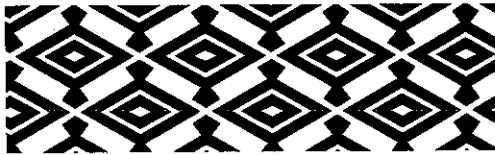


Minnesota Department of Human Services
Tribal Resource Book





FREQUENTLY ASKED QUESTIONS

(FAQ) *The following material has been compiled from various sources. Source information and other resources are noted at the end of this document. Thank you to the Minnesota Indian Affairs Council and the Tribes for their help.*

What is the definition of an Indian?

An individual's inclusion in the definition of Indian can stem from either a formal enrollment on a tribal roll of a federally recognized tribe, or to a more informal status as one recognized to be a member of the tribal community.¹

No single tribal or federal criterion establishes a person's formal identity as an Indian. Tribal nations and governmental agencies have differing criteria for determining membership. Because of this, the most appropriate way to determine what criteria is used for a particular tribe is to contact the Tribe or federal agency directly.²

Enrollment in a tribe is commonly a prerequisite for acceptance as a member of a tribal community, and it provides the best evidence of Indian status. Most tribes require one-fourth tribal blood to be an enrolled member, but others vary and require a greater or lesser amount.³ In addition, some tribal governments have other requirements such as a current residence on the reservation or a certain number of years of residence on the reservation. A few tribal governments base membership on matrilineal or patrilineal descent. This means that children of a marriage between a tribal member and a nonmember may or may not be eligible for tribal membership. For example, if the tribe were matrilineal, a child would become a member only if his or her mother was a tribal member.⁴

How does an Indian become a member of a Tribe?

A tribe sets up its own membership criteria, although the U.S. Congress can also establish tribal membership criteria. Becoming a member of a tribe requires meeting its membership rules, including adoption. The amount of blood quantum needed varies, with some requiring only proof of descent from an Indian ancestor, others may require as much as one-half.⁵

As an example, the Minnesota Chippewa Tribe (MCT) requires that a member be at least one-fourth MCT blood and an American citizen. Application for enrollment is made within a year after birth. The

governing body of the MCT reservation makes the determination with an appeal process.⁶

It should be understood that formal enrollment is a relatively recent concept in Indian law. Historically, some Indian tribes treated all participating members of their community as tribal members regardless of the degree of Indian blood, and were sometimes even willing to incorporate non-Indians who married tribal members into the tribal community. The requirement of formal tribal rolls can be traced to the allotment policy—the process of allotting tribal lands to individual tribal members.

Over the course of time, especially because of intermarriage, formal rolls have been recognized as having only a limited purpose, so many tribes have informal membership that is not based on degree of Indian blood. Coexisting, then, with the formal concept of tribal membership is an understanding of a tribal community composed of persons who are not all enrolled tribal members, but who nevertheless fully participate in the social, religious, and cultural life of the tribe if not political and economic processes. Although some statutes provide benefits to formally enrolled members of federally recognized tribes, many of the benefits accorded Indians under various statutes are available to Indians and are more broadly defined.

What is the population of American Indians in the U.S.?

The U.S. Census Bureau counts as an Indian any person who claims to be one. In 1990, the Census figures indicated approximately 1,959,234 American Indians and Alaska Natives living in the United States. In Minnesota, the total was approximately 50,000.⁷

What is an Indian Tribe?

Just as the definitions of Indian vary, so do the understandings of "tribe." Among Indian people the concept has an historical, cultural, religious, economic, and political element. The heritage and identity of the tribe is extremely important to its members and has an impact upon all aspects of life.

In general, the federal government identifies a "tribe" by the following guidelines: a body of people bound together by blood ties who are socially, politically, and religiously organized; who lived together in a defined territory and who spoke a common language or dialect.

There is often a difference between the federal government's definition of a tribe and an Indian tribe's understanding of its own identity. However, for federal Indian law, it is the U.S. government's recognition of tribes which provides a basic underpinning of the law. If the federal government officially recognizes a tribe, it has a government-to-government relationship with the United States. The tribe is recognized as a political unit or a government, similar to any nation outside the

United States. Its relationship to the United States is unique because of the nature of Indian-white relationships and the history of tribal relationships with the U.S. government.⁸

What is a "federally recognized tribe?"

