

EXHIBIT ZZ

Excerpts of Deposition of Walter Fratzke (May 2, 2007)

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

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

-vs-

File No. 2:05-CV-0224
Honorable Quist

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.

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1 DEPONENT: WALTER A. FRATZKE	1 Deposition Exhibit 4 107 107
2 DATE: Wednesday, May 2, 2007	2 (1977 Tax Agreement)
3 TIME: 9:00 a.m.	3 Deposition Exhibit 5 132 132
4 LOCATION: One Michigan Avenue, Suite 900	4 ('94 Letter)
5 Lansing, Michigan	5 Deposition Exhibit 6 138 139
6 REPORTER: Heidi A. Cook, RPR, CSR #4827	6 (Audit Report)
7	7 Deposition Exhibit 7 143 143
8 APPEARANCES:	8 (Earlier Audit Report)
9	9 Deposition Exhibit 8 146 146
10 SKIP DUROCHER	10 (Deficiency Audit Report)
11 Dorsey & Whitney, LLP	11 Deposition Exhibit 9 147 148
12 50 South Sixth Street, Suite 1500	12 (Letter from J. Bittorf)
13 Minneapolis, Minnesota 55402	13 Deposition Exhibit 10 149 149
14 (612) 340-7855	14 (Hearing Determination)
15	15 Deposition Exhibit 11 151 152
16 Appearing On behalf of Plaintiff.	16 (Decision and Order)
17	17 Deposition Exhibit 12 158 158
18 KEVIN J. MOODY	18 (Memo from J. Summers-Haas)
19 Miller, Canfield, Paddock and Stone, P.L.C.	19 Deposition Exhibit 13 163 163
20 One Michigan Avenue, Suite 900	20 (Final Bills)
21 Lansing, Michigan 48933	21 Deposition Exhibit 14 167 167
22 (517) 483-4989	22 (Monthly Statement)
23	23 Deposition Exhibit 15 169 169
24 Appearing On behalf of Defendants.	24 (STAR Assessment)
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3 ATTORNEY'S NAME EXAMINATION RE-EXAMINATION	3 Deposition Exhibit 17 177 177
4 -----	4 (Fax from J. Baker)
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24 (Decision)	24 (8/29/97 Letter)
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<p style="text-align: right;">46</p> <p>1 various cases involved, see how that comports with Michigan</p> <p>2 statute, and if there are any federal statutes out there that</p> <p>3 touch on those. And then discussing with the executive</p> <p>4 offices as to where Treasury would be in that particular</p> <p>5 situation, taking a position, and then communicating that</p> <p>6 position.</p> <p>7 Q Okay. The next one is implementing policies set by</p> <p>8 Treasury's executive office. Do you see that, it's right at</p> <p>9 the bottom of the page?</p> <p>10 A Yes.</p> <p>11 Q What's the executive office?</p> <p>12 A The treasurer and the deputy treasurers.</p> <p>13 Q All right. And can you identify for me any policies set by</p> <p>14 Treasury's employment office with respect to sales and use</p> <p>15 tax that affect tribes or tribal members?</p> <p>16 A Executive office?</p> <p>17 Q Yes, I'm sorry.</p> <p>18 A Could you say that again, please?</p> <p>19 Q Sure. You say here that you're implementing policies set by</p> <p>20 the Treasury's executive office, so I'm asking you to</p> <p>21 identify for me those policies that have been set by the</p> <p>22 executive office with respect to sales and use tax regarding</p> <p>23 tribes and tribal members?</p> <p>24 A Well, again, with -- we make a decision on whether an issue</p> <p>25 is taxable, either under the tax agreement or Federal Indian</p>	<p style="text-align: right;">48</p> <p>1 the user and consumer of that tangible personal property and</p> <p>2 is there subject to use tax.</p> <p>3 Q So in answer to my question, then, is Michigan's position</p> <p>4 that the use tax falls on the user or purchaser?</p> <p>5 A That's correct.</p> <p>6 Q Okay. And there is a written policy with respect to</p> <p>7 construction?