UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MASHANTUCKET PEQUOT TRIBE

Plaintiff,

v.

TOWN OF LEDYARD, PAUL HOPKINS, Tax Assessor of the Town of Ledyard and JOAN CARROLL, Tax Collector of the Town of Ledyard,

Defendants,

THE STATE OF CONNECTICUT,

Intervenor-Defendant.

CIVIL ACTION NO.
3:06-CV-01212 (WWE)
3:08-CV-01355 (WWE)

PLAINTIFF MASHANTUCKET PEQUOT TRIBE'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

This lawsuit involves an attempt by the Town of Ledyard to impose a personal property tax on slot machines used by the Mashantucket Pequot Tribe in its on-Reservation gaming facility. The Tribe is entitled to summary judgment because the Town's imposition of this tax violates federal law.

The material facts are undisputed. The Tribe leases slot machines from two vendors, AC Coin and WMS. The slot machines are used on the Tribe's Reservation at its gaming facility, which the Tribe lawfully operates under the Indian Gaming Regulatory Act and the Final Mashantucket Pequot Gaming Procedures promulgated by the Secretary of Interior. The revenues from the gaming operation are used by the Tribe to provide essential government services to its members and to the Reservation community. The Town of Ledyard has attempted to impose a state personal property tax on these slot machines. Pursuant to the Tribe's leases with AC Coin and WMS, the Tribe is contractually liable for this tax. The Town provides no on-Reservation services with respect to the slot machines, AC Coin or WMS, or the Tribe's gaming enterprise, and the tax is used only to raise general revenue for use by the Town. Based on these undisputed facts, the Mashantucket Pequot Tribe is entitled to summary judgment based on black letter legal principles of preemption and tribal sovereignty.

First, the Tribe is entitled to summary judgment based on direct preemption. State and local government regulation is preempted when federal statutes are so pervasive that they occupy the field. The Indian Trader statutes – federal legislation that comprehensively regulates businesses selling or leasing goods to reservation Indians – preclude the states and local governments from taxing these same businesses. Under circumstances similar to this case, the U.S. Supreme Court held that the Indian Trader statutes prohibit a state from imposing a tax on

on-reservation transactions between tribes and vendors. *See Warren Trading Post Co. v. Arizona Tax Comm'n*, 380 U.S. 685, 690 (1965); *see also Central Machinery Co. v. Arizona State Tax Commission*, 448 U.S. 160, 163-64 (1980). The Indian Gaming Regulatory Act ("IGRA") provides a second basis for direct preemption. 25 U.S.C. § 2701, *et seq*. IGRA not only imposes a comprehensive scheme of regulation on Indian gaming, it also prohibits states and local governments from regulating on-reservation gaming. Thus, IGRA, too, preempts the Town of Ledyard from imposing a tax on slot machines leased by the Tribe for use in its gaming facility.

Even if the tax at issue was not directly preempted by federal statutes, the tax is nonetheless preempted based on a balancing of the relevant interests at stake. This Court, in earlier rulings in this case, has already recognized that the Tribe and federal government have a strong interest in gaming as a means of encouraging tribal self-determination, economic development, and strong tribal governments. The undisputed facts demonstrate that the Tribe's gaming operation is its primary source of revenue for providing essential government services, that the Town of Ledyard provides no services related to gaming on the reservation, and that the tax at issue is imposed only to raise general revenue. Applying the traditional balancing of interest analysis, the Court should conclude that the tax imposed by the Town is improper and that the Tribe is entitled to summary judgment for this reason as well.

Finally, it is black letter law that states and local governments cannot infringe on the right of tribes to make their own laws on their reservations and be ruled by them. *See White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980) (*citing Williams v. Lee*, 358 U.S. 217, 220 (1959)). Here, the Tribe has an extensive regulatory, legislative and judicial system that govern activities on the Reservation. Within this system, the Tribe's legislative body has deliberately elected not to impose a tax on vendors doing business with the Tribe on its Reservation. By

attempting to impose its own tax on these vendors for property leased to the Tribe and located wholly within the Reservation, the Town is attempting to exercise its own sovereign power within the Reservation and thereby interferes with the Tribe's sovereign authority over its territory; this is an independent basis for summary judgment in favor of the Tribe.

The Court should grant summary judgment in favor of the Tribe, and hold that the Town of Ledyard's imposition of the state personal property tax on slot machines leased by the Tribe from AC Coin and WMS violates federal law. The Town of Ledyard should be enjoined from including the leased gaming machines on its list of taxable property and from collecting taxes on the leased gaming machines.

STATEMENT OF UNDISPUTED FACTS

The Mashantucket Pequot Tribe is a federally recognized Indian tribal government, and as a sovereign, the Tribe is not subject to state or local taxation. (Undisputed Facts Part I)**.** The Tribe provides essential government services to its members and to the Reservation community. *Id*. It funds these services with its own resources – primarily, revenue from its gaming operations on the Reservation conducted pursuant to the federal Indian Gaming Regulatory Act. (Undisputed Facts Part II). Revenues from the Tribe's gaming operations are also used to reimburse the State of Connecticut for certain regulatory and law enforcement services provided in relation to the gaming operations. *Id*. The Tribe also contributes 25% of its video facsimile game revenue to the State, and the State distributes most of this money to city and town governments based on its own allocation formula. *Id*.

For its on-Reservation gaming operations, the Tribe buys or leases gaming machines from various vendors, including Atlantic City Coin & Slot Service Company ("AC Coin") and WMS Gaming, Inc. ("WMS"). (Undisputed Facts Part III). Both of these vendors use standard

leases that make the gaming operator – in this case, the Tribe – responsible for taxes on the gaming machines. *Id*. Because the Tribe is not subject to state or local taxation, AC Coin and WMS agreed to modify the lease terms to clarify that the machines are leased only for use in the Tribe's on-Reservation gaming activity and thus no state or local taxes apply. *Id*. The Tribe agreed to indemnify the vendors in the event that taxes were required to be paid. *Id*.

As it turns out, the Town of Ledyard has assessed taxes on the leased gaming machines. (Undisputed Facts Part IV). The revenue from the assessed taxes goes to Ledyard's general fund, and thus pays for general services for Town residents, not for services provided on the Tribe's Reservation. (Undisputed Facts Part V). The Tribe commenced this action to challenge the legality of the property tax as imposed by Ledyard and to stop the continued violations of federal law. (Undisputed Facts Part VI).

I. THE MASHANTUCKET PEQUOT TRIBE IS A FEDERALLY RECOGNIZED TRIBAL GOVERNMENT THAT PROVIDES ESSENTIAL SERVICES TO ITS COMMUNITY.

The Mashantucket Pequot Tribe is a federally-recognized American Indian tribal government (under 25 U.S.C. § 1758(a)). Affidavit of Chairman Rodney Butler ("Butler Aff.") ¶ 2. The Tribe occupies and exercises jurisdiction over its Reservation, which is located in southeastern Connecticut, bordering or in close proximity to the Towns of Ledyard, Preston and North Stonington, and includes approximately 1,600 acres of land held in trust by the United States for the Tribe's exclusive benefit. *Id.* ¶ 2. Within the Reservation, the Tribe is largely self-sufficient, and exercises the powers of self-governance. *Id*. ¶ 3. The Tribe provides essential governmental services to its community, which includes tribal members, visitors, employees, and vendors. *Id*. ¶ 3. These services are similar to the ones that state or local governments provide to their communities, and include the following:

- **Mashantucket Pequot Tribal Gaming Commission:** The Gaming Commission is charged with the primary responsibility for regulatory oversight of all tribal gaming operations on the Reservation.

- **Court Services:** The Mashantucket Pequot Tribal Court provides a judicial forum for the resolution of civil and criminal cases. The Tribal Court is comprised of a trial and appellate level.

- **Fire and Emergency Services:** The Department of Fire and Emergency Services provides 24-hour fire and emergency medical services to the Reservation.

- **Land Use Commission:** The Land Use Commission is responsible for enforcing the Tribal Land Use Law and employee safety regulation.

- **Tribal Occupational Safety and Health Administration:** TOSHA is a regulatory agency of the Tribe created to enforce the Tribe's Occupational Safety and Health Law which addresses workplace health and safety issues.

- **Police Protection:** The Tribe's Police Department assures public safety and order throughout the Reservation. The Department has approximately 15 professional police officers who are also deputized by the Bureau of Indian Affairs.

- **Public Works:** The Public Works Department is responsible for maintenance of the Tribe's grounds, roads, and buildings.

- **Utilities:** The Tribe's Utilities Department administers the delivery of utilities to the Tribe and its enterprises. It maintains and operates Reservation-wide water, gas, electric and wastewater treatment systems.

Id. ¶ 3; Exs. A and B (most recent Tribal Annual Reports). The Tribe also provides child development, housing, health, education, career planning, and other services to its members. *Id*.

The Tribe uses its own resources to fund these and other essential government services. Butler Aff. ¶ 4. The Tribe's main source of revenue is its gaming enterprise, and the Tribe also relies on a Tribal sales tax, hotel occupancy tax, and admissions tax for on-Reservation transactions—the Tribe does not rely on financial assistance from Connecticut or Ledyard to provide essential government services on the Reservation. *Id*. To date, the Tribe has made a deliberate decision not to enact a Tribal personal property tax. *Id*. ¶ 6. The Mashantucket

Pequot Tribal Council, the legislative body of the Tribe, has considered adopting such a tax on several occasions, including within the past year. *Id*. ¶ 6.[1]

II. THE TRIBE CONDUCTS ON-RESERVATION GAMING AND, PURSUANT TO IGRA, USES THE REVENUES TO FUND ESSENTIAL TRIBAL GOVERNMENTAL SERVICES AND UNDER THE GAMING PROCEDURES REIMBURSES THE STATE FOR SERVICES THAT IT PROVIDES.