There are more than 550 federally recognized Tribes in the United States, including 223 village groups in Alaska. "Federally recognized" means these tribes and groups have a unique, legal relationship with the U.S. government. This relationship is referred to as a government-to-government relationship. Members of federally recognized tribes who do not reside on their reservations have limited relations with the BIA and IHS, since BIA and IHS programs are primarily administered for members of federally recognized tribes who live on or near reservations. A number of Indian tribes and groups in the U.S. do not have a federally recognized status, although some are state recognized. This means they have no relations with the BIA or the programs it operates.⁹

What is a reservation?

An Indian reservation is land a tribe reserved for itself when it relinquished its other land areas to the U.S. through treaties. It is a land with clearly established boundaries like any nation, state or county. More recently, Congressional Acts, Executive Orders and administrative acts have created reservations. Under federal law, tribal territory defines the jurisdiction of tribes, the federal government, and state government. It is generally within these areas that tribal sovereignty applies and state power is limited. Although the public generally thinks of these areas as "reservations" the precise legal term is "Indian country."

There are approximately 275 Indian land areas in the U.S. administered as Indian reservations (reservations, pueblos, rancherias, communities). However, non-Indians own much of these lands. According to the 1990 census almost half of the residents in these lands were non-Indian. Still, a tribal government governs each reservation.

Of these lands, approximately 56.2 million acres of land are held in trust by the United States for various Indian Tribes and individuals. On behalf of the United States, the Secretary of the Interior serves as trustee for such lands with many routine trust responsibilities delegated to BIA officials. In 1934, Congress delegated broad responsibility to the Secretary of the Interior to establish new reservations or add area to existing reservations. Land outside of a reservation that is purchased in trust for a tribe must be proclaimed a reservation by the Secretary of the Interior to acquire Indian country status.¹⁰

Are all reservation lands held in common by the members?

No. In fact non-Indians own a great deal of land on Indian reservations. Some of the different types of land that exist on Indian reservations include:

- **Tribal trust lands** are held in trust by the federal government for the use of a tribe. The federal government holds the legal title and the tribe holds the beneficial interest. This is the largest category of Indian land. Tribally owned trust land is held communally by the tribe in undivided interest and the individual members simply share in the enjoyment of the entire property with no claim to a particular piece of land.
- **Allotted trust lands** are held in trust for the use of an individual Indian (or heirs). The federal government holds the legal title and the individual (or his or her heirs) holds the beneficial interest.
- **Fee lands** are held by an owner, whether Indian or non-Indian. Today, it is not unusual that non-Indians own original reservation land. Fee land within Indian country generally does not enjoy the sovereign immunity protection enjoyed by trust land such as exemption from taxation.
- **Other lands** are held in Indian country by federal, state, and local (non-tribal) governments. These include, for example, National Forest lands which are wholly owned by the federal government, but which may be located within Indian country. The state or local governments similarly may own lands such as state parks, state natural and scenic areas, state forestland, and county parks located within Indian country.¹¹

What is "Indian Country?"

The term "Indian Country" has been used for a long time in federal Indian law. Congress first used it in 1790 to describe the territory controlled by various Indian nations.

Federal law generally defines Indian country as including Indian reservations, dependent Indian communities, and Indian allotments. Settlement by non-Indians does not withdraw land from Indian country status. Even lands owned in fee simple by non-Indians as well as towns incorporated by non-Indians are still within Indian country if they are within the boundaries of a reservation.¹²

What does tribal sovereignty mean?

Indian tribes have a unique legal status that derives from their status as sovereign nations under the United States Constitution and federal law. When the United States was founded, the tribes were self-governing, sovereign nations. Their powers of self-government and sovereign status were not fully extinguished by the constitution. Establishment of the United States subjected the tribes to federal power, but did not eliminate their internal sovereignty or subordinate them to the power of state governments. The tribes retain the powers of self-government over their lands and members.

Congress has the exclusive power to regulate Indian affairs. A state, by contrast, only has the power over Indian affairs within tribal territory (Indian country or lands) that Congress has specifically given it. State power over tribal territory is limited to those powers which Congress has delegated to it or which have not been preempted by the exercise of federal or tribal law.¹³

Do laws that apply to non-Indians also apply to Indians?

