If, as has been inferred, there be doubt as to the intention of Congress to give immunity from state taxation, it is recommended that legislation be secured expressly conferring the exemption. The states will not suffer from such a practice, for in return for the lost taxes on the purchased lands, there will be the subtraction to the state taxation of the relinquished lands, or of the lands used in making the new purchase.

Pending litigation should, of course, be pressed to a final conclusion with all possible speed in order that the existing uncertainty be ended. Should it transpire that these Indian lands are taxable, then the national government must fairly consider the nature of the duty to the ward of the guardian who has employed the ward's tax exempt funds to purchase property on the express or implied understanding that the newly-acquired property is likewise exempt. Several Indians have complained to the writer that they are, being taxed, despite the formal assurance of Indian Service employees that the lands purchased for them would be exempt from taxation. (P. 796-798.)

In the case of Shaw v. Gibson-Zahner Oil Corp., a land outside a reservation purchased with restricted funds and subject to a restraint against alienation were held subject to state property taxation. The court, however, recognized the fact that there are some instrumentalities which, though Congress may protect them from state taxation, will nevertheless be subject to, that taxation unless Congress speaks. (F. 561.)

Thereafter by the Act of June 20, 1936, Congress expressly exempted such lands from state taxation. In order that its purpose and meaning may be more fully understood, both section 1 and section 2 of the 1936 Act are quoted in full:

That there is hereby authorized to be appropriated, out of any money in the Treasury of the United States not otherwise appropriated, the sum of $25,000, to be expended under such rules and regulations as the Secretary of the Interior may prescribe, for payment of taxes, including penalties and interest, assessed against individually owned Indian land, to which is held subject to restrictions against alienation or encumbrance except with the consent or approval of the Secretary of the Interior, heretofore purchased out of trust or restricted funds of an Indian, where the Secretary finds that such land is held subject to restrictions against alienation or encumbrance except with the consent or approval of the Secretary of the Interior.

Sec. 2. All lands, the title to which is now held by an Indian subject to restrictions against alienation or encumbrance except with the consent or approval of the Secretary of the Interior, heretofore purchased out of trust or restricted funds of an Indian, are hereby declared to be instrumentalities of the Federal Government and shall be nontaxable until otherwise directed by Congress.

The 1937 amendment to section 2 of the above act reads as follows:

All homesteads, heretofore purchased out of the trust or restricted funds of individual Indians, are hereby declared to be instrumentalities of the Federal Government and shall be nontaxable until otherwise directed by Congress: Provided, That the title to such homesteads shall be held subject to restrictions against alienation or encumbrance except with the approval of the Secretary of the Interior: And provided further, That the Indian owner or owners shall select, with the approval of the Secretary of the Interior, either the agricultural and grazing lands, not exceeding a total of one hundred and sixty acres, or the village, town, or city property, not exceeding in cost $5,000, to be designated as a homestead.

The 1936 Act was passed to establish the tax-exemption of the lands purchased with restricted funds under the guidance and direction of the Interior Department as tax-exempt lands. After the passage of the act it was found that section 2 had application to such a large quantity of lands that a bill was introduced in Congress for its repeal. This bill was, however, amended on the recommendation of the Senate Committee on Indian Affairs to provide for restricting the tax-exemption to homesteads purchased with trust or restricted funds rather than for repealing the tax-exemption entirely, and the bill was passed in its amended form. The report of the Senate Committee in which this recommendation was made contains the following pertinent statement of the purpose of the 1936 Act and the 1937 amendment:

The said act of June 20, 1936 (49 Stat. L. 1542) was designed to bring relief and reimbursement to Indians who by failure to pay taxes have lost or now are in danger of losing lands purchased for them under supervision, advice, and guidance of the Federal Government, which losses were not the fault of the Indians, but were purchased with the understanding and belief on their part and induced by representations of the Government that the lands be nontaxable after purchase. It was intended that such lands would be redeemed out of the fund of $200,000 authorized to be appropriated under the provisions of said act of June 20, 1936 (49 Stat. L. 1542).

