

Research Is Needed on State-Tribal Tax Coordination

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More than 500 federally recognized Native American tribes (including Alaska natives) are present in the United States. Tribal governments and members face numerous challenges, including high poverty, unemployment, and mortality rates.¹ One of the many factors contributing to these conditions is the lack of clear rules on the interplay between state and tribal taxing authority.

Statutes, treaties, and court decisions establish that tribes may tax their members, as well as non-members that engage in transactions with the tribe, but generally may not tax other non-members (including non-Indians) who live within reservation boundaries.² Limited tribal taxing power (and capacity) make it difficult for tribes to provide adequate public services. Although states are generally preempted from taxing tribal property and the income that tribal members derive on the reservation, they may tax non-members, including those that engage in transactions with the tribe.³ Double taxation by state and tribal governments can occur, which “places those who deal with tribes at a disadvantage”⁴ and impedes tribal economic development.

Specific applications of those general principles are not clear-cut, sometimes leading to protracted litigation between tribes and states. One commentator notes that the legal analysis “injects both flexibility and unpredictability into questions of taxation ... because the result in each case depends upon a fact-specific balancing of the competing interests.”⁵ On a positive note, however, a number of states and tribes have reached cooperative tax agreements.⁶

Three lines of research in this area could be fruitful.

First, theoretical economic research could evaluate the efficiency and distributional effects of alternative taxing arrangements in the unique context of tribal-state shared sovereignty. The research should be undertaken by scholars with knowledge of the relevant institutions.

Second, empirical economic research could estimate the effects of current policies on tribal economic activity, including transactions between members and non-members. A top priority would be to examine the effects of state-tribal tax agreements.

¹ David H. Getches, Charles F. Wilkinson, Robert A. Williams, Jr., and Matthew L.M. Fletcher, *Cases and Materials on Federal Indian Law*, 6th edition (West Publishing Co, 2011), pp. 9-18.

² William C. Canby, Jr., *American Indian Law in a Nutshell*, 6th edition (West Academic Publishing, 2015), pp. 314-318.

³ Canby, pp. 298-314.

⁴ Canby, p. 309.

⁵ Canby, p. 294.

⁶ Canby, pp. 310-311; Getches et al., pp. 634-635.

Third, in-depth survey discussions with tribal and state officials could be undertaken to get information on the ground about the problems and the affected parties' evaluations of potential solutions, including tribal-state tax agreements.

Additional research in this area could yield insights that would facilitate the development of new institutional arrangements benefiting both tribes and states.