

Tribal Tax and Business Development

**Developing Tribal Tax Codes
and Administrative Systems**

Rob Roy Smith
Shareholder, Indian Law Practice Group

Eric N. Shepard
Attorney General, Colorado River Indian Tribes

ATERWYNNE^{LLP}
ATTORNEYS AT LAW

Why are Tribal Taxation Codes Important?

- Enhance tribal sovereignty
- Extend tribal civil jurisdiction
- Raise funds for the delivery of tribal government services to tribal members
- Boost revenues without creating business enterprises

ATERWYNNE^{LLP}
ATTORNEYS AT LAW

Considerations Before Developing a Taxation Code

- Federal Law
 - Reach of Tribal Civil Jurisdiction
- Tribal Law
 - Tax administrative provisions
 - Tax ordinances
- Practical
 - Can the local economy bear another tax
 - Who, What, and How of Tax Collection

ATERWYNNE^{LLP}
ATTORNEYS AT LAW

Tribal Tax Jurisdiction

“Chief among the powers of sovereignty recognized as pertaining to an Indian tribe is the power of taxation. Except where Congress has provided otherwise, this power may be exercised over members of the tribe and over nonmembers, so far as such non-members may accept privileges of trade, residence, etc., to which taxes may be attached as conditions.”

- Opinion of the Solicitor of the Department of Interior, 55 I.D. 14, 46 (1934)

ATERWYNNE^{LLP}
ATTORNEYS AT LAW

Tribal Tax Jurisdiction

- Tribal Members
 - Tribes clearly have broad power to tax their own members that extends to activities on both “Indian” and “non-Indian” land within the exterior boundaries of the Reservation.
- Nonmembers/ Non-Indians
 - depends upon both the person or entity upon whom the incidence of the tax falls and, to a lesser extent, where the taxed transaction or activity takes place.

ATERWYNNE^{LLP}
ATTORNEYS AT LAW

Tribal Tax Jurisdiction Over Nonmembers

- A tribal tax on a non-Indian transaction or activity occurring within the boundaries of a reservation will be upheld against a court challenge only if: (1) the transaction being taxed takes place on trust land; or (2) the transaction or activity being taxed takes place on non-Indian fee land and either
 - (a) the non-Indian is involved in a consensual relationship with the tribe or its members; or
 - (b) the impact of the transaction or activity on the tribe is demonstrably serious and imperils the political integrity, economic security, or health and welfare of the tribe.

ATERWYNNE^{LLP}
ATTORNEYS AT LAW

Tribal Tax Jurisdiction Over Nonmembers

- How to create “consensual relationship” and ensure a “nexus”
 - Tribal Business License
 - o Knowing, voluntary consent by non-Indians to tribal regulation
 - o Can be linked to Taxation Code
 - o Enhances sovereignty
 - o Business license program can raise modest revenues for the tribe through licensure fees

ATERWYNNE^{LLP}
ATTORNEYS AT LAW

Taxation Code Development: Administrative Issues

- Who will be responsible for implementing the tax code?
- How much enforcement and investigative authority will tax agents have?
- Where will the tax money collected be kept and what will the revenues be used for?
- What will the audit and examination procedures be?
- How will enforcement be addressed? Court?
- What about penalties, interest, and costs of collection?
- How closely should the tribal tax system follow state or federal tax models?
- Forms and Standard notice letters

ATERWYNNE^{LLP}
ATTORNEYS AT LAW

Taxation Code Development: Ordinance Issues

- Who to tax?
 - Retailers or consumers?
 - Non-members? Tribal members?
 - What exemptions should be made available?
- What to tax?
 - Cigarettes?
 - Liquor?
 - Retail Sales?
 - Food sales?
 - Utility sales?
- How much to tax?
 - What tax rate can the market bear?
 - o Tax Base Study?

ATERWYNNE LLP
ATTORNEYS AT LAW