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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**  
**FRESNO DIVISION**

BIG SANDY RANCHERIA ENTERPRISES,

Plaintiff,

v.

XAVIER BECERRA, in his official capacity as  
Attorney General of the State of California; and  
NICOLAS MADUROS, in his official capacity  
as Director of the California Department of Tax  
and Fee Administration,

Defendants

Case No. 1:18-cv-00958-DAD-RPG

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION**

DATE: November 6, 2018

TIME: 10:00 a.m.

DEPT: 5, 7th Floor

Hon. Dale A. Drozd

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**I. INTRODUCTION**

Plaintiff Big Sandy Rancheria Enterprises (“BSRE”) brings this action seeking declaratory and injunctive relief barring California officials from enforcing various aspects of state law governing the sale of cigarettes. One of BSRE’s claims plainly falls outside the subject matter jurisdiction of this Court: BSRE’s fifth cause of action asks the Court to declare that its business operations are not subject to state taxes under the California Cigarette and Tobacco Products Tax Law. Under the Tax Injunction Act, the Court has no jurisdiction to issue declaratory or injunctive relief enjoining, suspending, or restraining the collection of state taxes. And while Indian tribes fall within an exemption from the Tax Injunction Act, corporations owned by the Tribe – like BSRE – do not. Accordingly, the Court lacks jurisdiction over BSRE’s fifth cause of action, and must dismiss it without leave to amend.<sup>1</sup>

**II. BACKGROUND**

BSRE is a federally chartered corporation wholly owned by the Big Sandy Rancheria Band of Western Mono Indians, which is a federally recognized Indian tribe. (Complaint p. 1 & ¶¶ 9, 79-80.) BSRE was incorporated pursuant to section 17 of the Indian Reorganization Act of June 18, 1934, 25 U.S.C. § 5124. (Complaint ¶¶ 9, 79.) BSRE and its “subdivision” BSR Distributing, IRA distribute tobacco products to Indian tribal government and tribal-member reservation-based wholesalers and retailers on the Indian land of other tribes within California. (Complaint ¶¶ 90, 157.)

BSRE’s complaint alleges five causes of action. The fifth directly asks this Court to bar California from imposing taxes on BSRE under the Cigarette and Tobacco Products Tax Law, Cal. Rev. & Tax. Code §§ 30001 *et seq.* (Complaint ¶¶ 154-161.) Without needing to address the

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<sup>1</sup> The California Department of Tax and Fee Administration administers California’s sales and use tax, fuel, tobacco, cannabis and other taxes and fees to fund and administrate various state tax and fee programs. As such, its Director has a particular interest in enforcement of the federal Tax Injunction Act to ensure that the CDTFA’s functions are not impaired by litigation seeking an end-run around applicable state tax procedures. Director Maduros understands that the Attorney General is filing his own motion to dismiss addressing more broadly the Plaintiff’s substantive legal theories.

1 ripeness and other problems with such a broad contention, this claim is barred because this Court  
 2 lacks jurisdiction to enter declaratory or injunctive relief barring state taxes.

### 3 **III. THE FEDERAL DISTRICT COURTS HAVE NO SUBJECT MATTER** 4 **JURISDICTION TO ENJOIN STATE TAXES**

5 “Federal courts are courts of limited jurisdiction. They possess only that power  
 6 authorized by Constitution and statute.” *Rasul v. Bush*, 542 U.S. 466, 489 (2004) (internal  
 7 quotation omitted). This court is presumed *not* to have jurisdiction unless otherwise shown.  
 8 *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006). Where jurisdiction is challenged,  
 9 the burden is on the plaintiff to prove that jurisdiction exists. *Kokkonen v. Guardian Life Ins. Co.*  
 10 *of Am.*, 511 U.S. 375, 377 (1994); *In re Wilshire Courtyard*, 729 F.3d 1279, 1284 (9th Cir.  
 11 2013). Claims falling outside the Court’s subject matter jurisdiction are subject to dismissal  
 12 pursuant to Federal Rule of Civil Procedure 12(b)(1).

