IN THE CROW COURT OF APPEALS

IN AND FOR THE CROW INDIAN RESERVATION

CROW AGENCY, MONTANA

CIV. APP. NO. 95-27

GORDON ROSE AND JUNE ROSE, dba QUILL GORDON FLY FISHERS;
BIG HORN COUNTRY OUTFITTERS, INC.;
RECREATION DEVELOPMENT SYSTEMS, INC;
JOE S. BASSETT, dba SCHIVELY RANCH;
MIRACLE TRUST, dba LITTLE BIG HORN CAMP;
and BIG HORN BUSINESS ASSOCIATION, INC.,
Plaintiffs/Appellants,

vs.

DENIS ADAMS, Tax Commissioner of The Crow Tribe;
TYRONE TEN BEAR and STEVE STEVENS, member of the Crow Tribal Tax Commission,
Defendants/Appellees.

Decision Entered January 11, 2000

[Cite as 2000 CROW 1]

James E. Torske, Attorney at Law, Hardin, Montana, for Appellants.

Dale White, Attorney at Law, Boulder, Colorado, for Appellees.

Appeal from the Tribal Trial Court.

Before, BIRDINGROUND, Chief Judge, STEWART, Associate Judge and DESMOND, Special Associate Judge.

Opinion by Special Judge Desmond:

OPINION

IINTRODUCTION

¶1 This is an appeal of an action challenging the power of the Crow Tribe to enact a sales tax on tourist activities within the Crow Indian Reservation and impose it on all tourists, both non-Indian and Indian. The Tribal Court upheld the tax as a valid exercise of tribal authority. We affirm in accordance with the following.

STANDARD OF REVIEW

¶2 We review the Trial Court's conclusions of law under a de novo standard. See, American International Enterprises, Inc. v. F.D.I.C. 3 F.3d 1263 (9th Cir. 1993), and its conclusions of fact under a clearly erroneous standard. Anderson v. City of Bessemer City, 470 U.S. 564 (1985). Thus we perform an independent review of the Tribal Court's legal conclusions but we will not substitute our judgment for that of the Tribal Court on its factual determinations.

PARTIES

¶3 Appellants, five non-Indian owned businesses, are each involved in some type of recreation-oriented activity on the Crow Indian Reservation. Appellant Gordon Rose is the managing partner of Quill Gordon Fly Fishers, a business that sells fishing equipment, provides lodging and offers guiding services; its business offices are located on fee land, within the boundaries of the Crow Indian Reservation. Appellant Joe S. Bassett is the owner of the Schively Ranch, a guest ranch located on fee land but whose hunting preserve includes land leased from a tribal member and who conducts limited activities on trust land. Appellant Nick Forrester is the President of

Recreation Development, Inc., a hunting and fishing lodge that sells fishing equipment and provides guiding services for fishing and bird hunting. He leases land from the 40 Mile Colony that is used as a bird hunting preserve. Some of that land is trust land, although he does not intentionally conduct activities on trust land. Appellant Dennis Whitledge is the Manager of the Little Big Horn Campground, which is located on fee land and contains a campground, motel, grocery store, gas station and laundromat. Appellant George Kelly is the President of Bighorn County Outfitters Inc. which sells products related to the fishing industry and provides lodging and fishing guiding services. Appellee Denis Adams is the Crow Tribal Tax Commissioner. Appellees Tyrone Ten Bear and Steve Stevens are members of the Crow Tribal Tax Commission; Appellee Ten Bear formerly chaired the Commission.

PROCEDURAL BACKGROUND

¶4 The Crow Tribal Council enacted the resort tax at issue on January 14, 1995. (Ch. 4, Crow Tribal Taxation Code, "CTTC"; Crow Tribal Resolution No. 95-18. Complaint Ex. A) The United States Bureau of Indian Affairs approved the tax on June 9, 1995, in accordance with Article VI, Section 10 of the Crow Tribal Constitution, which provides that tribal taxes are "subject to review by the Secretary of Interior." The Bureau of Indian Affairs Area Director's letter approving the resort tax stated in relevant part,

> Adoption of this tax code is within the inherent right of the Crow Tribe in exercising its jurisdiction on the Crow Indian Reservation.
>
> Our decision whether to approve this code focuses primarily on whether the tax code is consistent with Federal statutes, regulations, and policies the Bureau of Indian Affairs (BIA) has the responsibility of implementing. It is our finding that this code is consistent with applicable Federal law implemented by the BIA.

Letter to Tribal Chair, June 9, 1995 p.1, Complaint, Ex. B.

¶5 The resort tax is a "sales or transaction" tax that imposes a 4% tax on "the gross receipts from all goods and services sold or used on the Reservation in connection with a resort business." CTTC §4.02 Section 4.01(a) CTTC, defines "resort businesses" as including but not limited to:

> (1) Campgrounds, dude ranches, guest ranches, hunting and fishing lodges, bed and breakfast establishments,souvenir shops, hotels, motels and other lodging or camping facilities and
>
> (2) Hunting and fishing guide services and recreation equipment rentals received or used on the Crow Reservation.

Section 4.04 CTTC, provides that the tax "shall be imposed on the consumer" and shall be collected by the owner of a resort business from the consumer, and that the owner is entitled to keep 2% of the total tax due to cover administrative costs. The resort tax is similar to the Montana state lodging facility tax, which is a tax on users of lodgings for less than 30 days, collected by the businesses operating the lodging facility and to the Montana local option resort tax. See, §15-65-101, et seq.; §7-6-1501 et seq. Appellee Commissioner Adams testified at the trial that several Tribes have also enacted similar taxes.

¶6 Appellants paid estimated taxes for the first quarter of 1995 under protest and filed this action on July 26, 1995. The Tribal Court action was then stayed while Appellants exhausted their administrative remedies before the Crow Tribal Tax Commission. On November 1, 1995, the Crow Tribal Tax Commission held a hearing on Appellants' request for exemption from the tax and a rebate. The Commission decided on December 20, 1995 that Appellants were not entitled to an exemption or to a refund of the taxes they had paid under protest. Appellants then amended their Complaint to include an appeal of the commission's orders. Appellees filed a counterclaim seeking a declaratory judgment that the tax is valid as applied to Appellants and an order requiring Appellants to pay the taxes due. Following a trial on the merits, the Tribal Court held on January 5, 1998, that the Crow Tribal Court had jurisdiction to determine the challenge to the validity of the ordinance, and that the Crow Tribe has authority both to impose the tax, and to require its collection by resort businesses.

