructional American Indian courses. Under this law, if ten or more American Indian students make a request, the governing board of the University of Minnesota or the Minnesota State Colleges and Universities must establish an American Indian advisory committee in consultation with tribal representatives. This law also requires public post-secondary institutions to provide opportunities for assessment, placement, or post-secondary credit for students proficient in American Indian languages. Finally, the law allows American Indian individuals who demonstrate knowledge and skills in American Indian language, culture, and history to provide instruction in these subjects.

The regents of the University of Minnesota adopted a board policy requiring each campus of the university that enrolls American Indians to establish an American Indian advisory board. The university established the President's American Indian advisory committee. The university also offers a bachelor of arts in American Indian studies through the College of Liberal Arts. Students who are proficient in a native language can take a foreign language test that, if passed, satisfies two years of college language requirements.

In the Minnesota State Colleges and Universities system (MnSCU), six of the seven state universities and one college have established an American Indian advisory committee.[7] The campuses report that American Indian students do not request credit for American Indian language skills.

Tribal Colleges

Tribal colleges have been established over the last 35 years to respond to the higher education needs of American Indians. Three of the 28 tribally chartered colleges are located in Minnesota.

Name	Location	Established	Chartering Tribe	Accreditation Status
Fond du Lac Tribal and Community College	Cloquet	1987	Fond du Lac Band of Superior Chippewa	Fully Accredited
Leech Lake Tribal College	Cass Lake	1990	Leech Lake Tribal Council	Candidate for Accreditation
White Earth Tribal and Community College	Mahnomen	1997	White Earth Reservation Tribal Council	Pre Candidate for Accreditation

Since 1994, Fond du Lac has been both a tribal college and a community college. The college is jointly governed, through a memorandum of understanding, by a tribal board of directors and the board of trustees of the MnSCU system.

Tribal colleges are also recognized in federal law. Since 1978, federal law has provided grants and endowment funding for operating and improving tribally controlled colleges or universities.[8] In 1994, the federal government gave land-grant status to 29 tribal colleges including Fond du Lac and Leech Lake. The federal action provided funding for the tribal colleges in place of the land grants conveyed to the original land-grant colleges under the first Morrill Act.[9]

Federal Laws

Federal Indian Grants and Contracts

Under the Indian Self-Determination and Education Assistance Act,[10] Indian tribes in Minnesota contracted with the federal government to establish schools on the Leech Lake, White Earth, Fond du Lac, and Mille Lacs Indian Reservations. These schools are designed to provide Indian students with educational services that are more responsive to the needs and desires of the Indian communities. Under Title VII of the Elementary and Secondary Education Act,[11] the federal government provides grants to local educational agencies and tribal schools for elementary and secondary programs designed to meet the unique needs of Indian students so that the students can achieve the same challenging state performance standards expected of all students. Funding also is available for programs that encourage Indian students to acquire a higher education or reduce the number of Indian elementary and secondary student dropouts and for fellowships to Indian students who demonstrate outstanding academic performance, leadership, and commitment to the Indian community. Under the Public Health and Welfare Act,[12] the federal government assists tribal contract schools with public health services.

Constitutional Issues

Constitutional issues affecting elementary and secondary Indian students and teachers often involve questions of: (1) whether the Equal Protection Clause of the 14th Amendment permits states or school districts to provide preferential treatment to Indians in the form of education or employment-related benefits; and (2) whether a school district's distinction between Indian and non-Indian students is a political or racial classification.

The Equal Protection Clause and preferential treatment of Indians. The U.S. Supreme Court held that federal programs designed to meet Indians' needs may withstand an equal protection challenge[13] so long as the programs are "tied rationally to the fulfillment of Congress's unique obligation toward Indians." The Court rejected claims of racial discrimination arising out of an employment preference for Indians at the BIA.[14] The Court premised its decision on "the unique legal status of Indian tribes under federal law and upon the plenary power of Congress, based on a history of treaties and the assumption of a 'guardian-ward' status, to legislate on behalf of federally recognized Indian tribes." The Court considered

the government's preference political in nature because it was "granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities. . . ." The Court regards federal regulation of Indian tribes as a permissible form of governance of once-sovereign political communities.

Arguably, there are two distinctions that can be made between federal and state regulation of Indian tribes. First, state and local governments do not enjoy the same trust relationship with Indians as that used to justify federal laws and regulations favoring Indians. Second, the federal laws examined by the Supreme Court affected Indians who were members of federally recognized tribes and Indians who lived on or near reservations. In contrast, a state, local school district, or school may be providing education or employment-related benefits to Indians in an urban setting where the benefits do not necessarily turn on Indians' tribal relationship.

The Equal Protection Clause and separate Indian education.[15] It is unclear whether an Indian classification that a school or school district uses to provide educational benefits to Indian students is a racial or a political classification under the Equal Protection Clause. If it is a racial classification, a court will consider it suspect, subject it to strict scrutiny, and most likely invalidate it. For example, some might argue that separating Indian students for educational purposes is unrelated to tribal matters and is therefore directed toward a racial group. Under a strict scrutiny analysis, if Indian children's needs can be met by means other than promoting separation in schools, the state cannot justify an Indian classification.[16] Others might argue that a state may enact protective measures to meet the educational needs of Indian children without violating the Equal Protection Clause. When the classification of Indian is based on quasi-sovereign tribal interests[17] and is intended to benefit Indian students, it is a "benign" classification subject to less judicial scrutiny.

Minnesota's School Desegregation/Integration Rule [18]

Certain American Indian students are exempt from the requirements under Minnesota Rules, chapter 3535, governing equal opportunity in schools. The exemption appears to be based on students' political status defined by the federal government's relationship with American Indian tribes or through an agreement with an American Indian tribal government. For purposes of developing a school or school district desegregation plan under the state rules, the definition of segregation does not include a concentration of enrolled American Indian students that (1) exists to meet the students' unique educational needs through federal education programs and (2) is voluntary on the part of the parents or students or both.[19] However, a district containing a racially identifiable school or a racially isolated district must develop a plan to improve integration in the school or district, and must include in the plan programs that provide instruction about different cultures, including options such as American Indian language and culture programs that are uniquely relevant to American Indian students.[20]

ENDNOTES

[1] Minn. Stat. §§ 124D.71-124D.82.

[2] Minn. Stat. § 124D.77. This measure may violate either the Equal Protection Clause of the 14th Amendment

or Title VII of the Civil Rights Act. Courts may find more acceptable those employment measures that impose a diffuse burden on many individuals, such as hiring goals or affirmative recruitment plans, than measures that impose a heavy burden on a few individuals, such as race conscious layoffs.

[3] Minn. Stat. § 128B.03.

[4] Minn. Stat. § 137.16.

[5] Laws 1909, ch. 184.

[6] Minn. Stat. § 135A.12.

[7] The MnSCU campuses with American Indian advisory committees are Bemidji State University, Itasca Community College, Metropolitan State University, Minnesota State University, Mankato, Minnesota State University, Moorhead, Southwest State University, and St. Cloud State University.

[8] 25 U.S.C. §§ 1801-1852.

[9] 7 U.S.C. § 301 note.

[10] 25 U.S.C. § 450 *et seq.*

[11] 20 U.S.C. § 7401 *et seq*.

[12] 42 U.S.C. § 2004b.

[13] An equal protection challenge arises when a government's action distinguishes between groups of people based upon a group's characteristics. Courts use one of two legal standards to decide whether the distinction, or "classification," is constitutionally permissible: a "compelling state interest" standard that triggers strict judicial scrutiny and places a heavy burden on a government to justify a classification; and a "rational basis" standard that places a lesser burden on government.

[14] *Morton v. Mancari*, 417 U.S. 535 (1974).

[15] For further discussion, see House Research policy brief *Native American Education: Separate or Integrated?* (June 1990).

[16] In *Booker v. Special School District No. 1*, 351 F.Supp. 799 (D. Minn. 1972), a federal district court found that the Minneapolis school board, through discretionary decisions, "had acted intentionally to maintain or increase racial segregation in the schools." The court ordered the district to implement a desegregation/integration plan. The school district asked the court to modify its desegregation order, in part by permitting a high concentration of Indian students in one or a limited number of schools. The court denied the board's request, concluding that the district's classification "has nothing to do with tribal membership or any quasi-sovereign interests of particular tribal groups or reservations."

[17] A classification based simply on an individual's "Indian" status likely would be invalidated under the Equal Protection Clause. Such a broad classification may include Indians who do not come within the unique jurisdiction of federal law: Indians belonging to a tribe that has no trust relationship with the federal government; a tribe that Congress has terminated; or Indians who have severed tribal ties.

