

No. 19-1298

In The
Supreme Court of the United States

ROGERS COUNTY BOARD OF TAX ROLL
CORRECTIONS, a political subdivision;
CATHY PINKERTON BAKER, Rogers County Treasurer,
in her official capacity; and SCOTT MARSH,
Rogers County Assessor, in his official capacity,

Petitioners,

v.

VIDEO GAMING TECHNOLOGIES, INC.,

Respondent.

**On Petition For Writ Of Certiorari
To The Supreme Court Of Oklahoma**

**BRIEF OF AMICUS CURIAE
TULSA COUNTY ASSESSOR JOHN A. WRIGHT
IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICUS CURIAE¹

Tulsa County Assessor John A. Wright (“Assessor” or “Amicus”) is a county-wide elected official in Oklahoma. Assessor has represented Tulsa County as

¹ Rule 37 statement: All parties were timely notified and consented to the filing of this brief. No part of this brief was authored by any party’s counsel. No person or entity other than *amicus* funded its preparation or submission.

county assessor since December 2018. The duty of Assessor is to assess and value all property (real and personal) in Tulsa County which is subject to local assessment for ad valorem tax purposes.² It is further the duty of Assessor to determine the taxable status of any property which is claimed to be exempt from ad valorem taxation for any reason.³

As part of his responsibilities to value and assess all property, Assessor (and his predecessor) have assessed Respondent Video Gaming Technologies, Inc.'s (VGT) personal property located at the Muscogee Creek Nation's River Spirit Casino Resort ("Tulsa Casino") in Tulsa County since the 2016 tax year.⁴ Assessor is interested in the case before the Court because Respondent VGT filed three (3) separate lawsuits against Tulsa County (Tulsa County Board of Tax Roll

² 68 Okla. Stat. § 2818(B): "The county assessor shall assess and value all property, both real and personal, which is subject to assessment by him, and shall place a separate value on the land and improvements in assessing real estate; and he shall do all things necessary, including the viewing and inspecting of property, to enable him to assess and value all taxable property, determine the accuracy of assessment lists filed with him, discover and assess omitted property, and determine the taxable status of any property which is claimed to be exempt from ad valorem taxation for any reason."

³ Id.

⁴ In addition to the personal property located at the Tulsa Casino, VGT has other property located in Tulsa County that is not located at the Tulsa Casino. See *Video Gaming Technologies, Inc.*'s website: About VGT/Company Profile, <http://www.vgt.net/about-vgt/company-profile/> (last viewed June 15, 2020); John Stancavage, *Video Gaming Technologies being bought for 1.3 billion*; Tulsa World (July 8, 2014).

Corrections, Tulsa County Treasurer, and Assessor) challenging the taxable status of its personal property located at the Tulsa Casino for the 2016-2019 tax years.⁵ The issue in the Tulsa County cases is identical to that before this Court: Is personal property (gaming equipment) owned by an out-of-state non-Indian corporation exempt from ad valorem taxation if the personal property is leased to an Indian tribe and used in the tribe's casino?

Assessor has taken an oath to assess all property as provided by law⁶ and apply the generally-applicable non-discriminatory Oklahoma ad valorem tax laws among all taxable personal property owners.⁷ However, that duty has been impaired by the lower court's decision issued on December 17, 2019. Additionally, the opinion of the Oklahoma Supreme Court has undeniable implications for some ad valorem tax recipients (general education schools, vocational schools, community colleges, public hospitals, county health departments, county libraries, county government, municipalities,

⁵ Tulsa County District Court cases: CV-2018-550, CV-2019-683, and CV-2020-214. In CV-2018-550, VGT's *Motion for Summary Judgment* (based on the Oklahoma Supreme Court's decision which is the subject of the Petition before this Court) was sustained by a Tulsa County judge on May 28, 2020; Assessor will appeal.

⁶ 68 Okla. Stat. § 2815: The county assessor shall take an oath that he will assess all property as provided by law, and he shall maintain his office at the county seat, which office shall be provided, furnished and maintained as required by law.

⁷ 68 Okla. Stat. § 2801 et seq., *Oklahoma Ad Valorem Tax Code*.

etc.) and to ad valorem taxpayers in the State of Oklahoma (ad valorem tax burden will shift to the property owners who pay their taxes).

Amicus accordingly submits this brief to assist the Court in consideration at the certiorari stage. Amicus respectfully requests that this Court grant certiorari and reverse the Oklahoma Supreme Court.