ISSUES ON APPEAL

¶7 We restate Appellants' grounds of appeal as follows:

> 1. The Crow Tribal Trial court erred in its analysis of whether or not the resort tax, as applied in this case, is a valid exercise of tribal authority by applying tribal rather than federal law.
>
> 2. Under the applicable federal law the Tribal Court lacks subject matter jurisdiction over this case and the Tribal Council lacked authority to enact a tax that would be imposed on non-Indians as well as on Indians.
>
> 3. Even if the Tribe did have authority to impose a resort tax on non-Indians, the taxpayers have not accepted privileges of on-reservation activity sufficient to justify the tax thus the Tribe cannot establish existence of a "nexus" for imposition of the tax.
>
> 4. The tribe lacks jurisdiction to require appellants to collect the tax.

DECISION

¶8 The Crow Tribal Court analyzed whether or not the resort tax is a valid exercise of tribal authority by applying both tribal law and federal law and thus did not err.

¶9 The Tribal Court applied both Tribal and federal law when it analyzed whether it had jurisdiction to adjudicate this matter. The Tribal Court correctly concluded that it had jurisdiction under tribal law. The Tribal Court found it had subject matter jurisdiction under

Crow Tribal Code §3-2-205 which states in relevant part:

> Jurisdiction--Subject Matter. The Crow Tribal Courts shall have jurisdiction over all civil causes of action arising within the exterior boundaries of the Crow Indian Reservation....

As for personal jurisdiction, the Court held that under Crow Tribal Code § 3-2-203, the court has jurisdiction over all persons who enter and or transact business within the exterior boundaries of the Crow Indian Reservation. Further, the Court noted that the Appellants consented to personal jurisdiction by filing this lawsuit. The Tribal Court held that the tax was within the Tribe's constitutional authority, and enacted in accordance with tribal law.

¶10 The Tribal Court also found it had subject matter jurisdiction under federal law, citing the cases of National Farmers Union Ins. Cos. v. Crow Tribe of Indians, 471 U.S. 845 (1985), ("National Farmers Union"), for its exhaustion rule and finding that neither Montana v. United States, 450 U.S. 544 (1981), ("Montana"), nor Strate v. A-1 Contractors, 117 S.Ct. 1104 (1997), ("Strate"), preclude jurisdiction. The Court further stated that Montana was distinguishable but that even if its main rule did apply, the Court had jurisdiction under both of its exceptions.

¶11 For the benefit of both the parties and this reviewing court, the Tribal Court could have developed a more thorough analysis of its subject matter jurisdiction in accordance with National Farmers Union by interpreting and applying treaties and statutes specific to the Crow Tribe. See, e.g., Sage v. Lodge Grass School District, Civil No. 287 (Crow Ct. App. July 30, 1986) [1986 CROW 1]. However, it clearly based its ruling on tribal taxation authority on an assumption that the Crow Tribal regulatory and adjudicatory taxation authority had not been divested by federal statute or treaty. Nor have Appellants cited any federal statute or treaty concerning the Crow Tribe that explicitly divests the Tribe of authority to impose the resort tax or adjudicate its validity.

¶12 The Tribal Court correctly held that under applicable federal law the Tribal Court has subject matterjurisdiction over this case and the Tribal Council had authority to enact a tax that would be imposed on both Indians and non-Indians.

1. The Jurisdictional Challenge and the Strate decision

¶13 The Tribal Court correctly held that the Crow Tribe has the power to enact the resort tax and the Crow Tribal Court has jurisdiction to determine a challenge to the tax. Appellants challenge both the legislative authority and the adjudicatory authority of the Crow Tribe. That is, Appellants argue first, that the Tribal Court lacks subject matter jurisdiction over this matter, and second, that the Tribe lacks authority to impose the tax at issue here. Appellants contend, correctly, that under Strate, these challenges must be analyzed under the same jurisdictional rules.

¶14 Appellants did not challenge the adjudicatory authority of the Tribal Court when they first filed this lawsuit. In their Complaint, they stated that tribal court exhaustion of this matter was required under National Farmer's Union. Later, following the Strate decision, while still complying with the National Farmers Union exhaustion requirement, Appellants directly challenged the Tribal Court's subject matter jurisdiction over the dispute and addressed the issue at oral argument. Since subject matter jurisdiction may be raised at any stage of the proceedings, Crow Tribe of Indians v. Gregori and Big Horn County Electric Coop., Crow Court of Appeals, Civ. App. Docket No. 94-151, slip op. at 16, (1998) [1998 CROW 2], Appellants are entitled to raise the issue, and we must address it.

¶15 Strate, although not a tax case, has significance here because of its ruling concerning the relationship between a tribe's civil regulatory jurisdiction and its civil adjudicatory jurisdiction. We first addressed the implications of Strate, in the Gregori case in which we concluded that under Strate, the analysis of whether the Tribal Court had jurisdiction to adjudicate a utility co-op's alleged violation of the Tribal Code must be the same as the analysis for whether the Tribal Council had legislative authority to enact the code provision regulating the co-op. Gregori, slip op. at 17. We next addressed Strate in Edwards v. Neal, Crow Court of Appeals, Civ. App. Docket No. 94-85, (1998) [1998 CROW 4], a negligence action involving a cow-car collision on a state highway on the reservation, In Edwards, we recognized again that a Tribal Court "has the power to adjudicate disputes involving a non-member only if the Tribal government would also have the right to regulate the non-member's conduct." slip op. at 4. We also noted that Strate recognized that "'tribes retain considerable control over nonmember conduct on tribal land'" Id., and that if the conduct at issue "arose on non-Indian fee land, the Tribe's authority to regulate nonmembers is governed by the main rule and exceptions set forth in Montana." Id. In view of differing circumstances presented by this case, and to explain why we do not read the meaning of Strate in the same manner as Appellants, we must now expand upon our earlier rulings concerning the effect of Strate.