[18] Minn. Rules, ch. 3535.

[19] Minn. Rules, part 3535.0110, subp. 9, para. B.

[20] Minn. Rules, parts 3535.0160, subp. 3, para. B, and 3535.0170, subp. 6.

Appendices

Appendix I

Population of American Indian and Alaska Native Persons

American Indian and Alaska Native Persons 2000 Minnesota and County Populations				
County	**Total population**	**Indian population, alone or in combination***	**Indians as a % of county population**	**% of total MN Indian population**
Aitkin	15,301	428	2.8%	0.5%
Anoka	298,084	3,824	1.3%	4.7%
Becker	30,000	2,853	9.5%	3.5%
Beltrami	39,650	8,632	21.8%	10.6%
Benton	34,226	277	0.8%	0.3%
Big Stone	5,820	43	0.7%	0.1%
Blue Earth	55,941	326	0.6%	0.4%
Brown	26,911	85	0.3%	0.1%
Carlton	31,671	1,994	6.3%	2.5%
Carver	70,205	283	0.4%	0.3%
Cass	27,150	3,431	12.6%	4.2%
Chippewa	13,088	191	1.5%	0.2%
Chisago	41,101	343	0.8%	0.4%
Clay	51,229	1,027	2.0%	1.3%
Clearwater	8,423	818	9.7%	1.0%
Cook	5,168	481	9.3%	0.6%
Cottonwood	12,167	57	0.5%	0.1%
Crow Wing	55,099	653	1.2%	0.8%
Dakota	355,904	2,763	0.8%	3.4%
Dodge	17,731	76	0.4%	0.1%
Douglas	32,821	151	0.5%	0.2%
Faribault	16,181	68	0.4%	0.1%
Fillmore	21,122	54	0.3%	0.1%
Freeborn	32,584	138	0.4%	0.2%
Goodhue	44,127	567	1.3%	0.7%
Grant	6,289	38	0.6%	0.0%
Hennepin	1,116,200	18,129	1.6%	22.4%
Houston	19,718	68	0.3%	0.1%

* Note: For the 2000 census, the federal government changed the standards governing the categories used to collect and present federal data on race and ethnicity. In addition to the five race groups (White, Black or African American, American Indian and Alaska Native, Asian, and Native Hawaiian and other Pacific Islander), the standards permit respondents to select one or more races.

County	Total population	Indian population, alone or in combination	Indians as a % of county population	% of total MN Indian population
Hubbard	18,376	512	2.8%	0.6%
Isanti	31,287	348	1.1%	0.4%
Itasca	43,992	1,968	4.5%	2.4%
Jackson	11,268	36	0.3%	0.0%
Kanabec	14,996	210	1.4%	0.3%
Kandiyohi	41,203	204	0.5%	0.3%
Kittson	5,285	33	0.6%	0.0%
Koochiching	14,355	432	3.0%	0.5%
Lac qui Parle	8,067	28	0.3%	0.0%
Lake	11,058	143	1.3%	0.2%
Lake of the Woods	4,522	85	1.9%	0.1%
Le Sueur	25,426	151	0.6%	0.2%
Lincoln	6,429	23	0.4%	0.0%
Lyon	25,425	148	0.6%	0.2%
McLeod	10,155	67	0.7%	0.1%
Mahnomen	5,190	1,894	36.5%	2.3%
Marshall	21,802	65	0.3%	0.1%
Martin	34,898	154	0.4%	0.2%
Meeker	22,644	76	0.3%	0.1%
Mille Lacs	22,330	1,172	5.2%	1.4%
Morrison	31,712	198	0.6%	0.2%
Mower	38,603	158	0.4%	0.2%
Murray	9,165	53	0.6%	0.1%
Nicollet	29,771	152	0.5%	0.2%
Nobles	20,832	123	0.6%	0.2%
Norman	7,442	205	2.8%	0.3%
Olmsted	124,277	685	0.6%	0.8%
Otter Tail	57,159	474	0.8%	0.6%
Pennington	13,584	174	1.3%	0.2%
Pine	26,530	853	3.2%	1.1%
Pipestone	9,895	212	2.1%	0.3%
Polk	31,369	632	2.0%	0.8%
Pope	11,236	48	0.4%	0.1%
Ramsey	511,035	7,892	1.5%	9.7%
Red Lake	4,299	90	2.1%	0.1%
Redwood	16,815	640	3.8%	0.8%
Renville	17,154	137	0.8%	0.2%

County	Total population	Indian population, alone or in combination	Indians as a % of county population	% of total MN Indian population
Rice	56,665	435	0.8%	0.5%
Rock	9,721	68	0.7%	0.1%
Roseau	16,338	308	1.9%	0.4%
St. Louis	200,528	5,659	2.8%	7.0%
Scott	89,498	1,090	1.2%	1.3%
Sherburne	64,417	582	0.9%	0.7%
Sibley	15,356	75	0.5%	0.1%
Stearns	133,166	742	0.6%	0.9%
Steele	33,680	110	0.3%	0.1%
Stevens	10,053	123	1.2%	0.2%
Swift	11,956	98	0.8%	0.1%
Todd	24,426	203	0.8%	0.3%
Traverse	4,134	121	2.9%	0.1%
Wabasha	21,610	102	0.5%	0.1%
Wadena	13,713	126	0.9%	0.2%
Waseca	19,526	166	0.9%	0.2%
Washington	201,130	1,585	0.8%	2.0%
Watonwan	11,876	53	0.4%	0.1%
Wilkin	7,138	66	0.9%	0.1%
Winona	49,985	248	0.5%	0.3%
Wright	89,986	569	0.6%	0.7%
Yellow Medicine	11,080	272	2.5%	0.3%
Tribal territory*	35282	18397	52.1%	22.7%
State Total	4,919,479	81,074	1.6%	100.0%

*The population of these areas is also counted in the county totals.

Source: 2000 census

Appendix II

Demographic and Other Information about Minnesota's Indian Reservations

This appendix includes information and certain demographic data about Minnesota's 11 federally recognized Indian reservations. Following is a brief description of certain terms and concepts used in this appendix.

Minnesota Chippewa Tribe Member: Indicates whether the reservation is a member of the Minnesota Chippewa Tribe. The Minnesota Chippewa Tribe is a federally recognized tribal government that provides certain services and technical assistance to its six member reservations.

Adjacent County: Lists the counties in which the reservation is located.

Tribal Enrollment (1999): Includes tribal enrollment information from the 1999 Bureau of Indian Affairs (BIA) Indian Labor Force Report.

Tribal Land/Individual Land/Government Land: Lists acreage information from the 2000 BIA Trust Acreage Report.

Top Three Industries on Reservation: Lists the three highest percentage industries or occupations reported in the 2000 census by the employed civilian population age 16 years and over living on a reservation.

Tribal Colleges or Public Colleges and Universities in Adjacent Counties: Lists tribal colleges, public colleges, and universities located on a reservation or in an adjacent county.

Demographic Information: Provides information from the 2000 census about a reservation, the counties adjacent to the reservation, and the state, including:

Population: The total population for the geographical area; the American Indian and Alaska Native population for the geographical area, alone or in combination with another race; the percentage of the geographical area's Minnesota Indian population; and the percentage of the geographical area's Indian population.

Age: Data on the age of the geographical area's population.

Income: The number of families in each geographical area; median family income (1999) and per capita income (1999) for the geographical area; and the number and percentage of individuals in poverty status (1999) in the geographical area.

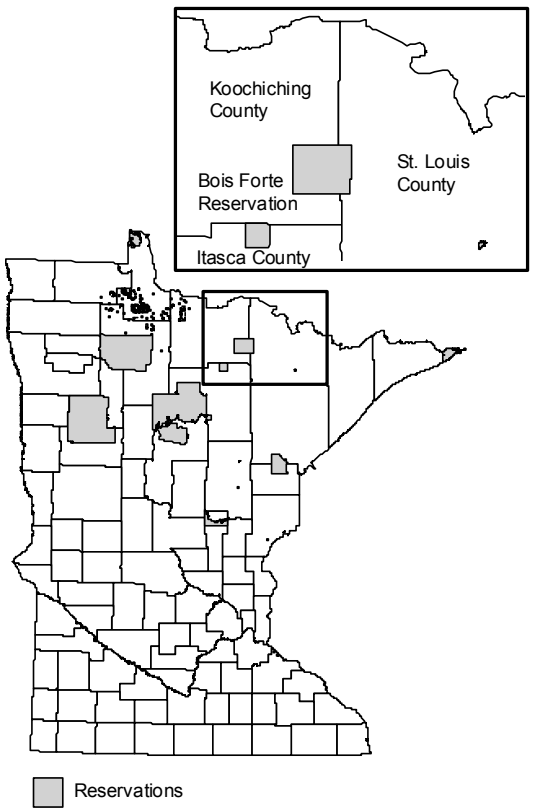
Public assistance: The total number of households and number and percentage of households that receive public assistance in the geographical area (1999).