Since the passage of said act of June 20, 1936 (49 Stat. L. 1542), it was found the provisions of section 2 thereof would apply to lands and other property purchased by restricted Indian funds, which would exempt from taxation vast quantities of property, such as business buildings, farm lands which are not homesteads, etc.

The Commissioner of Indian Affairs appeared before the committee and suggested the amendment herein proposed, which proposed amendment was adopted and herein recommended by your committee. (Senate Report No. 332. 75th Cong., 1st sess.)

In United States v. Board of Com'rs, the court, in construing these statutes, held that Congress had the power to define federal instrumentalities, and that the 1936 Act clearly applied to prevent taxation for 1936 of real estate, used for both residence and business purposes which was purchased with restricted funds of Osage Indians. The court said that the act applied to Indians in general, and was not made inapplicable to the Osages by reason of prior acts referring specifically to Osage homesteads.

In an unrepealed case, the same court applied these statutes to prevent taxation of homesteads purchased with trust funds held on deposit by the United States for Pawnee Indians in lieu of allotment.

The further extent of the operation of these statutes is not known at the present time, but they express the clear intent of Congress to continue homesteads of Indians tax exempt, whether the homestead was purchased for the Indian or allotted to him.

1 F. Supp. 270 (D. C. N. D. Okla. 1939) (Osage County). The court followed the view expressed in 58 I. D. 48 (1937) as to the applicability of the 1936 act to the Osages.

SECTION 4. STATE TAXATION OF PERSONAL PROPERTY

Wherever personal property is acquired by or for tribal Indians for use on Indian reservations, lands in connection with or in furtherance of the policy adopted by the Government in encouraging the Indians to cultivate the soil and to establish permanent homes and families, or otherwise aid in their economic rehabilitation, such property may not be taxed by the state. The immunity exists whether the property be purchased with moneys held in trust by the United States for the Indians or with moneys accruing to the Indians from other federal sources. The reason behind this immunity of state law is that the state has no power, by taxation or otherwise, to retard, impede, burden, or control the operations or instrumentalities employed by the Federal Government in carrying into execution the powers lawfully vested in it.

In United States v. Thurston County, the Circuit Court of Appeals for the Eighth Circuit ruled that the proceeds of the sales of allotted lands held in trust by the United States were exempt from state taxation for the reason that the proceeds were from similar use. The proceeds of the sale of trust lands from which the Indians derived a property from the original land and the term of its powers to protect, support, and instruct the Indians. The court said, among other things:

The allotted lands were held in trust by the United States for the benefit of those to whom they were assigned, and their heirs, under the acts of August 7, 1887, and February 8, 1887. The proceeds of the sales of these lands have been lawfully substituted for the lands themselves by the trustee. The substituting the proceeds of the nature of the original and stand charged with the same trust. The lands and their proceeds, so long as they are held or controlled by the United States and the term of the trust has not expired, are alike instrumentalities employed by the United States in the lawful exercise of its powers of government to protect, support, and instruct the Indians. For this reason, the complaint holds them, and they are not subject to taxation by any state or county. (P. 259.)

The doctrine of the foregoing case was approved in United States v. Pearson, a case involving issue property. That is, property held by the Federal Government, which is property issued to the Indians by the Federal Government. Immunity from state taxation was there extended to personal property which could be traced and identified as issue property, the increase of issue property, property purchased with the proceeds of the sale of issue property, property purchased with the proceeds of the sale of the increase of issue property, and property purchased with money given to the Indians by the United States.

To the same general effect is United States v. Dewey County, and United States v. Rickert. In the case last cited the court held that personal property consisting of horses, cattle, and other property issued by the United States to the Indians and used by them on their allotments was not subject to assessment and taxation by the state.

