The scope of state taxing powers—the conflict of "the plenary power of the States over residents within their borders with the semi-autonomous status of Indians living on tribal reservations" [723]—has been often litigated. Absent cession of jurisdiction or other congressional consent, states possess no power to tax Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation.[724] Off-reservation Indian activities require an express federal exemption to deny state taxing power.[725] Subjection to taxation of non-Indians doing business with Indians on a reservation involves a close analysis of the federal statutory framework, although the operating premise was for many years to deny state power because of its burdens upon the development of tribal self-sufficiency as promoted through federal law and its interference with tribes' ability to exercise their sovereign functions.[726]

That operating premise, however, seems to have been eroded. For example, in *Cotton Petroleum Corp. v. New Mexico*,[727] the Court held that, despite the existence of multiple taxation occasioned by a state oil and gas severance tax applied to on-reservation operations by non-Indians, which were already taxed by the tribe,[728] the impairment of tribal sovereignty was "too indirect and too insubstantial" to warrant a finding of preemption. The fact that the state provided significant services to the oil and gas lessees justified state taxation and also distinguished earlier cases in which the state had "asserted no legitimate regulatory interest that might justify the tax." [729] Still further erosion, or relaxation, of the principle of construction may be found in a later case, in which the Court, confronted with arguments that the imposition of particular state taxes on Indian property on the reservation was inconsistent with self-determination and self-

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[723] McClanahan v. Arizona Tax Comm'n, 411 U.S. 164, 165 (1973).

[724] Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148 (1973); McClanahan v. Arizona Tax Comm'n, 411 U.S. 164 (1973); Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 463 (1976); Bryan v. Itasca County, 426 U.S. 373 (1976); Washington v. Confederated Colville Tribes, 447 U.S. 134 (1980); Montana v. Blackfeet Tribe, 471 U.S. 759 (1985). *See also* Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe, 498 U.S. 505 (1991). A discernable easing of the reluctance to find congressional cession is reflected in more recent cases. *See* County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation, 502 U.S. 251 (1992).

[725] Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148–149 (1973).

[726] White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980); Central Machinery Co. v. Arizona State Tax Comm'n, 448 U.S. 160 (1980); Ramah Navajo School Board v. Bureau of Revenue of New Mexico, 458 U.S. 832 (1982).

[727] 490 U.S. 163 (1989).

[728] Held permissible in Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982).

[729] 490 U.S. at 185 (distinguishing *Bracker* and *Ramah Navaho School Bd*).