Labor: Information on the population of persons age 16 and over who are in the civilian labor force in each geographical area, and the percentage of persons who are employed or unemployed in each geographical area.

Education: Information about the educational attainment of the population age 25 and over in each geographical area, including the percentage of the population with no high school diploma, a high school diploma only, some college with no degree or an associated degree, and a bachelor's or graduate degree.

Bois Forte

(Nett Lake)



Minnesota Chippewa Tribe Member

Post Office Box 16
Nett Lake, MN 55772
218-757-3261
218-757-3312 (Fax)

Adjacent Counties: Itasca, Koochiching, and St. Louis counties

Nearby Cities: Big Falls, Cook, Little Fork

Tribal Enrollment (1999): 2,767

Tribal Land: 31,624 acres

Individual Land: 12,160 acres

***Government Land*:** 5 acres

Casino: Fortune Bay Resort Casino
1430 Bois Forte Road
Tower, Minnesota 55790
800-555-1714
800-992-7529

Top Three Industries on Reservation: Educational, health, and social services (25%); public administration (15%); arts, entertainment, recreation, accommodation, and food services (14%)

Public Colleges and Universities in Adjacent Counties:

Hibbing Community College
Hibbing (St. Louis County)

Lake Superior College Community and Technical College
Duluth (St. Louis County)

Northeast Higher Education District
Community and Technical College
Eveleth, Virginia, Ely (St. Louis County)

Northeast Higher Education District
Rainy River Community College
International Falls (Koochiching County)

Northeast Higher Education District
Community and Technical College
Grand Rapids (Itasca County)

University of Minnesota-Duluth
Duluth (St. Louis County)

Demographics

Population

	Total Population	American Indian alone or in combination	% of MN Indian Population	Indian as Percent of Total Population
Bois Forte	657	470	0.6%	71.5%
Adjacent Counties	258,875	8,059	9.9%	2.8%
State	4,919,479	81,074	100.0%	1.7%

Age

	Under Age 18	% Population under Age 18	Age 18 to 64	% Population Age 18 to 64	Age 65 and over	% Population Age 65 and over
Bois Forte	222	33.8%	378	57.5%	57	8.7%
Adjacent Counties	58,983	22.8%	157,654	60.9%	42,238	16.3%
State	1,286,894	26.2%	3,038,319	61.8%	594,266	12.1%

Income

	Total Families	Median Family Income 1999	Per Capita Income 1999	Individuals in Poverty Status, 1999	% Individuals in Poverty Status, 1999
Bois Forte	177	$32,917	$11,790	201	30.6%
Adjacent Counties	68,261	$46,360	$18,777	29,481	11.4%
State	1,262,953	$56,874	$23,198	380,476	7.7%

Public Assistance

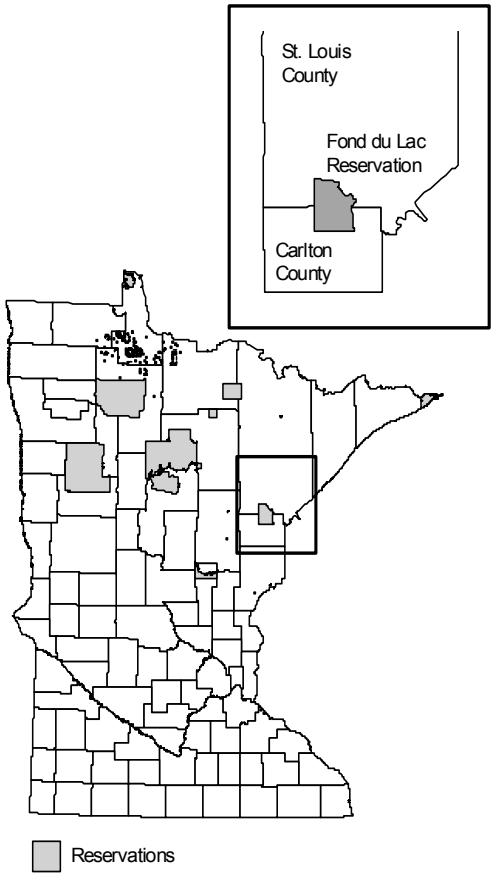
	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Bois Forte	246	44	17.9%
Adjacent Counties	106,595	5,117	4.8%
State	1,896,209	65,144	3.4%

Labor

	Population Age 16 and over	% Population Age 16 and over in Civilian Labor Force	% Population Age 16 and over in Civilian Work Force Employed	% Population Age 16 and over in Civilian Work Force Unemployed
Bois Forte	500	63.0%	58.0%	5.0%
Adjacent Counties	207,680	61.8%	57.7%	4.2%
State	3,781,756	71.1%	68.2%	2.9%

Education

	Population Age 25 and over	% Population Age 25 and over – No High School Diploma	% Population Age 25 and over – High School Graduate only	% Population Age 25 and over – some college, no degree or associated degree	% Population Age 25 and over – Bachelor's or Graduate Degree
Bois Forte	400	20.0%	39.5%	29.3%	11.3%
Adjacent Counties	172,731	13.4%	32.4%	33.5%	20.7%
State	3,164,345	12.1%	28.8%	31.7%	27.4%



Fond du Lac

Minnesota Chippewa Tribe Member

1720 Big Lake Road
Cloquet, MN 55720
218-879-4593
218-879-4146 (Fax)

Adjacent Counties: Carlton and St. Louis counties

Nearby Cities: Cloquet and Duluth

Tribal Enrollment (1999): 3,847

Tribal Land: 5,633.89 acres

Individual Land: 17,268.34 acres

***Government Land*:** 0 acres

Casinos: Black Bear Casino
1785 Highway 210, P.O. Box 777
Carlton, MN 55790
888-771-0777

Fond du-Luth Casino
129 East Superior Street
Duluth, MN 55802
800-873-0280

Top Three Industries on Reservation: Manufacturing (20%); education, health, and social services (19%); arts, entertainment, recreation, accommodation, and food services (18%)

Tribal College:
Fond du Lac Tribal and Community College
Cloquet (Carlton County)

Public Colleges and Universities in Adjacent Counties:
Hibbing Community College
Hibbing (St. Louis County)

Lake Superior Community and Technical College
Duluth (St. Louis County)

Northeast Higher Education District
Mesabi Range Community and Technical College and Vermillion Community College
Eveleth, Virginia, Ely (St. Louis County)

University of Minnesota-Duluth
Duluth (St. Louis County)

Demographics

Population

	Total Population	American Indian alone or in combination	% of MN Indian Population	Indian as Percent of Total Population
Fond du Lac	3,728	1,492	1.8%	40.0%
Adjacent Counties	232,199	7,653	9.4%	3.3%
State	4,919,479	81,074	100.0%	1.7%

Age

	Under Age 18	% Population under Age 18	Age 18 to 64	% Population Age 18 to 64	Age 65 and over	% Population Age 65 and over
Fond du Lac	1,204	32.3%	2,141	57.4%	383	10.3%
Adjacent Counties	52,861	22.8%	142,280	61.3%	37,058	16.0%
State	1,286,894	26.2%	3,038,319	61.8%	594,266	12.1%

Income

	Total Families	Median Family Income 1999	Per Capita Income 1999	Individuals in Poverty Status, 1999	% Individuals in Poverty Status, 1999
Fond du Lac	1,014	$43,214	$15,551	522	14.0%
Adjacent Counties	60,185	$47,310	$18,858	25,600	11.0%
State	1,262,953	$56,874	$23,198	380,476	7.7%

Public Assistance

	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Fond du Lac	1,344	89	6.6%
Adjacent Counties	94,737	4,625	4.9%
State	1,896,209	65,144	3.4%

