Second Circuit Holds That States May Tax Non-Indian Property on an Indian Reservation

On July 15, 2013, the United States Court of Appeals for the Second Circuit held that a state may impose a generally applicable personal-property tax on property owned by non-Indians but leased to an Indian tribe and used for gaming activities on a reservation. The decision sets an important precedent for defining the nature of business relationships between tribes and non-tribal companies engaged in commercial activities on Indian reservations. It also fills a significant gap in federal jurisprudence regarding the jurisdictional limits of states and local governments and Indian tribes. Under the Second Circuit decision, it is now clear that tribal sovereignty does not trump the authority of state and local governments over non-tribal entities engaged in business associated with a tribe's gaming operations.

The case, Mashantucket Pequot Tribe v. Town of Ledyard, began in 2005 when a slot-machine manufacturer from New Jersey that had leased its machines to the Mashantucket Pequot Tribe for use at its Foxwoods Casino informed the town that it believed it did not have to pay personal-property taxes on the machines. Supported by the state of Connecticut, the town rejected that argument and pursued collection. The tribe responded by suing the town in federal district court, seeking an injunction against assessment or collection of the tax. Other businesses with property on the reservation raised similar claims of tax-exempt status, threatening the town and the state with a significant loss of revenue. On cross-motions for summary judgment, the district court ruled in favor of the tribe, concluding that federal law preempted the tax.

SECOND CIRCUIT REVERSAL FOCUSES ON PROPERTY OWNERSHIP BY NON-INDIANS

In a decision authored by Judge Richard Wesley, a panel of the Second Circuit has now reversed the district court ruling. The court held that tax was not preempted by the Indian Trader Statutes, 25 U.S.C. §§ 261 et seq., in light of the “well established” authority of a state “to apply generally-applicable taxes to non-Indians performing otherwise-taxable functions on an Indian reservation.” In reaching that conclusion, the court emphasized that “the incidence of the generally applicable tax falls on the non-Indian’s ownership of property, rather than on the transaction between the Tribe and the non-Indian.” The court also rejected the tribe’s argument that the tax was preempted by the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 et seq. The court noted that neither IGRA itself nor the governing gaming compact restricted the state’s authority to apply its personal-property taxes to vendors of gaming equipment.

The court of appeals then turned to the balancing test prescribed by the Supreme Court in White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980). The Bracker test weighs the interests of a state government in asserting its jurisdiction over non-tribal activities on a reservation against the tribe’s need for sovereign authority over that activity. The Second Circuit concluded that the tax would have only “a minimal effect” on the tribe’s interest in tribal economic development, and that the “moderate” effect of the tax on tribal sovereignty was outweighed by the state’s economic interest in imposing the tax and providing services to the tribe and the state’s interests in “the uniform application of its tax code” and in “being in control of, and able to apply, its laws throughout its territory.” The court therefore concluded that the balance of interests favored the town and the state.

IMPACT OF MASHANTUCKET PEQUOT TRIBE V. TOWN OF LEDYARD

This latest decision represents an important limitation on the tax immunity of Indian tribes. A tribe itself is not subject to taxation, and a tax that singles out those doing business with a tribe may also be vulnerable to challenge. But a generally applicable property tax may be imposed on non-Indian property even if that property is located on a reservation and is used in doing business with a tribe.

Perkins Coie LLP represented the Town of Ledyard in this case. The Perkins Coie team included Benjamin S. Sharp, Donald C. Baur, Mary Rose Hughes, Jena A. MacLean, Eric D. Miller, and Elisabeth C. Frost. Mr. Miller argued the appeal.

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