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Indians, Indian Tribes, and State Government

Fourth Edition

This guidebook discusses major issues involved in the relationship between Indian tribes, Indians, and state government, including criminal and civil jurisdiction, control of natural resources, gaming and liquor regulation, taxation, health and human services, and education.

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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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. Map 2, Figure 1, and Appendix I present population information from U.S. Census 2005 population estimates and 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

Lastly, Appendix III explains the ability of the U.S. Bureau of Indian Affairs to acquire land in trust for Indians and discusses recent decisions regarding the Shakopee Mdewakanton Sioux Community.

Appendix IV lists the twelve tribal courts in Minnesota.

* 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

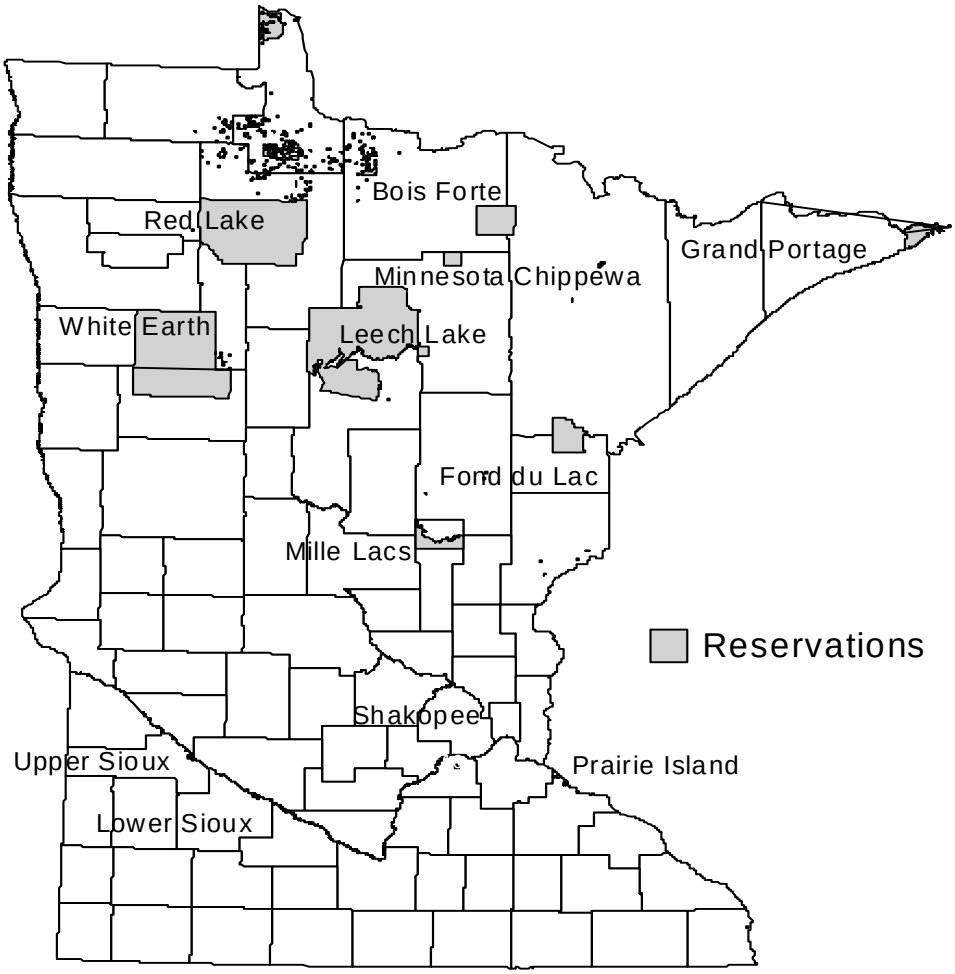
Dakota Communities (the Sioux)

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

Map 1 shows the location of these reservations.

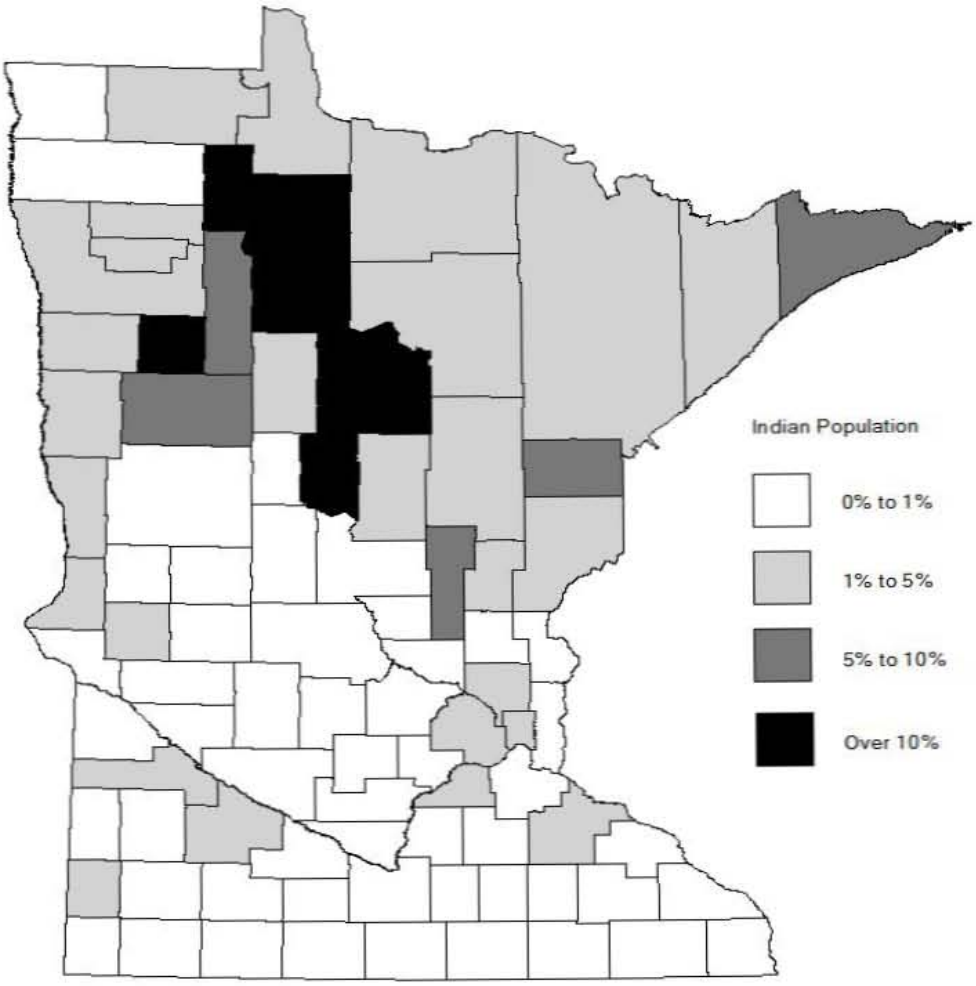
According to U.S. Census Bureau population estimates, there were 83,800 "American Indian and Alaska Native persons"[1] in Minnesota as of July 1, 2005, representing approximately 1.6 percent of the population. This number includes persons who identified themselves solely as American Indian and Alaska Native, and persons who identified themselves as more than one race, including American Indian and Alaska Native.[2]

Map 1: Minnesota Indian Reservations



Map 2: Indians as a Percent of County Population

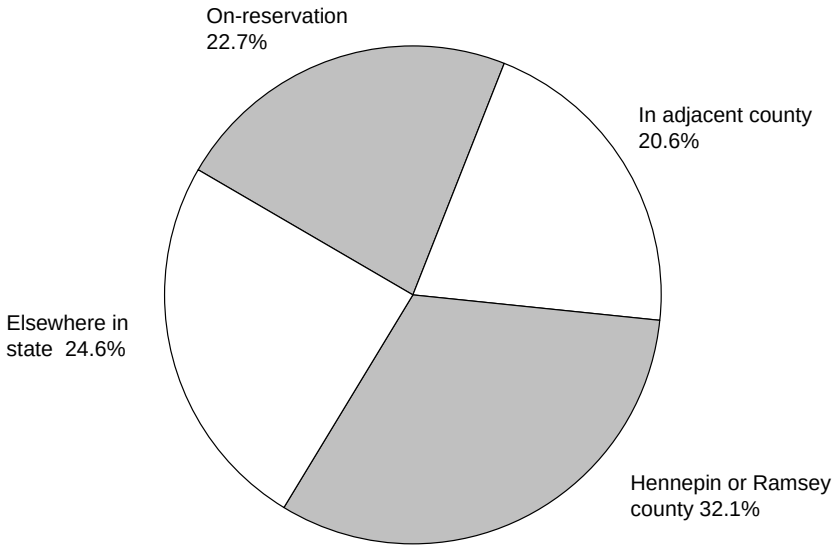
Map 2 shows what percentage of each county's total population is Indian. The table in Appendix I details Indian population by county.



Source: U.S. Census Bureau, 2005 Population Estimates

Figure 1: Where the Minnesota Indian Population Lives

Figure 1 shows where, according to the 2000 census, Indians in Minnesota live.[3] 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] Beginning with 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.

[3] More recent information about where Indians live was not available.

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] This includes the power to remove individuals from membership rolls, but a tribe's power over membership is subject to congressionally imposed limits.[2] 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.[3]

Limiting membership and sharing property 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.[4]

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.[5]

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.[6]

Through the 14th Amendment, Indians were granted federal citizenship and citizenship 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.[7]

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, e.g., Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874 (2nd Cir. 1996), *cert. denied* 519 U.S. 1041 (1996) (tribe immune from habeas corpus suit under Indian Civil Rights Act challenging action to strip petitioners of tribal membership and banish them from reservation; petition allowed to proceed against tribal officials contesting the banishment); *Quair v. Sisco*, 339 F.Supp.2d (D. Calif. 2004) (same).

[3] *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).

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

Minnesota Press, 1985) pp. 39-40.

[5] 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). Also there may be issues as to whether benefits are limited to enrolled members of a tribe. For example, the entitlement to the benefits of property provided by the federal government for the Mdewakanton Sioux in Minnesota and whether it is limited to enrolled members is now being litigated. *Wolfchild v. United States*, 62 Fed. Cl. 521 (2004), *reconsideration denied 62* Fed. Cl. 779 (2005).

[6] 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.

[7] *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[3] defines Indian country as consisting of three components:

- Indian reservations
- Dependent Indian communities[4]
- Indian allotments[5]

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 or a dependent Indian community.

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.[6]

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 Secretary of the Interior must approve conveyance of tribal lands to the United States in trust for the tribe. Federal regulations require publication of notice of pending transfers in trust, at least 30 days before the transfers take effect. This regulation was promulgated in response to the decision in *South Dakota v. United States Department of Interior* [7] to provide a procedure for judicial review of the secretary's decision to accept a transfer of land in trust. For a discussion of the issue and the criteria accepting trust transfers 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,[8] 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.[9] Many of the allotments passed out of trust status and are now no longer owned by Indians. Although some land passed legitimately at the expiration of the "trial period" to Indian ownership, most passed out of trust status and out of Indian hands through fraud and tax sales.[10] In 1934, with the passage of the Indian Reorganization Act (IRA), the trust status of the remaining allotments was extended indefinitely.[11] 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.[12]

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.

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. and see* 18 U.S.C. § 1151. Section 1151 defines Indian country for purposes of criminal jurisdiction as including these three components, but the Supreme Court has recognized it applies to matters of civil jurisdiction. *DeCoteau v. District County Court for Tenth Judicial District*, 420 U.S. 425 (1975).

[4] In order to qualify as dependent Indian community, lands that are neither reservations nor allotments must meet two qualifications: (1) they must be set aside by the federal government for use by Indians as Indian lands and (2) they must be under federal superintendence. *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 (1998) (holding lands on a disestablished reservation were not part of a dependent Indian community, preventing the tribe from imposing tribal taxes).

[5] *United States v. Pelican*, 232 U.S. 442 (1914) (lands created out of diminished reservation and held in trust by federal government were Indian country).

[6] 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.*

[7] 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.

[8] 25 U.S.C. §§ 331 et. seq. This is commonly referred to as the Dawes Act.

[9] 25 Stat. § 642.

[10] 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).

[11] 25 U.S.C. § 462.

[12] *See County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251 (1992) and discussion on taxation, page 59.

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.[6] 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 are the important touchstones that affect tribal relations with state government.

