No. 14-35165

In the

United States Court of Appeals

for the Ninth Circuit

CONFEDERATED TRIBES AND BANDS OF THE YAKAMA INDIAN NATION,
Plaintiff-Appellant,

v.

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU; JOHN J. MANFREDA, in his official capacity as Administrator of the Alcohol and Tobacco Tax and Trade Bureau; UNITED STATES DEPARTMENT OF THE TREASURY; TIMOTHY GEITHNER, in his official capacity as Secretary of the United States Department of the Treasury; UNITED STATES OF AMERICA,
Defendants-Appellees.

On Appeal from the United States District Court for the Eastern District of Washington, Spokane

BRIEF OF APPELLANT

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CORPORATE DISCLOSURE STATEMENT

Plaintiff-Appellant Confederated Tribes and Bands of the Yakama Nation is a sovereign Indian Nation and has no parent company, and no public company has any ownership interest in it.

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REQUEST FOR ORAL ARGUMENT

The Confederated Tribes and Bands of the Yakama Nation respectfully requests oral argument. This case involves protections and guarantees promised by the United States to the Yakama people in a treaty ratified by the United States Senate and signed by the President.[1] Both the United States Supreme Court and this Court have consistently confirmed and enforced these treaty rights. Despite this controlling precedent, the district court entered summary judgment against the Yakama Nation without applying the appropriate canons of treaty construction, and erred when it held that the language of this one hundred sixty year old treaty is not express enough to require application of those canons. This Court will also benefit from argument addressing the district court's failure to follow the Supreme Court's holding that analysis of tax exemptions under the General Allotment Act requires application of the Indian canons of construction, and when reviewing the propriety of limitations placed by the district court on the General Allotment Act. Oral argument will allow the parties to address these and other issues discussed in the briefs yet needing additional argument, and will significantly aid the Court's decisional process. Fed. R. App. P. 34(a)(2)(C), Add. 50-51.

[1] Although the Treaty is entitled "Treaty with the Yakimas," 12 Stat. 951 (1855), Add. 39-45, the official spelling is "Yakama." *See Ramsey v. United States*, 302 F.3d 1074, 1076 n.1 (9th Cir. 2002).

STATEMENT OF JURISDICTION

I. Federal District Court Jurisdiction.

The United States District Court for the Eastern District of Washington had original jurisdiction over Plaintiff-Appellant's claims because the claims present a federal question that arises under the laws and a treaty of the United States. 28 U.S.C. § 1331, Add. 26. In addition, the district court had original jurisdiction because the Confederated Tribes and Bands of the Yakama Nation, a federally recognized Indian tribe, filed the action. 28 U.S.C. § 1362, Add 27.

II. Jurisdiction on Appeal.

The Ninth Circuit Court of Appeals has appellate jurisdiction over this appeal pursuant to 28 U.S.C. Section 1291, Add. 25, because the district court's denial of Plaintiff-Appellant's motion for partial summary judgment and grant of Defendants/Appellees' motion for summary judgment constitute a final decision of a district court of the United States. *See* Order Denying Plaintiff's Motion for Partial Summary Judgment (Feb. 11, 2013) ECF No, 103, ER 23-35; Order Granting United States' Motion for Summary Judgment (Jan. 24, 2014) ECF No. 149, ER 1-20; Judgment in a Civil Action (Jan. 24, 2014) ECF No. 150, ER 40; Plaintiff's Notice of Appeal (Mar. 4, 2014) [ECF No. 152, ER 40].

ISSUES PRESENTED FOR REVIEW

1. Whether the district court erred when it failed to follow Supreme Court precedent holding that analysis of a claim for tax exemption under the General Allotment Act[2] requires application of Indian treaty and statutory canons of construction.

2. Whether the General Allotment Act's protections:

a) Extend to manufactured products;

b) Protect an allotment holder doing business as a corporation; and

c) Prohibit imposition of a federal excise tax that subjects allotted lands to liens and forfeiture.

3. Whether the Yakama Treaty contains "express exemptive language" sufficient to require the district court to apply the canons of Indian treaty construction.

[2] 24 Stat. 388, ch. 119, 25 U.S.C.A. 331, General Allotment Act, Act of Feb. 8, 1887

STATEMENT REGARDING ADDENDUM

An addendum containing pertinent constitutional provisions, statutes, rules, and legislative history is bound with this brief.

STATEMENT OF THE CASE

I. Procedural History and Rulings Presented for Review.

This case involves violations by the United States government of protections guaranteed to the Yakama people 1) in their Treaty with the United States, and 2) by Congress in the General Allotment Act. To challenge these violations, the Confederated Tribes and Bands of the Yakama Nation and one of its members sued the Alcohol and Tobacco Tax and Trade Bureau ("TTB"), the Administrator of the TTB, the United States Department of the Treasury, and the Secretary of the Treasury, seeking declaratory and injunctive relief enjoining the United States and its agents from imposing federal excise taxes on tobacco products manufactured on Yakama allotted lands. Complaint to Enforce Treaty Rights (Apr. 5, 2011) ECF No. 1, ER 248-289; First Amended Complaint to Enforce Treaty Rights and Other Federal Law (Aug. 26, 2011) ECF No. 16, ER 193-247.[3]

The Defendants moved to dismiss the complaint and Plaintiffs moved for summary judgment. United States' Motion to Dismiss Amended Complaint (Oct. 12, 2011) ECF No. 24, ER 189-192; Plaintiffs' Motion for Partial Summary Judgment (Jan. 19, 2012) ECF No. 52, ER 186-187. The district court denied the Defendants' motion to dismiss the Yakama Nation. However, relying on the Anti-Injunction Act, 26 U.S.C. § 7421, Add. 24, the district court granted the motion to

[3] *See* 26 U.S.C. § 5702(b)(1) – (2); 27 C.F.R. § 45.11; 27 C.F.R. § 45.35 (establishing the excise tax).

dismiss the Yakama Tribal member [Delbert Wheeler] and his corporation [King Mountain Tobacco Company, Inc.] Order Denying Plaintiffs' Motion to Strike and Granting in Part and Denying in Part Defendants' Motion to Dismiss (Sept. 24, 2012) ECF No. 83, ER 122-185. The district court subsequently denied the Yakama Nation's motion for summary judgment and denied the Yakama Nation's request that the district court amend its order to allow the Yakama Nation to seek an interlocutory appeal. Order Denying Plaintiff's Motion for Partial Summary Judgment (Feb. 11, 2013) ECF No. 103, ER 21-35; Order Denying Plaintiff's Motion to Amend Order and Stay Proceedings (Apr. 11, 2013) ECF No. 121, ER 164-171.

Defendants then moved for summary judgment on all claims brought by the Yakama Nation. United States' Motion for Summary Judgment (Oct. 1, 2013) ECF No. 134, ER 143-163. In ruling against the Yakama Nation on its Treaty claims, the district court held that the nearly one hundred and sixty-year-old Yakama Treaty did not "contain[] express exemptive language *applicable to the manufacture of tobacco products*." Order Granting United States' Motion for Summary Judgment at 20 (Jan. 24, 2014) ECF No. 149 at 20, ER 20 (emphasis added). And ignoring the General Allotment Act's prohibition against encumbrances on allotted land, the district court instead applied income tax analysis to the excise tax at issue here, focusing in the process on the nature of the

product derived from those allotted lands. In doing so, the district court improperly held that General Allotment Act protections only prohibit taxation of products "derived directly from the land" and that the finished products here were not "derived directly from the land." The General Allotment Act prohibits any tax that could result in a lien on or forfeiture of allotted lands. But based on its "directly derived" analysis, the district court held that the General Allotment Act's protections do not apply in this case. As an alternative basis for its ruling, the district court held that when he incorporated his business, the tribal member here extinguished the General Allotment Act protections to which he would otherwise be entitled. *Id.* at 11 ECF No. 149, ER 11.[4] Based on these holdings and analysis, the district court granted summary judgment against the Yakama Nation. Judgment in a Civil Action (Jan. 24, 2011) ECF No. 150, ER 40.

II. Statement of the Facts

A. The 1855 Yakama Treaty.

In 1855 Isaac Ingalls Stevens, Governor of the Washington Territory, and General Joel Palmer, Superintendent of Indian Affairs in the Oregon Territory, acting on behalf of the United States Government, initiated treaty negotiations near

[4] The district court also held that Section 4225 of the Internal Revenue Code (26 U.S.C. 4225), which exempts articles of Indian handicrafts manufactured by American Indians on Indian reservations, did not apply on its face to tobacco products. ECF No. 149 at 19, ER 19. The Yakama Nation does not appeal that portion of the district court's order.

present day Walla Walla Washington with Kamaiakin, Sklom, Owhi, Te-cole-kun,La-hoom, Koo-lat-toose, Sch-noo-a, Me-ni-nock, Shee-ah-cotte, Sla-kish, Elit Palmer, Tuck-quille, Wish-och-knipits, Ka-loo-as and other leaders of fourteen tribes and bands of Plateau Indians. Those fourteen tribes and bands ultimately were confederated into the Yakama Nation. See, *Yakama History*, Yakama Nation Museum & Cultural Center (available at: http://www.yakamamuseum.com/home-history.php, last visited Jul. 11, 2014).[5] It was critically important to the United States that these negotiations be successful for a number of historic reasons, including the need to secure land for the American settlers moving into the Washington territory. See, *The Treaty Trail: U.S. Indian Treaty Councils in the Northwest, Context For Treaty Making: Tribal Homelands* (available at http://washingtonhistoryonline.org/treatytrail/context/homelands.htm, last visited Jul 14, 2014).

As members of an oral culture, the Yakama leaders focused on the federal commissioners' spoken words during the negotiations, not the phrases written in

[5] Two years after negotiating this Treaty, Governor Stevens left Washington and was later killed at the battle of Chantilly in the Civil War. See, *The Treaty Trail: U.S. Indian Treaty Councils in the Northwest, Context For Treaty Making: Biography: Isaac Ingalls Stevens* (available at http://washingtonhistoryonline.org/treatytrail/context/bios/isaac-stevens.htm, last visited Jul. 11, 2014). Because he was perceived to have been too fair in his dealings with the Indians, General Palmer was removed from his federal position in 1857. See, *The Treaty Trail: U.S. Indian Treaty Councils in the Northwest, Context For Treaty Making: Biography Joel Palmer* (available at http://washingtonhistoryonline.org/treatytrail/context/bios/joel-palmer.htm, last visited Jul. 11, 2014).

the Treaty itself, which none of the Yakama signatories could read. SOF at ¶ 15, ECF No. 141 at 4 – 5, ER 44-45; Decl. of Fisher, ECF No. 141-3 at ¶ 6, ER 2. Therefore, the Yakama's original understanding of their agreement with the United States came from verbal descriptions of the Treaty articles passed through a chain of interpreters and Indian criers. [*Id.*]. These verbal descriptions were captured in part in minutes taken by the representatives of the United States who negotiated with the Yakama people. Treaty Minutes, ECF No. 1-2, ER 290-264. These minutes, testimony of Yakama elders and similar sources are part of the Treaty and must be relied upon by federal courts when called upon to determine the meaning of the Treaty's text. *Tulee v. Washington*, 315 U.S. 681, 684-85 (1942) ("It is our responsibility to see that the terms of the treaty are carried out, so far as possible, in accordance with the meaning they were understood to have by the tribal representatives at the council"); *United States v. Winans*, 198 U.S. 371, 381 (1905) ("How the treaty in question was understood may be gathered from the circumstances.").

The negotiations at Walla Walla culminated in the Yakama Treaty of 1855, which was subsequently ratified by the Senate and signed by the President. Article II of the Yakama Treaty set aside the land the Yakama people retained as a reservation for "the exclusive use and benefit" of the confederated tribes and bands of the Yakama people. Yakama Treaty; Add. 39-45. In explaining the purpose of

this reservation, Governor Stevens assured the Yakama people "that tract of land is the Indians home; his home and the home of his children. . . . There are other tracts of land East of the mountains set apart for the red mans home; for there are many tribes. Those tracts the white man cannot enter without the consent of the red man." Treaty Minutes, ECF No. 1-2 at 75, ER 75. Article II of the Treaty reaffirms this pledge, stating "nor shall any white man, excepting those in the employment of the Indian Department, be permitted to reside upon the said reservation without permission of the tribe and the superintendent and the agent." Treaty; Add. 39-45. The allotments and improvements made on the reservation were likewise to be for the Indians alone, as Governor Stevens indicated when he said: "Now we want you to agree with us to such a state of things; You to have your tract with all these things; the rest to be the Great Father's for his white children." Treaty Minutes, ECF No. 1-2 at 76, ER 32; SOF ¶ 16, ECF No. 141 at 5, ER 45; Decl. of Fisher, ECF No. 141-3 at ¶ 10, ER 135-136. There is no evidence in either the Treaty or the council proceedings to suggest that tribal leaders anticipated benefits from the use of reservation land to accrue to any non-Indian party or government. SOF ¶ 17, ECF No. 141 at 5, ER 45; Decl. of Fisher, ECF No. 141-3 at ¶ 10, ER 135-136.

Article III of the Treaty extended and protected Yakama economic activities beyond reservation boundaries. Specifically, it secured to the Indians "free access"

to the nearest public highway . . . as also the right, in common with the citizens of the United States, to travel upon all public highways." Treaty; Add. 39-45. Governor Stevens made the economic purpose of such travel explicit when he stated, during negotiations:

> You will be allowed to go on the roads to take your things to market, your horses and cattle. You will be allowed to go to the usual fishing places and fish in common with the whites, and to get roots and berries and to kill game on land not occupied by the whites. All that outside the reservation.

Treaty Minutes, ECF No. 1-3 at 99, ER 344.

The Yakama people understood that the land on which they would settle would truly and unequivocally be their own land, and they would be able to use that land to raise their families, cultivate crops, and engage in trade and travel. SOF at ¶ 24, ECF No. 141 at 8, ER 48; Decl. of Manson, ECF No. 141-2 at ¶ 7 (l), ER 123. *Yakama Indian Nation v. Flores*, 955 F. Supp. 1229, 1248, 1251, 1253 (E.D. Wash. 1997) (finding that the Yakama people understood the Treaty to reserve their "right to travel the public highways without restriction for purposes of hauling goods to market" and to "retain their right to travel outside reservation boundaries, with no conditions attached" even as they "engage in *future* trading endeavors") (emphasis in original). The Yakama people also understood that the right to travel and trade included all goods, not just those derived from on-reservation resources. *United States v. Smiskin*, 487 F.3d 1260, 1268 (9th Cir.

2007) ("Here, there is evidence from the time of treaty suggesting that the Yakamas then understood the right to travel to extend beyond tribal goods.").

The Yakama people's understanding of these sacred treaty terms is consistent with the unequivocal promises made by the federal treaty negotiators. Federal treaty negotiators explained to the Yakama people that "entering into the Treaty would not infringe upon or hinder their tribal practice" and "was presented as a means to preserve Yakama customs and prevent further encroachments by white settlers, while at the same time providing tribes with modern accoutrements to enhance their standard of living and fortify their resources." *Yakama Indian Nation*, 955 F. Supp. at 1244.

The Yakama Treaty resulted in the Yakama people's surrender to the United States of nearly ten million acres, or 90% of their land. *Smiskin*, 487 F.3d at 1265; Treaty; Add. 39-45. In return, the Yakama people were promised by federal negotiators that "*you can rely on all its provisions being carried out strictly*." *Yakama Indian Nation*, 955 F. Supp. at 1243 (discussing the representations of General Palmer at the treaty negotiations) (emphasis in original). The Yakama Treaty, like all treaties, is the supreme law of the land. It guarantees the Yakama People the right to travel and trade without government restrictions, and promises them the exclusive benefit of their lands – exclusive of any benefit the United States seeks by way of taxes. The government made these promises to end war,

and to secure title to millions of acres of Yakama land. All federal agencies must honor these promises both because the United States is a party to this solemn Treaty, and because, as federal trustee, it has fiduciary obligations to these Native people.

B. The Yakama Treaty Protects the Yakama People's Historic Cultivation and Trade of Tobacco.

Since long before the Treaty between the Yakama Nation and the United States, people of the Yakama Nation used their lands for farming and agricultural purposes, including the cultivation of tobacco. SOF ¶ 8, ECF No.141 at 3, ER 42; Decl. of Manson, ECF No. 141-2 at ¶ 7(b) ER 57; Decl. of Fisher, ECF No. 141-3 at ¶ 8, ER 134-135. The Yakama people have long been recognized as "inveterate traders" with extensive trading practices and territory. *Yakama Indian Nation v. Flores*, 955 F. Supp. 1229, 1238 (E.D. Wash. 1997), *aff'd sub nom. Cree v. Flores*, 157 F.3d 762 (9th Cir. 1998) ("*Cree II*"); SOF ¶ 12, ECF No. 141 at 4, ER 42; Decl. of Manson, ECF No. 141-2 at ¶ 7(f), ER 57; Decl. of Fisher, ECF No. 141-3 at ¶ 8, ER 134-135. Their trading practices included trade with travelers entering Yakama territory, as well as trade that occurred well beyond their lands. *Yakama Indian Nation*, 955 F. Supp. at 1238; SOF ¶ 12, ECF No. 141 at 4, ER 42; –Decl. of Manson, ECF No. 141-2 at ¶ 7(f), ER 57; Decl. of Fisher, ECF No. 141-3 at ¶ 8, ER 134-135. The Yakama people's "way of life depended on goods that were not available in the immediate area." *Yakama Indian Nation*, 955 F. Supp. at 1238; *see*

United States v. Smiskin, 487 F.3d 1260, 1268 (9th Cir. 2007) (finding that "it is likely that the Yakamas transported not only their own goods but also goods produced by other tribes in the network").

Tobacco has a longstanding presence in everyday Yakama life and, at the time of the Treaty, the Yakama people gathered, grew, traded, and used tobacco. SOF ¶ 8, ECF No.141 at 3, ER 43; Decl. of Manson, ECF No. 141-2 at ¶ 7(b), ER 57; Decl. of Fisher, ECF No. 141-3 at ¶ 8, ER 134-135. The Yakama people regularly blended the indigenous forms of tobacco available to them with other tobacco and similar plants to modulate burn, aroma and taste. SOF ¶ 9, ECF No. 141 at 3, ER 43; Decl. of Manson 141-2 at ¶ 7(b), ER 57; Decl. of Fisher 141-3 at ¶ 9, ER 134-135. They further used and continue to use tobacco in ceremonial and official contexts as a powerful religious and spiritual symbol, as well as a form of trade currency. SOF ¶ 10, ECF No. 141 at 4, ER 44; Decl. of Manson, ECF No. 141-2 at ¶ 7 (d), ER 57. The Yakama historically have engaged in extensive tobacco trade, including trade of tobacco grown and harvested on their land as well as tobacco obtained in trade from non-Yakama people. SOF ¶ 12, ECF No. 141 at 4, ER 44; Decl. of Manson ECF No. 141-2 at ¶ 7(f), ER 57; Decl. of Fisher, ECF No. 141-3 at ¶ 8, ER 134-135.