13 BSRE’s fifth cause of action asserts that California’s Cigarette and Tobacco Products Tax  
 14 Law cannot be applied to it, and “seeks a judicial declaration that [BSRE] has no liability for the  
 15 taxes imposed under the Cigarette and Tobacco Products Tax Law for the cigarettes and tobacco  
 16 products it distributes.” (Complaint ¶¶ 154-161.) This claim is squarely barred by the Tax  
 17 Injunction Act, which provides that “[t]he district courts shall not enjoin, suspend or restrain the  
 18 assessment, levy or collection of any tax under State law where a plain, speedy and efficient  
 19 remedy may be had in the courts of such State.” 28 U.S.C. § 1341. California’s tax procedures  
 20 have repeatedly been held to provide “a plain, speedy, and efficient remedy.” *See Franchise Tax*  
 21 *Bd. v. Alcan Aluminum*, 493 U.S. 331, 338-39 (1990); *California v. Grace Brethren Church*, 457  
 22 U.S. 393, 414 n.31, 416-17 (1982); *Hyatt v. Yee*, 871 F.3d 1067, 1074 (9th Cir. 2017); *Jerron*  
 23 *West, Inc. v. State of Cal., State Bd. of Equalization*, 129 F.3d 1334, 1339 (9th Cir. 1997).

24 The principal purpose of the Tax Injunction Act was “to limit drastically federal district  
 25 court jurisdiction to interfere with so important a local concern as the collection of taxes.” *Grace*  
 26 *Brethren Church*, 457 U.S. at 408-09 (internal quotation omitted). The Act prohibits claims for  
 27 declaratory as well as injunctive relief. *Id.* at 411. The Act’s prohibition “has its roots in equity  
 28

1 practice, in principles of federalism, and in recognition of the imperative need of a State to  
 2 administer its own fiscal operations.” *Jerron West, Inc.*, 129 F.3d at 1338 (quoting *Tully v.*  
 3 *Griffin, Inc.*, 429 U.S. 68, 73 (1976)).

4 BSRE recognizes this jurisdictional problem in its complaint, and tries to avoid it by  
 5 alleging that the Tax Injunction Act “does not apply to civil actions brought by Indian tribes  
 6 under 28 U.S.C. § 1362.” (Complaint ¶ 7.) BSRE is correct that civil actions brought by *Indian*  
 7 *tribes* are not barred by the TIA. *Moe v. Confederated Salish and Kootenai Tribes of Flathead*  
 8 *Reservation*, 425 U.S. 463, 470-74 (1976). *Moe* based that exemption on 28 U.S.C. § 1362,  
 9 which provides jurisdiction in federal court for claims “brought by any Indian tribe or band with  
 10 a governing body duly recognized by the Secretary of the Interior.” 28 U.S.C. § 1362; *Moe*, 425  
 11 U.S. at 472-73.

12 BSRE is *not*, however, an Indian tribe. As its own complaint admits, the relevant Indian  
 13 tribe is the Big Sandy Rancheria Band of Western Mono Indians. (Complaint p. 1 & ¶ 9.) BSRE  
 14 is a federally-chartered corporation “wholly owned by” the Tribe. (Complaint ¶ 9.)

15 The Ninth Circuit has held that the exemption to the TIA *only* applies to the Indian tribe  
 16 itself. It does not apply to “wholly controlled or owned subordinate economic tribal entities.”  
 17 *Navajo Tribal Utility Authority v. Arizona Dep’t of Revenue*, 608 F.2d 1228, 1231 (9th Cir.  
 18 1979). “Native corporations are not tribes or bands.” *Id.* (citation omitted); *see also Amarok*  
 19 *Corp. v. Nevada, Dep’t of Taxation*, 935 F.2d 1068, 1070 (9th Cir. 1991).

20 During meet and confer efforts, BSRE argued that it is entitled to the Tribe’s exemption  
 21 from the TIA because it has the same tax immunity as the Tribe under *Mescalero Apache Tribe*  
 22 *v. Jones*, 411 U.S. 145, 151, 157 n.13 (1973). The Ninth Circuit expressly rejected that argument  
 23 in *Navajo Tribal Utility Authority*. “[S]uch a view speaks only to the question of tax immunity,  
 24 not to the question of federal jurisdiction.” *Navajo Tribal Utility Authority*, 608 F.2d at 1233.

25 BSRE’s claim that it has no liability for taxes under the California Cigarette and  
 26 Tobacco Produces Tax Law is thus barred by the Tax Injunction Act, 28 U.S.C. § 1341, and  
 27 should be dismissed.

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**IV. CONCLUSION**

Because the Court has no subject matter jurisdiction over BSRE's fifth cause of action, that cause of action should be dismissed without leave to amend.

DATED: September 17, 2018

**KERR & WAGSTAFFE LLP**

By /s Michael von Loewenfeldt

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