

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 Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* CALIFORNIA ET AL.

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

No. 91-2003. Argued February 23, 1993—Decided April 26, 1993

After California issued sales and use tax deficiency notices to federal contractor Williams Brothers Engineering Company (WBEC) in 1978 and 1982, the State assessed approximately \$14 million in such taxes against WBEC for the tax years 1975 through 1981. Under its contract with the United States, WBEC received an annual fixed fee plus reimbursement for costs, including the state taxes. At the Government's direction, WBEC applied to the State Board of Equalization for redetermination of the assessments, but each claim was denied, with minor exceptions. WBEC then paid the assessments under protest, using funds the Government provided, and filed timely actions in state court. In January 1988, the State and WBEC stipulated to a \$3 million refund and to dismissal of the actions without prejudice. In May 1988, the Government filed suit in the Federal District Court, seeking a declaratory judgment that California had classified and taxed WBEC erroneously under state law and an \$11 million refund plus interest. In granting the State summary judgment, the District Court rejected the Government's argument that it was entitled to recovery based on the federal common law cause of action for money had and received. The Court of Appeals affirmed.

Held: The Federal Government may not recover the taxes it claims were wrongfully assessed under California law against WBEC. Pp. 4-13.

(a) Shouldering the entire economic burden of a levy through indemnification does not give the Government a federal common law cause of action for money had and received to challenge a state tax on state-law grounds simply because it is the Government. The contract here is in all relevant respects identical to the ones discussed in *United States v. New Mexico*, 455 U. S. 720, in which the Court held, *inter alia*, that federal

contractors are not immune from state taxes simply because the Government reimburses all of the contractors' state tax expenditures, see *id.*, at 734-735. Moreover, the Government's voluntary agreement to reimburse (or even fund in advance) WBEC for the taxes does not make the Government's payments direct disbursements of federal funds to the State. Cf. *Brady v. Roosevelt Steamship Co.*, 317 U. S. 575. Thus, the Government cannot use the existence of its obligation to indemnify WBEC to create the asserted federal cause of action. *Bayne v. United States*, 93 U. S. 642, and *Gaines v. Miller*, 111 U. S. 395, share two features this case lacks and therefore are inapposite. Because WBEC (1) did not steal or otherwise unlawfully take the money at issue from the Government, and (2) did not have a relationship with California that would make the State liable for WBEC's actions, the Court does not imply a contract in law between California and the Government. Without an implied contract, an action for money had and received will not lie against the State. See *Bayne, supra*, at 643. Pp. 4-9.

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(b) Because it indemnified WBEC, the Government has a right to be subrogated to WBEC's claims against the State. Under traditional principles of subrogation, however, a subrogee takes no more rights than its subrogor had. In this case, WBEC dismissed its state-law actions and the state statute of limitations has run against it. The Government argues that state statutes of limitations do not apply to it, but in *Guaranty Trust Co. v. United States*, 304 U. S. 126, this Court held that even if that were true, the principle did not apply when the Government acquired a right by assignment after the statute of limitations has run against the assignor. *Id.*, at 141-142. Although the Government acquired a right to be subrogated to WBEC's claims when it paid the taxes, it was not subrogated to those claims until it filed this proceeding in federal court. By then, the state statute of limitations had run; thus, the Government was not subrogated to "a right free of a pre-existing infirmity." *Id.*, at 142. Pp. 9-12.

932 F. 2d 1346, affirmed.

O'CONNOR, J., delivered the opinion for a unanimous Court.