ess Council

RESOLUTION OF THE GOVERNING BODY OF THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

- WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and
- WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and
- WHEREAS, Article VI, Section 5(c) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to exercise all necessary sovereign powers for the purpose of enforcing the jurisdiction granted to the Tribal Business Council by the people in Article I of the Constitution; and
- WHEREAS, It is the considered judgment of the Tribal Business Council that there is a need for a tax code with respect to Real Property and Possessory Interest Tax; and
- NOW THEREFORE BE IT RESOLVED, That the Tribal Business Council of the Three Affiliated Tribes hereby adopts the attached "Real Property and Possessory Interest Tax" code to be adopted into the Code of Laws of the Three Affiliated Tribes.

CERTIFICATION

| I, the undersigned, as Secretary of the Tribal Business Council of the |
|---|
| Three Affiliated Tribes of the Fort Berthold Reservation, hereby |
| certify that the Tribal Business Council is composed of 11 members of |
| whom 7 constitute a quorum, were present at a |
| Meeting thereof duly called, noticed, convened, and held on the $\underline{\mathscr{G}}$ |
| day of March, 1987; that the foregoing Resolution was duly |
| adopted at such Meeting by the affirmative vote of members, |
| members opposed, / members abstained, // members not voting, |
| and that said Resolution has not been rescinded or amended in any way. |
| Dated the 9 day of Match, 1987. |

ATTEST:

Chairman, Tribal Business Council

TRIBAL BUSINESS COUNCIL Three Affiliated Tribes

FORT BERTHOLD RESERVATION P. O. Box 220 New Town, North Dekota 58763

FROM THE OFFICE OF THE CHAIRMAN



Edward Lone Fight Chairman

Jim Bluestone Assistant to the Chairman

Judy Black Hawk Recording Secretary/ Administrative Secretary

Joann White Owl Receptionist/Secretary

TO: Superintendent Al Spang
Fort Berthold Agency

SUBJECT: Real Property and Possessory Interest Tax Tribal Resolution 87-44-C

DATE: August 24, 1987

Enclosed is a copy of the Resolution of the Governing Body of the Three Affiliated Tribes of the Fort Berthold Resolution (87-44-C) on Real Property and Possessory Interest Tax.

Please review and request your approval as soon as possible for implementation.

Edward Lone Fight

Chairman

Enclosure

cc: Paige Baker, Jr.

REAL PROPERTY AND POSSESSORY INTEREST TAX

§ 1 Declaration of Purpose.

Among the goals stated in the preamble to the Constitution of this tribe adopted under the Indian Reorganization Act of June 18, 1934 are (1) to preserve and develop our real estate and resources and (2) to promote the general welfare of the three tribes. It is the intent of the Tribal Business Council, in recognition of the central part lands, particularly those lands which we have held since time immemorial, play in our religion, culture and economy, to move toward those goals by achieving the following:

- (1) Provide for the sharing of the financial burden of the tribal government by those who elect to acquire lands which are on the date of this enactment held in trust by the United States for members of this Tribe;
- (2) Establish a fund by which real property which is now beneficially owned by tribal members can be acquired and maintained in tribal ownership when dire economic circumstances beyond their control force the conveyance of those lands or loss of those lands by foreclosure, when for whatever reason a tribal member simply decides to sell his or her trust land, or when trust lands pass to nonmembers by operation of law;
- (3) By revenues provided by this ordinance, control, manage and maintain air and water quality, wildlife, roads, range units and other resources which are affected by uses made of lands which are acquired by nonmembers.
- (4) To impose a tax which will fall only on those persons or entities, whether Indian or nonIndian, tribal member or nonmember who after the effective date of this ordinance elect to acquire land which passes into non-trust or unrestricted, fee simple status. Accordingly, those persons or

entities will not have ground to contend that a tax has been imposed on them without their knowledge or participation in the imposition.

§ 2. Definitions.

