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Murray B. Stewart

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FEDERAL TAX ENFORCEMENT: SPECIAL RULES APPLYING TO AMERICAN INDIANS

Murray B. Stewart*

*[E]mphasis is to be given to the "Indian tax rules" over the competing "general tax rules"*¹

INTRODUCTION

Since the adoption of the federal income tax constitutional amendment in 1913, there has been different emphasis placed by federal governmental departments on its application to Indians. This has created several lines of legal authority arriving at contradictory determinations in the same or similar cases. In addition, some of the administrators and tribunals have shifted their legal positions to meet the exigencies of particular tax cases. This has resulted in the same Indian being exempted differently on the same type of income in different tax years. It also has produced the ultimate extreme: Indians in nearly identical positions, literally in business across the street from each other, being oppositely treated by the same revenue agent. The same agent contemporaneously urges one Indian to file and receive refunds on income as being tax-exempt, and causes criminal tax evasion charges to be pressed against the Indian competitor across the street for not reporting the same type of income.

There is no central tax return filing office for American Indians similar to that for residents of foreign countries whose returns are processed by Internal Revenue Service (IRS) personnel with special knowledge of the applicable treaties and special laws.² As a result, divergent tax applications are made by local Internal Revenue districts.

* B.A., LL.B., University of Oklahoma; member of the firm Hutchins, Stewart, Stewart & Elmore, Tulsa, Oklahoma.

1. *Daney v. United States*, 247 F. Supp. 533, 538 (D. Kan. 1965), *aff'd*, 370 F.2d 791 (10th Cir. 1966).

2. Office of International Operations, INT. REV. MANUAL, § 1119.4, CCH-IRM 1116.

COORDINATE BRANCHES OF THE UNITED STATES GOVERNMENT—
DIRECTLY OPPOSING CONCLUSIONS

It has been said of government Indian policy:

As current guiding principles and management policy change from time to time it is difficult, and perhaps impossible, to have changes in policy take effect simultaneously at all levels of government. Some Government employees and Indians will continue to find ways to follow practices they think best regardless of presently accepted policy. Also, the enactment of laws to effect a new policy does not automatically remove from the books all earlier laws that prove to be in conflict with present policy.³

The Treasury Department, through its various opinion making procedures repeatedly, but not consistently, has urged the basic premise that Congress has not specifically exempted Indians in the Internal Revenue Code; nor has it specifically restricted the aggressive tax collection of the Commissioner, ergo Indians are taxable the same as everyone else with very few exemptions.⁴ Even when the Supreme Court and other courts have upheld the tax exemption of the Indian, the Treasury Department seeks to limit every judicial determination to extremely narrow fact situations. The Commissioner often strains language of court opinions in subsequent interpretative rulings to maintain this non-exemption position.⁵

3. S.L. TYLER, A HISTORY OF INDIAN POLICY 3 (1973).

4. Rev. Rul. 284, 1967-2 CUM. BULL. 55 (general), modified by Rev. Rul. 13, 1974-1 CUM. BULL. 14 (general). See Rev. Rul. 456, 1954-2 CUM. BULL. 49 (general); Rev. Rul. 342, 1956-2 CUM. BULL. 20 (General Allotment Act lands), amplified by Rev. Rul. 16, 1962-1 CUM. BULL. 7, which was in turn modified by Rev. Rul. 284, 1967-2 CUM. BULL. 55; Rev. Rul. 407, 1957-2 CUM. BULL. 45 (General Allotment Act lands); Rev. Rul. 523, 1957-2 CUM. BULL. 51 (Mandan, Gros Ventre-Hidatsa and Arikara lands); Rev. Rul. 320, 1958-2 CUM. BULL. 24 (possessory interests in unallotted tribal lands); Rev. Rul. 349, 1959-2 CUM. BULL. 16 (allotted lands and possessory interests in unallotted lands); Rev. Rul. 96, 1960-1 CUM. BULL. 18 (recognizing extensions of restriction on Cherokee Indians); Rev. Rul. 244, 1963-2 CUM. BULL. 21 (Fox and Sac lands).

5. L.D. 1098, I-1 CUM. BULL. 64 (1922) (Quapaw, taxable), obsolete by Rev. Rul. 123, 1967-1 CUM. BULL. 383; I.T. 1834, II-2 CUM. BULL. 62 (1923) (Osage, not taxable), revoked by Rev. Rul. 116, 1970-1 CUM. BULL. 11; S.M. 4527, IV-2 CUM. BULL. 69 (1925) (Hopi, taxable), obsolete by Rev. Rul. 31, 1969-1 CUM. BULL. 307; S.M. 5632, V-1 CUM. BULL. 193 (1926) (Ponca, not taxable), obsolete by Rev. Rul. 674, 1968-2 CUM. BULL. 609; G.C.M. 762, VI-1 CUM. BULL. 123 (1927) (nonrestricted, refund statute of limitations runs), affirmed by Rev. Rul. 11, 1961-1 CUM. BULL. 724, obsolete by Rev. Rul. 420, 1969-2 CUM. BULL. 264; G.C.M. 2008, VIII-1 CUM. BULL. 209 (1928) (Creek, taxable), obsolete by Rev. Rul. 31, 1969-1 CUM. BULL. 307; G.C.M. 2056, VI-2 CUM. BULL. 65 (1927) (Quapaw, date of basis determination), obsolete by Rev. Rul. 661, 1968-2 CUM. BULL. 607; G.C.M. 2715, XII-1 CUM. BULL. 56 (1928) (Otoe, not taxable), reversed by G.C.M. 6020, VIII-1 CUM. BULL. 63 (1929), obsolete by Rev. Rul. 31, 1969-1 CUM. BULL. 307; G.C.M. 8066, IX-2 CUM. BULL.

