Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

MONTANA ET AL. *v.* CROW TRIBE OF INDIANS ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 96–1829. Argued February 24, 1998– Decided May 18, 1998

In 1904, the Crow Tribe ceded part of its Montana Reservation to the United States for settlement by non-Indians. The United States holds rights to minerals underlying the ceded strip in trust for the Tribe. In 1972, with the approval of the Department of the Interior and pursuant to the Indian Mineral Leasing Act of 1938 (IMLA), Westmoreland Resources, Inc., a non-Indian company, entered into a mining lease with the Tribe for coal underlying the ceded strip. After executing the lease, Westmoreland signed contracts with its customers, four utility companies, allowing it to pass on to the utilities the cost of valid taxes. Westmoreland and the Tribe renegotiated the lease in 1974. The amended lease had an extendable ten-year term, and set some of the highest royalties in the United States. In 1975, Montana imposed a severance tax and a gross proceeds tax on all coal produced in the State, including coal underlying the reservation proper and the ceded strip. Westmoreland paid these taxes without timely pursuit of the procedures Montana law provides for protests and refunds. Some six months after the State imposed its taxes, the Crow Tribal Council adopted its own severance tax. The Department of the Interior approved the Tribe's tax as applied to coal underlying the reservation proper but, because of a limitation in the Tribe's constitution, did not approve as to coal beneath the ceded strip. The Tribe again enacted a tax for coal mined on the ceded strip in 1982, and again the Department rejected the tax.

In 1978, the Tribe brought a federal action for injunctive and declaratory relief against Montana and its counties, alleging that the State's severance and gross proceeds taxes were preempted by the IMLA and infringed on the Tribe's right to govern itself. The District Court dismissed the complaint. The Ninth Circuit reversed, holding

that the Tribe's allegations, if proved, would establish that the IMLA preempted the State's taxes. The Court of Appeals noted, however, that the Tribe had paid none of Westmoreland's taxes and apparently would not be entitled to any refund in the event that the taxes were declared invalid. *Crow Tribe* v. *Montana*, 650 F. 2d 1104, 1113, n. 13 *(Crow I)*. In 1982, the Tribe and Westmoreland entered into an agreement, with Interior Department approval, under which Westmoreland agreed to pay the Tribe a tax equal to the State's then-existing taxes, less any tax payments Westmoreland was required to pay to the State and its subdivisions. The agreement achieved, prospectively, the federal permission the Tribe had long sought. It allowed the Tribe to have an approved tax in place so that, if successful in the litigation against Montana, the Tribe could claim for itself any tax amounts Westmoreland would be ordered to pay into the District Court's registry *pendente lite*. It also enabled Westmoreland to avoid double taxation, and absolved the company from any tax payment obligation to the Tribe for the 1976–1982 period. In 1983, the District Court granted a motion by the Tribe and Westmoreland to deposit severance tax payments into the District Court's registry, pending resolution of the controversy over Montana's taxing authority. In 1987, the court granted the same interim relief for the gross proceeds taxes. Later that year, the United States intervened on behalf of the Tribe to protect its interests as trustee of the coal upon which Montana's taxes were levied. After trial, the District Court determined that federal law did not preempt the State's taxes on coal mined at the ceded strip. The Ninth Circuit again reversed, concluding that the taxes were both preempted by the IMLA and void for interfering with tribal self-governance. *Crow Tribe* v. *Montana*, 819 F. 2d 895, 903 *(Crow II)*. The Court of Appeals stressed, *inter alia*, that the State's taxes had at least some negative impact on the marketability of the Tribe's coal. *Id.*, at 900. This Court summarily affirmed. When the case returned to the District Court in 1988, the court ordered distribution of the funds in its registry to the United States as trustee for the Tribe. Subsequently, the United States and the Tribe filed amended complaints against Montana and Big Horn County to recover taxes paid by Westmoreland *prior* to the 1983 and 1987 orders directing deposits into the court's registry. Neither the Tribe nor the United States requested, as additional or alternate relief, recovery for the Tribe's actual financial losses attributable to the State's taxes.