Yes. As U.S. citizens, Indians are generally subject to Federal, state and local laws. On Indian reservations, however, only federal and tribal laws apply to members of the Tribe unless the Congress provides otherwise. Crimes committed by Indians within Indian Country generally come under tribal or federal jurisdiction. States typically do not have jurisdiction, although there are several exceptions under federal law (Public Law 280).

Where states have not been granted authority, tribal or federal law controls such things as the regulation of traffic, marriage and divorce, child custody, the sale of liquor and cigarettes, and many other matters.

Most tribes now maintain tribal court systems and facilities to detain tribal members convicted of certain offenses within the boundaries of the reservation.¹⁴

What is Public Law 280?

In 1953, Congress enacted a law, known as Public Law 280, which significantly expanded the criminal and civil jurisdiction of certain states over acts committed in Indian country. The federal law, as originally enacted, granted to the states of Wisconsin, Oregon, California, Minnesota and Nebraska criminal and civil jurisdiction in most Indian lands located within the boundaries of these states. Although the scope of Public law 280 has since been narrowed by congressional amendment and case law, its enactment remains a major event in the evolution of federal policy regarding Indian tribes and their relationship with state government, particularly in Minnesota.

Public Law 280 originally contained a mechanism under which certain other states could choose to assert full or partial civil or criminal jurisdiction over Indian lands without the consent of the affected Indians or their

tribes. This mechanism was changed in 1968 when Congress amended the law prospectively to prohibit additional states from asserting jurisdiction over Indians without their consent. The 1968 amendments also permitted states to "retrocede" or grant back jurisdiction acquired under Public Law 280 to an Indian tribe; however, retrocession had to be initiated by the state and approved by the federal government. The Indian tribes have no direct role in or control over the retrocession process.¹⁵

Public law 280 does not affect the supremacy of the federal-tribe relationship with regard to treaties, agreements, or federal statutes. Some of the important rights preserved by the law are pre-existing tribal rights with respect to hunting, trapping and fishing.¹⁶

Does the United States still make treaties with Indians?

No. Congress ended treaty-making with Indian tribes in 1871.

What is the status of treaties today?

A treaty is an agreement or contract between two sovereign nations. Only the federal government may enter into treaties with other nations. The U.S. Constitution specifically details how a treaty between the United States and another nation must be approved. Both the president and two-thirds of the U.S. Senate must approve the treaty before it will be accepted. The treaty then becomes part of the supreme law of the land, to be protected and enforced by the executive branch. The federal courts and the Supreme Court have the ultimate responsibility for interpreting the treaty should a dispute arise.¹⁷

Are most treaties similar?

Treaties between the United States and Indian nations vary in content and scope. Over 650 Indian treaties were entered into between the founding of the United States and 1871, when Congress declared that treaties would no longer be the method of conducting government relations with Indian tribes.

Indian treaties have addressed a large variety of issues, including but not limited to trade, boundaries, exchanging land, hunting and fishing, money, settlements, and treatment of peoples.

As different as Indian treaties may be from one another, they often contain two common points. First, they usually provide for the transfer of land from tribal control to the U.S. government. The U.S. government often negotiated treaties with land as the major issue. Second, treaties generally promised some land to be specifically reserved for the tribe's use. Some treaties further specified that certain services or payments were to be provided to the tribe, but others did not. Since a treaty was taking rights away from Indians, it often did

not specifically list all of the rights reserved to them. These reserved rights include the use of water, fishing, hunting, and so forth.¹⁸

Where does the authority come from for Indian tribes to govern themselves?

Indian tribes have always had the right to govern themselves. This was true before Europeans conquered and settled North and South America. It was certainly true before the United States of America became an independent nation. No one, including Congress and the President, gave Indian tribes the right or power to govern themselves. The tribes have that power from their own people. The Supreme Court declared that Congress is not the creator of tribal power.¹⁹

What powers does tribal government have?

Each tribe can determine its own laws regulating the internal affairs of the tribe and the conduct of tribal citizens. In this way, tribal governments are very similar to other governments with which you may be familiar.