A. The Gaming Enterprise Operates under Federal and Tribal Law and it is the Tribe's Primary Source of Revenue.

The Mashantucket Pequot Gaming Enterprise (the "Gaming Enterprise") is an arm of the Tribal government that conducts gaming operations at Foxwoods Resort Casino and MGM Grand at Foxwoods, both located on the Reservation. Butler Aff. ¶ 7. The Gaming Enterprise was established after Congress enacted IGRA[2] to provide a federal statutory framework for Indian gaming "as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1); *see also id*. ¶ 8. The Tribe's gaming operations are governed by the Final Mashantucket Pequot Gaming Procedures promulgated by the Secretary of Interior[3] (56 Fed. Reg. 24996 (May 31, 1991) ("Gaming Procedures") and by the

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[1] The Tribe's Office of Revenue and Taxation has issued regulations implementing the Tribal Tax Code. The Tribal Council has reviewed these taxes over the years and has reviewed the possibility of imposing other taxes on the Reservation. Based on this review, the Tribe has modified the tax code to increase tax rates when it felt necessary, and has specifically decided whether to impose a property tax. Butler Aff. ¶ 6.

[2] Public Law 100-497 (Oct. 17, 1988), *codified at* 25 U.S.C. § 2701, *et seq.*

[3] The Secretary of the Interior, acting pursuant to IGRA, 25 U.S.C. 2710(d)(7)(B)(vii), prescribed procedures for the conduct of Class III gaming by the Tribe. Pursuant to the requirements of IGRA, the Tribe and the State had negotiated for a Compact, but the negotiations did not result in an agreement when the State refused to sign a compact. 56 Fed Reg 15746 (1991); *Mashantucket Pequot Gaming Enterprise v. Jo-Anne Kennedy*, 2000 Conn. Super. LEXIS 679 at *17 (March 14, 2000). As a result, the state's version of the Tribal-State Compact, with some minor changes, was adopted by the Secretary pursuant to IGRA as the procedures governing the Tribe's gaming. 56 Fed. Reg. 24996 (1991);

Tribal Gaming Law (Title 3 of the Mashantucket Pequot Tribal Laws ("M.P.T.L.")).[4] *Id*. ¶ 9. The Tribal Gaming Law provides for, among other things, tribal regulation of the gaming operations, establishing the Tribe's sole proprietary interest in the gaming operations, and the required revenue allocation from the gaming. *Id*. ¶ 10 and Ex. C (Mashantucket Pequot Tribal Nation, Tribal Laws, Title 3, § 5(a)). Accordingly, under the authority of federal and tribal law, the Tribe oversees its gaming operation through the Tribal Gaming Enterprise, and the Mashantucket Pequot Tribal Gaming Commission is the primary regulatory body insuring the integrity of the tribal gaming. *Id*. ¶¶ 7-10.

The Gaming Enterprise is the Tribe's primary source of revenue: it funds tribal government programs and operations, provides for the Tribe and its members' general welfare, and promotes tribal economic development. Butler Aff. ¶4; 25 U.S.C. § 2710(b)(2)(B); 3 M.P.T.L. ch. 1, sec 5(b). Since 2002, the Tribe has invested over $1.42 billion of capital into its gaming operations. *Id*. ¶ 11.

B. The Tribe Reimburses the State for Services under the Gaming Procedures, and Pays 25% of its Slot Machine Revenue to the State.

As required under IGRA's statutory scheme governing Indian gaming, the Gaming Procedures are the only means by which the State has any regulatory authority over the Tribe's slot machines and other Class III gaming activity on the Reservation, and the Gaming Procedures[5] detail the State's role. Gaming Procedures §§ 4-6, 11-14. Section 11 of he Gaming

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Mashantucket Pequot Gaming Enterprise v. Jo-Anne Kennedy, 2000 Conn. Super. LEXIS 679 at *17.

[4] The tribal laws are published by West Publishing and are available in bound volumes as well as on Westlaw. The tribal government also maintains a website (www.mptnlaw.org) with the tribal laws including any amendments between publications of pocket parts.

[5] *See* Affidavit of James K. Nichols ("Nichols Aff.") Exhibit M.

Procedures provides that the Tribe shall reimburse the State for the regulatory and law enforcement services provided in connection with the Tribe's operation of the Gaming Enterprise. In particular, the State shall "annually make an assessment [to the Tribe] sufficient to compensate the State for the reasonable and necessary costs of regulating gaming operations and conducting law enforcement investigations pursuant to [the Gaming Procedures]." Gaming Procedures § 11(a). The Gaming Procedures authorize the State to license gaming employees, and require registration of all enterprises providing gaming services or equipment to the Tribe—and the Tribe compensates the State for doing so. Gaming Procedures §§ 5, 6. Vendors applying for registration as gaming services or equipment providers, pay to the State "a fee sufficient to compensate the State" for its enterprise registration process. Gaming Procedures § 6(i). Since 2003 the Tribe has reimbursed the State for these law enforcement and regulatory services in the amount of $56.8 million.[6] The Gaming Procedures do not authorize or permit the Town of Ledyard or any other municipality to regulate any part of the Tribe's Gaming Enterprise.

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[6] Nichols Aff. Ex. A (State's Answers to the Tribe's First Set of Interrogatories No. 5) (In its Answers, the State confirms that it provides no services relevant to the balancing test, and that it is entitled to compensation for other services it may provide). The yearly payments from the Tribe to the State are as follows:

State's Fiscal Year End	Payment Pursuant Gaming Procedures § 11
June 30, 2003	$4,519,914.79
June 30, 2004	$4,655,512.00
June 30, 2005	$4,795,178.00
June 30, 2006	$5,034,936.00
June 30, 2007	$5,236,335.00
June 30, 2008	$5,759,967.00
June 30, 2008	$5,759,967.00
June 30, 2009	$6,700,000.00
June 30, 2010	$7,035,000.00
June 30, 2011	$7,316,400.00

Butler Aff. ¶ 12.

In addition to this direct reimbursement to the State, the Tribe pays 25% of the gross operating revenues from its video facsimile games to the State. Butler Aff. ¶ 13 and Ex. D (Second Amendment to Memorandum of Understanding Between the State of Connecticut and the Mashantucket Pequot Tribe ¶ 1 (April 25, 1994)). Since 2003, the Tribe has paid more than $1.5 billion to the State under this agreement – more than the Tribe's capital investment in its gaming operation.[7] This money goes to the "Pequot Fund," which is distributed at the State's discretion, mostly as grants to towns and cities. *See* Nichols Aff. Ex. D at 177. Ledyard received between $590,000 and $1.4 million from the Pequot Fund each year from 2003 to 2010, and since 2007, has received an average of $1.1 million per year from this fund.[8]

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[7] The contributions by year are set out below:

Fiscal Year	Total Contribution
2003/2004	$196,883,096
2004/2005	$204,953,050
2005/2006	$204,505,785
2006/2007	$201,380,257
2007/2008	$190,037,675
2008/2009	$177,153,485
2009/2010	$169,408,149
2010/2011	$174,092,415

Butler Aff. ¶ 13; *see also* Foxwoods Casino Schedule of Selected Video Facsimile/Slot Machine Data, available at http://www.ct.gov/dcp/lib/dcp/pdf/gaming/fosltweb_july_11.pdf.

[8] More specifically, Ledyard received the following amounts from the Pequot fund for the years 2003-2010:

Year	Payment to Ledyard from Pequot Fund
2003	$743,231
2004	$591,793
2005	$612,377
2006	$861,415
2007	$1,020,922
2008	$1,125,635

III. THE TRIBE LEASES SLOT MACHINES FROM AC COIN AND WMS FOR USE IN ITS GAMING ENTERPRISE.

The use of slot machines is critical to the Gaming Enterprise operations and the Tribe leases or buys gaming machines from various vendors, including AC Coin and WMS.[9] Affidavit of Wade Blackmon ("Blackmon Aff.") ¶ 3. Both of these vendors use standard lease agreements that make the customer responsible for all taxes on the leased equipment.[10] Affidavit of Thomas McCormick ("McCormick Aff.") ¶ 4; Files Aff. ¶ 4. Because the Tribe is not subject to state or local taxes, AC Coin and WMS agreed to modify the lease terms to recognize the Tribe's sovereignty and the non-applicability of state and local taxes. McCormick Aff. ¶¶ 7-9; Files Aff. ¶¶ 6-12. But, the Tribe remains contractually liable for any taxes that are required to be paid. *Id.*

A. AC Coin Leases Gaming Machines to the Tribe and Makes the Tribe Responsible for Taxes.

AC Coin manufactures gaming devices for sale and lease. McCormick Aff. ¶ 2. Until October 2009, AC Coin's proprietary games – the ones most popular with casino visitors – were only available for lease. *Id.* ¶ 3. For leased machines, AC Coin uses a standard agreement that makes the lessee financially responsible for any personal property taxes relating to the leased gaming machines: "taxes and any license fees applicable to the use and operation of the Game(s) shall be paid by Casino." *Id.* ¶ 4. AC Coin's standard lease also requires the lessee to indemnify

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2009	$1,440,154
2010	$952,938

Nichols Aff. Ex. D at 172; 177; 183; 188; 193; 197-98; 201; 202 (testimony regarding Nichols Aff. Exs. E-L) (Town of Ledyard Annual Financial Reports from 2002-10)).

