BEFORE THE HEARING OFFICER
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE PROTEST OF
VAL TECH & ASSOCIATES, NO. 97-26
ID. NO. 02-285408-00 8, PROTEST
TO DENIAL OF CLAIM FOR REFUND

DECISION AND ORDER

This matter came on for hearing before Gerald B. Richardson, Hearing Officer, on February 7, 1997. Val Tech & Associates, hereinafter, "Taxpayer", was represented by Wayne H. Bladh, Esq. and Cynthia A. Kiersnowski, Esq. of Nordhaus, Haltom, Taylor, Taradash & Frye, LLP. The Taxation and Revenue Department, hereinafter, "Department", was represented by Frank D. Katz, Chief Counsel. Following the hearing, the parties submitted excellent briefs in support of their respective positions. The final brief, the Taxpayer's Reply Brief, was filed on May 15, 1997 and the matter was considered submitted for decision at that time. The parties have agreed to extend the deadline for issuing the decision in this matter until July 7, 1997.

Based upon the evidence and the arguments submitted, IT IS DECIDED AND ORDERED as follows:

FINDINGS OF FACT

1. The Taxpayer is a sole proprietorship owned by Mr. Bernard Velasquez, who is an enrolled member of the Pueblo of Laguna.

2. The Taxpayer's business is to do private investigation. Primarily, it does personnel background investigations for the gambling casinos owned and operated by the Pueblos of Acoma, Sandia and San Felipe so that they may use the information developed to determine the fitness for employment of various job applicants.

3. Since July of 1995, the Taxpayer's office or place of business has been in a building located at the Indian Pueblo Cultural Center in Albuquerque, New Mexico. The Taxpayer leases its office space from Indian Pueblo Marketing, Inc., which is a corporation which was formed to oversee the operations of the Indian Pueblo Cultural Center property.

4. The land on which the Indian Pueblo Cultural Center is located consists of 11.2857 acres at 2401 12th Street, N.W., in Albuquerque, New Mexico. The land was owned by the United States and was originally the site of the Albuquerque Indian School which was administered by the Bureau of Indian Affairs (BIA). In the 1960s the federal government determined that the lands and improvements of the Indian school property were no longer needed for federal Indian school purposes. In 1969 the BIA conveyed the land by quitclaim deed to the 19 New Mexico Pueblos as tenants in common. The purpose of the conveyance was to enable the Pueblos to develop an Indian Pueblo Cultural Center on the property.

5. The All Indian Pueblo Council, (AIPC) is an umbrella organization for the New Mexico Pueblos consisting of the governors of the 19 New Mexico Pueblos which, among other things, oversees the Indian Pueblo Cultural Center property. It meets monthly at the Indian Pueblo Cultural Center.

6. In 1972 the Federal Economic Development Administration (EDA) approved a grant to the AIPC to construct and equip the Indian Pueblo Cultural Center on the Indian school property. In 1973 the nineteen Pueblos leased the land to AIPC, but that lease was never formally approved by the Interior Department. The AIPC also created a non-profit corporation, Indian Pueblo Cultural Center, Inc. for the purpose of developing and maintaining the Indian Pueblo Cultural Center in order to provide cultural and educational programs and economic opportunities for marketing the products of Pueblo crafts people. AIPC assigned its lease of the land to Indian Pueblo Cultural Center, Inc. and designated the corporation as its agent in implementing the EDA grant and for construction of the Cultural Center, which was completed in 1976.

7. In 1974 the Santo Domingo Pueblo attempted to divest itself of ownership of the Indian school property by quitclaiming its interest in the property to the other 18 Pueblos. The BIA never approved of this action to divest of title but this action muddied the title to the land and raised further questions about the validity of the lease held by the AIPC which was assigned to Indian Pueblo Cultural Center, Inc.

8. In order to clarify the legal status of the Cultural Center land, the lease by the Pueblos to AIPC and the assignment of that lease, in 1976 the AIPC requested, by formal resolution, that the Indian Pueblo Cultural Center site be taken in trust by the United States for the 19 Pueblos.

9. By Act of February 17, 1978, Congress passed Public Law 95-232, 92 Stat. 30, which authorized the Secretary of the Interior to accept the reconveyance of the Cultural Center land on behalf of the United States, to be held in trust jointly for the Indian Pueblos.

