

**New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau**

TSB-M-82(2)-I
Income Tax
February 18, 1982

Law Bureau
State Campus,
Albany, New York 12227
February 2, 1982

Dear:

This is in response to your request for an opinion concerning personal income taxation of Native Americans who reside and work on non-federally recognized Indian reservations in New York State.

Attorney General Louis J. Lefkowitz, in his Opinion of June 27, 1977, reviewed the decision of the Supreme Court in Mc Clanahan v Arizona State Tax Commission, 411 US 164 (1973), and concluded that income earned from employment on an Indian reservation by an Indian who resides on such reservation is not subject to New York State personal income tax unless Congress specifically allows it (1977 Opus Atty Gen). In his Opinion of September 11, 1978, the Attorney General concluded that income earned in the City of Salamanca (which is within the Alleghany reservation) by a member of the Seneca Nation of Indians, who lives and works in such city, is not subject to New York State personal income tax.

It is true that the facts under which these Opinions were issued dealt only with Indians who live and work on Federally recognized Indian reservations. However, it is noteworthy that the Attorney General did not qualify his advice to restrict its application solely to Federally recognized Indians. It can, thus, be inferred that the foregoing Opinions of the Attorney General also apply to Indians who reside on an Indian reservation recognized by New York State and who are employed on such reservation, whether or not such reservation has received Federal recognition.

Accordingly, we conclude that income (including wages derived from CETA funding) earned from employment on the Shinnecock and Poosapatuk reservations by Indians who reside on such reservations is not subject to New York State personal income tax.

Sincerely,

PAUL B. COBURN
Deputy Commissioner and Counsel

This memorandum should be used in conjunction with TSB-M-78-(18)-I dated October 20, 1978.