[9] Both companies also lease accompanying seats, signage and equipment to the Tribe.

[10] These lease terms – under which the lessee is responsible for taxes on the leased equipment – are standard practice in the commercial equipment leasing industry. Deane Aff. ¶ 10.

AC Coin for any loss or liability of any kind arising from "the use, operation and possession of the Game(s). . . ." *Id.* ¶ 4. AC Coin uses this standard tax and indemnification language for both tribal and non-tribal lessees, and has imposed these tax and indemnification requirements ever since it first began leasing gaming devices. *Id.* ¶ 4.

1. AC Coin and the Tribe Modify the Lease Terms to Recognize that the Tribe is Sovereign and not Subject to State or Local Taxes.

AC Coin's standard tax and indemnification terms – including the requirement that "[a]ny and all taxes . . . shall be paid by the Casino" – were included in the Tribe's first slot machine leases with AC Coin in 1997-98. The Tribe later reviewed this issue and concluded that federal law prohibited Ledyard from imposing the personal property tax on the leased gaming equipment. Blackmon Aff. ¶ 6. To clarify the tax obligations under the lease in light of the Tribe's federal tax immunities, the Tribe requested the following terms be incorporated into the lease agreements: (1) the Tribe is not subject to state and local taxes; (2) AC Coin would not file any declarations or pay any taxes with respect to gaming machines leased to the Tribe; and (3) the Tribe would indemnify, hold harmless, and reimburse if necessary, AC Coin in the event it was obligated to pay any such taxes. *Id.* ¶ 6.

AC Coin was concerned about agreeing to these tax terms because of the possibility that regulatory inquiries could arise if the Town or State claimed that AC Coin had failed to pay taxes, and that those inquiries could affect AC Coin's gaming licenses in other jurisdictions. McCormick Aff. ¶ 8. The Tribe agreed to defend and indemnify AC Coin, and AC Coin thereafter agreed to the lease language requested by the Tribe. *Id.* ¶ 8; Blackmon Aff. ¶ 7. This language has been included in every lease between the Tribe and AC Coin since 2001. *Id.* ¶ 10.

2. The Tribe Negotiated and Signed the Leases on its Reservation and the Machines are Used only on the Reservation.

The Tribe negotiated and signed each of the leases with AC Coin on the Tribe's Reservation. Blackmon Aff. ¶ 9. All of the machines leased by the Tribe from AC Coin were delivered by AC Coin to the Tribe's Reservation, have been used solely for the Tribe's gaming operation, and are an integral part of that gaming operation. *Id*. at ¶ 10. All lease payments to AC Coin were made from the Reservation and were made with funds from the Tribe's gaming operation. *Id*. ¶ 11. These gaming devices are the only property AC Coin has on the Reservation or in the Town of Ledyard. McCormick Aff. ¶ 11. While AC Coin holds the title to the leased gaming devices, the Tribe is assigned all risk of loss and must maintain and insure the gaming machines against all loss and casualty. Blackmon Aff. ¶ 12; McCormick Aff. ¶¶ 7, 8, 10.

B. WMS Leases Gaming Machines and Makes the Customer Responsible for Taxes.

WMS manufactures and distributes gaming devices. Affidavit of McLaurin Files ("Files Aff.") ¶ 2. WMS offers some gaming devices for sale, but others are only available for lease. *Id*. ¶ 3. WMS – not the customer – decides whether a particular game will be leased or sold. *Id*. A variety of factors influence this decision, but if WMS concludes that a particular device will be in high demand and can be marketed for a premium price, then that machine will typically be available for lease only. *Id*. So, if a customer wants to use or offer WMS' top games, it most likely will have to lease them. *Id*.

For its lease agreements, WMS uses standard terms, and requires that taxes on leased machines be paid by the customer. *Id*. ¶ 4. WMS' standard terms have also required the Casino to "indemnify and defend WMS" from any liability or expense "arising from Casino's failure to remit such taxes or from any delinquency with respect to such remittance." *Id*. WMS has used this standard tax and indemnity language with both its tribal and non-tribal lessees, and continues

to do so. *Id*. Since at least 2004, WMS' policy has been to include in its standard lease language a provision making the customer responsible for sales, property and use taxes. *Id*.

1. WMS and the Tribe Modify the Lease Terms to Recognize that the Tribe is Sovereign and not Subject to State or Local Taxes.

Since 1998, the Tribe has leased and purchased gaming machines from WMS.[11] *Id*. ¶ 5. Initially, the lease agreements between WMS and the Tribe contained WMS' standard tax and indemnification provisions: "[t]axes . . . shall be paid by the Casino" and "Casino shall indemnify and defend WMS from and against any penalty, liability and expense (including reasonable attorney's fees) arising from Casino's failure to remit such taxes." *Id*. ¶ 6. After the Tribe concluded that federal law prohibited the Town from imposing the personal property tax on the leased gaming equipment, the Tribe requested that additional language be incorporated into the leases stating that it was not subject to state and local taxes, that WMS would not file any declarations or pay any taxes with respect to the gaming machines leased to the Tribe, and that the Tribe would indemnify, hold harmless, and reimburse, if necessary, WMS in the event it was obligated to pay any such taxes. Blackmon Aff. ¶¶ 6-7.

WMS had some concern about agreeing to the tax language requested by the Tribe. Files Aff. ¶ 10. For this reason, when WMS renegotiated its leases with the Tribe in 2004-05, WMS retained its own outside counsel to analyze the federal Indian law tax issues. *Id*. Based upon its outside counsel's advice, WMS concluded that the Town's tax was invalid. *Id*. WMS agreed to the Tribe's requested language for the 2005 leases. Files Aff. ¶ 10; Exs. C ¶ 9, D ¶ 3.

2. The Tribe Negotiated and Signed the Leases on its Reservation and the Machines are Used only on the Reservation.

The Tribe negotiated and signed each of the leases with WMS on the Tribe's

[11] As with its other customers, WMS decided whether a machine would be leased or would be available for sale to the Tribe. Files Aff. ¶ 3.

Reservation. Blackmon Aff ¶ 9. All of the machines leased by the Tribe from WMS were delivered by WMS to the Tribe's Reservation, have been used solely for the Tribe's gaming operation, and are an integral part of that gaming operation. *Id*. ¶ 10. All lease payments to WMS were made from the Reservation and came from funds generated by the Tribe's gaming operation. *Id*. ¶ 11. These gaming devices and related equipment are the only property WMS has on the Reservation or in the Town of Ledyard. Files Aff. ¶ 19. While WMS remains the owner of the leased gaming devices, the Tribe is assigned all risk of loss for the gaming equipment and must maintain and insure the gaming machines against all loss and casualty. Blackmon Aff. ¶ 12; Files Aff. Exs. C ¶ 1, D ¶ 5.

IV. THE TOWN ATTEMPTS TO IMPOSE AND COLLECT THE STATE PROPERTY TAX ON GAMING MACHINES LEASED BY THE TRIBE.

The Town of Ledyard has repeatedly sought to impose and collect its property tax on gaming devices that the Tribe leases from AC Coin and WMS, and the Tribe commenced these lawsuits seeking declaratory judgments that the tax is unlawful as imposed and an injunction against enforcement of the tax.[12]

A. AC Coin Pays the Tax Even Though the Town Has No Authority to Assess It.

The Town first assessed its property tax against AC Coin in 2003-04 and has continued to do so for each subsequent year. McCormick Aff. ¶ 12; 16. The tax assessment arose because of a mistakenly-filed personal property tax declaration – AC Coin's tax accounting firm apparently was not aware of the tax provisions in AC Coin's lease with the Tribe. McCormick Aff. ¶ 12. AC Coin explained to the Town that the tax could not be legally imposed on machines leased to the Tribe and used only on the Reservation. *Id*. ¶ 13; Ex. G. Although AC Coin disagreed with

[12] Connecticut towns are permitted by state law to assess and collect property taxes; the State itself does not assess or collect property taxes. Conn. Gen. Stat. §§ 12-40 – 12-121zz; Nichols Aff. Ex. A (The State's Answers to the Tribe's First Set of Interrogatories ¶ 7.)

the Town's position, AC decided to pay the tax rather than take an administrative appeal or commence litigation out of concerns that the refusal to pay could prompt regulatory concerns in other jurisdictions. *Id*. Ex. H.

In 2006, AC Coin went forward with an administrative appeal of the Town's assessment on the basis that the Town does not have authority to assess personal property taxes on gaming machines leased by the Tribe for exclusive use on the Reservation. McCormick Aff. ¶ 14; Ex. I. The Town's Board of Assessment Appeals rejected AC Coin's appeal. AC Coin thereafter paid the tax to avoid any regulatory difficulties. *Id*. Ex. J. AC Coin has continued to pay the tax while the lawsuit is pending, most recently on July 7, 2011. *Id*. ¶ 16. As required by its lease agreement with AC Coin, the Tribe has fully reimbursed AC Coin for all of its property tax payments to Ledyard, most recently on July 28, 2011. *Id*.; Blackmon Aff. Ex. C.

After AC Coin lost its administrative appeal, the Tribe[13] filed this action seeking a declaratory judgment on the legality of the tax and injunctive relief against enforcement of the tax; the Complaint was filed on August 3, 2006.

