

TUESDAY, NOVEMBER 17, 2009
11:00 A.M.

NO. 3

#25198

LOREN POURIER d/b/a MUDDY CREEK
OIL AND GAS, INC. and MUDDY
CREEK OIL AND GAS, INC.
Claimants and Appellants,

vs.

SOUTH DAKOTA DEPARTMENT OF
REVENUE AND REGULATION,
Respondent and Appellee.

Ms. Vanya S. Hogen
Ms. Jessica Intermill
Jacobson, Buffalo, Magnuson,
Anderson & Hogen, P.C.
1360 Energy Park Dr Ste 210
St. Paul MN 55108
PH: 651-644-4710

(FOR APPELLANTS)

Ms. Meghan Jo Sonstegard
Ms. Meghan N. Dilges
Assistant Attorneys General
1302 E Hwy 14 Ste 1
Pierre SD 57501-8501
Ph: 605-773-3215

(FOR APPELLEE)

The Honorable John Brown
Sixth Judicial Circuit
Hughes County

(CIV 99-196)

(20-20-10)

STATEMENT OF LEGAL ISSUES

1. **Issue:** This Court ruled that the Department of Revenue illegally collected motor-fuel taxes from Pourier and his Oglala Sioux tribal-member customers from 1997-1999, and South Dakota law allows a class action to recover unconstitutional motor-fuel taxes. Pourier moved to amend his refund claims to include his Oglala Sioux tribal-member customers as a class of fellow claimants. Should the circuit court have permitted Pourier to amend his claims?

Circuit Court Decision: The Court denied leave to amend the claims.

Most Relevant Cases: *Pourier v. South Dakota Dep't. of Revenue*, ("Pourier I"), 2003 SD 21, 658 N.W.2d 395 (2003) (defining right to refund).

Pourier v. South Dakota Dep't. of Revenue ("Pourier II"), 2004 SD 3, 674 N.W.2d 314 (2004) (defining right to refund).

SDDS, Inc. v. South Dakota, 2002 SD 90, 650 N.W.2d 1 (2002) (state sovereign immunity cannot bar federal constitutional claims).

State v. Moss, 2008 SD 64, 754 N.W.2d 626 (2008) (rules of statutory construction).

SDCL § 15-6-15(a) (leave-to-amend standard).

SDCL § 15-6-23(a) (prerequisites to class action).

2. **Issue:** The Department stipulated that any motor-fuel refund claims filed by Pourier filed after 1999 would be controlled by a decision on the identically based claims he filed before December 31, 1999. As part of the stipulated judgment awarded by the Department below, Pourier recovered personal refunds for his post-1999 refund claims. If Pourier can amend his claims to add his Oglala Sioux tribal-member customers as class claimants, should the class be permitted to recover refunds for the same post-1999 claims?

Circuit Court Decision: The Court denied leave to amend the claims.

Most Relevant Cases: *Pourier v. South Dakota Dep't. of Revenue*, ("Pourier I"), 2003 SD 21, 658 N.W.2d 395 (2003) (defining right to refund).

Pourier v. South Dakota Dep't. of Revenue ("Pourier II"), 2004 SD 3, 674 N.W.2d 314 (2004) (defining right to refund).

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SDCL § 15-6-15(a) (leave-to-amend standard).

SDCL § 15-6-23(a) (prerequisites to class action).

3. **Issue:** In over a decade of litigation, the Department has not decided a single tax-related issue in Pourier's favor, even though doing so was "unreasonable" and "not substantially justified." If Pourier's claims are amended, is it futile to once again remand this case to the Department?

Circuit Court Decision: The Court did not decide the issue.

Most Relevant Case: *Reed v. McKennan Hospital*, 2000 SD 66, 610 N.W.2d 782 (2000) (futility of administrative exhaustion).