The Justice Department through the Attorney General has issued opinions with the basic premise that laws relating to Indians on their reservations and on restricted allotted or assigned lands not on reservations are an exception to the general laws of the United States; therefore, the general revenue laws, including the income tax laws, do not apply to Indians living and working in these areas as long as restrictions continue.⁶

The Department of the Interior in its opinions and in its instructions to employees of the Bureau of Indian Affairs (BIA), and, more importantly, in its direct advice to individual Indians, applies the current Indian policy position to its interpretation of the tax laws.⁷ This takes

316 (1930) (Creek, minors, parts taxable and not taxable), obsolete by Rev. Rul. 31, 1969-1 CUM. BULL. 307; G.C.M. 9621, X-2 CUM. BULL. 111 (1931) (Five Civilized Tribes, Choctaw, taxable), obsolete by Rev. Rul. 31, 1969-2 CUM. BULL. 307; G.C.M. 14585, XIV-2 CUM. BULL. 400 (1935) (lessees of Osage and Seminole, taxable), obsolete by Rev. Rul. 199, 1967-1 CUM. BULL. 390; G.C.M. 16020, XV-1 CUM. BULL. 78 (1936) (Five Civilized Tribes, taxable), obsolete by Rev. Rul. 31, 1969-1 CUM. BULL. 307; G.C.M. 16100, XV-1 CUM. BULL. 80 (1936) (Osage, taxable), reversed in part by G.C.M. 18242, 1937-1 CUM. BULL. 57, and modified by G.C.M. 26399, 1950-2 CUM. BULL. 8, obsolete by Rev. Rul. 31, 1969-1 CUM. BULL. 307; G.C.M. 18242, 1937-1 CUM. BULL. 57 (Osage, not taxable in part), modified by G.C.M. 26399, 1950-2 CUM. BULL. 8, obsolete by Rev. Rul. 31, 1969-1 CUM. BULL. 307; G.C.M. 26399, 1950-2 CUM. BULL. 8 (Osage, taxable), obsolete by Rev. Rul. 31, 1969-1 CUM. BULL. 307; Rev. Rul. 64, 1958-1 CUM. BULL. 12 (General Allotment Act, taxable), reversed by Rev. Rul. 16, 1962-1 CUM. BULL. 7; Rev. Rul. 377, 1960-2 CUM. BULL. 13 (General Allotment Act, part taxable), reversed by Rev. Rul. 16, 1962-1 CUM. BULL. 7.

6. 19 OP. ATT'Y GEN. 161 (1888) (Winnebago and allotted Indians generally); 34 OP. ATT'Y GEN. 275 (1924) (Five Civilized Tribes), T.D. 3570, III-1 CUM. BULL. 85 (1924); 34 OP. ATT'Y GEN. 302 (1924) (Five Civilized Tribes), restricted in application in G.C.M. 762, VI-1 CUM. BULL. 123 (1927); 34 OP. ATT'Y GEN. 439 (1925) (Quapaw), T.D. 3754, IV-2 CUM. BULL. 37 (1925), revoked in part by 39 OP. ATT'Y GEN. 107 (1937), cited as authority in *Squire v. Capoeman*, 351 U.S. 1 (1956); 35 OP. ATT'Y GEN. 1 (1925) (Kaw); 35 OP. ATT'Y GEN. 107 (1926) (Hopi, unallotted reservation Indians); 39 OP. ATT'Y GEN. 107 (1937) (Creek), 11 OP. ATT'Y GEN., 1937-2 CUM. BULL. 61; 39 OP. ATT'Y GEN. 518 (1940) ("Indians not taxed" in Constitution does not afford tax exemption).

On the underlying question in this case, the Department of Justice is in a difficult position. On the one hand, it represents the Department of the Interior, which has a fiduciary responsibility to the Osage Indians On the other hand, the Department has a professional, and thus a fiduciary, responsibility to the United States

Thus there is a clear conflict of interest.

Brief of United States at 13, 14, reprinted, *Petition, Briefs, and Opinion, United States v. Mason*, 5 LAW REPRINTS, 5 Tax Series No. 14 at 65, 66 (1973).

7. Misc. Cir. No. 3240, Office of Indian Affairs, Department of Interior (1938), quoted in Fiske & Wilson, *Federal Taxation of Indian Income from Restricted Indian Land*, 10 LAND & WATER L. REV. 63, 76 n.46 (1975) (income of all Indians subject to tax unless specific treaty or act exempts it), quoted in Government's brief in *Critzer v. United States*, see notes 12 & 14 *infra*; 57 Inter. Dec. 195 (1939) (all Indians subject to taxation for census purposes); F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW § 7 (prel. draft 1940); F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 265-66 (1942); 58 Inter. Dec. 535 (1943) (oil and gas leases under 25 U.S.C. 398 (1970), taxable);

on larger importance when viewed from the perspective of the preparation of returns for restricted and reservation Indians. The BIA through its employees and contractors prepares large numbers of returns for restricted reservation and allotted Indians.⁸ The Indian's claim for his tax-exemption frequently lies in the hands of the person hired by the BIA to prepare his return for him.⁹

The Supreme Court of the United States has ruled that specific language must be shown which "evinces congressional intent" to grant tax exemption. Importantly, it has ruled that both the Internal Revenue Code and general Indian laws are to be examined and weighed. What language "evinces congressional intent" and is "clearly expressed" then becomes a critical determination.¹⁰

CRIMINAL DEFENSE—DEBATABLE LAW APPERTAINING TO INDIANS

The only reported case found of an American Indian criminally

United States Solicitor for the Department of Interior, FEDERAL INDIAN LAW, ch. XH, 877-85 (1958); Statement of Department of Interior quoted in part in *United States v. Critzer*, 498 F.2d 1160, 1162 (4th Cir. 1974) (Eastern Cherokee) (income from unallotted possessory interests in tribal lands not taxable). Complete statement contained in *Statement of the Department of the Interior Representing the United States as Trustee for Indian Natural Resource Rights*, I-4 INDIAN LAW REP. 69-74 (Apr. 1974) and in brief of Government at 49-53, *United States v. Critzer*, 498 F.2d 1160 (4th Cir. 1974); see note 16 *infra*.

8. O.D. 1130, 5 CUM. BULL. 237 (1921) (Indian Service to provide income information and affidavits of portion tax-exempt), obsoleted by Rev. Rul. 560, 1968-2 CUM. BULL. 601; I.T. 1366, I-1 CUM. BULL. 242 (1922) (Indian Service to make returns for restricted Indians), obsoleted by Rev. Rul. 43 1969-1 CUM. BULL. 310; *Harjo v. Commissioner*, 34 B.T.A. 467 (1936) (Secretary of Interior had duty to cause employees to prepare and file returns). See references to this practice in Rev. Rul. 11, 1961-1 CUM. BULL. 724, Rev. Rul. 172, 1968-1 CUM. BULL. 563, *Daney v. United States*, 247 F. Supp. 533 (D. Kan. 1965), *aff'd*, 370 F.2d 791 (10th Cir. 1966). *Harrington ex rel. Hallam v. United States*, 70-1 U.S. TAX. CAS. ¶ 9215 (N.D. Okla. 1970) (Quapaw); *Dodge ex rel. Coshehe v. United States*, 176 Ct. Cl. 476, 362 F.2d 810 (1966) (Osage). See also estate tax return preparation for restricted Indians contemplated by 25 U.S.C. §§ 372, 372-1, 375a (1970); Petition, Briefs and Opinion, *United States v. Mason*, LAW REPRINTS, 5 Tax Series No. 14 (1973).

