

ATTACHMENT 6

AFFIDAVIT OF

CYNTHIA A. COLLINS

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 CYNTHIA A. COLLINS
IN CONNECTION WITH PLAINTIFF'S MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Cynthia A. Collins, being first duly sworn on oath, hereby deposes and states as follows:

1. I make this Affidavit in connection with the motion for partial summary judgment brought by the Keweenaw Bay Indian Community (the "Community") 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. I have been employed at Baraga Telephone Co. ("BTC"), 204 State St., Baraga, Michigan 49908, for approximately 24 years. My current job responsibilities include overseeing customer billing.

3. BTC provides telephone and internet services to the Community. In September 2005, the Community provided BTC with a completed Michigan Department of Treasury ("Department") form entitled "Michigan Sales and Use Tax Certificate of Exemption" claiming exemption from Michigan sales and use tax on the basis that it is a "Tribal Government/Enterprise." Attached as Exhibit A is a true and correct copy of this completed exemption certificate.

4. In order to determine the Department's position regarding whether it would be appropriate for BTC to rely on the completed exemption certificate, I went to the Department's website and determined that the Department official that I should contact is Defendant Walter Fratzke. I spoke with Defendant Fratzke by telephone in late September 2005, and he asked that I send a copy of the completed exemption certificate to him so that he could review the situation. Attached as Exhibit B is a true and correct copy of my facsimile transmittal and memorandum to Defendant Fratzke dated September 28, 2005, enclosing the completed exemption certificate. Attached as Exhibit C is a true and correct copy of Defendant Fratzke's email message to me dated September 30, 2005, acknowledging receipt of these materials.

5. On October 18, 2005, Defendant Fratzke sent me an email message providing an answer to my question. In the email message, Defendant Fratzke stated that BTC should not accept such exemption certificates from Indian tribes. According to Defendant Fratzke:

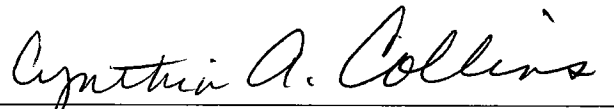
If the Tribe seeks to exempt itself from state taxation, it should contact myself with the appropriate details so that we may evaluate the specific situation and how it comports with federal Indian doctrine. If the State agrees that the specific transaction is preempted from state taxation, then the State will notify the provider of such a determination in writing.

Attached as Exhibit D is a true and correct copy of Defendant Fratzke's email message to me dated October 18, 2005.

6. BTC provides telephone and/or internet services to a number of individual members of the Community. From time to time, BTC has received telephone and in-person requests from Community members to remove charges for Michigan sales and use taxes from BTC's invoices since they are tribal members and therefore should not pay state tax.

7. I have informed one or more Community members that the Department requires that they seek an exemption from Michigan sales and use taxes by sending a letter to Defendant Fratzke, and that the Department will not automatically exempt Community members just because they may have filled out a Michigan exemption certificate.

FURTHER AFFIANT SAYETH NOT.


Cynthia A. Collins

STATE OF MICHIGAN)
) SS
COUNTY OF BARAGA)

Subscribed and sworn to before me
this 25 day of SEPTEMBER, 2006.

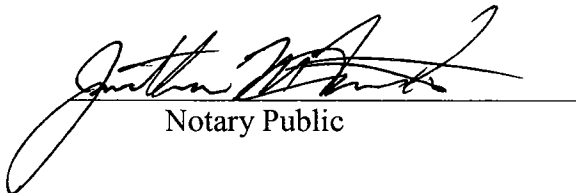

Notary Public

EXHIBIT A

Michigan Department of Treasury, SUW
3372 (Rev. 11-01)

Michigan Sales and Use Tax Certificate of Exemption

TO BE RETAINED IN THE SELLER'S RECORDS - DO NOT SEND TO TREASURY.

This certificate is invalid unless all four sections are completed by the purchaser.

SECTION 1 - CHECK ONE OF THE FOLLOWING

- ☐ One time purchase
- ☒ Blanket certificate (Note: A blanket certificate is valid for four years from the date of signature unless an earlier expiration date is listed below)
Expiration date, if less than four years: _____

The purchaser hereby claims exemption on the purchase of tangible personal property and selected services made under this certificate from BARAGA TELEPHONE CO. and certifies
(Vendor's Name)
that this claim is based upon the purchaser's proposed use of the items or services, or the status of the purchaser.

SECTION 2: ITEMS COVERED BY THIS CERTIFICATE

- ☒ All items purchased
- ☐ Limited to the following items: _____

SECTION 3: BASIS FOR EXEMPTION CLAIM

- ☐ For Resale at Retail - Sales Tax Registration Number: _____
- ☐ For Resale at Wholesale - No Number Required
- ☐ For Lease - Use Tax Registration Number: _____
- ☐ Agricultural Production - No Number Required (Describe) _____
- ☐ Industrial Processing - No Number Required
- ☐ Government Entity, Nonprofit School, Nonprofit Hospital, and Church (Circle type of organization.)
- ☐ Nonprofit Internal Revenue Code Section 501(c)(3) and 501(c)(4) Exempt Organizations (Attach copy of IRS letter ruling).
- ☐ Nonprofit Organizations with an Exempt letter from the State of Michigan (Attach a copy of State's letter)
- ☒ Other (explain): TRIBAL GOVERNMENT/ENTERPRISE

SECTION 4: CERTIFICATION

I declare, under penalty of perjury, that the information on this certificate is true, that I have consulted the statutes, administrative rules and other sources of law applicable to my exemption, and that I have exercised reasonable care in assuring that my claim of exemption is valid under Michigan law. In the event this claim is disallowed, I accept full responsibility for the payment of tax, penalty and any accrued interest, including, if necessary, reimbursement to the vendor for tax and accrued interest.

