No. 01-794

In The

Supreme Court of the United States

IDAHO STATE TAX COMMISSION,

Petitioner,

v.

GOODMAN OIL COMPANY OF LEWISTON, an Idaho Corporation; and GOODMAN OIL COMPANY, an Idaho Corporation,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Idaho

PETITIONER'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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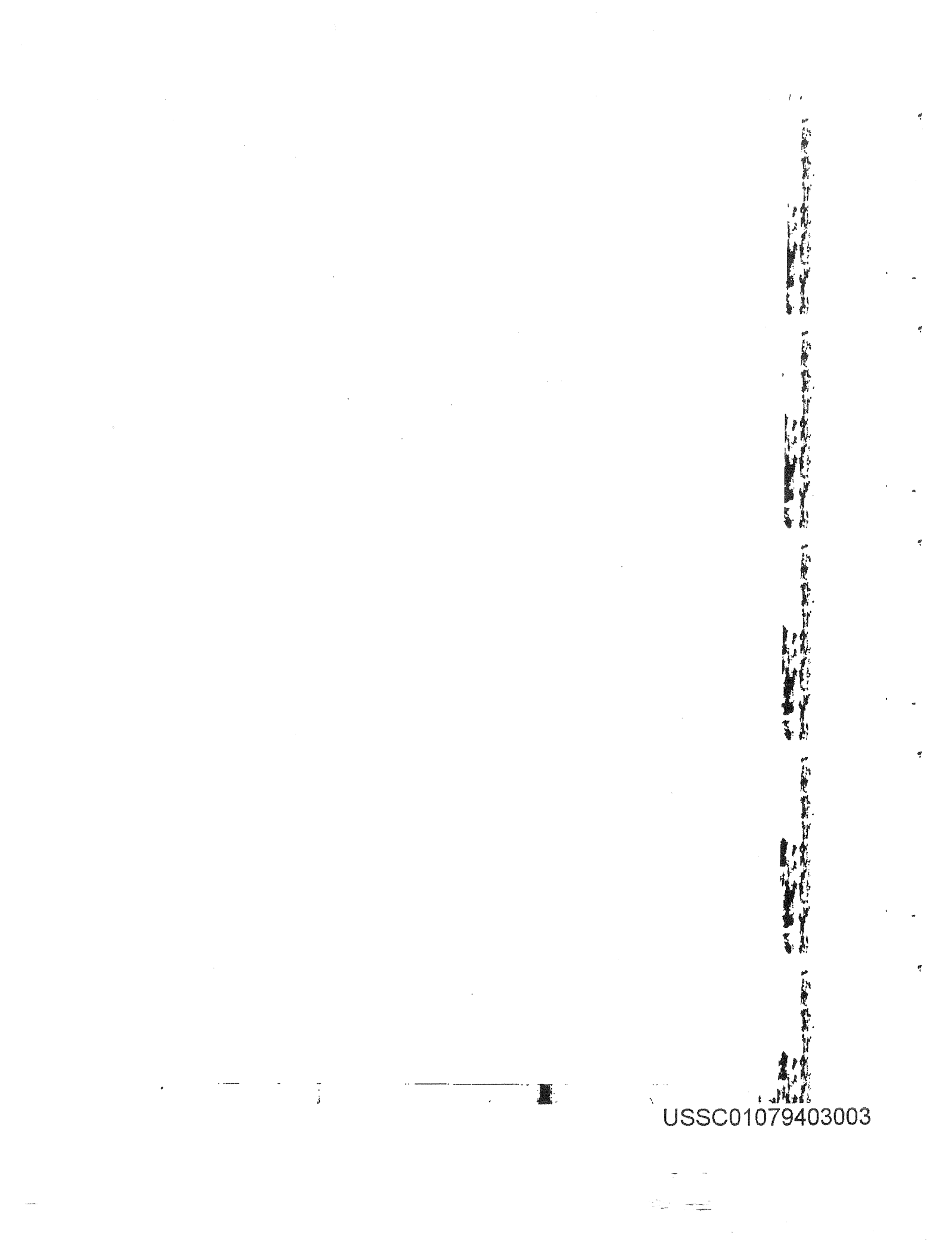

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COMMENTS ON RESPONDENTS' STATEMENT OF FACTS

Respondents assert the Idaho State Tax Commission (Commission) included a significant misstatement of fact in its petition. It did not.