10. As originally proposed in the Senate, S. 1509, which would become P.L. 95-232, had provided that "Upon approval by the Secretary of the Interior, the Secretary shall accept

such conveyances on behalf of the United States and such land shall be held in trust jointly for such Indian Pueblos." The Senate Select Committee on Indian Affairs amended this language to read, "Upon approval by the Secretary of the Interior, the Secretary shall accept such conveyances on behalf of the United States. Such land shall be held in trust jointly for such Indian pueblos and shall enjoy the tax-exempt status of other trust lands, including exemption from State taxation and regulation. However, such property shall not be "Indian country" as defined in section 1151 of title 18, United States Code." This amended language became part of subsection (b) of P.L. 95-232 as it was passed by Congress.

11. On July 10, 1996 the Taxpayer submitted a claim for refund to the Department, requesting a refund of gross receipts tax in the amount of $2,189.27 for the period of July, 1995 through March, 1996. The basis for the claim for refund is the Taxpayer's claim that the imposition of tax is barred by operation of federal law because the services are performed by a member of Laguna Pueblo on land held in trust for the Laguna Pueblo and the other Indian Pueblos of New Mexico and the services are performed for the Pueblos of Acoma, San Felipe and Sandia on land held in trust for those Pueblos.

12. On July 22, 1996 the Department denied the Taxpayer's claim for refund.

13. On August 1, 1996, the Taxpayer filed a written protest to the Department's denial of its claim for refund.

DISCUSSION

The issue presented for determination herein is whether the imposition of New Mexico's gross receipts tax upon the receipts of the Taxpayer is preempted by operation of federal law. There is no dispute about the relevant facts in this case. The Taxpayer is a sole proprietorship

owned by Mr. Bernard Velasquez, a member of the Pueblo of Laguna. The Taxpayer's receipts were derived from performing investigatory services at the Taxpayer's offices which are located at the Indian Pueblo Cultural Center[1] which is on land held by the United States in trust for the 19 New Mexico Indian Pueblos. The Taxpayer performs the investigatory services for the Pueblos of Acoma, San Felipe and Sandia.

Over the years, the Supreme Court has been called upon on numerous occasions to address the limits of state authority to tax matters involving Indian tribes and their members. The Court has termed this area of the law "vexing " and the legal problems encountered "intricate".[2] Anyone who has worked in this area of law would be hard pressed to disagree. The Court has developed the Indian preemption doctrine to determine these disputes, and the reach and application of that doctrine has been developed on a case by case basis over the years. The first cases to apply the doctrine, ***Warren Trading Post Co. v. Arizona State Tax Commission***, 380 U.S. 685 (1965), and ***McClanahan v. Arizona Tax Commission***, 411 U.S. 165 (1973) involved state taxes imposed on transactions or income derived on formally designated reservation land, the Navajo Indian Reservation. In ***Warren Trading Post***, the Court ruled that state sales taxes imposed on a federally licensed Indian trader trading with tribal members on the reservation were preempted. In ***McClanahan***, the state tax on the income of Indians derived from on reservation activities was held to be preempted.

---

[1] The testimony established that the vast majority of the Taxpayer's investigatory services are performed from its offices at the Indian Pueblo Cultural Center, although a small amount of services are performed off-site. Because, however, a taxpayer's receipts are reported based upon its place of business, *see*, NMSA 1978, § 7-1-14, it is irrelevant that some services are performed off-site.

[2] *See*, opening comments by Justice White in, ***Washington v. Confederated Tribes of Colville***, 447 U.S. 134, 138 (1980).

Historically, however, the Indian preemption doctrine has had a distinct territorial aspect to it and has been held inapplicable with respect to the taxation of activities involving Indians off-reservation. *See,* ***Mescalero Apache Tribe v. Jones***, 411 U.S. 141 (1973) in which the Court held that the state could impose its tax on an Indian tribe with respect to its business activities occurring off the reservation. More recent cases have applied the Indian preemption doctrine to state taxation of activities occurring on land which is not reservation land, but is "Indian country", ***Oklahoma Tax Commission v. Sac and Fox Nation***, 113 S.Ct. 1985 (1993), or land held in trust which was also "Indian country", ***Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma***, 498 U.S. 505 (1991). This case presents a question concerning the scope of the Indian preemption doctrine which has not been heretofore addressed, whether the state tax is preempted with respect to transactions occurring between a Pueblo Indian and the governments of other Pueblos on lands held in trust for the 19 New Mexico Pueblos but which lands are not "Indian country".