9. Under present BIA policy, litigation is left to the individual Indian until appeal is necessary. At that point the Solicitor's Office enters or contract attorneys are hired by the BIA. *Indian Tax Exempt Status Challenged*, 8 AM. IND. L. NEWSLETTER 71 (1975); affidavit of Morris Thompson, Commissioner of Indian Affairs, *The Pyramid Lake Briefs*, II-2 AM. IND. L. REV. 129, 161-64.

10. *Squire v. Capoeman*, 351 U.S. 1 (1956), *aff'g* 110 F. Supp. 924 (W.D. Wash. 1952), *aff'd*, 220 F.2d 349 (9th Cir. 1955); *Superintendent v. Commissioner*, 295 U.S. 418 (1935), *aff'g* 29 B.T.A. 635 (1933), *aff'd*, 75 F.2d 183 (10th Cir. 1935); *Choteau v. Commissioner*, 283 U.S. 691 (1931), *aff'g* 14 B.T.A. 1254 (1929), *aff'd*, 38 F.2d 976 (10th Cir. 1930); *Pettit v. Commissioner*, 14 B.T.A. 1253 (1929), *aff'd*, 38 F.2d 976 (10th Cir. 1930); *Blackbird v. Commissioner*, 14 B.T.A. 1247 (1929), *rev'd*, 38 F.2d 976 (10th Cir. 1930), *cert. denied*, 281 U.S. 759 (1930).

prosecuted for income tax evasion¹¹ where a defense of being an Indian was an issue is the recent case of *United States v. Critzer*.¹² In that case the record amply supported the conclusion that the Indian intentionally understated or omitted her income. The income was from operation of a fifty unit motel and restaurant and the leases from two gift shops and six apartments all located on her "possessory holdings" in assigned tribal lands. She was convicted in the lower court, but the appellate court exonerated her and reversed the conviction.

As a matter of law, defendant cannot be guilty of willfully evading and defeating income taxes on income, the taxability of which is so uncertain that even coordinate branches of the United States Government plausibly reach directly opposing conclusions. As a matter of law, the requisite intent to evade and defeat income taxes is missing.¹³

The court weighed in its opinion the following factors: (a) whether the defendant's unreported income was taxable was problematical and undecided, as there was no direct authority on the subject; (b) the government was in dispute with itself on the taxability of the omitted income; (c) the defendant made non-frivolous argument that the income was tax-exempt; (d) if the law had been consulted directly by the taxpayer, the defendant could have no certainty about what the law required; (e) the defendant in two prior years had been advised by the Bureau of Indian Affairs that similar income was exempt; (f) the Bureau of Indian Affairs (Department of Interior) made a statement on appeal that its current opinion was that the income was tax exempt and that it disagreed with the IRS (Treasury Department) and the Justice Department.

The court also commented in a footnote on corroborating factors not considered in the decision: (g) another Indian of the same tribe who held the identical kind of possessory interests on land across the street from the defendant had received tax refunds from the IRS on rentals of his apartments; (h) this other Indian had been advised to seek the refunds by the same IRS agent who testified against the defendant at a time when the agent was aware of the government's position in the *Critzer* case.¹⁴

11. INT. REV. CODE OF 1954, § 7201 [hereinafter cited as Code], evading and defeating federal income taxes.

12. 498 F.2d 1160 (4th Cir. 1974) (*Eastern Cherokee*), appeal from judgment of the District Court for the Western District of North Carolina (unpublished), 1967-1970 taxes.

13. *Id.* at 1162.

14. *Id.* at 1161.

An analysis of these factors shows; for factor (a) direct authority on the subject will be rare because of the IRS's practice of narrowly construing every case. Careful research can satisfy the requirements of factor (b) in almost any tax case involving restricted, reservation or possessory holdings in tribal lands. With the proliferation of treaties and special legislation affecting particular tribes a nonfrivolous argument can be made in nearly every case, satisfying factor (c). Factor (d) would exist in almost every case in which factor (c) is satisfied. It is submitted that factors (e), (f), (g), and (h) are simply evidence of the other factors and not themselves controlling.

The widowed Indian, a graduate nurse who had taken courses in accounting, was an enrolled member of the tribe and operated her own businesses and kept her own books.¹⁵ The government's brief¹⁶ argued the nonexistence of the tax exemption on possessory holdings, that the taxpayer had not relied on or mentioned the claimed tax exemption before prosecution and emphasized by quotation and summary hundreds of pages of testimony about falsified records and books. There was also emphasis by the government on testimony concerning claimed perjury on the tax return¹⁷ and claimed false denial of receipt of funds (whether or not exempt).¹⁸

The defendant Indian in her brief on appeal argued the profusion of Indian law made all her income in fact exempt¹⁹ and that she had received conflicting and confusing tax advice, which negated any willfulness on her part. Some of the advice was in the form of letters and memoranda.²⁰ Most of it related to taxes other than on income and to laws restricted by the IRS to other tribes of Indians. The advice was from various employees of the BIA, the IRS, the tax authorities of the State of North Carolina, and from her personal accountant.

15. She also prepared her own tribal levy returns.

16. The author thanks the Appellate Section, Tax Division of the Attorney General's Office for furnishing a copy of the Government's brief, and Coward, Coward, Jones & Dillard for furnishing a copy of the appellant's brief.

17. Cf. Code § 7206(1), perjury in signed return, statement or other document (a lesser felony than Code § 7201).

18. Cf. Code § 7207, false accounts, documents, etc., not signed (a lesser felony than Code §§ 7201, 7206).

19. The court declined to decide this "nice issue" and based its opinion on an analogy to embezzlement cases. The appellant, Critzer, is presently pursuing this issue in the Court of Claims.

20. Local BIA offices frequently prepare tax letters and memoranda since they are familiar with statutes and other law peculiar to their "wards." These are not regularly published, but copies usually are available upon request to the local office. See cases cited note 76 *infra*.

The *Critzer* case does not necessarily give the Indian ward a guarantee against criminal prosecution for tax evasion; however, short of new legislation clarifying the taxability of Indians, the IRS has been effectively restricted to civil procedures in pioneering areas where no direct court authority exists. It should be noted that the income omitted was closely associated with tribal property and not from general sources.

FEDERAL TAX LIENS—THE INVISIBLE INDIAN EXEMPTIONS STATUTES

Perhaps the most remarkable example of novel "Indian tax rules" is in the federal tax lien and levy procedures. The Code does not mention specifically any income tax exemption for Indians; however, the Treasury Department found exemptions for Indians when the circumstances of its position in litigation forced it to do so.

