

M e m o r a n d u m**305.0027**

To: -----, District Principal Auditor

Date: December 3, 1975

From: Tax Counsel- Headquarters

Subject: Administration of Sales and Use Tax Laws
Within the Boundaries of an Indian Reservation

This is in response to your memorandum of November 10, 1975, by which you request that we review Mr. ----- memorandum to you of October 22 in regard to the referenced subject matter. Mr. ----- seeks confirmation of the guidelines set out in an intradistrict memorandum dated July 13, 1971, and raises certain additional questions in his memorandum to you.

First, we can confirm the guidelines set out in the memorandum of July 13, 1971, except with regard to the statement that all non-Indian sellers are considered as "Indian traders" whether or not federally licensed as Indian traders. The only persons regarded as Indian traders are those persons federally licensed as Indian traders. See BTLG Anno. 305.0060; Memorandum Opinion in the Matter of the *Claim of Glenn and Margaret E. McGunegill*, August 21, 1974, copy attached for your reference.

Second, our response to the additional questions are as follows:

- (1) If an Indian is licensed as an Indian trader, the Indian should not be issued a seller's permit. We do issue seller's permits to non-Indian federally licensed Indian Traders.
- (2) The sale by an Indian seller to a non-Indian does not extinguish the use tax liability of the non-Indian.
- (3) We should not issue a seller's permit to an Indian association so that the association may purchase items for resale at cost to members of the association. In a proper case, such as that discussed in annotation 305.0020, an Indian organization, even though not subject to the requirement that it hold a seller's permit, may nevertheless purchase property for resale. This question is presently being considered in the case of Arcata Mobile Home Center, Inc., which has arisen in your district.
- (4) Federal laws concerning Indians also apply to the Use Fuel Tax Law.
- (5) It is immaterial to the exemption that the Indian claiming the exemption may be an enrolled member of another tribe and not of the tribe upon whose reservation the transaction occurs.