</p> <p>8 A There was a, I believe it was a memo that was circulated</p> <p>9 under June Summers-Haas' name --</p> <p>10 Q All right.</p> <p>11 A -- to that effect.</p> <p>12 Q And has that been distributed to the public?</p> <p>13 A I don't -- I don't know.</p> <p>14 Q All right. Do you consider it public information?</p> <p>15 A I don't know. I'm not sure.</p> <p>16 Q Do you know whether it's been produced in this case?</p> <p>17 A I'm not sure.</p> <p>18 Q All right.</p> <p>19 MR. DUROCHER: Kevin, can you take a look at that?</p> <p>20 MR. MOODY: I'll talk to Walt. I'm not sure, it</p> <p>21 may have been something -- if it was an internal memo</p> <p>22 discussing policy that was part of the deliberative process,</p> <p>23 it may have been pulled, or I'm not familiar with it.</p> <p>24 MR. DUROCHER: Can you talk about that during a</p> <p>25 break and let me know?</p>
<p style="text-align: right;">47</p> <p>1 Doctrine, and that's how I will respond to anyone inquiring</p> <p>2 as to what our position is.</p> <p>3 Q Is that set out in writing?</p> <p>4 A The only thing that I recall being set out in writing were</p> <p>5 construction, which was deemed taxable.</p> <p>6 Q And what do you mean by construction?</p> <p>7 A Contractors contracting with Indian tribes or members. The</p> <p>8 contractor is considered a taxable entity, and is not, in our</p> <p>9 view, preempted subject to tax under State statute.</p> <p>10 Q That would be a sales tax?</p> <p>11 A It depends on what the facts are.</p> <p>12 Q So it could be a sales or use tax?</p> <p>13 A Yes.</p> <p>14 Q And in that situation, if it's the sales tax, is it</p> <p>15 Michigan's position that the sales tax falls, the legal</p> <p>16 incidence of the sales tax falls on the contractor?</p> <p>17 A No, sales tax, the legal incidence falls on the retailer.</p> <p>18 Q Okay. And so if there's a construction contract, who would</p> <p>19 the retailer be in the construction contract?</p> <p>20 A Whoever the vendor is they purchase the items from.</p> <p>21 Q I see. With respect to use tax, does Michigan have a</p> <p>22 position on where the legal incidence of the use tax falls?</p> <p>23 A If the contractor can purchase tax exempt pursuant to any</p> <p>24 statute, and sales tax is not collected, and the contractor</p> <p>25 later affixes that property, the contractor is deemed to be</p>	<p style="text-align: right;">49</p> <p>1 MR. MOODY: Yes.</p> <p>2 MR. DUROCHER: I think it would be responsive to</p> <p>3 our request, and I would like to know your position on</p> <p>4 producing it, I don't think I've seen it.</p> <p>5 Q (BY MR. DUROCHER) Any other policies that you're aware of</p> <p>6 that are in writing with respect to sales and use tax</p> <p>7 regarding Native Americans?</p> <p>8 A No.</p> <p>9 Q Okay.</p> <p>10 A I'm not aware of any.</p> <p>11 Q How about with respect to offsets affecting tribes and tribal</p> <p>12 members, do you have any policies that have been implemented</p> <p>13 or that have been set by the Treasury's executive office with</p> <p>14 respect to offsets?</p> <p>15 A Not specifically regarding tribes, no, not that I'm aware of.</p> <p>16 Q Okay. How about generally?</p> <p>17 A I'm really not involved in that aspect of it very much, you</p> <p>18 may want to touch base with Mike on that. I know I got</p> <p>19 involved in 2002 when we offset with KBIC, I contacted Mike</p> <p>20 at that particular time, and I know I contacted him again</p> <p>21 this time.</p> <p>22 Q And you what?</p> <p>23 A I contacted him again this time.</p> <p>24 Q In 2005?</p> <p>25 A Yes.</p>

