WAGNON v. PRAIRIE BAND POTAWATOMI NATION
Supreme Court of the United States, 2005
546 U.S. 95, 126 S. Ct. 676

Justice THOMAS delivered the opinion of the Court.

The State of Kansas imposes a tax on the receipt of motor fuel by fuel distributors within its boundaries. Kansas applies that tax to motor fuel received by non-Indian fuel distributors who subsequently deliver that fuel to a gas station owned by, and located on, the Reservation of the Prairie Band Potawatomi Nation (Nation). The Nation maintains that this application of the Kansas motor fuel tax is an impermissible affront to its sovereignty. The Court of Appeals agreed, holding that the application of the Kansas tax to fuel received by a non-Indian distributor, but subsequently delivered to the Nation, was invalid under the interest-balancing test set forth in *White Mountain Apache Tribe* v. *Bracker*, 448 U.S. 136 (1980). But the *Bracker* interest-balancing test applies only where "a State asserts authority over the conduct of non-Indians engaging in activity on the reservation." *Id*., at 144. It does not apply where, as here, a state tax is imposed on a non-Indian and arises as a result of a transaction that occurs off the reservation. Accordingly, we reverse.

I

The Nation is a federally recognized Indian Tribe whose reservation is on United States trust land in Jackson County, Kansas. The Nation owns and operates a casino on its reservation. In order to accommodate casino patrons and other reservation-related traffic, the Nation constructed, and now owns and operates, a gas station on its reservation next to the casino. Seventy-three percent of the station's fuel sales are made to casino patrons, while 11 percent of the station's fuel sales are made to persons who live or work on the reservation. The Nation purchases fuel for its gas station from non-Indian distributors located off its reservation. Those distributors pay a state fuel tax on their initial receipt of motor fuel, Kan. Stat. Ann. §79—3408 (2003 Cum. Supp.),[1] and pass along the cost of that tax to their customers, including the Nation.

The Nation sells its fuel within 2 cents per gallon of the prevailing market price. *Prairie Band Potawatomi Nation* v. *Richards*, 379 F.3d 979, 982 (CA10 2004). It does so notwithstanding the distributor's decision to pass along the cost of the State's fuel tax to the Nation, and the Nation's decision to impose its own tax on the station's fuel sales in the amount of 16 cents per gallon of gasoline and 18 cents per gallon of diesel (increased to 20 cents for gasoline and 22 cents for diesel in January 2003). *Id.*, at 982. The Nation's fuel tax generates approximately $300,000 annually, funds that the Nation uses for " 'constructing and maintaining roads, bridges and rights-of-way located on or near the Reservation,' " including the access road between the state-funded highway and the casino. Ibid.

[1] The Kansas Legislature recently amended the fuel tax statute. 2005 Kan. Sess. Laws ch. 46. The text of the sections to which we refer remains the same, although the subsection numbers have changed. For consistency, our subsection references are to the 2003 version applied by the lower courts and cited by the parties.

The Nation brought an action in Federal District Court for declaratory judgment and injunctive relief from the State's collection of motor fuel tax from distributors who deliver fuel to the reservation. The District Court granted summary judgment in favor of the State. Applying the *Bracker* interest-balancing test, it determined that the balance of state, federal, and tribal interests tilted in favor of the State. The court reached this determination because "it is undisputed that the legal incidence of the tax is directed off-reservation at the fuel distributors," *Prairie Band Potawatomi Nation* v. *Richards,* 241 F. Supp. 2d 1295, 1311 (Kan. 2003), and because the ultimate purchasers of the fuel, non-Indian casino patrons, receive the bulk of their governmental services from the State, *id.*, at 1309. The court held that the State's tax did not interfere with the Nation's right of self-government, adding that "a tribe cannot oust a state from any power to tax on-reservation purchases by nonmembers of the tribe by simply imposing its own tax on the transactions or by otherwise earning its revenues from the tribal business." *Id*., at 1311.

The Court of Appeals for the Tenth Circuit reversed. 379 F.3d 979 (2004). It determined that, under *Bracker*, the balance of state, federal, and tribal interests favored the Tribe. The Tenth Circuit reasoned that the Nation's fuel revenues were "derived from value generated primarily on its reservation," 379 F.3d, at 984–namely, the creation of a new fuel market by virtue of the presence of the casino–and that the Nation's interests in taxing this reservation-created value to raise revenue for reservation infrastructure outweighed the State's "general interest in raising revenues," *id.*, at 986. We granted certiorari, and now reverse.