Federal statutes contain many separate acts relating to only one or a few tribes. A large number of these contain diverse restrictions on alienation without the consent of the Department of the Interior (restricted allotted lands).²¹ Many others place the title in the name of the United States²² and permit the Indian to hold the land under a variety of rules (Indian reservations).²³ These statutes are the foundation of one of the principal theories of tax exemption of American Indians.

Repeated reference is made to prohibition of "incumbrance" until restrictions are removed or patents in fee issue.²⁴ Few, if any, of them specifically refer to federal tax liens as such.²⁵ A few statutes couple

21. *E.g.*, homesteads purchased out of trust funds, 25 U.S.C. § 412a (1970): "[S]uch homesteads shall be held subject to restriction against alienation or incumbrance except with the approval of the Secretary of the Interior"

22. *E.g.*, Oklahoma Indian Welfare Act, 25 U.S.C. § 501 (1970): "[T]itle to all lands so acquired shall be taken in the name of the United States, in trust" See also note 23 *infra*.

23. *E.g.*, Indian Reorganization Act, 25 U.S.C. § 465 (1970): "Title to any lands or rights acquired pursuant [to this Act] shall be taken in the name of the United States in trust" read together with 25 U.S.C. § 476 (1970): "[T]he constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: . . . to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe"

24. *E.g.*, General Allotment Act, 25 U.S.C. § 348 (1970) provides in two places that patents shall issue to the Indian "discharged of any trust, and free of all charge, incumbrance, or restriction whatsoever" See also statutory examples notes 21-23 *supra* & 25-27 *infra*.

25. *E.g.*, (Osage) Act of August 4, 1947, ch. 474, 61 Stat. 747, 25 U.S.C. § 331 note (1970) (referring to lien and levy generally):

Provided, That the Osage lands and funds and any other property which has heretofore or which may hereafter be held in trust or under supervision of the United States for such Osage Indians not having a certificate of competency

the wording of a prohibition against incumbrances with nontaxability.²⁶ Some others declare such incumbrances specifically null and void.²⁷ Although the language is not consistent, the "evinced congressional intent" applies to Indians generally.²⁸

The Code sections²⁹ relating to tax liens contain a sizable list of specific exceptions.³⁰ The language of the Code would appear to be clearly expressed. Nothing in the exceptions refers to Indians and the general lien applies to "any person" which includes Indians.³¹ Nevertheless, the IRS has recognized the congressional intent evinced in the many Indian statutes and has provided for a limited exemption.

Solely for purposes of sections 6321 and 6331, any interest in restricted land held in trust by the United States for an individual noncompetent Indian (and not for a tribe) shall not be deemed to be property, or a right to property, belonging to such Indian. For the special lien for estate and gift taxes, see section 6324 and ss301.6324-1.³²

This regulation amendment recognizing "Indian tax rules" came

shall not be subject to *lien, levy, attachment, or forced sale* to satisfy any debt or obligation contracted or incurred prior to the issuance of a certificate of competency.

(Emphasis added.)

26. *E.g.*, reinvestment in other restricted lands, 25 U.S.C. § 409a (1970): "[L]and so selected and purchased shall be restricted as to alienation, lease or incumbrance and nontaxable . . ."

27. *E.g.*, (Eastern Band of Cherokees) Act of June 4, 1924, ch. 253, § 20, 43 Stat. 380, 25 U.S.C. § 331 note (1970):

That lands allotted under this Act shall not be subjected or held liable to any form of personal claim, or demand, against the allottee, arising or existing prior to the removal of restrictions; and *any attempted alienation or incumbrance of restricted land by deed, mortgage, contract to sell, power of attorney, or other method if incumbering real estate, except leases specifically authorized by law, before or after the approval of this Act and prior to removal of restrictions therefrom, shall be absolutely null and void.*

(Emphasis added.)

28. *Squire v. Capoeman*, 351 U.S. 1 (1956).

29. Code section 6321 provides a general lien.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

Code section 6324(a) creates a special lien for estate taxes upon the gross estate and persons receiving or holding property included in the gross estate. Code section 6324 (b) creates a special lien for gift taxes upon all gifts and the donee of such gifts.

30. Code §§ 6323 (a), (b), (c), (d), (e), 6324(c).

31. Part I, Rev. Rul. 284, 1967-2 CUM. BULL. 55 (general); Rev. Rul. 456, 1954-2 CUM. BULL. 49 (general).

32. Last two sentences of Treas. Reg. § 301.6321-1 which were added in an amendment by T.D. 7139, 1971-2 CUM. BULL. 408. The remainder of the short regulation is mostly a restatement of the statute.

about during the course of litigation³³ in which the IRS had taken an aggressive uncompromising tax position refusing to recognize the existence of "Indian tax rules." The IRS apparently was advocating indirect cancellation of the government Indian policy.³⁴

The amendment was processed hurriedly as a "clarification" of the regulation³⁵ and there are no hearing records for interpretive assistance. It appears that the parenthetical exception in the regulation "(and not for a tribe)" is intended to exclude the type of possessory holding at issue in the *Critzer* case which are common under the Indian Reorganization Act³⁶ and in modern Indian legislation. The distinction sought to be made by the IRS remains to be clarified through litigation or by Congress.³⁷

The regulation refers to the special lien for estate and gift taxes in Code section 6324 and Treasury Regulation section 301.6324-1. Examination of these will show no reference to Indians, although there would appear to be no distinction except that the heirs, beneficiaries, donees, etc. might not be restricted Indians. At least insofar as the recipients are also restricted Indians the same rationale should apply, but the IRS did not need to make that concession at the time Treasury Regulation section 301.6321-1 was amended.

It should be noted that the special lien for estate taxes applies only to property included in the gross estate. There are several revenue rulings³⁸ which exclude from the gross estate certain restricted Indian property under certain circumstances. These rulings might be applied to special estate tax liens, thus substantiating the Indian exemption of a portion of his property.

Where the Indian's financial affairs are in the hands of the local office of the BIA a close working relationship with the local IRS field agents develops. Many omissions to file or to pay estimates or the like

33. *Stevens v. Commissioner*, 452 F.2d 741 (9th Cir. 1971), *rev'g* 52 T.C. 330 (1969) (Gros Ventra-Fort Belknap). The Commissioner has announced the case will be followed in Rev. Rul. 13, 1974-1 CUM. BULL. 14 which modified Rev. Rul. 16, 1962-1 CUM. BULL. 7 and Rev. Rul. 284, 1967-2 CUM. BULL. 55.

