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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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WAGNON, SECRETARY, KANSAS DEPARTMENT OF REVENUE *v.* PRAIRIE BAND POTAWATOMI NATION

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 04–631. Argued October 3, 2005—Decided December 6, 2005

Kansas' motor fuel tax applies to the receipt of fuel by off-reservation non-Indian distributors who subsequently deliver it to the gas station owned by, and located on the Reservation of, the Prairie Band Potawatomi Nation (Nation). The station is meant to accommodate reservation traffic, including patrons driving to the casino the Nation owns and operates there. Most of the station's fuel is sold to such patrons, but some sales are made to persons living or working on the reservation. The Nation's own tax on the station's fuel sales generates revenue for reservation infrastructure. The Nation sued for declaratory judgment and injunctive relief from the State's collection of its tax from distributors delivering fuel to the reservation. Granting the State summary judgment, the District Court determined that the balance of state, federal, and tribal interests tilted in favor of the State under the test set forth in *White Mountain Apache Tribe* v. *Bracker,* 448 U. S. 136. The Tenth Circuit reversed, agreeing with the Nation that the Kansas tax is an impermissible affront to its sovereignty. The court reasoned that the Nation's fuel revenues were derived from value generated primarily on its reservation—*i.e.,* the creation of a new fuel market by virtue 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.

Held: Because Kansas' motor fuel tax is a nondiscriminatory tax imposed on an off-reservation transaction between non-Indians, the tax is valid and poses no affront to the Nation's sovereignty. The *Bracker* interest-balancing test does not apply to a tax that results from an off-reservation transaction between non-Indians. Pp. 4–18.

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1. The Kansas tax is imposed on non-Indian distributors based upon their off-reservation receipt of motor fuel, not on the on-reservation sale and delivery of that fuel. Pp. 4–12.

(a) Under this Court's Indian tax immunity cases, the "who" and the "where" of a challenged tax have significant consequences. "The initial and frequently dispositive question . . . is *who* bears [a tax's] legal incidence," *Oklahoma Tax Comm'n* v. *Chickasaw Nation,* 515 U. S. 450, 458 (emphasis added). Moreover, the States are categorically barred from placing a tax's legal incidence "*on a tribe or on tribal members* for sales made *inside Indian country*" without congressional authorization. *Id.*, at 459 (emphasis added). Even when a State imposes a tax's legal incidence 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, *e.g., Central Machinery Co.* v. *Arizona Tax Comm'n,* 448 U. S. 160. Pp. 4–5.

(b) The Court rejects the Nation's argument that it is entitled to prevail under *Chickasaw*'s categorical bar because the fairest reading of the Kansas statute is that the tax's legal incidence actually falls on the Tribe on the reservation. Under the statute, the tax's incidence is expressly imposed on the distributor that first receives the fuel. Such "dispositive language" from the state legislature is determinative of who bears a state excise tax's legal incidence. *Chickasaw, supra*, at 461. Even absent such "dispositive language," the Court would nonetheless conclude that the tax's legal incidence is on the distributor because Kansas law makes clear that it is the distributor, not the retailer, that is liable for the tax. The lower courts and the Kansas agency charged with administering the motor fuel tax reached the same conclusion. *Kaul* v. *Kansas Dept. of Revenue*, 266 Kan. 464, 970 P. 2d 60, distinguished. Pp. 5–8.

(c) Also rejected is the Nation's alternative argument that the *Bracker* test must be applied irrespective of who bears the Kansas tax's legal incidence because the tax arises as a result of the *on-reservation* sale and delivery of fuel. The Nation presented a starkly different, and correct, interpretation of the statute in the Tenth Circuit, arguing that the balancing test is appropriate even though the tax's legal incidence is imposed on the Nation's non-Indian distributor and is triggered by the distributor's receipt of fuel *outside the reservation*. The Nation's argument here is rebutted by provisions of the Kansas statute demonstrating that the only taxable event occurs when the distributor first receives the fuel and by a final determination by the State reaching the same conclusion. The Nation's theory that the existence of statutory deductions for certain postreceipt transactions make it impossible for a distributor to calculate its ulti-

mate tax liability without knowing whether, where, and to whom the fuel is ultimately sold or delivered suffers from several conceptual defects. For example, availability of the deductions does not change the nature of the taxable event, the distributor's receipt of the fuel. Pp. 8–12.

2. The Tenth Circuit erred in concluding that the Kansas tax is nevertheless subject to *Bracker*'s test. That test applies only where "a State asserts authority over the conduct of non-Indians engaging in activity on the reservation." 448 U. S., at 144. It has never been applied where, as here, a state tax imposed on a non-Indian arises from a transaction occurring off the reservation. The Court's Indian tax immunity cases counsel against such an application. Pp. 12–18.

(a) Limiting the *Bracker* test exclusively to *on-reservation* transactions between a nontribal entity and a tribe or tribal member is consistent with this Court's unique Indian tax immunity jurisprudence, which relies "heavily on the doctrine of tribal sovereignty [giving] 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. The Court has taken an altogether different course, by contrast, when a State asserts its taxing authority outside of Indian Country. *E.g., Chickasaw*, 515 U. S. 450. In such cases, "[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State." *Mescalero Apache Tribe* v. *Jones,* 411 U. S. 145, 148–149. If a State may apply a nondiscriminatory tax to Indians who have gone beyond the reservation's boundaries, it may also 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, *Bracker* is inapplicable. Cf. *Arizona Dept. of Revenue* v. *Blaze Constr. Co.*, 526 U. S. 32, 37. The application of the test here is also inconsistent with the Court's efforts to establish "bright line standard[s]" in the tax administration context. *Ibid.* The Nation is not entitled to interest balancing by virtue of its claim that the Kansas tax interferes with the Nation's own motor fuel tax. This is ultimately a complaint about the state tax's downstream economic consequences. The Nation cannot invalidate that tax by complaining about a decrease in its revenues. See, *e.g., Washington* v. *Confederated Tribes of Colville Reservation,* 447 U. S. 134, 156. Nor would the Court's analysis change if legal significance were accorded the Nation's decision to label a portion of its gas station's revenues as tax proceeds. See *id.,* at 184, n. 9. Pp. 12–17.

(b) This Court rejects the Nation's contention that the Kansas tax is invalid notwithstanding the *Bracker* test's inapplicability be-

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cause it exempts from taxation fuel sold or delivered to state and federal sovereigns and is therefore impermissibly discriminatory. The Nation is not similarly situated to the exempted sovereigns. While Kansas' tax pays for roads and bridges on the Nation's reservation, including the main highway used by casino patrons, Kansas offers no such services to the several States or the Federal Government. Moreover, to the extent Kansas retailers bear the tax's cost, that burden applies equally to all retailers within the State regardless of whether they are located on a reservation. P. 18.

379 F. 3d 979, reversed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, O'CONNOR, SCALIA, SOUTER, and BREYER, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which KENNEDY, J., joined.