2. Analysis of Civil Inherent Authority in General

¶16 Federal Indian law has been characterized by a complicated, protective approach to tribal inherent sovereignty, which, while limited, remains significant. Decisional law has been especially deferential to tribal authority when it is found to be necessary to the preservation of tribal self-government. See,e.g., Williams v. Lee, 358 U.S. 217 (1959). A review of some of the more significant United States Supreme Court cases involving inherent authority illustrates this view and provides a framework for the jurisdictional issues on appeal. In view of Strate's holding that tribal civil regulatory and adjudicatory authority are governed by the same principles, this review encompasses cases involving both adjudicatory and regulatory authority.

¶17 Historically, federal Indian law has evolved to reflect changes in federal policy, congressional directive and judicial decisionmaking as well as to respond to a more complex world. As a result, tribal authority has been narrowed in scope from its breadth prior to European contact. Yet, even while implementing and respecting adaptations in the law, in our application of Federal Indian law, in order to maintain its integrity, we must remember to review each narrow situation in light of the unchanging, broad, basic principles of Federal Indian law, which include sustained federal recognition of and support for tribal self-government. Our starting point should not be a list of limitations on tribal powers, but rather an assumption of the breadth of tribal powers, which remain in place unless specifically limited by Congressional enactment or treaty, or when inconsistent with tribal sovereign status. See, Oliphant v. Suquamish Tribe, 435 U.S. 191 (1978); United States v. Wheeler, 435 U.S. 313 (1978).

¶18 Accordingly, the Federal Indian law applicable to tribal civil authority over non-Indians did not begin in 1981 with the Montana decision. Rather, Montana, and cases interpreting it apply law that is an outgrowth of and intertwined with the federal-tribal relationship

created when our country was established. We read Strate in the context of this longstanding federal-tribal relationship.

¶19 The three United States Supreme Court decisions of Chief Justice Marshall of the nineteenth century that articulated the basis for and defined tribal governmental status, while limited by later decisions, treaties and Congressional action, remain the starting point for any analysis of the limits of tribal inherent sovereign powers. In Johnson v. McIntosh, 21 U.S.(8 Wheat.) 543 (1823), Chief Justice Marshall explained the effect upon tribal authority of "conquest" of Tribes by the United States and their incorporation into the Union. Tribal governments became subject to the paramount authority of the United States, retaining much of their inherent authority but losing the authority to engage in foreign relations and to convey their land without the consent of the federal government. Marshall stated that those two powers cannot be exercised in the face of the United States' overriding authority. ("'[T]heir rights to complete sovereignty, as independent nations, [are] necessarily diminished.'" Id. at 574, cited in Oliphant, at 209). Chief Justice Marshall further explained and refined the status of Tribal authority in Cherokee Nation v. Georgia, 30 U.S.(55 Pet.)1, 16 (1831), when he wrote that the Cherokee Tribe was "a distinct political society separated from others, capable of managing its own affairs and governing itself." He described this sovereignty as limited, though, calling Indian Tribes "domestic dependent nations." Chief Justice Marshall next clarified tribal status in Worcester v. Georgia, 31 U.S.(6 Pet.)515 (1832), when he held that the laws of Georgia had no force within Cherokee territory, thereby underscoring the rule that it is the tribal governmental relationship with the federal government that limits tribal sovereignty not that with the state government.

¶20 Years later, in 1959, the United States Supreme Court drew on these principles in Williams v. Lee, supra, when it held that a tribal court had exclusive jurisdiction over a suit stemming from an Indian-non-Indian transaction within a reservation. The question presented in Williams, i.e., whether a state court or tribal court had jurisdiction over the lawsuit differs from that presented here, where no state interests are at issue. Yet the Court's analysis applies here both because of its reiteration of the ways in which tribal authority may be curtailed and its emphasis on the importance of tribal self-government even when non-Indians are involved. The Williams case began when a non-Indian merchant filed an action in an Arizona state court to collect for goods sold on credit to Navajo Indians on the Navajo reservation. The Arizona Supreme Court upheld state jurisdiction on the grounds that no Act of Congress expressly prohibited Arizona courts from exercising jurisdiction over civil suits by non-Indians against Indians when such suits arise on an Indian reservation. In reversing the Arizona court, the United States Supreme Court reviewed the long course of its treatment of state power in Indian country beginning with Worcester v. Georgia. Noting the primacy of Congress in Indian affairs, the Court acknowledged that Congress could either grant states the jurisdiction in Indian affairs that Worcester had denied or, alternatively, take authority away from the Navajos. The Court found no grant of state jurisdiction or diminishment of tribal governing power in either express statute or congressional policy. On the contrary, the Court concluded that Congress had "acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation." 358 U.S. at 220. Congress had encouraged the strengthening of tribal governments and courts in the Indian Reorganization Act of 1934 and subsequent Bureau of Indian Affairs policies had sought to carry out this congressional mandate. The Court summarized the correct approach as follows: "Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them." Id. The opinion's concluding passage provided the answer to this inquiry:

> There can be no doubt that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves. It is immaterial that respondent is not an Indian. He was on the Reservation and the transaction with an Indian took place there. The cases in this Court have consistently guarded the authority of Indian governments over their reservations. Congress recognized this authority in the Navajos in the Treaty of 1868, and has done so ever since, If this power is to be taken away from them, it is for Congress to do it.

Id. at 223 (citations omitted).

¶21 Later, in 1978, the United States Supreme Court again drew on the principles of the Marshall trilogy in Oliphant when it held that the power to prosecute non-Indians was not inherent to tribes because, "[b]y submitting to the overriding sovereignty of the United States, Indian Tribes therefore necessarily gave up their power to try non-Indian citizens of the United States except in a manner acceptable to Congress." 435 U.S. at 210. Citing Cherokee Nation v. Georgia, the Oliphant Court acknowledged that tribes retain elements of "quasi-sovereign" authority. 435 U.S. at 208. To determine which powers Tribes retain and which they no longer possess, one must look at "specific restrictions" in treaties or Congressional statutes. But further, one must also analyze whether powers that have not been explicitly removed are nonetheless no longer retained by Tribes because their exercise is inconsistent with tribal status. Referring again to Justice Marshall's reasoning, this time citing Johnson v. McIntosh, the Oliphant Court reaffirmed that powers that are inconsistent with tribal status are those whose exercise would conflict with the interests of the overriding sovereign, the United States.