II

Although we granted certiorari to determine whether Kansas may tax a non-Indian distributor's *off-reservation* receipt of fuel without being subject to the *Bracker* interest-balancing test, the Nation maintains that Kansas' "tax is imposed not on the off-reservation receipt of fuel, but on its *on-reservation sale and delivery*," Brief for Respondent 11 (emphasis in original). As the Nation recognizes, under our Indian tax immunity cases, the "who" and the "where" of the challenged tax have significant consequences. We have determined that "[t]he initial and frequently dispositive question in Indian tax cases . . . is *who* bears the legal incidence of [the] tax," *Oklahoma Tax Comm'n* v. *Chickasaw Nation,* 515 U.S. 450, 458 (1995) (emphasis added), and that the States are categorically barred from placing the legal incidence of an excise tax "*on a tribe or on tribal members* for sales made *inside Indian country*" without congressional authorization, *id.*, at 459 (emphasis added). We have further determined that, even when a State imposes the legal incidence of its tax on a non-Indian seller, the tax may nonetheless be pre-empted if the transaction giving rise to tax liability occurs on the reservation and the imposition of the tax fails to satisfy the *Bracker* interest-balancing test. See 448 U.S. 136 (holding that state taxes imposed on on-reservation logging and hauling operations by non-Indian contractor are invalid under the interest-balancing test); cf. *Central Machinery Co.* v. *Arizona Tax Comm'n,* 448 U.S. 160 (1980) (holding that the Indian trader statutes pre-empted Arizona's tax on a non-Indian seller's on-reservation sales).

The Nation maintains that it is entitled to prevail under the categorical bar articulated in *Chickasaw* because "[t]he fairest reading of the statute is that the legal incidence of the tax actually falls on the Tribe [on the reservation]." Brief for Respondent 17, n. 5. The Nation

alternatively maintains it is entitled to prevail even if the legal incidence of the tax is on the non-Indian distributor because, according to the Nation, the tax arises out of a distributor's on-reservation transaction with the Tribe and is therefore subject to the *Bracker* balancing test. Brief for Respondent 15. We address the "who" and the "where" of Kansas' motor fuel tax in turn.

A

Kansas law specifies that "the incidence of [the motor fuel] tax is imposed on the distributor of the first receipt of the motor fuel." Kan. Stat. Ann. §79—3408(c) (2003 Cum. Supp.). We have suggested that such "dispositive language" from the state legislature is determinative of who bears the legal incidence of a state excise tax. *Chickasaw*, *supra*, at 461. But even if the state legislature had not employed such "dispositive language," thereby requiring us instead to look to a "fair interpretation of the taxing statute as written and applied," *California Bd. of Equalization* v. *Chemehuevi Tribe,* 474 U.S. 9, 11 (1985), we would nonetheless conclude that the legal incidence of the tax is on the distributor.

Kansas law makes clear that it is the distributor, rather than the retailer, that is liable to pay the motor fuel tax. Section 79—3410(a) (1997) provides, in relevant part, that "[e]very distributor . . . shall compute and shall pay to the director . . . the amount of [motor fuel] taxes due to the state." While the distributors are "entitled" to pass along the cost of the tax to downstream purchasers, see §79—3409 (2003 Cum. Supp.), they are not required to do so. In sum, the legal incidence of the Kansas motor fuel tax is on the distributor. The lower courts reached the same conclusion. And the Kansas Department of Revenue, the state agency charged with administering the motor fuel tax, has concluded likewise. See Letter from David J. Heinemann, Office of Administrative Appeals, to Mark Burghart, Written Final Determination in Request for Informal Conference for Reconsideration of Agency Action, *Davies Oil Co., Inc.*, Docket No. 01—970 (Jan. 3, 2002) (hereinafter Kansas Dept. of Revenue Letter) ("The legal incidence of the Kansas fuel tax rests with Davies, the distributor, who is up-stream from Nation, the retailer").