The Indian preemption doctrine also has two distinct branches which have developed with respect to state jurisdiction to impose taxes. Where the legal incidence of a state tax falls upon a non-Indian for transactions occurring on Indian reservations or in "Indian Country" with tribes or tribal members, the courts have attempted to balance the relative federal, state and tribal interests in determining whether the exercise of state authority to tax is preempted by federal law. ***White Mountain Apache Tribe. v. Bracker*** 448 U.S. 136 (1980). However, where the legal incidence of a tax falls upon an Indian tribe or tribal members for activities occurring on a reservation or in "Indian country", the court has employed a more categorical approach, presuming preemption of the state tax in the absence of an express federal authorization for the tax. ***Oklahoma Tax Commission v. Chickasaw Nation***, 515 U.S. ___, 115 S.Ct. 2214 (1995).

In this case, both the Taxpayer and the Department agree that since the legal incidence of New Mexico's tax falls upon a tribal member for activities performed on Indian lands, the categorical preemption test would apply if preemption applies to this case at all. Where the parties differ, however, is with whether the legal status of the Indian Pueblo Cultural Center land operates to remove this case from the application of the Indian preemption doctrine. The Taxpayer's position is that for purposes of the Indian preemption doctrine, the trust status alone of the Indian Pueblo Cultural Center land, which is held in trust for the Pueblos by the United States, is sufficient to invoke the strict federal preemption test for activities occurring on Indian lands which precludes state regulation in the absence of explicit federal permission. Under this scenario, the tax would be preempted under either of two theories. First, the Taxpayer's status as a sole proprietorship owned by a member of the Laguna Pueblo would invoke federal preemption under ***McClanahan,supra.***, because the state would be preempted from taxing the activities of a member of the Laguna Pueblo for activities on Laguna Pueblo land. Alternatively, the federal Indian Trader statutes have been ruled to preempt state taxation of goods sold to tribal entities or members on their reservations, ***Warren Trading Post, supra.***, or of services sold to tribal entities or members on their reservations. ***New Mexico Taxation and Revenue Department v. Laguna Industries, Inc.***, 115 N.M. 553, 855 P.2d 127 (1993). Thus, the state tax on services performed for the Pueblos of Acoma, San Felipe and Sandia on their lands would be exempt from tax.

In contrast to the Taxpayer, the Department argues that the trust status of the Cultural Center land, by itself, it not sufficient to invoke the Indian preemption doctrine, and that unless such land can also be characterized as "Indian country", the Indian preemption doctrine would not apply and the state's tax would apply to the Taxpayer's activities.

This case presents a unique situation which no other case in this difficult area of competing state, tribal and federal authority has addressed. This is because of the apparently singular language contained in P.L. 95-232 concerning the status of the Indian Pueblo Cultural Center land.

P.L. 95-232 was enacted in early 1978. Prior to its enactment, the 19 Pueblos held title, as tenants in common, to the Indian Pueblo Cultural Center property under a quitclaim deed executed in 1969 by the BIA. Various questions had arisen about the legal status of the land and the validity of the lease of the property by the 19 Pueblos to the AIPC. The BIA had never approved the lease and Santo Domingo Pueblo had attempted to quitclaim its interest in the property to the other Pueblos. In order to clarify the legal status of the land, the AIPC had passed a resolution in 1976 requesting that the United States take back the title to the property to be held in trust for the 19 Pueblos. The stated purpose of P.L. 95-232 was:

> To provide for the return to the United States of title to certain lands conveyed to certain Indian pueblos of New Mexico and for such land to be held in trust by the United States for such tribes.

During the process of Congressional hearings of the bill (S.1509) which became P.L. 95-232, the Senate Select Committee on Indian Affairs amended the bill. As originally proposed the bill had provided that:

> Upon approval by the Secretary of the Interior, the Secretary shall accept such conveyances on behalf of the United States and such land shall be held in trust jointly for such Indian Pueblos.

The committee amended this language to read:

> Upon approval by the Secretary of the Interior, the Secretary shall accept such conveyances on behalf of the United States. *Such land shall be held in trust jointly for such Indian pueblos and shall enjoy the tax-exempt*

> *status of other trust lands, including exemption from state taxation and regulation. However, such property shall not be "Indian country" as defined in section 1151 of title 18, United States Code.* (emphasis added).