34. "Treasury regulations are now being processed to provide that a non-competent Indian's interest in land shall not be considered his property for purposes of lien or levy." Brief for the IRS at page 26 quoted in Putzi, *Indians and Federal Income Taxation*, 2 N.M.L. REV. 200, 229 (1972) [hereinafter cited as Putzi].

35. 36 Fed. Reg. 15040 (1971).

36. 25 U.S.C. §§ 461 *et seq.* (1970) enacted in 1934.

37. Putzi, *supra* note 34, suggests the entire Treasury decision is invalid for lack of congressional approval.

38. Rev. Rul. 164, 1969-1 CUM. BULL. 220 (Osage headrights) revoking Rev. Rul. 168, 1954-1 CUM. BULL. 82 (Osage headrights) and Rev. Rul. 116, 1970-1 CUM. BULL.

are handled informally between government employees,³⁹ and the formal filing of liens is avoided. Agreed tax assessments are usually paid by the BIA as funds become available in the individual Indian's accounts. Where the Indian is attempting to conduct his own financial affairs or part of them or has a state court-appointed guardian or next friend, the application of the lien and levy procedures can become a very serious matter. It can be totally disruptive to the Indian policy for possessory holding, unrestricted or enrolled Indians.⁴⁰

FEDERAL TAX LEVY AND DISTRAINT—
THE INDIAN EXCLUSION

The companion to a tax lien is its foreclosure procedure. The invisible lien exemption for Indians has its correlate, the unseen exception from levy. The legal theories and citations concerning Indian exemption from federal liens are of equal importance in the consideration of federal tax levies. The same Treasury decision⁴¹ recognizing Indian tax rules for liens appears verbatim in the section of the regulations dealing with seizure of property for collection of taxes,⁴² except for the omission of the last sentence making cross-reference to estate and gift tax liens. However, there is difficulty in excluding the Indian property from levy and distraint because of the strong wording of the levy statutes.⁴³ They apply to "any person" and to all rights in property⁴⁴ including indivisible property rights.⁴⁵

Code section 6334(c) relating to exemptions from tax levies provides: "Notwithstanding any other law of the United States, no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a)."

11 (Osage headrights); Rev. Rul. 83, 1962-1 CUM. BULL. 175 (Osage homestead and surplus) revoking Rev. Rul. 518, 1955-1 CUM. BULL. 445 (Osage, homestead and surplus) and distinguishing Rev. Rul. 168 *supra*.

39. For a discussion of elimination of penalties see text accompanying notes 59-87 *infra*.

40. In *Critzer*, the court suggested the IRS first exhaust its civil remedies before resorting to criminal remedies. *Query*, what result for the Department of Interior's position if the Treasury Department proceeded with its arsenal of liens, levies and distraints in Code sections 6321 *et seq.*? Schmidt, *Civil or Criminal Trial First? A Close and Difficult Question*, 12 J. TAXATION 347 (1960); Schmidt, *Federal Taxation—A Lesson in Direct and Indirect Sanctions*, 49 IOWA L. REV. 474-97 (1964).

41. T.D. 7139, 1971-2 CUM. BULL. 408.

42. Treas. Reg. § 301.6331-1(a)(5) (1967) adds title "Non-competent Indians."

43. Code §§ 6331 *et seq.*

44. Code § 6331(b).

45. Code § 6335(c).

The statutory list of eight "homestead" type items in subsection (a) of Code section 6334, exempt from seizure by federal tax officials, nowhere mentions specifically Indian property or any item which could be regarded as "Indian".⁴⁶ It has been held that persons living on Indian reservations are entitled to the state statutory homestead exemptions from levy and seizure.⁴⁷ But it has also been held that the state statutory homestead exemptions are ineffective against federal tax levy.⁴⁸ The IRS appears bound by its addition of Indian homestead and other restricted property to the list of exemptions, as it would otherwise find itself having to argue the invalidity of its own regulations.⁴⁹

Where the filing of a lien becomes necessary, care should be exercised by the government in its foreclosure. Erroneous levy may necessitate recovery procedures because it has been made on restricted capital funds, allotments or income instead of on otherwise available property.⁵⁰ Confusion may also result because of erroneous levies made on homestead property. An Indian may have a restricted homestead allotment under federal statutes⁵¹ and actually be residing on other land owned by him which is his homestead under state laws.⁵² Consideration must be given to the fact that federal tax liens against one person may not extend to vested indivisible homestead (either state or federal Indian) or community property interests of other persons and as a result they are unenforceable.⁵³ Further, the federal Indian homestead is

46. The eight are: (1) wearing apparel and school books, (2) fuel, provisions, furniture, and personal effects not to exceed \$500.00, (3) books and tools of the trade, business or profession not to exceed \$250.00, (4) unemployment benefits, (5) undelivered and unopened mail, (6) certain federal railroad, and military annuities and pension payments, (7) workman's compensation payments, and (8) so much of income as is used to pay judgments for child support.

47. *Coey v. Cleghorn*, 10 Idaho 166, 79 P. 72 (1904) (non-Indian living on Indian reservation).

48. *United States v. Mitchell*, 403 U.S. 190 (1971) (non-Indians). The Court interpreted Code section 6334(c): "This language is specific and it is clear and there is no room in it for automatic exemption of property that happens to be exempt from state levy under state law." *Id.* at 204-05.

49. Provided the Commissioner does not reverse himself and revoke the regulation where new litigation makes it desirable for his tax position.

50. See Code § 6325(d), (e) for Certificates of Non-Attachment; Treas. Reg. § 301.6325-1(a) (1967) for release of lien; Sarner, *Federal Tax Liens*, 19 N.Y.U. INST. ON FED. TAX. 1431 (1961); see Bryant, III, *Statute of Limitation Affecting Indian Land Titles*, 46 OKLA. B. ASS'N J. 127-31 (1975), for discussion of problems of recovery of Indian homesteads under state tax sale laws which are similar; McHale, *Tax Liens*, 11 U. SO. CAL. 1956 TAX INST. 607.

51. See Rev. Rul. 96, 1960-1 CUM. BULL. 18 (Cherokee), Rev. Rul. 83, 1962-1 CUM. BULL. 175 (Osage) relating to tax exemptions of Indian homesteads.

