

interests to determine whether a state tax violates federal law. The federal government has expressed an interest in assisting tribes in their efforts to achieve economic self-sufficiency. However, that interest does not, without more, defeat a state tax on non-Indians. The Community has an interest in raising revenues, but that interest is at its weakest when goods are imported from off-reservation for sale. The State, too, has an interest in raising revenues, and this interest is at its strongest when non-Indians are taxed, and those taxes are used to provide them with government services. The pre-emption balance unmistakably tips in favor of the State. We affirm the district court's grant of summary judgment for the defendants.

AFFIRMED.



**SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY,
Plaintiff-Appellant,**

v.

YAVAPAI COUNTY, a political subdivision of the State of Arizona; Clair D. Barnett, Assessor of Yavapai County; Richard A. Jacobs, Treasurer of Yavapai County; the members of the Board of Supervisors, Carlton Camp, Bill Feldmeier, and Gheral Brownlow; Paul Waddell, Director of the Arizona Department of Revenue; and the State of Arizona, Defendants-Appellees.

No. 93-16975.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted Feb. 15, 1995.

Decided March 21, 1995.

Native American community brought action challenging imposition of ad valorem real

and personal property taxes on commercial property located off reservation. The United States District Court for the District of Arizona, William P. Copple, J., entered judgment for county, and community appealed. The Court of Appeals, Fletcher, Circuit Judge, held that tax was not discriminatory inasmuch as tribe was similarly situated with foreign sovereign owning property within the state, rather than with political subdivisions of the state itself.

Affirmed.

1. Taxation ⇐181

County could impose ad valorem real and personal property taxes on commercial property owned by Native American tribe but located off reservation, despite tribe's contention that it was similarly situated with cities and counties which were exempt from such taxation; tribe was not similarly situated with cities and counties, which were subordinate entities created by the state, but rather, was similarly situated with foreign sovereigns, such as sister states, which owned property outside their territorial jurisdictions and which were subject to the same taxes.

2. Taxation ⇐181

State may tax Indian property located outside boundaries of reservation so long as the tax is nondiscriminatory and no express federal law forbids it.

3. Taxation ⇐42(1)

Tax is "discriminatory" if it is not imposed equally upon similarly situated groups.

See publication Words and Phrases for other judicial constructions and definitions.

Philip J. Shea, Shea & Wilks, Phoenix, AZ,
for plaintiff-appellant.

Patrick Irvine, Asst. Atty. Gen., Phoenix,
AZ, for defendants-appellees.

Appeal from the United States District
Court for the District of Arizona.

Before: FLETCHER, PREGERSON, and RYMER, Circuit Judges.

FLETCHER, Circuit Judge:

[1] Plaintiff Salt River Pima-Maricopa Indian Community ("Community") appeals from a summary judgment for the defendants Yavapai County and the State of Arizona. The Community argues that the district court erred by finding that Yavapai County could impose ad valorem real and personal property taxes on the property of the Phoenix Cement Company located off the reservation. We have jurisdiction, 28 U.S.C. § 1291, and affirm.

FACTS & PRIOR PROCEEDINGS

In 1987, the Community, a recognized Indian tribe, purchased the Phoenix Cement plant for approximately \$55,000,000. The plant is located approximately 100 miles from the reservation in Yavapai County, and, with only a single exception, its labor force and management is non-Indian. The cement produced by the plant is sold on the open market, including some sales on the reservation. Yavapai County collects real and personal property tax on the cement plant under authority of state law. The property is owned directly by the Community, not held in trust by the United States.

Under Arizona's tax scheme, certain governmental entities are exempt from state taxation. Property owned by the federal government is exempt, as is property owned by Arizona and its county and municipal governments, including property outside their corporate limits. Arizona's tax exemption does not include property in Arizona owned by its sister states and their cities and counties or, most importantly here, off-reservation Indian property.

The Community sued Arizona and Yavapai county in federal district court, challenging Arizona's property tax levied against its cement plant. The Community argued that because it is similarly situated to Arizona's county and municipal governments, which are exempt from property taxes, the tax is discriminatory. Both the Community and the defendants moved for summary judgment. The district court granted the defen-

dants' motion for summary judgment and dismissed the plaintiff's action. The Community timely appealed.

DISCUSSION

The Community claims that Yavapai County's tax on its property located outside the reservation is discriminatory. We disagree.

We review a district court's grant of summary judgment de novo. *Jones v. Union Pac. R.R.*, 968 F.2d 937, 940 (9th Cir.1992). We will affirm the district court's grant of summary judgment if, viewing the facts in the light most favorable to the nonmoving party, there are no issues of material fact and summary judgment is appropriate as a matter of law. *Tzung v. State Farm Fire & Casualty Co.*, 873 F.2d 1338, 1339-40 (9th Cir.1989).

