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Flandreau Santee Sioux Tribe v. Terwilliger

United States District Court, D. South Dakota, Southern Division - October 21, 2020 - Slip Copy - 2020 WL 6158920

Flandreau Santee Sioux Tribe, filed action seeking a judicial declaration that, under federal law, the State of South Dakota did not have the authority to impose the South Dakota excise tax in connection with services performed by non-Indian contractors on the Tribe's on-reservation construction project.

The District Court held that:

- The contractor's excise tax is not expressly preempted by federal law.
- The case turns on whether the imposition of the State contractor's excise tax on Henry Carlson Company, a non-Indian contractor, for construction services performed on-reservation is preempted under the Bracker balancing test.
- The federal government has a strong interest in the construction, renovation, maintenance, and safety of Indian gaming facilities and the extent of federal regulation and control weighs against imposition of the State excise tax.
- Federal interests weigh against the imposition of the State excise tax.
- The State excise tax interferes with the Tribe's interests in tribal self-sufficiency, self-determination, and sovereignty.
- The State failed to establish that the use of State services funded by the State general fund sufficient to justify the imposition of the State excise tax.
- The State's interest in being reimbursed for State services is minimal, and does not weigh in favor of imposition of the excise tax.
- The loss of the Tribe's excise tax would have a small impact to the State's budget, and more importantly, State agencies' budgets funded by the State general fund from a loss of the Tribe's excise tax.
- The State's general interest in raising revenue cannot justify the substantial burden on federal and tribal interests and weighs against imposition of the excise tax.
- The State's general regulation of the construction industry does not outweigh the tribal and federal interests in Indian gaming revenue.
- The State's interest in uniform application of the contractor's excise tax is minimal and weighs against imposition of the excise tax.
- The term "trade" as used in the Indian Trader Statutes includes the sale of construction materials and services to Indians on-reservation. Thus, the Indian Trader Statutes expressly preempt the State contractor's excise tax at issue here.
- Based on the discussion of federal and tribal interests discussed, and incorporating the federal and tribal interests under IGRA that coincide with the federal and tribal interests under the Indian Trader Statutes, the federal and tribal interests weigh against imposition of the State excise tax.

"In conclusion, the court finds that under a Bracker analysis, the State of South Dakota's interest in imposing the contractor's excise tax does not outweigh the tribal and federal interests in promoting

tribal self-sufficiency and self-governance, ensuring the Tribe is the primary beneficiary of gaming, protecting gaming as a means of general tribal revenue, and securing tribal economic development. Considering all the Bracker factors, the evidence presented at trial demonstrated: (1) a strong historical backdrop of tribal sovereignty and sovereignty in the field of Indian gaming; (2) the federal regulatory scheme of IGRA is extensive; (3) there is a strong federal interest in the construction and maintenance of Indian gaming to protect the environment and public health and safety of Indian gaming facilities and patrons while simultaneously promoting tribal self-sufficiency and strong tribal government as evidenced by the statutory structure of IGRA; (4) the Tribe's own regulation of gaming, gaming revenue and on-reservation construction is extensive; (5) the economic burden of the State excise tax falls directly on the Tribe; (6) the State excise tax places a substantial burden on the Tribe's ability to generate gaming revenue and provide essential tribal governmental programs through the Tribe's budget; (7) there is no nexus between the services or regulations funded by the State general fund and provided by the State to the Tribe, tribal members, or Henry Carlson Company and the Casino renovation project; (8) any State services provided to the Tribe, tribal members, the Casino, or Henry Carlson Company off-reservation are not connected to the Casino renovation project and minimal; (9) the State does not uniformly apply the contractor's excise tax or its Department procedures for Indian country tax exemptions; and (10) the State provides little government services funded from the general fund to the Tribe, tribal members, the Casino, or Henry Carlson Company; the State does not uniformly apply the tax; and as a result, the State can only demonstrate a general interest in raising revenue."

"The South Dakota contractor's excise tax on Henry Carlson Company's gross receipts derived from the on-reservation construction and renovation of the Royal River Casino is not per se invalid nor expressly preempted under IGRA. After considering the federal, tribal, and state interests under the Bracker balancing test, the court finds that the tax interferes with federal and tribal interests reflected in IGRA. This outweighs the State's minimal interests. Thus, the State tax is preempted under IGRA."

"Additionally, because Congress has not said otherwise, Indian Trader Statutes expressly preempt the contractor's excise tax. In the alternative, even if the Indian Trader Statutes do not expressly preempt the State tax, after considering the federal, tribal, and state interests under the Bracker balancing test, the court finds that the tax interferes with federal and tribal interests reflected in the Indian Trader Statutes. This outweighs the State's minimal interests. Thus, the State tax is preempted under the Indian Trader Statutes. Because the State's interests do not outweigh the strong federal and tribal interests under IGRA or the Indian Trader Statutes, the State contractor's excise tax is preempted under federal law."

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