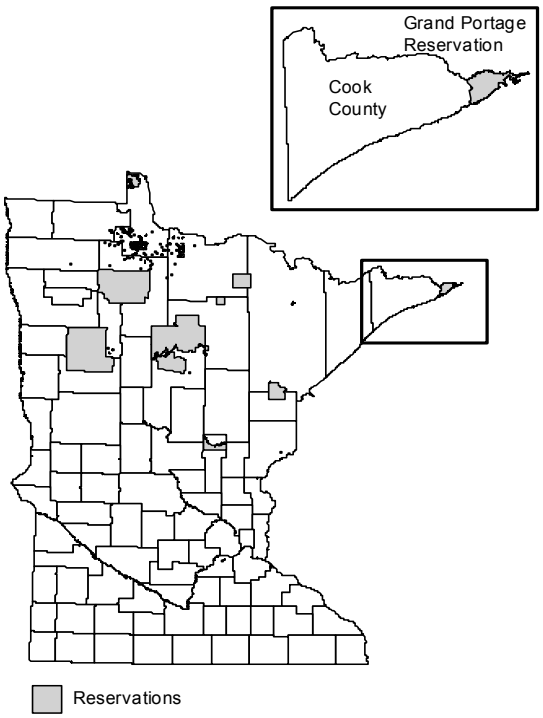
Labor

	Population Age 16 and over	% Population Age 16 and over in Civilian Labor Force	% Population Age 16 and over in Civilian Work Force Employed	% Population Age 16 and over in Civilian Work Force Unemployed
Fond du Lac	2,690	64.3%	58.6%	5.7%
Adjacent Counties	186,230	62.4%	58.2%	4.2%
State	3,781,756	71.1%	68.2%	2.9%

Education

	Population Age 25 and over	% Population Age 25 and over – No High School Diploma	% Population Age 25 and over – High School Graduate only	% Population Age 25 and over – some college, no degree or associated degree	% Population Age 25 and over – Bachelor's or Graduate Degree
Fond du Lac	2,251	17.3%	39.2%	33.9%	9.6%
Adjacent Counties	154,039	13.2%	32.6%	33.3%	20.9%
State	3,164,345	12.1%	28.8%	31.7%	27.4%

Grand Portage



Minnesota Chippewa Tribe Member

Post Office Box 428
Grand Portage, MN 55605
218-475-2277
218-475-2284 (Fax)

Adjacent County: Cook County

Nearby City: Grand Marais

Tribal Enrollment (1999): 1,097

Tribal Land: 38,966.28 acres

Individual Land: 7,086.10 acres

***Government Land*:** 79.10 acres

Casino: Grand Portage Lodge and Casino
P.O. Box 233
Grand Portage, MN 55605
800-543-1384

Top Three Industries on Reservation:
Arts, entertainment, recreation, accommodation, and food services (44.9%); education, health, and social services (15.4%); public administration (11.3%)

Demographics

Population

	Total Population	American Indian alone or in combination	% of MN Indian Population	Indian as Percent of Total Population
Grand Portage	557	354	0.4%	63.6%
Adjacent Counties	5,168	481	0.6%	9.3%
State	4,919,479	81,074	100.0%	1.7%

Age

	Under Age 18	% Population under Age 18	Age 18 to 64	% Population Age 18 to 64	Age 65 and over	% Population Age 65 and over
Grand Portage	151	27.1%	361	64.8%	45	8.1%
Adjacent Counties	1,054	20.4%	3,227	62.4%	887	17.2%
State	1,286,894	26.2%	3,038,319	61.2%	594,266	12.1%

Income

	Total Families	Median Family Income 1999	Per Capita Income 1999	Individuals in Poverty Status, 1999	% Individuals in Poverty Status, 1999
Grand Portage	127	$31,771	$15,782	115	20.7%
Adjacent Counties	1,441	$47,132	$21,775	517	10.0%
State	1,262,953	$56,874	$23,198	380,476	7.7%

Public Assistance

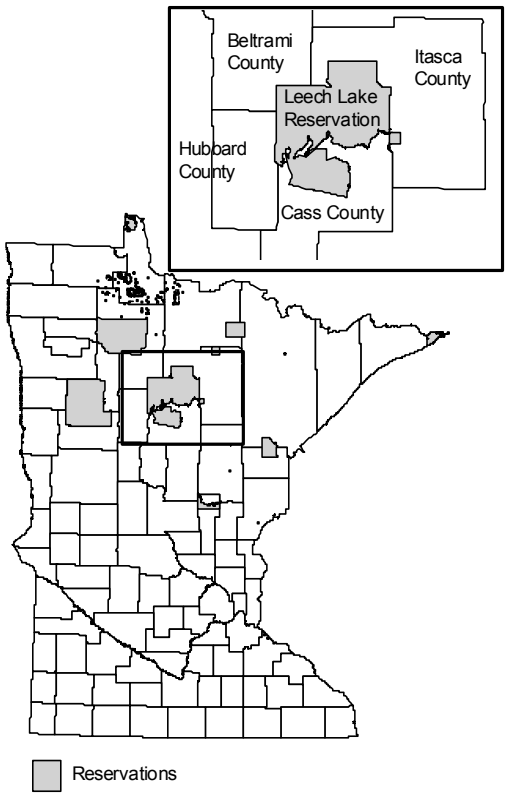
	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Grand Portage	250	14	5.6%
Adjacent Counties	2,370	75	3.2%
State	1,896,209	65,144	3.4%

Labor

	Population Age 16 and over	% Population Age 16 and over in Civilian Labor Force	% Population Age 16 and over in Civilian Work Force Employed	% Population Age 16 and over in Civilian Work Force Unemployed
Grand Portage	394	83.0%	74.1%	8.9%
Adjacent Counties	4,252	66.9%	62.8%	4.1%
State	3,781,756	71.1%	68.2%	2.9%

Education

	Population Age 25 and over	% Population Age 25 and over – No High School Diploma	% Population Age 25 and over – High School Graduate only	% Population Age 25 and over – some college, no degree or associated degree	% Population Age 25 and over – Bachelor's or Graduate Degree
Grand Portage	350	22.0%	26.3%	41.1%	10.6%
Adjacent Counties	3,864	11.3%	28.6%	31.3%	28.8%
State	3,164,345	12.1%	28.8%	31.7%	27.4%



Leech Lake

Minnesota Chippewa Tribe Member

6330 U.S. 2 NW
Cass Lake, MN 56633
218-335-8200
218-335-8309 (Fax)

Adjacent Counties: Betrami, Cass, Hubbard, and Itasca counties

Nearby Cities: Bemidji, Deer River, Grand Rapids, Walker

Tribal Enrollment (1999): 8,219

Tribal Land: 16,640.48 acres

Individual Land: 10,916.31 acres

***Government Land*:** 3.95 acres

Casinos: Northern Lights Casino
6800 Y Frontage Road NW
Walker, MN 56484
800-252-7529

White Oak Casino
U.S. Highway 2
Deer River, MN 56636
800-653-2412

Palace Casino Hotel
6280 Upper Cass Frontage Road NW
Cass Lake, MN 56633
800-228-6676

Top Three Industries on Reservation: Education, health, and social services (21.5%); arts, entertainment, recreation, accommodation, and food services (21.4%); retail trade (9.8%)

Tribal College:
Leech Lake Tribal College
Cass Lake (Cass County)

Public Colleges and Universities in Adjacent Counties:

Bemidji State University
Bemidji (Beltrami County)

Northwest Tech College
Bemidji (Beltrami County)

Northeast Higher Education District Itasca Community College
Grand Rapids (Itasca County)

Demographics

Population

	Total Population	American Indian alone or in combination	% of MN Indian Population	Indian as Percent of Total Population
Leech Lake	10,205	4,850	6.0%	47.5%
Adjacent Counties	129,168	14,543	17.9%	11.3%
State	4,919,479	81,074	100.0%	1.7%

Age

	Under Age 18	% Population under Age 18	Age 18 to 64	% Population Age 18 to 64	Age 65 and over	% Population Age 65 and over
Leech Lake	3,246	31.8%	5,724	56.1%	1,235	12.1%
Adjacent Counties	33,396	25.9%	75,563	58.5%	20,209	15.7%
State	1,286,894	26.2%	3,038,319	61.8%	594,266	12.1%

Income

	Total Families	Median Family Income 1999	Per Capita Income 1999	Individuals in Poverty Status, 1999	% Individuals in Poverty Status, 1999
Leech Lake	2,649	$31,275	$13,103	2,168	21.2%
Adjacent Counties	35,349	$41,726	$16,981	16,647	12.9%
State	1,262,953	$56,874	$23,198	380,476	7.7%

Public Assistance

	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Leech Lake	3,603	284	7.9%
Adjacent Counties	50,507	2,496	4.9%
State	1,896,209	65,144	3.4%

