Ute Mountain Ute Tribe v. Arizona Dept. of Revenue, ___ P.3d ___, 87 Arizona Cases Digest 12, 2023 WL 140529 (Ct. App. Div 1, Jan. 10, 2023).

- **Holding**: The gross proceeds from construction work on the Navajo and Hopi Reservations performed by a construction company owned by the Ute Mountain Ute Tribe under a contract with the federal government was subject to Arizona's transaction privilege tax.
- **Summary:** The Weeminuche Construction Authority (WCA), wholly owned by the Ute Mountain Ute Tribe, constructed projects on the Navajo and Hopi Reservations under contracts with the Bureau of Indian Affairs. The Arizona Department of Revenue assessed transaction privilege taxes on WCA's gross proceeds from the construction projects. WCA protested, had its complaint dismissed with prejudice by the tax court, and appealed, arguing that the tax court should have applied the holding in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 100 S.Ct. 2578, 65 L.Ed.2d 665 (1980), and engaged in a fact-specific inquiry that weighed the interests of the parties to determine whether federal law preempts Arizona's taxing authority. The court of appeals held that the tax court correctly applied the "bright-line" test for federal preemption enunciated in *Arizona Department of Revenue v. Blaze Construction Co., Inc*., 526 U.S. 32, 119 S.Ct. 957, 143 L.Ed.2d 27 (1999). *Blaze* established that "*Bracker's* balancing test is inapplicable when a state seeks to tax a transaction between the federal government and a nontribal contractor;" instead, a "bright-line standard" provides for "'tax[ing] federal contracts, regardless of whether the contracted-for activity takes place on [Native American] reservations.'" 2023 WL 140529 at *2 (quoting 526 U.S. at 37). Likewise, *Blaze* established that Native American-owned companies are "the equivalent of a non-[tribal entity] for purposes of th[e] case because none of its work occurred" on the owner's tribal lands. 2023 WL 140529 at *3 (quoting 526 U.S. at 37).

  The appellants attempted to circumvent *Blaze's* bright-line test by asserting that the BIA, in contracting with WCA, was not "acting in the interest of the federal government" but "as and for" the Navajo and Hopi tribes, which were "actively involved" in the construction projects. The court of appeals found such distinction to be of no significance, noting that "a bright-line test, by its nature, is not a nuanced, fact-specific inquiry," 2023 WL 140529 at *4, and noting that "[l]ike *Blaze*, here, the Navajo and Hopi tribes did not enter into self-determination contracts to plan, conduct, and administer their own construction programs." *Id*. Thus, "[b]ecause the federal government retained contracting responsibility, the bright-line standard favoring taxation of federal contracts applies." *Id*.

  Other issues: the court rejected the appellants' argument that the Department of Revenue had previously issued a ruling interpreting Arizona's transaction privileges tax to not apply to reservation construction projects, finding that it need not construe the ruling because the Department's rulings are not binding on the courts, which retain ultimate authority to interpret legislative actions. And, the tax court did not abuse its discretion in denying the tribe's attempt to amend its complaint to assert that the Department should be estopped from assessing the tax due to the tribe's reliance on its prior ruling that the tax did not apply to reservation construction projects, because, while

language in the ruling, if read in isolation, may have allowed the tribe to interpret the ruling as exempting them from taxation, the "context of the entire section … expressly differentiated between contractor transactions with the tribe, a tribal entity, or an affiliated member and contractor transactions with a nontribal person or entity, "including the federal government." *Id*. at *6.

- **Relevant (2023) Deskbook Section**: 11:8