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Eighth Circuit: South Dakota use tax preempted for certain Indian tribal transactions

The U.S. Court of Appeals for the Eighth Circuit today released two decisions in cases concerning an Indian tribe's liability for South Dakota sales and use tax.

The Eighth Circuit in an unofficial summary of one of the cases provided the following:

- The tribe failed to remit South Dakota use tax on goods and services sold to nonmembers at the tribe's casino and related store, and the South Dakota Department of Revenue denied the tribe's applications for renewal of the alcoholic beverage licenses issued to the casino and the store.
- The tribe filed an action alleging the imposition of the use tax on purchases by nonmembers on reservation land was preempted by the Indian Gaming Regulatory Act and that conditioning renewal of the tribe's alcohol licenses on use tax remittance violated 18 U.S.C. section 1161.
- The federal district court concluded the state could not collect the tax on the sale of amenities in the casino but could collect the tax on sales of goods and services to nonmembers at the store. The district court further determined that the state could not condition renewal of the liquor licenses on remittance of the taxes due on store sales.

The Eighth Circuit held that the Indian Gaming Regulatory Act does not expressly preempt the imposition of the use tax on nonmember purchases throughout the casino but that the tax is preempted because the revenues generated by the sales of the amenities contribute significantly to the economic success of the tribe's Category III gaming at the casino, and imposition of the tax would be contrary to the law's broad policies of increasing tribal revenue and ensuring the tribes are the primary beneficiaries of gaming revenue. The appeals court further found that the state may condition renewal of the alcoholic beverage licenses on the tribe's failure to remit the validly imposed portions of the use tax, and the district court's holding that it could not, is reversed.

The case is: *Flandreau Santee Sioux Tribe v. Noem*, No. 18-1271 (8th Cir. September 6, 2019). Read the Eighth Circuit's [decision](#) [PDF 62 KB] (that includes an opinion that dissents in part and concurs in part).

In the second case, the Eighth Circuit concluded that the Indian Gaming Regulatory Act does not preempt the imposition of South Dakota's statewide tax on the gross receipts of a nonmember contractor for services performed in renovating and expanding the tribe's gaming casino located on the reservation; that the tribe failed to show the tax has more than a de minimis financial impact on federal and tribal interests; and that the state's legitimate interests in raising revenue for essential government programs which benefit the nonmember contractor-taxpayer in this case is sufficient to justify imposing the excise tax.

The case is: *Flandreau Santee Sioux Tribe v. Haeder*, No: 18-2750 (8th Cir. September 6, 2019). Read the Eighth Circuit's [decision](#) [PDF 114 KB] (that includes concurring and dissenting opinions).

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