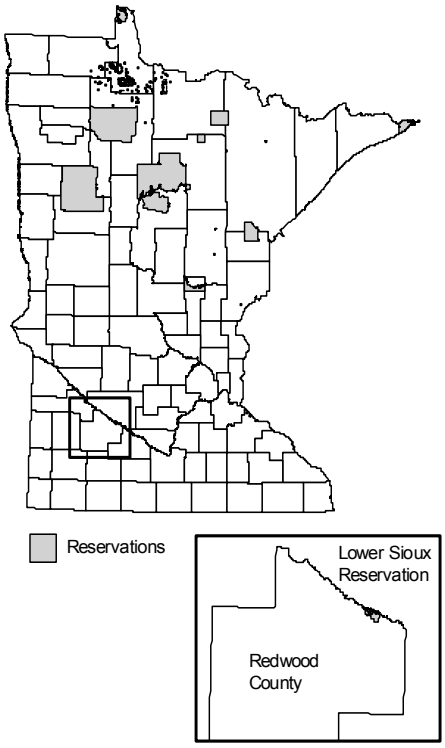
Labor

	Population Age 16 and over	% Population Age 16 and over in Civilian Labor Force	% Population Age 16 and over in Civilian Work Force Employed	% Population Age 16 and over in Civilian Work Force Unemployed
Leech Lake	7,230	60.0%	53.6%	6.4%
Adjacent Counties	100,126	61.2%	56.9%	4.3%
State	3,781,756	71.1%	68.2%	2.9%

Education

	Population Age 25 and over	% Population Age 25 and over – No High School Diploma	% Population Age 25 and over – High School Graduate only	% Population Age 25 and over – some college, no degree or associated degree	% Population Age 25 and over – Bachelor's or Graduate Degree
Leech Lake	6,097	20.3%	35.5%	32.4%	11.8%
Adjacent Counties	84,094	15.3%	32.9%	32.4%	19.4%
State	3,164,345	12.1%	28.8%	31.7%	27.4%

Lower Sioux



39527 RES Highway 1
Rural Route 1, Box 308
Morton, MN 56270
507-697-6185
507-637-4380 (Fax)

Adjacent County: Redwood County

Nearby City: Redwood Falls

Tribal Enrollment (1999): 930

Tribal Land: 1,784.93 acres

Individual Land: 0 acres

***Government Land*:** 0 acres

Casino: Jackpot Junction Casino Hotel
Post Office Box 420
Morton, MN 56270
800-946-2274

Top Three Industries on Reservation:
Arts, entertainment, recreation, accommodation, and food services (56.0%); retail trade (14.7%); manufacturing (6.7%)

Demographics

Population

	Total Population	American Indian alone or in combination	% of MN Indian Population	Indian as Percent of Total Population
Lower Sioux	335	303	0.4%	90.5%
Adjacent Counties	16,815	640	0.8%	3.8%
State	4,919,479	81,074	100.0%	1.7%

Age

	Under Age 18	% Population under Age 18	Age 18 to 64	% Population Age 18 to 64	Age 65 and over	% Population Age 65 and over
Lower Sioux	132	39.4%	191	57.0%	12	3.6%
Adjacent Counties	4,464	26.6%	9,098	54.1%	3,253	19.4%
State	1,286,894	26.2%	3,038,319	61.8%	594,266	12.1%

Income

	Total Families	Median Family Income 1999	Per Capita Income 1999	Individuals in Poverty Status, 1999	% Individuals in Poverty Status, 1999
Lower Sioux	84	$64,891	$26,181	30	9.0%
Adjacent Counties	4,539	$46,250	$18,903	1,260	7.5%
State	1,262,953	$56,874	$23,198	380,476	7.7%

Public Assistance

	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Lower Sioux	109	5	4.6%
Adjacent Counties	6,704	140	2.1%
State	1,896,209	65,144	3.4%

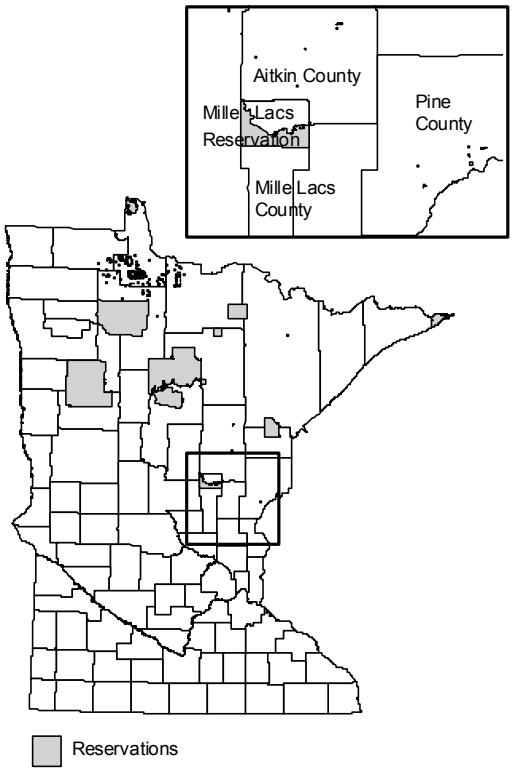
Labor

	Population Age 16 and over	% Population Age 16 and over in Civilian Labor Force	% Population Age 16 and over in Civilian Work Force Employed	% Population Age 16 and over in Civilian Work Force Unemployed
Lower Sioux	200	42.0%	37.5%	4.5%
Adjacent Counties	12,977	65.0%	63.0%	2.0%
State	3,781,756	71.1%	68.2%	2.9%

Education

	Population Age 25 and over	% Population Age 25 and over – No High School Diploma	% Population Age 25 and over – High School Graduate only	% Population Age 25 and over – some college, no degree or associated degree	% Population Age 25 and over – Bachelor's or Graduate Degree
Lower Sioux	158	24.7%	46.8%	25.3%	3.2%
Adjacent Counties	11,269	19.8%	37.0%	29.7%	13.4%
State	3,164,345	12.1%	28.8%	31.7%	27.4%

Mille Lacs



Minnesota Chippewa Tribe Member

43408 Oodena Drive
Onamia, MN 56359
320-532-4181
320-532-4209 (Fax)

Adjacent Counties: Aitkin, Mille Lacs, and Pine counties

Nearby Cities: Brainerd, Onamia

Tribal Enrollment (1999): 3,292

Tribal Land: 3,967.45 acres

Individual Land: 140.35 acres

***Government Land*:** 0 acres

Casinos: Grand Casino Hinckley
777 Lady Luck Drive
Hinckley, MN 55037
800-472-6321

Grand Casino Mille Lacs
777 Grand Avenue, Highway 169
Onamia, MN 56359
800-626-5825

Top Three Industries on Reservation:
Arts, entertainment, recreation, accommodation, and food services (23.7%); education, health, and social services (23.4%); manufacturing (12.5%)

Public Colleges and Universities in Adjacent Counties:
Pine Technical College
Pine City (Pine County)

Demographics

Population

	Total Population	American Indian alone or in combination	% of MN Indian Population	Indian as Percent of Total Population
Mille Lacs	4,704	1,225	1.5%	26.0%
Adjacent Counties	64,161	2,453	3.0%	3.8%
State	4,919,479	81,074	100.0%	1.7%

Age

	Under Age 18	% Population under Age 18	Age 18 to 64	% Population Age 18 to 64	Age 65 and over	% Population Age 65 and over
Mille Lacs	1,300	27.6%	2,517	53.5%	887	18.9%
Adjacent Counties	15,969	24.9%	37,086	57.8%	11,106	17.3%
State	1,286,894	26.2%	3,038,319	61.8%	594,266	12.1%

Income

	Total Families	Median Family Income 1999	Per Capita Income 1999	Individuals in Poverty Status, 1999	% Individuals in Poverty Status, 1999
Mille Lacs	1,233	$37,813	$15,880	756	16.1%
Adjacent Counties	17,424	$42,317	$17,614	6,665	10.4%
State	1,262,953	$56,874	$23,198	380,476	7.7%

Public Assistance

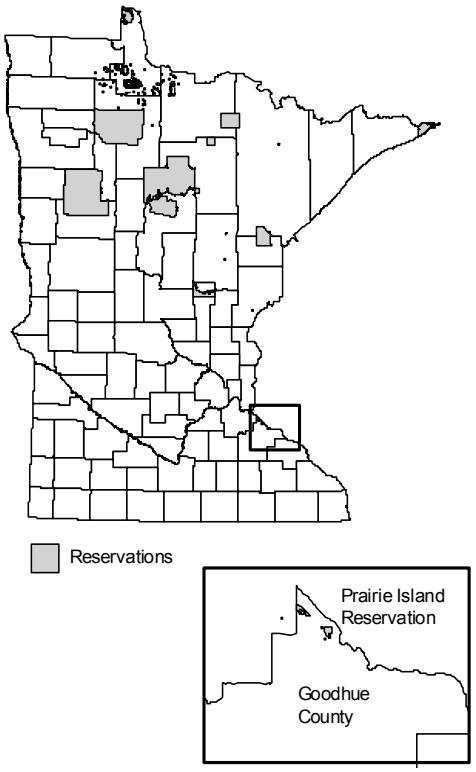
	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Mille Lacs	1,873	178	9.5%
Adjacent Counties	25,220	1,143	4.5%
State	1,896,209	65,144	3.4%

