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

ATKINSON TRADING CO., INC. *v.* SHIRLEY ET AL.

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

No. 00–454. Argued March 27, 2001– Decided May 29, 2001

In *Montana* v. *United States,* 450 U. S. 544, this Court held that, with two limited exceptions, Indian tribes lack civil authority over the conduct of nonmembers on non-Indian land within a reservation. Petitioner's trading post on such land within the Navajo Nation Reservation is subject to a hotel occupancy tax that the Tribe imposes on any hotel room located within the reservation's boundaries. The Federal District Court upheld the tax, and the Tenth Circuit affirmed. Relying in part on *Merrion* v. *Jicarilla Apache Tribe,* 455 U. S. 130, the latter court complemented *Montana*'s framework with a case-by-case approach that balanced the land's non-Indian fee status with the Tribe's sovereign powers, its interests, and the impact that the exercise of its powers had on the nonmembers' interests. The court concluded that the tax fell under *Montana*'s first exception.

Held: The Navajo Nation's imposition of a hotel occupancy tax upon nonmembers on non-Indian fee land within its reservation is invalid. Pp. 8–14.

(a) *Montana*'s general rule applies to tribal attempts to tax nonmember activity occurring on non-Indian fee land. Tribal jurisdiction is limited: For powers not expressly conferred them by federal statute or treaty, tribes must rely upon their retained or inherent sovereignty. Their power over nonmembers on non-Indian fee land is sharply circumscribed. *Montana* noted only two exceptions: (1) a tribe may regulate the activities of nonmembers who enter consensual relationships with the tribe or its members; and (2) a tribe may exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the tribe's political integrity, economic security, or health or welfare. 450 U. S., at 565–566. *Montana*'s rule applies to a

Syllabus

tribe's regulatory authority, *id.,* at 566, and adjudicatory authority, *Strate* v. *A–1 Contractors,* 520 U. S. 438, 453. Citing *Merrion,* respondents submit that *Montana* and *Strate* do not restrict a tribe's power to impose revenue-raising taxes. However, because *Merrion* noted that a tribe's inherent taxing power only extended to transactions occurring on trust lands and involving the tribe or its members, 455 U. S., at 137, it is easily reconcilable with the *Montana-Strate* line of authority. A tribe's sovereign power to tax reaches no further than tribal land. Thus, *Merrion* does not exempt taxation from *Montana*'s general rule, and *Montana* is applied straight up. Because Congress had not authorized the tax at issue through treaty or statute, and because the incidence of the tax falls upon nonmembers on non-Indian fee land, the Navajo Nation must establish the existence of one of *Montana*'s exceptions. Pp. 3–8.

(b) *Montana*'s exceptions do not obtain here. Neither petitioner nor its hotel guests have entered into a consensual relationship with the Navajo Nation justifying the tax's imposition. Such a relationship must stem from commercial dealing, contracts, leases, or other arrangements, *Montana, supra,* at 565, and a nonmember's actual or potential receipt of tribal police, fire, and medical services does not create the requisite connection. Nor is petitioner's status as an "Indian trader" licensed by the Indian Affairs Commissioner sufficient by itself to support the tax's imposition. As to *Montana*'s second exception, petitioner's operation of a hotel on non-Indian fee land does not threaten or have a direct effect on the tribe's political integrity, economic security, or health or welfare. Contrary to respondents' argument, the judgment in *Brendale* v. *Confederated Tribes and Bands of Yakima Nation,* 492 U. S. 408, 440, did not give Indian tribes broad authority over nonmembers where the acreage of non-Indian fee land is miniscule in relation to the surrounding tribal land. Irrespective of the percentage of non-Indian fee land within a reservation, *Montana*'s second exception grants tribes nothing beyond what is necessary to protect tribal self-government or control internal relations. *Strate, supra,* at 459. Whatever effect petitioner's operation of its trading post might have upon surrounding Navajo land, it does not endanger the Navajo Nation's political integrity. Pp. 8–13.

210 F. 3d 1247, reversed.

REHNQUIST, C. J., delivered the opinion for a unanimous Court. SOUTER, J., filed a concurring opinion, in which KENNEDY and THOMAS, JJ., joined.