**Capoeman v. United States**
**220 F.2d 349, 55-1 USTC ¶ 9295,**
**47 AFTR 329 (9th Cir. 1955) (aff'g per curiam)**

[9295] Clark Squire, Collector of Internal Revenue for the District of Washington, Appellant v. Horton Capoeman and Emma Capoeman, his wife, Appellees.

In the United States Court of Appeals for the Ninth Circuit. No. 13,640. March 11, 1955. (220 F. (2d) 349.)

Appeal from the United States District Court for the Western District of Washington, Southern Division,

**[1939 Code Secs. 11(a) and 12(b)(3) - similar to 1954 Code Sec. l(a)]**

Tax imposed on individuals: Indians: Tribal land held in trust by LT. S.--By the treaty with the Qninaielt Indian Tribe tribal lands were transferred to the United States and an area was reserved /or the exclusive use of the members of the tribe. In 1907, pursuant to the treaty, a trust patent was issued to taxpayer for 93 acres of tribal land within the Reservation. The fee title to this land is still held by the United States in trust for taxpayer. In 1943 standing timber thereon was sold, cut and paid for. A small portion of the proceeds was distributed to taxpayers and the balance was placed in trust by the United States in an account for them. Taxpayers claimed that their income from the sale of timber was not subject to tax because such taxation would be in violation of the treaty and the trust patent The District Court held for taxpayers and was affirmed.

**Back references: ¶ 422.107 and 422.1085.**

**Affirming the decision of the District Court, 53-1 USTC ¶ 9119, 110 Fed. Supp. 924.**

H. Brian Holland, Assistant Attorney General, Karl Schmeidler, Ellis N. Slack, Helen Goodner, Carolyn R. Just, Special Assistants to Attorney General, Washington, D. C., Thomas R. Winter, Internal Revenue Service, Charles P. Moriarty, United States Attorney, Guy A. B. Dovell, Assistant United States Attorney, Seattle, Wash., for petitioner. John W. Cragun, Washington, D. C., Kenneth R. L. Simmons, Billings, Mont., for respondents.

Before HEALY, BONE, and CHAMBERS, Circuit Judges.

PER CURIAM: This case has to do with the taxability as income of the proceeds of a sale of timber on trust allotted land of a tribal Indian.

Under the provisions of a treaty with the Quinaielt Indian Tribe, 12 Stat. 971, tribal funds in what is now the State of Washing-Ion were transferred to the United States. By the terms of the treaty an area was reserved there from and set apart for the exclusive use of the members of the tribe. Pursuant to the terms of the treaty and of the General Allotment Act of 1887, 24 Stat. 388,

a trust patent was issued to appellee Horton Capoeman for some ninety-three acres of tribal land within the Quinaielt Reservation. The fee title to this land was and still is in the United States in trust for Capoeman (an unemancipated member of the tribe) to be conveyed to him or his heirs at the end of the trust period in fee "discharged of said trust and free of all charge or incumbrance whatsoever." 25 USCA § 348.

In 1943, pursuant to a contract of sale entered into by the Bureau of Indian Affairs, with Capoeman's consent, standing timber on the latter's allotment was sold, cut and paid for. The timber, it is agreed, constituted the chief value of the !and. A minor part of the sales price was distributed to Capoeman, the bulk of it being retained in trust for him by the United States. Capoeman and his wife, Emma, filed for that year a joint income tax return reporting long-term capital gain from the sale. Subsequently they brought this suit for refund of the tax paid, and the district court granted judgment in their favor.

The opinion of the trial judge is reported in 110 Fed. Supp. 924 [53-1 USTC ¶ 9119]. Inasmuch as we agree with the judge's holding and in the main with the reasons given for it, no useful purpose would be served by our again plowing that field. Enough to say that in our view this attempt to tax evidences, at the least, a sorry breach of faith with these Indians. We may add that while the court below appeared to regard as distinguishable the decision of the Tenth Circuit in the cognate case of *Jones v. Taunah,* 186 Fed. (2d) 445 [51-1 USTC ¶ 9121], we see no ground upon which the holding can be distinguished. Rather, we agree with the dissenting opinion of Chief Judge Phillips.

Affirmed.