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B

The Nation maintains that we must apply the *Bracker* interest-balancing test, irrespective of the identity of the taxpayer (*i.e.*, the party bearing the legal incidence), because the Kansas fuel tax arises as a result of the *on-reservation* sale and delivery of the motor fuel. Notably, however, the Nation presented a starkly different interpretation of the statute in the proceedings before the Court of Appeals, arguing that "[t]he balancing test is appropriate even though the legal incidence of the tax is imposed on the Nation's non-Indian distributor and is triggered by the distributor's receipt of fuel *outside the reservation*." Appellant's Reply Brief in No. 03—3218 (CA10), p. 3 (emphasis added). A "fair interpretation of the taxing statute as written and applied," *Chemehuevi Tribe,* 474 U.S., at 11, confirms that the Nation's interpretation of the statute before the Court of Appeals was correct.

As written, the Kansas fuel tax provisions state that "the incidence of this tax is imposed on the distributor of the first receipt of the motor fuel and such taxes shall be paid but once. Such tax shall be computed on all motor-vehicle fuels or special fuels received by each distributor, manufacturer or importer in this state and paid in the manner provided for herein . . . ." Kan. Stat. Ann. §79—3408(c) (2003 Cum. Supp.). Under this provision, the distributor who initially receives the motor fuel is liable for payment of the fuel tax, and the distributor's tax liability is determined by calculating the amount of fuel received by the distributor.

Section 79—3410(a) (1997) confirms that it is the distributor's off-reservation receipt of the motor fuel, and not any subsequent event, that establishes tax liability. That section provides:

> "[E]very distributor, manufacturer, importer, exporter or retailer of motor-vehicle fuels or special fuels, on or before the 25th day of each month, shall render to the director . . . a report certified to be true and correct showing the number of gallons of motor-vehicle fuels or special fuels received by such distributor, manufacturer, importer, exporter or retailer during the preceding calendar month . . . . Every distributor, manufacturer or importer within the time herein fixed for the rendering of such reports, shall compute and shall pay to the director at the director's office the amount of taxes due to the state on all motor-vehicle fuels or special fuels received by such distributor, manufacturer or importer during the preceding calendar month."

Thus, Kansas law expressly provides that a distributor's monthly tax obligations are determined by the amount of fuel received by the distributor during the preceding month.

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III

Although Kansas' fuel tax is imposed on non-Indian distributors based upon those distributors' off-reservation receipt of motor fuel, the Tenth Circuit concluded that the tax was nevertheless still subject to the interest-balancing test this Court set forth in *Bracker*, 448 U.S. 136. As *Bracker* itself explained, however, we formulated the balancing test to address the "difficult questio[n]" that arises when "a State asserts authority over the conduct of non-Indians engaging in activity *on the reservation*." *Id.*, at 144—145 (emphasis added). The *Bracker* interest-balancing test has never been applied where, as here, the State asserts its taxing authority over non-Indians off the reservation. And although we have never addressed this precise issue, our Indian tax immunity cases counsel against such an application.

A

We have applied the balancing test articulated in *Bracker* only where "the legal incidence of the tax fell on a nontribal entity engaged in a transaction with tribes or tribal members," *Arizona Dept. of Revenue* v. *Blaze Constr. Co.*, 526 U.S. 32, 37 (1999), on the reservation. See *Bracker*, *supra*; *Department of Taxation and Finance of N. Y.* v. *Milhelm Attea & Bros.*, 512 U.S. 61 (1994); *Cotton Petroleum Corp.* v. *New Mexico*, 490 U.S. 163 (1989); *Ramah Navajo*

School Bd., Inc. v. *Bureau of Revenue of N. M.*, 458 U.S. 832 (1982); *Washington* v. *Confederated Tribes of Colville Reservation*, 447 U.S. 134 (1980); *Central Machinery Co.*, 448 U.S.. Similarly, the cases identified in *Bracker* as supportive of the balancing test were exclusively concerned with the on-reservation conduct of non-Indians. See *Warren Trading Post Co.* v. *Arizona Tax Comm'n*, 380 U.S. 685 (1965); *Thomas* v. *Gay*, 169 U.S. 264 (1898); *Williams* v. *Lee*, 358 U.S. 217 (1959).[5]