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**INTRODUCTION AND
SUMMARY OF ARGUMENT**

This case raises a significant legal issue that impacts Oklahoma’s generally applicable non-discriminatory ad valorem property tax law and the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq. (IGRA). Although the Second Circuit Court of Appeals had previously determined that IGRA does not bar a personal property tax on electronic gaming equipment owned by non-Indian lessors who lease the equipment to an Indian tribe to be used in the tribe’s casino [*Mashantucket Pequot Tribe v. Town of Ledyard*, 722 F.3d 457 (2d Cir. 2013)], the Oklahoma Supreme Court found the Second Circuit’s opinion was “unpersuasive.” Petitioner’s Appendix at 23. In complete opposition to *Mashantucket*, the Oklahoma Supreme Court held that electronic gaming equipment owned by a non-Indian out-of-state company that is leased to a tribe for use in their casino is a *sine qua non* for gaming under IGRA and that the comprehensive regulations of IGRA “occupy the field with respect to ad valorem taxes

imposed on gaming equipment used exclusively in tribal gaming.” Petitioner’s Appendix at 26. Unlike the Second Circuit, the Oklahoma Supreme Court found that the state’s property tax law was preempted, which means that a conflict has been created between Oklahoma and other states in the manner in which property tax law is enforced on non-Indian owned personal property leased to and used in tribal casinos.

The Petition for Writ of Certiorari filed by Petitioner ably explains why the Oklahoma Supreme Court’s decision was in error and why this Court should grant review. However, Amicus writes separately to address the Oklahoma Supreme Court’s consideration (or lack thereof) of the county’s interest in the application of the state’s non-discriminatory property tax law as part of its *Bracker* analysis.

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ARGUMENT

I. The State has a legitimate interest in raising revenue from the uniform application of ad valorem tax laws to properly fund county governments, schools, cities, and other essential county programs

A. Oklahoma Ad Valorem Tax Law

A brief understanding of the Oklahoma ad valorem tax laws begins with the basic proposition that all property in Oklahoma, except that which is specifically exempt by law, is subject to ad valorem tax. Title 68 Okla. Stat. § 2804. All property, both real and

personal, shall be listed and assessed each year. Title 68 Okla. Stat. § 2817. This statute is mandatory and allows no exceptions. This statute also makes clear that the county assessor has the authority to list and assess all personal property, including property that has not been listed by the taxpayer. (See also Title 68 Okla. Stat. §§ 2843, 2818.) Section 68 Okla. Stat. § 2817 provides in pertinent part:

A. All taxable personal property, except intangible personal property, personal property exempt from ad valorem taxation, or household personal property, shall be listed and assessed each year at its fair cash value, estimated at the price it would bring at a fair voluntary sale, as of January 1.

In Oklahoma, tangible personal property (such as VGT's gaming equipment) is taxable to the owner in the county of the owner's domicile if the property has not acquired a taxable situs elsewhere. Title 68 Okla. Stat. § 2831 provides for the listing and assessment of real and personal property and provides in pertinent part:

A. *All property, both real and personal, having an actual, constructive or taxable situs in this state, shall, except as hereinafter provided, be listed and assessed and taxable in the county, school districts, and municipal subdivision thereof, where actually located on the first day of January of each year. . . .* (emphasis added)

B. When any personal property is brought into or located in this state or removed from one county to another within this state between January 1 and September 1, and shall acquire an actual situs therein before the first of September, such property shall be listed and assessed and taxable where situated after such removal or change in location, unless such property has already been assessed in some other state or county for the current year, or the property was originally produced in this state subsequent to January 1, but if same is not assessed in said county it shall be subject to assessment and taxation in the county of the owner's domicile.

...

The burden is on the property owner (person or company) to list their property with the county assessor's office each year. 68 Okla. Stat. § 2832. Title 68 Okla. Stat. § 2838 requires that all corporations organized, existing or doing business in this state, . . .

shall, on or before March 15th of each year, return sworn lists or schedules of their taxable property within each county, to the county assessor of such county, . . . and said property shall be subject to taxation for county, municipal, public school and other purposes to the same extent as the real and personal property of private persons, in the taxing districts in which such property is located. (emphasis added)

It is the job of a county assessor to value the property in their jurisdiction; it is the job of the county exercise board to set the tax rates, 68 Okla. Stat. § 3014; and it is the job of the county treasurer to collect the taxes, 68 Okla. Stat. § 2869. Although the valuation of property and collection of the ad valorem taxes occur at the county level, state law governs how the process works. The Oklahoma Constitution and statutes authorize the levies that are used to calculate the tax rate for each jurisdiction in each county. These levies help fund not only county government as a whole,⁸ but also general education schools,⁹ vocational schools,¹⁰ city-county health departments,¹¹ city-county libraries,¹² municipal-owned hospitals,¹³ emergency medical service districts,¹⁴ solid waste management districts,¹⁵ fire protection districts,¹⁶ sewer improvement districts,¹⁷ and rural road improvement districts.¹⁸ Unquestionably, “[p]roperty taxes help to pay for public schools, city streets, county roads, police,

⁸ Okla. Const. Art. 10, §§ 9, 10, 26.