This amended language became part of subsection (b) of P.L. 95-232 as it was passed by Congress.

The unique status of the Indian Pueblo Cultural Center property, as trust property, but which is expressly not "Indian country" provides the factual predicate upon which the determination of state jurisdiction to tax is focused in this case.

As noted above, the Taxpayer's argument rests on the premise that the trust status of the Cultural Center property, which sets the land apart for the use of the Pueblos under the Federal government's superintendence is sufficient to invoke the application of the Indian preemption doctrine, regardless of the fact that the land is not "Indian country". The Taxpayer relies upon language drawn from ***Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma, supra.,*** for its position. At issue in that case was whether Oklahoma could tax the sale of goods (cigarettes) sold by a convenience store owned and operated by the Potawatomi Tribe which store was located on land held in trust for the Potawatomi Tribe. The Oklahoma Tax Commission had argued, in reliance on ***Mescalero Apache Tribe v. Jones, supra.,*** that tribal immunity from tax should not apply in the case because the sales did not occur on a reservation. The Taxpayer points to the language in the ***Potawatomi*** decision in which the Court rejected Oklahoma's attempt to limit the application of the tribe's sovereign immunity from tax to transactions occurring on reservation land and to deny its applicability to transactions occurring on land which is simply trust land. In rejecting Oklahoma's argument the Court stated, "Rather, we ask whether the area has been 'validly set apart for the use of the Indians as such, under the superintendence of the Government.'" ***Id.***, 498 U.S. at 511.

At first blush, this language would appear to determine the Taxpayer's protest herein, since there is no dispute that the Cultural Center property is trust land which has been set apart for the use of the Pueblo Indians under the government's superintendence. However, a more careful reading of the ***Potawatomi*** case, including the precedents from which the quoted language was drawn, as well as succeeding decisions of the Supreme Court belies the broad reading given to the ***Potawatomi*** decision by the Taxpayer.

First, we begin with a full reading of the portion of the Court's decision in ***Potawatomi*** from which the above-quoted language was drawn:

> Relying upon our decision in ***Mescalero Apache Tribe v. Jones***, 411 U.S. 145 (1973), Oklahoma argues that the tribal convenience store should be held subject to State tax laws because it does not operate on a formally designated "reservation," but on land held in trust for the Potawatomis. Neither ***Mescalero*** nor any other precedent of this Court has ever drawn the distinction between tribal trust land and reservations that Oklahoma urges. In ***United States v. John*****,** 437 U.S. 634 (1978), we stated that *the test for determining whether land is Indian country* does not turn upon whether that land is denominated "trust land" or "reservation." Rather, we ask whether the area has been "validly set apart for the use of the Indians as such, under the superintendence of the Government." ***Id***., at 648-649, see also, ***United States v. McGowan***, 302 U.S. 535, 539 (1938). (emphasis added).

Id., 498 U.S. at 511. As the full text of this quotation reveals, the Court was, in fact, applying the rule which has been long established in determining whether land is or is not "Indian country" as defined in 18 U.S.C. §1151. This is confirmed by a review of the cases cited, ***United States v. John, United States v. McGowan***, and of ***United States v. Pelican***, 232 U.S. 442, 449 (1914) the first case in which this rule for determining if land was "Indian country" was adopted by the Court. Each of those cases dealt specifically with determinations of

whether crimes or acts invoking federal forfeiture provisions had been committed in "Indian country".

Should there remain any doubt that in ***Potawatomi*** the Court was relying upon the "Indian country" status of the land at issue in determining that the state tax was preempted, one need only consult the opinion of the 10th Circuit Court of Appeals in that same matter. In ***Citizen Band Potawatomi Indian Tribe of Oklahoma v. Oklahoma Tax Commission***, 888 F.2d 1303 (10th Cir. 1989), the court specifically determined that the convenience store whose sales Oklahoma was attempting to tax was located in Indian country. ***Id***. at 1306. It was this determination which the Supreme Court was affirming in the language upon which the Taxpayer relies.