Based upon their historic trading practices and the promises made to the Yakama people by the federal government during treaty negotiations and in the

Treaty, the Yakama people always understood that they would be allowed to harvest the resources of their land and trade those resources with others – for the exclusive benefit of the Yakama people. *Cree II*, 157 F.3d at 769 (affirming the district court's finding that the Yakama people "understood the Treaty to grant them valuable rights that would permit them to continue in their ways"); SOF ¶ 24, ECF No. 141 at 8, ER 57; Decl. of Manson, ECF No. 141-2 at ¶ 8, ER 57.

C. King Mountain Tobacco Company Manufactures and Trades Tobacco Products that Are Grown on Trust Lands Within the Yakama Nation.

Pursuant to their historic practices and treaty rights, the Yakama people and their tribal corporations continue to harvest the resources of the land and trade them and other goods to this very day. King Mountain Tobacco Company is just such a tribal corporation, organized and existing under the laws of the Yakama Nation. SOF at ¶ 2, EFC No. 141 at 2, ER 42. King Mountain is owned and operated by Delbert Wheeler, Sr., a life-long enrolled member of the Yakama Nation. SOF at ¶ 3, ECF No. 141 at 3, ER 42. Fifty-four of King Mountain's employees are Yakama Indians. SOF at¶ 7, ECF No. 141 at 3, Decl. of Thompson, EFC No. 141-1 at ¶ 8, ER 53. King Mountain's manufacturing facilities are located on a Yakama trust allotment belonging to King Mountain's owner, Delbert Wheeler. ECF No. 141 at ¶ 4, ER 42.

All products manufactured by King Mountain contain trust-land grown tobacco although some of that product is blended with other tobacco. SOF 5(a), ECF No. 141 at 2, ER 42. Certain products manufactured by King Mountain consist entirely of tobacco grown exclusively on property held in trust by the United States. SOF 5(b), ECF No. 141 at 2 ER 42; Decl. of Thompson, ECF No. 141-1 at ¶ 7 ER 53. In 2012 and since that time, King Mountain has continued to increase the percentage of Yakama trust grown tobacco used in its products. SOF 5(c), ECF No. 141 at 2, ER 42-43; Decl. of Thompson at ¶ 6, ER 52. Specifically, for the Fourth Quarter of 2013, King Mountain's products were comprised of at least 55 percent tobacco grown exclusively on property held in trust by the United States for the beneficial use of Mr. Wheeler. SOF 5(d), ECF No. 141 at 3, ER 42; Decl. of Thompson, ECF No. 141-1 at ¶ 6, ER 52. Product sold without extensive processing for religious use consists of 100% reservation grown tobacco. SOF 5(b) ECF No. 141, ER 42; Decl. of Thompson, ECF No. 141-1 at ¶ 7, ER 53.[6]

[6] Contrary to language in the district court's order ECF No. 149 at 3, ER 3, the issue of traditional use tobacco is included in the complaint, and was argued to the district court in briefing and at oral argument. E.g., First Amended Complaint at ¶¶ 4.5, 4.53, 4.7, 4.78 and Section D, Counts I and II, and Prayer for Relief; ECF No. 16 at 1-55, ER 193-247; Response in Opposition to US Motion for Summary Judgment at 4 and 21. ECF No., 16 at 1-55, ER 193-247.

SUMMARY OF THE ARGUMENT

The United States Supreme Court has held that analysis of a claimed tax exemption under the General Allotment Act requires application of the Indian canons of treaty and statutory construction. The district court erred when it failed to comply with this requirement.

The General Allotment Act prohibits taxation that can result in an encumbrance on or forfeiture of an allotment. That requirement focuses on the encumbrance of title to the allotted lands, and not as the district court held, the nature of the taxable event. As a result, although a tax *on income* not "derived from" the land may be enforceable, the excise tax at issue here (which contains specific land forfeiture provisions) is not enforceable on Yakama allotted lands. Additionally, whether an allotment holder has elected to incorporate his business is not dispositive on the issue of protections available under the General Allotment Act or the Yakama Treaty.

The Yakama Treaty is express federal law exempting the Yakama Nation, the Yakama people and their Yakama businesses from a federal excise tax levied on a product manufactured on Yakama trust land and which incorporates ingredients grown on Yakama trust land. The Treaty's language is at least sufficiently express to require the district court to consider evidence showing how the Indians understood the Treaty and their rights and guarantees under the Treaty.

Here, the district court erred when it granted summary judgment against the Yakama Nation on its Treaty claims without conducting the Treaty analysis required by controlling Supreme Court and Ninth Circuit Court of Appeals precedent, and without applying the Indian canons of treaty and statutory construction.

STANDARD OF REVIEW AND BURDEN OF PROOF

This Court reviews *de novo* the interpretation and application of treaty language. *Cree II*, 157 F.3d at 768. The Court also reviews de novo the interpretation and application of statutory language. *United States v. Idaho*, 210 F.3d 1067, 1072 (9th Cir 2000). A district court's grant of summary judgment is reviewed *de novo*. *Fort Belknap Indian Cmty. v. Mazurek*, 43 F.3d 428, 432 (9th Cir. 1994); *Nolan v. Heald College*, 551 F.3d 1148, 1153 (9th Cir. 2009). This Court is guided by the traditional rules of summary judgment and will affirm a grant of summary judgment only if it appears from the record that "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), Add. 52; *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000) (*en banc*); *Leisek v. Brightwood Corp.*, 278 F.3d 895, 898 (9th Cir. 2002). In conducting its *de novo* review, this Court must view the evidence in the light most favorable to the Yakama Nation, which was the non-moving party, to determine whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law. *Ramsey v. United States*, 302 F.3d 1074, 1077 (9th Cir. 2002).

This case involves construction of a treaty between the United States and an Indian Tribe. The Supreme Court repeatedly has held that the interpretation of all Indian treaties is subject to canons of construction favorable to the Indian party.

See, e.g., *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226 (1985). Under those canons, the text of a treaty must be construed as the Indian Tribe would naturally have understood it at the time of the treaty, with doubtful or ambiguous expressions resolved in the Indians Tribe's favor. *Tulee*, 315 U.S. at 684-85 ("It is our responsibility to see that the terms of the treaty are carried out, so far as possible, in accordance with the meaning they were understood to have by the tribal representatives at the council"). Indeed:

> [I]t is the intention of the parties, and not solely that of the superior side, that must control any attempt to interpret the treaties. When Indians are involved, this Court has long given special meaning to this rule. It has held that the United States, as the party with the presumptively superior negotiating skills and superior knowledge of the language in which the treaty is recorded, has a responsibility to avoid taking advantage of the other side. *"[T]he treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians."* This rule, in fact, has thrice been explicitly relied on by the Court in broadly interpreting these very [Yakama] treaties in the Indians' favor.

Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n ("Fishing Vessel"), 443 U.S. 658, 675-76 (1979) (emphasis added).

Sources beyond the treaty necessarily aid treaty interpretation. *United States v. Winans*, 198 U.S. 371, 381 (1905) ("How the treaty in question was understood may be gathered from the circumstances.").

ARGUMENT

I. Analysis of a Claim for Tax Exemption Under the General Allotment Act Always Requires Application of Indian Treaty and Statutory Canons of Construction.

The United States Supreme Court has held that the text of the General Allotment Act is sufficiently express to always require application of the Indian canons of treaty and statutory construction to a tax exemption claimed under the Act. *Squire v. Capoeman*, 351 U.S. 1, 6 (1956). The district court erred when it failed to honor this requirement.

In *Capoeman*, the United States Supreme Court addressed the application of long term capital gains taxes to income derived from the sale of allotment grown timber. The three sources supporting an exemption to the tax upon which the district court, the Ninth Circuit Court of Appeals and the United States Supreme Court all relied were (1) the text of the 1855 Quinault Treaty;[7] (2) exemptive language in the General Allotment Act;[8] and (3) the terms of the allotment trust patent. 351 U.S. at 6 ("we cannot agree that taxability of respondents in these circumstances is unaffected by the treaty, the trust patent or the Allotment Act");

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[7] "[T]he Quinaielts were to have exclusive use of their reservation 'and no white man shall be permitted to reside thereon without permission of the tribe * * *.' Article II." *Capoeman*, 351 U.S. at 3;

[8] Allottees are to receive their allotted lands "discharged of the trust under which the United States had theretofore held them, and to obtain a patent 'in fee, discharged of said trust and free of all charge or incumbrance whatsoever'," *Capoeman*, 351 U.S. at 3.

see also Capoeman v. United States, 110 F. Supp. 924, 925 (W.D. Wash. 1952) (same); *Squire v. Capoeman*, 220 F.2d 349 (9th Cir. 1955) (same), *aff'd*, 351 U.S. 1 (1956).

In *Capoeman* the district court, this Court, and the United States Supreme Court found the General Allotment Act language sufficiently express to require application of the Indian canons of Treaty and statutory construction. As the Supreme Court noted:

> Although this statutory provision is not expressly couched in terms of nontaxability, this Court has said that 'Doubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith. Hence, in the words of Chief Justice Marshall: 'The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of, which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense.'

351 U.S. at 6-7 (citations omitted). But instead of following the Supreme Court's holding in *Capoeman*, the district Court improperly applied this Court's analysis in two cases where the General Allotment Act was not at issue: *Ramsey v. United States*[9] and *Hoptowit v. CIR*.[10]

In *Ramsey*, the challenged federal tax targeted exclusively off-reservation activities – heavy vehicle and diesel fuel taxes – so the General Allotment Act was not and could not have been an issue. Thus, this Court in *Ramsey* looked solely to

[9] 302 F.3d 1074, 1078 (9th Cir. 2002).
[10] 709 F.2d 564 (9th Cir. 1983).

the language in Article III of the Yakama Treaty, and was not bound by the Supreme Court's holding in *Capoeman* as to the General Allotment Act. 302 F.3d at 1076 ("Ramsey argues that the 'in common with' language in the highway use provision of the Treaty creates an exemption from the federal heavy vehicle and diesel fuel taxes."). Ramsey did not urge application of the General Allotment Act because the tax at issue had nothing to do with allotted lands and instead was imposed exclusively on the instruments used to transport goods outside the Yakama Nation – goods that had no ties to allotted Yakama lands. Indeed, there is not a single reference to allotments in the Court's *Ramsey* decision, although the Court did confirm its adherence to *Capoeman* when it held that "language such as 'free from incumbrance,'" is an example of express exemptive language sufficient "to find Indians exempt from federal tax." *Id*. at 1078-79. Similarly, *Hoptowit v. C.I.R.*, involved only claims under Article II of the Yakama Treaty. There was no General Allotment Act claim, and as a result no analysis of the protections provided by the General Allotment Act to Yakama allotments. 709 F.2d at 566 ("Hoptowit bases his claim on a treaty").

Capoeman's required application of Indian treaty and statutory canons of construction to General Allotment Act claims is consistent with the Supreme Court's long standing position that "the standard principles of statutory interpretation do not have their usual force in cases involving Indian law."

Montana v. Blackfeet Tribe, 471 U.S. 759, 766 (1985). As a matter of well-rooted federal common law, treaties and statutes are to be liberally construed in favor of Indian tribes and people and all ambiguities contained therein are to be resolved in favor of the Indian party. *Choate v. Trapp*, 224 U.S. 665, 675 (1912) ("in the Government's dealings with the Indians. . . [the] construction [of treaties] is liberal; [d]oubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor" of the Indians); *Winters v. United States*, 207 U.S. 564, 576-77 (1908) ("By a rule of interpretation of agreements and treaties with the Indians, ambiguities occurring will be resolved from the standpoint of the Indians.").

II. The General Allotment Act Prohibits Application of the Federal Excise Tax at Issue In This Case.

A. Tobacco Products Need Not Be "Directly Derived" From Allotted Lands to Benefit from General Allotment Act Protections.

As discussed above, in *Capoeman*, the Supreme Court confirmed that the General Allotment Act's prohibition on any "charge or incumbrance" on allotted lands was sufficient to include exemption on taxation, particularly in light of subsequent amendments to the Act. 351 U.S. at 7. But the critical analysis was not as to the nature of the tax. Instead, the Court focused on whether the tax impacted the Government's ability to transfer the allotment to the allottee free of

encumbrance.[11] The district court misinterpreted *Capoeman* on this issue when it claimed that the Court in *Capoeman* "noted, however, that the restriction on taxation *was limited to* 'the trust and income derived directly therefrom.' *Id.* at 9." Order at 8 (emphasis added). That is not correct. What the Supreme Court stated at the page cited by the district court was:

> [I]t was said by Felix S. Cohen, an acknowledged expert in Indian law, that 'It is clear that the exemption accorded tribal and restricted Indian lands *extends to* the income derived directly therefrom.

Capoeman, 351 U.S. at 8-9 (emphasis added). The difference is obvious and significant. The Supreme Court merely referenced Cohen for the proposition that the exemption extends to income derived from the land. It in no way limited the exemption as held by the district court.

To determine whether the income tax at issue impacted the ability of the government to transfer title to the allotment free of encumbrance, the Court in *Copoeman* logically looked to whether the income was "derived directly" from the allotted lands. *Id.* at 8-9. Although *Capoeman* requires courts addressing a tax *on income* to look to where the income is derived, it does so only to ensure the land can be transferred free of encumbrance. This Court has itself confirmed that it is the encumbrance, and not the source of income, that is the critical issue:

[11] "Capoeman is not a technical or narrow decision; nor is its holding limited to capital gains taxes." *Stevens v. Comm'r of Internal Revenue*, 452 F.2d 741, 744 (9th Cir. 1971).

> *Capoeman's* point was that if an Indian's allotted land (or the income directly derived from it) was taxed, and the tax was not paid, *the resulting tax lien on the land* would make it impossible for him to receive the land free of "incumbrance" at the end of the trust period.

United States v. Anderson, 625 F.2d 910, 914 (9th Cir. 1980) (emphasis added). Indeed, the Supreme Court itself noted in *Capoeman* that "imposition of the tax here in question is inconsistent with the Government's promise to transfer the fee 'free of all charge or incumbrance whatsoever.'" 351 U.S. at 6.

The case now before this Court does not involve a tax on income. It is a tax on a product manufactured on Yakama allotted lands, with the incidence of the tax occurring at the moment the product is removed from bond but still on allotted trust land. 26 U.S.C. § 5703(b)(1) (imposing tax "at the time of removal of the tobacco products and papers and tubes") Add. 14-17. If the tax is not paid, the allotted land is subject to encumbrance and forfeiture. As a result, the critical issue is not whether the challenged tax is on *income* from an item "directly derived" from the allotment. Instead, the issue is whether the challenged tax encumbers the land in a manner prohibited by the General Allotment Act.

B. Assessment of Federal Excise Taxes Against a Yakama Member-Owned Business Impermissibly Subjects Allotted Land to Forfeiture.

In its order granting Appellees' motion for summary judgment, the district court held that "the *Capoeman* exemption would not apply to taxes owed by King Mountain" because, the Court reasoned, "the trust property is held for the benefit

of Mr. Wheeler, it is not King Mountain's asset, and presumably the property would not be subject to a tax lien." ECF No. 149 at p. 12 (citing *Squire v. Capoeman*, 351 U.S. 1, 6 (1956)), ER 12. That is not correct.

Imposition of the tobacco excise tax by its terms directly imposes the threat of forfeiture or lien against the allotment upon which King Mountain manufactures its product. 26 U.S.C. §§ 5761-63. Indeed, the tax code provides that nonpayment of the excise tax automatically results in forfeiture:

> Real and personal property of illicit operators.--All tobacco products, cigarette papers and tubes, machinery, fixtures, equipment, and other materials and personal property on the premises of any person engaged in business as a manufacturer or importer of tobacco products or cigarette papers and tubes, or export warehouse proprietor, without filing the bond or obtaining the permit, as required by this chapter, together with all his right, title, and interest in the building in which such business is conducted, and *the lot or tract of ground on which the building is located, shall be forfeited to the United States*.

26 U.S.C. § 5763(c) (emphasis added), Add. 22-23.

The Internal Revenue Code ("IRC") provides for the Cigarette Excise Tax in Subtitle E, chapter 52, 26 U.S.C. section 5701 et seq. Subchapter G provides for Fines, Penalties, and Forfeitures for those who willfully omit, neglect, or refuse to comply with any duty imposed upon that person, including payment of the tax. 26 U.S.C. § 5701(b). Section 5763 provides that the "lot or tract of ground on which the building is located, shall be forfeited to the United States." Subsection (d) then goes on to provide that all property "intended for use in violating the provisions of

this chapter, or which has been so used, shall be forfeited to the United States as provided in section 7302." *See* 26 USC § 7302 ("It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property."). This forfeiture language creates the very lien, levy or forfeiture against the allotment that is prohibited in the Treaty and the General Allotment Act.

The cigarette excise tax provides that nonpayment can result in civil penalties, criminal penalties and forfeitures. 26 U.S.C.A. §§ 5761-63, Add. 18-23. The forfeiture under this section can occur as to third parties' property, and can be accomplished without notice or due process protections. *See In re Certain Chevrolet Automobile Bearing New Jersey Registration #IV-42*, 47 F. Supp. 843, 844 (D.N.J. 1942) (holding that the lack of personal notice of intended forfeiture to claimant did not require cancellation of forfeiture proceedings); *United States v. One 1951 Chevrolet 3/4-Ton Pickup Truck*, 130 F. Supp. 777, 778-79 (W.D. Ky. 1955) (holding that the forfeiture of property could be had without claimant having been convicted).