Among the several powers of tribal governments, perhaps the most important is the right to form a government. This power comes from the people. The power includes the right to choose officials and methods of governing. Tribal governments in the United States differ from each other in many ways. Today most tribes have a written constitution that forms the basis of its governing authority. In addition, most tribes have more detailed codes of law and tribal courts to enforce these laws. Many tribes have branches of government represented by a tribal chairperson (executive), tribal council (legislative), and tribal court (judicial). However, there are many variations. More than 100 tribes reorganized their governments under the Indian Reorganization Act of 1934 (Wheeler-Howard Act). This act had some positive points but it also has been severely criticized because it requires review and approval of tribal constitutions and laws by the Secretary of the Interior.

Other tribal powers include the right to keep law and order and the right to tax. In addition, tribal governments have the power to maintain law and order. This means that the tribe can pass and enforce laws that regulate civil and criminal matters. The tribe can establish and train a police force and maintain courts and jails.²⁰

Are there limits to the power of tribal governments?

There are some congressional restrictions on tribal law enforcement. Congress has excluded certain major crimes (through the Major Crimes Act) from tribal jurisdiction. This began approximately 100 years ago when Congress placed several major crimes under federal jurisdiction. There are now 14 crimes excluded from tribal jurisdiction, including murder, kidnapping, and arson. There are many Indian people, including attorneys and tribal leaders, who feel the exclusion of major crimes from tribal jurisdiction interferes with tribal self-government. There is some confusion in the law, and the Supreme Court has not made clear the exact meaning of the law.

In addition, Congress has limited tribal law enforcement in two other ways as well. As already discussed, certain tribes have been placed by Congress under the criminal jurisdiction of state governments. These states and tribes within are called "P.L. 280 states." Public Law 280 affects all tribes in the State of Minnesota, with the exception of Red Lake and Bois Forte.

The Indian Civil Rights Act of 1968 also places limitations on tribal law enforcement. The act limits the penalties tribal courts can impose in criminal cases. It requires that criminal defendants in Indian courts have almost all of the rights that they would have in state or federal courts. Thus, Congress has limited some tribal law enforcement powers through the Major Crimes Act, Public Law 280, and the Civil Rights Act.

In addition to congressional limits, the Supreme Court also has limited tribal law enforcement powers. In the 1978, the Supreme Court made it clear in *Oliphant v. Suquamish Indian Tribe*, that unless Congress had specifically given the power to the tribe, the tribe did not have the authority to prosecute non-Indians. However, non-Indians committing crimes against Indians in Indian Country are subject to federal jurisdiction.

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Do Indians pay taxes?

Yes, Indians pay federal income and excise taxes like everyone else. Most Minnesota Indians pay state income taxes too. Only those who live and work on the reservation--a very small percentage of Minnesota Indians--are exempt from state income tax. Indians pay most state sales taxes too under agreements with the Minnesota Department of Revenue. Each tribal-state tax agreement is different but most provide for the payment of all sales taxes with limited rebates to tribal governments based on reservation populations.