<p style="text-align: right;">102</p> <p>1 Q Okay. And then similarly, offsets with respect to Native 2 Americans of Indian tribes, you're not aware of any written 3 policies with respect to that? 4 A No, I'm not aware of any written policies, but I will say 5 that, you know, as with the tribe, Keweenaw Bay, when it 6 happened, I was contacted by the tribe and then I'm the 7 conduit, because we want all issues to funnel through me, 8 including a collection issue. 9 Q And I've seen a memo by Nancy Taylor that basically says that 10 you're the conduit? 11 A I'm the guy. 12 Q You're the guy? 13 A Yes. 14 Q So before that 2005 offset could take place, it had to be 15 approved by you? 16 A No, not necessarily. These are -- this is my understanding, 17 that these are programmatic things, and that I think they 18 do -- a lot of these things are automatic. I mean, the State 19 of Michigan has five million income tax filers and hundreds 20 of thousands of business filers, and these systems have to be 21 administratively functional. So I mean, I'll let, you know, 22 Mike talk to that a little bit more, I don't want to go 23 outside of my area here, but there -- I think if there was 24 going to be a conscious effort to do collection activity then 25 I might be involved at that point, but if it's programmatical</p>	<p style="text-align: right;">104</p> <p>1 don't know the timing of it, it seems like it happened pretty 2 quickly after the first one did, but that's -- 3 Q We'll look at some documents about that. Do you know whether 4 Treasury has conducted offsets involving Federal program 5 funds in any other occasion, other than with respect to KBIC? 6 A I can't say that I know, I can't -- I don't know for sure. 7 Q You're not aware of any, though? 8 MR. MOODY: I will object to lack of foundation. 9 He testified he doesn't do collections and he wasn't aware of 10 any. 11 THE WITNESS: I just don't know of any. 12 Q (BY MR. DUROCHER) Right. Because if there was an offset 13 with respect to another Indian tribe involving federal 14 program funds, you'd expect that you would have been made 15 aware of that? 16 A I expect that I would have been made aware of that, and none 17 come to mind, I'm just not aware of any. 18 Q And how about, putting aside Federal program funds, how about 19 offsets generally with respect to Indian tribes, do you know 20 whether there have been other offsets other than KBIC? 21 A The only one -- I couldn't tell you that, that's 28 1f, 22 confidentiality. There are very few tribes in the State of 23 Michigan, and I can't take the chance that you could impute 24 from any information I would say, and if I'm in -- I just, 25 I'm going to be very cautious in that area, we've talked</p>
<p style="text-align: right;">103</p> <p>1 or something like that, as in these, and I guess that's why I 2 pointed that out, that I was not notified ahead of time that 3 this would happen. 4 Q So neither in 2002 nor 2005 you were notified in advance? 5 A Yeah, I don't recall being notified in advance on those. 6 Q Of the very first offset? 7 A The 2002 or the 2005, I don't recall advanced notice on 8 either one of them. 9 Q Okay. And then there were several offsets that took place in 10 2005, correct? 11 A I don't remember what the breakdown was, but I know there was 12 more than one. 13 Q And you became aware after the first one, right? 14 A I think it was John who made me aware of it and then I 15 started looking into it. 16 Q John Baker? 17 A John Baker, that's correct, thank you. 18 Q And then additional -- and Mr. Baker contacted you and 19 objected? 20 A Yeah, I'm sure it was an objection. I mean, I don't remember 21 exactly what he said, but he didn't concede the issue. 22 Q Okay. And then additional offsets took place, at least one 23 additional offset took place after -- 24 A I believe that it was at least in two separate ones, I 25 believe it was an initial one and another one followed up. I</p>	<p style="text-align: right;">105</p> <p>1 about that before. 2 Q Well, I think you're reading the statute a little too 3 conservatively there, because I think as long as you're not 4 identifying the name of the taxpayer, and there certainly is 5 more than one tribe that could be, you know, experiencing 6 these offsets, so I'm not asking for that identity, I'm just 7 asking whether you know whether the department has ever 8 conducted an offset on taxes involving any other Indian tribe 9 in the State of Michigan, and I'm not going to ask you 10 anymore than that, I'm just going to ask you that question? 11 A If that's where it ends, and I'm still a little uncomfortable 12 about that, and I'm not aware of any. 13 Q Okay. Let's switch gears a little bit and talk about the 14 1977 tax agreement. You've said you've read the agreement, 15 think a couple different times, right? 16 A I know I read it back in, you know, 2002, I believe it was, 17 when the first one -- 18 Q Okay. 19 A And I'm sure I've looked at it since then briefly. 20 Q What's your -- what's your understanding of the agreement 21 terms as they relate to sales and use taxes? 22 A Do you have anything more specific on that? 23 Q Just wondering what your recollection is as to how this 1977 24 tax agreement treats sales and use taxes with -- 25 MR. MOODY: Well, I'm going to object as being</p>

