

TAXATION IN INDIAN COUNTRY
SUSTAINING THE RESERVATION CONFERENCE
FEBRUARY 27, 2014



Introduction

- ▶ 1. My name is Rod Lewis and I'm participating today as a practitioner not on behalf of the Gila River Indian Community.
- ▶ 2. I was the former General Counsel for the Community.

Tribal Taxation

- ▶ A fundamental attribute of sovereignty
 - 1. Need for revenue to support Tribal services.
 - 2. Support for regulatory programs.
 - 3. Extensive governmental services.
 - 4. Erratic Federal Revenues

The 1934 Opinion of Solicitor Margold

- ▶ Chief among the powers of sovereignty recognized as pertaining to an Indian Tribe is the power of taxation. Except where Congress has provided otherwise, this power may be exercised over members of the tribe and nonmembers, so far as such non-members may accept privileges of trade, residence, etc., to which taxes may be attached as conditions.

Merrion v. Jicarilla Apache Tribe

455 U.S.130, (1982)

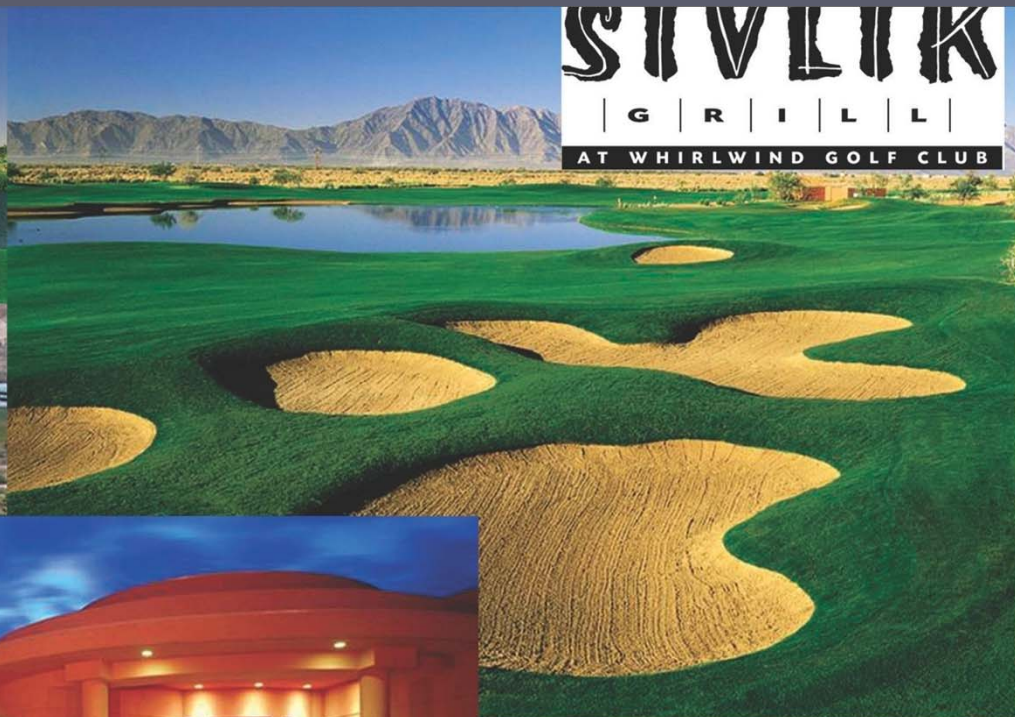
- ▶ 1. Upheld a Tribal severance tax applied to non-Indians lessees who mined oil and gas on the reservation.
- ▶ 2. The court held that the power to exclude supported the tax.
- ▶ 3. More importantly, the tribe's general authority , as sovereign, allowed the tax to control economic activities and support governmental services.

Historical Perspective

- ▶ 1. The Gila River Indian Reservation was established by Congress in 1859 and now comprises more than 372,000 acres.
- ▶ 2. Pimas (Akimel-O'Odham) and Maricopas (Pee-Posh) comprise the tribes of the Community.
- ▶ 3. Our ancestors, the ancient HuHuKam, farmed the Gila and Salt River Valleys since time immemorial.

...continued Historical Perspective

- ▶ 4. Pimas and Maricopas have the highest documented rate of diabetes of any ethnic group in the world.
- ▶ 5. Approximately 100,000 acres has been allotted.



Whirlwind.[®]
GOLF CLUB
AT WILD HORSE PASS

Urban Growth Near the Community

- ▶ TOWN OF MARICOPA-PROJECTED GROWTH TO 100,000 BY 2012 FROM 15,934
- ▶ PINAL COUNTY IS THE 3RD FASTEST GROWING COUNTY IN THE UNITED STATES WITH 9,900 NEW HOMES BUILT IN 2005
- ▶ THE COMMUNITY IS IMMEDIATELY ADJACENT TO PHOENIX AND CHANDLER













Sheraton Wild Horse Pass

RESORT & SPA
GILA RIVER INDIAN COMMUNITY/PHOENIX



Economic Development-Gaming

- ▶ 1. Three casinos-Wild Horse Pass, Vee Quiva, and Lone Butte
- ▶ 2. 2175-Gaming Devices (Includes Transferred Devices from other Tribes)
- ▶ 3. Casino-Wild Horse Pass at I-10
- ▶ 4. Lone Butte on 202 near the Chandler Mall

Economic Development-Wild Horse Pass Hotel and Resort

- ▶ 1. Sheraton Wild Horse Pass Resort and Spa-500 rooms and the Wild Horse Pass Casino Hotel
- ▶ 2. Rawhide Restaurant
- ▶ 3. Whirlwind Golf Courses (2) and Toka Sticks.
- ▶ 4. Firebird International Raceway
- ▶ 5. Future Development is responsibility of the Wild Horse Pass Development Authority

Economic Development Entities

- ▶ 1. Gila River Indian Community Utility Authority-Electricity
- ▶ 2. Gila River Telecommunications Inc.
- ▶ 3. Gila River Sand and Gravel
- ▶ 4. Gila River Irrigation and Drainage District
- ▶ 5. Lone Butte Development Inc.(40 tenants approx.)
- ▶ 6. Gila River Health Care Corp.

Gila River Indian Community

Title 13-Taxation

- ▶ 1. Requirement for a Business License.
- ▶ 2. Enforcement by fines.
- ▶ 3. A transaction privilege tax on the gross receipts.
- ▶ 4. Categories of goods sold include, tangible personal property, alcohol, tobacco, telecommunications, advertising, amusements, hotel/motels, construction activities, and utilities and other areas.

Civil Penalties

- ▶ 1. Failure to make timely payments.
- ▶ 2. Failure to pay.
- ▶ 3. Failure to furnish requested information.
- ▶ 4. A taxpayer may file a protest and have the protest heard in the Community Court.

Issues A Tribe Should Consider When Imposing A Tax.

- ▶ 1. Is the Tax on non-Indians on non-Trust land?
- ▶ 2. Are governmental services provided to non-Indians?
- ▶ 3. Equal Protection-Does the tax apply equally to Indians and non-Indians?
- ▶ 4. Does the tax violate the Commerce Clause?
- ▶ 5. Do Federal laws pre-empt the Tribal tax?

Conclusion

- ▶ 1. Tribal taxes are a significant source of revenue used to support Tribal governmental activities.
- ▶ 2. Imposition of taxes is a fundamental attribute of Tribal sovereignty.
- ▶ 3. Tribes are expected to provide more governmental services.