52. Code § 6334(c), Treas. Reg. § 301.6334-1 (1967). See note 48 *supra*.

53. *United States v. Hershberger*, 475 F.2d 677 (10th Cir. 1973), *aff'g* 338 F. Supp.

expressed in a total number of acres⁵⁴ and the Indian may own several small and scattered tracts of land which are all part of the restricted homestead.⁵⁵

There is one congressional approach to the Indian tax levy problem which is more practical and assures better coordination between the branches of the federal government. A federal statute provides:

*No part of the compensation provided for in section 2 of this Act shall be subject to any prior lien, debt, or claim of any nature whatsoever against the Seneca Nation or the individual Seneca Indians entitled to such compensation, except for the repayment of development loans made to the Seneca Nation, or of housing or resettlement loans made to individual Seneca Indians, by a bank or other recognized lending institution, and also except for delinquent debts owed to the United States by the nation or delinquent debts owed to the United States or the Seneca Nation by the individual Seneca Indian entitled to the compensation: Provided, That such compensation shall not be applied to the payment of individual delinquent debts to the United States unless the Secretary of the Interior first determines and certifies that no hardship will result from the payment of such delinquent debts.*⁵⁶

Unfortunately, this statute applies only to some of the funds of one tribe of Indians. The Osage have a more direct approach; an outright declaration that every lien and levy against particular property is null and void.⁵⁷

It should be noted that although seizure of certain Indian property may be prevented by the regulations, this exception does not prevent a civil foreclosure suit,⁵⁸ which is apparently the alternative suggested by the court in the *Critzer* case.

804 (D. Kan. 1972); *Paddock v. Siemoneit*, 147 Tex. 571, 218 S.W.2d 428 (1949). See Code § 6335(c), sale of indivisible property; Treas. Reg. § 301.6335-1(c)(4)(iii) (1967). See also Rev. Rul. 187, 1955-1 CUM. BULL. 197 (joint bank accounts); Williams, *Federal Tax Lien—Is It Effective Against State Homestead Exemption?*, 52 N.C.L. REV. 695 (1974); Plumber, *Federal Tax Collection and Lien Problems*, 13 TAX L. REV. 459 (1958); Ross, *Federal Tax Liens, Their Import on the Law of Real Property*, 18 U. MIAMI L. REV. 183 (1963); Burk, *Sale of an Undivided Interest in Realty for Federal Tax Lien*, 65 W. VA. L. REV. 191 (1963).

54. E.g., 25 U.S.C. §§ 331, 412a (1970).

55. Bryant, III, *Statute of Limitation Affecting Indian Land Titles*, 46 OKLA. B. ASS'N J. 127-31 (1975).

56. Act of August 31, 1964, Pub. L. No. 88-533, § 3(e), 78 Stat. 739 relating to the combined termination of the Seneca and the construction of the Allegheny Reservoir (emphasis added).

57. See note 25 *supra*. The decision not to codify this act has resulted in much confusion in the IRS (note 38 *supra*) and much litigation. Cf. *United States v. Mason*, 412 U.S. 391 (1973) (Osage).

58. Code § 7403, Treas. Reg. §§ 301.7401-1(a), 301.7403-1(a) (1967).

TAX PENALTIES AND INTEREST: LENIENCY FOR THE INDIAN

The civil penalties, additions to tax and interest on unpaid taxes, are mandatory unless there exists excusing "reasonable cause" for the taxpayer's failure to pay the tax or file a return and it "was not due to willful neglect."⁵⁹ Once particular items are determined to be taxable, the waiver or elimination of penalties, additions, and interest depends on falling within this statutory language.

With the sharp increase in computerized return processing and automatic imposition of penalties and interest, this becomes increasingly a problem for taxpayers. The notices of penalties and interest⁶⁰ usually require an answer to be filed to show cause if they should be eliminated.⁶¹ During IRS audits and other procedures these penalties are filled in on the form where there is an appropriate blank.⁶²

The individual Indian subject to "Indian tax rules" is most likely to encounter interest⁶³ and penalties for failure to file returns,⁶⁴ failure to pay with return,⁶⁵ failure to pay after assessment,⁶⁶ failure to pay due to negligence,⁶⁷ failure to pay due to fraud⁶⁸ and failure to pay estimated taxes.⁶⁹ There are some Indian tax rules that create reasonable cause for elimination or waiver and they should not be overlooked where they apply.

Where the taxpayer is a restricted Indian or an enrolled Indian whose financial affairs are otherwise in the hands of the BIA, the

59. See statutes listed in notes 63-69 *infra*; Hartley, *Civil Penalties for Late Filing of Federal Tax Returns*, 29 J. MO. BAR 290, 308 (1973); Taft, *Estate Tax Penalties*, 172 N.Y.L.J. 1 (Nov. 18, 1974); Monnier, *Penalty Provisions*, 10 TUL. TAX INST. 384 (1961). See also Wienstein, *Taxpayers' Reliance on Professional Advice May Sometimes Prevent Imposition of Penalties*, 13 TAX FOR ACCTS. 354 (1974).

60. Computerized notice is received on IRS forms 4048, 4177, 4603 or 4828 which usually contain this paragraph:

Elimination of Penalty—Reasonable Cause. The law provides for elimination of penalties when a taxpayer shows reasonable cause for filing a return late, paying tax late, and in certain other circumstances. If you believe you have such cause but have not yet sent us an explanation, please return this form with your explanation now so we can determine whether any penalties can be eliminated.

61. An explanation by letter is sufficient. IRS forms 2210 and 2210F can be used for estimated taxes, but need an additional explanation attached. IRS form 4571 can be used for explanation of late filing.

62. The most familiar is IRS form 4549, *Income Tax Audit Changes*.

63. Code § 6601 (9 percent/annum).

64. Code § 6651(a)(1) (5 percent/month—up to 25 percent).

65. Code § 6651(a)(2) (0.5 percent/month—up to 25 percent).

66. Code § 6651(a)(3) (0.5 percent/month—up to 25 percent).

67. Code § 6653(a) (5 percent).

68. Code § 6653(b) (50 percent).

69. Code § 6654 (9 percent/annum).

burden to prepare the returns or have them prepared shifts to federal government employees.⁷⁰ The federal government does not impose penalties or interest where the failure directly results from the action or inaction of its own employees⁷¹ or where the Indian was not the person with the duty to collect or pay the tax or file the return.⁷² A search of reported Indian tax cases since 1921 reveals that no penalties and interest were added where the returns were signed by the BIA for restricted Indians.⁷³ On the other hand, if the restricted Indian has received taxable income about which the BIA has not been made aware, he might be subject to the penalties,⁷⁴ probably dependent on his willful neglect or fraud in failing to inform the BIA, or his ability to show reasonable cause for failing to inform the BIA.

Where the taxpayer is an unrestricted Indian or a restricted Indian who hires his own counsel and/or prepares his own return he must rely upon all the same "reasonable causes" as non-Indians.⁷⁵ It then be-

70. For duty to file of Secretary of the Interior see citations note 8 *supra*. For duty of Secretary of the Interior to file refund claims see Indian case citations note 71 *infra*.