Capoeman is once again instructive. The government in *Capoeman* argued that once the timber was processed – severed from the land – imposing a capital gains tax on income from the sale of the severed timber was permissible because it

was a tax on income and not the source of the income – the land. *Id*. at 6. The Supreme Court disagreed, explaining that taxing the proceeds of selling timber would violate the General Allotment Act because allowing such taxation would mean that "the land no longer serves the purpose for which it was by treaty set aside to his ancestors, and for which it was allotted to him." *Id.* at 10. The Court continued:

> It can no longer be adequate to his needs and serve the purpose of bringing him finally to a state of competency and independence. Unless the proceeds of the timber sale are preserved for respondent, he cannot go forward when declared competent with the necessary chance of economic survival in competition with others. This chance is guaranteed by the tax exemption afforded by the General Allotment Act, and the solemn undertaking in the patent. It is unreasonable to infer that, in enacting the income tax law, Congress intended to limit or undermine the Government's undertaking. To tax respondent under these circumstances would, in the words of the court below, be 'at the least, a sorry breach of faith with these Indians.'

Id. at 10.[12]

Just so here. If by manufacturing his product on allotted lands this Yakama tribal member risks losing his allotment for non-payment of excise tax, then the land "can no longer be adequate to his needs and serve the purpose of bringing him finally to a state of competency and independence." If his allotment is forfeited, this Yakama tribal member "cannot go forward when declared competent with the

[12] In this context, a '"noncompetent Indian' is one who holds allotted land under a trust patent and who may not alienate or encumber that land without the consent of the United States." *Kirschling v. United States*, 746 F.2d 512, 513 fn.1 (9th Cir. 1984).

necessary chance of economic survival in competition with others. This chance is guaranteed by the tax exemption afforded by the General Allotment Act, and the solemn undertaking in the patent." *Id.*

In its simplest terms, the inclusion of forfeiture as a direct and automatic remedy for failure to pay the excise tax offends both the explicit language of the Yakama Treaty and the very purpose of the General Allotment Act, irrespective of whether the product taxed is directly derived from the allotment.

C. General Allotment Act Protections Extend to Manufactured Products.

Even if a connection between the allotted land and the tobacco product were required to afford General Allotment Act protections, the Act would prohibit taxation here because the product is derived directly from the allotted lands. *Stevens v. Comm'r of Internal Revenue*, 452 F.2d 741, 747 (9th Cir. 1971) (income from ranching and farming operations by an allottee on his allotted land was not taxable); *United States v. Daney*, 370 F.2d 791, 795 (10th Cir. 1996) (bonuses paid to an allottee for oil and gas leases on his allotment were not taxable); *Kirschling v. United States*, 746 F.2d 512 (9th Cir. 1984) (gift to a non-Indian of the proceeds from sale of timber on allotted lands not subject to federal gift tax). The record confirms that the majority of the tobacco, and in some cases all of the tobacco, in King Mountain's products is grown on Mr. Wheeler's allotted lands. SOF 5(d), ECF No. 141 at 3 ER 42; Decl. of Thompson, ECF No. 141-1 at ¶ 6, ER 52. The

government is not taxing income from this product, but instead seeks to tax the final manufactured product itself, a product derived from and manufactured on allotted lands. Yet no court has held that products *of* allotted lands lose their exempt status simply because they undergo a manufacturing process. And to the extent a taxable item incorporates some allotment resources, that portion at a minimum should not be taxed. *Critzer v. United States*, 597 F.2d 708, 714 (Ct.Cl. 1979) ("Even the Government admits that it might be appropriate in certain instances to allocate income based upon the relative value of the land vis-a-vis any improvements or services").

Because the excise tax encumbers the allotment regardless of whether the product is derived from the allotted lands, the "directly derived" analysis is unnecessary. But even if a direct tie to the allotted land is held to be required for manufactured tobacco products, the necessary distinction must be made between taxes on products *of* the land – which are exempt – from products that are simply sold *on* the land. *Cf. Dillon v. United States*, 792 F.2d 849, 856 (9th Cir. 1986) (income from a retail smoke shop was taxable); *Critzer*, 597 F.2d at 713-14 (income generated from a motel, restaurant, retail gift shop, and building rental was taxable). And where, as here, from 55% to 100% of product is grown on the allotted lands, that portion must be exempt from any tax. *Id.*

This Court in *Dillon* held that a physical connection to the allotted land was an important part of determining whether *income* was directly derived from the land. Specifically, the Court found that the *Capoeman* exemption did not include income related to "non-land-based" business activities. *Id.* at 855. The Court defined such activities as those where the income was earned "primarily through a combination of taxpayers' labor, the sale of goods *produced off the reservation* and improvements constructed on the trust land." *Id*. at 856 (emphasis added). On the other hand, the exemption would apply to instances in which the allottee "has exploited or reduced the value of the land by mining, logging, agricultural or similar activity." *Id.* at 855 (citations omitted). The Court recognized that actual exploitation of the land is not necessary to meet the derived directly standard. *Id.* (citing *Cross v. Comm'r of Internal Revenue*, 83 T.C. 561, 572 (1984) ("Farming and ranching, unless improperly conducted, do not damage or diminish the value of the trust land.")). This same analysis must be applied to manufacturing on allotted lands. Manufacturing does not damage or diminish the value of the trust land unless improperly conducted. But it does provide a physical connection to the allotted land that was absent in *Dillon*.

In deciding *Dillon*, the Court relied on *Hoptowit v. CIR*, 78 T.C. 1137 (1982), *aff'd*, 709 F.2d 564 (9th Cir. 1983), which involved *inter alia* a tribal member's claim that income earned by him from a smokeshop located on an

allotment was exempt from federal income tax. Specifically, the Court relied on the following language from *Hoptowit* to inform its application of *Capoeman*:

> The mere fact that [petitioner's business] was located on reservation land [was] not determinative. The income was earned primarily through a combination of petitioner's labor, the sale of tobacco products (none of which were grown on reservation land, so far as it appears from the record), and the marketing of a claimed exemption from State taxes. In these circumstances, imposition of the income tax on petitioner's smoke shop income is not inconsistent with . . . the Treaty; any exemption . . . *would not extend to income only incidentally and not directly attributable to such land and resources*.

Dillon, 792 F.2d at 855 (citing *Hoptowit*, 78 T.C. at 145) (alteration and emphasis in original).

The activity taxed here does not involve income at all, much less income only incidental to trust land such as rental of physical improvements like condominiums or hotel rooms. *See Critzer*, 597 F.2d at 713-14. Nor does it concern income from an allotment retail store selling goods or services unrelated to the trust lands. *Dillon*, 792 F.2d at 856. Instead, it involves taxes on consumer-ready tobacco products at the point they leave the factory - products made on an allotment, by Indian people, and that incorporate large quantities of allotment grown tobacco. The product comes directly out of the soil of an allotment and is processed entirely on an allotment. *See Stevens*, 452 F.2d at 747; *Daney*, 370 F.2d 791 at 795.

To address the undisputed facts offered by the Yakama Nation that the unprocessed tobacco contained in King Mountain's products is generated principally and directly from the trust lands, the district court created an additional constraint on the *Capoeman* exemption – one that prohibits application of the exemption if the final product of the reservation derived goods was "manufactured" or "processed." ECF No. 149 at 9, ER 12 ("The unprocessed tobacco grown on trust land is analogous to the timber grown on trust land in *Capoeman*, and any income from the unprocessed tobacco could be deemed as derived directly from the land."). The district court held that the manufacturing process in itself rendered the product taxable, since such a process was "a combination of labor and capital investment, rather than a product derived directly from the land." ECF No. 149 at 9, ER 12. In essence, though a substantial portion – and in some cases all – of the product is grown on the allotment, the district court viewed processed tobacco as analogous to a motel or restaurant, ignoring the distinction between services offered on trust land and product produced on trust land.

The district court cited no cases that endorse its holding that a product which in an unprocessed state is directly derived from trust lands and exempt from taxation losses its "directly derived" character if it is processed. Nor did the district court issue any findings of fact regarding what characteristics of the

tobacco manufacturing process – growing, harvesting, drying, curing, blending, and/or packaging – destroys the otherwise valid exemption from taxation. And the district court offered no policy justification for denying an exemption to Indian people who process products derived from their lands. Indeed, policy considerations support the opposite result, because under the district court's reasoning Indian people are left only to deliver raw products to the market and are thus relegated to nothing more than common laborers if they are to benefit from the protections promised in their Treaty and in the General Allotment Act. That result – taxing the Yakama people for their efforts to compete in the market place through processing of goods derived from their allotted lands – would "be 'at the least, a sorry breach of faith with these Indians.'" *Capoeman*, 351 U.S. at 10. It also contravenes the Treaty's promise to allow Yakama people the opportunity to exploit advances and developments in technology and trade that would occur and have occurred in the intervening centuries. *Smiskin*, 487 F.3d at 1266 ("the Treaty was clearly intended to reserve the Yakamas' right to travel on the public highways to engage *in future trading endeavors*") (internal quotation marks and citation omitted).

D. The District Court Erred When it Determined that the General Allotment Act's Protections Are Not Available to an Allotment Holder Doing Business as a Corporation.

In its order granting summary judgment against the Yakama Nation, the district court identified as "an alternative basis" for doing so the fact that the holder of the allotment at issue in this case has chosen to conduct his business through a wholly-owned Yakama corporation, King Mountain Tobacco Company, Inc. ECF No. 149 at 11, ER 11. Thus, the district court reasoned, though the Allotment Act may protect Mr. Wheeler's interest in the allotment and may exempt him from the tax, it does not protect his corporation. *Id.* The district court's creation of a "corporate" exception to the protections confirmed in *Capoeman* ignores that under the tax at issue, the allotment is subject to forfeiture regardless of King Mountain's corporate identity, it runs contrary to the majority of holdings addressing the impact of incorporation on Indian businesses, and it undermines the policies supporting federal laws protecting Indians, including the General Allotment Act.

First, King Mountain's corporate status does not impact the government's authority to seize and forfeit Mr. Wheeler's allotment under the federal excise tax scheme, as discussed above.

Second, the majority of courts that have addressed this issue hold that an individual tribal member's protections or tax immunity extend to his or her wholly

owned business. So, for example, the South Dakota Supreme Court has held that a corporation owned by an enrolled tribal member residing on the Indian reservation is entitled to the same tax immunity as the tribal member. *Pourier v. S.D. Dep't of Rev.*, 658 N.W.2d 395, 404 (S.D. 2003), *opinion vacated in part on reh'g on other grounds*, 674 N.W.2d 314 (2003). Montana's Supreme Court has done so as well. *Flat Ctr. Farms, Inc. v. State Dep't of Rev.*, 49 P.3d 578 (Mont. 2002), *cert. denied*, 537 U.S. 1046 (2002).

Courts have refused to find that an individual loses the protections and exemptions he or she may hold as a tribal member by electing to organize as a corporation. *Pourier*, 658 N.W.2d at 404 ("Behind incorporation, there remain individuals who maintain a distinct racial identity that protects them from some government action."). In so holding, these courts have "agree[d] with this recognition by courts and Congress that the identity of those owning and operating a business is pertinent to classification of the entity itself." *Id.* at 405.

Case law also confirms that the Yakama Treaty's economic protections extend to tribal member-owned businesses. *See Yakama Indian Nation*, 955 F. Supp. 1229 (extending treaty rights to two tribal member-owned corporations, Tiin-Ma Logging Company and Wheeler Logging); *Cree II*, 157 F.3d 762 (affirming same).

Moreover, the minutes of the treaty negotiations confirm that the United States envisioned that individual Yakama people would benefit from developing organized businesses. Specifically, during the treaty negotiations, Governor Stevens informed the Yakama people that:

> I told the Great Father, these men have farms; the Great Father said I want them to have more and larger farms; I told him you had cattle and horses; he answered that he wanted your horses and cattle to increase: I told him some of your grown people could read and write: He answered, I want all the grown people and all the children to learn to read and write; I told him that some of you were handy at trades; he answered, that he desired to give all who choose the means to learn those trades.

Treaty Minutes ECF No. 1-2 at 73, ER 318; Decl. of Fisher at ¶ 12, ECF No. 141-3 at 4, ER 138. Governor Stevens further stated:

> Then you the men will be farmers and mechanics, or you will be doctors and lawyers like white men; your women and your daughters will then teach their children, those who come after them to spin, to weave, to knit, to sew, and all the work of the house and lodges, you will have your own teachers, your own farmers, blacksmiths, wheelwrights and mechanics: besides this we want on each tract a saw mill and a grist mill.

Treaty Minutes ECF No. 1-2 at 75, ER 320; Decl. of Fisher at ¶ 12, ECF No. 141-3 at 4, ER 133.

Finally, significant policy considerations weigh heavily in favor of treating an Indian business entity the same as the Indian owner for tax purposes. As noted in *Pourier*:

> Congress' primary objective in Indian law for several decades has been to encourage tribal economic independence and development.

> By finding that incorporation under state law deprives a business of its Indian identity, we would force economic developers on reservations to forgo the benefits of incorporation in order to maintain their guaranteed protections under federal Indian law.

658 N.W.2d at 405; *accord Flat Ctr. Farms, Inc.*, 49 P.3d 578. This policy is confirmed in federal laws that allow corporations to benefit from the status of their tribal member-owners. *E.g.*, 15 U.S.C. § 631 (SBA Office of Native American Affairs offering programs and resources available to American Indians seeking to create, develop and expand small businesses), Add. 1-6; 25 U.S.C. § 1481 (Indian Loan Guaranty and Interest Subsidy Program providing financing for Indian-owned businesses that significantly contribute to a Tribe's economy) Add. 8.

Similar to these other federal programs, the basic purpose of the General Allotment Act was to promote Indian economic self-sufficiency to a point where Indians could compete in the American economic world. *Capoeman*, 351 U.S. at 10 ("Unless the proceeds of the timber sale are preserved for respondent, he cannot go forward when declared competent with the necessary change of economic survival in competition with others."). Denying the Act's protections to Indian's who incorporate would be a judicial denial of access to the most important business tool available to achieve economic self-sufficiency. *Id.* ("To tax respondent under these circumstances would, in the words of the court below, be 'at the least, a sorry breach of faith with these Indians.'") (citation omitted). By declining to extend the General Allotment Act protections confirmed in *Capoeman*

to a corporation wholly owned by a tribal member, the district court effectively penalizes Native Americans who choose to conduct their business by incorporating under tribal law.

III. The Yakama Treaty Contains "Express Exemptive Language."

A. Treaty and Statutory Tax Exemptions Need Not Be Explicit.

Native Americans, in ordinary affairs of life not governed by treaties or remedial legislation, are subject to federal taxes. However, Native Americans may be exempt from federal taxation by treaty or statute. *Squire v. Capoeman*, 351 U.S. 1, 6 (1956). When a federal tax is involved, the existence of a statutory or treaty exemption "depends on whether express exemptive language exists within the text of the statute or treaty." *Ramsey*, 302 F.3d at 1078. This exemptive language "need not explicitly state that Indians are exempt from the specific tax at issue; it must only provide evidence of the federal government's intent to exempt Indians from taxation." *Id.* "Treaty language such as 'free from incumbrance,' 'free from taxation,' and 'free from fees,' are but some examples of express exemptive language required to find Indians exempt from federal tax." *Id.* at 1078-79. The Yakama Treaty contains such language.

The Yakama Treaty affirmed certain rights for the Yakama people beyond those rights they would have had without the Treaty and beyond rights that other citizens may have. *See Puyallup Tribe v. Dep't of Game*, 391 U.S. 392, 397 (1968)

("[T]o construe the treaty as giving the Indians 'no rights but such as they would have without the treaty' would be 'an impotent outcome to negotiations and a convention which seemed to promise more, and give the word of the Nation for more.'") (internal citation omitted); *Tulee v. Washington*, 315 U.S. 681, 684 (1942) (holding that "despite the phrase 'in common with citizens of the Territory,' Article III conferred upon the Yakamas continuing rights, *beyond those which other citizens may enjoy*, to fish at their 'usual and accustomed places'") (emphasis added). Among the rights confirmed by the Treaty are: (1) the "exclusive use and benefit" of their lands, explicitly reserved in Article II of the Treaty; (2) the right to travel and trade outside the boundaries of the reservation free from economic restrictions, explicitly reserved in Article III of the Treaty; and (3) the right to hold their allotted lands "exempt from levy, sale, or forfeiture" guaranteed in Article VI of the Treaty.

In granting Appellees' motion for summary judgment, the district court improperly imposed a requirement that the Yakama Treaty contain "express exemptive language *applicable to the manufacture of tobacco products*." Order, ECF No. 149 at 20, ER 20 (emphasis added). Under this constrained legal standard, the district court predictably found no exemption under the Treaty. *Id.* In so holding, the district court ignored this Court's guidance that the Treaty "need not explicitly state that Indians are exempt from the specific tax at issue; it must

only provide evidence of the federal government's intent to exempt Indians from taxation." *Ramsey*, 302 F.3d at 1078.

B. The District Court Erred When it Failed to Apply the Indian Canons of Treaty Construction.

In *Capoeman*, the Supreme Court applied Indian canons of treaty construction to the Quinault Treaty, in part because of the Court's finding that the General Allotment Act and Treaty Act claims together required that it do so. 351 U.S. 1, 2 ("The question presented is whether the proceeds of the sale by the United States Government of standing timber on allotted lands on the Quinaielt Indian Reservation may be made subject to capital gains tax, consistently with *applicable treaty and statutory provisions* and the Government's role as respondents' trustee and guardian" (emphasis added)). That exact same analysis must apply in this case. Additionally, under the controlling law in this Circuit, "[t]he applicability of a federal tax to Indians depends on whether express exemptive language exists within the text of the statute or treaty." *Ramsey* 302 F.3d at 1078. This general rule is subject to the following instruction, however: "[t]he language *need not explicitly state that Indians are exempt from the specific tax at issue*; it must only provide *evidence of the federal government's intent to exempt Indians from taxation*." *Id.* (emphasis added). Under this instruction, when the treaty contains express exemptive language, then "any ambiguities as to

whether the exemptive language applies to the tax at issue should be construed in favor of the Indians." *Id.* at 1079.