To read ***Potawatomi*** more broadly, as the Taxpayer suggests would also contravene numerous precedents and the commonly understood principle in the area of Indian law that the term "Indian country" is the crucial jurisdictional term which generally determines the allocation of tribal, federal and state authority. As noted by the 10th Circuit in ***Indian Country U.S.A. v. Oklahoma Tax Commission***, 829 F. 2d 967 (10th Cir. 1987):

> Although section 1151 by its terms defines Indian country for purposes of determining federal criminal jurisdiction, the classification generally applies to questions of both civil and criminal jurisdiction. *See* ***Cabazon [California v. Cabazon Band of Mission Indians]*** 107 S.Ct at 1087 n. 5. Numerous cases confirm the principle that the Indian country classification is the benchmark for approaching the allocation of federal, tribal and state authority with respect to Indians and Indian lands. *See, e.g., id.;* ***Solem v. Bartlett***, 465 U.S. 463, 465 n.2, 104 S.Ct. 1161, 1163 n. 2, 79 L.Ed.2d 442 (1984); ***DeCoteau v. District County Court***, 420 U.S. 425, 427-428 & n.2, 95 S.Ct. 1082, 1084 & n.2, 43 L.Ed.2d 300 (1975); ***Kennerly v. District Court,*** 400 U.S. 423 (1971); ***Cheyenne-Arapaho Tribes of Oklahoma v. Oklahoma,*** 618 F. 2d 665 (10th Cir. 1980); *see also* Cohen's Handbook of Federal Indian Law 27-46 (R. Strickland ed. 1982) [hereinafter Cohen's Handbook]("Indian country" usually the governing legal term for jurisdictional purposes); F. Cohen,

> Handbook of Federal Indian Law 5-8 (1942)("Indian country generally determines allocation of tribal, federal and state authority").

Id. at 973.

It is also clear from Supreme Court cases determined subsequent to ***Potawatomi*** that the Court has not abandoned the concept that one must look to whether the activity sought to be taxed occurs in Indian country in determining whether state authority to tax is preempted. In ***Oklahoma Tax Commission v. Sac and Fox Nation***, 508 U.S. ___, 113 S.Ct. 1985 (1993) the Court struck Oklahoma's attempt to impose its income tax and motor vehicle taxes on members of the Sac and Fox Tribe. Oklahoma had argued that since the Sac and Fox reservation had been disestablished in favor of allotments of trust land for individual tribal members, that it could impose its taxes because the tribal members resided off-reservation. In rejecting Oklahoma's arguments the Court reiterated that Indian country is the concept which applies to determine those lands over which tribes maintain sovereignty and the Indian preemption doctrine applies.

> But our cases make clear that a tribal member need not live on a formal reservation to be outside the state's taxing jurisdiction; it is enough that the member live in "Indian country." Congress has defined Indian country broadly to include formal and informal reservations, dependent Indian communities and Indian allotments, whether restricted or held in trust by the United states. See 18 U.S.C. § 1151.

Id. 113 S.Ct. at 1191. The Court went on to note that it had rejected the identical argument made by the same litigant, the Oklahoma Tax Commission, only two years prior in the ***Potawatomi*** case. In discussing its decision in ***Potawatomi***, the Court stated:

> We noted that we have never drawn the distinction Oklahoma urged. *Instead, we ask only whether the land is Indian country*. (emphasis added).

Id.

Even more recently, the Court reaffirmed the significance of the determination of whether the taxable event occurs inside of or outside of Indian country in ***Oklahoma Tax Commission v. Chickasaw Nation***, 515 U.S. ___, 115 S.Ct. 2214 (1995). In that case the Court struck down Oklahoma's tax on motor vehicle fuel sold by the Tribe in Indian country, stating:

> We hold that Oklahoma may not apply its motor fuels tax, as currently designed, to fuel sold by the Tribe in Indian country. In so holding, we adhere to settled law. When Congress does not instruct otherwise, a state's excise tax is unenforceable if its legal incidence falls on a Tribe or its members for sales made *within Indian country.* (emphasis added).

Id., 115 S.Ct. at 2217.

Oklahoma had also sought to tax the income of Chicasaw tribal members who reside in-state but outside of Indian country. Some of those tribal members also derived their income from tribal employment. The Chicasaw Tribe had argued that especially with respect to those tribal members whose income was also derived from work for the Tribe on tribal lands, that the state was barred from imposing its income tax. The Court, however, rejected the Tribe's argument, stating:

> For the exception the tribe would carve out of the State's taxing authority, the tribe gains no support from the rule that Indians and Indian tribe are generally immune from state taxation, ***McClanahan v. Arizona State Tax Comm'n***, 411 U.S. 164, 93 S.Ct. 1257, 36 L.Ed.2d 129 (1973), *as this principle does not operate outside Indian country.* ***Oklahoma Tax Comm'n v. Sac and Fox Nation,*** 508 U.S. ___, 113 S.Ct. 1985, 1990-1992, 124 L.Ed. 2d 30 (1993). (emphasis added).

