Public Land and Resources Law Review

Volume 0 *Case Summaries 2014-2015*

Seminole Tribe of Florida v. State of Florida

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Seminole Tribe of Florida v. State of Florida, No. 12-62140-Civ., ___ F.Supp.2d ___, 2014 WL 4388143, 2014 U.S. Dist. LEXIS 124162 (S.D. Fla. Sept. 5, 2014).

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ABSTRACT

Seminole Tribe of Florida v. State of Florida stands as a declaration that tribal sovereignty preempts state taxation of tribal lands.[1] Although the court framed its decision in the "'deeply rooted' historical 'policy of leaving Indians free from state jurisdiction and control,"[2] it held that Florida's Rental and Utility Taxes imposed upon the Tribe were impermissible, based not on the rights and sovereignty of tribes, but on well-established principals of judicial deference to agency rule making.

I. INTRODUCTION

In *Seminole Tribe of Florida v. Florida*, the Seminole Tribe of Florida ("Tribe") challenged the imposition of two Florida taxes: (1) Florida's Rental Tax, which taxes the leaseholders of properties; and (2) Florida's Utility Tax, which taxes the gross receipts of public utilities for the services they deliver.[3] The Tribe argued that the Rental Tax and the Utility Tax were both preempted by federal law, and urged the court to declare both taxes on the tribe void.[4] Florida argued that the taxes were not preempted and claimed the Rental Tax did not fit within the meaning of 25 U.S.C. § 465 and the "legal incidence" of the Utility Tax did not fall on the Tribe.[5] The U.S. District Court for the Southern District of Florida found that the Rental Tax was preempted by § 465 and the incidence of the Utility Tax impermissibly fell on the Tribe.[6]

[1] *Seminole Tribe of Fla. v. Fla.*, No. 12-62140-Civ., 2014 WL 4388143 (S.D. Fla. Sept. 5, 2014).
[2] *Id.* at 6 (quoting *McClanahan v. St. Tax Commn. of Ariz.*, 411 U.S. 164, 168 (1973)).
[3] *Id.* at 1.
[4] *Id.* at 1, 7.
[5] *Id.* at 1.
[6] *Id.*

II. FACTUAL AND PROCEDURAL BACKGROUND

The Indian Reorganization Act grants the Secretary of the Interior ("Secretary") the power to take lands into trust "for the purpose of providing lands for Indians," and that "such lands or rights shall be exempt from State and local taxation."[7] In short, states and counties cannot levy property taxes on trust lands.[8] In *Mescalero Apache Tribe v. Jones*, the United States Supreme Court held federal "land covered by § 465, and h[eld] . . . in trust for the use of a tribe . . . , exempts permanent improvements on that land from state and local taxation."[9]

The Rental Tax falls on leaseholders engaged in the business of renting or leasing real property.[10] Florida's Utility Tax is levied upon the "'gross receipts from utility services that are delivered to a retail customer.'"[11] The Seminole Tribe is a federally recognized tribe that owns large gaming facilities in Florida.[12] The Tribe leases part of its space at two of its casinos to two different companies.[13] The Florida Department of Revenue ("Florida") levied the Rental Tax on the Tribe's leases of its casino space, and the Utility Tax on all electricity delivered to the Tribe.[14] The Tribe sued to enjoin the assessment of the taxes and on cross motions for summary judgment, the court held that the taxes were impermissible under federal law.[15]

III. ANALYSYS

A. Rental Tax and Federal Preemption

In discussing why Florida's Rental Tax was void, the court first looked to § 465. Relying on *Mescalero*, the district court found the Rental Tax was a "use tax" and fell under the

[7] 25 U.S.C. § 465 (1934).
[8] *See Confederated Tribes of Chehalis Reservation v. Thurston Co. Dd. of Equalization*, 724 F.3d 1153 (2013).
[9] *Id.* at 1157 (citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)).
[10] *Seminole Tribe*, slip op. at 1 (citing Fla. Stat. § 212.031 (2010)).
[11] *Id.* at 7 (citing Fla. Stat. § 203.01(1)(a)(1) (2014)).
[12] *Id.* at 1
[13] *Id*.
[14] *Id*.
[15] *Id*.