Labor

	Population Age 16 and over	% Population Age 16 and over in Civilian Labor Force	% Population Age 16 and over in Civilian Work Force Employed	% Population Age 16 and over in Civilian Work Force Unemployed
Mille Lacs	3,543	56.5%	50.9%	5.6%
Adjacent Counties	50,306	61.2%	57.2%	4.0%
State	3,781,756	71.1%	68.2%	2.9%

Education

	Population Age 25 and over	% Population Age 25 and over – No High School Diploma	% Population Age 25 and over – High School Graduate only	% Population Age 25 and over – some college, no degree or associated degree	% Population Age 25 and over – Bachelor's or Graduate Degree
Mille Lacs	3,035	19.5%	37.8%	28.9%	13.8%
Adjacent Counties	43,599	19.9%	40.4%	28.6%	11.2%
State	3,164,345	12.1%	28.8%	31.7%	27.4%



Prairie Island

5636 Sturgeon Lake Road
Welch, MN 55089
651-385-2554
651-388-1576 (Fax)

Adjacent County: Goodhue County

Nearby City: Red Wing

Tribal Enrollment (1999): 582

Tribal Land: 1,192.30 acres

Individual Land: 0 acres

***Government Land*:** 0 acres

Casino: Treasure Island Resort and Casino
5734 Sturgeon Lake Road
Red Wing, MN 55066
800-222-7077

Top Three Industries on Reservation:
Education, health and social services (19.7%); construction (14.8%); manufacturing/retail trade/public administration (13.1% each)

Public Colleges and Universities in Adjacent Counties:
Minnesota State College-Southeast Technical
Red Wing (Goodhue County)

Demographics

Population

	Total Population	American Indian alone or in combination	% of MN Indian Population	Indian as Percent of Total Population
Prairie Island	199	166	0.2%	83.4%
Adjacent Counties	44,127	567	0.7%	1.3%
State	4,919,479	81,074	100.0%	1.7%

Age

	Under Age 18	% Population under Age 18	Age 18 to 64	% Population Age 18 to 64	Age 65 and over	% Population Age 65 and over
Prairie Island	71	35.7%	120	60.3%	8	4.0%
Adjacent Counties	11,702	26.5%	25,821	58.5%	6,604	15.0%
State	1,286,894	26.2%	3,038,319	61.8%	594,266	12.1%

Income

	Total Families	Median Family Income 1999	Per Capita Income 1999	Individuals in Poverty Status, 1999	% Individuals in Poverty Status, 1999
Prairie Island	33	$94,641	$26,955	28	14.1%
Adjacent Counties	11,946	$55,689	$21,934	2,450	5.6%
State	1,262,953	$56,874	$23,198	380,476	7.7%

Public Assistance

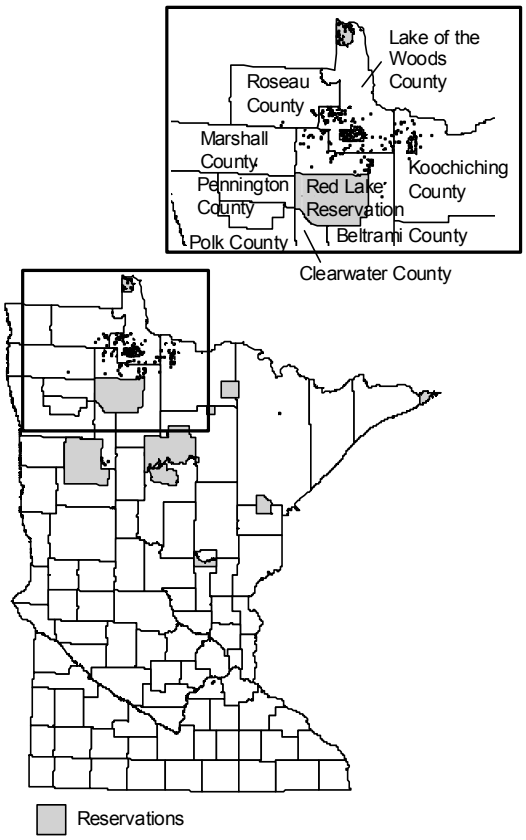
	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Prairie Island	55	2	3.6%
Adjacent Counties	16,996	374	2.2%
State	1,896,209	65,144	3.4%

Labor

	Population Age 16 and over	% Population Age 16 and over in Civilian Labor Force	% Population Age 16 and over in Civilian Work Force Employed	% Population Age 16 and over in Civilian Work Force Unemployed
Prairie Island	150	41.3%	40.7%	0.6%
Adjacent Counties	34,075	70.7%	68.5%	2.2%
State	3,781,756	71.1%	68.2%	2.9%

Education

	Population Age 25 and over	% Population Age 25 and over – No High School Diploma	% Population Age 25 and over – High School Graduate only	% Population Age 25 and over – some college, no degree or associated degree	% Population Age 25 and over – Bachelor's or Graduate Degree
Prairie Island	99	24.2%	36.4%	33.3%	6.1%
Adjacent Counties	29,127	13.3%	36.5%	31.1%	19.1%
State	3,164,345	12.1%	28.8%	31.7%	27.4%



Red Lake

Post Office Box 550
Red Lake, MN 56671
218-679-3341
218-679-3378 (Fax)

Adjacent Counties: Beltrami, Clearwater, Koochiching, Lake of the Woods, Marshall, Pennington, Polk, and Roseau counties

Nearby Cities: Bemidji, Thief River Falls

Tribal Enrollment (1999): 9,264

Tribal Land: 806,698.49 acres

Individual Land: 0 acres

***Government Land*:** 0 acres

Casinos: Seven Clans Red Lake Casino and Bingo
Post Office Box 543, Highway 1 East
Red Lake, MN 56671
888-679-2501

Seven Clans Thief River Falls Casino
10595 Center Street East
Thief River Falls, MN 56701
800-881-0712

Seven Clans Warroad Casino
1012 East Lake Street
Warroad, MN 56763
800-815-8293

Top Three Industries on Reservation: Education, health, and social services (28.3%); arts, entertainment, recreation, accommodation, and food services (22.8%); public administration (13.1%)

Public Colleges and Universities in Adjacent Counties:

Bemidji State University
Bemidji (Beltrami County)

Northland Community and Technical College
Thief River Falls (Pennington County)

Northwest Technical College
Bemidji (Beltrami County)

Northwest Technical College
East Grand Forks (Polk County)

Northeast Higher Education District
Rainy River Community College
International Falls (Koochiching County)

University of Minnesota
Crookston (Polk County)

Demographics

Population

	Total Population	American Indian alone or in combination	% of MN Indian Population	Indian as Percent of Total Population
Red Lake	5,162	5,087	6.3%	98.6%
Adjacent Counties	138,396	11,148	13.8%	8.1%
State	4,919,479	81,074	100.0%	1.7%

Age

	Under Age 18	% Population under Age 18	Age 18 to 64	% Population Age 18 to 64	Age 65 and over	% Population Age 65 and over
Red Lake	2,372	46.0%	2,562	49.6%	228	4.4%
Adjacent Counties	37,023	26.8%	80,378	58.1%	20,995	15.2%
State	1,286,894	26.2%	3,038,319	61.8%	594,266	12.1%

Income

	Total Families	Median Family Income 1999	Per Capita Income 1999	Individuals in Poverty Status, 1999	% Individuals in Poverty Status, 1999
Red Lake	1,130	$19,969	$7,957	2,024	39.2%
Adjacent Counties	36,398	$42,689	$16,767	16,826	12.2%
State	1,262,953	$56,874	$23,198	380,476	7.7%