<p style="text-align: right;">114</p> <p>1 affirmatively collect additional monies from the tribe?</p> <p>2 MR. MOODY: I believe he's already answered that.</p> <p>3 MR. DUROCHER: I don't think he has.</p> <p>4 THE WITNESS: I don't know, I feel like I should</p> <p>5 read it again; to be put on record as saying that it's not in</p> <p>6 there, which seems to be what you want me to say.</p> <p>7 Q (BY MR. DUROCHER) What I'm asking is based upon your</p> <p>8 understanding of the agreement, do you know whether there's</p> <p>9 any language in here that gives the State the right or that</p> <p>10 sets out the State's right to not only deduct amounts due to,</p> <p>11 allegedly due to the State, but also the State's right to</p> <p>12 affirmatively collect additional monies from the tribe?</p> <p>13 A I think that that, you know, I can only speculate at this</p> <p>14 point, and this time it sounded a little broader, that there</p> <p>15 was some language. Well, you know, again, with the licensure</p> <p>16 provisions and what goes with that, it was obviously the</p> <p>17 State's understanding that that right existed, and that's</p> <p>18 what happened.</p> <p>19 Q Right. And you, based on the 1977 agreement and the audits,</p> <p>20 the State has now performed an offset which was run by you as</p> <p>21 the head of the liaison for Native American affairs, right?</p> <p>22 A Well, it was run by me after the fact.</p> <p>23 Q Okay. But in any event, when Mr. Baker objected you looked</p> <p>24 into the issue, correct?</p> <p>25 A Started looking into the issue.</p>	<p style="text-align: right;">116</p> <p>1 derive additional amounts due, I guess, based on that. But,</p> <p>2 again, I'm in an area where I'm just reading this after the</p> <p>3 fact just like you or the Judge will.</p> <p>4 Q Right. And so the language that you're referring to is</p> <p>5 either the licensure language, can you show me where that is?</p> <p>6 A Well, I can look at it and try.</p> <p>7 MR. MOODY: Well, if we're going to quiz him on</p> <p>8 this, I think we should take a break and allow him to look at</p> <p>9 the agreement.</p> <p>10 MR. DUROCHER: Well, and that's fine. All I'm</p> <p>11 asking for is whether or not you're aware of provisions that</p> <p>12 allow for either deductions or the --</p> <p>13 MR. MOODY: And he's answered that to the best of</p> <p>14 his ability, and if he's going to be locked into, or being</p> <p>15 unable or able to identify something, I think it's only fair,</p> <p>16 then, you let him read the agreement, that's all.</p> <p>17 MR. DUROCHER: And he's identified two areas, I</p> <p>18 guess, a licensing area, and I was just asking where that is,</p> <p>19 if it's in here -- if you know where it is, great --</p> <p>20 THE WITNESS: I think it was in the beginning</p> <p>21 somewhere. I think it talked about two situations, one K-BID</p> <p>22 store had to be licensed, and that's on the top of page</p> <p>23 three, I see, the K-BID C store, which I understand to be the</p> <p>24 tribal store, will become licensed.</p> <p>25 MR. DUROCHER: Okay.</p>
<p style="text-align: right;">115</p> <p>1 Q Okay. And so my question is, are you aware of a provision in</p> <p>2 the 1977 agreement that gives the State the right to do this?</p> <p>3 MR. MOODY: Asked and answered.</p> <p>4 THE WITNESS: Yeah, you know, I think that's the</p> <p>5 best answer I have at this particular point, you know,</p> <p>6 there's a lot of statements in here that, again, with the</p> <p>7 licensure provisions that goes with licensure, the ability to</p> <p>8 follow through on situations, entering into an agreement,</p> <p>9 it's inherent that you have enforcement capabilities with</p> <p>10 that, you know. That's my response.</p> <p>11 Q (BY MR. DUROCHER) And so other than the licensure language</p> <p>12 that you're referring to, are you aware of any other language</p> <p>13 that specifically provides for the State's ability to either</p> <p>14 deduct or to affirmatively seek additional monies from the</p> <p>15 tribe?</p> <p>16 A Well, it talks about deduction, now that I think about it,</p> <p>17 you know, from the computation, if there's going to be an</p> <p>18 additional gas station and then further reduction, I think</p> <p>19 there's meant to be the formula deduction for RTM purchases</p> <p>20 from the K-BIT store.</p> <p>21 Q Okay.</p> <p>22 A It talks about, again, RTMs having to pay taxes, both on and</p> <p>23 off reservation, except where accepted, and that was the</p> <p>24 K-BID store and those enumerated items. You know, that</p> <p>25 implies some responsibility on the other side, and that could</p>	<p style="text-align: right;">117</p> <p>1 THE WITNESS: And then I think it was on the --</p> <p>2 page four, It is understood and agreed that all persons</p> <p>3 making retail sales within the exterior boundaries of the --</p> <p>4 I think that's where it indicates it otherwise.</p> <p>5 Q (BY MR. DUROCHER) All right. And then with respect to the</p> <p>6 licensure, is your --</p> <p>7 A And it says adjustment on page three, too. I mean, first,</p> <p>8 that I don't remember seeing the word adjustment, but there's</p> <p>9 the word adjustment, so I guess I stand corrected already.</p> <p>10 Q Right. It talks -- it says, if KBIC, or Keweenaw Bay Indian</p> <p>11 Community begins to operate a gasoline service station, a</p> <p>12 further reduction will have to be made to the lump sum refund</p> <p>13 of sales tax to the tribe?</p> <p>14 A Right.</p> <p>15 Q And then it says, This adjustment, right.</p> <p>16 A Right.</p> <p>17 Q So it's referring to that deduction?</p> <p>18 A That particular one. I think there's another one, too, on</p> <p>19 the K-BID store sales.</p> <p>20 Q Okay.</p> <p>21 A And then you were asking for the other licensing that was on</p> <p>22 page four, the first full paragraph, It is understood and</p> <p>23 agreed all persons making -- that's to include tribes, duly</p> <p>24 enrolled member of the tribe who resides on the reservation.</p> <p>25 And then the following paragraph it talks about, Pay</p>

