

ATTACHMENT 2

AFFIDAVIT OF

JENNIFER S. MISEGAN

with Exhibits

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

KEWEENAW BAY INDIAN COMMUNITY,
a federally-recognized Indian tribe, on its own
behalf and as *parens patriae* for its members,

Hon. Gordon J. Quist

Plaintiff,

Civil Action No. 2:05-CV-0224

v.

ROBERT J. KLEINE, Treasurer of the State of
Michigan; JAY RISING, former Treasurer of
the State of Michigan; MICHAEL
REYNOLDS, Administrator of the Collection
Division of the Michigan Department of
Treasury; WALTER A. FRATZKE, Native
American Affairs Specialist of the Michigan
Department of Treasury; and TERRI LYNN
LAND, Secretary of State of Michigan,

Defendants.

AFFIDAVIT OF JENNIFER S. MISEGAN
IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Jennifer S. Misegan, being first duly sworn on oath, hereby deposes and states as follows:

1. I am a member of the Keweenaw Bay Indian Community (the "Community") and have been employed by the Community as its Enrollment Director since November 1998. I make this Affidavit in support of the Community's motion for partial summary judgment in the above-captioned matter. I am over twenty-one years of age and understand the meaning and obligations of an oath. I have personal knowledge of the facts set forth herein, and if called upon to testify, I could and would testify to the truthfulness and accuracy of those facts.

2. As of September 1, 2006, there were 3,339 living enrolled members of the Community, 893 of whom live on the Community's L'Anse Indian Reservation (the

“Reservation”) or on other lands held in trust for the Community by the United States outside the Reservation (the “Trust Lands”).

3. My husband, Duane Misegan, is a member of the Community. My husband and I live on the Reservation at HCR 03, Box 395, L’Anse, Michigan. Along with my husband, I have purchased, leased, rented, and/or used and expect to continue to purchase, lease, rent, and/or use within the Reservation a wide variety of goods and services, including but not limited to motor vehicles, household appliances and furnishings, clothing, gas, electricity, telephone services, food and beverages served at restaurants and other food and beverage establishments, and other telecommunications and similar services.

4. I understand that, like my husband and me, other members of the Community have purchased, leased, rented, and/or used and expect to continue to purchase, lease, rent, and/or use within the Reservation and Trust Lands a wide variety of goods and services.

5. My husband and I frequently and routinely have been charged Michigan sales and use taxes with respect to our purchase, lease, rental, and/or use of goods and services within the Reservation. For example, on May 9, 2005, my husband and I purchased a 1993 Buick Park Avenue from ERA Chevrolet, Inc. Although ERA Chevrolet is located in Norway, Michigan, outside the Reservation, we purchased the vehicle within the Reservation. My mother, Carol Hamacher, is an employee of ERA Chevrolet. She delivered the vehicle on behalf of ERA Chevrolet to our home on the Reservation, where we paid for the vehicle and signed a document entitled “Application for Michigan Title & Registration, Statement of Vehicle Sale” (the “Application”). Attached as Exhibit A is a true and correct copy of the Application.

6. Before we purchased the vehicle, I informed one or more representatives of ERA Chevrolet that my husband and I would be entitled as members of a federally recognized Indian

tribe to purchase the vehicle within the Reservation free of Michigan sales and use taxes. I understand that Debra Polzin, an employee of ERA Chevrolet, called the Secretary of State's office to inquire about the Secretary of State's procedures for transferring title to a motor vehicle to a member of an Indian tribe without payment of these taxes. I understand that Ms. Polzin was informed by one or more employees of the Secretary of State's office during that call that Michigan sales tax must be paid when a vehicle is sold to a tribal member, unless the tribal member's tribe has a tax agreement with the State of Michigan and the tribe has issued the tribal member a Tribal Certificate of Exemption pursuant to the terms of the tax agreement. The Community does not have a tax agreement with the State of Michigan.

