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Court sides with Sherrill

Supreme Court justices rule 8-1 Oneida Nation must pay tax to city

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R. PATRICK CORBETT
Observer-Dispatch

The Oneida Indian Nation must pay taxes on its property in the city of Sherrill and potentially on all land it has bought outside of its 32-acre reservation in Madison County, the U.S. Supreme Court ruled Tuesday.

In an 8-1 decision, the court ruled that the New York Oneidas cannot disrupt two centuries of local development by refusing to pay local taxes on a gas station and T-shirt factory it owns in Sherrill in Oneida County.

New York City lawyer Ira Sacks, who pleaded Sherrill's case pro bono, said, "We were very pleased. The Supreme Court agreed with the principal argument that after 200 years ... the Oneida Indian Nation can't pick and choose places to buy and take it out of local jurisdiction."

The justices also remarked on the "distinctly non-Indian character of the area and its inhabitants," because most Oneida Indians moved out of the area about 150 years ago.

The Oneida Nation claimed that the Sherrill properties could not be taxed by the city because the land once was part of their historic homeland.

The Sherrill tax bill would run about \$7,000 a year, but the Nation could owe more than \$1.7 million a year in county, school and local property taxes on 17,000 acres it owns elsewhere in Oneida and Madison counties, county tax officials said.

The Oneida Nation refused to speculate about the implications of the potential tax hit on its business enterprises Tuesday.

In a statement it said, "Certainly the Nation wishes the court had ruled differently, but the Nation will do everything it can to protect the over 4,200 jobs it has created."

Robert Odawi Porter, director of the Center for Indigenous Law, Governance and Citizenship at Syracuse University, criticized the majority justices for ruling that the Oneidas waited 200 years too long to exercise their sovereignty.

"It's unfair to hold them to a standard of conduct they could do nothing about. It

wasn't until (federal law changed in) 1966 that the Oneidas could bring their lawsuits," he said.

Upstate Citizens for Equality, a landowners group that has long fought for tax equity for all landowners including the Nation, considers the ruling a major victory.

"The bottom line is this: All properties owned by the Oneidas not on the 32 acres is taxable land," said local UCE President David Vickers. "The message is, 'Dear Ray: Pay up,'" referring to Oneida Nation representative Ray Halbritter.

Vickers' interpretation of the ruling is that the Nation's federally-recognized sovereignty is a "legal fiction."

"Obviously, it's clear the tribes are not sovereign," he said. "If the city of Sherrill can tax properties owned by the Oneida Indian Nation Inc., that means the Oneida Indian Nation Inc. is very much more like a corporation than a true sovereignty."

The Nation has numerous convenience stores and a marina among its enterprises. They all employ local residents.



MARILU LOPEZ FRETTS / Observer-Dispatch

Sherrill City Manager David O. Barker reacts to the U.S. Supreme Court ruling that said the Oneida Indian Nation's properties are taxable. Behind Barker is Michael D. Holmes, city clerk/comptroller.

Timeline
Here is a brief chronology of significant events in the tax fight between the city of Sherrill and the Oneida Indian Nation:

- 1997-1998:** Oneida Indian Nation purchases 10 properties in the city of Sherrill.
- October 1999:** The city adds the 10 Oneida-owned parcels to its annual list of tax-delinquent properties.
- February 2000:** The tribe sues the city after Sherrill begins eviction proceedings over unpaid property taxes.
- June 2001:** U.S. District Court Judge David Hurd rules against the city, saying it could not tax or evict the Oneidas from the land.
- July 2003:** The 2nd U.S. Circuit Court of Appeals affirms that ruling. Sherrill appeals to the U.S. Supreme Court.
- Jan. 11, 2005:** The case goes before the U.S. Supreme Court. Lawyers for both sides argued their case before the justices for about 40 minutes, with justices asking questions.
- March 29, 2005:** Justices, in an 8-1 decision, side with Sherrill. The court said too much time had passed for the Oneidas to now claim tribal sovereignty and that such a move would create a "disruptive" patchwork of local and Indian jurisdiction.

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The biggest employer, Turning Stone Resort and Casino in the town of Verona, currently is exempted by the Town Board from property taxes, Verona Deputy Supervisor Darrell Curtis said. Other Indian properties remain on the local tax rolls even though the Oneidas have not been paying taxes on them, though.

He said the town granted the casino exemption because of tax implications that would have hurt the Vernon-Verona-Sherrill school district.

Curtis added, "I don't want to rejoice (about Tuesday's ruling). I'm cautiously optimistic this will be a catalyst for settlement of the land claim."

Three Oneida tribes claim that New York state illegally seized 250,000 acres from them two centuries ago and are seeking compensation.

Curtis also doesn't want to alienate the Oneida Nation.

"We've been a good neighbor and friend of the Nation for many years," he said. "I hope we can maintain a good relationship. They are a big employer and we have a world class resort over there (at Turning Stone)."

Sacks said, "I hope and expect the Oneidas, who have many times sought the benefit of federal courts, will abide (by Tuesday's ruling)."

He said he would not object if the Oneidas asked to have their land placed in tax-exempt trust by the federal government, as long as the trust land was configured as a contiguous reservation.

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