- (1) The term "real property" means real estate and all mineral resources and improvements above and below surface held in fee simple which: (a) is within the boundaries of the Fort Berthold Indian Reservation; and (b) was on the date of the enactment of this ordinance held in trust by the United States of America for a member or members of the Three Affiliated Tribes, and (c) subsequent to that date was voluntarily or by operation of law conveyed or by order of a court passed into fee simple status.
- (2) The term "possessory interest" means the possession of, claim to, or right to the possession of land or improvements to or interests in land when that the status of that land is:
 - (A) that described in subsection (1) above, and
 - (B) is immune from the imposition of this tax because title thereto is held by a governmental entity.
- (3) The term "Council" means the Tribal Business Council of the Three Affiliated Tribes.
- (4) The term "Chairman" means the Chairman of the Tribal Business Council.
- (5) The term "tax year" shall mean a year beginning on the date this ordinance was enacted by the Tribal Business Council and each year thereafter.

§ 2 Appointment of tax officials

The Chairman with the approval of the Council shall appoint the following officials who may be (a) members of the Council, (b) tribal employees or (c) other individuals, members or nonmembers of the tribe:

- (1) A Revenue Collector, who shall be responsible for the collection of the tax imposed by this ordinance. The Revenue Collector shall make such rules and regulations and establish procedures, subject to approval of the Council, as are necessary to implement this ordinance.
- (2) An Assessor, who shall be responsible for establishing the value of the real property and possessory interests taxed by this ordinance.
- (3) A three member board of equalization whose function shall be to hear and make decisions on taxpayers complaints, requests, and challenges to the value placed on property taxed by this ordinance.

§ 3 Levy of ad valorem tax on real property

- (A) There is hereby levied for each tax year a tax on real property at a rate or rates determined according to the provisions of this ordinance and all revenues from such tax shall be deposited in a bank account held by the Three Affiliated Tribes.
- (b) The rate of the tax shall be no less than one percent or more than six percent of the value of the real property. The rate shall be set at the beginning of each tax year by a committee of the Tribal Business Council designated to carry out that task. Until a rate is so established, the rate for the initial tax year shall be three percent of the value of the real property.

§ 4 Computation of the value of real property

The initial value of real property shall be the sale price of the trust land or the appraised value as determined by the Bureau of Indian Affairs whichever is the higher. Thereafter the value shall be determined by the Tax Assessor. The Assessor shall establish that value by ascertaining the fair market value of the real property. That may be accomplished by comparing

the interest to be valued with comparable interests whether within or without the reservation.

§ 5 Levy of tax on possessory interests

- (A) There is hereby levied for each tax year a tax on possessory interests at a rate or rates determined according to the provisions of this ordinance and all revenues from such tax shall be deposited in a bank account held by the Three Affiliated Tribes.
- (B) The rate of tax shall be no less than one percent or more than six percent of the value of the possessory interest. That rate shall be established at the beginning of each tax year by a committee of the Council designated to carry out that task. Until a rate is so established, the rate for the initial tax year shall be three percent of the value of the possessory interest.

§ 6 Computation of the value of possessory interests

The value of a possessory interest may be computed by either, or a combination, of two methods:

- (1) By comparing the interest to be valued with comparable interests whether within or without the reservation.
- (2) By estimating the gross income reasonably expected from the property and deducting from that amount reasonable and necessary expenses which are reasonably expected to be incurred.

§ 7 Tax liens, interests, and penalties

(1) If a tax payer or tax payers, after final notice made in accordance with rules and regulations established by the Revenue Collector, shall have failed or refused to pay a tax imposed and assessed under the provisions of this ordinance, the Revenue Collector shall file a lien for the amount of the tax plus interest and penalties in the appropriate land record office.

- (2) Any tax payer or tax payers who fail or refuse to pay taxes on the date required shall pay an additional ten percent interest annual interest on unpaid taxes.
- (3) Any tax payer or tax payers who fails or refuses to pay taxes within thirty days after the due date shall pay a penalty of one hundred dollars plus ten percent of the unpaid tax.

§8 Sale of tax delinquent property; redemption.

Any property for which taxes have not been paid within one year after the date due may be sold for nonpayment of those taxes. A bid may be placed in the name of the Three Affiliated Tribes. The former owner shall have one year after such sale within which to redeem the property by the payment of taxes, interest and penalties due.

§9 Exemption

The life estates of a nonmember spouse or a child or children of a member acquired in accordance with the Fort Berthold Probate Code shall be exempt from the tax imposed by this ordinance during the term of that life estate provided those persons are residing on the reservation.