Public Assistance

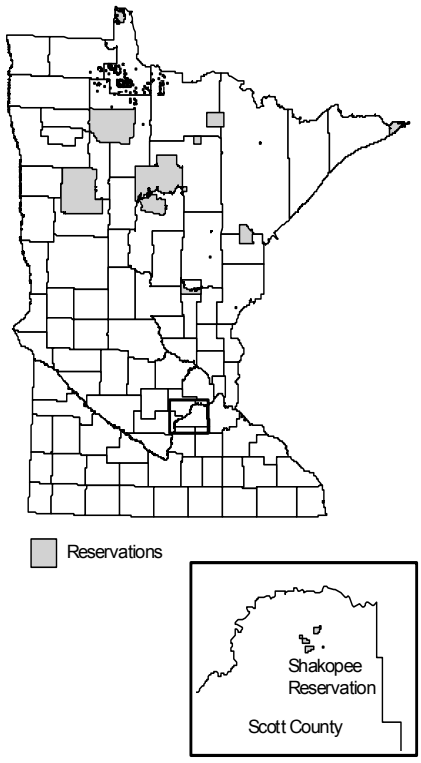
	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Red Lake	1,357	421	31.0%
Adjacent Counties	53,565	2,771	5.2%
State	1,896,209	65,144	3.4%

Labor

	Population Age 16 and over	% Population Age 16 and over in Civilian Labor Force	% Population Age 16 and over in Civilian Work Force Employed	% Population Age 16 and over in Civilian Work Force Unemployed
Red Lake	2,977	58.6%	44.7%	13.9%
Adjacent Counties	106,163	64.9%	60.6%	4.3%
State	3,781,756	71.1%	68.2%	2.9%

Education

	Population Age 25 and over	% Population Age 25 and over – No High School Diploma	% Population Age 25 and over – High School Graduate only	% Population Age 25 and over – some college, no degree or associated degree	% Population Age 25 and over – Bachelor's or Graduate Degree
Red Lake	2,179	38.5%	32.6%	26.9%	2.0%
Adjacent Counties	70,896	17.9%	32.1%	31.6%	18.5%
State	3,164,345	12.1%	28.8%	31.7%	27.4%



Shakopee-Mdewakanton

2330 Sioux Trail NW
Prior Lake, MN 55372
952-445-8900
952-445-8906 (Fax)

Adjacent County: Scott County

Nearby City: Shakopee

Tribal Enrollment (1999): 301

Tribal Land: 661.25 acres

Individual Land: 0 acres

***Government Land*:** 0 acres

Casinos: Little Six Casino
County Road 83
Prior Lake, MN 55372
952-445-8982

Mystic Lake Casino Hotel
2400 Mystic Lake Boulevard
Prior Lake, MN 55372
800-262-7799

Top Three Industries on Reservation:
Arts, entertainment, recreation, accommodation, and food services (21.1%); retail trade (18.4%); manufacturing (16.5%)

Demographics

Population

	Total Population	American Indian alone or in combination	% of MN Indian Population	Indian as Percent of Total Population
Shak.-Mdwktn.	338	244	0.3%	72.2%
Adjacent Counties	89,498	1,090	1.3%	1.2%
State	4,919,479	81,074	100.0%	1.7%

Age

	Under Age 18	% Population under Age 18	Age 18 to 64	% Population Age 18 to 64	Age 65 and over	% Population Age 65 and over
Shak.-Mdwktn.	106	31.4%	215	63.6%	17	5.0%
Adjacent Counties	27,964	31.3%	55,990	62.6%	5,544	6.2%
State	1,286,894	26.2%	3,038,319	61.8%	594,266	12.1%

Income

	Total Families	Median Family Income 1999	Per Capita Income 1999	Individuals in Poverty Status, 1999	% Individuals in Poverty Status, 1999
Shak.-Mdwktn.	82	$61,250	$84,517	71	21.0%
Adjacent Counties	24,162	$72,212	$26,418	2,979	3.3%
State	1,262,953	$56,874	$23,198	380,476	7.7%

Public Assistance

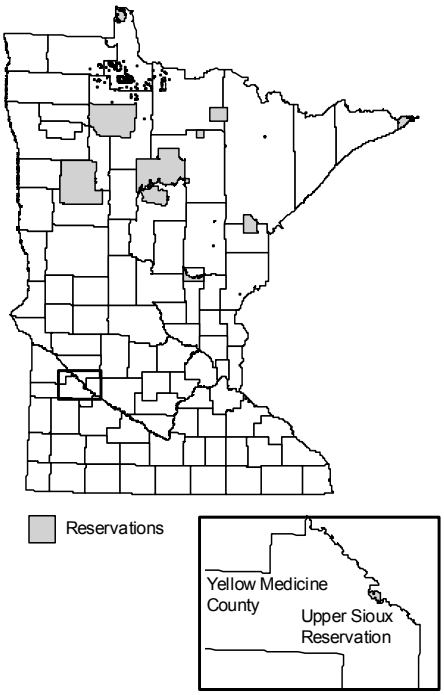
	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Shak.-Mdwktn.	116	2	1.7%
Adjacent Counties	30,714	439	1.4%
State	1,896,209	65,144	3.4%

Labor

	Population Age 16 and over	% Population Age 16 and over in Civilian Labor Force	% Population Age 16 and over in Civilian Work Force Employed	% Population Age 16 and over in Civilian Work Force Unemployed
Shak.-Mdwktn.	269	43.9%	40.5%	3.4%
Adjacent Counties	64,042	79.4%	77.3%	2.1%
State	3,781,756	71.1%	68.2%	2.9%

Education

	Population Age 25 and over	% Population Age 25 and over – No High School Diploma	% Population Age 25 and over – High School Graduate only	% Population Age 25 and over – some college, no degree or associated degree	% Population Age 25 and over – Bachelor's or Graduate Degree
Shak.-Mdwktn.	205	12.7%	46.3%	35.6%	5.4%
Adjacent Counties	55,564	9.0%	28.4%	33.2%	29.4%
State	3,164,345	12.1%	28.8%	31.7%	27.4%



Upper Sioux

Box 147
Granite Falls, MN 56241
320-564-3853
320-564-4482 (Fax)

Adjacent County: Yellow Medicine County

Nearby Cities: Granite Falls, Montevideo

Tribal Enrollment (1999): 369

Tribal Land: 1,200.65 acres

Individual Land: 0 acres

***Government Land*:** 0 acres

Casino: Firefly Creek Casino
2511 565th Street
Post Office Box 96
Granite Falls, MN 56241
320-564-2121

Top Three Industries on Reservation:
Education, health and social services (34.6%); arts, entertainment, recreation, accommodation, and food services (34.6%); construction/manufacturing/retail trade/professional (7.7% each)

Public Colleges and Universities in Adjacent Counties:
Minnesota West Community and
Technical College
Canby (Yellow Medicine County)

Demographics

Population

	Total Population	American Indian alone or in combination	% of MN Indian Population	Indian as Percent of Total Population
Upper Sioux	57	47	0.1%	82.5%
Adjacent Counties	11,080	272	0.3%	2.5%
State	4,919,479	81,074	100.0%	1.7%

Age

	Under Age 18	% Population under Age 18	Age 18 to 64	% Population Age 18 to 64	Age 65 and over	% Population Age 65 and over
Upper Sioux	13	22.8%	31	54.4%	13	22.8%
Adjacent Counties	2,858	25.8%	5,953	53.7%	2,269	20.5%
State	1,286,894	26.2%	3,038,319	61.8%	594,266	12.1%

Income

	Total Families	Median Family Income 1999	Per Capita Income 1999	Individuals in Poverty Status, 1999	% Individuals in Poverty Status, 1999
Upper Sioux	14	$38,750	$14,815	25	43.9%
Adjacent Counties	2,993	$42,002	$17,120	1,125	10.2%
State	1,262,953	$56,874	$23,198	380,476	7.7%

Public Assistance

	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Upper Sioux	32	0	0.0%
Adjacent Counties	4,441	140	3.2%
State	1,896,209	65,144	3.4%

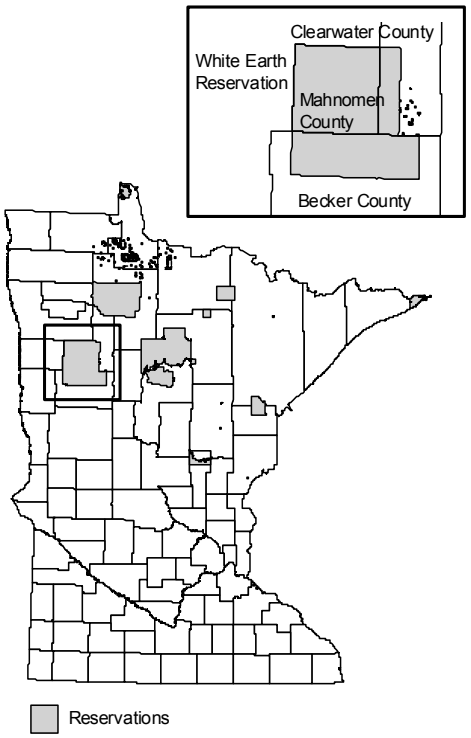
Labor

	Population Age 16 and over	% Population Age 16 and over in Civilian Labor Force	% Population Age 16 and over in Civilian Work Force Employed	% Population Age 16 and over in Civilian Work Force Unemployed
Upper Sioux	53	56.6%	49.1%	7.5%
Adjacent Counties	8,642	63.8%	60.3%	3.5%
State	3,781,756	71.1%	68.2%	2.9%