In modern times the Supreme Court has stated variously that Indian relations are the exclusive concern of Congress[7] and that state sovereignty does not stop at the borders of a reservation but rather is stripped only by congressional act.[8] In any case, generally state power over tribal territory is limited to those powers that 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 that Indian tribes and tribal governments are immune from lawsuits under the doctrine.[9] 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.[10] Further, the Supreme Court has pointed out that it has never held that tribal officers or agents are not liable for damages.[11]

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.[12]

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."[13] 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.[14] Nevertheless, the court has indicated it defers to Congress to make changes in the doctrine since "Congress is in a position to weigh and accommodate the competing policy concerns and reliance interests."[15]

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.[16] Congress has limited tribal immunity in some cases.[17] If Congress does not subject a tribe to suit, the tribe itself can agree to be sued by clearly waiving its sovereign immunity.[18] The Supreme Court has indicated that while a waiver must be unambiguous, it need not use the words "sovereign immunity."[19] 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.[20]

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.[21] On the one hand, the Court has ruled that the 11th Amendment prevents a state from suing an Indian tribe in federal court unless the tribe expressly consents or Congress abrogates the tribe's sovereign immunity. [22] 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.[23] 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."[24]

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 11th Amendment; for the same reason, the states would not have given up their immunity to being sued by tribes.[25]

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] This view of congressional plenary power is difficult to reconcile with the text of the constitution (i.e., limited

or enumerated powers such as the Indian Commerce Clause). The Court has reconciled this inconsistency in different ways–e.g., by relying upon the canons of constructions as *de facto* limits on congressional power. Over the years the Court's approach has shifted in emphasis and there is some evidence that the basic equation may be changing in recent years. *See* the discussion in Philip P. Frickey, *(Native) American Exceptionalism in Federal Public Law* 119 Harv. L. Rev. 431 (2005) (suggesting a shift to greater judicial control with less deference to Congress).

[7] *County of Oneida v. Oneida Indian Nation of New York State*, 470 U.S. 226, 234 (1985).

[8] *Nevada v. Hicks*, 533 U.S. 353, 361 (2001).

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

[10] *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 516 (Stevens concurring).

[11] *Id.*, 498 U.S. at 514 (1991).

[12] *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751 (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 (1994) (Rymer, J., concurring); Thomas McLish, Note, *Tribal Sovereign Immunity: Searching for Sensible Limits*, 88 Colum. L. Rev. 173, 179-80 (1988).

[13] *Kiowa Tribe*, *supra* note 12, 523 U.S. at 756.

[14] *Id.*, 523 U.S. at 757-58.

[15] *Id.*, 523 U.S. at 759.

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

[17] 25 U.S.C. § 450f(c)(3) (mandatory liability insurance); § 2710(d)(7)(A)(ii) (gaming activities).

[18] *C & L Enterprises, Inc*, *supra* note 16, 532 U.S. at 418 (citation omitted).

[19] *Id.*, 532 U.S. at 420 (citation omitted).

[20] *Id.*, 532 U.S. at 422. 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.

[21] *Blatchford v. Native Village of Noatake*, 501 U.S. 775, 779 (1991).

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

[23] *Seminole Tribe of Florida v. State of Florida*, 517 U.S. 44 (1996).

[24] *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 (1985).

[25] *Blatchford*, *supra* note 21, 501 U.S. at 782.

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]

Recent U.S. Supreme Courts cases may suggest reduced importance for the canons.

Although the canons of construction have long been a key element of Indian law,[6] recent cases suggest that the Supreme Court may be retreating from using the canons to protect the interests of Indians. Recent cases appear to ignore the canons in construing statutes directly affecting Indian interests.[7] More importantly, in a 2001 case the Supreme Court stated that canons are not mandatory rules and that canons favoring tribes may be offset by canons promoting other values.[8] In combination, these cases suggest a movement away from the strict adherence to the canons as a cornerstone of the Indian law protection for Indian interests.

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).

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

[5]*Mille Lacs Band of Chippewa Indians v. Minnesota*, 526 U.S. 172, 196 (1999).

[6] *See* Philip P. Frickey, *(Native) American Exceptionalism in Federal Public Law* 119 Harv. L. Rev. 431, 445-46 (2005) (describing the role the canons play, including allowing the Court "to defang" statutes to protect Indian interests).

[7] *See, e.g.*, *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 (1998) (ignoring canons in construing Alaskan Native Settlement Act); *Hagen v. Utah*, 510 U.S. 399 (1994) (clear statement requirement apparently ignored in diminishing the boundaries of a reservation).

[8] *Chickasaw Nation v. United States*, 534 U.S. 84, 93 - 94 (2001) ("Moreover the canon that assumes Congress intends its statutes to benefit the tribes is offset by the canon that warns us against interpreting federal statutes as providing tax exemptions unless those exemptions are clearly expressed."); *see* Graydon Dean Luthey, Jr., *Chickasaw Nation v. United States: The Beginning of the End of the Indian-Law Canons in Statutory Cases and The Start of the Judicial Assault on the Trust Relationship?* 27 Am. Indian L. Rev. 553 (2003).

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 Jeffrey Diebel (651-296-5041)

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, 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.[4] 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.[5]

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.[6]

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*.[7] 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.[8]

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.[9]

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.[10]

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
- 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.[11] The Minnesota Supreme Court also indicated, in *dicta*, that the laws prohibiting drunk driving and careless or reckless driving are likewise criminal/prohibitory.[12]

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)[13] • Obstruction of legal process[14] • Driving after cancellation as inimical to public safety (cancelled due to multiple DWI offenses)[15] • Fifth-degree assault[16] • Disorderly conduct[17] • Underage drinking[18]	• Driving after suspension (suspended for failure to pay child support)[19] • No proof of insurance/No insurance[20] • Driving after revocation (revoked for failure to provide proof of insurance)[21] • Expired registration[22] • No driver's license/Expired driver's license[23] • Speeding (petty misdemeanor) [24] • Failure to wear seatbelt[25] • No child restraint seat[26] • Failure to yield to an emergency vehicle[27] • Predatory offender registration[28]

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[29] 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.[30] Many years later, the Supreme Court ruled that this law applies in Indian country.[31] 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.[32] 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.[33]

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.[34] According to this federal law, the federal government has jurisdiction to prosecute certain enumerated crimes[35] 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.[36]

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.[37] 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.[38] Second, the Indian Civil Rights Act[39] 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.[40]

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.[41]

The Minnesota Legislature granted similar law enforcement authority to the Lower Sioux Indian Community (in Redwood County) in 1997.[42]

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] For a discussion of Public Law 280, retrocession, and the law's applicability to cooperative police agreements between local and tribal authorities under Minnesota Statutes, section 626.93, see *State v. Many Penny*, 682 N.W.2d 143 (Minn. 2004).

[5] Laws 1973, ch. 625.

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

[7] 480 U.S. 202 (1987).

[8] 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.

[9] 480 U.S. at 211 (1987).

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

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

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

[13] *State v. LaRose*, 673 N.W.2d 157 at 164 (Minn. App. 2003).

[14] *Id.*

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

[16] *State v. Judkins* C8-98-1038, C2-98-1069 (Minn. App. May 4, 1999), *unpublished opinion.*

[17] *State v. Reese*, No. CX-97-984 (Minn. App. March 3, 1998), 1998 WL 113982, *unpublished opinion.*

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

[19] *State v. Aune*, No. C2-99-143 (Minn. App. August 31, 1999), 1999 WL 672678, *unpublished opinion.*

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

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

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

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

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

[28] *State v. Jones*, 700 N.W.2d 556 (Minn. App. 2005).

[29] 18 U.S.C. § 1152.

[30] 18 U.S.C. § 13.

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

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

[33] *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).

[34] 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.

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

[36] 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).

[37] *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). After passage of 25 U.S.C. 1301, which recognized the "inherent powers" of Indian tribes to exercise jurisdiction over members of other tribes, *Oliphant* was called into question by *United States v. Lara*, 541 U.S. 193 (2004). The court did not find *Oliphant* controlling in that case, which dealt with the issue of whether trying an Indian defendant in federal court for assaulting a police officer, after he had already been tried in a tribal court for the same offense, constituted double jeopardy. The Court held that it did not, because, after 25 U.S.C. 1301, the authority of the tribe and the federal government to prosecute the offense came from two "separate sovereigns."

This holding was found to be consistent with *Oliphant*, although *Oliphant* had held that the tribe's authority to prosecute nonmembers was part of the tribal sovereignty that was divested by treaties and by Congress; *Lara* held that, after 25 U.S.C. 1301, this authority was inherent in the tribe. The Court found the two cases consistent because 25 U.S.C. 1301 had modified the tribe's status, which Congress was constitutionally permitted to do.

[38] 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.

[39] 25 U.S.C. § 1302.

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

[41] Minn. Stat. § 626.90.

[42] Minn. Stat. § 626.91.

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

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] Child protection statutes have also been held to apply in Indian country.[4] 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.[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 alone is not 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] For example, state court has concurrent jurisdiction with a tribal court in a wrongful death action against a tribe member if a nontribe member is killed in Indian Country.[15] 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,"[16] 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."[17]

State court must be available to an Indian who invokes its jurisdiction against a non-Indian, even if the dispute arises in Indian country.[18] State courts may take jurisdiction of civil actions arising in Indian country and involving only tribal members if there is no tribal court,[19] if the tribal court lacks jurisdiction of the subject under its tribal law,[20] or if an Indian party is found to have voluntarily submitted to state court jurisdiction by filing a petition there.[21] 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[22] or may decline jurisdiction for public policy reasons.[23]

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.[24] 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,[25] only judgments in certain kinds of cases,[26] or only judgments where specified conditions are met.[27]

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.[28] 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. The Minnesota Supreme Court adopted two rules on state court recognition of tribal court orders. Recognition is mandatory if required by federal or state statute.[29] Recognition is 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.[30]

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] *Doe v. Mann*, 415 F.3d 1038 (CA 9 2005) *cert. denied*. 126 S.Ct. 1911 (2006).

[5] *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.

[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] *Lemke ex. rel. Teta v. Brooks*, 614 N.W.2d 242 (Minn. App. 2000) *pet. for review denied* Sept. 27, 2000.

[16] *Montana v. United States*, 450 U.S. 544, 565 101 S. Ct. 1245, 1258 (1981). *See, Cohen v. Little Six, Inc.*, 543 N.W.wd 376 (Minn. App. 1996), affirmed without opinion 561 N.W.2d 889 (Minn. 1997), *cert. denied* 524 U.S. 903, 118 S.Ct. 2059 (1998).

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

[18] *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).

[19] *Becker County Welfare Department v. Bellcourt*, 453 N.W.2d 543 (Minn. App. 1990) *pet. for review denied*, May 23, 1990.

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

[21] *Ibid.*

[22] *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).

[23] *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).

[24] U.S. Const. art. IV, § 1, cl. 1.

[25] Wis. Stat. Ann. § 806.245.

[26] Ark. Code Ann. 9-15-302 (tribal court orders for protection order).

[27] Okla. Stat. tit. 12, § 728 (recognizing tribal court judgments if tribal court reciprocates on state court judgments); Wyo. Stat. Ann. § 5-1-111.

[28] *Jim v. CIT Financial Services Corp.*, 87 N. M. 362, 533 P.2d 751 (1975); *Mexican v. Circle Bear*, 370 N.W. 2d 737 (S.D. 1985) (superseded by statute in SDCL 1-1-25).

[29] General Rules of Practice for the District Courts, Rule 10.01. Recognition is discretionary with the state court in all other cases; a rule outlines factors the court may consider in exercising this discretion.

[30] General Rules of Practice for the District Court, Rule 10.02.

Gaming Regulation in Indian Country

by Patrick McCormack (651-296-5048)

Indian Gaming Regulatory Act

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. In recent years, Congress has considered proposals to further limit the lands eligible for gaming, but none of the proposed legislation has passed thus far.

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

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

"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 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.

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.

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' Roles

States have limited rights to regulate or prohibit Indian gambling. Under 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. Several states have such revenue-sharing 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.

Under the blackjack compacts, Minnesota Indian tribes are obligated to pay the state a total of approximately $150,000 each year to assist the state in administering the compacts. However, the Minnesota compacts do not require tribes to pay a share of gambling proceeds to 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.

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. The law legalized and licensed "video games of chance" without allowing betting on them. At the time the law was repealed, the legislature also said that the 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.