¶22 The Supreme Court again addressed the issue of tribal inherent authority in criminal matters in 1978, in United States v. Wheeler, supra, when it held that double jeopardy protections do not bar successive prosecutions in tribal and federal courts for offenses arising out of the same incident. Integral to this holding was the Court's recognition that tribes possess inherent sovereign powers to enforce their criminal laws against tribal members. The Court applied this now-familiar standard, "In sum, Indian Tribes still possess those aspects of sovereignty not withdrawn by treaty or statue, or by implication as a necessary result of their dependent status." 435 U.S. at 323. The Wheeler Court took a restrictive view of tribal sovereignty, to a certain extent equating the limits of inherent authority with the control of internal tribal relations involving tribal members only. (This may be due in part to the fact that the issue addressed did not involve non-Indians.) Yet, quoting Worcester v. Georgia, the Court noted that the tribes had not surrendered "their right to self-government."

¶23 Shortly after its Oliphant decision, this time in the tribal taxation context, the United States Supreme Court again applied the Marshall principles to the question of whether or not a tribe had lost a power as a necessary result of the incorporation of Tribes into the United States. In Washington v. Confederated Tribes of the Colville Reservation, 447 U.S. 134 (1980) ("Colville") the Court addressed a challenge to the State of Washington's application of cigarette taxes to sales by on-reservation tobacco outlets. In part, the Tribal challenges were based on an argument that the state taxation scheme impermissibly interfered with the tribe's inherent right to tax. The State of Washington argued that the tribes involved did not possess this inherent right. The United States Supreme Court disagreed, stating that, "The power to tax transactions occurring on trust lands and significantly involving a tribe or its members is a fundamental aspect of sovereignty which the tribes retain unless divested of it by federal law or necessary implication of their dependent status." 447

U.S. at 207-208. The Court further stated, "The widely held understanding within the Federal Government has always been that federal law to date has not worked a divestiture of Indian taxing power." 447 U.S. at 208. Looking to see if the exercise of this power would be "inconsistent with the overriding interests of the National Government," the Court held, "In the present cases, we can see no overriding federal interest that would necessarily be frustrated by tribal taxation."

¶24 The next occasion for the United States Supreme Court to address the reach of tribal civil inherent jurisdiction occurred when the Court reviewed United States v. Montana, 604 F.2d 1162 (9th Cir. 1979), which had upheld the right of the Crow Tribe to regulate all hunting and fishing within the reservation. The Ninth Circuit's decision was based partly on its conclusion that Crow authority over Indians and non-Indians on both Indian and non-Indian land was an incident of the tribe's inherent sovereignty over the entire Crow reservation.

¶25 Although in Montana, the Supreme Court did not disturb the holding of the Ninth Circuit that the Crow Tribe could prohibit non-Indian hunting and fishing on Indian lands or condition their entry by charging fees and imposing regulations, the Court disagreed markedly with the Ninth Circuit's conclusion about the reach of Crow tribal authority over non-Indian hunting and fishing on non-Indian lands within the Crow reservation. To reach its decision, the Court engaged in a particularized scrutiny of the United States' treaties with the Crow Tribe and examined land developments including allotment and subsequent passage of Crow lands into non-Indian ownership, concluding that the reach of inherent tribal authority over activities conducted by non-Indians on fee land was limited. This conclusion was also based on the Court's reference to the Wheeler statement that when implicit divestiture has occurred it has been in those areas that involve, "'the relations between an Indian tribe and nonmembers of the tribe'" because the dependent status of the tribes is inconsistent with their "'freedom independently to determine their external relations.'" 450 U.S. at 564. The Montana Court then contrasted external authority with the tribe's self-governing authority, which involves only relations among members of a tribe and remains intact. Later though, the Court described the extent of tribal authority in the context of protection of tribal self-government much more expansively, stating, "But exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes and so cannot survive without express congressional delegation." 450 U.S. at 564 (citations omitted, emphasis added). Although it found implicit divestiture, the Montana Court did not specify what paramount interest of the United States was implicated by the exercise of tribal hunting and fishing regulatory authority over non-Indians on fee land.

¶26 We find significant for our purposes here the Court's assumption that tribes retain those powers that are necessary to the protection of self-government as well as those powers necessary to control internal relations as shown again in the following passage:

> Since regulation of hunting and fishing by non-members of a tribe on lands no longer owned by the tribe bears no clear relationship to tribal self-government or internal relations, the general principles of retained inherent sovereignty did not authorize the Crow Tribe to adopt Resolution No. 74-05.

450 U.S. at 564-65.

¶27 In spite of the limiting effect of this decision on the Crow Tribe, in its application and interpretation, Montana provided general support in succeeding years for nationwide increased tribal regulation of activities undertaken by both Indians and non-Indians on reservation lands. The Court had at first appeared to limit sharply tribal authority over non-Indians when it stated that it drew from Oliphant, "support [for] the general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." 450 U.S. at 565. However, the Court then made the following statement which includes what are often referred to as the two Montana exceptions:

> To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee land. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealings, 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.

450 U.S. at 555-56, (internal citations omitted).

¶28 The Montana ruling established an additional factor to be addressed in jurisdictional analysis. Specifically, instead of merely determining whether the event at issue occurred within a reservation or in "Indian country", as had been the accepted approach, Montana directs us to consider the status of the land upon which the cause of action arose. (Below we will refer to the challenge of addressing land status when the events at issue are reservation-wide.)

¶29 In 1985, in National Farmers' Union, the Supreme Court addressed the question of the extent of tribal adjudicatory authority over non-Indian defendants for reservation-based causes of action and set in motion the exhaustion rule under which this case was filed. (Otherwise the exhaustion rule has little bearing on this case and we will not address it in detail.)

¶30 A tribal member had sued a non-Indian defendant, the Lodge Grass School District, for personal injuries in the Crow Tribal Court. The tribal court had asserted jurisdiction and issued a default judgment. The school district and insurer then sought and obtained, in federal district court, a permanent injunction against enforcement of the judgment on the grounds that the tribal court lacked subject matter jurisdiction over the matter. On appeal, the Ninth Circuit Court of Appeals reversed, holding that a claim challenging tribal adjudicatory jurisdiction could not create federal question jurisdiction under 28 U.S.C. §1331. The United States Supreme Court reversed in part, ruling that federal question jurisdiction did exist over the issue of the extent of tribal court jurisdiction over the matter but, requiring the exhaustion of tribal court remedies prior to federal litigation so that the tribal court itself could first determine the extent of its jurisdiction over a cause of action.

