STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

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June 23, 2011

OPINION NO. 2011-09

INDIAN RESERVATION; TAXATION: Land acquired in fee title by a tribe does not become part of an Indian reservation or Indian colony under NRS 372.805 and NRS 374.805 and, therefore, the exemption from sales and use tax in those provisions does not apply. When and if the land is subsequently conveyed by the tribe to the United States to hold in trust for the tribe, the exemption would apply.

Christopher G. Nielsen, Interim Executive Director
Nevada Department of Taxation
1550 North College Parkway, Suite 115
Carson City, Nevada 89706

Dear Mr. Nielsen:

You have requested an opinion from the Office of the Attorney General concerning whether land acquired in fee title by an Indian tribe is reservation or colony land for the purpose of the tax exemptions found in NRS 372.805 and NRS 374.805.

## QUESTION

Does acquisition by a tribe of fee title to land make the land "on an Indian reservation or Indian colony" for purposes of the tax exemptions available to tribes and colonies pursuant to NRS 372.805 and NRS 374.805?

## ANALYSIS

As background, NRS Title 32 imposes taxes on the privilege of selling tangible personal property at retail and on the storage, use, or other consumption in this State of

tangible personal property purchased from a retailer (sales and use taxes).[1] NRS Title 32 limits the reach of these taxes with respect to Indian colonies and reservations as follows:

> The Department of Taxation shall not collect the tax imposed by this chapter on the sale of tangible personal property on an Indian reservation or Indian colony on which a tax has been imposed pursuant to NRS 372.800 if:
> 1. The tax is equal to or greater than the tax imposed by this chapter; and
> 2. A copy of an approved tribal tax ordinance imposing the tax has been filed with the Department of Taxation.

NRS 372.805.[2]

Determining the issue of whether the foregoing exemption applies to transactions occurring on land to which fee title is acquired by a tribe depends first on what is the meaning of the phrase "on an Indian reservation or Indian colony."

NRS 372.805 was created in 1989. Act of June 26, 1989, ch. 525, §§ 2, 3, and 4, 1989 Nev. Stat. 1109. The exemption is the result of the enactment of NRS 372.805. NRS 372.805 does not expressly define "on an Indian reservation or Indian colony." *See Hearing on A.B. 877 Before the Assembly Committee on Taxation,* 1989 Leg., 65th Sess. 5 (June 26, 1989). However, the failure to define these terms may itself signify an intent that they carry the same meaning established under federal law. "Generally, when a legislature uses a term of art in a statute, it does so with full knowledge of how that term has been interpreted in the past, and it is presumed that the legislature intended it to be interpreted in the same fashion." *Beazer Homes Nev., Inc. v. Eighth Jud. Dist. Court*, 120 Nev. 575, 587, 97 P.3d 1132, 1139-1140 (2004).

"Indian reservation" has been authoritatively defined as a "part of public domain set aside by proper authority for use and occupation of tribe or tribes of Indians. . . . An Indian reservation consists of lands validly set apart for use of Indians under superintendence of the government which retains title to the land." BLACK'S LAW DICTIONARY 694 (5th ed. 1979).

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[1] The specific provisions imposing taxes are NRS 372.105, NRS 372.185, NRS 374.110, NRS 374.190, NRS 377.040, NRS 377A.030, and NRS 377B.110.

[2] The same exemption is applicable to NRS Chapter 374 and in turn applicable to other taxes on sales and use found in NRS Title 32. *See* NRS 374.805, NRS 377.040, NRS 377A.030, and NRS 377B.110.

The status of a location as a reservation or a colony is a matter of federal law. *See, e.g., Snooks v. Ninth Jud. Dist. Court*, 112 Nev. 798, 800 n.1, 919 P.2d 1064, 1065 n.1 (1986). (Indian country defined by 18 U.S.C. § 1154) and Op. Nev. Att'y Gen. No. 89-2 (March 13, 1989) (AGO 89-2). Indian reservations and colonies exist by virtue of federal treaties and statutes. *See, e.g., DeCoteau v. Dist. County Court,* 420 U.S. 425 (1975) (termination of reservation must be by clear expression of Congress); *U.S. v. McGowan*, 302 U.S. 535 (1938) (federal law created Reno Colony as Indian Country).

The role of the federal government as sole creator of reservations and colonies arises from the United States Constitution, which "vests the federal government with exclusive authority over relations with Indian tribes." *Montana v. Blackfeet Tribe,* 471 U.S. 759, 764 (1985).

Therefore, the phrases "Indian reservation" and "Indian colony" in NRS 372.805 and NRS 374.805 plainly derive their meaning from federal law, and a reference to activity on an Indian reservation or colony means activity on land considered under federal law to be within the reservation or colony.

Turning to the legislative history of NRS 372.805, it does not appear that the Legislature intended to enlarge upon what constitutes "Indian country" under federal law to include land acquired in fee title, i.e., without federal superintendence. The minutes reflect the purpose of the statute as follows:

> [Executive Director Comeaux] said his department basically supported the bill, mainly because the state was not collecting anything in sales tax on those transactions that are completed on tribal lands. Also, tax was not being collected on transactions completed by the Indian operated stores off reservation. By basically giving up the assumed ability to require the tribal governments to collect and remit tax transactions on their reservations, they would agree to collect and submit state tax for transactions off the reservation.

*Hearing on A.B. 877 Before the Assembly Committee on Taxation*, 1989 Leg., 65th Sess. 5 (June 8, 1989).

The foregoing legislative history reflects an intention to limit exercise of state taxing authority over sales to non-tribal members occurring on the reservation. The legislative history of NRS 372.805 does not reflect an intention to change the law concerning how land could be added to a reservation, but rather to recognize tribes' sovereign power to tax on-reservation transactions and to address the issue of "dual

taxation" for such transactions. *Id.* at Exhibit F (written testimony of Joseph Ely, Chairman, Pyramid Lake Paiute Tribe).

This office has previously analyzed federal law to address the question presented herein, i.e., whether "a tribal government [can] extend the boundary of a reservation or colony simply by purchasing or leasing property in its own name." AGO 89-2, p. 2. That opinion concluded that "(a) tribal government cannot extend the boundary of its reservation or Indian trust lands without the consent of Congress and without taking title to the land in the name of the United States in trust for the Indian tribe." *Id.*

Court decisions since AGO 89-2 do not undercut this conclusion. In *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma,* 498 U.S. 505, 511 (1991), the United States Supreme Court held that land that was held in trust by the federal government on behalf of a tribe had sovereign immunity even if the land is outside the formally constituted reservation, if it met the requirement that the land was validly set aside under the federal government's superintendence. The United States Court of Appeals for the Tenth Circuit has held that acquisition of land in fee by a tribe did not make the land "Indian country" for purposes of immunity from state jurisdiction, even though the tribe's charter made any alienation of land subject to approval of the Secretary of the Interior. *Buzzard v. Oklahoma Tax Comm'n*, 992 F.2d 1073 (10th Cir. 1993).

## CONCLUSION

Land acquired in fee title by a tribe does not become part of an Indian reservation or Indian colony under NRS 372.805 and NRS 374.805 and, therefore, the exemption from sales and use tax in those provisions does not apply. When and if the land is subsequently conveyed by the tribe to the United States to hold in trust for the tribe, the exemption would apply.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By: _____
DENNIS L. BELCOURT
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Division of Business and Taxation

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