Education

	Population Age 25 and over	% Population Age 25 and over – No High School Diploma	% Population Age 25 and over – High School Graduate only	% Population Age 25 and over – some college, no degree or associated degree	% Population Age 25 and over – Bachelor's or Graduate Degree
Upper Sioux	51	19.6%	25.5%	37.3%	17.6%
Adjacent Counties	7,394	18.1%	35.4%	32.2%	14.4%
State	3,164,345	12.1%	28.8%	31.7%	27.4%

White Earth



Minnesota Chippewa Tribe Member

Post Office Box 418
White Earth, MN 56591
218-983-3285
218-983-3641 (Fax)

Adjacent Counties: Becker, Clearwater, and Mahnomen counties

Nearby Cities: Bemidji, Detroit Lakes, and Park Rapids

Tribal Enrollment (1999): 21,083

Tribal Land: 75,267.52 acres

Individual Land: 1,952.83 acres

***Government Land*:** 0 acres

Casinos: Shooting Star Casino Hotel
777 Casino Road, P.O Box 418
Mahnomen, MN 56557
800-453-7827

Top Three Industries on Reservation: Education, health, and social services (22.2%); arts, entertainment, recreation, accommodation, and food services (19.0%); agriculture, forestry, fishing and hunting, and mining (10.4%)

Tribal College:
White Earth Tribal and Community College
Mahnomen (Mahnomen County)

Public Colleges and Universities in Adjacent Counties:
Northwest Technical College
Detroit Lakes (Becker County)

Demographics

Population

	Total Population	American Indian alone or in combination	% of MN Indian Population	Indian as Percent of Total Population
White Earth	9,192	4,029	5.0%	43.8%
Adjacent Counties	43,613	5,565	6.9%	12.8%
State	4,919,479	81,074	100.0%	1.7%

Age

	Under Age 18	% Population under Age 18	Age 18 to 64	% Population Age 18 to 64	Age 65 and over	% Population Age 65 and over
White Earth	2,910	31.7%	4,939	53.7%	1,343	14.6%
Adjacent Counties	11,701	26.8%	24,655	56.5%	7,257	16.6%
State	1,286,894	26.2%	3,038,319	61.8%	594,266	12.1%

Income

	Total Families	Median Family Income 1999	Per Capita Income 1999	Individuals in Poverty Status, 1999	% Individuals in Poverty Status, 1999
White Earth	2,396	33,144	$12,786	1,804	19.6%
Adjacent Counties	11,874	40,677	$11,461	5,691	9.1%
State	1,262,953	$56,874	$23,198	380,476	7.7%

Public Assistance

	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
White Earth	3,327	250	7.5%
Adjacent Counties	17,131	894	5.2%
State	1,896,209	65,144	3.4%

Labor

	Population Age 16 and over	% Population Age 16 and over in Civilian Labor Force	% Population Age 16 and over in Civilian Work Force Employed	% Population Age 16 and over in Civilian Work Force Unemployed
White Earth	6,654	59.6%	54.7%	4.9%
Adjacent Counties	33,505	63.0%	58.5%	4.5%
State	3,781,756	71.1%	68.2%	2.9%

Education

	Population Age 25 and over	% Population Age 25 and over – No High School Diploma	% Population Age 25 and over – High School Graduate only	% Population Age 25 and over – some college, no degree or associated degree	% Population Age 25 and over – Bachelor's or Graduate Degree
White Earth	5,562	24.2%	37.1%	27.8%	10.9%
Adjacent Counties	28,702	19.3%	34.7%	30.2%	15.8%
State	3,164,345	12.1%	28.8%	31.7%	27.4%

Appendix III

Secretary of the Interior's Authority to Acquire Land in Trust for Indian Tribes

The Indian Reorganization Act generally authorizes the Secretary of the Interior to accept transfers of land in trust for Indian tribes and individual Indians.[1] Trust status transfers title to the federal government, in trust for the tribe or individual Indian. Under federal law, the land is exempt from state and local property taxes. Fee lands owned by the tribe, by contrast, are subject to property taxes once the land is transferred into trust.

The federal statute authorizes the secretary "in his discretion" to acquire land "for the purpose of providing land for Indians."[2] The statute itself provides no standard or restrictions on when transfers into trust may be accepted. Agency regulations provide three circumstances in which the secretary may acquire land for a tribe in trust status. Each of these is an *independent or separate* basis for acquiring the land:

- The property is located in or adjacent to the reservation boundaries
- The tribe already owns an interest in the land
- The secretary determines that acquisition of the land is "necessary to facilitate tribal self-determination, economic development, or Indian housing"[3]

Specific criteria apply when the land is within or adjacent to a reservation, and the acquisition is not mandatory. The most important of these appear to be:

- The tribe's need for the land
- The purpose for which the land will be used
- Impact on state and local governments of removing the land from the tax rolls
- Potential jurisdictional problems and conflicts of land use
- Whether the BIA can handle any administrative responsibilities that result from the acquisition
- The extent to which the tribe provided information needed to comply with environmental law relating to hazardous substances[4]

The regulations provide little guidance as to the substantive content of any of these criteria or how or what relative weight they are to be given. For example, there is no indication of how a tribe's "need" for the land is to be determined, beyond the three categories of "self-determination, economic development, [and] Indian housing."[5]

In 1998 the Shakopee Mdewakanton Sioux Community requested the secretary to transfer a parcel of land into trust for the tribe. The BIA regional officer declined the request, and there was no appeal. The decision provides some insight into the way in which the BIA will likely apply the regulations on trust transfers. Some of these insights include:

- Need for the trust status must be shown. It is not clear how this is to be done, but it seems likely that a tribe could meet it by showing that the property tax exemption is an economic necessity for the stated purpose. The need for exemption from local regulations might also be relevant. The need for these exemptions must tie back to (1) fostering economic development or (2) supporting tribal self-government.

- The BIA decision makes it clear that in measuring the effect on local tax bases, it will look only at the loss of current tax base, not any potential loss of future tax revenues.

- The decision also suggests that loss of tax base will be evaluated relative to the size of the local tax base. If it is a small share, it is unlikely to affect the application for trust status.

ENDNOTES

[1] 25 U.S.C. § 465.

[2] 25 U.S.C.A. § 465.

[3] 25 C.F.R. § 151.3.

[4] 25 C.F.R § 151.10.

[5] These appear in a separate section of the regulations stating the general policy. 25 C.F.R. § 151.3. It seems reasonable to read them into the term "need" in section 151.10(b).

Appendix IV

Tribal Courts in Minnesota

Tribal court judges are appointed by the governing body of each tribe.

Bois Forte Band of Chippewa P.O. Box 16 Nett Lake, MN 55772 218-757-3462	**Fond du Lac Band of Chippewa** 1720 Big Lake Road Cloquet, MN 55720 218-878-8002
Grand Portage Band of Chippewa 54 Upper Road Box 367 Grand Portage, MN 55605 218-475-0188	**Leech Lake Band of Chippewa** 6530 U.S.2, NW Cass Lake, MN 56633 218-335-3682
Lower Sioux Community in Minnesota 5001 West 80th Street, Suite 500 Bloomington, MN 55437 952-838-2294	**Mille Lacs Band of Chippewa** HCR 67 Box 194 Onamia, MN 56359 800-709-6445
Minnesota Chippewa Tribe P.O. Box 217 Cass Lake, MN 56633 218-335-8585	**Prairie Island Indian Community** 5001 West 80th Street, Suite 500 Bloomington, MN 55437 952-838-2294
Red Lake Band of Chippewa P.O. Box 572 Red Lake, MN 56671 218-679-3303	**Shakopee Mdewakanton Sioux (Dakota) Community** 1885 University Avenue W St. Paul, MN 55104 651-644-4710
Upper Sioux Community P.O. Box 155 Granite Falls, MN 56241 320-564-4955	**White Earth Band of Chippewa** P.O. Box 4810 Highway 224 White Earth, MN 56591 218-983-3285