For the same reason that property purchased by Indians with restricted funds and property issued to the Indians by the Government are Government instrumentalities, property purchased by the Indians pursuant to a specific plan for economic rehabilitation approved by the Government and carried out under Government supervision should likewise be recognized as a government instrumentality. As said by the Solicitor of the Interior Department:

The purchase of property by the Indians themselves in accordance with an economic plan worked out with the Government is supplemental, as a method of assuring the promotion of economic development, the old method or the Government's issuing such property to the Indians. From a legal viewpoint, the purchase of property by the Indians with revolving loan funds or judgment fund moneys, pursuant to a plan for rehabilitation approved by the Superintendent, or purchased by the Indians with revolving loan funds or judgment fund moneys, pursuant to a plan for rehabilitation approved by the Superintendent, or purchased by the Superintendent with reparation funds and issued to the Indians. The reasoning of the courts applies equally to these procedures, except that in the cases above cited the Government had an ownership interest in the title to the property was found to be in the United States. The form of title, while indicative of the intent of the Government, is not, in itself, the determining factor. The important factor is the acquisition and use of the property in the execution of a government plan for the Indians.

There are apparently no cases determining the right of the state to tax personal property of an Indian on a reservation which is not used pursuant to some federal plan. Apparently to state has attempted to collect such a tax. The doctrine that Indians on a reservation are not subject to state law in the absence of Congressional authority would indicate that any such tax would be invalid.

On the other hand, property issued to an Indian by the Federal Government and used by him outside the reservation is taxable by the state.

Personalty owned by non-Indians but held on an Indian reservation is subject to state taxation. This is true even though the personality belongs to a Catholic mission situated on an Indian reservation and devoting both the personality and the proceeds therefrom to the welfare of the Indians. In so deciding the Supreme Court declared:

Taking the complaint as it is, it shows on its face that the Indians have neither any legal nor equitable title to the property, neither have they any legal or equitable right to its beneficial use, and it also appears from the complaint that the property is owned, unconditionally and absolutely by the plaintiffs. The plaintiffs, as the owner of the property, may, at any time, abandon its present manner of using them and may devote them, or any income arising from their ownership, to any purpose which they may choose. The Indians would have no legal right of complaint. The plaintiffs might or might not spend another dollar upon the Indians upon these reservations and refuse to further maintain or aid them in any way whatever, and no right of the Indians would be thereby violated, nor could they call upon the courts to enforce the application of the plaintiffs' property, or the income thereof, to the same purposes the plaintiffs had theretofore applied them. There is noth-
SECTION 5. STATE SALES TAXES

The question of the extent to which Indians and persons trading with Indians are subject to State sales taxes has been treated in a recent opinion of the Solicitor of the Interior Department. Though the question has treated arose under Arizona statutes, the problem they present is a general one and the Arizona statutes involved are not dissimilar in substance from the State laws of other States. For this reason the following copious quotations from the opinion serve to illuminate the entire subject:

There are two Arizona statutes particularly involved, each of which is illustrative of a type of sales tax law. The Recise Revenue Act of 1935, Chapter 77, Laws Regular Session 1935, as amended by Chapter 2, Laws of First Special Session 1937, places an annual privilege tax on the business of selling at retail measured by the gross proceeds or the gross income from the business. Provision is made by the law for the use of tokens -by proprietors to reimburse the dealers for the tax applicable to any sale. The other statute in question, Chapter 78, Laws Regular Session 1935, as amended in 1936, 1937, and 1939, places a tax on certain designated luxuries to be paid by stamps to be affixed to the articles by the dealers. Both statutes contain, as a method of enforcement, the requirement that all dealers shall take out State licenses. Both statutes provide for an exemption from the tax of businesses and transactions not subject to tax under the United States Code for resale of personal property, the dealer of the tax paid by him when proof is made that the transactions and articles taxed were not subject to tax under the law. In both statutes the tax is, on its face, a tax to be paid by dealers, whether wholesalers or retailers, and to be enforced against them, although both acts contemplate, that the amount of the tax shall be added to the, price paid by, the consumer.

1. Application of State taxes to persons trading with Indians.

The question of the application of these taxes to persons trading with Indians is subject to different answers depending upon the location of the trade and upon whether the trade is by the persons dealt with are Indians. The regulation of trade with Indian tribes is one of the powers expressly delegated to Congress by section 8 of Article I of the United States Constitution. Congress has exercised this power in statutes restricting trade with the Indians and has given exclusive authority to the Commissioner of Indian Affairs to regulate such trade and the prices at which goods shall be sold to the Indians. (Sections 261 through 266, Title 25 of the United States Code.)