This controlling precedent required that the district court apply a two-step process when it construed the Yakama Treaty: (1) determine whether the articles of the Treaty contain exemptive language either alone or when read together with the General Allotment Act; and (2) if so, apply treaty canons of construction favoring the Yakama Nation's understanding of the Treaty language to determine whether the exemption applies to the federal tobacco excise tax.[13] But instead of applying this required analysis, the district court viewed only whether, within its four corners, the Treaty contained explicit language exempting the Yakama people from the federal tax, and held that it does not. Specifically, the district court applied the following legal standard: whether either the Yakama Treaty "contains express exemptive language applicable to the manufacture of tobacco products." ECF No. 149 at 19; ER19. Such a restriction on treaty interpretation renders the canons of construction meaningless. If the Treaty is required to have explicit

[13] The Third and Eighth Circuit Courts of Appeal recognize the potential conflict between the Indian canon and federal tax canons in the context of Indian treaties and have appropriately harmonized the two. *See Holt v. Comm'r of Internal Revenue*, 364 F.2d 38, 40 (8th Cir. 1966) (holding that courts must look to the Indian canons if there is a basis in a treaty's text "which can reasonably be construed to confer income exemptions"); *Lazore v. Comm'r of Internal Revenue*, 11 F.3d 1180, 1184-85 (3d Cir. 1993) ("This formulation gives appropriate weight to the notion that a treaty-based tax exemption must have a textual basis and accounts for the interpretive rules applicable to Indian treaties"). *See also Cook v. United States*, 32 Fed. Cl. 170, 174-75 (1994).

language exempting the Yakama people from the specific tobacco excise tax, then there would be no need to employ the canons of construction, because the Treaty would be dispositive. Neither this Court nor the Supreme Court has ever endorsed such a constrained standard of treaty construction.

C. Article II of the Yakama Treaty Contains Express Exemptive Language.

Article II of the Yakama Treaty provides:

> There is, however, reserved, from the lands above ceded for the use and occupation of the aforesaid confederated tribes and bands of Indians, the tract of land [described in the Treaty text].
>
> All which tract shall be set apart and, so far as necessary, surveyed and marked out, *for the exclusive use and benefit* of said confederated tribes and bands of Indians, as an Indian reservation, nor shall any white man, excepting those in the employment of the Indian Department, be permitted to reside upon the said reservation without permission of the tribe and the superintendent and agent.

Treaty, Add. 39-45 (emphasis added). Article II confirms that the Yakama people were to be the sole residents of the reserved lands ("use and occupation") and were to be the sole beneficiaries of the resources cultivated on their reserved lands ("exclusive use and benefit"). *Id.*

The term "exclusive use" alone was used in the Quinaielt treaty and was sufficiently express for the district court, this Court and the Supreme Court to apply the Indian canons of construction in *Capoeman*. Yet the Yakama Treaty guarantees both exclusive use and exclusive "benefit" – a much broader

confirmation of the intent of the parties to protect the Yakama from federal taxation.

"Exclusive" is not an ambiguous term, and is sufficiently express to confirm that the Yakama reserved their right to be free from federal taxation when exercising their right to "exclusive use and benefit" of their reserved lands. At the time of the treaty negotiations, the Yakama were fighting to keep others from exploiting Yakama land. In negotiating peace, they secured the right to be the only people who would benefit from the fraction of land they were able to keep. *See Swim v. Bergland*, 696 F.2d 712, 716 (9th Cir. 1983) ("Land cession agreements between the United States and Indian tribes are to be interpreted as grants *by* the Indians *to* the United States. The Indians reserve any rights not explicitly granted.") (emphasis in original); *Skeem v. United States*, 273 F. 93, 95 (9th Cir. 1921) ("The grant was not a grant to the Indians, but was a grant from the Indians to the United States, and such being the case all rights not specifically granted were reserved to the Indians.").

The word "exclusive" is at least sufficiently express to confirm a genuine issue of material fact that must be resolved at trial, through testimony of Yakama elders as to the Yakama people's understanding of that term. *Cree II*, 157 F.3d at 773-74 ("[t]estimony of this sort by Yakama elders has been sanctioned for over twenty years"); SOF at ¶ 24, ECF No. 141 at 8 ER 48.

That the phrase "exclusive use and benefit" is an express exemption is further confirmed by viewing the Treaty as a whole. "Exclusive" is used in the Treaty only in Article II (guaranteeing the "exclusive use and benefit of" the reservation to the Yakama) and Article III (providing for the "exclusive right of taking fish"). The phrase "use and benefit" alone (without inclusion of the word "exclusive") is used in the Treaty in Articles IV and X. The addition of "exclusive" in Article II is critical, especially given its omission in other provisions in the Treaty. Reading Article II as part of the larger Treaty confirms that there is a genuine issue of material fact as to whether the "exclusive" promise was and is sufficiently express that it requires looking beyond the face of the Treaty to determine whether the Treaty bars the tax at issue here.

To deny the exemptive intention of the term "exclusive use and benefit" in Article II of the Treaty, the district court relied heavily on *Hoptowit v. CIR*, 709 F.2d 564 (9th Cir. 1983). ECF No. 149 at 15-16; ER 15-14. *Hoptowit*, however, does not weaken the Yakama Nation's claims here. First, unlike the case now before this Court, *Hoptowit* did not involve General Allotment Act claims. In *Capoeman*, the United States Supreme Court held that when both Treaty and General Allotment Act claims are at issue, the courts apply the Indian canons of treaty construction. *Capoeman*, 351 U.S. at 6. Second, *Hoptowit* only addressed per diem payments received by a Tribal Council member that were not related to

an allotment or manufacture of a product on an allotment. 709 F.2d at 565-566. Specifically, the Ninth Circuit drew a line as to the express exemptive language contained in Article II of the Treaty between "income derived directly from the land" – which is exempt – and "use of that income to compensate Hoptowit for his service as a Tribal Council Member" – which is not exempt. *Id.* at 566. *Hoptowit*, therefore, preserved Article II's guarantee of exclusive use and benefit of reservation lands as applied to taxation of reservation based manufacturing operations using reservation derived resources. At a minimum, it does not foreclose application of the Indian treaty canons of construction to the required analysis of Article II's guarantee of exclusive use and benefit.

As part of this general canon of treaty construction, terms in treaties are to be construed as the Indian tribe or person would have understood them. *United States v. Shoshone Tribe*, 304 U.S. 111, 116 (1938) (treaties "are not to be interpreted narrowly, as sometimes may be writings expressed in words of art employed by conveyancers, but are to be construed in the sense in which naturally the Indians would understand them"); *United States v. Winans*, 198 U.S. 371, 380-81 (1905) ("we have said we will construe a treaty with the Indians as [the Indians] understood it"); *Tulee*, 315 U.S. at 684-85 ("It is our responsibility to see that the terms of the treaty are carried out, so far as possible, in accordance with the meaning they were understood to have by the tribal representatives at the

council"). Sources beyond the treaty necessarily aid that interpretation. *Winans*, 198 U.S. at 381 ("How the treaty in question was understood may be gathered from the circumstances.").

When negotiating the Yakama Treaty, the United States, and its agents Governor Stevens and General Palmer, certainly knew about taxes. The Yakama negotiators, however, did not. Yet the word "tax" was not included in the Treaty or discussed in the negotiations as confirmed by the Minutes. Indeed, it was inconceivable that Yakama people had any concept of taxation in 1855. *See Yakama Indian Nation*, 955 F. Supp. at 1244. And it is inconceivable that Governor Stevens and General Palmer imagined that Yakama members would ever be subject to federal taxes on products the Yakama produced on their reservation.

The Yakama negotiators could not see into the future and demand more than the "exclusive benefit" of their reserved lands – exempting themselves and their people from unimaginable charges and assessments that might be imposed at some future date by the very government that was promising the Yakama people that they would be the exclusive beneficiaries of that fraction of their lands they were allowed to retain. SOF at ¶24, ECF No. 141 at 8, ER 43. 351 U.S. at 8 ("the allotment shall be free from all taxes, both those in being and those which might in the future be enacted"). Indeed, Governor Stevens and General Palmer did not demand that the Yakama negotiators grant federal taxation as a treaty concession,

something which had it been important, the federal government certainly could, and would, have done. *Accord Capoeman*, 351 U.S. at 8 ("it is not lightly to be assumed that Congress intended to tax the ward for the benefit of the guardian" (citation omitted)).

Because the Yakama people reserved the right to the exclusive use and benefit of their land, the only way that exclusivity could be denied is for Congress to express a clear intent to do so. *Smiskin*, 487 F.3d at 1264 ("'federal statute of general applicability that is silent on the issue of applicability to Indian tribes will not apply to them if . . . the application of the law to the tribe would abrogate rights guaranteed by Indian treaties'" (citations omitted)). There is no evidence that in passing the tobacco excise tax, Congress expressly abrogated the Yakama's treaty right to be the exclusive government that benefits from processing trust land products on Yakama land. SOF at ¶ 17, ECF No. 141 at 5, ER 45, Decl. of Fisher, ECF No. 141-3 at ¶ 10, ER 135-136. At a minimum, the district court was required to take evidence from Yakama elders and experts as to whether the Yakama understood "exclusive use and benefit" in Article II to exempt them from the excise taxes imposed on these products. *Smiskin*, 487 F.3d at 1264.

D. Article III of the Yakama Treaty Contains Express Exemptive Language.

Although Article II's promise of "exclusive use and benefit" is sufficiently express to require presentation of facts on the issue of the Yakama understanding

of the Treaty's protections, the Yakama Nation also sought to avoid summary judgment based on the express language of Article III of the Yakama Treaty. Article III states, in pertinent part:

> if necessary for the public convenience, roads may be run through the said reservation; and on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them; as also the right, in common with citizens of the United States, to travel upon all public highways.

Treaty With the Yakama, 12 Stat. 951 (1855); Add. 39-45. This Court has interpreted Article III as unequivocally prohibiting imposition of economic restrictions or pre-conditions on the Yakama people's treaty right to engage in the trade of tobacco products:

> Thus, whether the goods at issue are timber or tobacco products, the right to travel overlaps with the right to trade under the Yakama Treaty such that excluding commercial exchanges from its purview would effectively abrogate our decision in *Cree II* and render the Right to Travel provision truly impotent.

Smiskin, 487 F.3d at 1266-67; *see also Yakama Indian Nation*, 955 F. Supp. at 1248 (holding that "the language of the Treaty, when viewed in the historical context as the Yakamas would have understood it, unambiguously reserves to the Yakamas the right to travel the public highways without restriction for purposes of hauling goods to market").

In granting summary judgment against the Yakama Nation, the district court relied on this Court's prior refusal to apply Article III's provisions to exempt an

individual tribal member from federal heavy vehicle and diesel fuel taxes. ECF No. 149 at 17-18 (citing *Ramsey*, 302 F.3d at 1080). *Ramsey*, however, is not dispositive of the Yakama Nation's Article III claims in this case, and the district court improperly construed *Ramsey* as holding that Article III can never be read to contain exemptive language sufficient to require application of the Indian canons of treaty construction when reviewing application of federal taxes.

First, the claims in *Ramsey* did not concern Article III's travel and trade guarantees as they relate to other Treaty provisions, including Article II's promise of exclusive use and benefit and Article VI's guarantee that allotted lands would not be encumbered. Proper determination of the exemptive language issue requires review of the Treaty as a whole, not in isolated fragments. *Ramsey* does not require that Article III of the Treaty be read in isolation nor does it hold that the Yakama Nation cannot prove its Article III claims through reference to the Treaty as a whole. *See Boise Cascade Corp. v. E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991) ("Under accepted canons of statutory interpretation, we must interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous."); *Kennewick Irr. Dist. v. United States*, 880 F.2d 1018, 1032 (9th Cir. 1989) ("A written contract must be read as a whole

and every part interpreted with reference to the whole.") (citations and internal quotation marks omitted).

Moreover, *Ramsey* did not involve reservation based manufacturing activities – rather, it concerned the tools of trade used off reservation to haul off reservation goods to market. In *Ramsey*, the challenged federal tax targeted exclusively off-reservation activities – heavy vehicle and diesel fuel taxes – so the tribal member plaintiff limited his legal claims to Article III. 302 F.3d at 1076 ("Ramsey argues that the 'in common with' language in the highway use provision of the Treaty creates an exemption from the federal heavy vehicle and diesel fuel taxes."). Ramsey did not urge a reading of Article III in the context of the entire Treaty, including Articles II and VI, because the tax at issue had nothing to do with allotted lands and instead was imposed exclusively on the instruments used to transport the goods, rather than the goods themselves.

This case, however, involves the trade of goods manufactured on, and incorporating the product of, Yakama trust lands. When considering trade goods, as opposed to equipment and fuel used in the transport of goods, the Ninth Circuit has reached the opposite result. *Smiskin*, 487 F.3d at 1266 ("the Yakamas understood the Treaty at the time of signing to "unambiguously reserve [ ] to [them] the right to travel the public highways *without restriction* for purposes of hauling goods to market") (emphasis in original and citations omitted).

Here, in contrast, Article III's trade and travel provisions – when read together with Article II's "exclusive use and benefit" guarantee and Article VI's restrictions on encumbering allotted lands – provides language sufficiently express to require application of the Indian canons of treaty construction to determine whether the Yakama Nation and its people are exempt from the tax imposed on these trust derived products manufactured on Yakama trust land. Thus, *Ramsey*'s precedential value is limited to the finding that Article III's travel and trade provision "does not provide express language from which we can discern an intent to exempt the Yakama from federal heavy vehicle and diesel fuel taxation." *Id.* at 1080. The district court erred when it construed *Ramsey* as being dispositive *in toto* of all future claims of federal tax exemption under Article III of the Treaty.

E. Article VI of the Yakama Treaty Contains Express Exemptive Language Nearly Identical to Language in the General Allotment Act.

In this case, as in *Capoeman*: "The Government urges us to view this case as an ordinary tax case without regard to the treaty, relevant statutes, congressional policy concerning Indians, or the guardian-ward relationship between the United States and these particular Indians." *Capoeman*, 351 U.S. at 5-6. But here, as in *Capoeman*, and because of *Capoeman's* controlling precedential authority, the Court must reject that argument.

In *Capoeman*, the Supreme Court confirmed that the phrase in the text of the General Allotment Act prohibiting any "charge or incumbrance" on allotted lands was sufficient to include taxation, particularly in light of subsequent amendments to the Act. 351 U.S. at 7. That same approach is required under the similar language contained in Article VI of the Yakama Treaty.

Article VI of the Yakama Treaty provides for allotment lands to be directed "by the President." The Treaty goes on to provide these lands will be administered "on the same terms and subject to the same regulations as provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable". The Omaha Treaty includes the following language:

> "…And the President may, at any time, in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; **and shall be exempt from levy, sale, or forfeiture**, which conditions shall continue in force,…

Treaty With The Omaha of March 16, 1854, ratified April 17, 1854, 10 Stats. 1043, Article 6, Disposition of Lands Reserved, at p. 612 (emphasis added). Thus, the allotment system contained within the Yakama Treaty includes a prohibition against liens, levies or forfeitures similar to that contained in the General Allotment Act. Because this Court and the Supreme Court have confirmed that such language is sufficiently express to require application of the Indian canons of construction, those canons must be applied in this case. And, as noted above in the

context of the General Allotment Act, because the excise tax at issue here directly imposes a forfeiture and lien against allotted property as part of its tax provisions, it cannot be imposed on the Yakama Nation consistent with Article VI of the Yakama Treaty.

CONCLUSION

The district court erred when it failed to apply Indian canons of construction to the Yakama Nation's General Allotment Act claims. This Court should reverse that error, and confirm that the General Allotment Act's protections extend to manufactured products, prohibit taxes that allow encumbrance and forfeiture of allotted lands, and protect allotment holders even if they choose to incorporate their business. The Court should also hold that the Yakama Treaty contains express language confirming an intent to exempt the Yakama people from this federal tax, or at least language sufficiently express to require application of Indian canons of treaty and statutory construction.

July 14, 2014

Respectfully submitted,

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STATEMENT OF RELATED CASES

The Yakama Nation is involved in an appeal addressing the scope of the State of Washington's regulatory authority under the Yakama Treaty, but that appeal does not involve federal tax authority or the General Allotment Act. *King Mountain Tobacco Company v. Robert McKenna*, Case No. 13-3560 before this Court.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

I certify that pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached opening brief is proportionately spaced, has a typeface of 14 points or more and contains 13,177 words.

July 14, 2014

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CERTIFICATE OF SERVICE

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on July 14, 2014. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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ADDENDUM

ADDENDUM

Effective: September 27, 2010

United States Code Annotated Currentness
Title 15. Commerce and Trade
Chapter 14A. Aid to Small Business (Refs & Annos)

§ 631. Declaration of policy

(a) Aid, counsel, assistance, etc., to small business concerns

The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.

(b) Assistance to compete in international markets

(1) It is the declared policy of the Congress that the Federal Government, through the Administrator of the Small Business Administration, acting through the Associate Administrator for International Trade, and in cooperation with the Department of Commerce and other relevant State and Federal agencies, should aid and assist small businesses, as defined under this chapter, to increase their ability to compete in international markets by--

(A) enhancing their ability to export;

(B) facilitating technology transfers;

(C) enhancing their ability to compete effectively and efficiently against imports;

(D) increasing the access of small businesses to long-term capital for the purchase of new plant and equipment used in the production of goods and services involved in international trade;

Addendum 1

(E) disseminating information concerning State, Federal, and private programs and initiatives to enhance the ability of small businesses to compete in international markets; and

(F) ensuring that the interests of small businesses are adequately represented in bilateral and multilateral trade negotiations.

(2) The Congress recognizes that the Department of Commerce is the principal Federal agency for trade development and export promotion and that the Department of Commerce and the Small Business Administration work together to advance joint interests. It is the purpose of this chapter to enhance, not alter, their respective roles.

(c) Aid for agriculturally related industries; financial assistance

It is the declared policy of the Congress that the Government, through the Small Business Administration, should aid and assist small business concerns which are engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and the financial assistance programs authorized by this chapter are also to be used to assist such concerns.

(d) Use of assistance programs to establish, preserve, and strengthen small business concerns

(1) The assistance programs authorized by sections 636(i) and 636(j) of this title are to be utilized to assist in the establishment, preservation, and strengthening of small business concerns and improve the managerial skills employed in such enterprises, with special attention to small business concerns (1) located in urban or rural areas with high proportions of unemployed or low-income individuals; or (2) owned by low-income individuals; and to mobilize for these objectives private as well as public managerial skills and resources.

(2)(A) With respect to the programs authorized by section 636(j) of this title, the Congress finds--

(i) that ownership and control of productive capital is concentrated in the economy of the United States and certain groups, therefore, own and control little productive capital;

(ii) that certain groups in the United States own and control little productive capital because they have limited opportunities for small business ownership;

(iii) that the broadening of small business ownership among groups that presently own and control little productive capital is essential to provide for the well-being of this Nation by promoting their increased participation in the free enterprise system of the United States;

(iv) that such development of business ownership among groups that presently own and control little product-

Addendum 2

ive capital will be greatly facilitated through the creation of a small business ownership development program, which shall provide services, including, but not limited to, financial, management, and technical assistance. [FN1]

(v) that the power to let Federal contracts pursuant to section 637(a) of this title can be an effective procurement assistance tool for development of business ownership among groups that own and control little productive capital; and

(vi) that the procurement authority under section 637(a) of this title shall be used only as a tool for developing business ownership among groups that own and control little productive capital.