B. WMS Refuses to Pay the Illegally-Imposed Property Tax.

In 2004, WMS filed a property tax declaration with the Town of Ledyard "under protest" on the basis that the tax could not legally be applied to gaming equipment used by the Tribe for on-reservation gaming activity. Files Aff. ¶ 14; Ex. E.[14] This was inadvertent; WMS believes that it resulted from turnover of personnel in its tax department and a misunderstanding by an outside tax accountant. *Id*. ¶ 16. Because paying the tax would be contrary to the tax language

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[13] When the lawsuit was first filed, AC Coin was a co-plaintiff. As of December 1, 2006, AC Coin is not a party.

[14] WMS prepared property declarations in earlier years and believes that they were filed. Files Aff. ¶ 17.

in the WMS lease with the Tribe, and also contrary to WMS' independent legal analysis that Ledyard could not impose the tax, in August 2006 WMS informed the Town that it would not file declarations in subsequent years because the gaming machines on the Reservation were not subject to the local property tax. *Id.* ¶ 15; Ex. F.

In 2008, while this action was pending involving the AC Coin lease, the Town filed a state court action against WMS seeking to force payment of taxes relating to the WMS machines, which prompted the Tribe to file suit seeking a declaratory judgment that the property tax could not be imposed on gaming machines leased from WMS. Files Aff. ¶ 18. The state court granted WMS's motion staying the action pending the outcome of this case. The leases between WMS and the Tribe require the Tribe to indemnify WMS for all liabilities arising from the tax dispute. If a Court holds that the tax must be paid, the lease requires the Tribe to reimburse WMS for all tax payments. *Id.* ¶ 20.

V. THE REVENUE FROM TAXES ON THE TRIBE'S LEASED GAMING MACHINES GOES INTO THE TOWN'S GENERAL FUND—WHICH PAYS FOR OFF-RESERVATION SERVICES.

The Town concedes that it provides no services to AC Coin, WMS, the gaming machines themselves or the Tribe's Gaming Enterprise, and therefore the property tax does not benefit these vendors or the Gaming Enterprise. Nichols Aff. Ex. B (Town's Response to Plaintiff's First Interrogatories, No. 6; Town's Response to Plaintiff's First Interrogatories, No. 5).[15] Rather, the tax receipts from this tax go to the Town's general fund, which is used for the business operations of the Town and general services to Town residents and visitors to the Town,

[15] The State conceded early in this case that "any services the State provides within the Tribe's reservation and trust lands would not be relevant to the balancing inquiry in this case." Nichols Aff. Ex. A (State's Response to Plaintiff's First Set of Interrogatories No. 5). The Tribe agrees, and has relied on this concession through the course of discovery.

such as roads, and police and fire service in the Town. Nichols Aff. Ex. A at 168); Ex. C (Town's Answers to the Tribe's Third Set of Interrogatories ¶ 5); Ex. B (Town's Answers to First Set of Interrogatories ¶ 6). Moreover, even though not relevant to the analysis here, the Town claims that it provides a few services to the Tribe or its members on the Reservation. Nichols Aff. Ex. C (Town's Answers to the Tribe's Third Set of Interrogatories ¶ 5). None of these claimed services, however, directly benefit the gaming devices, AC Coin, WMS, or the Tribe's Gaming Enterprise. *Id*. The Tribal government, not the Town, provides comprehensive governmental services within the Reservation to the entire Tribal community, including tribal citizens, employees, vendors and visitors. Butler Aff. ¶ 3-4. The slot vendors and the leased equipment benefit from numerous tribal services, but not from Town services. *Id*.

Ledyard provides services to Town citizens. Some Tribal members live in the Town of Ledyard, off the Reservation, and as town citizens, they receive Town services. *See* Nichols Aff. Ex. D at 286. The Tribe owns some property there as well, including the Two Trees Inn. *Id*. at 161. These Tribal members and the Tribe, however, pay taxes to the Town with respect to their property within the Town. *Id*. at 162; 286. The Tribe pays more property taxes than any other taxpayer in Ledyard.[16]

VI. THE TRIBE CHALLENGES THE LEGALITY OF THE PROPERTY TAX.

This action is a consolidation of two cases that began separately. In the first action (Case No. 3:06-cv-01212-WWE), the Tribe challenges the Town's attempt to impose the property tax on machines leased by the Tribe from AC Coin. In the second action (Case No. 3:08-cv-01355-WWE), the Tribe challenges the tax as imposed on machines leased from WMS. The State of

[16] The Tribe will pay $1,025,824.18 in property tax for 2010—the most of any taxpayer in Ledyard. Nichols Aff. Ex. D at 161:24-163:1; Ex. N. Historically, the Tribe has been the Town's top taxpayer. *Id*. Ex. D at 178-179, 185, 191.

Connecticut intervened as a Defendant in both actions in order to defend its tax statutes and "ensur[e] that the Town can receive tax revenues." (Motion to Intervene, Doc. No. 16 at 13).[17] The actions were consolidated in December 2008 (Notice to Counsel, Doc. 127), shortly after the WMS Action was commenced. These consolidated cases include the same three counts:

I. Federal law, including IGRA and the Indian Trader statutes, preempt the property tax;

II. Federal and tribal interests on balance (and when considered under IGRA and the Indian Trader statutes) also preempt the Town's property tax; and,

III. The Town's tax unlawfully interferes with the Tribe's self-determination and sovereignty.

(Second Amended Complaint ¶¶ 21-32).

The Tribe moves for summary judgment on all three counts. The context for this motion is set by Magistrate Judge Fitzsimmons's twenty-eight page summary of the law governing the Tribe's preemption and sovereignty claims against the Town's property tax assessment (Doc. No. 113 at 4-31, Case No. 3:06-cv-01212), which this Court affirmed in relevant part (Ruling on Defendants' Objection to Magistrate Judge's Ruling on Discovery Motions at 2).

LEGAL STANDARD

Summary judgment is proper when "there is no genuine issue as to any material fact" and "the movant is entitled to judgment as a matter of law." *Mele v. Hill Health Center*, 609 F. Supp. 2d 248, 253 (D. Conn. 2009) (quoting Fed. R. Civ. P. 56(c).) Summary judgment is appropriate when the "nonmoving party submits evidence that is 'merely colorable' or is not 'significantly probative.'" *Id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986)). The

[17] Motion to Intervene and Order Granting Motion, Docs. 16, 44, 45 (Case No. 3:06-cv-01212-WWE) and Motion to Intervene, Doc. 14, Order Granting Motion to Intervene, Doc. 17 (Case No. 3:08-cv-01355-WWE).

nonmoving party must present probative evidence and may not merely rely upon its pleadings. *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986); *Colon v. Coughlin*, 58 F.3d 865, 872 (2d Cir. 1995)). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Hoffman v. Town of Southington*, 62 F. Supp. 2d 569, 571 (D. Conn. 1999) (quoting *Anderson*, 477 U.S. at 247-48).

ARGUMENT

The Town of Ledyard's attempt to impose the state property tax on gaming machines leased by the Tribe is unlawful because it is preempted by federal Indian law and violates the sovereignty of the Tribe. Indian tribes have a unique legal status in their relationship with the federal and state governments. Indian tribes are "distinct, independent political communities, retaining their original natural rights." *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832); *see also Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 16 (1831); *Romanella v. Hayward*, 114 F.3d 15, 16 (2d Cir. 1997); *Reich v. Mashantucket Sand & Gravel*, 95 F.3d 174, 178 (2d Cir. 1996). "Those rights are 'retained' in the sense that they are not granted by the federal government, but are a function of the tribe's unique status as an aboriginal entity." *Mashantucket Sand & Gravel*, 95 F.3d at 178. Indian tribes are separate sovereigns that predate the formation of the United States and the U.S. Constitution. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978). As distinct sovereign entities, Indian tribes retain "attributes of sovereignty over both their members and their territory." *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980) (quoting *United States v. Mazurie*, 419 U.S. 544, 557 (1975)). This imposes "two independent but related barriers" to states' authority to regulate Indian tribes and its members. *See id.* at 141-42. Ledyard's assessment of property tax is unlawful if it is

"pre-empted by federal law" or if it "infringe[s] 'on the right of reservation Indians to make their own laws and be ruled by them.'" *Id*. at 142 (internal citations omitted) (quoting *Williams v. Lee*, 358 U.S. 217, 220 (1959)). The property tax imposed by Ledyard violates both barriers and is invalid, for three principal reasons.

First, federal regulation of Indian traders and Indian gaming is so complete and pervasive that no state taxation is permissible. The tax is preempted by two comprehensive federal statutory schemes:

- The Indian Trader statutes, 25 U.S.C. §§ 261-264, preempt taxes imposed upon non-Indians selling or leasing goods to a tribe on its reservation – such as AC Coin and WMS with the Tribe – because "Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens upon traders." *Central Machinery Co. v. Arizona State Tax Commission*, 448 U.S. 160, 163-64 (1980).

- IGRA, too, preempts taxes imposed with respect to tribal gaming, because the Indian Gaming Regulatory Act "expressly preempt[s] the field in the governance of gaming activities on Indian lands." S. Rep. No. 100-446, at *5-6 (1988), *reprinted in* 1988 U.S.C.C.A.N. 3071, 3075-76. The State role is limited to specific areas – such as licensing and gaming vendor registration – that must be negotiated in a tribal-state compact.

Second, the tax is unlawful under the *Bracker* balancing test, which weighs federal and tribal interests against state interests to determine if a state tax on reservation activity is lawful. 448 U.S. at 143-44. Normally, this test is only applied when a tax is not preempted by federal statute; as a result, the Court need not even reach this issue because the Ledyard property tax is

preempted by the Indian Trader statutes and IGRA. Nevertheless, if the Court were to conduct the balancing test, it would reach the same conclusion – the federal and tribal interests in the Tribe's self-determination, economic development, and strong tribal government preclude the Town from taxing property integral to the Tribe's gaming operation.