71. O.D. 1130, 5 CUM. BULL. 237 (1921) (Indian Service) obsolete by Rev. Rul. 560, 1968-2 CUM. BULL. 601. This ruling originally required the BIA (Indian Service) to attach an affidavit of late filing, or payment which is no longer required. The BIA signature is sufficient on the late return and the United States government check in payment is sufficient on the late payment. Competent accountant's error, *Ford v. United States*, 67-2 U.S. TAX. CAS. ¶ 9546 (W.D. Ky. 1967), *aff'd on other grounds*, 402 F.2d 791 (6th Cir. 1968); Internal Revenue agent's advice, INT. REV. MANUAL, 4562.2(1)(c), CCH-IRM 8337 and *Druggist's Supply Corp.*, 8 T.C. 1343 (1947) (non-Indians); *Farm Home Loan Administration circulars and memoranda*, *Agricultural Securities Corp.*, 39 B.T.A. 1103, *aff'd*, 116 F.2d 800 (9th Cir. 1944) (non-Indians). See similar rationale in cases relating to waiver of statute of limitations for income tax refunds where Indian financial affairs were in hands of BIA. *Harrington v. United States*, 70-1 U.S. TAX. CAS. ¶ 9215 (N.D. Okla. 1970) (restricted Quapaw); *Daney v. United States*, 247 F. Supp. 533 (D. Kan. 1965) (restricted Choctaw); *Nash v. Wiseman*, 227 F. Supp. 522 (W.D. Okla. 1963) (restricted Pottawatomie); *Dodge v. United States*, 362 F.2d 810 (Ct. Cl. 1966) (restricted Osage).

72. See note 70 *supra*. See large number of cases collected in P-H 1975 FED. TAXES ¶¶ 37,367.30, 37,367.35, 37,367.45(15), (20), (30) relating to 100 percent penalties on corporate officers and employees and "duty" question.

73. See *Boling v. U.S.*, 51-1 U.S. TAX. CAS. ¶ 9140 (N.D. Okla. 1950) (Creek).

74. O.D. 1130, 5 CUM. BULL. 237 (1921) (Indian Service) obsolete by Rev. Rul. 560, 1968-2 CUM. BULL. 601. *Foster v. Commissioner*, 391 F.2d 727 (4th Cir. 1968), *aff'g*, 34 P-H Tax Ct. Mem. 1389 (1965); *Drieborg v. Commissioner*, 225 F.2d 216 (6th Cir. 1955), *aff'g* 23 P-H Tax Ct. Mem. 221 (1954); *Marvin E. Hinson*, ¶ 67,015, 26 P-H Tax Ct. Mem. 95 (1967); *Mark A. Bird*, ¶ 62,074, 21 P-H Tax Ct. Mem. 384 (1962); *Homer L. Blackwell*, ¶ 61,124, 20 P-H Tax Ct. Mem. 599 (1961); *E.M. Green*, 11 B.T.A. 278 (1928).

75. INT. REV. MANUAL P-2-7 *et seq.*, CCH-IRM 1303-75 *et seq.*; INT. REV. MANUAL 4560 *et seq.*, CCH-IRM 8337 *et seq.*; IRM SUPP. 45G-216, CCH-IRM 8440, IRM SUPP. 456-228, CCH 8454-13. See *Nash v. Wiseman*, 227 F. Supp. 522 (W.D. Okla. 1963) which distinguishes *Landman*, Superintendent Five Civilized Tribes *ex rel. Starr v. Alexander*, CIR, 26 F. Supp. 752 (E.D. Okla. 1939), *appeal dismissed*, 105 F.2d 1018 (10th

comes a matter of showing sufficient facts to create the reasonable cause.

In *Critzer*, the court recognized facts which showed conflicting tax advice from coordinate branches of government and other persons about tax exemption. It appears that the court approved the unrestricted Indian's claim that she was confused by her advisors rather than her actual reliance upon the advice of any particular advisor. Also, this Indian was living on tribal reservation lands subject to a large amount of special legislation and administrative rules which were not clear even when reviewed by the court. This excused criminal fraud and should also be sufficient to eliminate civil penalties. The Indian's returns were prepared by a public accountant in private practice and signed by the Indian.⁷⁶

In *Walker v. Commissioner*,⁷⁷ the Tax Court recognized facts which showed that the tax exemption was believed to exist by all other Indians similarly situated and by the BIA. None of a large group of Indians had ever paid taxes on the income or even filed tax returns. They had been receiving the income⁷⁸ regularly for twenty years before the IRS challenged the tax exemption. This restricted Indian lived on the reservation and had no other income. After demand by the IRS, the Indian's return was prepared promptly (claiming all income exempt and no tax due) by an attorney and signed by the Indian.⁷⁹ Tax, penalty and interest were subsequently assessed. The penalty was for late filing. The Tax Court held the income was exempt and no penalty or interest could apply and, as an afterthought, said reasonable cause was shown for elimination in any event.⁸⁰ The appellate court reversed the lower

Cir. 1939) (Creek, estate taxes, unrestricted heirs); *United States v. Richards*, 27 F.2d 284 (8th Cir. 1928) *rev'g*, 21 F.2d 94 (N.D. Okla. 1927), *cert. denied* 278 U.S. 630 (1928) on grounds they concerned unrestricted Indians. See *Walker v. Commissioner*, 37 T.C. 962 (1962), reversed in part but affirmed on the issue of penalties and interest, 362 F.2d 261 (9th Cir. 1964) (restricted Pima-Maricopa).

76. Government's brief at 4, 9, 40, *United States v. Critzer*, 498 F.2d 1160 (4th Cir. 1974); see note 16 *supra*. See also where "confusion" was reasonable cause, *Anton F. Journey*, ¶ 66,222, 25 P-H Tax Ct. Mem. 599 (1966) (non-Indian); where confusing memorandum was factor, *Agricultural Securities Corp.*, 39 B.T.A. 1103, *aff'd*, 116 F.2d 800 (9th Cir. 1944) (non-Indians); honest belief in tax exemption where law very complex and reasonable men might differ in its meaning, cases cited note 83 *infra* and 10 J. MERTENS, *LAW OF FEDERAL INCOME TAXATION*, ¶ 55.23 n.19, 19.8 *et seq.* (1970).

77. *Walker v. Commissioner*, 37 T.C. 962 (1962), reversed in part but affirmed on the issue of penalties and interest, 326 F.2d 261 (9th Cir. 1964) (Gila River, Pima-Maricopa).

78. Payments from tribal income collected and held by the BIA. Indian was paid for services as tribal official managing tribe incorporated under 25 U.S.C. § 477 (1970).