<p style="text-align: right;">118</p> <p>1 sales tax to all sellers regardless whether the seller is 2 located on or off the reservation. And that's where I got 3 that from. 4 Q Where you got what from? 5 A I had made a statement that the RTMs were to pay tax on or 6 off reservation on all purchases, that's where I got that 7 from. 8 Q Oh, I see. So just getting back, then, to sort of where this 9 started out, just talking about whether or not there was 10 language in here authorizing deductions or reductions. And 11 then went beyond that to ask about whether there was language 12 authorizing an affirmative act of collecting additional money 13 beyond a reduction. And you've identified for me two areas: 14 One where it talks about adjustments based upon, or that, you 15 know, relate to deductions, I think that's on page three, 16 right? 17 A Uh-huh. 18 Q And then you also mentioned several different places where 19 there's licensure language? 20 A Well, licensure language, and then also RTMs having to pay 21 tax. 22 Q Right. Right. The, the licensure, now, explain to me how 23 that fits in with the deductions or the ability to -- 24 A Well -- 25 Q Well, let me finish. For the deductions or the State to</p>	<p style="text-align: right;">120</p> <p>1 A Jim Brulla was the only one. 2 Q Brulla was, I guess, the only one? 3 A Right. 4 Q And there's no other information you have about the operation 5 of this agreement other than what you've told me? 6 MR. MOODY: Are you talking about contemporaneously 7 when he took over in 1997? 8 MR. DUROCHER: Exactly. 9 THE WITNESS: Repeat your question again. 10 Q (BY MR. DUROCHER) Sure. I'm just trying to make sure that 11 there's not any other conversations that you've had with 12 people about the contemporaneous operation of the 1977 tax 13 agreement? 14 A No, I don't recall talking to anyone about that. When I came 15 in, you know, the idea was moving forward. And as I said 16 before, I wasn't even sure there was a tax agreement in 17 existence, but thought that there may, but we were moving 18 forward with new ones and -- 19 Q Okay. All right. Do you have any understanding as to 20 whether the community agreed to pay sales tax on its sales on 21 the reservation, under the 1977 tax agreement? 22 A Did I what? 23 Q Do you have any understanding as to whether the Community in 24 the 1977 tax agreement agreed to pay sales tax on its sales? 25 A I don't know.</p>
<p style="text-align: right;">119</p> <p>1 affirmatively collect a tax from the tribe? 2 A Are you asking me specifically, or are you saying in 3 general? I thought -- repeat yourself, please. 4 Q You bet. Because I was asking you whether you were aware of 5 provisions in the contract, right? 6 A Right. 7 Q And you mentioned these two different areas, one of them 8 being licensure? 9 A Right. 10 Q And so I was just asking how you relate the licensure to the 11 State's ability to deduct or, you know, affirmatively 12 collect? 13 A In general, if someone licenses, then, you know, they're 14 subjecting themselves to the regulatory authority, and, you 15 know, with licensure comes, you know, payment, filing and the 16 other things that go with that particular tax. I mean, you 17 license, you know, for something to be able to act in that 18 capacity and meet the requirements under statute, or the 19 agreement, whatever it may be and that's what I was referring 20 to. 21 Q Okay. All right. And I think you've already told me, but I 22 want to make sure I'm right on this. You've already told me 23 about the conversations you had with people who would have 24 been involved in either the negotiation or operation of the 25 1977 tax agreement, you've mentioned your conversation --</p>	<p style="text-align: right;">121</p> <p>1 Q Okay. How about with respect to whether the Community agreed 2 to collect use tax from its customers at the reservation? 3 A I don't know. 4 Q How about whether -- do you have any understanding whether 5 the Community, in this 1977 agreement, agreed that it would 6 be liable to the State for any failure to collect a use tax 7 from its customers? 8 A Repeat the first part of the question. 9 Q Sure. 10 A Is it my -- 11 Q Do you have any understanding whether the Community, within 12 the 1977 agreement, agreed that it would be liable to the 13 State for any failure to collect a use tax from any of the 14 Community's customers? 15 A The only information I have would be what I read in this 16 agreement, which we've already talked about. And I do recall 17 in the notes of the summary, audit summary or something like 18 that, where it was my understanding that the tribe agreed 19 with the figures that were due with the audit results. And 20 that they were withholding payment until there were 21 substantive talks that were going to take place with regards 22 to a new tax agreement. And that would be the only two areas 23 I would derive any understanding from. 24 Q You never had any of your own conversations with the 25 Community where there was any concession or agreement?</p>