Third, Ledyard's property tax infringes on the Tribe's sovereignty. Tribal sovereignty is an independent barrier to the exercise of a state's authority if it "unlawfully infringe[s] 'on the right of reservation Indians to make their own laws and be ruled by them.'" *Bracker*, 448 U.S. at 142 (citing *Williams v. Lee*, 358 U.S. at 220). The Town's imposition of property tax on property located within the Reservation and used by the Tribe in its gaming operations does precisely that, and is therefore unlawful.

I. FEDERAL REGULATION OF INDIAN TRADERS AND INDIAN GAMING PREEMPTS ANY STATE TAX ON RESERVATION GAMING ACTIVITY.

The federal government occupies the field of regulating trade with Indian tribes and tribal gaming. The statutory schemes governing these areas – the Indian Trader statutes and IGRA, respectively – are sufficient, each on its own, to preempt the property tax imposed by Ledyard on gaming machines leased for use in the Tribe's reservation gaming operations.

A. The Indian Trader Statutes Preempt the Town's Property Tax.

The Indian Trader statutes so comprehensively and pervasively regulate trade with the Indians that any state tax falling directly upon Indian traders is preempted. Accordingly, Ledyard cannot impose the state property tax on AC Coin or WMS machines leased to the Tribe.

The Supreme Court has repeatedly held that the comprehensive federal regulatory scheme imposed by the Indian Trader statutes and regulations precludes a state from imposing a tax upon an "Indian trader" – a non-Indian selling or leasing goods with Indians on a

reservation.[18] *Warren Trading Post Co. v. Arizona State Tax Comm'n*, 380 U.S. 685, 690 (1965); *Central Machinery Co. v. Arizona State Tax Comm'n*, 448 U.S. 160, 165-66 (1980); *Department of Taxation and Finance of New York v. Milhelm Attea & Bros., Inc.*, 512 U.S. 61, 73 (1994) (confirming that "a tax imposed directly on Indian traders" is preempted). The Indian Trader statutes give the federal government exclusive authority to regulate non-Indians trading with Indians on a reservation. 25 U.S.C. §§ 261-264; 25 U.S.C. pt. 140. The statutes apply to "[a]ny person desiring to trade with the Indians on any Indian reservation." 25 U.S.C. § 262. The regulations imposed under the Indian Trader statutes are so extensive that they reserve the federal government's right to regulate the kind, quantity and even the price of goods that may be sold to reservation Indians. 25 U.S.C. § 261. As the Supreme Court held, the Indian Trader statutes and regulations "show that Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens upon traders." *Warren Trading Post*, 380 U.S. at 690. The Indian Trader statutes "bar States from taxing federally licensed Indian traders on their sales to reservation Indians on a reservation." *Id.* at 690.

This preemptive effect does not require that the taxed Indian trader be licensed by the federal government or have a permanent place of business on the reservation. *Central Machinery*, 448 U.S. at 164. If a contract is executed on a reservation, and if delivery and payment are effected there, then the transaction falls squarely within the scope of the Indian Trader statutes. *Id*. In that case, the preemptive effect applies with full force, since "[i]t is the existence of the Indian trader statutes, . . . and not their administration, that pre-empts the field of

[18] "Trading," as defined for purposes of the Indian trader statutes, "means buying, selling, bartering, renting, leasing, permitting and any other transaction involving the acquisition of property or services." 25 C.F.R. § 140.5(a)(6).

transactions with Indians occurring on reservations." *Id.* at 165. The Indian Trader statutes always preempt state taxes directly imposed upon an Indian trader for on-reservation transactions. *Id.*

The Supreme Court more recently addressed the preemptive effect of the Indian Trader statutes in *Milhelm Attea*, in which the Court confirmed that a state tax "imposed directly on Indian traders, on enrolled tribal members or tribal organizations, or on value generated on the reservation by activities involving the Tribes" is preempted by the Indian Trader statutes. 512 U.S. at 73 (internal citations omitted). In *Milhelm Attea*, the Court recognized that Indian traders are not "wholly immune from state regulation that is reasonably necessary to the assessment or collection of lawful state taxes." *Id.* at 75. On that basis, the Court permitted a state "regulatory scheme that imposes recordkeeping requirements and quantity limitations on cigarette wholesalers who sell untaxed cigarettes to reservation Indians." *Id.* at 64. But, in so doing, the Court recognized that allowing such a regulatory scheme is "markedly different" from the state taxes preempted in *Warren Trading Post* and *Central Machinery*. *Id.* at 73. Thus, taxes directly imposed upon Indian traders for on-reservation activity remain preempted as a matter of law. *Id.*

Under the authorities above, the Indian Trader statutes clearly preempt the property taxes at issue here. First, AC Coin and WMS constitute Indian traders subject to the comprehensive regulation of the Indian Trader statutes with respect to their lease of gaming machines to the Tribe. The Tribe negotiated and signed the lease agreements with AC Coin and WMS on the Reservation, AC Coin and WMS delivered the gaming machines to the Reservation for exclusive use in the Tribe's gaming operation, and the Tribe makes the lease payments from the Reservation with its gaming revenues. (Undisputed Fact III.A.2; III.B.2). It makes no difference that AC Coin and WMS are not licensed as Indian traders or that they do not have a permanent

place of business on the Reservation. Like the sales contracts at issue in *Central Machinery*, the gaming machine leases here fall "squarely within" the Indian Trader Statutes, which regulate "[a]ny person . . . introduc[ing] goods" either "in the Indian country, or on any Indian reservation." *Central Machinery*, 448 U.S. at 164-65 (quoting 25 U.S.C. § 264).

Second, the legal incidence of the Town's property tax falls directly on AC Coin and WMS. (Undisputed Fact III.A.2; III.B.2). State law requires AC Coin and WMS, as the owners of the leased property, to file declarations of personal property and pay the assessed tax. Conn. Gen. Stat. §§ 12-43, 12-57a. Just like the taxes assessed on the companies selling to the tribes in *Central Machinery* and *Warren Trading Post*, AC Coin and WMS bear the legal incidence of the tax. This result is not changed by the fact that AC Coin and WMS pass the economic burden of the tax on to the Tribe – the Indian trader at issue in *Central Machinery* did the same. 448 U.S. at 162. Accordingly, the Town of Ledyard's property tax against AC Coin and WMS is a state tax on Indian traders and is categorically preempted by the Indian Trader Statutes.

B. IGRA also Categorically Preempts the Town's Property Tax.

IGRA establishes "a comprehensive regulatory structure for Indian gaming" at least as pervasive and all-inclusive as federal regulation under the Indian Trader statutes. *Gaming Corp. of Am. v. Dorsey & Whitney*, 88 F.3d 536, 544 (8th Cir. 1996). Federal regulation of tribal gaming leaves the states with "no regulatory role over [tribal] gaming except as expressly authorized by IGRA" and even then, only so far as permitted by 'a tribal-state compact.'" *Id.* at 546. IGRA thus preempts any state or local taxation for gaming-related activities on the Reservation – particularly the property tax imposed by Ledyard on slot machines, which is as much a tax on the Tribe's gaming activity as it is a tax on trade with an Indian tribe.

IGRA is "a comprehensive regulatory structure for Indian gaming," *Gaming Corp. of Am.*, 88 F.3d at 544, including slot machines and other Class III gaming as defined in IGRA. *See*

25 U.S.C. § 2710(d); 25 C.F.R. § 502.4(b) (slot machines are class III gaming activity). With IGRA, the federal government "expressly preempt[s] the field in the governance of gaming activities on Indian lands." S. Rep. No. 100-446, at *5-6 (1988), *reprinted in* 1988 U.S.C.C.A.N. 3071, 3075-76. IGRA establishes the primacy of tribal and federal "regulation of gaming activities on Indian lands" and does not allow state regulation "unless a tribe affirmatively elects to have State laws and State jurisdiction extend to tribal lands." S. Rep. No. 100-446, at *5-6 (1988), *reprinted in* 1988 U.S.C.C.A.N. 3071, 3075-76. Accordingly, IGRA occupies the field of tribal gaming regulation by:

- "provid[ing] a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments," 25 U.S.C. § 2702(1);
- affirming the Indian tribes' "exclusive right to regulate gaming activity on Indian lands" under IGRA's framework, 25 U.S.C. § 2701(5); and
- establishing an "independent Federal regulatory authority for gaming on Indian lands . . . necessary to meet congressional concerns," 25 U.S.C. § 2702(3).

In short, if any state regulation is to touch Indian gaming, it must go through IGRA.

