



How is this not a sin tax?' Cigarette fee questioned by Oklahoma Supreme Court justice

New justice asks why \$1.50 cigarette 'fee' shouldn't be called a tax

By Barbara Hoberock Tulsa World ,Capitol Bureau Writer

August 9, 2017

OKLAHOMA CITY — The newest member of the Oklahoma Supreme Court on Tuesday quizzed a state attorney as to why a \$1.50 “fee” on cigarettes was not a sin tax.

The court heard oral arguments on three challenges to bills passed by the Legislature last session.

Tobacco companies filed suit after lawmakers, facing a \$878 million budget hole, passed Senate Bill 845, which put a smoking cessation fee on cigarettes. That came after unsuccessful efforts to pass it as a tax.

The measure is expected to generate \$257 million. The fee is scheduled to take effect Aug. 24.

Tax increases must garner three-fourths support in both chambers of the Legislature or go to a vote of the people based on State Question 640, passed in 1992. Revenue-raising measures must originate in the House and can't be passed in the last five days of session.

Senate Bill 845 did not secure three-fourths approval, did not originate in the House and passed in the last five days of the session.

“How is this not a sin tax?” asked Justice Patrick R. Wyrick, former solicitor general for former Attorney General Scott Pruitt.

Mithun Mansinghani, solicitor general for Oklahoma Attorney General Mike Hunter, said the measure may fit the definition of a sin tax, but the state had an overarching purpose of imposing the fee to reduce smoking rates and the costs associated with treating smoking-related illnesses.

Short of banning smoking, the single best way to reduce the consumption rate is to increase the cost of cigarettes, Mansinghani said.

Wyrick asked Mansinghani, a former co-worker, whether or not it was his view that the Legislature could impose fees on items it disagreed with in order to make them go away.

Mansinghani said even if the state burned the money the measure would generate, the fee will save 18,000 lives, which is far more important than revenue.

Robert G. McCampbell, an attorney representing the tobacco companies, said nothing in the measure addresses compensating the state for treatment of tobacco-related illnesses. In addition, the state could put additional restrictions on tobacco without creating more than \$200 million in revenue.

"They needed that money to balance their budget," McCampbell said.

Justice Noma Gurich said the title of the bill doesn't make it sound like a tax.

McCampbell asked the court to look past just relying on the legislative characterization, telling justices to rely on what the measure actually did.

Gurich asked whether or not data supports the notion that increasing the cost will lower consumption.

McCampbell agreed, but said that next year, it could be any other product.

Meanwhile, Republican gubernatorial candidate Gary Richardson, a Tulsa attorney, challenged three measures, making similar allegations that lawmakers did not follow the proper procedure.

House Bill 2433 removes a sales tax exemption on cars, thus imposing a 1.25 percent sales tax on vehicles in addition to the 3.25 percent excise tax. In addition to Richardson, automobile dealers have challenged the law, which has already gone into effect.

If allowed to stand, the measure would nullify the 1992 vote of the people on State Question 640, said Clyde Muchmore, who represents the auto dealers.

Mansinghani said the bill only alters an existing exemption.

Gurich said removal of an exemption is not the same as levying a tax.

Chief Justice Douglas L. Combs said that for those who purchased a vehicle after July 1, the effective date of the measure, it might feel more like a tax. Muchmore said the practical effect of the measure is a tax increase.

Richardson also challenged House Bill 1449, which imposes a \$100 fee on electric-drive motor vehicle registration and a \$30 fee on hybrid-drive motor vehicle registrations.

Also challenged by Richardson is House Bill 2348, which uncouples Oklahoma's annual tax deduction from the federal deduction level.

One of the architects of State Question 640, Norman attorney Stan Ward, represented Richardson.

Ward said if a measure raises revenue, it needs a super majority for legislative approval or must go to a vote of the people.

Ward said he could appreciate the dilemma faced by lawmakers, but it did not justify a violation of the state constitution.

"The public deserves clarity," Ward told the court.

Gov. Mary Fallin, visiting Tulsa on Tuesday, said she hopes the measures in question stand up.

"I'm certainly considering a special session if the Supreme Court should throw out any of the measures that were passed during the legislative session on some of the fee increases that we saw," she said. "Hopefully they won't. Hopefully we won't have to deal with that, we can just continue on." She said it would be a huge hit if the agencies didn't get the money promised as the fees go into effect.

Her comment to state lawmakers: "You're on notice. You may have to return back to work."

http://www.tulsaworld.com/news/state/how-is-this-not-a-sin-tax-cigarette-fee-questioned/article_ee848207-fbad-555f-83c1-4c434793cb3d.html