These statutes, by their terms or by judicial construction, are limited in their application to Indian reservations. United States v. Taylor, 44 F. (2d) 537 (C. C. A. 9th, 1930), cert. den. 283 U. S. 820; Rider v. La Clair, 77 Wash. 488, 128 Pac. 3; United States v. Certain Property 22 Pac. 517 (Ariz. 1871). Congress has not exercised its power to regulate trade with the Indians in so far as

upon the lands or privileges of the Indians, citing Erie Railroad v. Pennsylvania, 165 U. S. 431, and other cases, as authority for the decision. This is reaffirmed in the second case cited. In this case the Indians have been held to be such businesses and transactions not subject to tax under the United States law, and the owners are not obliged to pay anything for the privilege of grazing, and may, as we have said, devote the property, or the income thereof, to purposes wholly foreign to the Indians themselves. However meritorious the conduct of the owners of the cattle may be in devoting the income or any portion of the principal of their property to the charitable work of improving and educating the Indians (and we cordially admit the merit of such conduct), we cannot see that there is, on that account, the least claim for exemption from taxation, in view of any provision, constitutional or otherwise. (Pp. 125-129.)

The Supreme Court has repeatedly permitted the taxation by the State of the property of white persons located on Indian reservations on the theory that such taxation did not interfere with the exercise of Federal authority within the reservations. Thomas v. Gay, 169 U. S. 264; Waggoner v. Evans, 170 U. S. 588; Catholic Missions v. Missoula County, 200 U. S. 118. This principle has been carried by the State courts to the extent of permitting State taxation of the property of Indian traders, including their stock in trade. Moore v. Beason, 7 Wyo. 292, 51 Pac. 875; Coster v. McMillan, 22 Mont. 454, 56 Pac. 906; Noble v. Amoretti, 71 Pac. 870 (Wyo. 1903). In the review of the relationship between the Federal Government and the State government on an Indian reservation in Surplus Trading Co. v. Concern, 292 U. S. 101, the Supreme Court stated that the jurisdiction of the State over the reservation is full and complete save as to the Indians and their property.

In this view of the position of the State I held in my memorandum to the Commissioner of Indian Affairs of February 4, 1938, that white traders in their dealings with non-Indians must comply with the State laws including those imposing sales taxes. I believe this ruling was correct. Traders on Indian reservations who are non-Indians are, in my opinion, required to take out licenses under the Arizona laws in question to carry on trade with non-Indians on the reservation, and must account to the State authorities for sales taxes on so much of their business as is done with non-Indians. They are not required to account to the State authorities for their transactions with Indians on the reservations, but are, if they do deal with the Indians, required to conform with the licensing provisions in the Federal statutes regulating trade with Indians and with non-Indians. Indians are not subject to the State laws whether they deal with Indians or non-Indians. (b) Where traders are not located on Indian reservations they are, in my opinion, responsible for the State taxes and subject to license whether or not they are Indians and whether or not they deal with Indians. Since

**Note:** The position of the Solicitor in this connection has been supported by the recent case of Neah Bay Fish Co. v. Krammel, 101 P. 2d 600 (Wash. 1940). The court there held that the State of Washington may levy taxes upon a company conducting business entirely within the Indian reservation under a license from the Commissioner of Indian Affairs and the tribe, for sales made to persons other than Indians. **80 p. Sol. L. D., May 8, 1940.**
TAXATION

restrict the tax immunity of agencies of Government where the burden on the Government was not clear and direct. Helton v. Mountain Producers Corp., 303 U. S. 376; Helton v. Gerhardt, 304 U. S. 405.

Although the law on the question is in a state of flux, the proper holding at the present time is, in my opinion, that where purchases are made either by the Indians themselves or by Government agents in carrying out a specific economic program for the Indians approved and supervised by the Federal Government, or where such purchases are made with restricted funds, the purchases are not subject to the State sales taxes even though they are made off the reservation.

SUMMARY

1. Persons trading with the Indians on Indian reservations are not subject to the Arizona sales tax laws. However, where such traders are non-Indians, they are subject to the sales tax laws on so much of their business as is carried on with other non-Indians. Traders off an Indian reservation are subject to the State sales tax laws whether or not they are Indians or dealing with Indians.