§10 Consent to Suit

For purposes of controversies which arise under this ordinance, the Three Affiliated Tribes consents to be sued in the Tribal Court of the Three Affiliated Tribes.

§11 Severability

If any part or application of this Ordinance is held to be invalid, the remainder of the Ordinance or its application to other situations or persons shall not be affected.

\$12 Effective Date

The effective date of imposition of this tax shall be the date of its enactment notwithstanding the fact that it may not be finally be approved by the Secretary of the Interior, if required, at a later date.

doing business within the reservation * * * consistent with Federal laws governing trade with Indian tribes." It could hardly be argued that it was only intended that the tribe should have power to tax nonmembers.

In October of 1934 the Assistant Secretary of the Interior approved an opinion of the Solicitor which held that among the "powers vested in any Indian Tribe or Tribal Council by existing law" is the power "To levy dués, fees, or taxes upon the members of the tribe and upon nonmembers residing or doing any business of any sort within the reservation, so far as may be consistent with the power of the Commissioner of Indian Affairs over licensed traders." (55 I.D. 14, 16) This principle that an Indian Tribe has the power to tax as a corollary to its government function has been reaffirmed in the recent court case Iron Crow v. Oglala Sioux Tribe, supra. Further, it has been held that a tribe has capacity to sue in the Federal District Court for the collection of taxes which the tribe has validly imposed on nonmembers leasing tribal land. Oglala Sioux Tribe v. Barta, D.C., 146 F. Supp. 917.

You have asked the further question whether the tribe may impose a sales tax only on sales of livestock by members indebted to the tribe for loans and on sales of crops produced by members who have been financed with loans from the tribe. A valid ordinance enacted to legislate against all members of a large class does not lose its validity because the restrictions or penalties are subsequently enforced against only a segment of the class. Nor can the members who are so taxed be heard to complain when they, as borrowers, were or should have been aware of the tax prior to their application for loans from the tribe and the use of the borrowed fund to raise livestock or crops. The content of the questioned resolution was incorporated into the Bureau of Indian Affairs' approved policies and plans in connection with loan agreements as long ago as 1950. We see no reason to reopen this question administratively at this late date.

Although the Congress by the acts of August 15, 1953, 67 Stat. 590, and July 10, 1957, 71 Stat. 277, has removed the restrictions formerly placed on sales of such property we find no authority to support the theory that Congress intended thereby to extinguish tribal power to control sales of chattels on which they have a lien or to repeal tribal power to tax. We therefore see no legal objection to the continued imposition of the tribal sales tax on the class of persons so designated by the subject Tribal Business Council resolution. The Bureau of Indian Affairs may encourage the tribe to enact a resolution repealing the sales tax and renegotiate their loan agreement with the United States, but it is our opinion that the tribe could continue operating its credit program as at present without breach of its contract or violation of law.

> EDMUND T. FRITZ, Deputy Solicitor.

MEMBERSHIP-CONFEDERATED SALISH AND. KOOTENAI TRIBES OF THE FLATHEAD RESERVATION

65 I.D. 97 M = 36476

March 3, 1958.

Indian Tribes: Constitutions-Indian Tribes: Membership

Failure of the Secretary of the Interior to disapprove a Tribal Council ordinance which is inconsistent with the tribal constitution does not validate the ordinance.

Memorandum

To: Commissioner of Indian Affairs

From: Solicitor

Subject: Membership-Confederated Salish and

Kootenai Tribes of the Flathead Reser-

vation

A question has been raised whether this Department will recognize as effective, at least as far as the Department is concerned, ordinances passed by the Tribal Council of the Salish and Kootenai Tribes of the Flathead Reservation in Montana, by which the Council authorizes itself (1) to remove from enrollment members who were previously enrolled in literal compliance with the membership criteria set forth in the tribal constitution and (2) extends future membership to all children or to to change the provisions of that constitution which any member of the Tribes "who is a resident of the reservation at the time of the birth of said children * * *," without complying with the constitutional procedure for such action. The Commissioner of Indian Affairs is advised to point out to the Tribal Council that serious doubts as to the legality of the resolution involved prevent him, as representative of the United States in its capacity as guardian of tribal assets, from recognizing the disenrollment of present members and the failure to enroll new members, insofar as such actions are predicated on the authority of the tribal resolutions inconsistent with the tribal constitution.