The supposed misstatement is the suggestion that Indians are free riders on state highways. Respondents point to 23 U.S.C. § 120 for the proposition that Indians are not free riders if they do not pay state motor fuel tax because the federal government already provides funding to states for construction of state highways on Indian Reservations. Petitioners further note that Congress provides funding for construction and maintenance of Bureau of Indian Affairs (BIA) and tribal roads. As to these small, secondary roads, their relative importance is revealed in the funding figures respondents recite. In the ten-year period from 1993 to 2003, the Idaho Transportation Department budgeted $56.8 million for road construction on state highways within the Coeur d'Alene Indian Reservation (Reservation). Federal funds expended on BIA and tribal roads were less than $100,000 in 1997 and a similar amount in 1998.

More importantly, 23 U.S.C. § 120 does not support the proposition that the federal government reimburses states for fuel tax money Indians do not pay. This section has a long history, but its essential purpose is to help states defray the costs of road construction and maintenance whether they have Indian reservations or not. The statute provides for a basic federal share of road costs. One subsection provides for increasing that share for

states having more than 5% of their area taken in nontaxable Indian lands and public domain lands. It is possible under this subsection for a state to have an Indian reservation and receive no extra funding. It is equally possible for a state to receive additional federal funding without the presence of an Indian reservation. Pursuant to another subsection, it is possible for a state to receive additional funding without the presence of an Indian Reservation. It is illogical to maintain that the federal funding distributed pursuant to 23 U.S.C. § 120 is compensation to states for fuel taxes they do not collect from Indians.

Respondents also draw attention to the fact that the Commission received payment from the Coeur d'Alene Tribe (Tribe) for fuel tax on sales made to non-Indians. This is true, but trivial. The issue is whether Indians are subject to the state tax on motor vehicle fuel. The non-Indian licensed distributor, required under Idaho law to collect and remit the tax, received full credit for every penny of tax the Tribe sent the state for fuel sold to non-Indians. The only tax money at issue in this case is for fuel sold to Indians on the Reservation.

Likewise, the fact respondents had a tribal business license has nothing to do with whether Congress authorized states to collect their motor vehicle fuel taxes on sales made to Indians on their reservations.

COMMENTS ON RESPONDENTS' REASONS FOR DENYING THE WRIT

Respondents observe the issue the Commission presents is important, but argue it should be left for Congress to decide. The Commission's point is that Congress did decide the issue in 1936 when it enacted the Hayden-Cartwright Act. (4 U.S.C. § 104.) It is, of course, left ultimately to this Court to interpret Congressional enactments. That both petitioner and respondents agree the issue is important is good reason for the Court to grant the Commission's petition.

Respondents correctly identify the two chief lines of argument the Commission relies upon for the proposition that the Hayden-Cartwright Act provides Congressional consent for states to impose their nondiscriminatory motor fuel taxes on fuel sold to Indians and tribes on reservations. First, the term "licensed trader" means licensed Indian trader. This is no new assertion. In 1940, the Solicitor of the Department of the Interior expressed the view that the phrase is "particularly suggestive of Indian reservations." 57 Interior Dec. 129 at 139 (1940). Second, Congress endorsed the 1940 administrative opinion when it twice subsequently reenacted Hayden-Cartwright without change. These two lines of argument provide ample reason for holding states can impose their motor fuel taxes on reservation sales to Indians. This is true despite the special rules of construction applicable to state taxation of Indians on reservations. It is true despite a mistake in the meaning of the term "licensed trader" made by a federal district court judge in Kentucky sixty years ago (*Falls City Brewing Company v. Reeves*, 40

F. Supp. 35 (W.D. Ky. 1941), despite respondents' misplaced reliance on the Buck Act (Pub. L. 819, 54 Stat. 1059, [1940]), a sales tax measure, and despite use of the term "reservation" in other sections of the Hayden-Cartwright Act. This brief, of course, is not the place to go into the arguments.

CONCLUSION

Both petitioner and respondents agree this case presents an important issue. Petitioner respectfully requests the petition be granted.

Respectfully submitted,

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