IGRA is the exclusive framework for the governance and regulation of Indian gaming. It confines states to a narrowly-defined role: "Congress . . . left states with no regulatory role over gaming except as expressly authorized by IGRA, and under it, the only method by which a state can apply its general civil laws to gaming is through a tribal-state compact." *Gaming Corp. of Am.*, 88 F.3d at 546.[19] Importantly, IGRA specifically addresses the issue of state taxation,

[19] A tribal-state compact is required in order for a tribe to engage in class III gaming activities, 25 U.S.C. § 2710(d)(1)(C), which includes slot machines, 25 C.F.R. § 502.4(b), and IGRA provides a specific list of seven items which such a compact "may include provisions relating

allowing tribal-state compacts to include "assessments by the State . . . in such amounts as are necessary to defray the costs of [state] regulati[on]," 25 U.S.C. § 2710(d)(3)(C)(iii), while also making explicit that "nothing in this section shall be interpreted as conferring upon a State *or any of its political subdivisions* authority to impose any *tax*, fee, charge, or other assessment upon an Indian tribe or *upon any other person or entity authorized by an Indian tribe to engage in a class III activity*," 25 U.S.C. § 2710(d)(4) (emphasis added). As contemplated by IGRA, the State sought reimbursement from the Tribe for the cost of its regulatory and law enforcement involvement, and the Gaming Procedures provide for reimbursement by the Tribe and the Tribe has paid the State approximately $56 million under the Gaming Procedures. Butler Aff. ¶ 12. In addition, the Tribe pays the State 25% of its video facsimile revenue, which totaled more than $170 million in fiscal year 2011 alone. Butler Aff. ¶ 13. No provision was made for the Town to assume any role whatsoever in regulating, monitoring, or protecting the Tribe's Gaming Enterprise, and certainly no provision was made for payment of the Town's property tax with respect to gaming machines.

The Gaming Procedures provide the State a role in the registration of enterprises that provide gaming services and gaming equipment to the Tribe. Gaming Procedures, § 6. The Gaming Procedures specifically provide that the State can charge a registration fee to the vendor in order to compensate the State for its costs in reviewing registration applications. The Gaming Procedures limit the fee that can be charged to the vendor to $1,500.00—but the State can recoup any costs in excess of that amount through an assessment to the Tribe under Section 11 of the Gaming Procedures. Gaming Procedures, § 6(i). Nowhere in this section or in the Gaming Procedures, generally, is there allowed an additional property tax on these gaming equipment

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to." 25 U.S.C. § 2710(d)(3)(C).

vendors. The Gaming Procedures specifically address the regulation and fees that can be imposed by the State on gaming equipment vendors, such as AC Coin and WMS, and preempt any attempt by the State to impose additional burdens on these vendors outside of the federal regulations approved under IGRA.

In addition, Section 14(b) of the Gaming Procedures provides that state laws apply to sale and distribution of liquor. It includes specific language about taxation and specifically states that the Tribe needs to collect state tax for the retail sale of alcoholic beverages. This is an example of where state taxes were specifically addressed in the Gaming Procedures and made applicable to the gaming operation. If a state tax, such as the property tax at issue here, is not expressly made applicable under the Gaming Procedures, it cannot lawfully be imposed.

The Town is attempting to impose a property tax on class III gaming machines used by the Tribe on its Reservation as an integral part of the Tribe's Gaming Enterprise. Slot machines are critical to the Tribe's gaming operation, and some of the most sought after slot machines are only available for lease. Blackmon Aff. ¶3 ; Files Aff. ¶ 3; McCormick Aff. ¶ 3. The machines have no use other than gaming, and could not exist in Connecticut except in connection with a Tribal gaming operation. IGRA's comprehensive regulatory scheme applicable to Indian gaming clearly precludes the Town's tax. Moreover, the tax was not provided for in the Gaming Procedures and thus falls squarely under IGRA's express prohibition on state taxation for engaging in class III gaming activities in 25 U.S.C. § 2710(d)(4). The tax plainly violates IGRA's regulations and is therefore preempted as a matter of law.

II. THE TOWN'S PROPERTY TAX VIOLATES FEDERAL LAW UNDER THE *BRACKER* BALANCING TEST.

As discussed in Section I above, the Town's property tax is preempted by the Indian Trader statutes and IGRA. Although it is unnecessary to engage in further analysis given the

preemption under Section 1, above, the *Bracker* balancing test leads to the same result as the direct preemption analysis: the Town's tax is an unlawful assertion of state regulation on the Tribe's Reservation.

A. The *Bracker* Balancing Test.

Under the *Bracker* balancing test, in situations in which the legal incidence of a state or municipal tax falls on a non-Indian with respect to property or activities within Indian country but where Indians or Indian tribes are adversely affected by the tax, the tax is preempted if the federal and tribal interests outweigh the state's (or municipality's) interest in imposing its tax. *Bracker*, 488 U.S. at 143-44; *see also Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95, 101-02 (2005) (confirming that *Bracker* balancing test applies to determine validity of a state tax on a non-Indian if transaction giving rise to tax liability occurs on reservation). The Supreme Court has explained the balancing test's analytical framework as follows:

> In such cases 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. This inquiry is not dependent on mechanical or absolute conceptions of state or tribal sovereignty, but has called for *a particularized inquiry into the nature of the state, federal, and tribal interests at stake*, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law.

Bracker, 488 U.S. at 144-45 (emphasis added).

Under the balancing test, "[s]tate jurisdiction is preempted by the operation of federal law if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the State interests at stake are sufficient to justify the assertion of State authority." *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983). Unlike the standard federal preemption test, federal preemption of state jurisdiction over Indians "is not limited to those situations where Congress has explicitly announced an intention to pre-empt state activity." *Ramah Navajo*

School Bd. v. Bureau of Revenue of New Mexico, 458 U.S. 832, 838 (1982) (citing *Bracker*, 448 U.S. at 143-44). "[T]he traditional notions of tribal sovereignty, and the recognition and encouragement of this sovereignty in congressional Acts promoting tribal independence and economic development, inform the pre-emption analysis that governs this inquiry." *Id.* (citing *Bracker*, 448 U.S. at 143 & n.10). Treaties and federal statutes must be interpreted "generously in order to comport with these traditional notions of sovereignty and with the federal policy of encouraging tribal independence." *Bracker*, 448 U.S. at 144-45.

In the cases applying the *Bracker* balancing test, several important principles predominate in the courts' analysis:

(1) The federal government has interests in tribal economic development and tribal self-government, stated explicitly in numerous Acts of Congress[20] and Executive Branch policies and programs.[21] Its interests are strongest when a comprehensive and pervasive federal regulatory scheme governs the activity burdened by the tax. *See Ramah*, 458 U.S. at 841-44 (state gross receipts tax on non-Indian company constructing a school preempted because, among other factors, tax interfered with federal government's comprehensive regulation of Indian education); *Bracker*, 448 U.S. at 151 (state vehicle tax on non-Indian hauling timber to a

[20] These Acts of Congress include the Indian Reorganization Act, 25 U.S.C. §§ 461 to 479, the Indian Self-Determination Act, 25 U.S.C. § 450f *et seq.*, the Indian Financing Act of 1974, 25 U.S.C. § 1451 *et seq.*, and, of course, IGRA.

[21] *E.g.*, Presidential Memorandum of November 9, 2009: Tribal Consultation, 74 Fed. Reg. 57881 (Nov. 9, 2009) ("[E]xecutive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials . . . and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes . . . My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications . . . ."); Presidential Executive Order 13175, 65 Fed. Reg. 67249, Consultation and Coordination With Indian Tribal Governments, Sec. 2(a), (Nov. 6, 2000) ("the United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination").

tribal sawmill preempted because, among other factors, tax interfered with federal government's comprehensive regulation of reservation timber activities); Magistrate Judge Opinion 17-18.

(2) Tribal governments share the federal government's interests in tribal economic development and tribal self-government, and these tribal interests are strongest when the revenues burdened by the tax are derived from value "generated on the reservations by activities in which [Indians] have a significant interest." *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134, 155-56 (1980); *accord Indian Country, U.S.A., Inc. v. State of Oklahoma*, 829 F.2d 967, 986 (10th Cir. 1987); *see also* Magistrate Judge Opinion 8-9, 14-15. In evaluating the reservation value embodied in a tribal enterprise, the federal courts focus on the tribe's investment in, participation in, and control over the enterprise. Thus, in the pre-IGRA case of *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), the Supreme Court held that state regulation of a tribal gaming enterprise was preempted by federal law under the balancing test. The Court emphasized that the Tribes:

> have built modern facilities which provide recreational opportunities and ancillary services to their patrons, who do not simply drive onto the reservations, make purchases and depart, but spend extended periods of time there enjoying the services the Tribes provide. The Tribes have a strong incentive to provide comfortable, clean, and attractive facilities and well-run games in order to increase attendance at games.

Id. at 219.

(3) The tribal interests are virtually decisive if the tribe (or a tribal member) bears the direct economic burden of the tax. *See Ramah*, 458 U.S. at 844; *Bracker*, 448 U.S. at 151; *see also* Magistrate Judge Ruling 11-12.

(4) While the states (and municipalities) have an interest in raising revenue, that state interest is at its weakest when the tax is not imposed to compensate the state (or municipality) for services provided within the reservation to the taxpayer or to the activity affected by the tax. In

Bracker, for instance, the Supreme Court examined the state's regulatory interest and services provided to the non-Indian logging company which bore the legal incidence of the vehicle taxes that Arizona imposed on the company's on-reservation activities and concluded that Arizona could not identify "any regulatory function or service performed by the State that would justify the assessment of taxes for activities on Bureau and tribal roads within the reservation." 448 U.S. at 148-49. Similarly, in *Ramah*, the Court attached little importance to the *off*-reservation services provided by the state to the non-Indian contractor (Lembke), noting that"[p]resumably, the state tax revenues derived from Lembke's off-reservation business activities are adequate to reimburse the State for the services it provides to Lembke." 458 U.S. at 844 n. 9; *see also* Magistrate Judge Ruling 19 ("The exercise of State authority which imposes additional burdens on a tribal enterprise must ordinarily be justified by functions or services performed by the State in connection with the on-reservation activity.") (quoting *New Mexico*, 462 U.S. at 336).