⁹ Okla. Const. Art. 10, §§ 9, 10, 26.

¹⁰ Okla. Const. Art. 10, §§ 9B, 10, 26.

¹¹ Okla. Const. Art. 10, § 9A.

¹² Okla. Const. Art. 10, § 10A.

¹³ Okla. Const. Art. 10, § 10B.

¹⁴ Okla. Const. Art. 10, § 9C.

¹⁵ Okla. Const. Art. 10, § 9D.

¹⁶ Title 19 Okla. Stat. § 901.19, and Okla. Const. Art. 10, § 26.

¹⁷ Title 19 Okla. Stat. § 890, and Okla. Const. Art. 10, § 26.

¹⁸ Title 19 Okla. Stat. §§ 902.16, 902.15.

fire protection, and many other essential services”¹⁹ that are utilized by companies that choose to do business in Oklahoma and their employees, as well as tribal members and the patrons of the tribe-owned casinos.

In addition, the municipalities in Oklahoma are beneficiaries of ad valorem levies for their sinking funds.²⁰ Public indebtedness is repaid with ad valorem tax levies. “Debt is incurred when general obligation bonds and support levies are voted by the people in the counties, cities, towns, school districts, and other smaller taxing jurisdictions.” This type of indebtedness helps support public projects such as “school buildings, libraries, fire and water districts, health, EMS, museums, airports, career tech, and sinking funds.”²¹ Levies of ad valorem taxes for sinking funds of various political subdivisions of the state are authorized by the Oklahoma Constitution, Article 10, § 28, which provides in pertinent part:

“counties, townships, school districts, cities, and towns shall levy sufficient additional revenue to create a sinking fund to be used, first, for the payment of interest coupons as they fall dues; second, for the payment of bonds as they fall dues; third, for the

¹⁹ *Oklahoma Property Taxes, 2020 Taxpayers’ Rights, Remedies and Responsibilities*; informational pamphlet from the Oklahoma Tax Commission, Ad Valorem Division, pg. 1, <https://www.ok.gov/tax/documents/TES-14.pdf>.

²⁰ Title 62 Okla. Stat. § 431.

²¹ *Oklahoma Property Taxes, 2020 Taxpayers’ Rights, Remedies and Responsibilities* at pgs. 15-16.

payments of such parts of judgments as such municipality may, by law, be required to pay.”

Oklahoma’s property taxes are among the lowest in the nation. The property tax comprises 20 percent of total state and local tax revenue in Oklahoma, less than in most other states.²² Apparently, VGT wants to continue to keep Oklahoma’s revenue among the lowest in the nation.

B. Video Gaming Technologies, Inc.

Video Gaming Technologies, Inc. is a Tennessee company doing business in Oklahoma.²³ In October 2014, VGT was acquired by Aristocrat Leisure Ltd., an Australian company, for \$1.28 billion.²⁴ Prior to the Oklahoma Supreme Court decision in December 2019, there was no ad valorem tax exemption provided for in Oklahoma law for personal property gaming equipment owned by a non-Indian corporation, even though the equipment was leased to and used in the tribe’s casino. Respondent VGT filed this current action to stop the Rogers County assessor from enforcing the ad

²² *Property Tax*; Oklahoma Policy Institute; <https://okpolicy.org/resources/online-budget-guide/revenues/an-overview-of-our-tax-system/oklahomas-major-taxes/property-tax/> (last viewed June 15, 2020).

²³ Petition at 4.