¶31 The Supreme Court concluded that this tribal court determination was necessary, in part, because the law applicable to tribal court inherent civil authority over non-Indians differs from the law applicable to criminal authority, and thus civil authority was "not automatically foreclosed, as an extension of Oliphant would require." 471 U.S. at 855. The Court proceeded from the assumption that the

power to resolve disputes arising within their territory was once an attribute of inherent tribal sovereignty. Consistent with this assumption, the Supreme Court described the required Tribal Court exhaustion jurisdictional inquiry, as follows:

> Rather, the existence and extent of a tribal court's jurisdiction will require a careful examination of tribal sovereignty, the extent to which that sovereignty has been altered, divested, or diminished, as well as a detailed study of relevant statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative decisions.

471 U.S. at 856.

¶32 Building upon its reasoning in Montana, the Supreme Court again gave decisional weight to land ownership patterns in 1989, in Brendale v. Confederated Tribes and Bands of the Yakima Nation, 492 U.S. 408 (1989). The intention of the Yakima Nation to apply its land-use regulations throughout its reservation, the intention of Yakima County to zone reservation lands held by non-Indians, and the resistance of two non-Indian landowners to tribal regulation led to this litigation. The Ninth Circuit Court of Appeals applied the second Montana exception and held the Yakima Nation had inherent authority to zone non-Indian fee lands on the reservation, within both a so-called closed area, long protected for natural and cultural resources, in which only a small portion of the land was privately owned, and an open, checkerboarded area with a significant percentage of land in private ownership.

¶33 In a splintered opinion, the Supreme Court reversed in part and affirmed in part. Because none of the several analytical approaches advanced in the opinion received the vote of a majority of the Justices, Brendale's precedential import is unclear. The practical result of the decision is that the Yakima Nation has exclusive zoning authority in the closed area and Yakima County, not the Yakima Nation, may zone non-Indian lands in the open area. A plurality opinion authored by Justice White and joined by three other Justices limited the tribe's authority under the second Montana exception to a "protectible interest' that could be asserted by an injunctive suit if the impact was "demonstrably serious and imperil[ed] the political integrity, the economic security, or the health and welfare of the tribe." 492 U.S. at 431. Although not a majority view, this heightened standard clouded the vitality of the second Montana exception until the Strate decision reverted back to the original Montana language. 520 U.S. at 457-58.

¶34 In Strate, the Supreme Court held a tribe lacked adjudicatory jurisdiction over a personal injury action involving non-Indians when the underlying cause of action arose on a state highway. In its discussion, and going beyond the issue presented, which the Court had framed narrowly, the Strate Court described the meaning of the Montana rule in the following way:

¶35 Absent a different congressional direction, Indian tribes lack civil authority over the conduct of nonmembers on non-Indian land within a reservation, subject to two exceptions: the first exception relates to nonmembers who enter consensual relationships with the tribe or its members; the second concerns activity that directly affects the tribe's political integrity, economic security, health or welfare. 117 S.Ct. at 1409. Although the Court stated it could '"readily agree"', (citing Montana), that, "tribes retain considerable control over nonmember conduct on tribal land," it found a state highway to be the equivalent of "alienated, non-Indian land." 520 U.S. at 454.

¶36 Here, the trial court found Montana and Strate to be inapplicable to the case on appeal, largely, in our view, because the cases are distinguishable on their facts. While we cannot dismiss the cases so easily, we agree that neither Montana nor Strate precludes the taxation scheme at issue here. We will apply Montana and Strate below but first we outline our preferred approach.

¶37 We find that this tribal taxation issue is not readily addressed by Montana and Strate because the Crow resort tax is imposed on reservation-wide activities. To attempt to parse the matter down to whether or not a particular taxable activity or event occurs on fee or trust land ultimately would have the effect of undermining tribal taxation authority because it would restrict in type or breadth what could be considered a valid tax. As a result, on a reservation with mixed land patterns, a reservation-wide tax might be analyzed more restrictively than on a reservation with mainly trust land. As will be discussed in the following section, tribes retain broad taxation authority so the test for the validity of a tribal tax must be fashioned in a manner that acknowledges this. Our review of tribal inherent authority supports a test that would hold a reservation-wide tax imposed on both Indians and non-Indians to be within tribal inherent authority, (assuming that authority has not been removed by federal law or treaty), when:

> (1) the imposition of the tax is consistent with the tribe's dependent status in that it is necessary to tribal self-government, and compatible with the paramount interests of the United States,
>
> (2) the tax is imposed on those who accept the "privileges of trade or residence," as that phrase is outlined below, and
>
> (3) the tribe has a "significant interest" in the taxed activities or events. We believe this test is consistent with the broad rulings of Montana and Strate. As noted above, the Montana Court specifically found that the tribal regulation at issue bore, "no clear relationship to tribal self-government or internal relations." 450 U.S. at 564. Similarly, the Strate Court stated, "Opening up the Tribal Court for [the plaintiff's] optional use is not necessary to protect tribal self-government." 520 U.S. at 459. By contrast, in view of the strong support in federal Indian law for tribal taxation authority, the necessity of taxation such as that at issue here to the protection of tribal-self government cannot be so readily dismissed.

¶38 Recent decisions of the Ninth Circuit Court of Appeals also support the view that narrow land-status application of Montana and Strate may not serve when the issue involved concerns reservation-wide activities. In reviewing tribal authority to regulate water quality in State of Montana v. E.P.A., 137 F.3d 1135, 1139 (1998), the Ninth Circuit characterized one reason for the Strate ruling as follows, "that the exercise of tribal jurisdiction over non-tribal members engaged in traffic accident litigation was not necessary to the self-governance of the tribe." As well, recently, in Burlington Northern Railroad v. Red Wolf, (Ninth Circuit Nos. 98-35502, 98-35539 and 98-35541, November 17, 1999) the Court stated that "the power to tax is not equivalent to the right to exercise civil jurisdiction over tribal land." The Court further stated that, "a tribe's taxation power is broader than its civil adjudicatory jurisdiction over non-members," and appeared to acknowledge that the tribe retained the right to tax the railroad right of way even though it did not retain adjudicatory authority over causes of action arising on the right of way. Slip Op. at 3. Thus the protection of tribal self-government continues to have implications in jurisdictional analysis.