In applying the *Bracker* balancing test, the Supreme Court has held state taxes to be unlawful when the tax intrudes on federal government regulation intended to benefit a tribe, the tax burdens reservation value in which a tribe has a significant interest, the economic burden of the tax falls directly on a tribe, and the tax is imposed without relation to a state service provided on the reservation to the taxpayer or to the activity burdened by the tax. *See Bracker*, 448 U.S. at 151; *Ramah*, 458 U.S. at 841-44.[22] As discussed below, *all* these factors central to the *Bracker* analysis resolve decisively against the legality of the property tax imposed by Ledyard.

[22] *Compare Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 185-87 (1989) (tax on non-Indian company lawful where federal regulation of the industry was not exclusive, tax did not impose any direct economic burden on the tribe, and State directly provided the company with services for its operations).

B. All the Factors Central to *Bracker* Balancing Point to Preemption of the Town's Tax.

1. Two Comprehensive and Pervasive Federal Schemes Regulate the Activity Burdened by the Tax.

As discussed above, there are not one, but two, comprehensive and pervasive federal regulatory schemes applicable to the slot machines at issue – the Indian Trader statutes and IGRA – establishing the federal government's strong interest against imposition of the Town's tax. *See supra* pp. 22-28. The Connecticut Department of Revenue Services relied in large part on IGRA's comprehensive regulatory scheme in applying *Bracker* balancing to hold that the Connecticut sales tax is preempted with respect to the sale of building materials on the reservation by a non-Indian supplier to a non-Indian construction contractor for incorporation into a tribal gaming facility and to the sale or lease of construction equipment by a non-Indian supplier to a non-Indian construction contractor for exclusive use in the construction of the facility. As the Department recognized, the regulation of gaming on Indian lands "has been completely the province of the federal government" under IGRA since 1988, and "[c]onstruction projects within Indian country in connection with Indian gaming, therefore, affect programs subject to extensive regulation." Conn. Gen. Rev. Rul. 95-11 at 4 (Nov. 29, 1995) (the "Connecticut Ruling") (copy attached as Nichols Aff. Ex. O).[23] If *Bracker* balancing preempts Connecticut's sales tax that burdens a tribe with respect to its construction of a gaming facility, then it must also preempt the Town's property tax that even more directly burdens the Tribe's gaming operations – by taxing the slot machines themselves.

[23] Because the tax at issue in the Connecticut ruling involved a sale of goods from one non-Indian to another non-Indian, the Indian Trader statutes did not apply to the sale and, thus, *Warren Trading* and *Central Machinery* did not apply to categorically preempt the tax.

2. The Tax Burdens Revenues Derived from Reservation Value in which the Tribe Has a Substantial Interest.

As Magistrate Judge Fitzsimmons has already recognized, the Tribe (like the federal government) has strong interests in self-determination and economic development. *Bracker*, 448 U.S. at 149. The Tribe has an especially strong interest in value "generated on the reservation by activities in which [it has] a significant interest." *Colville*, 447 U.S. at 155; *Indian Country, U.S.A.*, 829 F.2d at 986. There is no better example than the Tribe's Reservation gaming operation, which provides the funding for the Tribe's essential government services provided to its community of tribal members, visitors, employees, and vendors. Butler Aff. ¶ 3. The Tribe has invested over one billion dollars in developing its gaming resort, and its gaming operations generate the funding for Reservation utilities, public safety, courts, gaming regulation, and other government services and programs. Butler Aff. ¶¶ 3-4, 11. The Tribe's gaming revenues are therefore vitally important to fostering tribal self-determination and economic development. *See Cabazon*, 480 U.S. at 218-20 (Tribal gaming is a means to fund "the operation of the tribal governments and the provision of tribal services" and "the major sources of employment on the reservations" and "[s]elf-determination and economic development are not within reach if the Tribes cannot raise revenues and provide employment for their members.**"**). The property tax imposed by Ledyard burdens these interests. In fact, the very existence of this economic burden, regardless of the magnitude, injures the Tribe's interest in self-determination. *Indian Country, U.S.A.*, 829 F.3d at 987 n. 9 (the "balancing test" analysis "cannot turn on the severity of a direct economic burden on tribal revenues caused by the state tax."). The fact that the Town is attempting to assert its regulatory and governmental authority over the Tribe's Gaming Enterprise within the Reservation seriously impacts the Tribe's self-determination.

3. The Direct Economic Burden of the Tax Falls on the Tribe.

The direct economic burden of the tax falls on the Tribe. Since 2004, the Tribe has paid – under its contractual obligation to reimburse AC Coin – nearly $70,000 in property taxes on leased slot machines. McCormick Aff. ¶ 16; Blackmon Aff. ¶ 11. If it is determined that WMS is legally obligated to pay the tax, the Tribe will be contractually obligated to reimburse WMS. Files Aff. ¶ 20; Blackmon Aff. ¶ 6. This weighs so heavily in the balancing test that it is nearly determinative. *See Bracker*, 448 U.S. at 151 ("it is undisputed that the economic burden of the asserted taxes will ultimately fall on the Tribe"); *Ramah*, 458 U.S. at 844 (observing that the "tax['s] . . . ultimate burden falls on the tribal organization"); *compare Cotton Petroleum*, 490 U.S. at 185 ("The present case is also unlike *Bracker* and *Ramah Navajo School Bd.*, in that the District Court found that '[n]o economic burden falls on the tribe by virtue of the state taxes").

Accepting the economic burden of the tax has always been a condition of doing business with WMS and AC Coin. Blackmon Aff. ¶¶ 4, 5. The first leases—the Vendors' standard forms for tribal and non-tribal casinos—made the Tribe responsible for taxes. *Id.*; *see also* McCormick Aff. ¶ 4; Files Aff. ¶ 4. Even after the Tribe concluded that the property tax was unlawful and the leases were amended to clarify that point, AC Coin and WMS still required the Tribe to indemnify them if AC Coin and WMS were required to pay taxes. So, even though the legal incidence of the Town's property tax lies with AC Coin and WMS as the owners of the taxed gaming machines, *see* Conn. Gen. Stat. §§ 12-57a, 12-43, the economic burden has always fallen on the Tribe, because the Tribe has always been contractually obligated to pay (or reimburse) any taxes arising from use of the leased slot machines. McCormick Aff. ¶¶ 4, 6-10; Files Aff. ¶¶ 4; 6-13. In fact, the Tribe has reimbursed AC Coin for its tax payments. McCormick Aff. ¶ 16.

It makes no difference to the balancing test that the economic burden of the tax falls on the Tribe by operation of the lease agreements. The same was true in *Bracker* and *Ramah* and in

the Connecticut Ruling that applied *Bracker* balancing. *Bracker*, 448 U.S. at 140 & n.7; *Ramah*, 458 U.S. at 835; Connecticut Ruling ("it would appear that the 'direct economic burden' of the equipment rental, and hence of any tax in connection therewith, does indeed fall on the Tribe, assuming the entire rental cost is passed on to the Tribe").[24] In fact, the lease terms are not only customary but are standard practice within the commercial equipment leasing industry. Deane Decl. ¶¶ 8, 10. In earlier briefing, the Defendants have suggested, without basis, that the Tribe somehow "rigged" the leases so that the Tribe would bear the economic burden of the tax. The Magistrate Judge rejected this argument, correctly holding that the Tribe was not "'rigging,' 'scheming,' or 'manipulating' its contracts with non-Indians to reimburse vendors for state taxes."[25] Magistrate Judge Ruling 29. After all, AC Coin and WMS originally set the lease terms putting the economic burden of the tax on the Tribe. Files Aff. ¶ 4 ; McCormick Aff. ¶ 4.

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[24] This is in direct contrast to *Cotton Petroleum*, where the tribe challenged state severance taxes imposed in addition to tribal severance taxes upon lessees of the tribe for the production of oil and gas on tribal property. *Cotton Petroleum*, 490 U.S. at 168-69. The tribe in that case did not claim that it bore the direct economic burden of the state severance tax, but rather that "the state taxes would substantially interfere with the Tribe's ability to raise its own tax rates and would diminish the desirability of on-reservation oil and gas leases." *Id.* at 170; *see id.* at 187 n. 18 ("It is important to keep in mind that the primary burden of the state taxation falls on the non-Indian taxpayers.").

[25] In reaching this conclusion, the Magistrate Judge considered, and rejected, the Town's arguments based on *Barona Band of Mission Indians*, 528 F.3d at 1190-91 (9th Cir. 2008), in which the court mistakenly viewed common contracting practices as improper "rigging." The Magistrate Judge recognized that the Supreme Court cases establishing the balancing test arose from agreements by the tribes to reimburse taxes paid by companies doing business on the reservation – and the state tax was preempted in those cases. Magistrate Judge Decision 30 (citing *Bracker*, 448 U.S. at 140 (Supreme Court noted without further comment that,"[t]he Tribe agreed to reimburse Pinetop for any tax liability incurred as a result of its on-reservation business activities, and the Tribe intervened in the action as a plaintiff."); *Ramah Navajo School Bd.*, 458 U.S. at 835 (The Board reimbursed the construction company for the state gross receipts taxes. The second contract between the construction company and the Board included a clause "recognizing that the Board could litigate the validity of the tax and was entitled to any refund.")). The Magistrate Judge also recognized that the *Barona* case, which involved a tax on construction materials incorporated into a tribal gaming

D. The Property Tax is Driven Only by the Town's General Desire to Raise Revenue, Rather than to Compensate the Town for Services Provided Within the Reservation to AC Coin, WMS, the Taxed Property, or the Gaming Operation.