[2, 3] It is well-established that states have the right to impose taxes on Indian property located outside the boundaries of reservations, so long as the tax is nondiscriminatory. "Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49, 93 S.Ct. 1267, 1270, 36 L.Ed.2d 114 (1973). States retain "the right to tax, unless Congress forbade it, all Indian land and Indian activities located or occurring 'outside of an Indian reservation.'" *Id.* at 149-50, 93 S.Ct. at 1271. A tax is discriminatory if it is not imposed equally upon similarly situated groups. *See generally First Federal S & L v. Massachusetts Tax Comm'n*, 437 U.S. 255, 260-62, 98 S.Ct. 2333, 2336-38, 57 L.Ed.2d 187 (1978) (applying "similarly situated" test to determine whether state tax is discriminatory); *United States v. City of Fresno*, 429 U.S. 452, 462, 97 S.Ct. 699, 704, 50 L.Ed.2d 683 (1977) (same). We conclude that the Community is similarly situated with Arizona's sister states and their cities and counties.

Most importantly, both Indian tribes and sister states exercise limited sovereignty that does not depend on a delegation of authority

from Arizona. *See id.*; *see also Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559, 8 L.Ed. 483 (1832) (Indian tribes are "distinct, independent, political communities."). In contrast, Arizona cities and counties are subordinate entities created by the State. *See United States v. Wheeler*, 435 U.S. 313, 320, 98 S.Ct. 1079, 1084, 55 L.Ed.2d 303 (1978) (citing *Reynolds v. Sims*, 377 U.S. 533, 575, 84 S.Ct. 1362, 1388, 12 L.Ed.2d 506 (1964)). Consequently, a tax on Arizona cities and counties would be tantamount to a tax on Arizona itself.

In addition, Indian tribes and Arizona's sister states, like private property owners generally, lack governmental authority over their Arizona property. *See Mescalero Apache Tribe*, 411 U.S. at 148-49, 93 S.Ct. at 1270-71. In contrast, Arizona cities have the authority of a government over their land outside their corporate limits. *See Ariz.Rev. Stat. § 9-401(A)* (1994) (power to enforce ordinances in outside property); *Ariz.Rev. Stat. § 9-461.11* (1994) (extraterritorial jurisdiction for planning purpose); *Ariz.Rev.Stat. § 9-511(C)* (1994) (right of eminent domain outside corporate limits).

Finally, because the tax falls upon non-exempt property owners generally, an important segment of the Arizona economy, there can be no claim that the tax impermissibly singles-out foreign governments and Indian tribes for discriminatory treatment. *See First Federal*, 437 U.S. at 261-62, 98 S.Ct. at 2337-38 (diverse composition of taxable class protects federal associations from discriminatory treatment).

In short, Arizona's tax on off-reservation property is not discriminatory because it "is imposed equally on the other similarly situated constituents of the State"—Arizona's sister states and their subordinate governmental entities. *City of Fresno*, 429 U.S. at 462, 97 S.Ct. at 704. Accordingly, we affirm the district court's summary judgment for the defendants.

AFFIRMED.



UNITED STATES of America; State of California, ex rel. Department of Fish & Game, State Lands Commission; and Department of Parks & Recreation, Plaintiffs-counter-defendants-third-party-defendants-Appellees,

v.

MONTROSE CHEMICAL CORPORATION OF CALIFORNIA; Chris-Craft Industries, Inc.; Stauffer Management Company; ICI American Holdings, Inc.; Atkemix Thirty-Seven, Inc.; Rhone-Poulenc Basic Chemicals Company, Defendants-counter-claimants-cross-claimants-Appellants,

v.

CITY OF LOS ANGELES; County of Los Angeles; City of Long Beach; Orange County Municipalities and Sanitation District in Orange County; Ventura County Municipalities and Sanitation Districts in Ventura County; San Bernardino County Municipalities, Water & Sanitation Districts, Third-party-defendants-Appellees,

and

DDT Industrial; PCB Industrial; Los Angeles County Sanitation District and other County Sanitation District of Los Angeles County, Defendants-Appellees.

UNITED STATES of America; State of California, ex rel. Department of Fish & Game, State Lands Commission, and Department of Parks & Recreation, Plaintiffs-Appellees,

v.

MONTROSE CHEMICAL CORPORATION OF CALIFORNIA, Defendant,

and

CITY OF LOS ANGELES; The Cities of Alhambra; Arcadia; Artesia; Azusa, et al.; The Cities of Agoura Hills; Avalon; Beverly Hills; Burbank, et al.; County of Los Angeles; Los Angeles County Flood Control District; Los Angeles