Casino Revenues

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. Recent estimates indicate that $10 billion or more was wagered at Minnesota tribal casinos in fiscal year 2004,[2] and that gaming revenue at Minnesota Indian gaming facilities amounted to approximately $1.36 billion in 2005.[3]

Casinos in Minnesota

Minnesota currently has 17 Indian casinos. Initially, this was more tribal casinos than other states. There are several reasons for this:

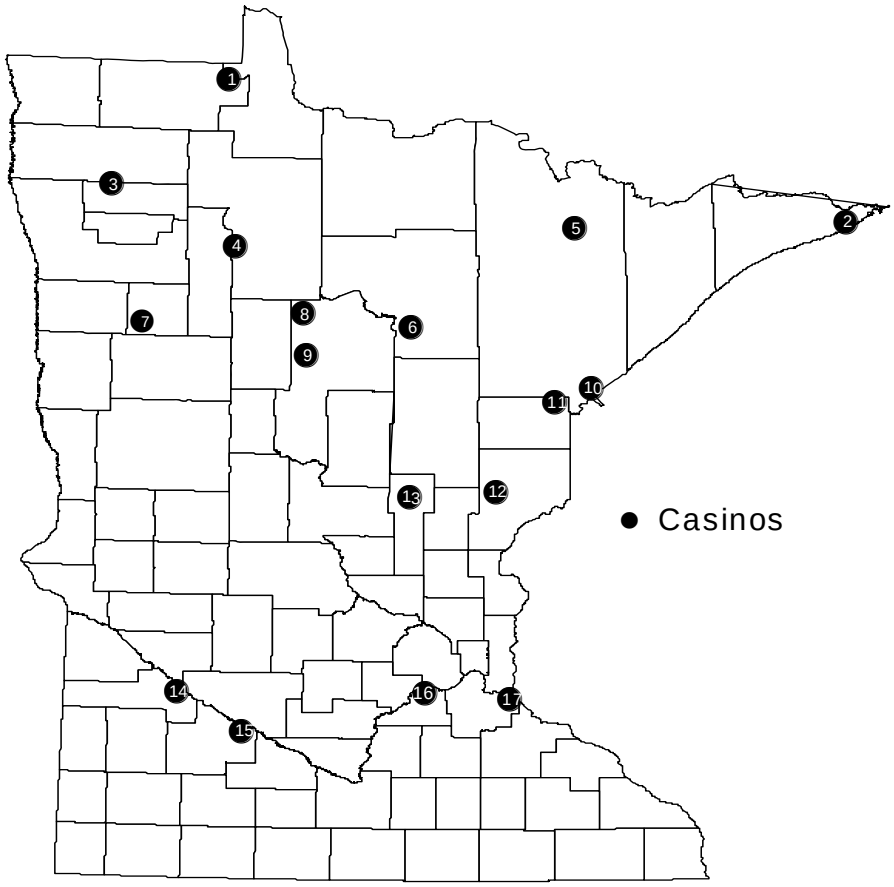
- Minnesota tribes were involved in legal gambling operations several years before the passage of the 1988 federal act. These activities were permitted under federal court decisions upholding Indian sovereignty. Although these operations were on a much smaller scale than today's casinos, they laid an 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. According to the Minnesota Indian Gaming Association, an estimated 17 percent of casino patrons are 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.

Map 3: Location of 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. Prairie's Edge Casino Resort
15. Jackpot Junction Casino Hotel
16. Little Six Casino
    Mystic Lake Casino Hotel
17. Treasure Island Resort and Casino

ENDNOTES

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

[2] Minnesota State Lottery, Gambling in Minnesota: An Overview, September 24, 2004.

[3] Alan Meister, Indian Gaming Industry Report, 2006-2007 Ed. at 21. This estimate includes revenues from smaller bingo facilities as well as tribal casinos.

Liquor Regulation in Indian Country

by Patrick McCormack (651-296-5048)

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 was located. In 1985, the legislature 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 included less restrictive fishing regulations for nonband anglers, penalties for the state and anglers for exceeding the safe walleye harvest quota in 2002, and a cap on future walleye limits.

A July 2006 decision by Judge Steven Anderson in Mille Lacs County District Court brought by the county dismissed a tribal member's argument that he was exercising 1837 treaty hunting rights on tribal land outside the reservation boundaries when he was charged with weapons violations, so state law didn't apply. Mille Lacs band-owned lands often are identified by signage, but are never posted as private land, which means it is open to the public for hunting with a proper license.

Because Judge Anderson declared in his order that the defendant could be tried under state law, a pending criminal case is in the works. Discussions by the band, the DNR, and Mille Lacs County continue in the hopes of coming up with a possible solution for future, similar situations, including asking the Eighth Circuit District Court for clarification of 1837 treaty rights regarding band-owned fee land.

ENDNOTES

[1] Minn. Stat. §§ 97A.151, 97A.155.

[2] Minn. Stat. § 97A.161.

[3] See Minnesota Statutes 2006, section 97A.161. 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 are valid, and Phase II dealt with defining those rights, 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 Fond du Lac case (1854 treaty), the federal district court found the treaty harvest right 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 Bob Eleff (651-296-8961)

In the century following the establishment of the reservation system after the Civil War, environmental regulation of tribal members in Indian country was meager. Federal and state environmental statutes were few. Regulation that did occur emanated from tribal law or from the application of state laws governing public nuisance, refuse disposal, and the like. During the past 40 years, as the federal government and the states enacted many of the environmental statutes operating today, the issue of which laws—state, federal, or tribal—apply in Indian country and which governing body administers them has been clarified by a series of court decisions.

Federal and tribal environmental regulatory laws apply to tribal members in Indian country; the jurisdiction of state laws is limited. Federal environmental statutes apply in Indian country, but federal policy is to cede regulatory authority to tribes that wish to **administer** these laws on tribal lands, provided the tribes meet certain criteria. This tribal authority may only be applied to those provisions of environmental laws expressly designated by Congress. Tribes retain authority to enact and administer their own environmental laws in the absence of corresponding federal laws, or as long as they are at least as stringent as any corresponding federal laws. Tribes are treated similar to states in these respects. Tribal jurisdiction extends to non-Indians under certain conditions.

The authority of state environmental laws over tribal members in Indian country is quite narrow, being restricted to statutes that prohibit certain acts, such as the sale or use of specific pesticides or chemicals in packaging or products. State statutes that are regulatory in nature—that permit certain actions but govern **how** they are to be carried out—are not applicable to tribal members in Indian country, but are applicable to non-Indians in certain circumstances.

Federal Environmental Regulations and Indian Lands

Courts have ruled for many years that federal laws apply to Indians, although this was not the case earlier. Federal primacy with respect to Indian lands derives from the constitutional powers granted to Congress to regulate commerce with Indian tribes and to enter into treaties with them.[1] This is not to say that all federal laws automatically governed in Indian country. In fact, in an 1894 decision, the Supreme Court said, "Under the Constitution of the United States,

"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.

as originally established . . . General Acts of Congress did not apply to Indians, unless so expressed as to clearly manifest an intention to include them."[2] However, by 1960, the Court declared that "it is now well settled by many decisions of this Court that a general statute in terms applying to all persons includes Indians and their property interests."[3]

The trend toward greater tribal self-government began in the 1970s. In 1970, President Nixon announced a national policy aimed at tribal self-determination, a principle eventually embodied in the Indian Self-Determination and Education Assistance Act passed by Congress in 1975. In 1983, President Reagan gave further impetus to this trend in a statement on Indian policy, noting that despite passage of the act:

> major tribal governmental functions[, including]. . . developing and managing tribal resources . . [,] are frequently carried on by federal employees. The federal government must move away from this surrogate role which undermines the concept of self-government. This Administration intends to restore tribal governments to their rightful place among the governments of this nation and to enable tribal governments . . . to resume control over their own affairs.[4]

The following year, the Environmental Protection Agency (EPA) articulated its policy regarding the operation of federal environmental programs on Indian lands.

> EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as political subdivisions of states or other governmental units. . .[T]he agency will assist interested Tribal Governments in developing programs and preparing to assume regulatory and program management responsibilities for reservation lands.[5]

Federal Delegation of Authority to Indian Tribes

Tribes may administer certain federal environmental programs. Many of the core environmental laws enacted during the 1970s and 1980s expressly provided that EPA could delegate authority to qualified states to administer regulatory programs, such as inspecting facilities, issuing permits, determining compliance, and enforcing against violators. Between 1986 and 1995, Congress amended those laws to allow a similar delegation to Indian tribes, but only with respect to certain authorities, as reflected in the partial list below:[6]

- **Clean Water Act**: Planning and receiving federal funding for the construction of wastewater treatment plants; establishing water quality standards; monitoring and inspecting facilities for compliance; issuing permits containing pollution limits and enforcing them; controlling pollution from "nonpoint" sources
- **Safe Drinking Water Act**: Establishing drinking water standards and enforcing them; protecting water wellhead areas from contamination; regulating the injection of fluids into the ground (e.g., from non-residential septic systems)

- **Clean Air Act**: Issuing and enforcing permits limiting emissions; designating air quality areas

- **Comprehensive Environmental Response, Compensation and Liability Act**: Removing hazardous wastes from contaminated lands or pursuing agreements with others to do so; submitting priorities for cleanups to EPA; consulting with the EPA on cleanup methods

- **Federal Insecticide, Fungicide and Rodenticide Act**: Cooperating with the EPA to train and certify pesticide applicators and to enforce the act

Tribes seeking delegation of authority must meet certain conditions. In reviewing a tribe's application for delegation of authority under these laws, the EPA must insure that a tribe satisfies criteria established by Congress. For example, the Safe Drinking Water Act requires that: 1) the tribe has a governing body possessing substantial governmental powers and performing substantial duties; and 2) the functions to be exercised are within the tribe's jurisdiction;[7] and 3) the tribe is reasonably expected to be capable of carrying out those functions in a manner consistent with the purposes of the act.[8]

Tribes are also eligible to receive federal financial and technical assistance to help them carry out their environmental responsibilities. The purposes of the Indian Environmental and General Assistance Program Act of 1992 are to "provide general assistance grants to Indian tribal governments . . . to build capacity to administer environmental regulatory programs that may be delegated by the Environmental Protection Agency," and to "provide technical assistance in the development of multimedia programs. . ."[9]

Four Minnesota tribes have been granted "treatment as state" status by the EPA. This designation authorizes tribes to administer the following federal programs:

- In 1999, both the Upper and Lower Sioux Indian Communities were granted authority to administer programs under section 402 of the Toxic Substances Control Act to accredit those who train workers in proper lead paint abatement practices, as well as to certify that such workers have completed requisite training.[10] Both tribes have also signed a memorandum of understanding with the EPA to enforce the work practice standards developed by the agency to insure proper lead paint removal from buildings.

- The Grand Portage and Fond du Lac Bands of Chippewa were delegated authority by the EPA, in 1996 and 1998, respectively, to set, monitor, and enforce water quality standards under section 303 of the Clean Water Act.[11] The Grand Portage band has signed a memorandum of understanding with the EPA and the Minnesota Pollution Control Agency (PCA) regarding its establishment of water quality standards for the shore waters of Lake Superior that allows both the tribe and the agency to retain separate jurisdiction to set standards, but insures that those standards will be identical.[12]

- The Fond du Lac tribe received authority from the EPA in January 2004 to be treated as a state with respect to two Clean Air Act programs. The tribe will receive notice of any

> draft air pollution permits the state issues for sources located within a 50-mile radius of reservation boundaries, so that it may review and comment on the permit. The tribe is also qualified to receive federal air program grants at a 5-percent reduced match rate, the same rate as states.[13, 14]

Tribal Environmental Regulations in Indian Country

Like states, Indian tribes may enact and enforce their own environmental regulations in subject areas where no federal law exists or if their laws are at least as stringent as corresponding federal laws. Indian tribes have inherent sovereign authority to regulate tribal members on the reservation,[15] although these powers may be limited, modified or eliminated by Congress.[16]

A tribe may also regulate the activities of non-Indians on the reservation. A 1981 Supreme Court decision recognized that tribes have authority to enforce their civil regulations against non-Indians within the reservation if expressly authorized by federal law or treaty. The decision also stated that a tribe has inherent power to exercise civil authority over

> nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.[17]

State Environmental Regulations in Indian Country

State jurisdiction over tribal members in Indian country with respect to environmental law has been limited by Congress and the courts. Minnesota's role in applying its environmental laws to tribal members in Indian country is governed by Public Law 280, enacted by Congress in 1953, which transferred federal criminal jurisdiction in Indian country to six states, including Minnesota, and allowed other states discretion to assume such authority.[18] However, many of Minnesota's environmental laws are not criminal; they are civil laws that permit certain actions, but establish procedures, limits, and conditions to govern them. The U.S. Supreme Court has ruled that Public Law 280 does not apply to such civil/regulatory laws, but only to criminal/prohibitory laws.[19] The test it established to distinguish between these two categories is whether the law intends to prohibit conduct that violates a state's public policy or to regulate conduct otherwise permitted. As one publication declared, "This distinction eludes clear definition and has generated considerable litigation.[20] For more on Public Law 280, see pages 22 and 23.