After trial, the District Court concluded that the disgorgement remedy sought by the Tribe was not appropriate. Key to the court's decision was this Court's holding in *Cotton Petroleum Corp.* v. *New Mexico*, 490 U. S. 163, that both State and Tribe may impose sever-

ance taxes on on-reservation oil and gas production by a non-Indian lessee. *Cotton Petroleum* indicated that Montana's taxes on ceded strip coal were invalidated in *Crow II* not because the State lacked power to tax the coal at all, but because its taxes were "extraordinarily high." *Id.,* at 186–187, n. 17. The District Court also considered that Westmoreland would not have paid coal taxes to the Tribe before 1983, for Interior Department approval was essential to allow pass-through to the company's customers. Furthermore, under the 1982 lease agreement, the Tribe and Westmoreland stipulated that Westmoreland would have no tax liability to the Tribe for the 1976–1982 period. Moreover, the deposited funds, Westmoreland's post-1982 tax payments, had been turned over in full to the United States for the benefit of the Tribe. The court further noted that Westmoreland did not timely endeavor to recover taxes paid to the State and counties, and the Tribe did nothing to prompt Westmoreland to initiate appropriate refund proceedings. The court received additional evidence concerning the effect of Montana's taxes on the marketability of Montana coal and described the parties' conflicting positions on that issue, but made no findings on the matter. The Ninth Circuit again reversed, holding that the District Court had ignored the law of the case and abused its discretion.

Held: The restitution sought for the Tribe is not warranted. Pp. 14–21.

(a) As a rule, a nontaxpayer may not sue for a refund of taxes paid by another. The Ninth Circuit evidently had that rule in mind when it noted, in *Crow I,* that the Tribe was apparently not entitled to any refund of taxes Westmoreland had paid to Montana. The Tribe maintains, however, that the disgorgement remedy it gained does not fall within the "refund" category. The Tribe's disgorgement claim must be examined in light of this Court's pathmarking decision in *Cotton Petroleum Corp.* v. *New Mexico,* 490 U. S. 163. There, the Court clarified that neither the IMLA, nor any other federal law, categorically preempts state nondiscriminatory severance taxes on all extraction enterprises in a State, including on-reservation operations. Both State and Tribe have taxing jurisdiction over on-reservation production. The Court in *Cotton Petroleum* distinguished *Crow II* in a footnote, indicating that Montana had the power to tax Crow coal, but not at an exorbitant rate. Pp. 14–17.

(b) The Tribe first argues that it, not Montana, should have received Westmoreland's 1975–1982 coal tax payments; therefore the proper remedy is to require the State to turn all taxes it collected from Westmoreland over to the Tribe. However, as *Cotton Petroleum* makes plain, neither the State nor the Tribe enjoys authority to tax to the total exclusion of the other. This situation differs from cases like *Valley County* v. *Thomas,* 109 Mont. 345, 97 P. 2d 345, in which

only one jurisdiction could tax a particular activity. Moreover, the Tribe could not have taxed Westmoreland during the period in question, for the Interior Department had withheld the essential permission, further distancing this case from *Valley County*. The District Court correctly took these and other factors into account in holding disgorgement an exorbitant, and therefore inequitable, remedy. Pp. 17–18.

(c) The Tribe and the United States urge the negative impact of Montana's high taxes on the marketability of the Tribe's coal as an alternative justification for requiring Montana to disgorge the taxes collected from Westmoreland. This claim rests on the concern that, by taxing the coal actually mined and sold, Montana deprived the Tribe of its fair share of the economic rent. Again, however, the Tribe could not have exacted a tax from Westmoreland before 1983, because the Interior Department withheld approval. And no evidence suggests that Westmoreland would have agreed to pay even higher royalties to the Tribe in 1974, but for Montana's tax. It merits emphasis also that under *Cotton Petroleum*, Montana could have imposed a severance tax, albeit not one so extraordinarily high. The District Court did not consider awarding the Tribe, in lieu of all the 1975–1982 taxes Montana collected, damages based on actual losses the Tribe suffered. This was not an oversight. The complaint contained no prayer for compensatory damages. Nor did the proof establish entitlement to such relief. The Tribe concentrated on disgorgement as the desired remedy; it deliberately sought and proved no damages attributable to coal not sold because the State's tax made the price too high. Federal Rule of Civil Procedure 54(c) therefore could not aid the Tribe, for the Tribe had not shown entitlement to actual damages. While not foreclosing the District Court from any course the Federal Rules and that court's thorough grasp on this litigation may lead it to take, this Court is satisfied that the Court of Appeals improperly overturned the District Court's judgment. Pp. 18–21.

92 F. 3d 826, 98 F. 3d 1194, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, SCALIA, KENNEDY, THOMAS, and BREYER, JJ., joined. SOUTER, J., filed an opinion concurring in part and dissenting in part, in which O'CONNOR, J., joined.