

RECEIVED
JUL 09 1984

FILED
JUL 6 7 12 AM '84
WILLIAM L. WHITTAKER
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ZIONTZ, PIRTLE, MORISSET,
ERNSTOFF & CHESTNUT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE HOOPA VALLEY TRIBE, a) NO. C-82-5903-MHP
federally recognized Indian tribe,)
in its own behalf and in behalf of)
its enrolled members; the HOOPA)
TIMBER CORPORATION, a tribal)
enterprise of the Hoopa Valley)
Tribe,)

Plaintiff,)

vs.)

RICHARD NEVINS, CONWAY H. COLLIN,)
ERNEST J. DRONENBURG, JR., KENNETH)
CORY, WILLIAM F. BENNETT, Members,)
State Board of Equalization;)
CALIFORNIA STATE BOARD OF)
EQUALIZATION; STATE OF CALIFORNIA,)

OPINION

Defendants.)

INTRODUCTION

This action is before the court on crossmotions for partial summary judgment. Oral argument was heard on the matter on March 5, 1984. After having considered all memoranda submitted by the parties and the arguments of counsel, the court concludes for the reasons set forth below that plaintiffs' motion for partial summary must be granted, and defendants' motion denied.

///

1 FACTUAL BACKGROUND

2 Plaintiffs are the Hoopa Valley Tribe ("Tribe") and the
3 Hoopa Timber Corporation ("HTC"), a wholly-owned enterprise of
4 the Tribe. Defendants are the California State Board of
5 Equalization ("Board"), five individual members of the Board,
6 and the State of California. Plaintiffs challenge application
7 of the timber yield tax established by the 1976 California
8 Forest Taxation Reform Act (Cal. Rev. & Tax. Code §§38101 -
9 38908), which is levied on "timber owners" against the value
10 of timber at the time of harvest.

11 Timber on the reservation is held in trust for the Tribe
12 by the United States and is sold annually by the Bureau of
13 Indian Affairs ("BIA") through competitive bidding. When HTC
14 is the successful bidder it buys from BIA and after processing
15 the timber sells to off-reservation companies. On its face
16 the timber yield tax applies to private companies who buy
17 directly from BIA. Cal. Rev. & Tax. Code §38104 provides that
18 "timber owner" includes "the first person who acquires either
19 the legal title or beneficial title to timber after it has
20 been felled or any other person or agency or entity from land
21 owned by a federal agency exempt from property taxation under
22 the Constitution or laws of the United States...." Defendants
23 have not attempted to assess the tax directly against HTC when
24 it is the successful bidder who purchases from BIA. However,
25 the Board, which is charged with enforcing the tax, has ruled
26 that the tax applies to purchases by private companies from
27 HTC. A property tax rule has defined "timber owner" as "the
28

1 first nonexempt person" who "acquires either the legal title
2 or beneficial title to timber after it has been felled." Cal.
3 Admin. Code Pub. Rev. R. 1026 (1980).

4 Plaintiffs challenge the application of the tax both to
5 private companies who buy directly from BIA and to private
6 companies who buy from HTC, on grounds of federal preemption
7 and infringement of tribal sovereignty. Because the court
8 concludes that the state tax is preempted by federal law, it
9 does not reach the issue of tribal sovereignty.

10 DISCUSSION

11 The parties agreed at oral argument that the analysis of
12 this case must be guided by the Supreme Court's decision in
13 White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980).^{1/}
14 In White Mountain the court held that motor carrier and use
15 fuel taxes imposed by Arizona on a non-Indian logging company
16 operating on an Indian reservation were invalid because
17 preempted by federal law. The Court determined that either
18 preemption by federal law or infringement on tribal sover-
19 eignty could bar the application of state law to activity on
20 the reservation or by tribal members. Id. at 142-43.
21 Emphasizing that preemption standards which have been
22 developed in other areas are unhelpful in analyzing preemption
23 as it relates to Indian tribes, the Court called for "a
24 particularized inquiry into the nature of the state, federal,
25 and tribal interests at stake, an inquiry designed to
26 determine whether, in the specific context, the exercise of
27 state authority would violate federal law." Id. at 145.
28

1 Using this as the framework, the Court then examined in
2 detail the extent of the federal government's regulation of
3 the harvesting of Indian timber and concluded that it was
4 comprehensive, with the BIA exercising "literally daily
5 supervision over the harvesting and management of tribal
6 timber." Id. at 147. The Court also concluded that the
7 federal government exercised detailed supervision over BIA
8 roads on the reservation. Finding the federal regulatory
9 scheme pervasive, the Court concluded that assessment of state
10 taxes would obstruct federal policies and that defendants had
11 identified no service performed by the state that would
12 justify assessment of taxes for activities on BIA and tribal
13 roads. Id. at 148-49.

14 The Court identified several ways in which the taxes
15 would obstruct federal policy. First:

16 At the most general level, the taxes would
17 threaten the overriding federal objective of
18 guaranteeing Indians that they will "receive
19 ... the benefit of whatever profit [the
20 forest] is capable of yielding..." 25 C.F.R.
21 §141.3(a)(3) (1979). Underlying the federal
22 regulatory program rests a policy of assuring
23 that the profits derived from timber sales
24 will inure to the benefit of the Tribe,
25 subject only to administrative expenses
incurred by the Federal Government.... The
imposition of the taxes at issue would
undermine that policy in a context in which
the Federal Government has undertaken to
regulate the most minute details of timber
production and expressed a firm desire that
the Tribe should retain the benefits derived
from the harvesting and sale of reservation
timber.

26 Id. at 149. Second, the Court found that "the taxes would
27 undermine the Secretary's ability to make the wide range of
28