In general, state environmental laws that flatly prohibit certain actions and impose civil or criminal penalties on violators are more likely to be judged to be applicable on Indian lands. Among such laws enacted in Minnesota are the following:

Prohibitions on sales, distribution or use of certain types of products or products containing certain chemicals or materials	
Material	**Minnesota Statute**
Pesticides containing chlordane, heptachlor, or more than 1 part per million TCDD	§§18B.11, 18B.115
Packaging materials containing intentionally introduced lead, cadmium, mercury, or hexavalent chromium	§ 115A.965
Products placed on a "prohibited" list by the Listed Metals Advisory Committee that contain lead, cadmium, mercury, or hexavalent chromium	§ 115A.9651
Mercury thermometers	§ 116.92
Toys, games, and apparel containing mercury	§ 116.92
Mercury manometers used on dairy farms	§ 116.92
Beverages in a plastic and metal can	§ 325E.042
Beverages or motor oil containers held together by connected rings made of nondegradable plastic	§ 325E.042
Devices impairing operation of a motor vehicle emissions control system	§ 325E.091
Alkaline manganese batteries containing more than .025% mercury by weight	§ 325E.125
Button cell nonrechargeable batteries containing more than 25 mg of mercury	§ 325E.125
Dry cell batteries containing a mercuric oxide electrode	§ 325E.125
Certain products containing CFCs	§ 325E.38
Sweeping compounds containing petroleum oil	§ 325E.40
Children's toys or articles posing a toxic hazard	§ 325F.08

Prohibition of activities that may pollute water	
Activity	**Minnesota Statute**
Discharging a marine toilet into waters of the state	§ 86B.325
Constructing/operating a depository for hazardous/nuclear waste that may pollute potable water	§ 115.065

Prohibitions on placing certain items in solid waste, in a solid waste processing or disposal facility	
Item	**Minnesota Statute**
Waste tires	§ 115A.904
Lead acid batteries	§ 115A.915
Rechargeable battery, battery-pack, or product containing them	§ 115A.9157
Motor vehicle fluids or filters	§ 115A.916
Yard wastes, except for reuse, composting, or co-composting	§ 115A.931
Mercury, or instruments containing mercury	§ 115A.932
Fluorescent or high-intensity discharge lamps	§ 115A.932
Telephone directories	§ 115A.951
Major appliances	§ 115A.9561
Electronic products containing a cathode-ray tube	§ 115A.9565

Prohibition of miscellaneous activities	
Activity	**Minnesota Statute**
Selling/distributing an adulterated or misbranded pesticide	§§ 18B.12, 18B.13
Certain fertilizer handling activities	§ 18C.201
Selling/distributing a misbranded or adulterated fertilizer, plant amendment or soil amendment	§§ 18C.225, 18C.231
Operating a motorboat in excess of noise limits	§ 86B.321
Delivering unprocessed mixed municipal solid waste to a substandard disposal facility	§ 115A.415
Littering on public or private lands or waters	§§ 115A.99, 609.68
Sending/accepting residential lead-paint waste for incineration in a mixed municipal solid waste incinerator	§ 116.88
Throwing solid waste from a motor vehicle	§ 169.421

With respect to non-Indians, states have authority to regulate their activities on an Indian reservation unless preempted by federal law. In a 1983 decision, the Supreme Court expanded the concept of federal preemption of state authority on reservations, stating: "State jurisdiction is preempted by the operation of federal law if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the State interests at stake are sufficient to justify the assertion of State authority."[21]

Summary

Federal regulatory environmental statutes apply on Indian lands. Tribal law applies in the absence of federal statutes, or where tribal law is more stringent than corresponding federal law. Qualified tribes may administer several federal environmental programs designated by Congress or the EPA, and are eligible to receive federal financial and technical assistance for that purpose. The federal government retains authority to implement and enforce federal laws in Indian country where a tribe is not delegated to do so.

State laws that prohibit certain polluting activities and that impose civil or criminal penalties for violations are likely to apply in Indian country to the same extent as in the rest of the state. State regulatory environmental statutes do not apply on Indian lands. The distinction between these two categories is not, however, a settled area of law.

ENDNOTES

[1] U.S. Const., art. I, § 8, cl. 3, and art. II, § 2, cl. 2, respectively.

[2] *Elk v. Wilkins*, 112 U.S. 94 (1894), at 99-100.

[3] *Federal Power Commission v. Tuscorora Indian Nation*, 362 U.S. 99 (1960), at 116.

[4] "American Indian Policy," January 24, 1983, pp. 2, 4, http://epa.gov/Indian/pdfs/reagan83.pdf#search%22reagan%20 indian%20/policy%201983%22.

[5] U.S. Environmental Protection Agency, *EPA policy for the administration of environmental programs on Indian reservations*, November 8, 1984, p. 2, http://www.epa.gov/region6/6pd/pd-u-sw/reser.htm

[6] In the case of the Clean Water Act (33 USC § 1377(e)), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, the Superfund law governing hazardous waste cleanup, 42 USC § 9626), and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA, 7 USC § 136u), Congress specified which authorities could be delegated to tribes. With respect to the Safe Drinking Water Act (42 USC §§ 300h-1(e) and 300j-11) and the Clean Air Act (42 USC § 7601(d)), Congress authorized the EPA to make that determination.

[7] Although courts have held that tribal authority does not extend to nonmembers in all cases, the Supreme Court ruled in 1981 that "A tribe may regulate . . . the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." [Citations omitted] *Montana v. United States*, 450 US 544 (1981), at 565-566.

[8] 42 U.S.C. § 300j-11(b).

[9] 42 U.S.C. § 4368b(b).

[10] U.S. Environmental Protection Agency, "Lead-based paint activities in target housing and child-occupied facilities; authorization of the Upper Sioux community's and Lower Sioux community's lead-based paint activities program," *Federal Register*, vol. 64, no. 130 (July 8, 1999), pp. 36870-36871, www.epa.gov/fedrgstr/EPA-TOX/1999/July/Day-08/t17316.htm.

[11] Fond du Lac band of Lake Superior Chippewa, *Water quality standards of the Fond du Lac reservation, Ordinance #12/98, as amended*, www.epa.gov/waterscience/standards/wqslibrary/tribes/chippewa.pdf; *Grand*

Portage reservation water quality standards, Final draft, May 24, 2005, www.epa.gov/waterscience/standards/wqslibrary/tribes/grand-portage-band.pdf.

[12] Interview with Luke Jones, Director, Indian Environmental Office, U.S. Environmental Protection Agency, Region V, October 3, 2006.

[13] U.S. Environmental Protection Agency, *Region 5 Air: Weekly activity report*, January 23, 2004, www.epa.gov/Region5/air/hot/04-01-23.htm.

[14] There are additional formal mechanisms of cooperation between tribes and the EPA that do not involve a formal delegation of authority. For example, the EPA, PCA, and the Mille Lacs band of Chippewa have entered into a memorandum of understanding among the three parties that allows EPA to implement the program, but permits the tribe and the PCA to make informal referrals to EPA for enforcement action. (Minnesota Pollution Control Agency, *Legislative fact sheet: Mille Lacs memorandum of understanding*, January 14, 2000, www.pca.state.mn.us/hot/legislature/factsheets/mlmou-00.pdf)

EPA also employs a mechanism called a DITCA (Direct Implementation Tribal Cooperative Agreement) whereby tribes receive compensation to perform certain EPA functions. For example, the Bois Forte band conducts outreach and education activities under the federal lead program, while the Fond du Lac and Mille Lacs bands inspect certain facilities during construction to insure compliance with the agency's storm water standards. (Interview with Luke Jones)

[15] *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

[16] *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, at 141.

[17] *Montana v. United States*, 450 U.S. 544 (1981) at 557, 565-566.

[18] Public Law 280 excluded the Red Lake Reservation from its provisions. President Eisenhower expressed "grave doubts" about signing this legislation without a provision requiring tribal consent for states to assume such authority. In 1968, an amendment to that effect was enacted. No tribe has since given such consent. Carole Goldberg and Duane Champagne, "Is Public Law 280 fit for the twenty-first century? Some data at last," *Connecticut Law Review*, vol. 38, no. 4 (Spring 2006), pp. 697-729, at 707, www.connecticutlawreview.org/archive/vol38/spring2 /Goldberg.pdf.

[19] *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), at 209-10.

[20] U.S. Department of Justice, Office of Justice Programs, *Public Law 280 and law enforcement in Indian country – research priorities*, December 2005, p. 6, www.ncjrs.gov/pdffiles1/nij/209839.pdf.

[21] *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, at 334.

Taxation in Indian Country

by Joel Michael (651-296-5057) and Karen Baker (651-296-8959)

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]

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

"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.

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[5] 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[6]
Tribe			
Indian country source income	Waived[7]	No	N.A.
Non-Indian country income	Waived[8]	Yes[9]	N.A.
Passive income	Waived[10]	No	N.A.
Tribal member[11] in Indian country			
Indian country source income	Yes	No[12]	Yes
Non-Indian country income	Yes	Yes[13]	Probably yes[14]
Passive income	Yes	No[15]	Probably yes[16]
Tribal member outside Indian country			
Indian country source income	Yes	Yes[17]	Probably yes[18]
Non-Indian country income	Yes	Yes	Probably yes[19]
Passive income	Yes	Yes	Probably yes[20]
Nonmember Indian in Indian country			
Indian country source income	Yes	Probably yes[21]	Unclear[22]
Non-Indian country income	Yes	Yes	No[23]
Passive income	Yes	Yes	No[24]
Nonmember Indian outside Indian country			
Indian country source income	Yes	Yes[25]	No[26]
Non-Indian country income	Yes	Yes	No
Passive income	Yes	Yes	No
Non-Indian in Indian country			
Indian country source income	Yes	Yes	Unclear[27]
Non-Indian country income	Yes	Yes	No[28]
Passive income	Yes	Yes	No[29]
Non-Indian outside Indian country			
Indian country source income	Yes	Yes	No[30]
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[31]	Non-Indian[32]
State Taxation			
Cigarette excise tax	No[33]	No[34]	Yes[35]
Severance tax on minerals			
Leases under pre-1938 law[36]	Yes	Yes	Yes
Leases under post-1938 law[37]	No	No	Yes[38]
General sales tax	No[39]	No[40]	Yes[41]
Motor vehicle license	No	No	No[42]
Gross receipts of contractor with tribe	N.A.	No	No[43]
Alcohol excise[44]	No	No	Yes
Motor fuel sales to Indian retailer in Indian country	N.A.	N.A.	No[45]
Motor fuel sales to non-Indian distributor for ultimate sale in Indian country	Yes[46]	Yes[47]	Yes[48]
Tribal Taxation			
Cigarette excise	N.A.	Yes[49]	Yes[50]
Alcohol excise	N.A.	Yes[51]	Yes[52]
General sales	N.A.	Yes[53]	Yes[54]
Oil and gas severance	N.A.	Yes[55]	Yes[56]

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*[57] 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."[58] 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.[59]

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[60]	Entity Imposing Tax: Tribal
Trust land		
Tribal	No[61]	N.A.
Allotted to individual Indian	No[62]	Yes[63]
Fee land – on reservation		
Tribally owned	Yes[64]	N.A.
Owned by enrolled Indian	Yes[65]	Yes[66]
Owned by nonenrolled Indian	Yes	No[67]
Owned by nonIndian	Yes	No[68]
Tribal fee land – off reservation	Yes[69]	N.A.

Table 4 displays the amount of tax-exempt Indian trust lands by county. The land values are from the 2004 tax-exempt abstract. (This is the most recent version; the next abstract is due in 2010). Scott County has the highest amount of tax-exempt value ($250 million) with Cass County a close second ($241 million). Scott County is home to the Mystic Lake Casino, the

largest tribal casino in Minnesota. However, the $250 million amount is small relative to Scott County's tax base (2.4 percent) and population ($2,150 per capita). Indian trust lands constitute the largest share of Mahnomen County's tax base (17.5 percent), reflecting the county's low tax base and that Indian lands comprise a large portion of the county. Mahnomen's actual percentage is now much higher, since the Shooting Star Casino was transferred into trust status in 2006.[70] Cook County has the largest per capita amount ($12,417) of exempt Indian trust land.[71] This data is now about three years old (based on January 2004 values), and the 2010 assessment will show increases, reflecting additions and improvements to tribal casinos and other properties that have been made by tribes, as well as trust transfers.