7. ERA Chevrolet informed me that my husband and I would be charged Michigan sales tax in connection with our purchase of the 1993 Buick Park Avenue. The Application attached as Exhibit A shows that we were charged Michigan sales tax of \$197.40. I understand that ERA Chevrolet charged this tax on the basis of Ms. Polzin's conversation with the Secretary of State's office.

8. My husband and I routinely have been charged Michigan sales tax on our purchases of propane gas within the Reservation from Ferrellgas. Attached as Exhibit B are true and correct copies of delivery receipts from Ferrellgas dated June 6, 2005, July 15, 2005, and August 22, 2005, showing that we were charged taxes of \$5.37, \$2.64, and \$3.17, respectively, which I understand were Michigan sales taxes, with respect to these deliveries. I understand that other Community members also routinely have been charged for this tax.

9. On March 7, 2003, my husband and I sent a letter to Ferrellgas, our propane gas supplier, informing it that we are members of the Community residing on the Reservation, that pursuant to federal law we are not required to pay sales or use tax with respect to propane gas

delivered to the Reservation, and that we had deducted the sales tax from the amount shown as due on the invoice from Ferrellgas. Attached as Exhibit C is a true and correct copy of this letter to Ferrellgas.

10. Kent Maki, the District Manager of Ferrellgas, responded to our letter on March 26, 2003. Mr. Maki indicated in his letter that Ferrellgas had received the following instructions from one or more Department officials:

Your Tribe is in negotiations with the State of Michigan right now to become tax exempt. However, it has not been settled as of yet. Until it is finalized the people in your Tribe will have to pay sales and use tax. Your name has been put on the list in our tax department and as soon as we receive word from the State of Michigan that this matter has been settled in court you will become tax exempt.

Attached as Exhibit D is a true and correct copy of this letter from Mr. Maki.

11. More recently, my husband and I again informed Ferrellgas that we are not required to pay sales tax with respect to our purchase of propane gas within the Reservation and again deducted the sales tax from the amount shown as due on the invoice from Ferrellgas. We received a reply from Ferrellgas dated April 26, 2005, stating:

As of this date we have not received a tax exempt ID number or documentation stating the matter between your tribe and the State of Michigan has been settled. It is a State law that we, as a business, have to charge sales tax to all residential and commercial accounts unless we have a tax exempt number on file. Until we have the necessary documentation, we will have to continue to charge sales tax.


Attached as Exhibit E is a true and correct copy of this letter from Ferrellgas.

12. My husband and I routinely have been charged Michigan sales tax on our purchase of electricity within the Reservation from The Ontonagon County Rural Electrification Association ("RE"). For example, attached as Exhibit F is a true and correct copy of the bill that

we received from RE dated April 19, 2004, showing that we were charged Michigan sales tax of \$3.44.

13. Similarly, my husband and I routinely have been charged Michigan sales and use taxes on our purchase of telephone services within the Reservation from Baraga Telephone Company ("BTC"). I recently called BTC to inquire why I have been charged sales and use taxes and spoke with a representative of BTC named Cindy Collins. Ms. Collins informed me that she has spoken to Defendant Walter Fratzke regarding the procedures that the Michigan Department of Treasury requires to be followed in order to permit vendors to make sales to tribal members and tribal entities free of Michigan sales and use taxes, that Defendant Fratzke told her that tribal members or anyone representing any tribal entity must seek a tax exemption by sending a letter to him, and that the Department cannot automatically exempt tribal members and tribal entities just because they may have filled out a state tax exemption form stating that they are a tribal member or tribal entity.

FURTHER AFFIANT SAYETH NOT.


Jennifer S. Misegan

STATE OF MICHIGAN)
) SS
COUNTY OF BARAGA)

Subscribed and sworn to before me
this 6th day of September, 2006.