(B) It is therefore the purpose of the programs authorized by section 636(j) of this title to--

(i) foster business ownership and development by individuals in groups that own and control little productive capital; and

(ii) promote the competitive viability of such firms in the marketplace by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.

(e) Assistance to victims of floods, etc., and those displaced as result of federally aided construction programs

Further, it is the declared policy of the Congress that the Government should aid and assist victims of floods and other catastrophes, and small-business concerns which are displaced as a result of federally aided construction programs.

(f) Findings; purpose

(1) with [FN2] respect to the Administration's business development programs the Congress finds--

(A) that the opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic equality for such persons and improve the functioning of our national economy;

(B) that many such persons are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(C) that such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans,

Addendum 3

Indian tribes, Asian Pacific Americans, Native Hawaiian Organizations, and other minorities;

(D) that it is in the national interest to expeditiously ameliorate the conditions of socially and economically disadvantaged groups;

(E) that such conditions can be improved by providing the maximum practicable opportunity for the development of small business concerns owned by members of socially and economically disadvantaged groups;

(F) that such development can be materially advanced through the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from such concerns; and

(G) that such procurements also benefit the United States by encouraging the expansion of suppliers for such procurements, thereby encouraging competition among such suppliers and promoting economy in such procurements.

(2) It is therefore the purpose of section 637(a) of this title to--

(A) promote the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete on an equal basis in the American economy;

(B) promote the competitive viability of such concerns in the marketplace by providing such available contract, financial, technical, and mangement [FN3] assistance as may be necessary; and

(C) clarify and expand the program for the procurement by the United States of articles, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.

(g) Assistance to disaster victims under disaster loan program

In administering the disaster loan program authorized by section 636 of this title, to the maximum extent possible, the Administration shall provide assistance and counseling to disaster victims in filing applications, providing information relevant to loan processing, and in loan closing and prompt disbursement of loan proceeds and shall give the disaster program a high priority in allocating funds for administrative expenses.

(h) Assistance to women owned business

(1) With respect to the programs and activities authorized by this chapter, the Congress finds that--

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(A) women owned business has become a major contributor to the American economy by providing goods and services, revenues, and jobs;

(B) over the past two decades there have been substantial gains in the social and economic status of women as they have sought economic equality and independence;

(C) despite such progress, women, as a group, are subjected to discrimination in entrepreneurial endeavors due to their gender;

(D) such discrimination takes many overt and subtle forms adversely impacting the ability to raise or secure capital, to acquire managerial talents, and to capture market opportunities;

(E) it is in the national interest to expeditiously remove discriminatory barriers to the creation and development of small business concerns owned and controlled by women;

(F) the removal of such barriers is essential to provide a fair opportunity for full participation in the free enterprise system by women and to further increase the economic vitality of the Nation;

(G) increased numbers of small business concerns owned and controlled by women will directly benefit the United States Government by expanding the potential number of suppliers of goods and services to the Government; and

(H) programs and activities designed to assist small business concerns owned and controlled by women must be implemented in such a way as to remove such discriminatory barriers while not adversely affecting the rights of socially and economically disadvantaged individuals.

(2) It is, therefore, the purpose of those programs and activities conducted under the authority of this chapter that assist women entrepreneurs to--

(A) vigorously promote the legitimate interests of small business concerns owned and controlled by women;

(B) remove, insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production; and

(C) require that the Government engage in a systematic and sustained effort to identify, define and analyze those discriminatory barriers facing women and that such effort directly involve the participation of women business owners in the public/private sector partnership.

(i) Prohibition on use of funds for individuals not lawfully within United States

Addendum 5

None of the funds made available pursuant to this chapter may be used to provide any direct benefit or assistance to any individual in the United States if the Administrator or the official to which the funds are made available receives notification that the individual is not lawfully within the United States.

(j) Contract bundling

In complying with the statement of congressional policy expressed in subsection (a) of this section, relating to fostering the participation of small business concerns in the contracting opportunities of the Government, each Federal agency, to the maximum extent practicable, shall--

(1) comply with congressional intent to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers;

(2) structure its contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation; and

(3) avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors.

CREDIT(S)

(Pub.L. 85-536, § 2[2], July 18, 1958, 72 Stat. 384; Pub.L. 87-70, Title III, § 305(b), June 30, 1961, 75 Stat. 167; Pub.L. 87-305, § 6, Sept. 26, 1961, 75 Stat. 667; Pub.L. 93-386, § 2(a)(1), Aug. 23, 1974, 88 Stat. 742; Pub.L. 94-305, Title I, § 112(a), June 4, 1976, 90 Stat. 667; Pub.L. 95-507, Title II, §§ 201, 203, Oct. 24, 1978, 92 Stat. 1760, 1763; Pub.L. 96-302, Title I, § 118(a), July 2, 1980, 94 Stat. 840; Pub.L. 99-272, Title XVIII, § 18015(a), Apr. 7, 1986, 100 Stat. 370; Pub.L. 100-418, Title VIII, § 8002, Aug. 23, 1988, 102 Stat. 1553; Pub.L. 100-533, Title I, § 101, Oct. 25, 1988, 102 Stat. 2689; Pub.L. 100-590, Title I, § 118, Nov. 3, 1988, 102 Stat. 2999; Pub.L. 100-656, Title II, §§ 204, 207(b), Nov. 15, 1988, 102 Stat. 3859, 3861; Pub.L. 101-37, § 6(c), June 15, 1989, 103 Stat. 72; Pub.L. 103-403, Title VI, § 609, Oct. 22, 1994, 108 Stat. 4204; Pub.L. 105-135, § 411, Dec. 2, 1997, 111 Stat. 2617; Pub.L. 111-240, Title I, 1203(d), Sept. 27, 2010, 124 Stat. 2522.)

[FN1] So in original. The period probably should be a semicolon.

[FN2] So in original. Probably should be capitalized.

[FN3] So in original. Probably should be “management”.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1958 Acts. Senate Report No. 1714 and Conference Report No. 2135, see 1958 U.S. Code Cong. and Adm.

Addendum 6

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 25. Indians
Chapter 9. Allotment of Indian Lands
§ 349. Patents in fee to allottees

At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section 348 of this title, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law: *Provided*, That the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent: *Provided further*, That until the issuance of fee-simple patents all allottees to whom trust patents shall be issued shall be subject to the exclusive jurisdiction of the United States: *And provided further*, That the provisions of this Act shall not extend to any Indians in the former Indian Territory.

CREDIT(S)

(Feb. 8, 1887, c. 119, § 6, 24 Stat. 390; May 8, 1906, c. 2348, 34 Stat. 182.)

HISTORICAL AND STATUTORY NOTES

References in Text

This Act, referred to in text, is Act Feb. 8, 1887, c. 119, 24 Stat. 388, as amended, and is popularly known as the Indian General Allotment Act. For classification of this Act to the Code, see Short Title note set out under § 331 of this title and Tables.

Codifications

Act May 8, 1906 substituted “At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section 348 of this title, then each and every allottee” for “Upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made” and added the three provisos.

Addendum 7

Effective: May 12, 2006

United States Code Annotated Currentness
Title 25. Indians
Chapter 17. Financing Economic Development of Indians and Indian Organizations
Subchapter II. Loan Guaranty and Insurance
§ 1481. Loan guaranties and insurance

(a) In general

In order to provide access to private money sources which otherwise would not be available, the Secretary may--

(1) guarantee not to exceed 90 per centum of the unpaid principal and interest due on any loan made to any organization of Indians having a form or organization satisfactory to the Secretary, and to individual Indians; or

(2) insure loans under an agreement approved by the Secretary whereby the lender will be reimbursed for losses in an amount not to exceed 15 per centum of the aggregate of such loans made by it, but not to exceed 90 per centum of the loss on any one loan.

(b) Eligible borrowers

The Secretary may guarantee or insure loans under subsection (a) of this section to both for-profit and nonprofit borrowers.

CREDIT(S)

(Pub.L. 93-262, Title II, § 201, Apr. 12, 1974, 88 Stat. 79; Pub.L. 98-449, § 4, Oct. 4, 1984, 98 Stat. 1725; Pub.L. 109-221, Title IV, § 401(a), May 12, 2006, 120 Stat. 341.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1974 Acts. House Report No. 93-907, see 1974 U.S. Code Cong. and Adm. News, p. 2873.

1984 Acts. House Report No. 98-991, see 1984 U.S. Code Cong. and Adm. News, p. 2889.

Addendum 8

I.R.C. § 4225

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle D. Miscellaneous Excise Taxes (Refs & Annos)
Chapter 32. Manufacturers Excise Taxes (Refs & Annos)
Subchapter G. Exemptions, Registration, Etc.

§ 4225. Exemption of articles manufactured or produced by Indians

No tax shall be imposed under this chapter on any article of native Indian handicraft manufactured or produced by Indians on Indian reservations, or in Indian schools, or by Indians under the jurisdiction of the United States Government in Alaska.

CREDIT(S)

(Added Pub.L. 85-859, Title I, § 119(a), Sept. 2, 1958, 72 Stat. 1286.)

Current through P.L. 113-120 approved 6-10-14

END OF DOCUMENT

Addendum 9

I.R.C. § 5702

Effective: July 6, 2012

United States Code Annotated Currentness
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle E. Alcohol, Tobacco, and Certain Other Excise Taxes (Refs & Annos)
Chapter 52. Tobacco Products and Cigarette Papers and Tubes (Refs & Annos)
Subchapter A. Definitions; Rate and Payment of Tax; Exemption from Tax; and Refund and Drawback of Tax (Refs & Annos)

§ 5702. Definitions

When used in this chapter--

(a) Cigar.--"Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (b)(2)).

(b) Cigarette.--"Cigarette" means--

(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1).

(c) Tobacco products.--"Tobacco products" means cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

(d) Manufacturer of tobacco products.--"Manufacturer of tobacco products" means any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco or roll-your-own tobacco, except that such term shall not include--

(1) a person who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the person's own personal consumption or use, and

(2) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse.

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Such term shall include any person who for commercial purposes makes available for consumer use (including such consumer's personal consumption or use under paragraph (1)) a machine capable of making cigarettes, cigars, or other tobacco products. A person making such a machine available for consumer use shall be deemed the person making the removal as defined by subsection (j) with respect to any tobacco products manufactured by such machine. A person who sells a machine directly to a consumer at retail for a consumer's personal home use is not making a machine available for commercial purposes if such machine is not used at a retail premises and is designed to produce tobacco products only in personal use quantities.

(e) Cigarette paper.--"Cigarette paper" means paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

(f) Cigarette tube.--"Cigarette tube" means cigarette paper made into a hollow cylinder for use in making cigarettes.

(g) Manufacturer of cigarette papers and tubes.--"Manufacturer of cigarette papers and tubes" means any person who manufactures cigarette paper, or makes up cigarette paper into tubes, except for his own personal use or consumption.

(h) Export warehouse.--"Export warehouse" means a bonded internal revenue warehouse for the storage of tobacco products or cigarette papers or tubes or any processed tobacco, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

(i) Export warehouse proprietor.--"Export warehouse proprietor" means any person who operates an export warehouse.

(j) Removal or remove.--"Removal" or "remove" means the removal of tobacco products or cigarette papers or tubes, or any processed tobacco, from the factory or from internal revenue bond under section 5704, as the Secretary shall by regulation prescribe, or release from customs custody, and shall also include the smuggling or other unlawful importation of such articles into the United States.

(k) Importer.--"Importer" means any person in the United States to whom nontaxpaid tobacco products or cigarette papers or tubes, or any processed tobacco, manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned; any person who removes cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse; and any person who smuggles or otherwise unlawfully brings tobacco products or cigarette papers or tubes into the United States.

(l) Determination of price on cigars.--In determining price for purposes of section 5701(a)(2)--

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(1) there shall be included any charge incident to placing the article in condition ready for use,

(2) there shall be excluded--

(A) the amount of the tax imposed by this chapter or section 7652, and

(B) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

(3) rules similar to the rules of section 4216(b) shall apply.

(m) Definitions relating to smokeless tobacco.--

(1) Smokeless tobacco.--The term "smokeless tobacco" means any snuff or chewing tobacco.

(2) Snuff.--The term "snuff" means any finely cut, ground, or powdered tobacco that is not intended to be smoked.

(3) Chewing tobacco.--The term "chewing tobacco" means any leaf tobacco that is not intended to be smoked.

(n) Pipe tobacco.--The term "pipe tobacco" means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

(o) Roll-your-own tobacco.--The term "roll-your-own tobacco" means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes or cigars, or for use as wrappers thereof.

(p) Manufacturer of processed tobacco.--

(1) In general.--The term "manufacturer of processed tobacco" means any person who processes any tobacco other than tobacco products.

(2) Processed tobacco.--The processing of tobacco shall not include the farming or growing of tobacco or the handling of tobacco solely for sale, shipment, or delivery to a manufacturer of tobacco products or processed tobacco.

Addendum 12

I.R.C. § 5702

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 706; Sept. 2, 1958, Pub.L. 85-859, Title II, § 202, 72 Stat. 1415; June 21, 1965, Pub.L. 89-44, Title V, § 502(b)(3), Title VIII, § 808(a), 79 Stat. 151, 164; Oct. 4, 1976, Pub.L. 94-455, Title XIX, § 1906(b)(13)(A), Title XXI, § 2128(b), 90 Stat. 1834, 1921; Apr. 7, 1986, Pub.L. 99-272, Title XIII, § 13202(b)(2) to (4), 100 Stat. 312; Nov. 10, 1988, Pub.L. 100-647, Title V, § 5061(b), (c)(1), (2), 102 Stat. 3679; Nov. 5, 1990, Pub.L. 101-508, Title XI, § 11202(g), 104 Stat. 1388-419; Aug. 5, 1997, Pub.L. 105-33, Title IX, §§ 9302(g)(2) to (3)(B)(ii), 9302(h)(4), 111 Stat. 672, 674; Dec. 21, 2000, Pub.L. 106-554, § 1(a)(7) [Title III, § 315(a)(2)], 114 Stat. 2763, 2763A-643; Feb. 4, 2009, Pub.L. 111-3, Title VII, § 702(a)(4), (5), (d)(1) , 123 Stat. 108, 110; Pub.L. 112-141, Div. F, Title I, § 100122(a), July 6, 2012, 126 Stat. 914.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1954 Acts. House Report No. 1337, Senate Report No. 1622, and Conference Report No. 2543, see 1954 U.S. Code Cong. and Adm. News, p. 4533.

1958 Acts. Senate Report No. 2090 and Conference Report No. 2596, see 1958 U.S. Code Cong. and Adm. News, p. 4395.

1965 Acts. House Report No. 433, Senate Report No. 324, and Conference Report No. 525, see 1965 U.S. Code Cong. and Adm. News, p. 1645.

1976 Acts. House Report Nos. 94-658, 94-1380, Senate Report No. 94-938, and House Conference Report No. 94-1515, see 1976 U.S. Code Cong. and Adm. News, p. 2897.

1986 Acts. House Report Nos. 99-241, 99-300, and Senate Report No. 99-146, see 1986 U.S. Code Cong. and Adm. News, p. 42.

1988 Acts. Senate Report No. 100-445 and House Conference Report No. 100-1104, see 1988 U.S. Code Cong. and Adm. News, p. 4515.

1990 Acts. House Report No. 101-881 and House Conference Report No. 101-964, see 1990 U.S. Code Cong. and Adm. News, p. 2017.

1997 Acts. House Report No. 105-149, House Conference Report No. 105-217, and Statement by President, see 1997 U.S. Code Cong. and Adm. News, p. 176.

2000 Acts. House Report No. 106-645 and Statement by President, see 2000 U.S. Code Cong. and Adm. News, p. 2459.

Addendum 13

I.R.C. § 5703

C

Effective: February 4, 2009

United States Code Annotated Currentness
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle E. Alcohol, Tobacco, and Certain Other Excise Taxes (Refs & Annos)
Chapter 52. Tobacco Products and Cigarette Papers and Tubes (Refs & Annos)
Subchapter A. Definitions; Rate and Payment of Tax; Exemption from Tax; and Refund and Drawback of Tax (Refs & Annos)

§ 5703. Liability for tax and method of payment

(a) Liability for tax.--

(1) Original liability.--The manufacturer or importer of tobacco products and cigarette papers and tubes shall be liable for the taxes imposed thereon by section 5701.

(2) Transfer of liability.--When tobacco products and cigarette papers and tubes are transferred, without payment of tax, pursuant to section 5704, the liability for tax shall be transferred in accordance with the provisions of this paragraph. When tobacco products and cigarette papers and tubes are transferred between the bonded premises of manufacturers and export warehouse proprietors, the transferee shall become liable for the tax upon receipt by him of such articles, and the transferor shall thereupon be relieved of his liability for such tax. When tobacco products and cigarette papers and tubes are released in bond from customs custody for transfer to the bonded premises of a manufacturer of tobacco products or cigarette papers and tubes, the transferee shall become liable for the tax on such articles upon release from customs custody, and the importer shall thereupon be relieved of his liability for such tax. All provisions of this chapter applicable to tobacco products and cigarette papers and tubes in bond shall be applicable to such articles returned to bond upon withdrawal from the market or returned to bond after previous removal for a tax-exempt purpose.

(b) Method of payment of tax.--

(1) In general.--The taxes imposed by section 5701 shall be determined at the time of removal of the tobacco products and cigarette papers and tubes. Such taxes shall be paid on the basis of return. The Secretary shall, by regulations, prescribe the period or the event for which such return shall be made and the information to be furnished on such return. Any postponement under this subsection of the payment of taxes determined at the time of removal shall be conditioned upon the filing of such additional bonds, and upon compliance with such requirements, as the Secretary may prescribe for the protection of the revenue. The Secretary may, by regulations, require payment of tax on the basis of a return prior to removal of the tobacco products and cigarette papers and tubes where a person defaults in the postponed payment of tax on the basis of a return under this subsection or regulations prescribed thereunder. All administrative and penalty provisions of this title, insofar as applicable, shall apply to any tax imposed by section 5701.

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(2) Time for payment of taxes.--

(A) In general.--Except as otherwise provided in this paragraph, in the case of taxes on tobacco products and cigarette papers and tubes removed during any semimonthly period under bond for deferred payment of tax, the last day for payment of such taxes shall be the 14th day after the last day of such semimonthly period.