Table 4
Tax-Exempt Indian Trust Lands by County
2004 Assessment

County	Market value of exempt Indian lands	% of taxable market value	Per capita
Aitkin	$3,221,100	0.19%	$199
Becker	37,388,600	1.53%	1,173
Beltrami	17,991,700	1.02%	421
Carlton	96,025,100	5.58%	2,816
Cass	241,144,100	6.32%	8,361
Clearwater	8,502,300	1.77%	1,003
Cook	66,654,000	6.83%	12,417
Crow Wing	82,700	0.00%	1
Goodhue	33,197,800	0.82%	722
Houston	566,700	0.05%	28
Hubbard	49,800	0.00%	3
Itasca	8,370,500	0.25%	189
Koochiching	32,200	0.00%	2
Lake of the Woods	31,550,200	11.33%	7,127
Mahnomen	46,355,400	17.49%	9,066
Mille Lacs	75,526,600	4.96%	2,950
Pennington	10,191,200	2.00%	748
Pine	64,441,600	3.32%	2,265
Pipestone	16,700	0.00%	2
Redwood	62,472,200	4.43%	3,881
Roseau	2,435,000	0.35%	148
St. Louis	47,048,200	0.44%	237
Scott	249,354,900	2.43%	2,150
Yellow Medicine	21,825,400	2.37%	2,062
Total	**$1,124,444,000**		

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 2005

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 about a decade and a half.[72] By most accounts, these enterprises have proven to be financially successful. An independent consultant estimated the total gaming revenues of Minnesota tribes to be $1.36 billion in 2005.[73] 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.

The value of exempt Indian lands more than doubled between the 1998 exempt abstract and the 2004 abstract.

It is difficult to assess how much this increase is attributable simply to increases in values of previously exempt properties and how much of it is attributable to transfers of additional land to trust status. Based on surveys conducted by House Research on trust transfers between 1992 and 1998, about 9,000 acres were transferred into trust during this period.[74] A substantial amount of the property was already exempt before the transfer. It seems likely that the almost $600 million of increase in value between 1998 and 2004 must be in some part attributable to trust transfers. Based on House Research surveys of assessors in 2006, about $2.8 million of trust transfers were made after 2004. (This does not include transfer of the $20 million Shooting Star Casino and related properties in Mahnomen County, which as of November 2006 the county had not received notice of the completed transfer.) As described in Appendix III, a large trust transfer is pending in Scott County.

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 and continue to pay Minnesota property taxes on them.

Although most tribal lands are held in trust status, Indian tribes also own fee lands that pay state and local property taxes. It seems reasonable to expect that all or part of these properties will be transferred into trust and become exempt from property taxation. Based on the 2006 survey, tribes paid about $2.4 million in property taxes in 11 counties in 2005 (the Mille Lacs Band paid over $1 million in property tax to governments in Pine and Mille Lacs counties).[75]

In-lieu Payments

Some tribal governments make in-lieu payments to help for local services. Although trust lands are exempt from taxation, some tribal governments make in-lieu payments to cities and counties to offset the cost of providing local services. Based on a survey of local governments conducted by House Research in 2006, these in-lieu payments totaled a little more than $6 million in 2005. However, one tribe, the Fond du Lac Band of the Lake Superior Chippewa, paid $5 million of this to Duluth under an agreement related to establishment of the tribe's casino in the city.[76] The rest of the in-lieu payments are divided about equally between cities/towns and counties. Table 5 displays the amount of payments by tribe, county, and city.

Table 5
Tribal In-Lieu Payments to Local Governments
Calendar Year 2005

Tribe	Location		In Lieu Payments		
	County	City/town	City/Town	County	Total
Fond du Lac Band	Carlton	Carlton	$10,000	$52,000	$62,000
Upper Sioux Community	Yellow Medicine	Granite Falls	$10,000	$10,000	$20,000
Fond du Lac Band	St. Louis	Duluth	$5,000,000	$0	$5,000,000
Bois Forte Band		Tower	$5,000	$0	$5,000
Mille Lacs Band	Pine	Hinckley, Barry	$47,000	$0	$47,000
Mille Lacs Band	Mille Lacs	Onamia	$3,500	$0	$3,500
Grand Portage Chippewa	Cook		$0	$41,000	$41,000
Lower Sioux Community	Redwood	Morton	$0	$18,356	$18,356
Shakopee Mdewakanton Sioux Community	Scott	Prior Lake	$340,000	$441,650	$781,650
Red Lake Band of Chippewa Indians	Roseau	Warroad	$5,000	$0	$5,000
Leech Lake Band of Ojibwe	Itasca	Deer River	$94,177	$400	$94,577
Total			**$5,514,677**	**$563,406**	**$6,078,083**

Tax Agreements with Tribes

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.[77] 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. The authority will also allow the agreements to cover the cigarette fees imposed by the 2003 and 2005 legislatures (i.e., the 35-cent per pack fee on nonsettlement cigarettes and the 75-cent per pack

health impact fee). Following resolution of the litigation over the constitutionality of these fees, the commissioner has entered negotiations in the fall of 2006 with the tribal governments to modify the agreements to include these fees.

Table 6
Per Capita Distributions to
Tribal Governments Under State Tax Agreements
Effective for payment starting October 31, 2006

Tribal Government	Sales & Use	Cigarette & Tobacco	Alcoholic Beverage	Motor Fuels*
Bois Forte Band	$64.12	$48.80	$13.41	$68.75
Fond du Lac Band	60.91	48.80	13.41	68.75
Grand Portage Band	61.87	48.80	13.41	49.45
Leech Lake Reservation Tribal Council	109.49	48.80	13.41	69.75
Lower Sioux Indian Community	28.87	48.80	13.41	49.50
Mille Lacs Band	55.99	48.80	13.41	48.80
Prairie Island Community	No tax agreement			
Red Lake Band	106.89	48.80	13.41	Entire amount
Shakopee Mdewakanton Indian Community	19.14	48.80	13.41	49.45
Upper Sioux Indian Community	36.70	48.80	13.41	49.50
White Earth	104.90	48.80	13.41	68.75

* In addition, tax paid by tribal government on its purchases is refunded.
Source: Minnesota Department of Revenue

Table 7
Revenue Sharing Under State-Tribal Tax Agreement
Formulas to Calculate Tribal Governments' Share
Calendar Year 2007

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 2005 by tax type.

Table 8
Payments to Tribal Governments Under State Tax Agreements
Calendar Year 2005

Tribal Government	Sales & Use	Cigarette & Tobacco	Alcoholic Beverage	Motor Fuels	Total
Bois Forte Band	$598,325	$124,691	$34,266	$199,575	$956,857
Fond du Lac Band	741,088	248,392	43,792	289,915	1,323,187
Grand Portage Band	167,073	43,618	5,469	314,713	530,873
Leech Lake Reservation Tribal Council	1,399,001	474,674	155,005	792,823	2,821,503
Lower Sioux Indian Community	515,062	99,461	14,552	64,319	693,394
Mille Lacs Band	920,556	522,539	28,265	99,857	1,571,217
Red Lake Band	860,490	392,796	54,055	336,431	1,643,772
Shakopee Mdewakanton Indian Community	856,883	616,253	40,989	690,335	2,204,460
Upper Sioux Indian Community	172,109	94,167	5,147	92,179	363,602
White Earth	2,094,569	370,274	101,671	755,703	3,322,217
Total	$8,325,156	$2,986,865	$483,211	$3,635,850	$15,431,082

Source: Minnesota Department of Revenue

State Aid to Casino Counties

The state pays aid to most counties with Indian gaming casinos. Under this aid program, the state pays 10 percent of its share of the taxes paid under the agreement 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.[78] In 2003, the legislature modified the aid program to allow counties with casinos not subject to tax agreements to receive 5 percent of the excise tax revenues generated from activities located in the county.[79]

Table 9 below shows the amount of aid paid in 2005 by county. Total aid equaled $668,124 with the largest payment, $174,315, being made 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 Counties with Casinos
Calendar Year 2005

County	Tribe	County Payment
Carlton	Fond du Lac	$30,235
Cass	Leech Lake	24,211
Cook	Grand Portage	22,161
Goodhue	Prairie Island	52,848
Itasca	Leech Lake	24,211
Mahnomen	White Earth	103,686
Mille Lacs	Mille Lacs	61,015
Pine	Mille Lacs	61,015
Redwood	Lower Sioux	56,664
St. Louis	Fond du Lac	30,235
Scott	Shakopee	174,315
Yellow Medicine	Upper Sioux	27,528
Total		**$668,124**

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] *See* the discussion in Part One, page 15, of what constitutes Indian country. In Minnesota, Indian country so far appears to be limited to the territory of the reservation and trust lands. However, it could extend to dependent Indian communities and Indian allotments, as defined under federal law. *Dark-Eyes v. Commissioner of Revenue Services*, 887 A.2d 848 (Conn. 2006) (rejecting a tribal member's claim for an income tax exemption on the grounds that her home, located outside of the formal reservation, was not within a dependent Indian community).

[6] 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 Wagon v. Prairie Potawatomi Nation*, 546 U.S. 95 (2005); *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.

[7] *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.

[8] *See* note 7.

[9] 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) (gross receipts tax on off-reservation Indian-owned ski resort valid).

[10] *See* note 7.

[11] 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).

[12] *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).

[13] 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).

[14] 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.

[15] 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 from 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.

[16] *See* note 13.

[17] *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450 (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 535 U.S. 930*, *rehearing denied* 535 U.S. 1071 (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).

[18] *See* note 14.

[19] *See* note 14.

[20] *See* note 14.

[21] 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).

[22] 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.

[23] *See* note 22.

[24] *See* note 21.

[25] *See* note 17.

[26] *See* note 22.

[27] *See* note 22.

[28] *See* note 22.

[29] *See* note 22.

[30] *See* note 22.

[31] 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 11, 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.

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

[33] "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*, 515 U.S. 450, 458 (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).

[34] *See* note 33.

[35] *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.

[36] 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.

[37] *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 36.

[38] *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).

[39] *See* note 33.

[40] *See* note 33.

[41] *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980). *See* discussion in note 35.

[42] *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).

[43] 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).

[44] 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.

[45] *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450 (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. Two state courts and one federal court have decided that the act does not authorize state motor fuel taxation of Indian retailers in Indian country. *Coeur D'Alene Tribe of Idaho v. Hammond*, 384 F.3d 674 (9th Cir. 2004), *cert. denied* 543 U.S. 1187 (2005): *Pourier v. South Dakota Dept. of Revenue*, 658 N.W.2d 395 (2003), *vacated in part* 674 N.W.2d 314, *cert. denied* 541 U.S. 1064 (2004); *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 have been enjoined in federal court. *Winnebago Tribe of Nebraska v. Stovall*, 341 F.3d 1202 (D. Kan. 2002) (upholding preliminary injunction to enjoin jeopardy assessments, seizure of tribal distributor's property, and so forth). *See* also the discussion in note 46.

[46] *Wagon v. Prairie Potawatomi Nation*, 546 U.S. 95, 126 S. Ct. 676 (2005) upheld a Kansas motor fuel tax with legal incidence on the non-Indian distributor with ultimate sale to an Indian retailer located in Indian country. *Potawatomi Nation* held that the interest balancing test (weighing the state's versa the tribe's interest) applied only "to *on-reservation* transactions between a nontribal entity and a tribe or tribal member * * *." *Id.*, 126 S.Ct. at 687. The Court reached this result despite the fact that the Kansas law allowed distributors to deduct sales made to the United States and retailers located in other states (that would be subject to those state's motor fuel taxes). Note that the result is the opposite, if the legal incidence of the tax is on the retailer. *Coeur D'Alene Tribe of Idaho v. Hammond*, 384 F.3d 674 (9th Cir. 2004), *cert. denied* 543 U.S. 1187 (2005) and discussion in note 45.

[47] *See* note 46.

[48] *See* note 46.

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

[50] *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).

[51] *See* note 46.

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

[53] *See* note 46.

[54] *See* note 47.

[55] *See* note 46.

[56] *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).

[57] 502 U.S. 251 (1992).

[58] *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).

[59] The Minnesota Supreme Court has also held that the congressional grant of power to tax fee land includes the authority to define what constitutes real property, rather than personal property. *Cogger v. County of Becker*, 690 N.W.2d 739 (Minn. 2005). This issue arose in the context of a mobile home on fee land owned by a tribal member. The court cited no federal authority for its conclusion, reaching its conclusion that the power to tax was implicit in the state's sovereign power.

[60] 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.

[61] *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.

[62] *See* note 61.

[63] This power flows from the tribe's authority to tax its own members. *See* note 14. 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).

[64] *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 individual treaties or federal laws may provide property tax exemptions for fee land that is alienable, however.

