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## High court to hear Indian tax case

Sherrill v. Oneida Nation

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WASHINGTON -- Using profits from its hugely successful Turning Stone Resort and Casino, the Oneida Indian Nation is accomplishing some of what it has been unable to do in its long-running legal battle to reclaim ancestral land in Central New York.

Throughout Oneida and Madison counties, the Oneida Nation has bought land almost as quickly as properties go on the market and claimed it as sovereign territory that is tax-exempt under federal law.

But this week, the U.S. Supreme Court will hear arguments on whether Sherrill, New York's smallest city, can tax an Oneida-owned gasoline station/convenience store and a textile plant that makes T-shirts and sweatshirts.

Two lower courts have already ruled in favor of the Oneidas, saying emphatically the two properties are part of Indian country and therefore entitled to federal protection.

But winning the right to get their case heard by the highest court in the United States over the objections of the Bush administration has buoyed Sherrill's hopes.

"We are ecstatic," said Sherrill City Manager David Barker, who will be among local government officials from Oneida and Madison counties coming to Washington for Tuesday's hearing.

"Somebody said, 'You lost in the district court, you lost in the 2nd U.S. Circuit Court of Appeals and you are going to Washington 0 and 2.' I say we are going to Washington 1 out of 3," Barker said. "When the Supreme Court decided to hear our case, that's a victory. We are the ones on a roll, not the Oneidas."

### Lost revenue

With a population of about 3,000 and land area of 2.2 square miles, Sherrill is a bedroom community for Utica and Syracuse -- each roughly 20 miles away on Route 5. It is just a few minutes' drive from the growing Turning Stone Resort and Casino in Verona.

Sherrill officials argue that the Oneidas' refusal to pay about \$3,000 a year in property taxes on the commercial parcels shifts more of the tax burden to non-Indian property owners.

The combined loss of revenue from the uncollected property tax and the sales taxes the Oneidas also refuse to collect and remit is "north of \$100,000," Barker said. But he and other Sherrill officials contend the city could go bankrupt if the Oneidas buy more valuable land.

"If the Oneidas continue to cherry pick the prime spots, they could erode our tax base to a point where we couldn't afford to exist," Barker said. "The sales tax is a huge revenue stream for us."

The Oneidas already have reclaimed nearly 17,000 acres of their ancestral land through land purchases in Oneida and Madison counties -- the heart of their land claim area of 250,000 acres -- since Turning Stone opened in 1993.

Although they don't pay property taxes, the Oneidas have made voluntary contributions of more than \$6 million to school districts and local governments near the casino since 1996. None of the grants, which are usually twice what the taxes would have been before the land was developed, have gone to Sherrill or other jurisdictions the Oneidas consider unfriendly, according to the tribe's spokesman, Mark Emery.

### Land claims

The Sherrill case deals only with the taxability of Indian-owned land -- a significant issue for municipalities and counties in Upstate New York, where several tribes are located.

But some legal experts think any court ruling involving a definition of Indian country could potentially affect efforts of the Oneidas and other New York tribes to pursue monetary damages in various land claims cases in the state. Indian tribes nationwide are also watching the case closely, fearing the court could drastically alter the entire legal foundation of Indian land ownership.

"It could be cataclysmic for Indian nations, certainly for the traditional nations in New York," said Robert Odawi Porter, a Cornell

University law professor specializing in Indian law and a member of New York's Seneca tribe. "But even nationally, when you start tinkering with the infrastructure of the way in which Indian land is held and protected by federal law, you create openings for predatory actions by states and local governments."

In a brief supporting the Oneidas, the National Congress of American Indians, which represents more than 250 tribes, said the city of Sherrill argues against "time-honored principles of Indian law" based on "vastly exaggerated claims of the hardship."

New York state, several county and town governments and a South Dakota-based citizens rights group also filed briefs supporting Sherrill.

"The decision (by the 2nd Circuit) needlessly infringes on the sovereignty of state and local governments," officials from Madison and Oneida counties said in their brief. "New York has exercised unchallenged control over the area for more than 200 years."

#### Treaties

Sherrill's lawyer, Ira Sacks of New York City, said he will tell the Supreme Court that the lower court ruling against the city should be reversed. Sacks said it was the state that set aside some land for the Oneidas under a 1788 treaty, after purchasing about 6 million acres from the tribe. The Oneida reservation was never set aside or managed by the federal government and therefore doesn't qualify as tax-exempt Indian country, he argues.

"The lawful actions of New York state in 1788, before the U.S. Constitution was effective, could also have extinguished Indian title, which would make the land taxable," Sacks said.

Even if the land was Indian country, it lost such status when the Oneidas were directed to move from New York to Kansas under an 1838 treaty, Sacks said. And the land certainly ceased to be Indian country, he contends, when the Oneidas ceased to exist as a tribe for a period at the end of the 19th century and at the beginning of the 20th century.

The Oneidas' lawyer, Michael Smith of Washington, D.C., will argue the Oneidas' reservation won federal recognition and protection under the 1794 Treaty of Canandaigua, a federal pact. The United States, the only entity with the power to change the status of Indian country, has never terminated the Oneidas' reservation status, Smith says in his brief to the court.

Last summer, then-U.S. Solicitor General Theodore Olsen advised the Supreme Court not to take the Sherrill case. The solicitor general, who represents the administration in cases before the high court, said a tax case was a not a suitable vehicle to consider issues that also arise in land claims.

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