2. Purchases made by Indians on Indian reservations are not subject to the Arizona sales taxes nor are purchases made by Indians or Government agents off the reservation where they are made with restricted funds or in carrying out a specific program for, the economic rehabilitation of the Indians approved and supervised by the Federal Government.

In another recent opinion of the Solicitor of the Interior Department, the application of certain state taxes to sales of tobacco and gasoline to the Menominee Indian Mills was considered. The state taxes in question were: (1) the State excise tax on the sales of gasoline, levied under chapter 78 of the Wisconsin Statutes of 1937; and (2) the State occupational tax on the sale of tobacco products, levied under chapters 443 and 518 of the Laws of Wisconsin, 1939.

After a searching analysis of the problems presented, the Solicitor made a twofold finding, to wit:

1. State gasoline sales taxes (a) do not apply to sales of gasoline to the Menominee Indian Mills for use in the operation of the plants, but (b) do apply to sales of gasoline to the mills for resale through the commissary of the mills to employees and the general public. This latter ruling was occasioned by the fact that title IV of the Internal Revenue Act of 1932 and the regulations issued thereunder exempted from the operation of the tax only gasoline sold "for the exclusive use of the United States."

2. The state tax on the sale of tobacco products does not apply to the selling of such products by the commissary of the Menominee Indian Mills to employees and the general public.


SECTION 6. STATE INHERITANCE TAXES

There appears to be meager authority on the question of the liability of an Indian's estate to the payment of state inheritance taxes. The only case to reach the Supreme Court involved allotted lands of a restricted full-blood Quapaw Indian which had been declared inalienable for a period of 25 years by the Act of March 2, 1895. By the Act of June 25, 1910, the Secretary of the Interior was directed to determine the heirs of deceased allottees according to state statutes of descent. According to the state statute the land herein involved descended to two full-blood Quapas. The state auditor of Oklahoma attempted to subject the lands to the state inheritance tax. Upon appeal the Supreme Court declared:

Apparently appellant supposed that the lands passed to the heirs by virtue of the laws of the State and were subject to the inheritance taxes which she claimed. He accordingly demanded the payment of appellees and threatened enforcement by summary process and sale of the lands. The court below held that the State had no right to demand the taxes and restrained appellant from attempting to enforce payment.

The duty of the Secretary of the Interior to determine the heirs according to the State law of descent is not questioned. Congress provided that the lands should be...
JUSTICE 9. 1930).}

FEDERAL TAXATION

SECTION 7. FEDERAL TAXATION

A. SOURCES OF LIMITATIONS

While the tax which was declared invalid in Choate v. Trapp was payable to the State of Oklahoma, the question to which the Supreme Court addressed its primary attention in that case was the validity of the congressional enactment which purportedly subjected the land to state taxation. In holding that Congress had no power to subject the land to taxation after agreeing, in exchange for a valuable consideration, that the land should be tax-exempt, the Supreme Court enunciated and went far to support a rule which would lay limits upon federal taxation as well as upon state taxation. Thus if, in circumstances similar to those exemplified in Choate v. Trapp, the Federal Government, pursuant to an agreement with an Indian tribe, issues a trust patent promising clear title to the patentee after a fixed period, it seems probable that any attempt, for example, to impose a federal inheritance tax upon such land would be held violative of the Fifth Amendment.

Nevertheless, in the only Supreme Court case in which the constitutionality of a federal tax violating an agreement with an Indian tribe was considered, the case of The Cherokee Tobacco, the Supreme Court held that the violation of a treaty provision by an act of Congress presented a purely political question which the courts were powerless to remedy. This doctrine would, of course, preclude the relief which the Supreme Court gave in Choate  v. Trapp.