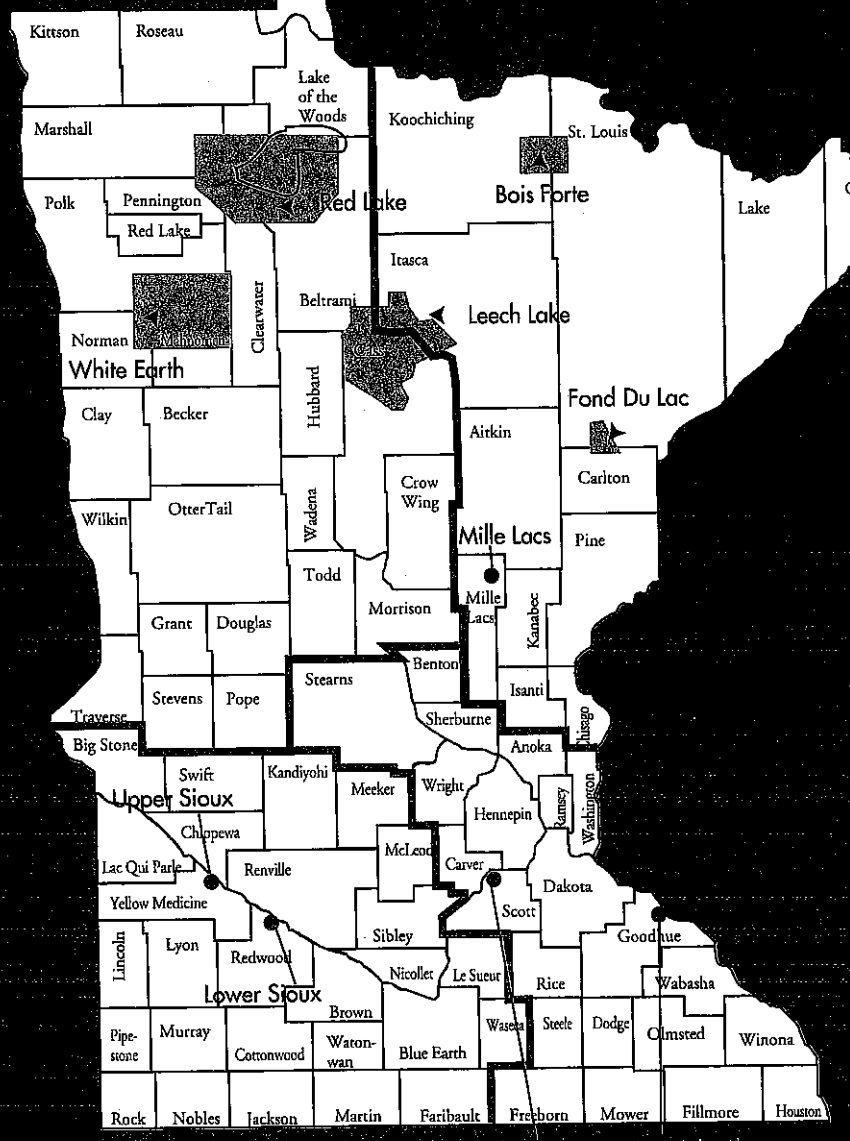
The majority of reservation Indians pay local real estate taxes. Only those who live on land held in trust are exempt.²²

Do Indians receive regular payments from the federal government?

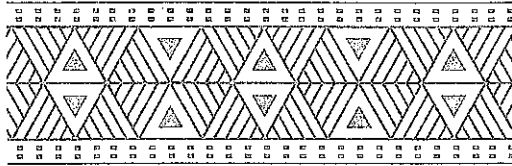
No. Federal funds for Indian programs are paid to tribal governments, not individual members. Over the past few years, members of some tribes have received one-time payments as part of financial settlements with states or the federal government.²³

What is the preferred term--Native American or American Indian?

In 1978, the Minnesota Indian Affairs Intertribal Board passed a resolution stating that the term "American Indian" or "Indian" should be used.²⁴



Shakopee
 Prairie Island
 Mdewakanton
 Sioux



OVERVIEW OF INDIANS IN MINNESOTA

The following material is reprinted courtesy of the Minnesota Indian Affairs Council. In Minnesota, there are seven Anishinaabe (Chippewa, Ojibwe) reservations and four Dakota (Sioux) communities.

Anishinabe Reservations

The seven Anishinabe reservations include: Grand Portage located in the northeast corner of the state; Bois Forte located in extreme northern Minnesota; Red Lake located in extreme northern Minnesota west of Bois Forte; White Earth located in northwestern Minnesota; Leech Lake located in the north central portion of the state; Fond du Lac located in northeast Minnesota west of the city of Duluth; and Mille Lacs located in the central part of the state, south and east of Brainerd.

All seven Anishinabe reservations in Minnesota were originally established by treaty and are considered separate and distinct nations by the United States government. In some cases, the tribe retained additional lands through an Executive Order of the President. Six of the seven reservations were allotted at the time of the passage of the General Allotment Act. The Red Lake Reservation is the only closed reservation in Minnesota, which means that the reservation was never allotted and the land continues to be held in common by all tribal members. Each Indian tribe began its relationship with the U.S. government as a sovereign power recognized as such in treaty and legislation. The Old Crossing Treaty of 1863 officially recognized Red Lake as separate and distinct. In this treaty, the Red Lake Nation ceded more than 11 million acres of the richest agricultural land in Minnesota in exchange for monetary compensation and a stipulation that the "President of the United States direct a certain sum of money to be applied to agricultural education and to such other beneficial purposes calculated to promote the prosperity and happiness of the Red Lake Indian."