Limiting the interest-balancing test exclusively to *on-reservation* transactions between a nontribal entity and a tribe or tribal member is consistent with our unique Indian tax immunity jurisprudence. We have explained that this jurisprudence relies "heavily on the doctrine of tribal sovereignty . . . which historically gave state law 'no role to play' within a tribe's territorial boundaries." *Oklahoma Tax Comm'n* v. *Sac and Fox Nation*, 508 U.S. 114, 123—124 (1993) (quoting *McClanahan* v. *Arizona Tax Comm'n*, 411 U.S. 164, 168 (1973)). We have further explained that the doctrine of tribal sovereignty, which has a "significant geographical component," *Bracker*, *supra*, at 151, requires us to "revers[e]" the " 'general rule' " that " 'exemptions from tax laws should . . . be clearly expressed.' " *Sac and Fox*, *supra*, at 124 (quoting *McClanahan*, *supra*, at 176). And we have determined that the geographical component of tribal sovereignty " 'provide[s] a backdrop against which the applicable treaties and federal statutes must be read.' " *Sac and Fox*, *supra*, at 124 (quoting *McClanahan*, *supra*, at 172). Indeed, the particularized inquiry we set forth in *Bracker* relied specifically on that backdrop. See 448 U.S., at 144—145 (noting that where "a State asserts authority over the conduct of non-Indians engaging in activity *on the reservation* . . . we have examined the language of the relevant federal treaties and statutes in terms of both the broad policies that underlie them and the notions of sovereignty that have developed from historical traditions of tribal independence" (emphasis added)).

We have taken an altogether different course, by contrast, when a State asserts its taxing authority outside of Indian Country. Without applying the interest-balancing test, we have permitted the taxation of the gross receipts of an off-reservation, Indian-owned ski resort,

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[5] Our recent discussion in *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U.S. 450 (1995), regarding the application of the interest-balancing test to motor fuel taxes is not to the contrary. In *Chickasaw*, we noted in dicta that, "if the legal incidence of the tax rests on non-Indians, no categorical bar prevents enforcement of the tax; if the balance of federal, state, and tribal interests favors the State, and federal law is not to the contrary, the state may impose its levy, and may place on a tribe or tribal members 'minimal burdens' in collecting the toll." *Id.*, at 459 (citation omitted). *Chickasaw* did not purport to expand the applicability of *White Mountain Apache Tribe* v. *Bracker*, 448 U.S. 136 (1980), to an off-reservation tax on non-Indians. Indeed, the quoted sentence reveals that *Chickasaw* discussed the applicability of the interest-balancing test in the context of a tax that is collected by the tribe–a tax that necessarily arises from on-reservation conduct. Moreover, in purporting to craft a " 'bright-line standard' " in that case, we noted that Oklahoma "generally is free" to impose the legal incidence of its motor fuel tax on the consumer–who purchases fuel on the reservation–and then require the Indian retailers to " 'collect and remit the levy.' " 515 U.S., at 460. If Oklahoma would have been free to impose the legal incidence of its fuel tax downstream from the Indian retailers, then Kansas should be equally free to impose the legal incidence of its fuel tax upstream from Indian retailers notwithstanding the applicability of the interest-balancing test. Indeed, the *Chickasaw* dicta should apply *a fortiori* here; the upstream approach is *less* burdensome on the Tribe because it does not include the collecting and remitting requirements that typically, and permissibly, accompany a consumer tax.

Mescalero Apache Tribe v. *Jones*, 411 U.S. 145 (1973), and the taxation of income earned by Indians working on-reservation but living off-reservation, *Chickasaw*, 515 U.S. 450. In these cases, we have concluded that "[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." *Mescalero Apache*, *supra*, at 148—149; *Chickasaw*, *supra*, at 465 (quoting *Mescalero Apache*, *supra*, at 148—149). If a State may apply a nondiscriminatory tax to Indians who have gone beyond the boundaries of the reservation, then it follows that it may apply a nondiscriminatory tax where, as here, the tax is imposed on non-Indians as a result of an off-reservation transaction. In these circumstances, the interest-balancing test set forth in *Bracker* is inapplicable. Cf. *Blaze Constr.*, 526 U.S., at 37 (declining to apply the *Bracker* interest-balancing test "where a State seeks to tax a transaction [on-reservation] between the Federal Government and its non-Indian private contractor").