Notary Public

KRISTY L. MCCARTHY
Notary Public, Baraga County, MI
My commission expires July 13, 2013

EXHIBIT A

RD-108 12/02

Temporary
Registration No. _____ Temporary
Fee Charged Yes ☐ No ☐

Salesperson **RODNEY** _____

EXHIBIT B

FERRELLGAS

www.ferrellgas.com

This is not a bill.
Your invoice will be mailed later.

Date: 06/06/2005 12:38
Account #: 7391404
Truck: 3706
Driver: Gerald M

Sold To: -----
MISEGAN, DUANE & JENNIFER
HOUSE
L-3324-N SKANEE ROAD
LANSE, MI 49946

Order #: 1002926953
Ending % : 80

Qty	Price	Amount
PROPANE		
85 gal	\$1.579	\$134.22
	Subtotal	\$134.22
	Taxes	\$5.37
	Total	\$139.59

All Sales Final

Product has been odorized



FERRELLGAS

www.ferrellgas.com

This is not a bill.
Your invoice will be mailed later.

Date: 07/15/2005 10:50
Account #: 7391404
Truck: 3706
Driver: Gerald M

Sold To:
MISEGAN, DUANE & JENNIFER
HOUSE
L-3324-N SKANEE ROAD
LANSE, MI 49946

Order #: 1003388178
Ending % : 80

Qty	Price	Amount
PROPANE		
40.5 gal	\$1.629	\$65.97
	Subtotal	\$65.97
	Taxes	\$2.64
	Total	\$68.61

All Sales Final

Product has been odorized

FERRELLGAS

www.ferrellgas.com

This is not a bill.
Your invoice will be mailed later.

Date: 08/22/2005 10:42
Account #: 7391404
Truck: 3706
Driver: Gerald M

Sold To:

MISEGAN, DUANE & JENNIFER
HOUSE
L-3324-N SKANEE ROAD
LANSE, MI 49946

Order #: 1003932735
Ending % : 80

Qty	Price	Amount
PROPANE		
48.1 gal	\$1.649	\$79.32
	Subtotal	\$79.32
	Taxes	\$3.17
	Total	\$82.49

ALL SALES FINAL PER TERMS OF OUR AGREEMENT
Product has been odorized

Liquefied Petroleum Gas 2.1 UN 1075

EXHIBIT C

March 7, 2003

Ferrellgas
Rte. 2, Box 891-A
L'Anse MI 49946

COPY

Dear Sirs,

I am a member of the Keweenaw Bay Indian Community and I reside within the boundaries of the L'Anse Federal Indian Reservation. I was delivered propane at my residence. Federal Law does not require me to pay sales or use tax on the reservation. I have deducted this from the amount due.

If you have any questions or concerns, please contact me.

Sincerely,

Duane Misegan

Duane Misegan

EXHIBIT D



Ferrellgas

March 26, 2003

Duane and Jennifer Misegan
HCR01, Box 395
L'Anse, MI 49946

COPY

Dear Duane and Jennifer,

This letter is in response to the letter you sent us stating you don't have to pay sales or use tax because you are on Tribal Land. We have checked with our tax department on what to do in this matter because this is the first time this has come up.

Our tax department informed us that there are 12 Tribes in the State of Michigan. Only 2 of those Tribes, which are located down state, are currently tax exempt. Your Tribe is in negotiations with the State of Michigan right now to become tax exempt. However, it has not been settled as of yet. Until it is finalized the people in your Tribe will have to pay sales and use tax. Your name has been put on the list in our tax department and as soon as we receive word from the State of Michigan that this matter has been settled in court you will become tax exempt.

If you have any questions or would like to talk to the State of Michigan people dealing directly with this matter please give us a call and we will be glad to get you in touch with them.

Thank you.

Kent Maki
District Manager

PROPANE
EXCEPTIONAL ENERGY

EXHIBIT E



April 26, 2005

Duane and Jennifer Misegan
HCR01, Box 395
L'Anse, MI 49946

COPY

Dear Duane and Jennifer,

This letter is in response to your note stating you don't have to pay sales tax due to the fact that you are Keweenaw Bay Tribal members.