It is thus clear that there remains a distinct territorial limitation on the applicability of the Indian preemption doctrine. The operative concept for whether a state's ability to tax is preempted is whether the legal incidence of the tax falls on a tribe or a tribal member for activities occurring within "Indian country". Given the fact that the Indian Pueblo Cultural Center property at issue herein was expressly declared by Congress to **not** be Indian country, there is no preemption of New Mexico's gross receipts tax.

The Taxpayer argues against the application of this established law, arguing that by making the Cultural Center property trust land, but not Indian country, that Congress has created an ambiguity as to the state's jurisdiction over the activities at the property. It then invokes the well established canon of construction applicable to treaties and congressional enactments dealing with Indians that ambiguities must be construed in favor of protecting the interests of the Indians. In support of this argument, the Taxpayer posits that the concept of Indian country as the crucial jurisdictional term defining the jurisdiction of states with regard to Indians was an evolving concept which had not been clearly established to apply beyond criminal jurisdiction into areas of civil jurisdiction at the time that P.L. 95-232 was enacted in 1978.

In 1975, however, the Supreme Court spoke to this precise issue in ***DeCoteau v. District County Court for the Tenth Judicial District***, 420 U.S. 423 (1975). The issue in that case was whether the South Dakota state courts had civil and criminal jurisdiction over the conduct of members of the Sisseton-Wahpeton Indian Tribe for activities occurring on unallotted lands which were within the original boundaries of the Lake Traverse Indian Reservation. The specific issue the Court examined was whether the lands in question were part of a continuing reservation, bringing the lands within one of the definitions of "Indian country" in 18 U.S.C. §1151(a). Because the Court concluded that the reservation had been terminated by an 1891

Act of Congress, it ruled that the state courts had both criminal and civil jurisdiction. As framed by the Court, the issue was stated as follows:

> The parties agree that the state courts did not have jurisdiction if these lands are "Indian country," as defined in 18 U.S.C. § 1151, and that this question depends upon whether the lands retained reservation status after 1891.

Id. at 427. The Court expanded upon this statement in footnote 2, explaining:

> If the lands in question are within a continuing "reservation," jurisdiction is in the tribe and the Federal Government "notwithstanding the issuance of any patent, [such jurisdiction] including rights-of-way running through the reservation." 18 U.S.C. § 1151(a). On the other hand, if the lands are not within a continuing reservation, jurisdiction is in the State, except for those land parcels which are "Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." 18 U.S.C. § 1151(c). Even within "Indian country," a State may have jurisdiction over some persons or types of conduct, but this jurisdiction is quite limited. See, *e.g.*, ***McClanahan v. Arizona State Tax Comm'n***, 411 U.S. 164; ***Williams v. Lee***, 358 U.S. 217; ***Worcester v. Georgia***, 31 U.S. 515. *While § 1151 is concerned, on its face, only with criminal jurisdiction, the Court has recognized that it generally applies as well to questions of civil jurisdiction.* ***McClanahan v. Arizona State Tax Comm'm,*** *supra,* 411 U.S., at 177-178, n. 17; ***Kennerly v. District Court of Montana***, 400 U.S. 423, 424, n. 1; ***Williams v. Lee,*** *supra.* 358 U.S., at 220-222, nn. 7,6, and 10. (emphasis added).

Lest there be any doubt that Congress was quite aware, in enacting P.L. 95-232, that by declaring the land to not be Indian country it was clarifying state jurisdiction over the property, one need only consult the sketchy, but still revealing legislative history in the form of the Congressional reports on the legislation.

As originally introduced, S. 1509, which, as amended became P.L. 95-232, had simply provided that:

> Upon approval by the Secretary of the Interior, the Secretary shall accept such conveyances on behalf of the United States and such land shall be held in trust jointly for such Indian Pueblos.

Senator Domenici, co-sponsor of the bill, was aware, even upon the introduction of the bill,

that transferring the property to trust status raised questions of state, tribal and federal jurisdiction, however, for he stated that:

> I do not contend that my bill has solved all the problems that will be associated with the conversion of this land to a Federal trust status. For example, the issue of law enforcement jurisdiction over this land must be addressed. *I am confident that the hearings on my bill will focus on this and similar problems and find the best solutions thereto*. (emphasis added).