The application of the interest-balancing test to the Kansas motor fuel tax is not only inconsistent with the special geographic sovereignty concerns that gave rise to that test, but also with our efforts to establish "bright-line standard[s]" in the context of tax administration. *Ibid.* ("The need to avoid litigation and to ensure efficient tax administration counsels in favor of a bright-line standard for taxation of federal contracts, regardless of whether the contracted-for activity takes place on Indian reservations"); cf. *Chickasaw*, *supra*, at 460 (noting that the legal incidence test " 'provide[s] a reasonably bright-line standard' Indeed, we have recognized that the *Bracker* interest-balancing test "only cloud[s]" our efforts to establish such standards. *Blaze Constr.*, *supra*, at 37. Under the Nation's view, however, any off-reservation tax imposed on the manufacture or sale of any good imported by the Nation or one of its members would be subject to interest balancing. Such an expansion of the application of the *Bracker* test is not supported by our cases.

Nor is the Nation entitled to interest balancing by virtue of its claim that the Kansas motor fuel tax interferes with its own motor fuel tax. As an initial matter, this is ultimately a complaint about the downstream economic consequences of the Kansas tax. As the owner of the station, the Nation will keep every dollar it collects above its operating costs. Given that the Nation sells gas at prevailing market rates, its decision to impose a tax should have no effect on its net revenues from the operation of the station; it should not matter whether those revenues are labeled "profits" or "tax proceeds." The Nation merely seeks to increase those revenues by purchasing untaxed fuel. But the Nation cannot invalidate the Kansas tax by complaining about a decrease in revenues. See *Colville*, 447 U.S., at 156 ("Washington does not infringe the right of reservation Indians to 'make their own laws and be ruled by them,' *Williams* v. *Lee*, 358 U.S. 217, 220 (1959), merely because the result of imposing its taxes will be to deprive the Tribes of revenues which they currently are receiving"). Nor would our analysis change if we accorded legal significance to the Nation's decision to label a portion of the station's revenues as tax proceeds. See *id.*, at 184, n. 9 (Rehnquist, J., concurring in part, concurring in result in part, and dissenting in part) ("When two sovereigns have legitimate authority to tax the same transaction, exercise of that authority by one sovereign does not oust the jurisdiction of the other. If it were otherwise, we would not be obligated to pay federal as well as state taxes on our income or

gasoline purchases. Economic burdens on the competing sovereign . . . do not alter the concurrent nature of the taxing authority").[6]

B

Finally, the Nation contends that the Kansas motor fuel tax is invalid notwithstanding the inapplicability of the interest-balancing test, because it "exempts from taxation fuel sold or delivered to all other sovereigns," and is therefore impermissibly discriminatory. Brief for Respondent 17—20 (emphasis deleted); Kan. Stat. Ann. §§79—3408(d)(1)—(2) (2003 Cum. Supp.). But the Nation is not similarly situated to the sovereigns exempted from the Kansas fuel tax. While Kansas uses the proceeds from its fuel tax to pay for a significant portion of the costs of maintaining the roads and bridges on the Nation's reservation, including the main highway used by the Nation's casino patrons, Kansas offers no such services to the several States or the Federal Government. Moreover, to the extent Kansas fuel retailers bear the cost of the fuel tax, that burden falls equally upon all retailers within the State regardless of whether those retailers are located on an Indian reservation. Accordingly, the Kansas motor fuel tax is not impermissibly discriminatory.

* * *

For the foregoing reasons, we hold that the Kansas motor fuel tax is a nondiscriminatory tax imposed on an off-reservation transaction between non-Indians. Accordingly, the tax is valid and poses no affront to the Nation's sovereignty. The judgment of the Court of Appeals is reversed.

It is so ordered.

Justice GINSBURG, with whom Justice KENNEDY joins, dissenting.

The Kansas fuel tax at issue is imposed on distributors, passed on to retailers, and ultimately paid by gas station customers. Out-of-state sales are exempt, as are sales to other distributors, the United States, and U.S. Government contractors. Fuel lost or destroyed, and thus not sold, is also exempt. But no statutory exception attends sales to Indian tribes or their members.

The Prairie Band Potawatomi Nation (hereinafter Nation) maintains a casino and related facilities on its reservation. On nearby tribal land, as an adjunct to its casino, the Nation built, owns, and operates a gas station known as the Nation Station. Some 73% of the Nation Station's customers are casino patrons or employees. *Prairie Band Potawatomi Nation* v. *Richards,* 379

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[6] These authorities also foreclose the Nation's contention that the Kansas motor fuel tax is invalid, irrespective of the applicability of *Bracker*, 448 U.S. 136, because it interferes with the Nation's right to self government.