(B) Imported articles.--In the case of tobacco products and cigarette papers and tubes which are imported into the United States--

(i) In general.--The last day for payment of tax shall be the 14th day after the last day of the semimonthly period during which the article is entered into the customs territory of the United States.

(ii) Special rule for entry for warehousing.--Except as provided in clause (iv), in the case of an entry for warehousing, the last day for payment of tax shall not be later than the 14th day after the last day of the semimonthly period during which the article is removed from the 1st such warehouse.

(iii) Foreign trade zones.--Except as provided in clause (iv) and in regulations prescribed by the Secretary, articles brought into a foreign trade zone shall, notwithstanding any other provision of law, be treated for purposes of this subsection as if such zone were a single customs warehouse.

(iv) Exception for articles destined for export.--Clauses (ii) and (iii) shall not apply to any article which is shown to the satisfaction of the Secretary to be destined for export.

(C) Tobacco products and cigarette papers and tubes brought into the United States from Puerto Rico.--In the case of tobacco products and cigarette papers and tubes which are brought into the United States from Puerto Rico, the last day for payment of tax shall be the 14th day after the last day of the semimonthly period during which the article is brought into the United States.

(D) Special rule for tax due in September.--

(i) In general.--Notwithstanding the preceding provisions of this paragraph, the taxes on tobacco products and cigarette papers and tubes for the period beginning on September 16 and ending on September 26 shall be paid not later than September 29.

(ii) Safe harbor.--The requirement of clause (i) shall be treated as met if the amount paid not later than September 29 is not less than 11/15 of the taxes on tobacco products and cigarette papers and tubes for the period beginning on September 1 and ending on September 15.

(iii) Taxpayers not required to use electronic funds transfer.--In the case of payments not required to be made by electronic funds transfer, clauses (i) and (ii) shall be applied by substituting “September 25”

for “September 26”, “September 28” for “September 29”, and “ 2/3 ” for “ 11/15 ”.

(E) Special rule where due date falls on Saturday, Sunday, or holiday.--Notwithstanding section 7503, if, but for this subparagraph, the due date under this paragraph would fall on a Saturday, Sunday, or a legal holiday (as defined in section 7503), such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday (or the immediately following day where the due date described in subparagraph (D) falls on a Sunday).

(F) Special rule for unlawfully manufactured tobacco products.--In the case of any tobacco products, cigarette paper, or cigarette tubes manufactured in the United States at any place other than the premises of a manufacturer of tobacco products, cigarette paper, or cigarette tubes that has filed the bond and obtained the permit required under this chapter, tax shall be due and payable immediately upon manufacture.

(3) Payment by electronic fund transfer.--Any person who in any 12-month period, ending December 31, was liable for a gross amount equal to or exceeding $5,000,000 in taxes imposed on tobacco products and cigarette papers and tubes by section 5701 (or 7652) shall pay such taxes during the succeeding calendar year by electronic fund transfer (as defined in section 5061(e)(2)) to a Federal Reserve Bank. Rules similar to the rules of section 5061(e)(3) shall apply to the $5,000,000 amount specified in the preceding sentence.

(c) Use of government depositaries.--The Secretary may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed by this chapter, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, time, and condition under which the receipt of such tax by such banks and trust companies is to be treated as payment for tax purposes.

(d) Assessment.--Whenever any tax required to be paid by this chapter is not paid in full at the time required for such payment, it shall be the duty of the Secretary, subject to the limitations prescribed in section 6501, on proof satisfactory to him, to determine the amount of tax which has been omitted to be paid, and to make an assessment therefor against the person liable for the tax. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error, no such assessment shall be made until and after the person liable for the tax has been afforded reasonable notice and opportunity to show cause, in writing, against such assessment.

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 707; Sept. 2, 1958, Pub.L. 85-859, Title II, § 202, 72 Stat. 1417; Oct. 4, 1976, Pub.L. 94-455, Title XIX, §§ 1905(a)(25), 1906(b)(13)(A), 90 Stat. 1821, 1834; Jan. 12, 1983, Pub.L. 97-448, Title III, § 308(a), 96 Stat. 2407; July 18, 1984, Pub.L. 98-369, Div. A, Title I, § 27(c)(2), 98 Stat. 509; Oct. 21, 1986, Pub.L. 99-509, Title VIII, § 8011(a)(1), 100 Stat. 1951; Oct. 22, 1986, Pub.L. 99-514, Title XVIII, § 1801(c)(2), 100 Stat. 2786; Nov. 10, 1988, Pub.L. 100-647, Title II, § 2003(b)(1)(C), (D), 102 Stat. 3598; Dec.

I.R.C. § 5703

8, 1994, Pub.L. 103-465, Title VII, § 712(c), 108 Stat. 5000; Feb. 4, 2009, Pub.L. 111-3, Title VII, § 702(e)(1), 123 Stat. 110.)

Current through P.L. 113-120 approved 6-10-14

END OF DOCUMENT

I.R.C. § 5761

Effective: December 20, 2006

United States Code Annotated Currentness
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle E. Alcohol, Tobacco, and Certain Other Excise Taxes (Refs & Annos)
Chapter 52. Tobacco Products and Cigarette Papers and Tubes (Refs & Annos)
Subchapter G. Penalties and Forfeitures (Refs & Annos)

§ 5761. Civil penalties

(a) Omitting things required or doing things forbidden.--Whoever willfully omits, neglects, or refuses to comply with any duty imposed upon him by this chapter, or to do, or cause to be done, any of the things required by this chapter, or does anything prohibited by this chapter, shall, in addition to any other penalty provided in this title, be liable to a penalty of $1,000, to be recovered, with costs of suit, in a civil action, except where a penalty under subsection (b) or (c) or under section 6651 or 6653 or part II of subchapter A of chapter 68 may be collected from such person by assessment.

(b) Failure to pay tax.--Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this title, be liable to a penalty of 5 percent of the tax due but unpaid.

(c) Sale of tobacco products and cigarette papers and tubes for export.--Except as provided in subsections (b) and (d) of section 5704--

(1) every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation under this chapter,

(2) every person who sells or receives such relanded tobacco products or cigarette papers or tubes, and

(3) every person who aids or abets in such selling, relanding, or receiving,

shall, in addition to the tax and any other penalty provided in this title, be liable for a penalty equal to the greater of $1,000 or 5 times the amount of the tax imposed by this chapter. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States shall be forfeited to the United States and destroyed. All vessels, vehicles, and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States. This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty

under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity.

(d) Personal use quantities.--

(1) In general.--No quantity of tobacco products other than the quantity referred to in paragraph (2) may be relanded or received as a personal use quantity.

(2) Exception for personal use quantity.--Subsection (c) and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States, and such person may voluntarily relinquish to the Secretary at the time of entry any excess of such quantity without incurring the penalty under subsection (c).

(3) Special rule for delivery sales.--

(A) In general.--Paragraph (2) shall not apply to any tobacco product sold in connection with a delivery sale.

(B) Delivery sale.--For purposes of subparagraph (A), the term "delivery sale" means any sale of a tobacco product to a consumer if--

(i) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mail, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made, or

(ii) the tobacco product is delivered by use of a common carrier, private delivery service, or the mail, or the seller is not in the physical presence of the buyer when the buyer obtains personal possession of the tobacco product.

(e) Applicability of section 6665.--The penalties imposed by subsections (b) and (c) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6665(a).

(f) Cross references.--

For penalty for failure to make deposits or for overstatement of deposits, see section 6656.

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 717; Sept. 2, 1958, Pub.L. 85-859, Title II, § 202, 72 Stat. 1425; Aug. 13,

I.R.C. § 5762

Effective: December 31, 1999

United States Code Annotated Currentness
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle E. Alcohol, Tobacco, and Certain Other Excise Taxes (Refs & Annos)
Chapter 52. Tobacco Products and Cigarette Papers and Tubes (Refs & Annos)
Subchapter G. Penalties and Forfeitures (Refs & Annos)

§ 5762. Criminal penalties

(a) Fraudulent offenses.--Whoever, with intent to defraud the United States--

(1) Engaging in business unlawfully.--Engages in business as a manufacturer or importer of tobacco products or cigarette papers and tubes, or as an export warehouse proprietor, without filing the bond and obtaining the permit where required by this chapter or regulations thereunder; or

(2) Failing to furnish information or furnishing false information.--Fails to keep or make any record, return, report, or inventory, or keeps or makes any false or fraudulent record, return, report, or inventory, required by this chapter or regulations thereunder; or

(3) Refusing to pay or evading tax.--Refuses to pay any tax imposed by this chapter, or attempts in any manner to evade or defeat the tax or the payment thereof; or

(4) Removing tobacco products or cigarette papers or tubes unlawfully.--Removes, contrary to this chapter or regulations thereunder, any tobacco products or cigarette papers or tubes subject to tax under this chapter; or

(5) Purchasing, receiving, possessing, or selling tobacco products or cigarette papers or tubes unlawfully.--Violates any provision of section 5751(a)(1) or (a)(2); or

(6) Destroying, obliterating, or detaching marks, labels, or notices before packages are emptied.--Violates any provision of section 5752;

shall, for each such offense, be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(b) Other offenses.--Whoever, otherwise than as provided in subsection (a), violates any provision of this

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chapter, or of regulations prescribed thereunder, shall, for each such offense, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 717; Sept. 2, 1958, Pub.L. 85-859, Title II, § 202, 72 Stat. 1425; June 21, 1965, Pub.L. 89-44, Title V, § 502(b)(12), 79 Stat. 152; Oct. 4, 1976, Pub.L. 94-455, Title XIX, § 1905(b)(7)(B)(ii), 90 Stat. 1823; Aug. 5, 1997, Pub.L. 105-33, Title IX, § 9302(h)(2)(A), 111 Stat. 674.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1954 Acts. House Report No. 1337, Senate Report No. 1622, and Conference Report No. 2543, see 1954 U.S. Code Cong. and Adm. News, p. 4538.

1958 Acts. Senate Report No. 2090 and Conference Report No. 2596, see 1958 U.S. Code Cong. and Adm. News, p. 4395.

1965 Acts. House Report No. 433, Senate Report No. 324, and Conference Report No. 525, see 1965 U.S. Code Cong. and Adm. News, p. 1645.

1976 Acts. House Report Nos. 94-658, 94-1380, Senate Report No. 94-938, and House Conference Report No. 94-1515, see 1976 U.S. Code Cong. and Adm. News, p. 2897.

1997 Acts. House Report No. 105-149, House Conference Report No. 105-217, and Statement by President, see 1997 U.S. Code Cong. and Adm. News, p. 176.

Amendments

1997 Amendments. Subsec. (a)(1). Pub.L. 105-33, § 9302(h)(2)(A), inserted “or importer” following “manufacturer” in subsec. (a)(1).

1976 Amendments. Subsec. (a)(6). Pub.L. 94-455 redesignated par. (7) as (6), and in par. (6), as so redesignated, substituted “or notices” for “notices, or stamps” and “section 5752;” for “section 5752(a); or”. Former par. (6), relating to the affixing of improper stamps, was stricken.

Subsec. (a)(7). Pub.L. 94-455 redesignated par. (7) as (6).

I.R.C. § 5763

Effective: December 31, 1999

United States Code Annotated Currentness
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle E. Alcohol, Tobacco, and Certain Other Excise Taxes (Refs & Annos)
Chapter 52. Tobacco Products and Cigarette Papers and Tubes (Refs & Annos)
Subchapter G. Penalties and Forfeitures (Refs & Annos)

§ 5763. Forfeitures

(a) Tobacco products and cigarette papers and tubes unlawfully possessed.--

(1) Tobacco products and cigarette papers and tubes possessed with intent to defraud.--All tobacco products and cigarette papers and tubes which, after removal, are possessed with intent to defraud the United States shall be forfeited to the United States.

(2) Tobacco products and cigarette papers and tubes not properly packaged.--All tobacco products and cigarette papers and tubes not in packages as required under section 5723 or which are in packages not bearing the marks, labels, and notices, as required under such section, which, after removal, are possessed otherwise than with intent to defraud the United States, shall be forfeited to the United States. This paragraph shall not apply to tobacco products or cigarette papers or tubes sold or delivered directly to consumers from proper packages.

(b) Personal property of qualified manufacturers, qualified importers, and export warehouse proprietors, acting with intent to defraud.--All tobacco products and cigarette papers and tubes, packages, machinery, fixtures, equipment, and all other materials and personal property on the premises of any qualified manufacturer or importer of tobacco products or cigarette papers and tubes, or export warehouse proprietor, who, with intent to defraud the United States, fails to keep or make any record, return, report, or inventory, or keeps or makes any false or fraudulent record, return, report, or inventory, required by this chapter; or refuses to pay any tax imposed by this chapter, or attempts in any manner to evade or defeat the tax or the payment thereof; or removes, contrary to any provision of this chapter, any article subject to tax under this chapter, shall be forfeited to the United States.

(c) Real and personal property of illicit operators.--All tobacco products, cigarette papers and tubes, machinery, fixtures, equipment, and other materials and personal property on the premises of any person engaged in business as a manufacturer or importer of tobacco products or cigarette papers and tubes, or export warehouse proprietor, without filing the bond or obtaining the permit, as required by this chapter, together with all his right, title, and interest in the building in which such business is conducted, and the lot or tract of ground on which the building is located, shall be forfeited to the United States.

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I.R.C. § 5763

(d) General.--All property intended for use in violating the provisions of this chapter, or regulations thereunder, or which has been so used, shall be forfeited to the United States as provided in section 7302.

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 718; Sept. 2, 1958, Pub.L. 85-859, Title II, § 202, 72 Stat. 1426; June 21, 1965, Pub.L. 89-44, Title V, § 502(b)(13), 79 Stat. 152; Oct. 4, 1976, Pub.L. 94-455, Title XIX, § 1905(b)(7)(C), 90 Stat. 1823; Aug. 5, 1997, Pub.L. 105-33, Title IX, § 9302(h)(2)(A), (B), 111 Stat. 674.)

1997 Acts. Amendments by section 9302 of Pub.L. 105-33 applicable to articles removed (as defined in section 5702(k) of this title, as amended by section 9302) after December 31, 1999, with transitional provisions, see section 9302(i) of Pub.L. 105-33, set out as a note under section 5701 of this title.

Current through P.L. 113-120 approved 6-10-14

END OF DOCUMENT

Addendum 23

I.R.C. § 7421

Effective: December 21, 2000

United States Code Annotated Currentness
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle F. Procedure and Administration (Refs & Annos)
Chapter 76. Judicial Proceedings
Subchapter B. Proceedings by Taxpayers and Third Parties (Refs & Annos)

§ 7421. Prohibition of suits to restrain assessment or collection

(a) Tax.--Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6225(b), 6246(b), 6330(e)(1), 6331(i), 6672(c), 6694(c), 7426(a) and (b)(1), 7429(b), and 7436, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

(b) Liability of transferee or fiduciary.--No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71) of--

(1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue tax, or

(2) the amount of the liability of a fiduciary under section 3713(b) of title 31, United States Code [FN1] in respect of any such tax.

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 876; Nov. 2, 1966, Pub.L. 89-719, Title I, § 110(c), 80 Stat. 1144; Oct. 4, 1976, Pub.L. 94-455, Title XII, § 1204(c)(11), 90 Stat. 1699; Nov. 10, 1978, Pub.L. 95-628, § 9(b)(1), 92 Stat. 3633; Sept. 13, 1982, Pub.L. 97-258, § 3(f)(13), 96 Stat. 1065; Aug. 5, 1997, Pub.L. 105-34, Title XII, §§ 1222(b)(1), 1239(e)(3), Title XIV, § 1454(b)(4), 111 Stat. 1019, 1028, 1057; July 22, 1998, Pub.L. 105-206, Title III, § 3201(e)(3), 112 Stat. 740; Oct. 21, 1998, Pub.L. 105-277, Div. J, Title IV, § 4002(c)(1), (f), 112 Stat. 2681-906, 2681-907; Dec. 21, 2000, Pub.L. 106-554, § 1(a)(7) [Title III, §§ 313(b)(2)(B), 319(24)], 114 Stat. 2763, 2763A-642, 2763A-647.)

[FN1] So in original. A comma probably should appear here.

Current through P.L. 113-120 approved 6-10-14

Addendum 24

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 83. Courts of Appeals (Refs & Annos)
§ 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 929; Oct. 31, 1951, c. 655, § 48, 65 Stat. 726; July 7, 1958, Pub.L. 85-508, § 12(e), 72 Stat. 348; Apr. 2, 1982, Pub.L. 97-164, Title I, § 124, 96 Stat. 36.)

Current through P.L. 113-13 approved 6-3-13

END OF DOCUMENT

Addendum 25

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 85. District Courts; Jurisdiction (Refs & Annos)

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 930; July 25, 1958, Pub.L. 85-554, § 1, 72 Stat. 415; Oct. 21, 1976, Pub.L. 94-574, § 2, 90 Stat. 2721; Dec. 1, 1980, Pub.L. 96-486, § 2(a), 94 Stat. 2369.)

Current through P.L. 113-13 approved 6-3-13

END OF DOCUMENT

Addendum 26

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 85. District Courts; Jurisdiction (Refs & Annos)
§ 1362. Indian tribes

The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.

CREDIT(S)

(Added Pub.L. 89-635, § 1, Oct. 10, 1966, 80 Stat. 880.)

Current through P.L. 113-13 approved 6-3-13

END OF DOCUMENT

Addendum 27

Effective: March 3, 2011

Code of Federal Regulations Currentness
Title 27. Alcohol, Tobacco Products and Firearms
Chapter I. Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury (Refs & Annos)
Subchapter B. Tobacco (Refs & Annos)
Part 45. Removal of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, for Use of the United States (Refs & Annos)
Subpart B. Definitions
§ 45.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms “includes” and “including” do not exclude things not listed which are in the same general class.

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.45, Delegation of the Administrator's Authorities in 27 CFR Part 45, Removal of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, for Use of the United States.

Armed forces. The Army, Navy (including the Marine Corps), Air Force, and Coast Guard.

Charge of the United States. A patient in a hospital or similar institution, or a Federal prisoner, if the hospital, institution, or prison is operated by a Federal agency and the support or care of such person results in a charge on, or an expense to, the United States Government.

Chewing tobacco. Any leaf tobacco that is not intended to be smoked.

Cigar. Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of paragraph (2) of the definition for cigarette).

Cigarette. (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(2) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1) of this definition.

Cigarette paper. Paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

Cigarette tube. Cigarette paper made into a hollow cylinder for use in making cigarettes.

Factory. The premises of a manufacturer of tobacco products or cigarette papers and tubes in which he carries on such business.

