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TAX - SOUTH DAKOTA

Flandreau Santee Sioux Tribe v. Gerlach

United States District Court, D. South Dakota, Southern Division - December 18, 2015 - F.Supp.3d - 2015 WL 9273931

Following decision by South Dakota Office of Hearing Examiners that nonmember purchases at casino owned and operated by Indian tribe on tribal lands were subject to state's use tax, brought action in federal court against state and governor, alleging that state lacked authority to impose its use tax scheme on reservation land against nonmember casino patrons. Defendants moved to dismiss.

The District Court held that:

- Under South Dakota law federal claims were not precluded by any res judicata effect of Hearing Examiner's final order;
- Younger abstention and "Our Federalism" doctrine did not preclude federal jurisdiction;
- Tribe adequately pleaded that state taxation of nonmember purchases of goods and services at casino was preempted by IGRA;
- Tribe's complaint that imposition of taxes was unlawfully discriminatory met threshold requirement of plausibility;
- Claim was ripe for judicial determination; and
- Tribe adequately pled that tax remittance was unrelated to alcohol regulation, and thus invalid.

Decision by South Dakota Office of Hearing Examiners, in compelled review of state's alcohol license denial, that nonmember purchases at casino owned and operated by tribe on tribal lands were not subject to state's use tax, did not consider tribe's Ex parte Young federal questions of state taxation on reservation land, federal preemption law, operation of IGRA, and jurisdiction over Indian tribes, and which did not involve § 1983 claim, and thus under South Dakota law federal claims were not precluded by any res judicata effect of Hearing Examiner's final order, which tribe had not appealed to state court, although Hearing Examiner discussed that application of use tax on tribe violated neither IGRA nor Tribal-State Compact.

Younger abstention and "Our Federalism" doctrine did not preclude federal jurisdiction over Indian tribe's federal claims not yet litigated in state court against state and governor, alleging state's taxation on reservation land contravened IGRA, although tribe had initiated state administrative proceeding seeking to compel reissuance of its alcohol license. State proceeding was licensure hearing, not enforcement proceeding, brought by tribe and not state, and thus was not judicial in nature.

Indian tribe, which owned and operated IGRA-sanctioned casino on tribal lands, adequately pleaded that state taxation of nonmember purchases of goods and services at casino was preempted by IGRA. Taxes were result of casino activity, compact existed between tribe and state but did not direct state's authority to tax alcohol sales at tribe's casino, state could have negotiated for taxes on alcohol sales on casino floor depending on use to which those funds were to be put, questions remained regarding whether state waived its right to such tax imposition, and whether sales of

alcohol and other services was directly related to gaming, and tax interfered with IGRA's purpose of amplifying tribal development as it related to gaming.

South Dakota's tax imposition on nonmember patrons of casino on reservation land of not only goods presumably purchased by tribe off reservation for resale to casino patrons, but also services provided to patrons on reservation, required weighing of interests of tribe, state, and federal government to determine if taxes were permissible, and thus tribe's complaint that imposition of taxes was unlawfully discriminatory as applied to tribe met threshold requirement of plausibility, as required to adequately plead claim, even though tribe erroneously relied on case involving off-reservation tax.

Indian tribe's claim that South Dakota's use tax and remittance requirements as applied to on reservation patrons and that was necessary to retain alcohol license at tribe's casino were preempted by Indian Commerce Clause of Federal Constitution, federal common law, and infringed on inherent tribal sovereignty was neither hypothetical nor speculative given that state declined to renew tribe's license after tribe failed to collect and remit tax, and thus claim was ripe for judicial determination.

Indian tribe adequately pled that alcohol licenses conditioned on tax remittance was unrelated to alcohol regulation and as such was violative of statute granting state's authority to regulate and control use of alcohol on tribal lands, and thus was invalid as improper exercise of state regulatory authority.