exclusion in § 465.[16] In *Mescalero*, the Supreme Court found that use taxes were preempted by § 465, stating, "'use is among the bundle of privileges that make up . . . ownership of property'" and a "'tax upon use is a tax upon the property itself.'"[17] Further, the district court noted that the right to manage and receive income from property is an inherent component in the bundle of rights owners have in their property.[18] The court reasoned that since the right to lease the land and realize any income from it are inherent rights recognized in the ownership of property, the court held that the Rental Tax was a tax on the trust land.[19]

The court also found the Rental Tax was preempted by regulations promulgated by the Secretary.[20] Generally, the status of tribes precludes states from imposing taxes on them if federal law preempts the tax, or if it "interferes with a tribe's ability to exercise its sovereign functions."[21] Specifically, the court turned to 25 C.F.R. § 162.017, which states, "'the leasehold or possessory interest is not subject to any fee, tax, assessment, levy, or other [charge] imposed by any State or political subdivision of a State.'"[22]

The court noted that neither the Eleventh Circuit Court of Appeals, nor the Supreme Court had addressed the regulations governing the leasing of trust lands and the preemption of state taxes.[23] Thus, the court turned to the Secretary's "comprehensive analysis" in the Federal Register, which showed how tribal interests are affected by state taxes on leases.[24] While the court would not extend the full benefit of *Chevron* deference to the Secretary's regulations, because of his involvement with tribes and tribal interests on a daily basis vis-à-vis the Bureau of

[16] *Seminole Tribe*, slip op. at 2 (quoting *Mescalero*, 411 U.S. at 158).
[17] *Id*. (quoting *Mescalero*, 411 U.S. at 158) (internal quotation marks and citations omitted in original).
[18] *Id.* (citing *Burns v. Pa. Dept. of Correct.*, 544 F.3d 297, 287 (3d Cir. 2008)).
[19] *Id.*
[20] *Id.* at 3 (citing 25 C.F.R. § 162.017 (2013)).
[21] *Id.* (quoting *White Mt. Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980)).
[22] *Seminole Tribe*, slip op. at 3 (quoting 25 C.F.R. § 162.017).
[23] *Id*.
[24] *Id*. at 4 (referencing 77 Fed. Reg. 72440-01 (Dec. 5, 2009)).

Indian Affairs, the court held that his analysis supporting the regulations "merit[] the full amount of deference available under the law."[25] The court examined the Secretary's extensive analysis of the effects, policy, and history of state taxation on tribal leases and found his "preemption analysis thorough and persuasive."[26]

Florida argued that even if the Regulations were authoritative, the Rental Tax was not preempted because it was an excise tax on the "privilege of renting or leasing."[27] Florida also argued that 25 C.F.R. § 162.008(a) allowed the state to collect the tax since the leases required that all appropriate taxes be paid.[28] The court ruled that excise taxes were preempted by the regulations, and that *Oklahoma Tax Commission v. Chickasaw Nation* barred any direct tax on the tribe for the privilege of renting property.[29] The court held the leases could not be read to give Florida the authority to enforce a tax on the Tribe that was preempted by federal law.[30]

B. Utility Tax and "Legal Incidence"

The legal incidence of a tax refers to who pays the tax.[31] The court noted how, in some cases, "the *economic incidence* of a tax and its *statutory incidence*" could be distinguished.[32] This distinction recognizes that a tax's statutory incidence may require one person to pay, but that the ultimate burden of that tax—the economic or legal incidence—can be passed on to another.[33] The Tribe argued that while the Utility Tax was levied on the utility company, the economic incidence fell on the Tribe, as the costs of the tax were passed on to the utility's