79. 37 T.C. 962, 964 (1962).

80. *Id.* at 973 (no authority cited).

court, holding the income was taxable but approved the elimination of the penalty and interest.⁸¹

Because of their circumstances some Indians will be able to qualify on the facts for one or more non-Indian reasonable causes for penalty elimination. Their "foreign" cultural background may make them ignorant and uneducated under accepted American standards.⁸² They may have relied upon competent counsel and formed an erroneous belief in the tax-exempt status of their income.⁸³ Upon the advice of others, they may have entered into an income producing venture with an honest belief that it was a legitimate tax avoidance device.⁸⁴

Although there is statutory authority only for refunds of interest, where an unrestricted Indian has been assessed late payment penalties and interest and later is successful in a refund claim based on his Indian tax exemption, he is also entitled to refund of the penalties as well as the interest.⁸⁵ Unless the facts are strong, the Indian should be wary of the

81. 326 F.2d at 264, citing *Schmidt v. Commissioner*, 272 F.2d 423, 425 (9th Cir. 1959) (non-Indians) and *Ferrando v. United States*, 245 F.2d 582, 587-88 (9th Cir. 1957) (non-Indians).

82. General ignorance as distinguished from ignorance of the law. Illiterate, *Sol Gross d/b/a Appalachia Iron & Metal Co.*, ¶ 49,254, 8 P-H Tax Ct. Mem. 928 (1949) (non-Indian); *Thurston v. Commissioner*, 28 T.C. 350 (1957) (non-Indian); *John M. Tregoning*, ¶ 52,109, 11 P-H Tax Ct. Mem. 381 (1952), supplemented in ¶ 52,339, 11 P-H Tax Ct. Mem. 1175 (1952) (non-Indian); *Earl Smith*, ¶ 55,038, 14 P-H Tax Ct. Mem. 129 (1955) (non-Indian); *Henry J. Umentum*, ¶ 59,211, 18 P-H Tax Ct. Mem. 1020 (1959) (non-Indian). Limited education, *Charles M. Stewart*, ¶ 49,294, 8 P-H Tax Ct. Mem. 1075 (1949) (non-Indian); *Rhodes v. Edwards*, 56-2 U.S. Tax Cas. ¶ 9643 (M.D. Ga. 1956); *Dexter v. United States*, 306 F. Supp. 415 (D. Miss. 1970). Third reader, *H. C. Lister v. Commissioner*, 18 B.T.A. 699 (1930) (non-Indian). Fourth grade and foreign born, *Anton F. Journey*, ¶ 66,222, 25 P-H Tax Ct. Mem. 1138 (1966) (non-Indian). Fifth grade, *Robert L. Stapleton*, ¶ 55,290, 14 P-H Tax Ct. Mem. 1199 (1955) (non-Indian), *Earl Smith*, *supra*. Seventh grade, *William A. Prater*, ¶ 53,262, 12 P-H Tax Ct. Mem. 872 (1953) (non-Indian).

83. *Jockey Club*, 30 B.T.A. 670 (1934), *aff'd*, 76 F.2d 597 (2d Cir. 1935); *United States v. Rexach*, 9 Am. Fed. Tax R.2d 855 (1967), *aff'd*, 390 F.2d 631 (1st Cir. 1968), *cert. denied*, 393 U.S. 833 (1968); and *United States v. Rexach*, 185 F. Supp. 465 (D.P.R. 1960) and 200 F. Supp. 494 (D.P.R. 1961); *Gray Line Co. v. Granquist*, 237 F.2d 390 (9th Cir. 1956) (non-Indian); *Bronson v. Commissioner*, 183 F.2d 529 (2d Cir. 1950) (non-Indian); *Woodward v. Campbell*, 134 F. Supp. 258 (D. Ind. 1955), *aff'd*, 235 F.2d 268 (7th Cir. 1956); *William N. Dillin*, 56 T.C. 228 (1971) (non-Indian); *Fajardo Sugar Co.*, 20 B.T.A. 980 (1930) (non-Indian); *J.T. Wurtsbaugh*, 13 T.C. 1059, *rev'd on other grounds*, 187 F.2d 975 (5th Cir. 1951) (non-Indian); *Henry Yeckes*, ¶ 66,178, 25 P-H Tax Ct. Mem. 924 (1966) (non-Indian). See where the advisor was apparently the BIA, *Walker v. Commissioner*, 37 T.C. 962 (1962), *rev'd in part but aff'd on the issue of penalties and interest*, 362 F.2d 261 (9th Cir. 1964).

84. *Tussaud's Wax Museum, Inc.*, ¶ 66,211, 25 P-H Tax Ct. Mem. 1081 (1966) (non-Indians). *Cf. Holzman, IRS Often Claims Use of Tax Advisor Gives Evidence of Tax Avoidance Motive*, 22 J. TAXATION 118, 119 (1965).

85. *Boling v. United States*, 51-1 U.S. Tax Cas. ¶ 9140 (N.D. Okla. 1950) (Creek). (1918 income taxes paid in 1919 and 1920). *Cf. Code* § 6402(a), *Treas. Reg.* 301.6402-2(b)(2) (1967).

penalties, additions, and interest as they can become a sizeable amount.

Some of the same reasonable causes are used in obtaining extensions of time to file returns.⁸⁶ Where an IRS agent demands a tax return to be filed, this should be done promptly showing complete financial data, but claiming no tax is due based on the claimed tax exemption. Under these circumstances, the penalties may be eliminated should the income later be determined not to be tax-exempt.⁸⁷

SUMMARY

In the federal courts, in decisions relating to tax enforcement, the Tenth Circuit and the Tax Court recognize the "Indian tax rules;" in the Ninth Circuit the IRS demand for specific statutory exemption in the Internal Revenue Code is recognized; in the Fourth Circuit the issue is avoided if possible. All these federal courts agree that "Indian tax rules" are recognized to the extent that the confusion is a basis for waiver of penalties and drastic procedures.

To the Indian, confusion between branches of government has been one of the puzzling mysteries of the white man's way. The effect on the great white father's representatives has been a number of unusual procedures which are in need of congressional clarification.

86. Treas. Reg. § 1.6081-1(b)(1) (1960), instructions in IRS form 2688, INT. REV. MANUAL, P-2-62, CCH-IRM 1303-19 (generally, causes beyond the control of the taxpayer).

87. *Jockey Club*, 30 B.T.A. 670 (1934), *aff'd*, 76 F.2d 597 (2d Cir. 1935); *Walker v. Commissioner*, 37 T.C. 962 (1962), *rev'd in part but aff'd on the issues of penalties and interest*, 362 F.2d 261 (9th Cir. 1964).