[65] *See* note 64.

[66] 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.

[67] 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.

[68] *See* note 67.

[69] *See* note 67.

[70] The county has not received final notice of the trust transfer, but the tribe has stopped paying taxes on the property. The casino had a taxable market value of $20,560,200 for the 2005 assessment. It is not clear how comparable this amount is to the 2004 tax-exempt abstract values. If it were added to the 2004 exempt value and removed from the taxable value, Mahnomen County's percentage would rise to 27.37 percent.

[71] Mahnomen will eclipse this as well, since its per capita amount will exceed $13,000 after transfer of the Shooting Star Casino and related properties into trust status. See note 70.

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

[73] Alan Meister, Indian Gaming Industry Report, 2006-2007 Ed. at 21. This estimate includes revenues from smaller bingo facilities as well as tribal casinos.

[74] 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.

[75] The Mille Lacs Band amounts were divided between governments in the two counties as follows: $711,920 for Pine and $348,518 for Mille Lacs. The total amount also includes $920,958 for the Shooting Star Casino. As noted above, transfer of this property into trust is apparently nearly completed and the tribe (as of 2006) has stopped paying property taxes. Thus, the total taxes for payable in 2006 will be substantially lower than the $2.4 million reported for 2005.

[76] The in-lieu payments to the city of Duluth are based on a share of the casino's slot machine revenues. This agreement has been in place since 1994 and is scheduled to continue until 2010. This differs qualitatively from voluntarily in-lieu payments intended to offset the cost of local government service delivery.

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

[78] 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. 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.

[79] Laws 2003, 1st spec. sess., ch 21, art. 9, § 3, now codified as Minn. Stat. § 270C.19, subd. 4 (a)(2).

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] An 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 Consolidated Chemical Dependency 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 (Pub. 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]

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 and penalties under tribal jurisdiction. 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.[12] Licensure is voluntary for

social workers who are members of the ethnic population served and are employed by federally recognized tribes.[13] Licensure is also voluntary for marriage and family therapists who are employed by federally recognized tribes and are members of the ethnic population served.[14]

Indian Child Welfare Laws

The Federal Indian Child Welfare Act. In 1978, Congress passed the federal Indian Child Welfare Act.[15] 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 when all parties are enrolled members of a tribe.[16] 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 terminating the parental rights of 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.[17] 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.

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.[18]

Ombudsperson for Families

Legislation 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.[19]

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 TANF requirements. Minnesota's 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.[20] Another provision of the legislation authorizes the Commissioner of Human Services to enter into agreements with tribal governments to provide employment and training services.[21] 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. § 148C.11, subd. 3, para. (a).

[13] Minn. Stat. § 148D.065, subd. 5.

[14] Minn. Stat. § 148B.38, subd. 3.

[15] 25 U.S.C. §§ 1901 to 1963.

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

[17] Minn. Stat. §§ 260.751-260.835.

[18] Minn. Stat. § 256.975, subd. 6.

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

[20] Minn. Stat. § 256J.315.

[21] Minn. Stat. § 256J.645.

Education Laws Affecting Indian Students

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

K-12 Education

American Indian Education Act of 1988.[1] The Minnesota Legislature passed this law in order 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 2006 and 2007 are displayed in the table.

Indian Education Programs
Fiscal Years 2006 and 2007 Appropriations

Program	Amount	
	2006	**2007**
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)	$2,338,000	$2,357,000
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)	$2,240,000	$2,137,000
Total	**$6,711,000**	**$6,627,000**

The No Child Left Behind Act. The federal No Child Left Behind Act of 2002[4] mandates accountability in public education, among other requirements. Title I, sections 1111-1127, of the act authorize funding[5] to states and school districts to improve basic education programs that help low-achieving students attain their state's academic standards. Title I imposes testing requirements on states and public schools, establishes student proficiency goals, and penalizes public schools and school districts that, among other things, fail to close the achievement gap between identified subgroups of students, including students who are economically disadvantaged, racial or ethnic minorities, disabled, or have limited English proficiency. Under Title I, all public school students must achieve reading, math and science proficiency by the 2013-2014 school year.

Testing data generated under Title I allow states, school districts, and schools to show students' educational progress. There were 17,397 elementary and secondary American Indian students, or 2.1 percent, out of a total student population of 838,997 enrolled in Minnesota's K-12 public schools in the 2005-2006 school year. An overall improvement in Minnesota students' test scores has not significantly reduced the achievement gap between white, non-Hispanic students, and students of color.

Also, American Indian students are underrepresented in the Minnesota Postsecondary Enrollment Options program[6] and among Advanced Placement test takers,[7] and the number of American Indian students who qualify for a free or reduced price lunch or special education services is increasing as American Indian enrollments decrease. [8]

Other No Child Left Behind Act Programs that Serve American Indian Students. The English Language Acquisition and Language Enhancement Program (Title III, sections 3001-3304) authorizes formula and discretionary competitive project grants to Indian tribes, tribally sanctioned educational authorities, and BIA-funded schools to improve Indian students' fluency in English as a second language and to preserve students' tribal languages in a manner that is consistent with their tribal traditions and cultures.

Indian Education Act Grants (Title VII, sections 7101-7152) authorize formula and discretionary grants to states, school districts, Indian tribes, and BIA-funded schools to help meet the unique educational and culturally relevant academic needs of eligible Indian students and help Indian students meet challenging academic content and achievement standards through supplemental and comprehensive programs. The law requires formula grant program applicants to consult with Indian parents and Indian parent advisory committees or tribes. The discretionary grants are available for scientifically based and culturally appropriate programs, projects, and activities that improve Indian students' educational opportunities and level of academic achievement. Professional development grants are available to states, school districts, and Indian tribes, in cooperation with higher education institutions, to support Indian teachers, administrators, teachers aides, social workers, and other educational staff, who must work in schools serving tribal students or repay their training costs.

The Impact Aid program (Title VIII, sections 801-805) authorizes funding for general operating expenditures and school construction costs through the U.S. Department of Education to compensate local school districts for large amounts of nontaxable federal Indian land located within the district. Impact aid recipients must ensure that Indian tribes and parents participate in planning and operating district education programs. The program includes a grievance process that allows Indian tribes and parents to try to ensure they participate as intended.

BIA-funded Programs and Schools

Bureau of Indian Affairs (BIA) programs, including the Johnson O'Malley (JOM)/Indian Education Assistance to Schools Act, serve American Indian students by authorizing funding through the BIA for contracts with states, local education agencies, private entities, and American Indian tribes for supplemental education and other health and social services programs that meet the unique needs of eligible American Indian students.

BIA-funded schools must be accredited by a state or regional accrediting agency or a qualified tribal accrediting body and must meet either BIA or state basic education standards and may meet tribal education standards that have been approved by a qualified state or regional accrediting agency. Three types of BIA-funded elementary and secondary schools serve Indian students: BIA-operated schools[9]; tribal contract schools[10]; and tribal grant schools.[11] BIA-

funded schools have special provisions under Title I governing assessments and adequate yearly progress, accountability measures, school improvement requirements, corrective actions, and annual reports.

Federal Indian Grants and Contracts

Under the Indian Self-Determination and Education Assistance Act,[12] 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,[13] 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,[14] 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[15] 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.[16] 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.[17] 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.[18] 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[19] and is intended to benefit Indian students, it is a "benign" classification subject to less judicial scrutiny.

Minnesota's School Desegregation/Integration Rule

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.[20] 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.[21]

Higher Education

Enrollment in Postsecondary Education. American Indian students are enrolled in all types of postsecondary institutions. The largest number of students are enrolled in the two-year colleges of the Minnesota State Colleges and Universities. Total American Indian postsecondary enrollment has increased by 45 percent since 2000.

American Indian Enrollment in Minnesota Postsecondary Institutions

	2005	2004	2003	2002	2001	2000
Minnesota State Colleges and Universities						
Two-Year Colleges	1,705	1,667	1,593	1,386	1,172	1,195
State Universities	510	499	454	417	417	435
University of Minnesota	695	622	568	551	563	503
Private Colleges & Universities	350	343	323	437	275	290
Private Career Schools*	444	308	283	91	103	86
Private Graduate & Professional	16	17	44	45	50	51
Total Enrollment of American Indians	3,720	3,428	3,265	2,927	2,580	2,560

* Enrollment increases in private career schools are due to improved reporting by these schools.

Source: Minnesota Office of Higher Education

Free Tuition at University of Minnesota, Morris

State law[22] requires admission of qualified American Indian students to the Morris campus 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.[23] 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 fall of 2005, 142 American Indian students were enrolled at the University of Minnesota, Morris (UMM). To be eligible for a tuition waiver, UMM requires students to prove they are directly descended from a member of a federally recognized tribe or that the student is personally enrolled in a federally recognized tribe.

Unique Needs and Abilities of American Indian People

State law[24] requires public postsecondary 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 postsecondary institutions to provide opportunities for assessment, placement, or postsecondary 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 offers a bachelor of arts in American Indian studies including concentrations and a minor in the Ojibwe language. 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), four of the seven state universities and four of the two-year colleges have established an American Indian advisory committee.[25] 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 34 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	Accredited
Leech Lake Tribal College	Cass Lake	1990	Leech Lake Band of Ojibwe Tribal Council	Accredited
White Earth Tribal and Community College	Mahnomen	1997	White Earth Reservation Tribal Council	Pre-candidate for Accreditation; some courses transfer to specific institutions

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. Fond du Lac's unique status, dual mission, and joint governance is established in Minnesota law.[26]

Tribal colleges are accredited by regional accreditation agencies and are recognized in federal law. Since 1978, federal law has provided grants and endowment funding for operating and

improving tribally controlled colleges or universities.[27] In the Equity in Educational Land-Grant Status Act of 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.[28] Most tribal colleges do not receive any state funding.

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] No Child Left Behind Act, of 2001, Pub. L. 107-110.

[5] Title I is the single largest source of federal education funding. Funding is distributed based upon the number of low-income families residing in a school district.

[6] High school students who participate in the Minnesota Postsecondary Enrollment Options program and earn college credit without having to pay college tuition and fees have a financial advantage.

[7] American Indian students in Minnesota take less than 1 percent of Advanced Placement exams.

[8] Minnesota Minority Education Partnership 2006 State of Students of Color report, page 16, citing Minnesota Department of Education data.

[9] BIA-operated schools may serve students in kindergarten through grade 8, kindergarten through grade 12, or other combination of grade levels, may be boarding or day schools, and are usually located on Indian land. The BIA operates these schools directly along with a locally elected Indian school board.

[10] The U.S. Secretary of the Interior contracts with eligible tribes to operate and administer tribal contract schools that were previously operated by the BIA.

[11] Eligible tribes may operate grant schools that were previously tribally controlled schools or operated by the BIA or as tribal contract schools. Grant school operators receive annual grants that they may invest and use to operate the school, provide support services, and improve students' education.

[12] 25 U.S.C. § 450 *et seq.*

[13] 20 U.S.C. § 7401 *et seq.*

[14] 42 U.S.C. § 2004b.

[15] 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.

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

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

[18] 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."

[19] 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.

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

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

[22] Minn. Stat. § 137.16.

[23] Laws 1909, ch. 184.

[24] Minn. Stat. § 135A.12.

[25] The MnSCU campuses with American Indian advisory committees are Hibbing Community College, Itasca Community College, Minnesota State Community and Technical Colleges, Minnesota State University, Mankato, Minnesota State University, Moorhead, Northland Community and Technical College, Southwest Minnesota State University, and St. Cloud State University.

[26] Minn. Stat. § 136F.12.

[27] 25 U.S.C. §§ 1801-1852.

[28] 7 U.S.C. § 301 note.

