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Can States Tax Gas Stations on Tribal Lands?

After years of fights between Washington state and the Yakama Nation, the debate is heading to the U.S. Supreme Court.

The Yakama Nation and Washington state have been fighting over governance issues ever since the tribe signed its 1855 treaty with the federal government. Recently, those fights have involved fees on cigarettes and rules for logging trucks. But the biggest dispute over the years has been about fuel taxes. And now the U.S. Supreme Court is stepping in.

Washington state lawmakers have tried repeatedly to impose fuel taxes on Indian tribes, and the tribes have repeatedly fought back. The Yakama have been especially adamant in their resistance, arguing that the fuel taxes violate a provision of their treaty that guarantees them the right to travel freely on public highways.

The Yakama convinced the Washington Supreme Court to uphold their exemption even though lawmakers crafted the current tax in 2007 to avoid the legal pitfalls of previous fuel tax levies that Native Americans were able to avoid. The state high court's decision in March was such a jolt to state taxing authority that Idaho, Kansas, Nebraska, North Dakota, South Dakota and Wyoming supported Washington's last-ditch effort to get the U.S. Supreme Court to reverse the ruling and reimpose the tax.

In general, states cannot tax Native Americans for activity on reservations, but they can for most activities that occur off tribal lands. Courts determined that Washington's previous fuel taxes, which were collected at gas stations, didn't apply to those on tribal lands.

That's why the state legislature changed the tax scheme in 2007. It imposed a per-gallon fuel tax on suppliers, blenders, distributors, exporters and importers of motor fuels. Whoever owned the fuel first inside Washington state's borders had to pay it. Because the Yakama fuel stations imported their fuel from Oregon, the state said, they would have to pay the tax.

States, though, don't have the last word on the matter. The federal government does. Treaties with Indian tribes are part of federal law. Under the 1855 treaty with the Yakama Nation, the federal government guaranteed that the tribe would have the "right, in common with citizens of the United States, to travel upon all public highways." The state Supreme Court relied on that language to determine that the right to travel meant the Yakama shouldn't have to pay the fuel tax, since it's impossible to import fuel without traveling on public highways.

The state isn't buying this. "The challenged law does not restrict [a Yakama-owned company's] right to travel on Washington public highways," according to the state's brief. It simply asks them to pay for importing fuel the way every other business does.

Other states, specifically those that have joined the case, have reason to be concerned. Idaho, for example, has tribes within its borders whose treaties with the U.S. government include the same "right to travel" language that the Yakama have in Washington. Now that the U.S. Supreme Court

has taken the case, those states will soon find out whether the Yakama's fuel tax exemption applies more broadly or not at all.

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