[25] *Id*.
[26] *Id*. at 5.
[27] *Id*.
[28] *Seminole Tribe*, slip op. at 5 (citing 25 C.F.R. § 162.008(a) (2013) (For leases approved before Jan. 4, 2013: "the provisions of the lease document conflict[ing] with this part, the provisions of the lease govern")).
[29] *Id.*; *see Okla. Tax Commn. v. Chickasaw Nation*, 515 U.S. 450, 458 (1995).
[30] *Seminole Tribe*, slip op. at 5.
[31] *Id.* at 7.
[32] *Id*. (citing George R. Zodrow, *Incidence of Taxes*, in *The Encyclopedia of Taxation and Tax Policy*, 168 (Joseph J. Cordes et al. eds., 1st ed., The Urban Institue Press 1999)) (emphasis in original).
[33] *Id*. (citing Zodrow, *Incidence of Taxes* at 169).

customers. The court found it well settled that, "'[i]f the legal incidence of an excise tax f[alls] on a tribe . . . for sales made inside Indian country, the tax cannot be enforced.'"[34] Since the Utility Tax was an excise tax, the court turned to the dispositive question: whether the legal incidence of the tax fell on the tribe.[35]

The court determined that from both the structure and language of the Utility Tax statute, the legal incidence fell upon the customer.[36] Florida's tax was levied upon the "'gross receipts from utility services that are delivered.'"[37] While the utility company paid the state the tax, the statute required "[e]very customer to 'remit the tax' to the utility company as part of the total bill."[38] The court noted that if a customer did not pay the utility company for the tax as billed, the utility company was not required to pay that tax on to the state.[39] The court concluded that the utility company was nothing more than a "transmittal agent."[40]

The court found the facts here were nearly identical to those in *Oklahoma Tax Commission*, where the Supreme Court ruled that the legal incidence fell not on the agent transmitting the tax, but on the individual ultimately burdened with the tax.[41] Since the utility company only became liable for the tax when the customer paid it, and was required to pass the tax on to the customer, the district court found the legal incidence fell on the Tribe.[42]

Florida also argued that the tax incidence did not fall on the customer because it was a tax on the privilege of conducting a utility business.[43] Additionally, Florida argued that since the tax was on the gross receipts of the utility's deliveries, the tax obligation arose outside of the

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[34] *Id.* (quoting *Olka. Tax Commn.*, 515 U.S. at 458) (ellipses in original).
[35] *Id*.
[36] *Seminole* Tribe, slip op. at 8.
[37] *Id*. (quoting Fla. Stat. § 203.01(1)(a)(1)).
[38] *Id*. (quoting Fla. Stat. § 203.01(4)).
[39] *Id.* (quoting Fla. Admin Code. R. 12B-6.005 (2008)).
[40] *Id.* at 9.
[41] *Id.* (citing *Okla. Tax Commn.*, 515 U.S. at 461-462).
[42] *Seminole Tribe*, slip op. at 9. (citing *U.S. v. St. Tax Commn. of Miss.*, 421 U.S. 599 (1975)).
[43] *Id.* at 10.

reservation, creating a wholly different scenario than that in *Oklahoma Tax Commission*.[44] Analogizing to the state sales tax, the court cited Florida case law holding that sales taxes are taxes on a privilege to sell goods with the incidence falling on the customer.[45] The court dismissed the second argument, holding that "the tax obligation . . . arises when the utility company provide[s] utility services to the customer" on tribal land.[46]

IV. CONCLUSION

While the court stated, "tribal independence is the 'deeply rooted' historical 'policy of leaving Indians free from state jurisdiction and control,'"[47] the basis for its holding was far more tempered. The district court's ruling, while advantageous for the advancement of tribal sovereignty, is more fairly read as an avowal of deference to the discretion and analysis of the Secretary of the Interior. While the court made broad policy statements, its opinion was tied not to the rights and sovereignty of tribes generally, but to the "thorough and persuasive" analysis of the Secretary, affording him the "full amount of deference available under the law."[48]

[44] *Id.* at 11.
[45] *Id*. (citing *Fla. Dept. of Revenue v. Naval Aviation Museum Found., Inc.*, 907 So.2d 586 (Fla. 1st Dist. App. 2005)).
[46] *Id.* (citing *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue of N.M.*, 458 U.S. 832 (1982)).
[47] *Id*. at 6 (quoting *McClanahan v. St. Tax Commn. of Ariz.*, 411 U.S. 164, 168 (1973)).
[48] *Seminole Tribe*, slip op. at 4, 5.