F.3d 979, 982 (CA10 2004). The Nation imposes its own tax on fuel sold at the Nation Station, pennies per gallon less than Kansas' tax. *Ibid.*

Both the Nation and the State have authority to tax fuel sales at the Nation Station. *See Merrion* v. *Jicarilla Apache Tribe,* 455 U.S. 130, 137 (1982) (describing "[t]he power to tax [as] an essential attribute of Indian sovereignty[,] … a necessary instrument of self-government and territorial management," which "enables a tribal government to raise revenues for its essential services"). As a practical matter, however, the two tolls cannot coexist. 379 F.3d, at 986. If the Nation imposes its tax on top of Kansas' tax, then unless the Nation operates the Nation Station at a substantial loss, scarcely anyone will fill up at its pumps. Effectively double-taxed, the Nation Station must operate as an unprofitable venture, or not at all. In these circumstances, which tax is paramount? Applying the interest-balancing approach described in *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136 (1980), the Court of Appeals for the Tenth Circuit held that "the Kansas tax, as applied here, is preempted because it is incompatible with and outweighed by the strong tribal and federal interests against the tax." 379 F.3d, at 983. I agree and would affirm the Court of Appeals' judgment.

I

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Kansas and the Court heavily rely upon *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973) (*Mescalero I*). That case involved a ski resort operated by the Mescalero Apache Tribe on off-reservation land leased from the Federal Government. This Court upheld New Mexico's imposition of a tax on the gross receipts of the resort. Balancing was not in order, the Court explained, because the Tribe had ventured outside its own domain, and was fairly treated, for gross receipts purposes, just as a non-Indian enterprise would be. In such cases, the Court observed, an express-preemption standard is appropriately applied. As the Court put it: "Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." *Id*., at 148—149. Accord *Chickasaw Nation,* 515 U.S., at 462—465 (State permitted to tax income of tribal members residing outside Indian Country). Cases of the *Mescalero I* kind, however, do not touch and concern what is at issue in the instant case: taxes formally imposed on nonmembers that nonetheless burden *on-reservation* tribal activity.

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Balancing tests have been criticized as rudderless, affording insufficient guidance to decisionmakers. See *Colville,* 447 U.S., at 176 (Rehnquist, J., concurring in part, concurring in result in part, and dissenting in part) (criticizing the "case-by-case litigation which has plagued this area of law"); Brief for Petitioner 30—32. Pointed as the criticism may be, one must ask, as in life's choices generally, what is the alternative. "The principle of tribal self-government, grounded in notions of inherent sovereignty and in congressional policies, seeks an accommodation between the interests of the Tribes and the Federal Government, on the one hand, and those of the State, on the other." *Colville*, 447 U.S., at 156. No "bright-line" test is capable of achieving such an accommodation with respect to state taxes formally imposed on

non-Indians, but impacting on-reservation ventures. The one the Court adopts inevitably means, so long as the State officially places the burden on the non-Indian distributor in cases of this order, the Tribe loses. *Faute de mieux* and absent congressional instruction otherwise, I would adhere to precedent calling for "a particularized inquiry into the nature of the state, federal, and tribal interests at stake." *Bracker*, 448 U.S., at 145.

II

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The Nation's interests coincide with "strong federal interests in promoting tribal economic development, tribal self-sufficiency, and strong tribal governments." 379 F.3d, at 986. The United States points to the poor condition of Indian reservation roads, documented in federal reports, conditions that affect not only driving safety, but also the ability to furnish emergency medical, fire, and police services on an expedited basis, transportation to schools and jobs, and the advancement of economic activity critical to tribal self-sufficiency. Brief for United States as *Amicus Curiae* 26; see, *e.g.*, Dept. of Commerce, Bureau of Indian Affairs, TEA—21 Reauthorization Resource Paper: Transportation Serving Native American Lands (May 2003). The shared interest of the Federal Government and the Nation in improving reservation roads is reflected in Department of the Interior regulations implementing the Indian Reservation Roads Program. See 69 Fed. Reg. 43090 (2004); 25 CFR §170 *et seq*. (2005). The regulations aim at enhancing the ability of tribal governments to promote road construction and maintenance. They anticipate that Tribes will supplement federal funds with their own revenues, including funds gained from a "[t]ribal fuel tax." §170.932(d). Because the Nation's roads are integrally related to its casino enterprise, they also further federal interests in tribal economic development advanced by the Indian Gaming Regulatory Act, Pub. L. 100—497, 102 Stat. 2467, 25 U.S.C. § 2701 *et seq*.