The State – or in this case, the Town – must show a "specific, legitimate regulatory interest to justify the imposition of its . . . tax." *Ramah*, 458 U.S. at 843-44; *Bracker*, 448 U.S. at 150. As the Magistrate Judge observed in an order affirmed by this Court, the State and Town must show a nexus between the activity taxed and the services provided by the Town. Magistrate Judge Ruling 19 ("The exercise of State authority which imposes additional burdens on a tribal enterprise must ordinarily be justified by functions or services performed by the State in connection with the on-reservation activity.") (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 336 (1983)). Courts "disfavor[] taxation when 'the State had *nothing* to do with the on-reservation activity, save tax it.'" *Id.* at 23 (quoting *Cotton Petroleum*, 490 U.S. at 186 (emphasis added in Magistrate Judge Ruling)). A "State seeking to impose a tax on a transaction between a Tribe and nonmembers must point to more than its general interest in raising revenues." *Id.* at 19 (quoting *Mescalero Apache Tribe*, 462 U.S. at 336).

Here, the State has conceded that "any services the State provides within the Tribe's reservation and trust lands would not be relevant to the balancing inquiry in this case." (State's Response to Mashantucket's First Set of Interrogatories ¶ 5); *Cabazon Band of Mission Indians v. Wilson*, 37 F.3d 430 (9th Cir. 1994) ("The State's asserted interest is weakened in this case, however, because IGRA specifically recognizes such state regulation and establishes a mechanism – the compacts – by which Bands can reimburse the State for regulatory costs, outside of the State tax structure.").

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facility, never would have arisen in Connecticut, given the Department's resolution of the balancing test to find preemption of a similar state tax in the Connecticut Ruling.

The Town fares no better. The property tax receipts go to the Town's general fund, which is used for the business operations of the town and general services to residents and visitors to the Town, such as roads, and police and fire service in the Town. Nichols Aff. Ex. Dat 168); Ex. C (Town's Answers to the Tribe's Third Set of Interrogatories ¶ 5); Ex. B (Town's Answers to First Set of Interrogatories ¶ 6). The Tribe's government – not the Town's – provides comprehensive governmental services within the Reservation to the entire tribal community, including its members, employees, vendors and visitors. The Town has repeatedly failed to identify any services provided to the Reservation in connection with the leased gaming machines.[26] The State and Town interests are too weak to overcome the strong Tribal and federal interests against the property tax on leased gaming machines. The Town's property tax is unlawful as applied to AC Coin and WMS's gaming machines leased to the Tribe.

III. THE PROPERTY TAX INFRINGES UPON THE TRIBE'S RIGHT TO MAKE ITS OWN RULES AND BE GOVERNED BY THEM.

Tribal sovereignty is an independent barrier to the exercise of a state's authority if it "unlawfully infringe[s] 'on the right of reservation Indians to make their own laws and be ruled by them.'" *Bracker*, 448 U.S. at 142 (citing *Williams*, 358 U.S. at 220). The Connecticut Supreme Court has recognized this independent barrier to a state's exercise of jurisdiction. *See Golden Hill Paugussett Tribe of Indians v. Southbury*, 231 Conn. 563, 574 (1995) ("Like all instrumentalities of the state of Connecticut, our Courts are powerless to intervene in the exercise of tribal self-government. Federal statute, federal common law, and state statute all require us to treat bona fide Indian tribes as sovereign nations and to protect tribal rights to self-determination.").

[26] The Town alleges—but failed to provide any specific details—that it provides some other services to the Reservation.

The Tribe has developed an extensive and deliberate body of laws and regulations governing activity on its Reservation. Butler Aff. ¶¶ 3; 5; 6; Exs. A-C. The Tribe has a court system and numerous regulatory bodies including the Gaming Commission, the Tribal Occupational Safety and Health Administration, the Tribal Land Use Commission, the Mashantucket Employment Rights Office, the Food Safety and Sanitation Manager, and the Office of Revenue and Taxation. Butler Aff. ¶¶ 3; 6. The Tribal laws govern activities from marriage, divorce, and criminal conduct to civil rights, employment and health and safety laws.[27] The Tribe has made deliberate choices about the laws and regulations it enacts in order to regulate activities on the Reservation in the manner the Tribe, through its governing body – the Tribal Council – deems appropriate given all of the circumstances. Butler Aff. ¶ 5.

In this deliberate fashion, the Tribe adopted the General Revenue and Taxation Code in 1998, which includes a hotel occupancy tax, food and beverage tax, a general sales tax, and an admissions tax. *See* Title 16 Mashantucket Pequot Tribal Laws (M.P.T.L.); Butler Aff. ¶ 6. The Office of Revenue and Taxation has issued regulations implementing the Tribal Tax Code. *Id.* The Tribal Council has reviewed these taxes over the years and has reviewed the possibility of imposing other taxes on the Reservation. *Id.* Based on this review, the Tribe has modified the tax code to increase tax rates when it felt necessary, and has specifically reviewed whether to impose a property tax. At the present time, the Tribal Council has made a deliberate decision not to impose a tax on personal property located on its reservation, but will continue to consider whether to impose taxes on property located within the Reservation. *Id.*; *see* 16 M.P.T.L. (Tribal law does not assess a tax on personal property located on the Reservation.).

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[27] *E.g.*, M.P.T.L. Title 6 (Family Relations); Title 2 (Criminal Law); Title 20 (Civil Rights Code); Title 8 (Employment); Title 5 (Child Welfare); Title 7 (Traffic Safety); Title 34 (Tribal Occupational Safety and Health Law) (available at http://www.mptnlaw.com/laws/Titles%201%20-%2023.pdf).

Without legal basis, Defendants attempt to enter the Reservation and usurp the Tribe's authority to make or modify that tax decision by imposing their own tax on property in the Tribe's jurisdiction – a tax that benefits the Town, not the Tribe. There can be no greater infringement on the Tribe's sovereign authority than another government seeking to enter the Tribe's jurisdiction and impose a tax on the Tribe's gaming activity. The power to make decisions about taxation on the reservation is "[c]hief among the powers of sovereignty recognized as pertaining to an Indian tribe" and "this power may be exercised over members of the tribe and over nonmembers." *Colville*, 447 U.S. at 153. The infringement is highlighted by the specter of the Town physically entering the Reservation to assess and enforce its taxes on property located on the Tribe's gaming floor on the Reservation. The Town's actions impede the Tribe's right to make its own governmental decisions about taxation within its jurisdiction. The Town's actions are demonstrably unlawful when considered in light of the fact that the Tribe, not the Town, provides the governmental services within the Reservation. Moreover, to the extent the state has any regulatory authority under the Gaming Procedures, the Tribe reimburses the state and has paid the state over a billion dollars from its video facsimile revenue.

The Town's imposition of taxes on the Reservation for its own benefit seriously infringes on the Tribe's sovereign authority, and further deprives the Tribe of funds that should be used for "public purposes of the Tribe." (Title 3 M.P.T.L. § 1). The infringement is particularly egregious here because the tax directly burdens the Tribe and is imposed on an activity taking place entirely within the reservation to which the Town provides no services.

CONCLUSION

The Town's property tax assessments against WMS and AC Coin are unlawful for three independent reasons:

(1) The Indian Trader statutes and IGRA occupy the field of regulating trade with Indian tribes and Indian gaming. There is no room for state or local taxation of those activities. The property tax imposed by Ledyard is preempted by federal law.

(2) The Tribal and federal interests in the Tribe's self-determination and economic development outweigh the town's sole interest in raising revenue, and prohibit stop the State from taxing property integral to the Tribe's gaming operation.

(3) The tax unlawfully infringes on the right of the Tribe to make its own laws and be ruled by them.

Accordingly, for any and all of the foregoing reasons, the Tribe respectfully requests that summary judgment be granted in its favor and that this Court order declaratory and injunctive relief prohibiting Defendants from including the gaming machines on the Town's list of taxable property and/or assessing such property, and prohibiting Defendants from collecting personal property taxes with respect to the leased gaming machines.

Dated: September 16, 2011

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MASHANTUCKET PEQUOT TRIBE

Plaintiff,

v.

TOWN OF LEDYARD, PAUL HOPKINS, Tax Assessor of the Tow of Ledyard and JOAN CARROLL, Tax Collector of the Town of Ledyard,

Defendants,

THE STATE OF CONNECTICUT,

Intervenor-Defendant.

CIVIL ACTION NO.
3:06-CV-01212 (WWE)
3:08-CV-01355 (WWE)

[PROPOSED] ORDER GRANTING MOTION OF THE MASHANTUCKET PEQUOT TRIBE FOR SUMMARY JUDGMENT

The above-referenced matter came before the Court on the motion of Plaintiff Mashantucket Pequot Tribe. Based upon the briefs, arguments of counsel, and all files, records, and proceedings herein, the Motion for Summary Judgment is GRANTED.

IT IS HEREBY ORDERED:

I. Federal law, including IGRA, 25 U.S.C. § 2701, *et seq*., and the Indian Trader statutes, 25 U.S.C. §§ 261-264, preempts the property tax imposed by the Town of Ledyard on leased gaming equipment;

II. Federal and tribal interests on balance (and when considered under IGRA and the Indian Trader statutes) also preempt the Town's property tax; and,

III. The Town's tax unlawfully interferes with the Tribe's self-determination and sovereignty.

The property tax imposed by the Town of Ledyard on gaming equipment leased by the Mashantucket Pequot Tribe is declared unlawful and the Town is enjoined from imposing the property tax on such leased gaming equipment.

JUDGMENT IS SO ENTERED.

Date:_____

_____
Judge Warren W. Eginton
Judge for the United States District Court
for the District of Connecticut