

# Flandreau tribe files lawsuit in tax dispute with state



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(Photo: Devin Wagner - Argus Leader / Devin Wagner)

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A long-simmering tax dispute between the Flandreau Santee Sioux Tribe and the state of South Dakota is threatening to shut down alcohol sales at the Royal River Casino and Hotel.

The tribe has refused to pay the state's use tax since 2009, saying its status as a sovereign nation exempts its patrons from state taxation. The state has refused to renew the casino's licenses unless the tribe pays.

Now, the tribe has filed a lawsuit to bar the state from collecting use taxes from non-tribal members who patronize businesses in Indian Country. The tribe also wants a federal judge to issue an injunction to block the state from withholding a liquor license while the case is pending.

The case could have long-term implications for the state's nine tribal casinos, most of which pay use taxes to the state through special jurisdiction agreements.

A shutdown of alcohol sales at Royal River would have immediate impact for both the city of Flandreau and the tribe. The tribe gets half its money from Royal River's operation, and the tribe pays a third of the Flandreau Police Department's operating budget.

Jean Archambeau, vice president of the Yankton Sioux Tribe, says the state's Indian community is behind the Flandreau Santee effort. The state pays lip service to tribal sovereignty, Archambeau said, but plays hardball once if tribes behave as sovereign nations.

Yankton Sioux has sparred with the state in federal court over attempts to put more land in untaxable federal trust.

"They have the support of all of us," Archambeau said. "(The state) always says we have a government-to-government relationship, but when it comes down to something like this, it's always a fight."

The state, for its part, says that Flandreau Santee is thumbing its nose at a reasonable tax on non-Tribal members. The legislature passed a law in 2006 requiring tribes to remit use taxes on the goods and services purchased by non-Tribal members on Indian land.

The refusal to renew liquor licenses came after several years of non-compliance. Most tribes comply.

"For many years, the State has requested the FSST to collect the use tax from nonmembers and send it to the State," said Andy Gerlach, Secretary of the Department of Revenue.

Gerlach declined further comment on the pending litigation, but pointed to an Oct. 29 ruling by the Office of Hearings Examiners as indicative of the state's position.

That ruling said 2006 law's purpose was clear: To allow the state to collect taxes on those who benefit from a state-issued liquor license.

"(The law) clearly and unambiguously requires that in order for the Department to reissue an alcoholic beverage license to a Tribe operating in Indian Country, the Indian tribe must remit to the Department all use tax incurred by nonmembers as a result of the operation of the licensed premises," the ruling said.

The tribe contends that all the activities at Royal River, its family entertainment center and its associated convenience store are covered by the Indian Gaming and Regulatory Act, which it says preempts state laws on taxes.

Its lawsuit says that the liquor licenses, the bowling alley, the hotel and all the other amenities associated with Royal River are in furtherance of the gaming activities regulated by the federal law, and therefore ought to be exempt from state taxes.

Steven Johnson, a Sioux Falls lawyer representing the tribe, says his clients have never agreed with the notion that they owe the state

"This is a tax that has never been paid," Johnson said.

The issue of the alcohol licenses is pressing. Without an injunction, the licenses will expire on Dec. 13.

On Wednesday, Judge Lawrence Piersol ordered a response from the state by Nov. 26 and set a hearing on the injunction for Dec. 1.

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