

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 Lumber Co.*, 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

Syllabus

## DEPARTMENT OF TAXATION AND FINANCE OF NEW YORK ET AL. v. MILHELM ATTEA & BROS., INC., ET AL.

CERTIORARI TO THE COURT OF APPEALS OF NEW YORK  
No. 93-377. Argued March 23, 1994—Decided June 13, 1994

Enrolled tribal members purchasing cigarettes on Indian reservations are exempt from a New York cigarette tax, but non-Indians making such purchases are not. Licensed agents precollect the tax by purchasing stamps and affixing them to cigarette packs in advance of their first sale. Determining that a large volume of unstamped cigarettes was being purchased by non-Indians on reservations, petitioner tax department enacted regulations imposing recordkeeping requirements and quantity limitations on cigarette wholesalers selling untaxed cigarettes to reservation Indians. As relevant here, the regulations set quotas on the quantity of untaxed cigarettes that wholesalers may sell to tribes and tribal retailers, and petitioner must approve each such sale. Wholesalers must also ensure that a buyer holds a valid state tax exemption certificate, and must keep records of their tax-exempt sales, make monthly reports to petitioners, and, as licensed agents, precollect taxes on nonexempt sales. Respondent wholesalers are licensed by the Bureau of Indian Affairs to sell cigarettes to reservation Indians. They filed separate suits in state court alleging that the regulations were pre-empted by the federal Indian Trader Statutes. The trial court issued an injunction. Ultimately, the Appellate Division upheld the regulations, but the Court of Appeals reversed, distinguishing this Court's decisions upholding taxes imposed on non-Indian purchasers of cigarettes, see *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U. S. 463; *Washington v. Confederated Tribes of Colville Reservation*, 447 U. S. 134, on the ground that they involved regulating sales to non-Indian

consumers whereas New York's regulations applied to sales by non-Indian wholesalers to reservation Indians. The court concluded that the Indian Trader Statutes, as construed in *Warren Trading Post v. Arizona Tax Comm'n*, 380 U. S. 685, deprived the States of all power to impose regulatory burdens on licensed Indian traders, and, alternatively, that if States could impose minimal burdens on the traders, the State's regulations were invalid because the burdens were significant.

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*Held:* New York's regulations do not, on their face, violate the Indian Trader Statutes. Pp. 6-16.

(a) Because respondents have made essentially a facial challenge, this case is confined to those alleged defects that inhere in the regulations as written, and the Court need not assess for all purposes each feature of the tax scheme that might affect tribal self-government or federal authority over Indian affairs. Pp. 6-7.

(b) Indian traders are not wholly immune from state regulation that is reasonably necessary to the assessment or collection of lawful state taxes. Although broad language in *Warren Trading Post* suggests such immunity, that proposition has been undermined by subsequent decisions in *Moe* (upholding a state law requiring Indian retailers on tribal land to collect a state cigarette tax imposed on sales to non-Indians), *Colville* (upholding in relevant part a state law requiring tribal retailers on reservations to collect cigarette taxes on sales to nonmembers and to keep extensive records), and *Oklahoma Tax Comm'n v. Citizen Band of Potawatomi Tribe of Okla.*, 498 U. S. 505. These cases have made clear that the States have a valid interest in ensuring compliance with lawful taxes that might easily be evaded through purchases of tax-exempt cigarettes on reservations; that interest outweighs tribes' modest interest in offering a tax exemption to customers who would ordinarily shop elsewhere. Thus, there is more room for state regulation in this area. In particular, these cases have decided that States may impose on reservation retailers minimal burdens reasonably tailored to the collection of valid taxes from non-Indians. It would be anomalous to hold that a State could impose tax collection and bookkeeping burdens on reservation retailers who are enrolled tribal members but not on wholesalers, who often are not. Pp. 7-13.

(c) New York's scheme does not impose excessive burdens on Indian traders. Respondents' objections to the regulations setting quotas and requiring that petitioner preapprove deliveries provide no basis for a facial challenge, although the possibility of inadequate quotas may provide a basis for a future challenge to the regulations' *application*. The requirements that wholesalers sell untaxed cigarettes only to persons with valid exemption certificates and keep detailed records are no more demanding than comparable measures approved in *Colville*. Moreover, the precollection obligation placed on wholesalers is the same as the obligation that, under *Moe* and *Colville*, may be imposed on reservation retailers. The United States' arguments supporting its position that the scheme improperly burdens Indian trading are also rejected. Pp. 13-16.

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81 N. Y. 2d 417, 615 N. E. 2d 994, reversed.

STEVENS, J., delivered the opinion for a unanimous Court.