<p style="text-align: right;">122</p> <p>1 A I don't recall any concessions based on my own 2 conversations. I did talk to Chad DePetro, then attorney, 3 during the 2002 offsets, and, you know, made him aware that 4 we felt this money was due. And we were looking for that 5 payment with the signing of the agreement as part of that 6 process. 7 Q What was Mr. DePetro's response? 8 A He would get back to me, it was my understanding that he was 9 going to go to the tribal council and they were looking into 10 it, and I was expecting Keweenaw Bay to show up for the 11 signing and have the tax agreement with them, and they 12 didn't. They had a representative there, but they did not 13 enter into the tax agreement at that time, and I don't recall 14 the issue being revisited at that point. 15 Q But Mr. DePetro, neither Mr. DePetro or anyone from the tribe 16 told you that the tribe agreed to pay those amounts? 17 A No, he did not tell me that they agreed to that, he said they 18 would look into it and I never heard back from them, there 19 were lots of things going on at the time. 20 Q Okay. All right. 21 MR. DUROCHER: It's 12:30, we'll take a lunch 22 break. 23 (Whereupon, a lunch break was taken.) 24 MR. MOODY: I just handed to Mr. Durocher the memo 25 that was referred to, the June Summers-Haas memo from October</p>	<p style="text-align: right;">124</p> <p>1 Q And from a note on my stack here, it looks like Bates number 2 985 through 988, and 1034 through 1037 appear to be a letter, 3 maybe two copies of a letter that are privileged, and you're 4 going to put that on a privilege log? 5 MR. MOODY: That's my understanding, yes. 6 Q (BY MR. DUROCHER) Mr. Fratzke, you're familiar, generally, 7 with this stack of documents, at least to testify that it 8 came from the Department of Treasury? 9 A Yeah, my associate was looking for some files for me, found 10 them, I looked, and as I said, At a couple of them and I 11 said, This looks like this is something that is, you know, 12 should be the discovery thing, so I had it turned over to our 13 attorneys. They came over and picked it up that very day. 14 Q This was yesterday? 15 A Yes. 16 Q And it looks like, from my glance through, this document is 17 from 1977 through 1982? 18 A That sounds -- you know, I saw 1977 and I don't recall 19 seeing, maybe a 1980 or something like that, and it seemed to 20 be that time, so off it went. 21 Q But anyway, as far as you know, these are business records of 22 the Department of Treasury that were kept in the ordinary 23 course of the Department of Treasury's business? 24 A Yeah. 25 Q Okay.</p>
<p style="text-align: right;">123</p> <p>1 26, 1999. Without waiving the deliberative process 2 privilege, Mr. Fratzke had testified about this and he 3 testified about it being an internal memo. We believe 4 there's a portion of that that is still part of the process, 5 but because of his testimony and everything, and like I say, 6 without waiving anything further, we turn it over to you. 7 MR. DUROCHER: Thank you. And this is the whole 8 memo? 9 THE WITNESS: Yes. 10 MR. MOODY: Yes. 11 MR. DUROCHER: Thank you. You're right, it is 12 fairly short. And it's Bates number 1080. And why don't I 13 just make that an exhibit. Do you have extra copies of it? 14 MR. MOODY: That's the only one right now, let 15 me -- 16 MR. DUROCHER: Well, how about when we take our 17 next break, if you can make some copies. 18 MR. MOODY: Okay. 19 Q (BY MR. DUROCHER) So we're back on the record and a couple 20 of things, one, why don't we -- I do want to just briefly 21 mention the stack of documents that was produced today, I 22 think it ranges from Bates number 861 through 1079, but I 23 guess there's a few pages that have been withdrawn or taken 24 out for privilege, is that right? 25 A Yes.</p>	<p style="text-align: right;">125</p> <p>1 A And I think they were from the old commissioner's office or, 2 something like that, from way back when. 3 Q And I quickly glanced through them over lunch, didn't see 4 anything that I felt the need to question you about right 5 now -- 6 A Okay. 7 Q -- but during the break Mr. Moody and I talked and I said 8 that we'd like a chance to look over these a little bit more 9 closely. In the event that there is a question or some 10 questions we have with respect to those documents, perhaps we 11 can reconvene by telephone just for purposes of covering 12 that? 13 MR. MOODY: And I think that's fair, if you take a 14 look at the documents, because we have taken a quick look at 15 them and tried to provide you with what we believe you're 16 entitled to, and pulling out privileged documents, et 17 cetera. If you see things in here that there's a reference 18 to something else I don't know whether we have or don't have, 19 go ahead and make a specific document request. We'll both 20 then have more time to take a look at this stack of documents 21 to see, so we can provide more productive time to question 22 Mr. Fratzke. 23 MR. DUROCHER: Fair enough. And in that regard, I 24 should follow up on one other topic, which is the 30(b)(6) 25 depositions. We'd sent out 30(b)(6) notice, you and I have</p>