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Appendix I

Population of American Indian and Alaska Native Persons

American Indian and Alaska Native Persons 2005 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	16,174	391	2.4%	0.5%
Anoka	323,996	4,276	1.3%	5.1%
Becker	31,868	2,924	9.2%	3.5%
Beltrami	42,871	9,040	21.1%	10.8%
Benton	38,505	309	0.8%	0.4%
Big Stone	5,481	29	0.5%	0.0%
Blue Earth	58,030	311	0.5%	0.4%
Brown	26,534	45	0.2%	0.1%
Carlton	34,026	2,140	6.3%	2.6%
Carver	84,864	374	0.4%	0.4%
Cass	28,910	3,402	11.8%	4.1%
Chippewa	12,802	130	1.0%	0.2%
Chisago	49,400	483	1.0%	0.6%
Clay	53,838	1,101	2.0%	1.3%
Clearwater	8,476	844	10.0%	1.0%
Cook	5,367	449	8.4%	0.5%
Cottonwood	11,834	50	0.4%	0.1%
Crow Wing	59,917	673	1.1%	0.8%
Dakota	383,592	3,270	0.9%	3.9%
Dodge	19,595	86	0.4%	0.1%
Douglas	35,138	181	0.5%	0.2%
Faribault	15,506	63	0.4%	0.1%
Fillmore	21,368	27	0.1%	0.0%
Freeborn	31,946	132	0.4%	0.2%
Goodhue	45,585	608	1.3%	0.7%
Grant	6,114	22	0.4%	0.0%
Hennepin	1,119,364	18,365	1.6%	21.9%
Houston	19,941	47	0.2%	0.1%

* Note: Beginning with 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	18,861	481	2.6%	0.6%
Isanti	37,664	362	1.0%	0.4%
Itasca	44,384	1,986	4.5%	2.4%
Jackson	11,182	26	0.2%	0.0%
Kanabec	16,215	244	1.5%	0.3%
Kandiyohi	41,199	165	0.4%	0.2%
Kittson	4,792	23	0.5%	0.0%
Koochiching	13,907	447	3.2%	0.5%
Lac qui Parle	7,604	19	0.2%	0.0%
Lake	11,156	119	1.1%	0.1%
Lake of the Woods	4,421	85	1.9%	0.1%
Le Sueur	27,490	140	0.5%	0.2%
Lincoln	6,050	21	0.3%	0.0%
Lyon	24,972	117	0.5%	0.1%
Mahnomen	5,113	1,853	36.2%	2.2%
Marshall	9,965	60	0.6%	0.1%
Martin	21,002	62	0.3%	0.1%
McLeod	36,636	184	0.5%	0.2%
Meeker	23,371	61	0.3%	0.1%
Mille Lacs	25,680	1,333	5.2%	1.6%
Morrison	32,728	189	0.6%	0.2%
Mower	38,799	172	0.4%	0.2%
Murray	8,852	32	0.4%	0.0%
Nicollet	30,848	80	0.3%	0.1%
Nobles	20,508	136	0.7%	0.2%
Norman	7,003	242	3.5%	0.3%
Olmsted	135,189	664	0.5%	0.8%
Otter Tail	57,658	461	0.8%	0.6%
Pennington	13,608	240	1.8%	0.3%
Pine	28,485	889	3.1%	1.1%
Pipestone	9,421	157	1.7%	0.2%
Polk	31,133	591	1.9%	0.7%
Pope	11,252	35	0.3%	0.0%
Ramsey	494,920	7,611	1.5%	9.1%
Red Lake	4,317	66	1.5%	0.1%

County	Total population	Indian population, alone or in combination	Indians as a % of county population	% of total MN Indian population
Redwood	16,022	669	4.2%	0.8%
Renville	16,764	153	0.9%	0.2%
Rice	60,949	480	0.8%	0.6%
Rock	9,520	48	0.5%	0.1%
Roseau	16,495	358	2.2%	0.4%
St. Louis	197,179	5,683	2.9%	6.8%
Scott	119,825	1,400	1.2%	1.7%
Sherburne	81,752	651	0.8%	0.8%
Sibley	15,237	72	0.5%	0.1%
Stearns	142,654	776	0.5%	0.9%
Steele	35,755	83	0.2%	0.1%
Stevens	9,826	162	1.6%	0.2%
Swift	11,324	78	0.7%	0.1%
Todd	24,603	238	1.0%	0.3%
Traverse	3,810	165	4.3%	0.2%
Wabasha	22,200	105	0.5%	0.1%
Wadena	13,650	103	0.8%	0.1%
Waseca	19,330	131	0.7%	0.2%
Washington	220,426	1,823	0.8%	2.2%
Watonwan	11,234	45	0.4%	0.1%
Wilkin	6,802	87	1.3%	0.1%
Winona	49,276	290	0.6%	0.3%
Wright	110,730	805	0.7%	1.0%
Yellow Medicine	10,449	270	2.6%	0.3%
State Total	5,132,799	83,800	1.6%	100.0%

Source: Population Estimates, U.S. Census Bureau

Appendix II

Demographic and Other Information about Minnesota's Indian Reservations

Bois Forte....98
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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 (2003): Includes tribal enrollment information from the Bureau of Indian Affairs (BIA) *American Indian Population and Labor Force Report*, 2003.

Tribal Land/Individual Land/Government Land: Lists acreage information from the 2000 BIA Trust Acreage Report. (More recent data was not available.)

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.

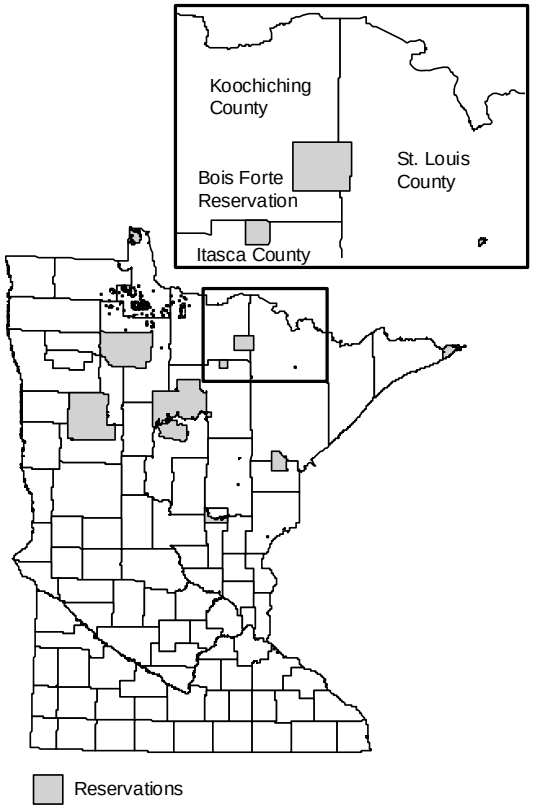
Public assistance: The total number of households and number and percentage of households that receive public assistance in the geographical area (1999).

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.

Note on Census Data: Detailed demographic information is only available from the decennial census; the most recent information in Appendix II on population, age, income, public assistance, labor, and education is from the 2000 census.

Bois Forte



(Nett Lake)

Minnesota Chippewa Tribe Member

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

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

Nearby Cities: Big Falls, Cook, Little Fork

Tribal Enrollment (2003): 2,931

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
800-992-7529
www.fortunebay.com/index.php

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

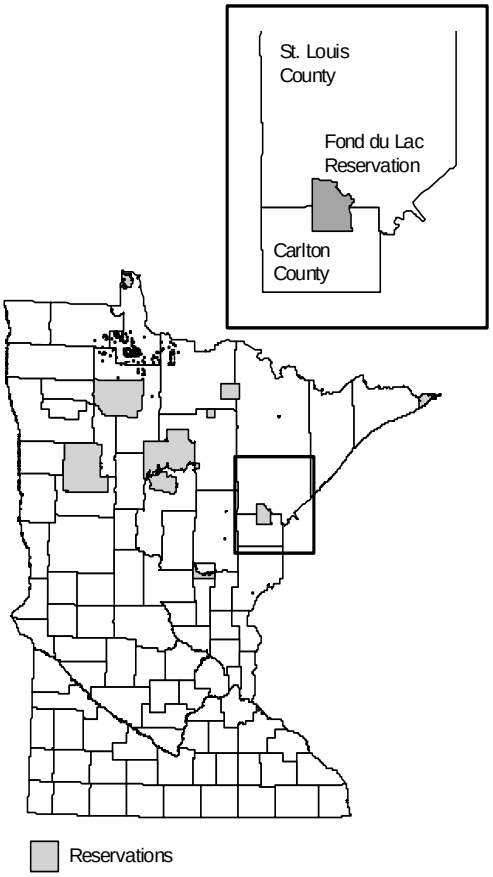
	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Bois Forte	246	44	17.9%
Adjacent Counties	106,595	5,117	4.8%
State	1,896,209	65,144	3.4%

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)
www.fdlrez.com

Adjacent Counties: Carlton and St. Louis counties

Nearby Cities: Cloquet and Duluth

Tribal Enrollment (2003): 3,902

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 55718
888-771-0777
218-878-2327
www.blackbearcasinohotel.com

Fond du-Luth Casino
129 East Superior Street
Duluth, MN 55802
800-873-0280
218-722-0280
www.fondduluthcasino.com

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%

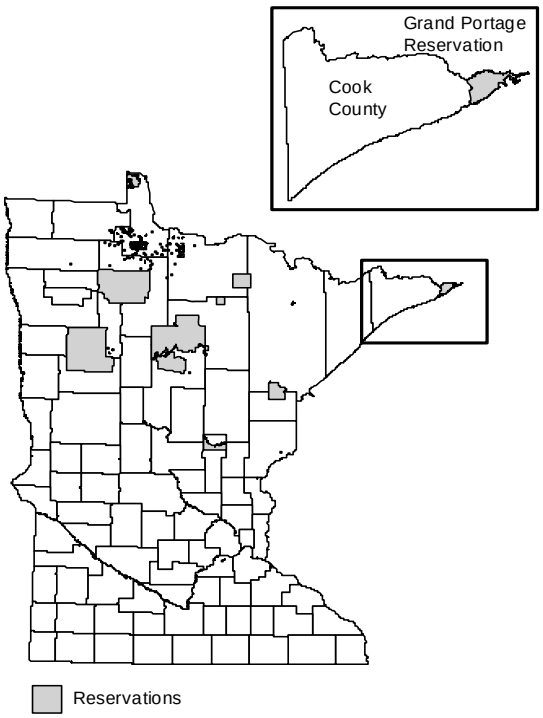
Labor

	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)
www.grandportage.com

Adjacent County: Cook County

Nearby City: Grand Marais

Tribal Enrollment (2003): 1,106

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
218-475-2401

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

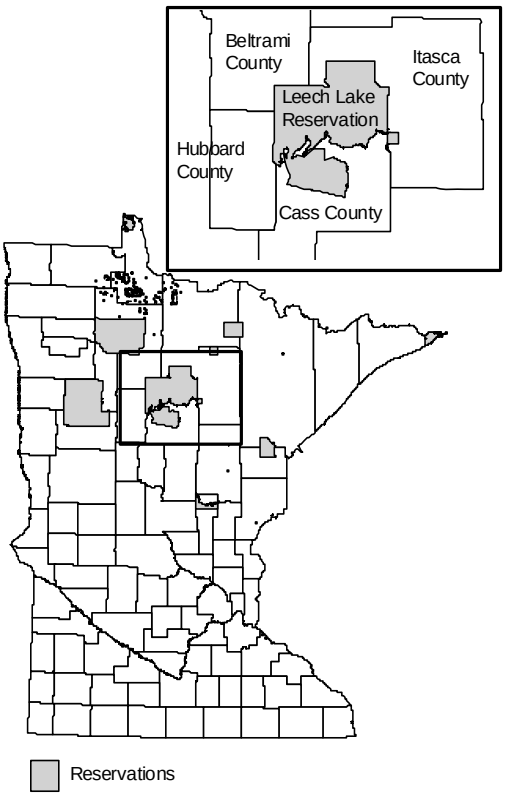
	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Grand Portage	250	14	5.6%
Adjacent Counties	2,370	75	3.2%
State	1,896,209	65,144	3.4%

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

115 Sixth Street NW, Suite E
Cass Lake, MN 56633
218-335-8200
218-335-8309 (Fax)
www.llojibwe.com

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

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

Tribal Enrollment (2003): 8,294

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
45830 U.S. Highway 2
Deer River, MN 56636
800-653-2412

Palace Casino Hotel
6280 Upper Cass Frontage Road NW
Cass Lake, MN 56633
877-972-5223

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

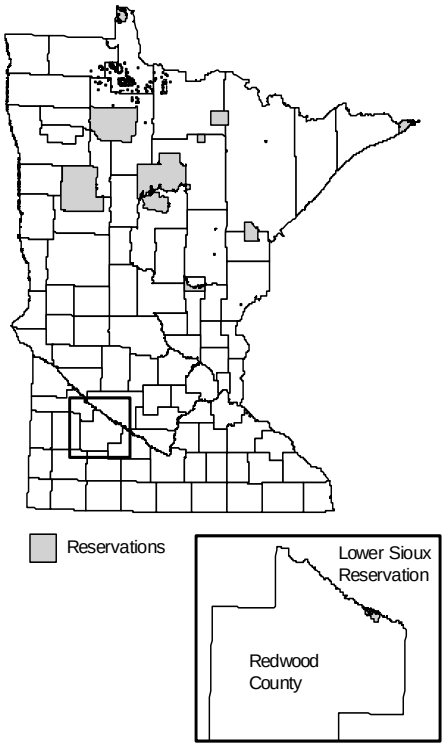
	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Leech Lake	3,603	284	7.9%
Adjacent Counties	50,507	2,496	4.9%
State	1,896,209	65,144	3.4%