²⁴ *Video Gaming Technologies, Inc.* website: About VGT/ Overview/ <http://www.vgt.net/about-vgt/> (last viewed June 15, 2020); John Stancavage, *Video Gaming Technologies being bought for \$1.3 billion*, Tulsa World (July 8, 2014); Swati Pandey, *Australia’s Aristocrat Leisure to buy U.S. slot machine maker VGT for \$1.28 billion*, Reuters (July 6, 2014).

valorem tax on its personal property located in the Cherokee Nation's Hard Rock Casino located in Rogers County. Similar suits were filed by VGT against seven other county assessors in: Tulsa, Okmulgee, Grady, McIntosh, Noble, Nowata, and Osage Counties.²⁵ Even though VGT indicated in their appeal in Rogers County that they would pass on the expense of paying ad valorem taxes on their gaming equipment to the tribe,²⁶ no tribe has joined in as a party to the case. If not reversed by this Court, the impact of the Oklahoma Supreme Court's decision would have widespread impact over all counties in Oklahoma that have (or will have) a tribal-owned casino. Not only would the personal property gaming equipment owned by VGT be exempt from ad valorem taxation, but very likely all personal property that is owned by a non-Indian lessor and leased to a tribe for use in the tribe's casino would be exempt from ad valorem taxation. This would be devastating to the counties because there currently are over 100 tribal-owned casinos in Oklahoma.²⁷

In the case before the Court, as well as in the seven other counties in Oklahoma where the district court cases involving VGT remain pending, the ad valorem tax levied upon VGT's gaming equipment was done so because, very simply, personal property was located in

²⁵ Petition at 26.

²⁶ Petition at 5.

²⁷ TravelOK.com, "Oklahoma's Official Travel and Tourism Site"; Listings for "Casinos & Gaming," https://www.travelok.com/listings/search/7?tags%5B0%5D=7&page=1&per_page=40 (last viewed June 15, 2020).

the State of Oklahoma and it had acquired taxable situs in each respective county. “The ability of the state to apply generally-applicable taxes to non-Indians” who are “performing otherwise-taxable functions” on Indian land is well established (internal citations omitted). *Mashantucket Pequot Tribe v. Town of Ledyard*, 722 F.3d 457, 468-469 (2d Cir. 2013). That is particularly true where “the incidence of the generally applicable tax falls on the non-Indian’s ownership of property,” and not on a transaction between the non-Indian and a tribe. *Mashantucket Pequot Tribe v. Town of Ledyard*, 722 F.3d 457 (2d Cir. 2013), citing to *Central Machinery Co. v. Ariz. State Tax Comm’n*, 448 U.S. 160, 165, 100 S.Ct. 2592, 65 L.Ed.2d 684 (1980).

VGT does not deny that it bears the legal incidence of the ad valorem tax as the owner of the gaming equipment.

C. The State’s Legitimate Interest

Oklahoma and its counties have an interest in the uniform application of the Oklahoma Ad Valorem Tax Code. Moreover, the Oklahoma Constitution requires that “taxes shall be uniform upon the same class of subjects,” Art. 10, § 5(B). The Oklahoma Legislature mandated in Title 68 Okla. Stat. § 2803 that there are five (5) different types of property for purposes of ad valorem taxation: 1) real property; 2) personal property; 3) household personal property; 4) public service corporation property; and 5) railroad and air carrier property. There is no special classification for personal

property gaming equipment that is owned by a non-Indian but leased to a tribal-casino. Therefore, in order to comply with the Oklahoma Constitution, VGT's personal property must be treated in a uniform manner with all other personal property, without the special treatment if it is leased to a tribal-owned casino. In addition, "states have a valid interest in ensuring compliance with lawful taxes that might easily be evaded." (internal quotes omitted). *Mashantucket*, 722 F.3d at 475-476. Finally, a "State has a separate sovereign interest in being in control of, and able to apply, its laws throughout its territory." *Cotton Petroleum*, 490 U.S. 163, 188, 109 S.Ct. 1698, 1713, 104 L. Ed. 2d 209 (1989). The likelihood of additional affronts to State sovereignty increases if a tax's application "becomes more contingent upon the use to which non-Indian third parties put" property located on Indian land. *Mashantucket*, 722 F.3d at 476.

Revenue raising to support government is a proper purpose behind most taxes, and that purpose "is strongest when the tax is directed at off-reservation value" and when the entity paying the tax "is the recipient of the state services." *Salt River-Pima-Maricopa Indian Community*, 50 F.3d 734, 737 (9th Cir. 1995). The federal and tribal interests must be balanced against the "State's legitimate interests in raising revenue for essential government programs that benefit" the residents, including non-Indian taxpayers. *Flandreau Santee Sioux Tribe v. Haeder*, 938 F.3d 941, 947 (8th Cir. 2019). The Oklahoma Supreme Court failed to give any weight to the legitimate interests of

the State to raise revenue for essential government programs that benefit its residents and the companies doing business in each county; therefore, the Supreme Court's decision should be reversed.



CONCLUSION

For the forgoing reasons, the petition should be granted and the judgment of the court below reversed.

Respectfully submitted,

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June 18, 2020