Against these strong tribal and federal interests, Kansas asserts only its "general interest in raising revenues." 379 F.3d, at 986. "Kansas' interest," as the Court of Appeals observed, "is not at its strongest." *Id.*, at 987. By effectively taxing the Nation Station, Kansas would be deriving revenue "primarily from value generated on the reservation" by the Nation's casino. *Ibid.* Moreover, the revenue Kansas would gain from applying its tax to fuel destined for the Nation Station appears insubstantial when compared with the total revenue ($6.1 billion in 2004) the State annually collects through the tax. See *id.*, at 982; Brief for Respondent 12 (observing that "[t]he tax revenues at issue–roughly $300,000 annually–are less than one-tenth of one percent of the total state fuel tax revenues").

The Court asserts that "Kansas uses the proceeds from its fuel tax to pay for a significant portion of the costs of maintaining the roads and bridges on the Nation's reservation." *Ante*, at 18. The record reveals a different reality. According to the affidavit of the Director of the Nation's Road and Bridge Department, Kansas and its subdivisions have failed to provide proper maintenance even on their own roads running through the reservation. App. 79. As a result, the Nation has had to assume responsibility for a steadily growing number of road miles within the reservation (roughly 118 of the 212 total miles in 2000). *Ibid.;* see also Brief for Respondent 3, 40, 44—45. Of greater significance, Kansas expends *none* of its fuel tax revenue on the upkeep

or improvement of tribally owned reservation roads. 379 F.3d, at 986—987; cf. *Ramah*, 458 U.S., at 843, n. 7 ("This case would be different if the State were actively seeking tax revenues for the purpose of constructing, or assisting in the efforts to provide, adequate [tribal services]."). In contrast, Kansas sets aside a significant percentage of its fuel tax revenues (over 40% in 1999) for counties and localities. Kan. Stat. Ann. §79—3425 (2003 Cum. Supp.); see also §79—34,142 (1997) (prescribing allocation formula); 1999 Kan. Sess. Laws, ch. 137, §37. And, as indicated earlier, *supra*, at 4—5, Kansas accords the Nation no dispensation based on the Nation's sovereign status. The Nation thus receives neither a state exemption so that it can impose its own fuel tax, nor a share of the State's fuel tax revenues. Accordingly, the net result of invalidating Kansas' tax as applied to fuel distributed to the Nation Station would be a somewhat more equitable distribution of road maintenance revenues in Kansas.

Kansas argues that, were the Nation to prevail in this case, nothing would stop the Nation from reducing its tax in order to sell gas below the market price. Brief for Petitioner 30. *Colville* should quell the State's fears in this regard. Were the Nation to pursue such a course, it would be marketing an exemption, much as the smokeshops did in *Colville*, and hence, interest balancing would likely yield a judgment for the State. See 447 U.S., at 155—157. In any event, as the Nation points out, the State could guard against the risk that "Tribes will impose a 'nominal tax' and sell goods at a deep discount on the reservation." Brief for Respondent 34—35. The State could provide a credit for any tribal tax imposed or enact a state tax that applies only to the extent that the Nation fails to impose an equivalent tribal tax. *Id.*, at 35.

Today's decision is particularly troubling because of the cloud it casts over the most beneficial means to resolve conflicts of this order. In *Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505 (1991), the Court counseled that States and Tribes may enter into agreements establishing "a mutually satisfactory regime for the collection of this sort of tax." *Id.*, at 514; see also *Nevada* v. *Hicks*, 533 U.S. 353, 393 (2001) (O'Connor, J., concurring in part and concurring in judgment) (describing various state-tribal agreements). By truncating the balancing-of-interests approach, the Court has diminished prospects for cooperative efforts to achieve resolution of taxation issues through constructive intergovernmental agreements.

In sum, the Nation operates the Nation Station in order to provide a service for patrons at its casino without, in any way, seeking to attract bargain hunters on the lookout for cheap gas. Kansas' collection of its tax on fuel destined for the Nation Station will effectively nullify the Nation's tax, which funds critical reservation road-building programs, endeavors not aided by state funds. I resist that unbalanced judgment.

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For the reasons stated, I would affirm the judgment of the Court of Appeals for the Tenth Circuit.