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Interior Solicitor Leo M. Krulitz has ruled that the State of New Mexico has no authority to tax royalties paid to the .Jicarilla Apache Tribe for and gas production from tribal lands.

The tribe asked for a decision on the question following a 1977 Solicitor's Opinion which said that the State of Montana lacked authority to tax oil and gas leasing royalties paid the Sioux and Assiniboine Tribes of the Fort Reservation. After that opinion was issued, the Jicarilla Apaches stopped paying royalty taxes to the State of New Mexico. (Taxes on tribal royalties amounted to $116,452 in fiscal 1976, the last full year for which the tribe paid the taxes.)

Krulitz said the 1977 opinion applies equally to reservations created by treaty with Indian tribes, such as Fort Peck, and to reservations created by Executive Order of the President, such as the Jicarilla Apache Reservation. The effect of the expanded ruling is to deny the authority of states to tax tribal royalties from any mineral leases issued under the 1938 Indian Mineral Leasing Act on United States Indian reservations. Krulitz said the exemption applies to lease royalties from coal and other minerals as well as from oil and gas.

The 1938 Act replaced a patchwork of leasing authorities for Indian lands dating back to 1891. Some dealt only with treaty reservations, others only with executive order reservations and some contained state taxing authority.

"It is clear that states cannot tax trust property, reservation Indians or Indian tribes unless Congress has consented," said the Solicitor in the 1977 opinion, noting that the 1938 Act contained no such consent. A 1924 act dealing with mineral leasing on treaty reservations did authorize states to tax mineral production from leases on tribal lands. A 1927 statute authorizing mineral leasing on the tribal lands of reservations created by executive order contained a similar state taxing provisions.

"The 1938 Act replaced the earlier leasing statutes; it did not complement or incorporate them," said Krulitz. "The 1938 Act contained no authorization for state tax provisions nor did it refer to the taxing provisions of the earlier statutes."

While Krulitz said the amended opinion is applicable to other minerals, reservations and states, he cautioned that each case world have to be examined separately. For example, special legislation governs the mineral leases of the so-called Five Civilized Tribes and the Osage Tribe in Oklahoma.

The Bureau of Indian Affairs is now examining leases on tribal lands to see which states are collecting taxes on tribal royalty income.