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
507-697-6110 (Fax)

Adjacent County: Redwood County

Nearby City: Redwood Falls

Tribal Enrollment (2003): 838

Tribal Land: 1,784.93 acres

Individual Land: 0 acres

***Government Land*:** 0 acres

Casino: Jackpot Junction Casino Hotel
39375 County Highway 24
Post Office Box 420
Morton, MN 56270
800-946-2274
www.jackpotjunction.com

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%

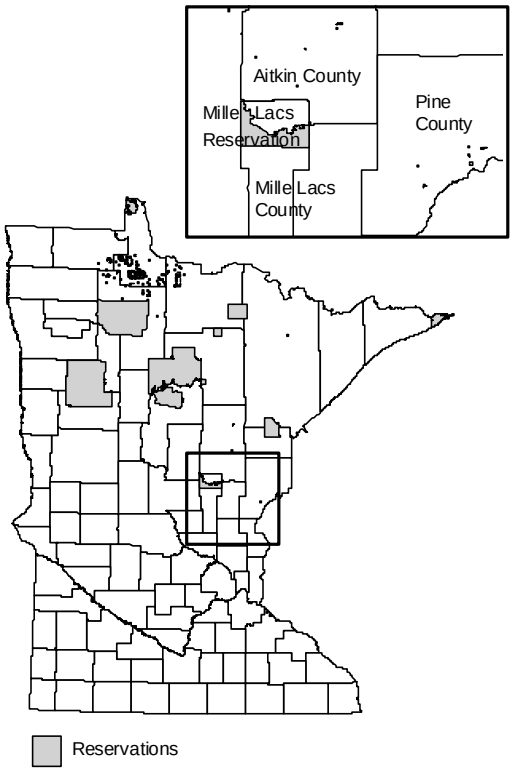
Labor

	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
800-709-6445
320-532-4209 (Fax)
www.millelacsojibwe.org

Adjacent Counties: Aitkin, Mille Lacs, and Pine counties

Nearby Cities: Brainerd, Onamia

Tribal Enrollment (2003): 3,602

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
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

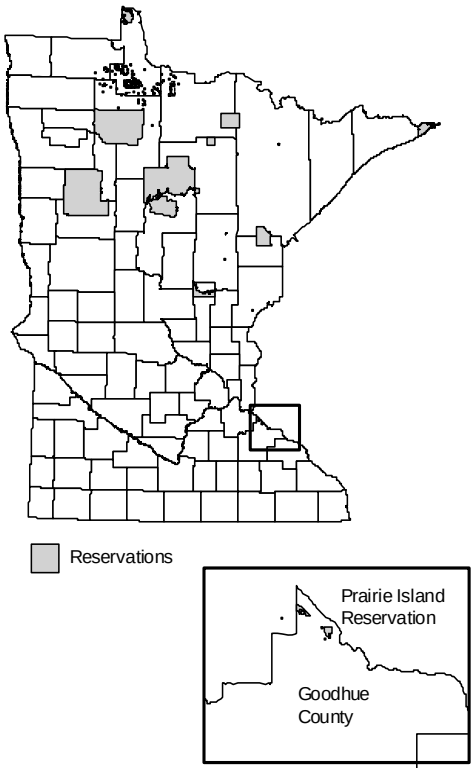
	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Mille Lacs	1,873	178	9.5%
Adjacent Counties	25,220	1,143	4.5%
State	1,896,209	65,144	3.4%

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
651-267-4180 (Fax)
www.prairieisland.org

Adjacent County: Goodhue County

Nearby City: Red Wing

Tribal Enrollment (2003): 660

Tribal Land: 1,192.30 acres

Individual Land: 0 acres

***Government Land*:** 0 acres

Casino: Treasure Island Resort and Casino
5734 Sturgeon Lake Road
Welch, MN 55089
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

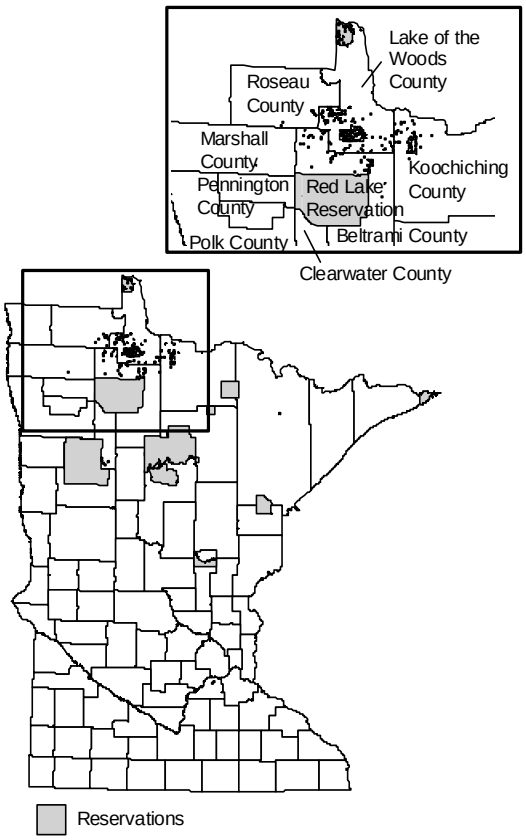
	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Prairie Island	55	2	3.6%
Adjacent Counties	16,996	374	2.2%
State	1,896,209	65,144	3.4%

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)
www.redlakenation.org

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

Nearby Cities: Bemidji, Thief River Falls

Tribal Enrollment (2003): 9,538

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)

Northwest Technical College
Bemidji (Beltrami County)

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

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

Northwest Technical College
East Grand Forks (Polk 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

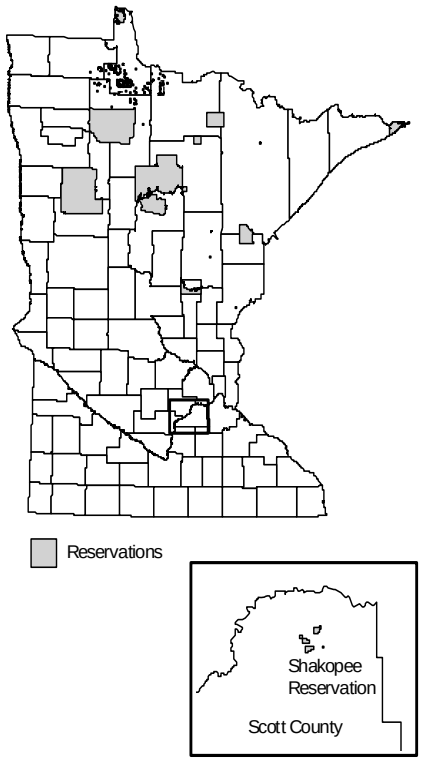
	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Red Lake	1,357	421	31.0%
Adjacent Counties	53,565	2,771	5.2%
State	1,896,209	65,144	3.4%

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)
www.ccsmdc.org

Adjacent County: Scott County

Nearby City: Shakopee

Tribal Enrollment (2003): 354

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
952-445-9000
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

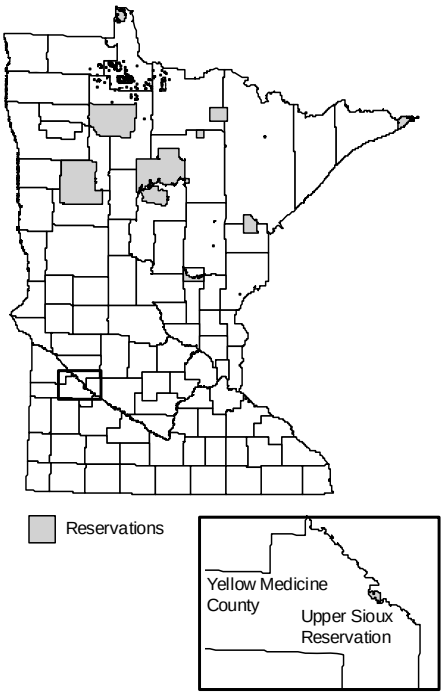
	Total Households	Households with Public Assistance Income	% Households with Public Assistance Income
Shak.-Mdwktn.	116	2	1.7%
Adjacent Counties	30,714	439	1.4%
State	1,896,209	65,144	3.4%

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
5738 Highway 67 East
Granite Falls, MN 56241
320-564-3853
320-564-4482 (Fax)
www.uppersiouxcommunity-nsn.gov

Adjacent County: Yellow Medicine County

Nearby Cities: Granite Falls, Montevideo

Tribal Enrollment (2003): 413

Tribal Land: 1,200.65 acres

Individual Land: 0 acres

***Government Land*:** 0 acres

Casino: Prairie's Edge Casino Resort
5616 Prairie's Edge Lane
Granite Falls, MN 56241
320-564-2121
866-293-2121

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%

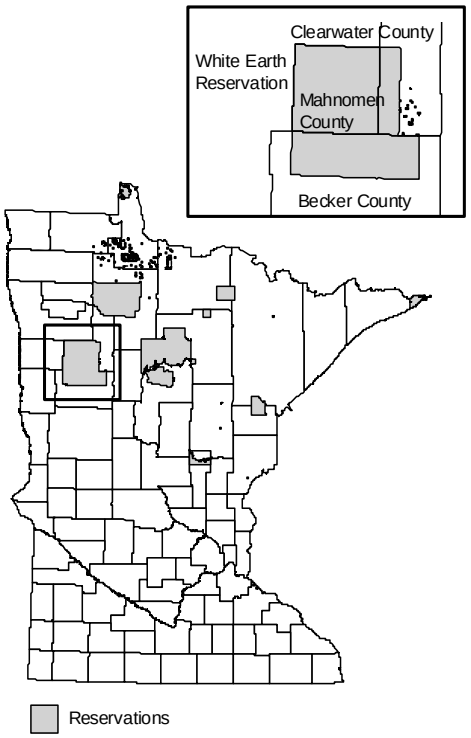
Labor

	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)
www.whiteearth.com

Adjacent Counties: Becker, Clearwater, and Mahnomen counties

Nearby Cities: Bemidji, Detroit Lakes, and Park Rapids

Tribal Enrollment (2003): 19,629

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
218-935-2711

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.

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 may apply the regulations on trust transfers. Some of these insights include:

- The 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.

Events following the 1998 BIA decision underline the ambiguity involved with the rules for accepting trust transfers for wealthy Indian tribes, such as Shakopee Mdewakanton Sioux.[6] In 2000, the tribe renewed its request to transfer the property into trust; this request involved 752 acres. State and local officials continued to object to the transfer, although ultimately the city of Prior Lake, one of the affected local units, supported it.[7] The BIA did not act upon this request for six years until July 2006 when the Midwest Regional office granted the request. The letter granting approval stated that federal law "does not include any type of evaluative factor to consider the wealth of the tribe prior to bringing land into trust status."[8] However, one week later, the BIA director withdrew this decision on the grounds "it was issued prematurely."[9]

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).

[6] For ordinary tribes, trust transfers apparently are accepted and processed routinely.

[7] Anthony Lonetree, "Tribal land issue heating up in Scott County," *Star Tribune* p. 1B (February 11, 2006).

[8] Quoted in Anthony Lonetree, "Shakopee tribe gets land trust go-ahead" *Star Tribune* p. 1A, (July 11, 2006). This seems contrary to the approach taken by the BIA in reviewing the 1998 request.

[9] Memorandum from Director of Bureau of Indian Affairs to Terrance Virden, Midwest Regional Director, dated July 14, 2006. This memorandum indicates that the final decision would be issued by the national office of the BIA.

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 218-878-2676
Grand Portage Band of Chippewa 54 Upper Road Box 367 Grand Portage, MN 55605 218-475-0188	**Leech Lake Band of Chippewa** 115 6th Street NW, Suite 6 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** 43408 Oodena Drive Onamia, MN 56359 320-532-7400
Minnesota Chippewa Tribe P.O. Box 217 Cass Lake, MN 56633 218-335-8581	**Prairie Island Indian Community** 5636 Sturgeon Lake Road Welch, MN 55089 651-385-4161
Red Lake Band of Chippewa P.O. Box 572 Red Lake, MN 56671 218-679-3303	**Shakopee Mdewakanton Sioux (Dakota) Community** Energy Park Financial Center, Suite 210 1360 Energy Park Drive St. Paul, MN 55108 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 418 White Earth, MN 56591 218-983-3285