

Business AUGUST 27, 2015

Supreme Court upholds deal on tribal gas stations

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Associated Press

SPOKANE, WASH. — The state Supreme Court on Thursday unanimously upheld a lower court ruling in a long-running lawsuit by non-tribal gas station owners challenging gas tax compacts negotiated in the past decade between the state and Indian tribes.

The Supreme Court ruled that non-Indian gas station owners failed to prove that the payments to the tribes, which total about \$30 million a year, were not refunds for taxes paid on motor vehicle fuels.

"We also find no unconstitutional delegation of legislative power," the court said in its 26-page opinion.

Under the current system, tribes agreed to buy taxed fuel to sell in their gas stations and the state agreed to refund a portion of the fuel tax receipted to the tribes. The agreements over the past decade have provided tribes refunds equal to 75 percent of the tax on fuel bought by tribal gas stations.

A group of non-tribal gas station owners challenged the lawfulness of these agreements. The trial court dismissed that lawsuit on summary judgment.

The Supreme Court was asked to decide if the tribal agreements violated Washington's constitution, which limits the use of state fuel tax receipts to highway purposes, and whether the Legislature improperly delegated legislative authority to the governor to negotiate those agreements.

The case centered on the definition of a refund.

The state constitution restricts gas-tax revenues for use on roads, but made an exception for refunds to taxpayers.

Gas station owners argued that tribes are not eligible for refunds of gas tax because they neither paid the taxes directly, as suppliers do, nor bear the ultimate burden of the tax, as drivers do.

Attorneys for the state argued that the case threatened to invalidate numerous other tax refunds the Legislature has created. For instance, refunds are available to people who buy fuel for non-highway uses such as construction and farming, among others.

In exchange for the refunds, tribes agreed not to get into the business of blending or wholesaling automotive fuel. Such a move would have made them directly responsible for tax collection and could trigger their immunity from taxes, which is the problem the Legislature sought to avoid by imposing taxes before the gas reached the pump.

Attorneys for the state said the compacts are working to protect highway funds.

Attorneys for Indian tribes contended that the lawsuit threatened the ability of tribes to fund transportation projects on reservations. Tribes are required to spend the gas-tax money on transportation and public safety projects.

But non-Indian gas station owners contend that the state payments are used to undercut competition from their stations. They pointed to tribal gas stations that sell fuel cheaper than non-tribal stations.

But the tribes pointed out that some retailers, such as Costco and Safeway, sold gas at prices below tribal gas stations.



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