KEWEENAW BAY INDIAN COMMUNITY
dba OJIBWA CASINOS, OJIBWA BAY INN

Purchaser

797 MICHIGAN AVE.
Street Address

(906)353-4458

BARAGA

MI

49908

Area Code / Telephone No.

City

State

Zip Code

Francis Lapointe
Signature and Title

CFO

7-16-05
Date Signed

FRANCIS LAPOINTE

38-1743340

Name (Print or Type)

Social Security No. or FEIN

EXHIBIT B

Baraga Telephone Company
P.O. Box 9 - 204 State Street
Baraga, MI 49908
Phone 906-353-6644
Fax 906-353-7550

facsimile transmittal

To: Walt Fratzke

DATE: 9/28/2005

From: Cynthia A. Collins

Email: ccollins@up.net

Re: Tribal Tax Issue

Remarks:





Date: September 28, 2005

To: Walt Fratzke
Michigan Department of Treasury

Re: Michigan Sales and Use Tax Exemption

Pursuant to our conversation earlier today, I am attaching a copy of a Michigan Sales and Use Tax Certificate of Exemption from the Keweenaw Bay Indian Community (KBIC). As you can see in the attachment they are claiming exemption on the basis that they are a Tribal Government/Enterprise.

We provide them with Local Telephone Service, for which we have been charging them the appropriate state taxes. They have withheld paying the state taxes for the most recent bill that we have rendered to them on some newly installed services.

Please advise me on how to proceed with this matter and any future questions concerning tax exemption eligibility for any of the KBIC services that we provide to them.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia A. Collins".

Cynthia A. Collins

Michigan Department of Treasury, SUW
2372 (Rev. 11-01)

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The purchaser hereby claims exemption on the purchase of tangible personal property and selected services made under this certificate from BARAGA TELEPHONE CO. and certifies
(Vendor's Name)
that this claim is based upon the purchaser's proposed use of the items or services, or the status of the purchaser.

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- ☐ For Resale at Retail - Sales Tax Registration Number: _____
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☐ Government Entity, Nonprofit School, Nonprofit Hospital, and Church (Circle type of organization.)
☐ Nonprofit Internal Revenue Code Section 501(c)(3) and 501(c)(4) Exempt Organizations (Attach copy of IRS letter ruling).
☐ Nonprofit Organizations with an Exempt letter from the State of Michigan (Attach a copy of State's letter)
☒ Other (explain): TRIBAL GOVERNMENT/ENTERPRISE

SECTION 4: CERTIFICATION

I declare, under penalty of perjury, that the information on this certificate is true, that I have consulted the statutes, administrative rules and other sources of law applicable to my exemption, and that I have exercised reasonable care in assuring that my claim of exemption is valid under Michigan law. In the event this claim is disallowed, I accept full responsibility for the payment of tax, penalty and any accrued interest, including, if necessary, reimbursement to the vendor for tax and accrued interest.

KEWEENAW BAY INDIAN COMMUNITY
dba OJIBWA CASINOS, OJIBWA BAY INN

Purchaser

797 MICHIGAN AVE.

Street Address

(906) 353-4458

Area Code / Telephone No.

BARAGA

City

MI

State

49908

Zip Code

Signature and Title

FRANCIS LAPOINTE

Name (Print or Type)

CFO

Date Signed

9-16-05

Social Security No. or FEIN

EXHIBIT C

Keweenaw Bay Indian Community

Subject: Keweenaw Bay Indian Community
From: "Walter A Fratzke" <FratzkeW@michigan.gov>
Date: Fri, 30 Sep 2005 10:07:40 -0400
To: <ccollins@up.net>

Cynthia Collins:

I just wanted to let you know that your fax was received and that I am reviewing the situation. I will get back to you as soon as possible.

Walter A Fratzke
Michigan Department of Treasury
430 W. Allegan
Lansing, MI 48922
Work 517.241.2185
Fax 517.241.3825

EXHIBIT D

----- Original Message -----

From: "Walter A Fratzke" <FratzkeW@michigan.gov>

To: <ccollins@up.net>

Sent: Tuesday, October 18, 2005 1:55 PM

Subject: Exemption Certificate Used by KBIC

> Cynthia Collins:

>

> Pursuant to our September 28, 2005 conversation and your subsequent fax,
> you have sought guidance with regards to whether or not Baraga Telephone
> Company should accept a Michigan tax exemption certificate (form 3372)
> submitted by the Keweenaw Bay Indian Community.

>

> The answer to your question is no, your company should not accept such
> certificates from any Indian tribe given the unique status and resulting
> complexities associated with such tribes. If the Tribe seeks to exempt
> itself from state taxation, it should contact myself with the appropriate
> details so that we may evaluate the specific situation and how it comports
> with federal Indian doctrine. If the State agrees that the specific
> transaction is preempted from state taxation, then the State will notify
> the provider of such a determination in writing. This notification should
> then be held, with any other documentation, by the provider for
> verification of the exempt treatment. If the State does not agree with
> the Tribe as to the appropriate treatment of the transaction, it may
> present additional information to the Department to further support its
> claim or appeal the Department's position as it deems necessary.

>

> Please let me know if you have any further questions.

>

> Sincerely,

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