¶39 In the tribal taxation context, the Navajo Nation Supreme Court recently described the correct approach to analyzing a tribe's power to levy an accommodations tax on lodgers in a motel owned by a non-Indian and located on fee land, as follows:

> Thus, the general principle is Indian nations have the inherent power to tax using their general governmental authority, except to the extent Congress has expressly limited that power, and that governmental authority includes taxation of non-Indians who are present within Indian country.

In the Matter of Atkinson Trading Co. Inc., Navajo Nation Supreme Court, 24 ILR 6191 (1997). The Court determined that application of this rule resulting in a finding that the tax was a valid exercise of tribal authority.

3. Analysis of the power to tax

¶40 We next describe the extent to which the power to tax remains an element of tribal inherent sovereignty, including the degree to which the power to tax is a component of self-government.

¶41 The power to raise revenue is an essential governmental power. Tribal authority to impose taxes on both Indians and non-Indians doing business on the reservation has long been recognized and protected. See, Morris v. Hitchcock, 194 U.S. 384 (1904); Buster v. Wright, 135 F. 947 (8th Cir. 1905), appeal dism'd, 203 U.S. 599 (1906); Colville,supra, Kerr-McGee Corp. v. Navajo Tribe, 471 U.S. 195 (1985); Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982).

¶42 In 1934, at the time of the enactment of the Indian Reorganization Act, when the Interior Department was asked to compile a list of remaining inherent Tribal powers supported by the Act, Solicitor Nathan Margold included the following summary of the tribal power to tax:

> 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 nonmembers may accept privileges of trade, residence, etc., to which taxes may be attached as conditions.

Powers of Indian Tribes, 55 I.D. 14, 46 (1934)

¶43 Later, in 1982, in Merrion, the United States Supreme Court reviewed the existence and source of tribal taxation authority in determining whether the Jicarilla Apache Tribe had the power to impose an oil and gas severance tax on non-Indian lessees. The Court stated that the power to tax is, "an essential attribute of Indian sovereignty," because it is a "necessary instrument of self-government" and "territorial management." The Court explained that tribal taxation authority, "enables a tribal government to raise revenue" for "essential services." As for the source of this tribal power, the Court stated that it "does not derive fully from the Indian tribe's power to exclude non-Indians from tribal lands." Rather,

> it derives from the tribe's general authority, as sovereign, to control economic activity within its jurisdiction, and to defray the cost of providing governmental services by requiring contributions from persons or enterprises engaged in economic activities within that jurisdiction.

455 U.S. at 137.

¶44 As stated above, in Colville, the United States Supreme Court upheld the tribe's power to impose a sales tax on transactions with non-Indians entering the reservation to purchase cigarettes. Applying Oliphant's analysis, the Court found a "widely held understanding within the Federal Government... that federal law...[had not brought about] a divestiture of Indian taxing power." The Court traced the historical viewpoints of the executive and judicial branches to nineteenth century opinions of the United States Attorney General and to federal court decisions from the early 1900s, (noted above). Congressional endorsement of tribal tax powers was found in the IRA. For the Court, the section of the IRA confirming tribal powers under existing law constituted congressional recognition of a tribal government's "authority to tax the activities or property of non-Indians taking place or situated on Indian lands, in cases where the tribe has a significant interest in the subject matter." 447 U.S. at 152. The Court specifically found that the tribal power to tax had not been implicitly divested in the manner described in Oliphant, stating it "saw no overriding federal interest that would necessarily be frustrated by tribal taxation," and reiterating the rule made precise in the Marshall decisions that, "tribal sovereignty is dependent on and subordinate to, only the Federal Government, not the State." Like the tourists who are subject to the Crow resort tax, the cigarette purchasers came voluntarily onto the reservation to transact their business.

¶45 Appellants argue that Colville is distinguishable because by its own terms the case is limited to taxation of transactions occurring on trust land. We agree with the Tribal Court that Colville does apply. We see no logical reason to limit the meaning of this decision to taxation of events occurring on trust land. The Court did characterize the issue as pertaining to activities on trust land. However, the Court does not address the land status issue anywhere. Additionally, the Colville Court cited with approval, the cases of Buster v. Wright, and Morris v. Hitchcock, each of which upheld tribal taxation of non-Indians on fee land. Perhaps more importantly for our purposes here, in Montana, the Court cited Colville, in support of its statement, that in the proper circumstances, tribes retain the power to tax non-Indians, even for activities occurring on fee land. Further, according to an interpretation in Cohen, Handbook of Indian Law, (1982) the Colville Court's rationale requires a "tribal interest in the subject matter to justify a tribal tax," which in that case was supplied by use of trust land. On fee land, the interest can exist but must be based on some other situation. Cohen at 434 n. 27, Thus, while Appellants are correct that in Colville the Supreme Court stated its rule in the context of trust land, we do not agree that the Colville decision renders the Crow resort tax invalid.

¶46 Clearly, and justifiably so, the power to tax both Indians and non-Indians persists as an important element of tribal inherent sovereignty. As outlined above, currently the scope of tribal authority, while limited, remains meaningful. The Crow Tribe and other tribes

are, "a good deal more than 'private voluntary organizations'". United States v. Mazurie, 419 U.S. 544 (1975). They are governments, and like governments everywhere must raise revenue to survive.

4. Application of Montana

¶47 With the exception of one finding described below, the Tribal Court's application of the Montana exceptions was correct; its legal conclusions were based on extensive factual findings well-supported by the record. As indicated earlier, the Tribal Court initially ruled that Montana did not apply because the tax is, "not imposed upon activities that take place on the fee patented lands of the Plaintiffs." Rather, the Court found that the tax is imposed upon the consumers of resort businesses for all of the activities they undertake on the Crow Reservation.