123 Cong. Rec. 14,698 (May 13, 1977).

Indeed, the committee hearings apparently did focus on these problems. Senate Report No. 95-445 reflects that hearings on S. 1509 were held before the Senate Select Committee on Indian Affairs on August 4, 1977. Page 2 of that report indicates that:

> The administration testified before the committee in support of the legislation and stated that in their opinion the conveyances would not raise questions of Federal, tribal, and state jurisdiction. As trust lands they are exempt from state taxation, but otherwise subject to state police and judicial authority.

Apparently, the Committee was not confident in this statement that the placing the lands in trust status would only affect the state's ability to tax and regulate the land itself and otherwise leave intact state authority, for it felt the need to amend the bill. It was in this committee that the language specifically declaring that the lands, as trust lands, "shall enjoy the tax exempt status of other trust lands, including exemption from state taxation and regulation", but that the property "shall not be `Indian country'" was added to the bill. The bill went on to pass the Senate in its amended form and on January 23, 1978 it was considered and passed by the Committee of the Whole House (of Representatives) and passed. House Report No. 95-846

which accompanied the bill when considered by the House of Representatives provided this explanation with respect to the issues of state, tribal and federal jurisdiction:

> Since the *lands* are to be held in trust jointly for the Indian pueblos, *it will be tax exempt* as other Indian trust lands are tax exempt. *However,* for criminal *and civil jurisdiction purposes, the lands are not to be considered as "Indian country"* as defined in section 1151 of title 18, United States Code. (emphasis added).

Thus, it is clear that enacting P.L. 95-232, Congress was well aware that the concept of "Indian country" had implications for civil jurisdiction as well as for criminal jurisdiction. We need not consult legal presumptions and canons of construction when it is clear from the record that Congress was well aware of the fact that in enacting P.L. 95-232 it was exempting the land in question from state taxation but it was not otherwise ousting state jurisdiction.

As the Congressional hearing reports concerning P.L. 95-232 reveal, Congress was aware in passing this law that the land in question was located on eleven-plus acres within the city of Albuquerque, New Mexico. It was also aware that the land had been the former site of the federally owned Albuquerque Indian School which had been administered by the Bureau of Indian Affairs. It was also aware that the land had, less than nine years before, been deeded in fee to the 19 Pueblos. It was thus aware that this land was not former reservation land or land over which Indians had traditionally exercised jurisdiction. Congress understood, as evidenced by the explicit language in the bill, that it was exempting the land itself from state taxation. It was also aware, however, that by declaring it to not be "Indian country", it was not ousting state jurisdiction over this property. What is apparent from all of this is that we have a very unique situation. We have land located within the heart of a large, metropolitan city which was not traditional tribal property and which Congress, in taking the title in trust, wished to remain subject to the same state jurisdiction as the remaining city around it. It chose not to create an

island of uncertain jurisdiction which would only create uncertainties in the future. Instead, it granted tax exempt status to the land itself and left state civil and criminal jurisdiction intact.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to the Department's denial of its claim for refund, and jurisdiction lies over both the parties and the subject matter of this protest.

2. The land on which the Indian Pueblo Cultural Center is located is owned in trust for the 19 New Mexico Indian Pueblos by the Federal government.

3. As trust land, the Indian Pueblo Cultural Center property itself is exempt from state taxation.

4. The trust status of the Indian Pueblo Cultural Center property, by itself, is not sufficient to oust state civil jurisdiction over activities that occur on the property. It must be determined whether the property qualifies as Indian country.

5. The operative concept for whether a state's ability to tax is preempted when the legal incidence of a state tax falls on an Indian tribe or a tribal member for activities occurring on Indian land is whether or not the land status qualifies as "Indian country" as defined in 18 U.S.C. § 1151.

6. The Indian Pueblo Cultural Center property is not "Indian country" as defined in 18 U.S.C. § 1151.

7. New Mexico is not preempted from imposing its gross receipts tax upon Val Tech, Inc. for its activities performed at the Indian Pueblo Cultural Center for the Pueblos of Acoma, San Felipe or Sandia.

For the foregoing reasons, the Taxpayer's protest IS HEREBY DENIED.

DONE, this 7th day of July, 1997.