It seems clear, then, that the holding in Choate v. Trapp is inconsistent with the doctrine of The Cherokee Tobacco, and that the holding in that case is incompatible with the doctrine of Choate v. Trapp. The opinion in the later case does not attempt to distinguish the earlier case—does not even mention the earlier case. It is easy to make verbal distinctions, to say that The Cherokee Tobacco involved a question of the plenary power of Congress over tribal affairs and that Choate v. Trapp involved individual property rights. But one might as easily say that plenary power of Congress over tribal affairs was involved in Choate v. Trapp, since all the legislation in that case dealt with tribes, and that the individual rights of the Indian Elias Boudel, not in The Cherokee Tobacco, which in fact Congress felt called upon to recognize and compensate 4 years after the Supreme Court decision, were even more individual than the rights of the 8,000 plaintiff members of the Choctaw and Chickasaw tribes in Choate v. Trapp. To say that property rights existed in one case and not in the other is to describe the result rather than to explain it or to aid in predicting future decisions.

Whether the Choate case overruled the case of The Cherokee Tobacco, sub silentio, or whether the doctrine of the earlier case is to prevail outside the narrow fact situation presented in the Choate case, the future will determine. Some support is given to the former hypothesis by the consideration that the decision of the Supreme Court in Choate v. Trapp was unanimous, while that in The Cherokee Tobacco was a four-to-two decision with three members of the court not hearing argument.

In recent years Congress has occasionally made certain that no claim to permanent tax exemption would arise, by specifying that designated Indian property should be "nontaxable until otherwise directed by Congress."38

B. FEDERAL INCOME TAXES

In considering federal taxation of Indian income, one finds the courts concerned not, as in the case of the state, with the question of whether the state may tax, but with the question of whether the Federal Government has intended to tax. Whether it has done so in a particular case depends on the construction accorded the taxing statute by the courts. The rule of construction most recently announced is that the federal income tax law, applying as it does to the income of "every individual" and to income derived "from any source whatever," includes within its application Indians and their income unless they are by agreement or statute exempted.

It is clear that the exemption accorded tribal and restricted Indian lands extends to the income derived directly therefrom.39 Accordingly, rents, royalties, and other income of Quapaw,40 Oto,41 Oto and Missouri,42 and Ponca Indians have been held tax-exempt. Likewise, the income derived by individual Indians as their share in the oil or mineral deposits in tribal lands has been held tax-exempt.43

27 633053-4619
14 541-614 (1870).
36 108 U. S. 491, 1074-1078 (1883).
34 11 Wall. 616 (1870).
Conversely, income which is derived from unrestricted lands has been held taxable, and the Circuit Court of Appeals has held that upon the death of a restricted Creek allottee, his surplus allotment having been freed of restrictions by the Act of May 27, 1906, the income therefrom was taxable in the bands of a noncompetent heir although income from the homestead which remained restricted was nontaxable. It has been held, too, by the United States Supreme Court that where an Indian holds a certificate of competency the income paid to him as royalties from oil and gas leases is taxable. And the income of a Hopi Indian derived from his commercial business in trading with other Indians and from the sale of cattle given him by the Government is taxable.

Though income derived directly from restricted allotted lands is exempt from federal income taxation, so-called reinvestment income is subject to such taxation. The case of Superintendent, Five Civilized Tribes v. Commissioner, involved the taxability of the income of a noncompetent Indian derived from the reinvestment of income from restricted allotted lands. The court there said that the taxation of the income from trust property of its Indian wards by the Federal Government, under federal revenue acts general in scope, is not so inconsistent with the relationship between the Government and its Indian wards that exemption is a necessary implication, and held that reinvestment income is clearly taxable under the federal revenue laws.

It has been held that the income of a non-Indian lessee derived from a lease of restricted Indian lands is subject to the federal income tax.

The courts in considering an Indian claim for refund of taxes erroneously paid, have looked upon an unrestricted Indian claimant as upon any other taxpayer. Thus an unrestricted Indian member of the Choctaw Tribe of Indians is not entitled to a refund of taxes erroneously paid upon income from tax-exempt lands where no claim for refund was filed until after the running of the statute of limitations. But there is no limitation on refunds to restricted Indians if (1) a tax was assessed against their nontaxable income, and (2) such tax was paid by an Indian superintendent, or other such officer of the United States, out of funds in his possession belonging eventually to his ward.