Federal agency. A department or agency of the United States Government, including the American National Red Cross, and the U.S. Soldiers Home, Washington, D.C.

Large cigarettes. Cigarettes weighing more than three pounds per thousand.

Addendum 28

Large cigars. Cigars weighing more than three pounds per thousand.

Manufacturer of cigarette papers and tubes. Any person who manufactures cigarette paper, or makes up cigarette paper into tubes, except for his own personal use or consumption.

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Package. The immediate container in which tobacco products, processed tobacco, or cigarette papers or tubes are put up by the manufacturer and offered for sale or delivery to the ultimate consumer. For purposes of this definition, a container of processed tobacco, the contents of which weigh 10 pounds or less (including any added non-tobacco ingredients or constituents), that is removed within the meaning of this part, is deemed to be a package offered for sale or delivery to the ultimate consumer.

Person. An individual, partnership, association, company, corporation, estate, or trust.

Pipe tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

Removal or remove. The removal of tobacco products or cigarette papers or tubes from the factory.

Roll-your-own tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes or cigars, or for use as wrappers thereof.

Sale price. The price for which large cigars are sold by the manufacturer or importer, determined in accordance with §§ 40.22 or 41.39 and used in computation of the tax.

Small cigarettes. Cigarettes weighing not more than three pounds per thousand.

Small cigars. Cigars weighing not more than three pounds per thousand.

Smokeless tobacco. Any chewing tobacco or snuff.

Snuff. Any finely cut, ground, or powdered tobacco that is not intended to be smoked.

This chapter. Chapter I, title 26, [FN1] Code of Federal Regulations.

[FN1] So in original; probably should read “title 27”.

Tobacco products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

United States. When used in a geographical sense shall include only the States and the District of Columbia.

U.S.C. The United States Code.

[T.D. ATF–48, 43 FR 13557, March 31, 1978; 44 FR 55856, Sept. 28, 1979; T.D. ATF–232, 51 FR 28090, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–289, 54 FR 48842, Nov. 27, 1989; 57 FR 53854, Nov. 13, 1992; T.D. ATF–424, 64 FR 71933, Dec. 22, 1999; T.D. ATF–420, 64 FR 71945, Dec. 22, 1999; T.D. ATF–429, 65 FR 57547, Sept. 25, 2000; T.D. ATF–460, 66 FR 39093, July 27, 2001; T.D. ATF–467, 66 FR 49532, Sept. 28, 2001; T.D. ATF–472, 67 FR 8880, Feb. 27, 2002; T.D. TTB–16, 69 FR 52423, Aug. 26, 2004; T.D.

TTB–44, 71 FR 16954, April 4, 2006; T.D. TTB–78, 74 FR 29420, June 22, 2009; T.D. TTB–91, 76 FR 5480, Feb. 1, 2011; T.D. TTB–104, 77 FR 37301, June 21, 2012]

SOURCE: T.D. ATF–219, 50 FR 51390, Dec. 17, 1985; T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–459, 66 FR 38550, July 25, 2001; T.D. ATF–469, 66 FR 56758, Nov. 13, 2001; T.D. ATF–472, 67 FR 8880, Feb. 27, 2002; T.D. ATF–487, 68 FR 3747, Jan. 24, 2003; T.D. TTB–78, 74 FR 29420, June 22, 2009; T.D. TTB–104, 77 FR 37301, June 21, 2012, unless otherwise noted.

AUTHORITY: 26 U.S.C. 5702–5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805; 44 U.S.C. 3504(h).

27 C. F. R. § 45.11, 27 CFR § 45.11

Current through July 03, 2014; 79 FR 38242.

END OF DOCUMENT

Addendum 30

Effective:[See Text Amendments]

Code of Federal Regulations Currentness
Title 27. Alcohol, Tobacco Products and Firearms
Chapter I. Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury (Refs & Annos)
Subchapter B. Tobacco (Refs & Annos)
Part 45. Removal of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, for Use of the United States (Refs & Annos)
Subpart D. Removals (Refs & Annos)
§ 45.35 Liability for tax.

The manufacturer who removes tobacco products, or cigarette papers or tubes under this part shall be liable for the taxes imposed thereon by 26 U.S.C. 5701, until such tobacco products, or cigarette papers or tubes are received by the Federal agency. Any person who possesses tobacco products, or cigarette papers or tubes in violation of 26 U.S.C. 5751(a)(1) or (2), shall be liable for a tax equal to the tax on such articles.

(Authority: 72 Stat. 1417, 1424; 26 U.S.C. 5703, 5751)

[T.D. 6871, 31 FR 57, Jan. 14, 1966; 40 FR 16835, April 15, 1975, and amended by T.D. ATF–48, 44 FR 55856, Sept. 28, 1979; T.D. ATF–232, 51 FR 28090, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

SOURCE: T.D. 6871, 31 FR 57, Jan. 14, 1966. Redesignated at 40 FR 16835, April 15, 1975.; T.D. ATF–219, 50 FR 51390, Dec. 17, 1985; T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–459, 66 FR 38550, July 25, 2001; T.D. ATF–469, 66 FR 56758, Nov. 13, 2001; T.D. ATF–472, 67 FR 8880, Feb. 27, 2002; T.D. ATF–487, 68 FR 3747, Jan. 24, 2003; T.D. TTB–78, 74 FR 29420, June 22, 2009; T.D. TTB–104, 77 FR 37301, June 21, 2012, unless otherwise noted.

AUTHORITY: 26 U.S.C. 5702–5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805; 44 U.S.C. 3504(h).

27 C. F. R. § 45.35, 27 CFR § 45.35

Current through July 03, 2014; 79 FR 38242.

END OF DOCUMENT

Addendum 31

The Office of the President of the United States

(TREATY)

TREATY WITH THE OMAHA, 1854.

March 16, 1854.

Articles of agreement and convention made and concluded at the city of Washington this sixteenth day of March, one thousand eight hundred and fifty-four, by George W. Manypenny, as commissioner on the part of the United States, and the following-named chiefs of the Omaha tribe of Indians, viz: Shon-ga-ska, or Logan Fontenelle; E-sta-mah-za, or Joseph Le Flesche; Gra-tah-nah-je, or Standing Hawk; Gah-he-ga-gin-gah, or Little Chief; Ta-wah-gah-ha, or Village Maker; Wah-no-ke-ga, or Noise; So-da-nah-ze, or Yellow Smoke; they being thereto duly authorized by said tribe. [FNA][FNB]

ARTICLE 1

The Omaha Indians cede to the United States all their lands west of the Missouri River, and south of a line drawn due west from a point in the centre of the main channel of said Missouri River due east of where the Ayoway River disembogues out of the bluffs, to the western boundary of the Omaha country, and forever relinquish all right and title to the country south of said line: Provided, however, That if the country north of said due west line, which is reserved by the Omahas for their future home, should not on exploration prove to be a satisfactory and suitable location for said Indians, the President may, with the consent of said Indians, set apart and assign to them, within or outside of the ceded country, a residence suited for and acceptable to them. And for the purpose of determining at once and definitely, it is agreed that a delegation of said Indians, in company with their agent, shall, immediately after the ratification of this instrument, proceed to examine the country hereby reserved, and if it please the delegation, and the Indians in counsel express themselves satisfied, then it shall be deemed and taken for their future home; but if otherwise, on the fact being reported to the President, he is authorized to cause a new location, of suitable extent, to be made for the future home of said Indians, and which shall not be more in extent than three hundred thousand acres, and then and in that case, all of the country belonging to the said Indians north of said due west line, shall be and is hereby ceded to the United States by the said Indians, they to receive the same rate per acre for it, less the number of acres assigned in lieu of it for a home, as now paid for the land south of said line.[FNC][FND]

ARTICLE 2

The Omahas agree, that so soon after the United States shall make the necessary provision for fulfilling the stipulations of this instrument, as they can conveniently arrange their affairs, and not to exceed one year from its ratification, they will vacate the ceded country, and remove to the lands reserved herein by them, or to the other lands provided for in

lieu thereof, in the preceding article, as the case may be. [FNE]

ARTICLE 3

The Omahas relinquish to the United States all claims, for money or other thing, under former treaties, and likewise all claim[FNF] which they may have heretofore, at any land on the east side of the Missouri River: Provided, The Omahas shall still be entitled to and receive from the Government, the unpaid balance of the twenty-five thousand dollars appropriated for their use, by the act of thirtieth of August, 1851.

ARTICLE 4

In consideration of and payment for the country herein ceded, and the relinquishments herein made, the United States agree to pay to the Omaha Indians the several sums of money following, to wit;[FNG]

1st. Forty thousand dollars, per annum, for the term of three years, commencing on the first day of January, eighteen hundred and fifty-five.

2d. Thirty thousand dollars per annum, for the term of ten years, next succeeding the three years.

3d. Twenty thousand dollars per annum, for the term of fifteen years, next succeeding the ten years.

4th. Ten thousand dollars per annum, for the term of twelve years, next succeeding the fifteen years.

All which several sums of money shall be paid to the Omahas, or expended for their use and benefit, under the direction of the President of the United States, who may from time to time determine at his discretion, what proportion of the annual payments, in this article provided for, if any, shall be paid to them in money, and what proportion shall be applied to and expended, for their moral improvement and education; for such beneficial objects as in his judgment will be calculated to advance them in civilization; for buildings, opening farms, fencing, breaking land, providing stock, agricultural implements, seeds, &c.; for clothing, provisions, and merchandise; for iron, steel, arms, and ammunition; for mechanics, and tools; and for medical purposes. [FNH]

ARTICLE 5

In order to enable the said Indians to settle their affairs and to remove and subsist themselves for one year at their new home, and which they agree to do without further expense to the United States, and also to pay the expenses of the delegation who may be appointed to make the exploration provided for in article first, and to fence and break up two hundred acres of land at their new home, they shall receive from the United States, the further sum of forty-one thousand dollars, to be paid out and expended under the direction of the President, and in such manner as he shall approve. [FNI]

ARTICLE 6

The President may, from time to time, at his discretion, cause the whole or such portion of the land hereby reserved, as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign to such Indian or Indians of said tribe as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not exceeding ten, one section; and to each family over ten in number, one quarter section for every additional five members. And he may prescribe such rules and regulations as will insure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon. And the President may, at any time, in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale, or forfeiture, which conditions shall continue in force, until a State constitution, embracing such lands within its boundaries, shall have been formed,[FNJ] and the legislature of the State shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned and on which they have located, or shall rove from place to place, the President may, if the patent shall have been issued, cancel the assignment, and may also withhold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of such tribe, or disposed of as is provided for the disposition of the excess of said land. And the residue of the land hereby reserved, or of that which may be selected in lieu thereof, after all of the Indian persons or families shall have had assigned to them permanent homes, may be sold for their benefit, under such laws, rules or regulations, as may hereafter be prescribed by the Congress or President of the United States. No State legislature shall remove the restrictions herein provided for, without the consent of Congress.

ARTICLE 7

Should the Omahas determine to make their permanent home north of the due west line named in the first article, the United States agree to protect them from the Sioux and all other hostile tribes, as long as the President may deem such protection necessary; and if other lands be assigned them, the same protection is guaranteed.

ARTICLE 8

The United States agree to erect for the Omahas, at their new home, a grist and saw mill, and keep the same in repair, and provide a miller for ten years; also to erect a good blacksmith shop, supply the same with tools, and keep it in repair for ten years; and provide a good blacksmith for a like period; and to employ an experienced farmer for the term of ten years, to instruct the Indians in agriculture. [FNK][FNL][FNM]

ARTICLE 9

The annuities of the Indians shall not be taken to pay the debts of individuals. [FNN]

ARTICLE 10

The Omahas acknowledge their dependence on the Government of the United States, and promise to be friendly with all the citizens thereof, and pledge themselves to commit no depredations on the property of such citizens. And should any one or more of them violate this pledge, and the fact be satisfactorily proven before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the Government out of their annuities. Nor will they make war on any other tribe, except in self-defence, but will submit all matters of difference between them and other Indians to the Government of the United States, or its agent, for decision, and abide thereby. And if any of the said Omahas commit any depredations on any other Indians, the same rule shall prevail as that prescribed in this article in cases of depredations against citizens.[FNO][FNP]

ARTICLE 11

The Omahas acknowledge themselves indebted to Lewis Sounsosee, (a half-breed,) for services, the sum of one thousand dollars, which debt they have not been able to pay, and the United States agree to pay the same. [FNQ]

ARTICLE 12

The Omahas are desirous to exclude from their country the use of ardent spirits, and to prevent their people from drinking the same, and therefore it is provided that any Omaha who is guilty of bringing liquor into their country, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine. [FNR]

ARTICLE 13

The board of foreign missions of the Presbyterian Church have on the lands of the Omahas a manual-labor boarding-school, for the education of the Omaha, Ottoe, and other Indian youth, which is now in successful operation, and as it will be some time before[FNS] the necessary buildings can be erected on the reservation, and (it is) desirable that the school should not be suspended, it is agreed that the said board shall have four adjoining quarter sections of land, so as to include as near as may be all the improvements heretofore made by them; and the President is authorized to issue to the proper authority of said board, a patent in fee-simple for such quarter sections.

ARTICLE 14

The Omahas agree that all the necessary roads, highways, and railroads, which may be constructed as the country improves, and the lines of which may run through such tract as may be reserved for their permanent home, shall have a right of way through the reservation, a just compensation being paid therefor in money.

ARTICLE 15

This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and

Senate of the United States. [FNT]

In testimony whereof, the said George W. Manypenny, commissioner as aforesaid, and the undersigned chiefs, of the Omaha tribe of Indians, have hereunto set their hands and seals, at the place and on the day and year herein before written.

George W. Manypenny, Comissioner. (L.S.)

Shon-ga-ska, or Logan Fontenelle, his x mark. (L.S.)

E-sta-mah-za, or Joseph Le Flesche, his x mark. (L.S.)

Gra-tah-mah-je, or Standing Hawk, his x mark. (L.S.)

Gah-he-ga-gin-gah, or Little Chief, his x mark. (L.S.)

Tah-wah-gah-ha, or Village Maker, his x mark. (L.S.)

Wah-no-ke-ga, or Noise, his x mark. (L.S.)

So-da-nah-ze, or Yellow Smoke, his x mark. (L.S.)

Executed in the presence of us:

James M. Gatewood, Indian agent.

James Goszler.

Charles Calvert.

James D. Kerr.

Henry Beard.

Alfred Chapman.

Lewis saunsoci, interpreter.

FNA Ratified Apr. 17, 1854.

FNB Proclaimed June 21, 1854.

FNC Cession of lands to the United States.

FND Reserve for the Indians.

FNE Removal of the Indians.

FNF Relinquishment of former claims.

FNG Payment to the Indians.

FNH How made.

FNI Further payment.

FNJ Disposition of the lands reserved.

FNK Protection from hostile tribes.

FNL Grist and sawmill.

FNM Blacksmith.

FNN Annuities not to be taken for debts.

FNO Conduct of the Indians.

FNP Depredations.

FNQ Payment to Lewis Sounsosee.

FNR Provision against introduction of ardent spirits.

FNS Grant to the missions of the Presbyterian Church.

FNT Construction of roads.

1854 WL 9493 (Trty.)
END OF DOCUMENT

The Office of the President of the United States

(TREATY)

TREATY WITH THE YAKIMA, 1855.

June 9, 1855.

Articles of agreement and convention made and concluded at the treaty-ground, Camp Stevens, Walla-Walla Valley, this ninth day of June, in the year one thousand eight hundred and fifty-five, by and between Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, on the part of the United States, and the undersigned head chiefs, chiefs, head-men, and delegates of the Yakama, Palouse, Pisquouse, Wenatshapam, Klikatat, Klinquit, Kow-was-say-ee, Li-ay-was, Skin-pah, Wish-ham, Shyiks, Oche-chotes, Kah-milt-pah, and Se-ap-cat, confederated tribes and bands of Indians, occupying lands hereinafter bounded and described and lying in Washington Territory, who for the purposes of this treaty are to be considered as one nation, under the name of "Yakama," with Kamaiakun as its head chief, on behalf of and acting for said tribes and bands, and being duly authorized thereto by them. [FNA][FNB]

ARTICLE 1

The aforesaid confederated tribes and bands of Indians hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the lands and country occupied and claimed by them, and bounded and described as follows, to wit: [FNC]

Commencing at Mount Ranier, thence northerly along the main ridge of the Cascade Mountains to the point where the northern tributaries of Lake Che-lan and the southern tributaries of the Methow River have their rise; thence southeasterly on the divide between the waters of Lake Che-lan and the Methow River to the Columbia River; thence, crossing the Columbia on a true east course, to a point whose longitude is one hundred and nineteen degrees and ten minutes, (119 degrees 10',) which two latter lines separate the above confederated tribes and bands from the Oakinakane tribe of Indians; thence in a true south course to the forty-seventh (47 degrees) parallel of latitude; thence east on said parallel to the main Palouse River, which two latter lines of boundary separate the above confederated tribes and bands from the Spokanes; thence down the Palouse River to its junction with the Moh-hah-ne-she, or southern tributary of the same; thence in a southesterly direction, to the Snake River, at the mouth of the Tucannon River, separating the above confederated tribes from the Nez Perce tribe of Indians; thence down the Snake River to its junction with the Columbia River; thence up the Columbia River to the "White Banks" below the Priest's Rapids; thence westerly to a lake called "LaLac;" thence southerly to a point on the Yakama River called Toh-mah-luke; thence, in a southwesterly direction, to the Columbia River, at the western extremity of the "Big Island," between the mouths of the Umatilla River and Butler Creek; all which latter boundaries[FND] separate the above confederated tribes and bands from the Walla-Walla, Cayuse, and Umatilla tribes and bands of Indians; thence down the Columbia River to midway between the mouths of White Salmon and Wind Rivers; thence along the divide between said rivers to the main ridge of the Cascade Mountains; and thence along said ridge to the place of beginning.