As a result of the agreements of 1889 and the Agreement of 1904, Red Lake ceded another 2,256,152 acres and the Band was guaranteed that all benefits under existing treaties would not change.

Dakota Communities

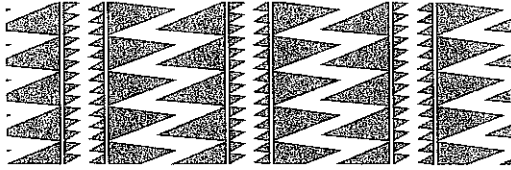
The four Dakota Communities include: Shakopee Mdewakanton located south of the Twin Cities near Prior Lake; Prairie Island located near Red Wing; Lower Sioux located near Redwood Falls; and Upper Sioux whose lands are near the city of Granite Falls.

The original Dakota Community was established by treaty in 1851. The treaty set aside a 10-mile wide strip of land on both sides of the Minnesota River as the permanent home of the Dakota. However, in the aftermath of the U.S.-Dakota Conflict of 1862, Congress abrogated all treaties made with them and the Dakota were forced from their homes in the state. The four communities were re-established in their current localities by acts of Congress in 1886. The four Dakota Communities today represent small segments of the original reservation that were restored to the Dakota by Acts of Congress or Proclamation of the Secretary of Interior.

Tribal Governmental Structures

Tribal governments in Minnesota are called by various names such as tribal council, reservation business committee or business council. Officials are either elected to serve two-year or four-year terms of office by eligible voting tribal members. Heads of government are called Chairman, Chairperson, President or Chief Executive. Tribal council varies in size. Each nation operates by a set of laws and codes approved by the governing body.

While maintaining their own tribal governments, six of the seven Anishinabe reservations joined together under provisions of the 1934 Indian Reorganization Act to form the Minnesota Chippewa Tribe. The Minnesota Chippewa Tribe (MCT) is a confederacy of the six participating reservations. This organization is governed by a Tribal Executive Committee, which is comprised of 12 members from the tribal chair and secretary/treasurer from each of the six reservations.



Anishinabe (Chippewa) Reservations

The following material is reprinted courtesy of the Minnesota Indian Affairs Council.

Bois Forte Reservation

The Reservation Business Committee includes the chair, secretary/treasurer and three committee members. Members are elected to serve four-year terms.

Fond du Lac Reservation

The Reservation Business Committee includes the chair, secretary/treasurer and three representatives. Members are elected to serve four-year terms.

Grand Portage Reservation

The Reservation Business Committee includes the chair, secretary/treasurer and three at-large members. Members are elected to serve four-year terms.

Leech Lake Reservation

The Reservation Business Committee includes the chair, secretary/treasurer and three district representatives. Members are elected to serve four-year terms.

Mille Lacs Reservation

The Mille Lacs Band of Chippewa includes three branches of government; the Executive, Legislative and Judicial branches. In addition it is governed by the Chief Executive, Speaker of the Assembly, Band Assembly, Secretary/Treasurer and Chief Justice.

Red Lake nation

The Red Lake Nation is not a participating member of the Minnesota Chippewa Tribe. The Tribal Council, consisting of 11 members, is Red Lake's governing body. Council members include the Chair, Secretary, Treasurer and two representatives from each of the four districts that comprise the reservation.

White Earth Reservation

The Reservation Business Committee includes the Chair, Secretary/Treasurer and three council members. Members are elected to serve four-year terms.

Dakota Communities

Prairie Island Sioux Community

The governing body is the Community Council consisting of five members elected to office for two-year terms.

Shakopee-Mdewakanton Community

The governing body is the General Council, which includes all eligible enrolled tribal members. The Business Council, which runs the day-to-day affairs of the community, is elected to office by the General Council to serve four-year terms. The Business Council includes the Chair, Vice-Chair and Secretary.

The Lower Sioux Community

The Lower Sioux Community has a five-member governing body. Each council member serves a two-year term of office.

The Upper Sioux community

The Upper Sioux Community is governed by a Board of Trustees that includes the Chair, Vice-Chair, Secretary/Treasurer and three at-large members, who are elected to serve four-year terms.