Enclosed you will find a letter we sent to you in March of 2003 pertaining to this matter. As of this date we have not received a tax exempt ID number or documentation stating the matter between your tribe and the State of Michigan has been settled. It is a State law that we, as a business, have to charge sales tax to all residential and commercial accounts unless we have a tax exempt number on file. Until we have the necessary documentation we will have to continue to charge sales tax. Therefore the \$15.70 you have deducted from your payments is still owed and is past due.

If you have any questions or need more information, please give us a call.

Sincerely,

Ferrellgas
Enclosure

EXHIBIT F

0901504401



The Ontonagon County Rural
Electrification Association
500 J. K. Paul St. P. O. Box 97
Ontonagon, MI 49953-0097

To pay by Visa or MasterCard, enter Credit Card #, Expiration
Date and your signature below.

Card #: _____ Exp Date: _____

Signature: _____

1145 1 AV O. 278
DUANE MISEGAN
HC 03 BOX 395
LANSE MI 49946-9726

4 1145
C-5 P-11

Account # 901504401

HBA 033T

AMOUNT DUE 89.33

Amount Due After 05/13/2004 91.05
Billing Date 04/19/2004
Previous Reading 8356

READ METER ON THE 25TH OF THE MONTH ENTER METER READING HERE				

Date Meter Read _____

THE ONTONAGON COUNTY RURAL
ELECTRIFICATION ASSOCIATION
PO BOX 97
ONTONAGON MI 49953-0097



THE ONTONAGON COUNTY RURAL ELECTRIFICATION ASSOCIATION, ONTONAGON, MI 49953
Phone: 906-884-4151 Toll Free: 1-800-562-7128 Office Hours: 8:00 a.m. to 4:30 p.m.
AFTER HOURS CALL SAME PHONE NUMBERS AS ABOVE

Account # 901504401		Reading Dates: 03/15/2004		To 04/15/2004		Days 31	Used Last Yr 1265	Daily Cost 2.77
Meter Number: 16443486		PSCR Factor 0.0187400	Previous Reading	Present Reading	Multiplier	KWH Usage	\$Amount	
Activity Since Last Bill		7709 8356 1.0000 647						
Balance:	73.22	KWH CHARGE						66.77
Total Payments:	-73.22	SERVICE CHARGE						7.00
Other Adjustments:	0.00	WHOLESALE PWR ADJ						12.12
Balance Forward:	0.00	STATE SALES TAX						3.44
		TOTAL AMOUNT DUE						89.33
Billing Date: 04/19/2004		Bill Type: REGULAR BILL		Rate Schedule: 1		Map Location: HBA 033T		
Current Bill Due Date: 05/13/2004		Net Amount Due 89.33		Past Due After: 05/13/2004		Amount With Penalty: 91.05		
<p>If service is interrupted, check your fuses and breakers. If all your service is off, check with your neighbor. Report promptly if you think the trouble is on our system.</p> <p>YOUR NET BILL IS PAYABLE UPON RECEIPT. A 2% LATE CHARGE WILL BE ADDED TO THE AMOUNT DUE IF PAYMENT IS NOT RECEIVED BY THE DUE DATE.</p> <p>The Ontonagon County REA is regulated by the Michigan Public Service Commission, Lansing, Michigan, 1-800-292-9555.</p> <p>Rate schedules, explanation of rate schedules, an explanation of how to calculate the accuracy of the bill and an explanation of fuel clauses are available and will be mailed upon request.</p> <p>REGISTER ANY INQUIRY OR COMPLAINT ABOUT THIS BILL PRIOR TO THE DUE DATE BY WRITING:</p> <p>THE ONTONAGON COUNTY RURAL ELECTRIFICATION ASSOCIATION 500 J. K. PAUL ST. P.O. BOX 97 ONTONAGON, MICHIGAN 49953</p> <p>READ METER THE 25TH OF MONTH</p>								

KBIC 201215