Provision has been made by public resolution for the allowance of claims for refund of taxes erroneously or illegally collected from a duly enrolled member of an Indian tribe who received in pursuance of a tribal treaty or agreement with the United States an allotment of land which by the terms of said treaty or agreement was exempted from taxation, notwithstanding his failure to file a claim for refund within the time prescribed by law. A recent statute, similar in nature to the foregoing resolution, has expressly stated that it is not the policy of the Government to invoke or plead the statute of limitations in order to escape its obligation to its Indian wards.

C. OTHER FEDERAL TAXES

By section 617 of title 4 of the Revenue Act of 1932, an excise tax is levied on sales of gasoline. In considering the application of this tax to sales of gasoline to the Menominee Indian Mills, the Solicitor of the Interior Department in a recent opinion made the following finding, to wit:

1. Federal gasoline sales taxes (a) do not apply to sales of gasoline to the Menominee Indian Mills for use in the operation of the mills, but (b) do apply to sales of gasoline to the mills for resale through the commissary of the mills to employees and the general public. This latter ruling was occasioned by the fact that title 4 of the Internal Revenue Act of 1932 and the regulations issued thereunder exempted from the operation of the tax sales of gasoline sold "for the exclusive use of the United States."

From an early date Congress has expressly provided that no duty shall be levied or collected from Indians on the importation of peltries brought by them to the territories of the United States and the desire to encourage native Indian handicraft has been clearly evidenced by the express exemption from the operation of the Revenue Act of 1932 of "any article of native Indian handicraft manufactured or produced by Indians on Indian reservations, or in Indian schools, or by Indians under the jurisdiction of the United States Government in Alaska."

SECTION 8. TRIBAL TAXATION

As distinct political communities, the Indian tribes possess some of the attributes of sovereignty, among which is the power to legislate regarding their internal relations. This power, with certain exceptions, includes the power to levy local taxes on all property within tribal limits, belonging to members of the tribe. Though the scope of the power as applied to nonmembers is not clear, it extends at least to property of nonmembers used in connection with Indian property as well as to privileges enjoyed by nonmembers in trading with the Indians. The power to tax nonmembers is derived from the "authoritative founded on original sovereignty and guaranteed in some instances by treaties, to remove property of nonmembers from..."
the territorial limits of the tribe. Since the tribal government has the power to exclude, it can extract a fee from nonmembers as a condition precedent to granting permission to remain or to operate within the tribal domain. Since, however, the exclusive power to regulate trade with the Indians is vested in the Commissioner of Indian Affairs, it would seem that, in the absence of specific federal authorization, the tribe has no power to tax licensed traders.

Limitations on the taxing power of the state governments arising from the federal instrumentality doctrine logically also apply to the tribal governments.

It would seem that the tribal taxing power is not subject to limitations imposed upon state or federal legislation by the Federal Constitution. In the only Supreme Court case on the point, the court remarked in approving such a tax that the act of the tribal legislature was not arbitrary and did not violate the Federal Constitution.

Under section 16 of the Act of June 18, 1934, tribal constitu-


127 For example, it has been administratively determined that the tribe may not tax employees of the Federal Government. See Memo. Sol. I. D., February 17, 1939.

128 Constitution, Hannaberry Indian Community, Art. V, sec. 1 (b); Constitution, Keweenaw Bay Indian Community, Art. VI, sec. 1 (f).

129 Constitution, Oneida Tribe of Indians of Wisconsin, Art. IV, sec. 1 (f); Constitution, Kalispel Indian Community, Wash., Art. IV, sec. 1 (f); Constitution, Fort McDermott Paiute and Shoshone Tribe, Art. VI, sec. 1 (f); Constitution, Flandreau Santee Sioux Tribe, Art. IV, sec. 1 (f).

130 Constitution, Omaha Tribe of Nebraska, Art. IV, sec. 1 (h); Constitution, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin, Art. V, see. 1 (f); Constitution, Lower Sioux Indian Tribe, Art. V, sec. 1 (h); Constitution, Wyandotte Cooperative Association in Miami, Art. V, sec. 1 (d).

131 Constitution, Constitution, Chippewa, Three Affiliated Tribes. Fort Berthold Reservation, Art. VI, see. 5 (b).