ARTICLE 2

There is, however, reserved, from the lands above ceded for the use and occupation of the aforesaid confederated tribes and bands of Indians, the tract of land included within the following boundaries, to wit: Commencing on the Yakama River, at the mouth of the Attah-nam River; thence westerly along said Attah-nam River to the forks; thence along the southern tributary to the Cascade Mountains; thence southerly along the main ridge of said mountains, passing south and east of Mount Adams, to the spur whence flows the waters of the Klickatat and Pisco Rivers; thence down said spur to the divide between the waters of said rivers; thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River; thence along said divide to the main Yakama, eight miles below the mouth of the Satass River; and thence up the Yakama River to the place of beginning. [FNE][FNF]

All which tract shall be set apart and, so far as necessary, surveyed and marked out, for the exclusive use and benefit of said confederated tribes and bands of Indians, as an Indian reservation; nor shall any white man, excepting those in the employment of the Indian Department, be permitted to reside upon the said reservation without permission of the tribe and the superintendent and agent. And the said confederated tribes and bands agree to remove to, and settle upon, the same, within one year after the ratification of this treaty. In the mean time it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States; and upon any ground claimed or occupied, if with the permission of the owner or claimant. [FNG] [FNH]

Guaranteeing, however, the right to all citizens of the United States to enter upon and occupy as settlers any lands not actually occupied and cultivated by said Indians at this time, and not included in the reservation above named.

And provided, That any substantial improvements heretofore made by any Indian, such as fields enclosed and cultivated, and houses erected upon the lands hereby ceded, and which he may be compelled to abandon in consequence of this treaty, shall be valued, under the direction of the President of the United States, and payment made therefor in money; or improvements of an equal value made for said Indian upon the reservation. And no Indian will be required to abandon the improvements aforesaid, now occupied by him, until their value in money, or improvements of an equal value shall be furnished him as aforesaid. [FNI]

ARTICLE 3

And provided, That, if necessary for the public convenience, roads may be run through the said reservation; and on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them; as also the right, in common with citizens of the United States, to travel upon all public highways. [FNJ]

The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with the citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land. [FNK]

ARTICLE 4

In consideration of the above cession, the United States agree to pay to the said confederated tribes and bands of Indians, in addition to the goods and provisions distributed to them at the time of signing this treaty, the sum of two hundred thousand dollars, in the following manner, that is to say: Sixty thousand dollars, to be expended under the direction of the President of the United States, the first year after the ratification of this treaty, in provid-

ing for their removal to the reservation, breaking up and fencing farms, building houses for them, supplying them with provisions and a suitable outfit, and for such other objects as he may deem necessary, and the remainder in annuities, as follows: For the first five years after the ratification of the treaty, ten thousand dollars each year, commencing September first, 1856; for the next five years, eight thousand dollars each year; for the next five years, six thousand dollars per year; and for the next five years, four thousand dollars per year. [FNL]

All which sums of money shall be applied to the use and benefit of said Indians, under the direction of the President of the United States, who may from time to time determine, at his discretion, upon what beneficial objects to expend the same for them. And the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of the Indians in relation thereto. [FNM]

ARTICLE 5

The United States further agree to establish at suitable points within said reservation, within one year after the ratification hereof, two schools, erecting the necessary buildings, keeping them in repair, and providing them with furniture, books, and stationery, one of which shall be an agricultural and industrial school, to be located at the agency, and to be free to the children of the said confederated tribes and bands of Indians, and to employ one superintendent of teaching and two teachers; to build two blacksmith's shops, to one of which shall be attached a tin-shop, and to the other a gunsmith's shop; one carpenter's shop, one wagon and plough maker's shop, and to keep the same in repair and furnished with the necessary tools; to employ one superintendent of farming and two farmers, two blacksmiths, one tinner, one gunsmith, one carpenter, one wagon and plough maker, for the instruction of the Indians in trades and to assist them in the same; to erect one saw-mill and one flouring-mill, keeping the same in repair and furnished with the necessary tools and fixtures; to erect a hospital, keeping the same in repair and provided with the necessary medicines and furniture, and to employ a physician; and to erect, keep in repair, and provided with the necessary furniture, the building required for the accommodation of the said employees. The said buildings and establishments to be maintained and kept in repair as aforesaid, and the employees to be kept in service for the period of twenty years. [FNN][FNO][FNP][FNQ]

And in view of the fact that the head chief of the said confederated tribes and bands of Indians is expected, and will be called upon to perform many services of a public character, occupying much of his time, the United States further agree to pay to the said confederated tribes and bands of Indians five hundred dollars per year, for the term of twenty years after the ratification hereof, as a salary for such person as the said confederated tribes and bands of Indians may select to be their head chief, to build for him at a suitable point on the reservation a comfortable house, and properly furnish the same, and to plough and fence ten acres of land. The said salary to be paid to, and the said house to be occupied by, such head chief so long as he may continue to hold that office. [FNR]

And it is distinctly understood and agreed that at the time of the conclusion of this treaty Kamaiakun is the duly elected and authorized[FNS] head chief of the confederated tribes and bands aforesaid, styled the Yakama Nation, and is recognized as such by them and by the commissioners on the part of the United States holding this treaty; and all the expenditures and expenses contemplated in this article of this treaty shall be defrayed by the United States, and shall not be deducted from the annuities agreed to be paid to said confederated tribes and band of Indians. Nor shall the cost of transporting the goods for the annuity payments be a charge upon the annuities, but shall be defrayed by the United States.

ARTICLE 6

The President may, from time to time, at his discretion, cause the whole or such portions of such reservation as he may think proper, to be surveyed into lots, and assign the same to such individuals or families of the said confederated tribes and bands of Indians as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable. [FNT]

ARTICLE 7

The annuities of the aforesaid confederated tribes and bands of Indians shall not be taken to pay the debts of individuals.[FNU]

ARTICLE 8

The aforesaid confederated tribes and bands of Indians acknowledge their dependence upon the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens.[FNV]

And should any one or more of them violate this pledge, and the fact be satisfactorily proved before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the Government out of the annuities. [FNW]

Nor will they make war upon any other tribe, except in self-defence, but will submit all matters of difference between them and other Indians to the Government of the United States or its agent for decision, and abide thereby. And if any of the said Indians commit depredations on any other Indians within the Territory of Washington or Oregon, the same rule shall prevail as that provided in this article in case of depredations against citizens. And the said confederated tribes and bands of Indians agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial. [FNX][FNY]

ARTICLE 9

The said confederated tribes and bands of Indians desire to exclude from their reservation the use of ardent spirits, and to prevent their people from drinking the same, and, therefore, it is provided that any Indian belonging to said confederated tribes and bands of Indians, who is guilty of bringing liquor into said reservation, or who drinks liquor, may have his or her annuities withheld from him or her for such time as the President may determine. [FNZ]

ARTICLE 10

And provided, That there is also reserved and set apart from the lands ceded by this treaty, for the use and benefit of the aforesaid confederated tribes and bands, a tract of land not exceeding in quantity one township of six miles square, situated at the forks of the Pisquouse or Wenatshapam River, and known as the “Wenatshapam Fishery,” which said reservation shall be surveyed and marked out whenever the President may direct, and be subject to the same provisions and restrictions as other Indian reservations. [FNAA]

ARTICLE 11

This treaty shall be obligatory upon the contracting parties as soon as the same shall be ratified by the President and Senate of the United States. [FNBB]

Addendum 42

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and the undersigned head chief, chiefs, headmen, and delegates of the aforesaid confederated tribes and bands of Indians, have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

ISAAC I. STEVENS,

Governor and Superintendent. (L.S.)

Kamaiakun, his x mark. (L.S.)

Skloom, his x mark. (L.S.)

Owhi, his x mark. (L.S.)

Te-cole-kun, his x mark. (L.S.)

La-hoom, his x mark. (L.S.)

Me-ni-nock, his x mark. (L.S.)

Elit Palmer, his x mark. (L.S.)

Wish-och-kmpits, his x mark. (L.S.)

Koo-lat-toose, his x mark. (L.S.)

Shee-ah-cotte, his x mark. (L.S.)

Tuck-quille, his x mark. (L.S.)

Ka-loo-as, his x mark. (L.S.)

Scha-noo-a, his x mark. (L.S.)

Sla-kish, his x mark. (L.S.)

Signed and sealed in the presence of - -

James Doty, secretary of treaties,

Mie. Cles. Pandosy, O. M. T.,

Wm. C. McKay,

W. H. Tappan, sub Indian agent, W. T.,

C. Chirouse, O. M. T.,

Patrick McKenzie, interpreter,

Addendum 43

A. D. Pamburn, interpreter,

Joel Palmer, superintendent Indian affairs, O. T.,

W. D. Biglow,

A. D. Pamburn, interpreter.

FNA Ratified Mar. 8, 1859.

FNB Proclaimed Apr. 18, 1859.

FNC Cession of lands to the United States.

FND Boundaries.

FNE Reservation.

FNF Boundaries.

FNG Reservations to be set apart, etc., and Indians to settle thereon.

FNH Whites not to reside thereon.

FNI Improvements on ceded lands.

FNJ Roads may be made.

FNK Privileges secured to Indians.

FNL Payments by the United States.

FNM How to be applied.

FNN United States to establish schools.

FNO Mechanics' shops.

FNP Sawmill and flouring mill.

FNQ Hospital.

FNR Salary to head chief; house, etc.

FNS Kamaiakun is the head chief.

FNT Reservation may be surveyed into lots and assigned to individuals or families.

FNU Annuities not to pay for debts of individuals.

Addendum 44

FNV Tribes to preserve friendly relations.

FNW To pay for depredations.

FNX Not to make war but in self-defense.

FNY Tosurrender offenders.

FNZ Annuities may be withheld from those who drink ardent spirits.

FNAA Wenatshapam fishery reserved.

FNBB When treaty to take effect.

1855 WL 10420 (Trty.)
END OF DOCUMENT

Remedy by existing law not impaired.

SEC. 2. That nothing in this act contained shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any owner of letters patent for a design, aggrieved by the infringement of the same, might have had if this act had not been passed; but such owner shall not twice recover the profit made from the infringement.

Approved, February 4, 1887.

Feb. 8, 1887.

CHAP. 119.—An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.

President authorized to allot land in severalty to Indians on reservations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon in quantities as follows:

Distribution.

To each head of a family, one-quarter of a section;

To each single person over eighteen years of age, one-eighth of a section;

To each orphan child under eighteen years of age, one-eighth of a section; and

To each other single person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section: *Provided*, That in case there is not sufficient land in any of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: *And provided further*, That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act: *And provided further*, That when the lands allotted are only valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual.

Provisos.

Allotment pro rata if lands insufficient.

Allotment by treaty or act not reduced.

Additional allotment of lands fit for grazing only.

Selection of allotments.

SEC. 2. That all allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act: *Provided*, That if any one entitled to an allotment shall fail to make a selection within four years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which election shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner.

Improvements.

Proviso.

On failure to select in four years, Secretary of the Interior may direct selection.

Allotments to be made by special agents and Indian agents.

SEC. 3. That the allotments provided for in this act shall be made by special agents appointed by the President for such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office.

Certificates.

Indians not on reservations, etc., may make selection of public lands.

SEC. 4. That where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land-office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands, the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as herein provided. And the fees to which the officers of such local land-office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

Fees to be paid from the Treasury.

Patent to issue.

SEC. 5. That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided*, That the law of descent and partition in force in the State or Territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except as herein otherwise provided; and the laws of the State of Kansas regulating the descent and partition of real estate shall, so far as practicable, apply to all lands in the Indian Territory which may be allotted in severalty under the provisions of this act: *And provided further*, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be

To be held in trust.

Conveyance in fee after 25 years.

Provisos.

Period may be extended.

Laws of descent and partition.

Negotiations for purchase of lands not alloted.

Lands so bought to be held for actual settlers if arable.

prescribed by Congress: *Provided however*, That all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: *And provided further*, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void.

Patent to issue only to person taking as homestead.

Purchase money to be held in trust for Indians.

And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians; to whom such reservations belonged; and the same, with interest thereon at three per cent per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterward delivered, free of charge, to the allottee entitled thereto. And if any religious society or other organization is now occupying any of the public lands to which this act is applicable, for religious or educational work among the Indians, the Secretary of the Interior is hereby authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law.

Religious organizations.

Indians selecting lands to be preferred for police, etc.

And hereafter in the employment of Indian police, or any other employes in the public service among any of the Indian tribes or bands affected by this act, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of this act and become citizens of the United States shall be preferred.

Citizenship to be accorded to allottees and Indians adopting civilized life.

SEC. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

Secretary of the Interior to prescribe rules for use of waters for irrigation.

SEC. 7. That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservations; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

Lands excepted.

SEC. 8. That the provision of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in the Indian Territory, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by executive order.

Appropriation for surveys.

SEC 9. That for the purpose of making the surveys and resurveys mentioned in section two of this act, there be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of one hundred thousand dollars, to be repaid proportionately out of the proceeds of the sales of such land as may be acquired from the Indians under the provisions of this act.

Rights of way not affected.

SEC. 10. That nothing in this act contained shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation.

Southern Utes may be removed to new reservation.

SEC. 11. That nothing in this act shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in Southwestern Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe.

Approved, February 8, 1887.

Feb. 8, 1887.

CHAP. 120.—An act to declare a forfeiture of lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company, to confirm title to certain lands, and for other purposes.

Certain lands granted to New Orleans, Baton Rouge and Vicksburg R. R. Co. forfeited.
Vol. 16, p. 579.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company by the act entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March third, eighteen hundred and seventy-one, are hereby declared to be forfeited to the United States of America in all that part of said grant which is situate on the east side of the Mississippi River, and also in all that part of said grant on the west of the Mississippi River which is opposite to and coterminous with the part of the New Orleans Pacific Railroad Company which was completed on the fifth day of January, eighteen hundred and eighty-one; and said lands are restored to the public domain of the United States.

Certain lands confirmed to New Orleans Pacific R. R. Co., assignee of New Orleans, Baton Rouge and Vicksburg R. R. Co.

SEC. 2. That the title of the United States and of the original grantee to the lands granted by said act of Congress of March third, eighteen hundred and seventy-one, to said grantee, the New Orleans, Baton Rouge and Vicksburg Railroad Company, not herein declared forfeited, is relinquished, granted, conveyed, and confirmed to the New Orleans Pacific Railroad Company, as the assignee of the New Orleans, Baton Rouge and Vicksburg Railroad Company, said lands to be located in accordance with the map filed by said New Orleans Pacific Railway Company in the Department of the Interior October twenty-seventh, eighteen hundred and eighty-one and November seventeenth, eighteen hundred and eighty-two, which indicate the definite location of said road: *Provided*, That all said lands occupied by actual settlers at the date of the definite location of said road and still remaining in their possession or in possession of their heirs or assigns shall be held and deemed excepted from said grant and shall be subject to entry under the public land laws of the United States.

Proviso.
Lands of actual settlers at the time excepted.

When grant to be in effect.

SEC. 3. That the relinquishment of the lands and the confirmation of the grant provided for in the second sections of this act are made and shall take effect whenever the Secretary of the Interior is notified that

C

United States Code Annotated Currentness
Federal Rules of Appellate Procedure (Refs & Annos)
Title VII. General Provisions
Rule 34. Oral Argument

(a) In General.

(1) Party's Statement. Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need not, be permitted.

(2) Standards. Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) the appeal is frivolous;

(B) the dispositive issue or issues have been authoritatively decided; or

(C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(b) Notice of Argument; Postponement. The clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.

(c) Order and Contents of Argument. The appellant opens and concludes the argument. Counsel must not read at length from briefs, records, or authorities.

(d) Cross-Appeals and Separate Appeals. If there is a cross-appeal, Rule 28.1(b) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(e) Nonappearance of a Party. If the appellee fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear for argument, the court may hear the appellee's argument. If neither party

appears, the case will be decided on the briefs, unless the court orders otherwise.

(f) Submission on Briefs. The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.

(g) Use of Physical Exhibits at Argument; Removal. Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom, unless the court directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them.

CREDIT(S)

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 25, 2005, eff. Dec. 1, 2005.)

ADVISORY COMMITTEE NOTES

1967 Adoption

A majority of circuits now limit oral argument to thirty minutes for each side, with the provision that additional time may be made available upon request. The Committee is of the view that thirty minutes to each side is sufficient in most cases, but that where additional time is necessary it should be freely granted on a proper showing of cause therefor. It further feels that the matter of time should be left ultimately to each court of appeals, subject to the spirit of the rule that a reasonable time should be allowed for argument. The term “side” is used to indicate that the time allowed by the rule is afforded to opposing interests rather than to individual parties. Thus if multiple appellants or appellees have a common interest, they constitute only a single side. If counsel for multiple parties who constitute a single side feel that additional time is necessary, they may request it. In other particulars this rule follows the usual practice among the circuits. See 3d Cir. Rule 31 [rule 31, U.S.Ct. of App.3rd Cir.]; 6th Cir. Rule 20 [rule 20, U.S.Ct. of App.6th Cir.]; 10th Cir. Rule 23 [rule 23, U.S.Ct. of App.10th Cir.].

1979 Amendment

The proposed amendment, patterned after the recommendations in the Report of the Commission on Revision of the Federal Court Appellate System, *Structure and Internal Procedures: Recommendations for Change*, 1975, created by Public Law 489 of the 92nd Cong.2nd Sess., 86 Stat. 807, sets forth general principles and minimum standards to be observed in formulating any local rule.

1986 Amendment

The amendments to Rules 34(a) and (e) are technical. No substantive change is intended.

1991 Amendment

C

United States Code Annotated Currentness
Federal Rules of Civil Procedure for the United States District Courts (Refs & Annos)
Title VII. Judgment
Rule 56. Summary Judgment

<Notes of Decisions for 28 USCA Federal Rules of Civil Procedure Rule 56 are displayed in three separate documents. Notes of Decisions for subdivisions I to VI are contained in this document. For Notes of Decisions for subdivisions VII through XXV, see the second document for 28 USCA Federal Rules of Civil Procedure Rule 56. For Notes of Decisions for subdivisions XXVI to end, see the third document for 28 USCA Federal Rules of Civil Procedure Rule 56.>

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense--or the part of each claim or defense--on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) Procedures.

(1) ***Supporting Factual Positions*****.** A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) ***Objection That a Fact Is Not Supported by Admissible Evidence*****.** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) ***Materials Not Cited*****.** The court need consider only the cited materials, but it may consider other materials

Addendum 52

I.R.C. § 7302

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle F. Procedure and Administration (Refs & Annos)
Chapter 75. Crimes, Other Offenses, and Forfeitures
Subchapter C. Forfeitures
Part I. Property Subject to Forfeiture

§ 7302. Property used in violation of internal revenue laws

It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property. A search warrant may issue as provided in chapter 205 of title 18 of the United States Code and the Federal Rules of Criminal Procedure for the seizure of such property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal revenue laws, or of any other law. The seizure and forfeiture of any property under the provisions of this section and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal revenue laws.

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 867.)

Current through P.L. 113-120 approved 6-10-14

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Addendum 53