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1 had a lot of E-mail exchange over the notice.

2 MR. MOODY: Yes. We should put that on the record.

3 MR. DUROCHER: And you indicated that you felt that
4 there was really no one within, you correct me if I'm wrong,
5 but you felt there was really no one within the department
6 that could testify very fully about the various topics.

7 MR. MOODY: We have met inquiries, which is
8 actually why Walt ended up talking to Jim Brulla, as he
9 testified earlier. We -- I'm not so sure that 30(b)(6)
10 necessarily would apply to these individual defendants, but
11 we understood the request and took it in good faith. We
12 looked -- I identified two individuals for you that we
13 thought might have information, Stan Borawski and Jim
14 Brulla. Neither one of them is in our control, we disclosed
15 that to you. I don't know, at this moment, I think it's
16 unlikely that we would use them as witnesses, but we reserve
17 that right.

18 Given all that, because Walt is the main Native American
19 tax individual at Treasury, we identified him as the most
20 likely person to fulfill your 30(b)(6) request, although,
21 mostly goes back to 1977 and we just don't have that kind of
22 institutional history.

23 MR. DUROCHER: For purposes of today, though,
24 you're willing to agree to expedite things, if my questions
25 on those topics would be treated by Mr. Fratzke as speaking

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1 for the department as a 30(b)(6) representative.

2 MR. MOODY: Well, I guess you can ask Mr. Fratzke
3 whether he has any responsibilities. I don't know that it's
4 fair because it goes back to 1977, unless his testimony is
5 that, yes, I administered this portion of it, or I had
6 knowledge of this. I guess I wouldn't go so far as to say
7 that he could speak for the department on that. What the
8 department did in 1977 or 1980, unfortunately, unless
9 Mr. Fratzke does have specific knowledge because they've
10 talked about it or there were memos about it, I think that
11 would be unfair to ask him.