¶48 Nonetheless, the Tribal Court applied the Montana case. The Court correctly held that to meet the first Montana exception, that of "consensual relationships with the tribe or its members through commercial dealing, contracts, leases or other arrangements," it is not necessary that those relationships be formal. In support of this position, the Court cited Colville and Buster v. Wright, neither of which involved formal relationships. The Court found that Appellees proved at trial at least six consensual relationships within the meaning of the first exception. However, the Court erred in its analysis by considering consensual relationships between the Tribe or Tribal members and Appellants rather than only consensual relationships between the Tribe or Tribal members and Appellants' customers, the persons upon whose activities the tax is imposed. The Court did find, correctly, that the customers have consensual relationships that satisfy the first exception, based on the Tribe's creation of a "civilized society" on the reservation which is necessary to the customers' participating in resort activities.

¶49 As for the second Montana exception, i.e., that the nonmember's activity, "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe," the Court found the exception satisfied because the evidence at trial showed that tourist activity does have these direct effects on the tribe. (In their post-trial brief, Appellants acknowledged that the tribe may incur governmental expense as a result of tourism, but argued that the evidence did not demonstrate a "serious impact which imperils tribal government." As discussed above, this heightened standard applied by the Brendale plurality and advanced by Appellants is not the prevailing standard. See, Strate at 457.) The Court found that Appellees presented "substantial evidence" of the effects of tourist activity on the tribe's ability to operate its government and stated, "The Resort Tax is needed to defray the impacts of tourism: the costs of providing services that benefit tourists and the costs of remedying the impacts of tourism." The Court also noted that a "contributing factor" to tourism's effect on the "tribe's financial resources was the federal government's resent drastic decrease in the BIA's budget." For example, as a result of BIA law enforcement cuts, the tribe has had to increase its own law enforcement budget. Slip op. at 24.

¶50 On the same topic, the Court also cited Professor Kalt's testimony that between the years of 1986 and 1996, a marked increase in reservation tourism occurred with a resulting increased burden on tribal governmental services that tourists experience, such as traffic safety, use of roads and trash collection. The Court also relied on Professor Kalt's testimony that, "to the extent that rising tourism creates rising burdens...there are fewer resources for direct application to the members of the Tribe itself. So tourism represents a real burden." Professor Kalt illustrated this point by pointing out the effect of increased tourism on road maintenance and the reallocation of tribal resources caused thereby. Id., at 25. Finally, the Court found significant to the measurement of the effect of the regulated activity upon the tribe, the fact that the Crow economy is not strong and the per capita income of tribal members is relatively low. The Court then reached the conclusion that the tribe needs to impose the resort tax to protect "tribal self-government or control internal relations," within the meaning of Strate. Id. at 26.

5. Adjudicatory Jurisdiction

¶51 In view of our ruling that the Crow resort tax is a valid exercise of tribal legislative authority, we must also hold, under Strate, that the Tribal Court has subject matter jurisdiction to determine this dispute. As the Ninth Circuit Court of Appeals recently stated in Nevada v. Hicks, (No. 96-17315, November 9, 1999), Strate dictates that, "[o]nce a tribe's authority to regulate activities on its land has been demonstrated, civil jurisdiction regarding those activities follows." The Ninth Circuit also stated that any sovereign, "even a limited sovereign, must have the power to adjudicate whatever it has the power to legislate." The Court concluded that a sovereign, "who must depend on the courts of another sovereign to adjudicate violations of its own rules is little more than a landowner." Nevada v. Hicks, Slip op. at 9.

¶52 Strate held that interpretations of decisions such as National Farmers Union, and Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9 (1987), as holding that a tribe's adjudicatory authority could exceed its regulatory authority were incorrect and that, rather, a tribe's regulatory authority is coextensive with its adjudicatory authority. 520 U.S. at 453. To the extent that tribal adjudicatory authority may have been formerly perceived in caselaw as broader than regulatory authority, Strate has been seen by some commentators as limiting tribal power. However, an important aspect of the Strate decision is that it does not overrule the significant line of adjudicatory authority cases that support tribal jurisdiction over reservation-based matters. See, e.g., Williams v. Lee, supra; Kennerly v. District Court, 400 U.S. 423 (1971); Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978). Therefore, in reviewing a challenge to regulatory authority – as opposed to adjudicatory authority, if the powers are coextensive, then the adjudicatory authority cases must have bearing on the regulatory issue.

> The Tribal Court's factual findings underlying its determination that the taxpayers have accepted privileges of on-reservation activity sufficient to justify the tax are not clearly erroneous. The Court's finding that a sufficient "nexus" exists to justify the tax is correct.

1. Incidence of the tax

¶53 The Court held that the legal incidence of the tax fell on the tourists, citing the express language of sections 4.01(a), (d), and 4.04 (1) and pointing out that in the Pretrial Order, Appellants acknowledged that they are not the taxpayers under the code (Final Pretrial Order, 5(4), January 6, 1997, Court Doc. No. 77.1). The Court stated that the tax is imposed upon the activities of "consumers" of resort business goods and services based upon their activity within the Reservation as a whole. The Court correctly disregarded the testimony of Appellant Gordon Rose on this topic since he was not recognized as an expert on the legal implications of tax. Appellee Tax Commissioner Adams, who was recognized as an expert in tax matters, testified that the tax was narrowly-tailored to tourism. For example, no tax is

imposed on purchase of necessities of life and no tax is imposed on motel stays of more than 30 days. CTTC 4.01 (d).

2. Provision of governmental services as the nexus for imposition of the tax.

¶54 Assuming a tribe has authority to enact a tax, for that tax to be valid a "nexus" must exist between overall government services provided by the tribe and the taxpayer. While no absolute formula for this nexus has been identified, decisional law requires that some connection exists between the tribe's creation of a "civilized society," (Merrion, 455 U.S. at 137-38), and the activity being taxed. We agree with the Tribal Court's determination that here the taxpayers have accepted the "privileges of trade, residence, etc.," to which a tax may be attached as a condition. The Crow Tribe provides adequate government services from which tourists benefit to meet the "nexus" test. The Tribal Court correctly pointed out that the taxes do not need to have any relation to actual government costs and it is not necessary that they even benefit the taxpayer. Commonwealth Edison Co. v. Montana, 453 U.S. 609 (1981); Carmichael v. Southern Coal and Coke Co., 301 U.S. 495 (1937).