T

mac

pur

pro

wer Apr roll clea fed€ head sucl the (a) resp give sub gov Cor take ogn tior Α pow pov Flai 193 the diff the futi

> 0 O a e

Cor

Koo

vide

In Tri "to wit tion sec. cil me ord of : wh sen the pos to: οf

us of

of the cutive

vhich

t the e ap-The lands outf the which

It is e the there idian that

nodiands.

347; ouse the

10, of of l] he

·C-

d at ated the and I by the Jen-

sess. 927, ress 926. custo her

ssed.

the character of mineral rights, if any, acquired under an Executive order reservation, in other words, whether a right of use and occupancy in reserved lands included the right to the underlying minerals. The 1927 act confirmed that such mineral rights belonged to the Indians.

We will agree that by its clear terms the 1927 act precludes the changing of the boundaries of Executive order reservations, but we believe that section 4 of the act must be read in its proper context as applying to all such reservations where there is an existent Indian title. We believe that section 4 has no application in cases where Indian title, and whatever rights attach thereto, has been extinguished by reason of a merger of the legal and equitable titles in the United States.

Edmund T. Fritz,

Deputy Solicitor.

SALES TAX-THREE AFFILIATED TRIBES OF THE FT. BERTHOLD RESERVATION

M-36448

March 3, 1958.

Indian Tribes: Tribal Government-Indians: Taxation: Generally

The governing body of the Three Affiliated Tribes on the Fort Berthold Reservation acted within the scope of the traditional authority of Indian Tribes to tax persons under their jurisdiction and to exercise such other reasonable governmental powers as are necessary to maintain law and order and to provide traditional governmental service except insofar as such functions have been assumed by the paramount government, the United States, when, by Resolution dated March 11, 1948, the Tribal Business Council imposed a sales tax on the gross sales on all cattle and horses sold on or off the reservation, and on sales of crops produced as a result of revolving credit financing.

Indian Tribes: Fiscal Matters-Indians: Taxation: Generally

There is no legal objection to the imposition of the tribal sales tax designated by Tribal Business Council resolution. The tax is enforced against all of a class, namely, those who have produced livestock and crops "as a result of revolving credit financing." The borrowers were or should have been aware of the tax prior to their application for loans.

Memorandum

To: Commissioner of Indian Affairs

From: Solicito

Subject: Sales tax, Three Affiliated Tribes of the

Fort Berthold Reservation

In a memorandum on this subject you requested my opinion as to whether the Tribal Business Council of the Three Affiliated Tribes, Fort Berthold Reservation, acted within the scope of its authority when it adopted the Resolution of March 11, 1948, which provides:

"That the Tribal Business Council of the corporation authorize a sales tax of two percent (2%) on the gross sales return on all cattle and horses sold on or off the reservation. Sales of crops which have been produced as a result of revolving credit financing shall also be taxed two percent (2%). Other crop sales shall not be taxed for the same purpose; * * * * "

At this late date, nearly ten years after the adoption of the Resolution, we shall give the Tribe the benefit of any doubts, which if presented more seasonably, might have led to corrective suggestions as to the form of the Resolution. The time limit for disapproval in this connection lapsed ninety days after the enactment of the Resolution.

In general there is little doubt but that the governing body of the Three Affiliated Tribes on the Fort Berthold Reservation acted within the scope of the traditional authority of Indian Tribes to tax persons under their jurisdiction and to exercise such other reasonable governmental powers as are necessary to maintain law and order and to provide traditional governmental services except in so far as such functions have been assumed by the paramount government, the United States. Iron Crow v. Oglala Sioux Tribe, 231 F. (2d) 89 (1956). Section 16 of the Indian Reorganization Act, 25 U.S.C. 476, under which these historical bands or tribes were constituted into a single statutory tribe can be read to require that their new Constitution shall give the statutory tribe "all powers vested in any Indian tribe or tribal council by existing law" and certain additional powers not theretofore ordinarily exercised by Indian tribes, which are specifically enumerated. Section 3 (d) of Article VI of the Constitution of the Three Affiliated Tribes of the Fort Berthold Reservation provides that subject to the approval of the Secretary of the Interior the Tribal Business Council shall have the power, "* * * to levy taxes or license fees on nonmembers