¶55 In any event, the Tribal Court found "substantial evidence" showing that tourists receive benefits and accept privileges of trade provided by the Crow Tribe and its trustee agents the Bureau of Indian Affairs and Indian Health Services ("IHS"), whose services the Tribal Court properly considered because the services are intended to benefit the Tribe and its members under a trust relationship. We see no reason to substitute our judgment for that of the Tribal Court on these findings. The Tribal Court made extensive findings on the governmental services available to tourists and on the link between tourist activity and increased demands for governmental services, some of which we have already referred to in our discussion of the second Montana exception.

¶56 The Tribal Court found Appellees' exhibits, "Report Concerning the Crow Tribe Resort Tax" and "Surrebuttal Report Concerning the Crow Tribal Resort Tax" of the Economics Resource Group (ERG) as well as the expert testimony of the reports' principal author, Professor Joseph Kalt, "clearly established that tourists receive tangible and intangible benefits from the Tribal government's expenditures." Professor Kalt is the Ford Foundation Professor of International Political Economy at Harvard University's John F. Kennedy School of Government and the founding co-director of the Harvard Project on American Indian Economic Development. He has widely researched the field and published extensively. In support of the weight it placed on the Professor Kalt's reports and testimony, the Court stated that ERG and Professor Kalt "possess impressive qualifications in the area of governmental taxation, economics and how those subjects impact all governments including American Indian tribal governments." Slip op. at 16-17. The Court also found that Appellants did not effectively contradict the reports.

¶57 While the Tribe did not conduct its own formal study on tourism prior to enacting the tax, Appellee Tax Commissioner Adams testified that the Tribe had consulted several studies and other data that showed an increase in tourism. Commissioner Adams also testified that he was aware of the increase in tourism through newspaper articles, and attendance figures from the Little Big Horn Battlefield, Yellowtail Dam, Big Horn Canyon Recreational Area and an increase in the number of tourist businesses on the reservation. The Court found that the evidence at trial showed that on any day in July, the population on the Crow Reservation can rise by a factor of 30 to 40 percent as a result of the influx of tourists. The tax commission also relied on studies prepared for two proposed economic development projects and on traffic counts. The former chair of the Crow Tax Commission, Appellee Tyrone Ten Bear, testified that tribal members had noticed increases in law enforcement and traffic collection needs and he was aware of attendance figures from several tourist destinations, and information from the Montana Highway Department, the National Park Service and the IHS which showed an increase in tourism on the reservation.

¶58 The Tribal Court found, on the basis of the ERG Reports that the Crow Tribe and its trustee agents, the BIA and IHS, "perform substantial governmental service and functions that tangibly benefit tourists on the Reservation." Specifically, the court found a "wide range of law enforcement, fire protection, road construction and maintenance, wildlife management, education, public utility services, health and welfare and other governmental services that make civil and economic commerce possible and fruitful." Slip op. at 18-19. Four of the five Appellants testified that they or their customers use BIA roads. Appellant Bassett testified that several years ago the tribal fire department put out a fire that threatened his property and that he keeps the department's telephone number near his telephone. Appellant Whitledge testified that he calls the tribal police when disturbances occur at his business.

3. Tribal Interests

¶59 Serious Tribal interests are implicated by the activities upon which the tax is imposed. Merrion recognizes that a tribe may have an interest in imposing a tax, even on non-Indians. In this case, understandably, Appellants have tried to distance themselves, as a theoretical matter, from the legal authority of the Crow Tribe, emphasizing headquarter locations on fee lands, businesses' recreational activities on fee lands and that the main attraction for the majority of their customers is the Big Horn River, which is held and regulated by the State of Montana.

¶60 Yet, the evidence at trial indicated that the Tribal context has a great deal to do with Appellants' businesses, as their own testimony acknowledged. In its decision, the Tribal Court pointed out that Appellants Forrester, Bassett and Whitledge testified that to some extent, their business operations are enhanced by their location within an Indian reservation and that they use the "Indian mystique for marketing purposes." Slip op. at 21. Appellant Forrester testified that he employed guides trained in a program offered by Little Big Horn College, a Tribally-operated institution of higher education. Appellant Whitledge testified that the majority of his customers are members of the Crow Tribe. Further, some of the tourist opportunities are tribally-related or have tribal aspects, e.g. the Auke Bay at the Big Horn Canyon Recreation area, the Little Big Horn Battlefield and the annual Crow Fair, one of the largest powwows in the country.

¶61 Appellant Rose, who was qualified as a legal expert, testified that all activities related to his business occurred on fee land and that this was partly a result of his studying applicable law to ensure that he did not take any action that would render his business subject to tribal regulation. He also characterized the Big Horn River as not being within the Crow Indian Reservation. While it is correct that Montana held that the bed and banks of the Big Horn River are owned by the State of Montana, Montana was not a reservation diminishment case. No case has been brought to the attention of this Court, nor is the Court aware of any case, that holds that the Big Horn River area is not a part of the reservation.

¶62 Finally, the evidence presented at trial indicated that a great deal of the activity of Appellants' customers is conducted on trust

land and illustrated the practical difficulty of using land status as a deciding factor. The Court found that Appellants' customers "routinely trespass on Indian trust property along the banks of the Big Horn River." Tribal Game Warden Arnold Costa testified that he observes 15 to 20 people per day trespassing from the Big Horn River onto trust property. Appellant Bassett testified that unintentional trespasses on tribal trust land are committed by himself and his customers at the Shively ranch, when they mend fences. Part of the hunting preserve leased by Appellant Forrester's business, (Recreational Development, Inc.), includes tribal trust lands. Appellant Bassett leases 1400 acres from a tribal member for his dude ranch operation and grazes his cattle on this land.

4. The Tribal Court's ruling that the tribe has jurisdiction to require appellants to collect the tax is correct.

¶63 As for the issue of whether or not the Tribe has the authority to require Appellants to collect the tax for them, the Tribal Court held that it was valid as a "minimal burden" on the businesses which is necessary to prevent tax avoidance, citing Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463 (1976) and Colville. We agree.

¶64 The requirement that appellants collect the tax does not burden them impermissibly. As in Moe and Colville, the businesses are required to do little in the way of bookkeeping and in fact they are entitled to keep a portion of the collected tax to defray any administrative costs which may be incurred. The Tribal Court was correct in ruling that the administrative requirements are not regulation of Appellants within the meaning of Montana.

¶65 The Tribal Court's judgment is **AFFIRMED** in accordance with this Opinion.