12 MR. DUROCHER: Well, we could have gone forward
13 with a 30(b)(6) and you would have produced him in that
14 sense, and so rather than do two separate depositions, I
15 thought I'd just ask him --

16 MR. MOODY: Oh, certainly, certainly. Right, I'm
17 not suggesting you need to do two different depositions, you
18 can ask him, but I guess, as I think you've learned before,
19 he has some knowledge of the agreement in the things you
20 asked for, but it's limited.

21 MR. DUROCHER: No, I understand that, I just want
22 to make sure you're not, you weren't suggesting that I should
23 set up a separate 30(b)(6) deposition.

24 MR. MOODY: No, no.

25 MR. DUROCHER: Okay. Thank you.

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1 Q (BY MR. DUROCHER) All right. So rather than go through the
2 specific topics, you know, seriatim, I'm just going to cover
3 them as we talk through your deposition today. And I
4 understand for most of these topics you don't have personal
5 information, but maybe for some of it you do and some of it
6 you have information based upon your review of department
7 documents, correct?

8 A Uh-huh, I'll do the best that I can, yep.

9 Q Okay. Back to the 1977 agreement. Maybe you've answered
10 this already, but in your view, does the agreement permit
11 sales tax audits?

12 A Again, yeah, I would give you the same answer that, pointing
13 to the same places that I've pointed to, in general, you
14 know, on page 35 it talks about State taxing authority, and I
15 think there are provisions in there about if something is
16 found improper by a Court or something like that. You know,
17 there could be other tax, things that are not covered by this
18 agreement. Again, in general, the Treasury thought that it
19 had the ability to do these things, we thought by the tribe
20 allowing the State to come in and its agreeing to that fact,
21 and given the notes that I read way back when when I read the
22 audit stuff, that all implied to me that this was routine,
23 this was the way it was working. That's what I know about
24 it.

25 Q Because the licensure reference that you'd made earlier on

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1 page three --

2 A Okay.

3 Q -- I believe that referred to the K-BID C store, right?

4 A Yes.

5 Q K-BID C store, you understand that is no longer in operation?

6 A I think that there was something somewhere that it's not in
7 operation; I'm sure it's not now in operation, in 2007.

8 Q Right.

9 A You know, when it -- if it did go out, I'm not sure when it
10 did go out of business.

11 Q You're not aware that it went out of business in 1982?

12 Counsel just pointed you to something in the agreement, I'm
13 taking it --

14 MR. MOODY: Page four.

15 THE WITNESS: Oh, yeah, this is something that we
16 pointed out earlier.

17 Q (BY MR. DUROCHER) What's that?

18 A Everyone is required to do that. You know, I'm not 100
19 percent --

20 Q Wait, you mentioned something, but --

21 MR. MOODY: Go ahead.

22 THE WITNESS: I'm sorry. It's what I pointed out
23 to you before about all retail establishments within the
24 reservation needing to be licensed for Michigan sales tax.

25 Q (BY MR. DUROCHER) Well, actually, it says, All persons

<p style="text-align: right;">130</p> <p>1 making retail sales, correct?</p> <p>2 A Right.</p> <p>3 Q And --</p> <p>4 A Is that different?</p> <p>5 Q Well, I don't know if it's different or not. I guess, do you</p> <p>6 think it's different?</p> <p>7 A From what I said?</p> <p>8 Q You said, I think, all retail operations?</p> <p>9 A Maybe you can read me back what I said, then.</p> <p>10 Q Sure, that sounds like a fair way to go.</p> <p>11 (Requested portion of the record</p> <p>12 was read by the reporter.)</p> <p>13 Q (BY MR. DUROCHER) And then you pointed to page four and I</p> <p>14 pointed out that page four actually talks about all persons</p> <p>15 making retail sales must obtain a Michigan sales tax</p> <p>16 license. Is there a difference between an establishment and</p> <p>17 a person, in your view, or no?</p> <p>18 A I think that's intended to mean the same thing, that's the</p> <p>19 way I intended it when I stated it that way.</p> <p>20 Q You don't know -- you've never had any conversation with</p> <p>21 anyone --</p> <p>22 A A person.</p> <p>23 Q You've got to let me finish.</p> <p>24 A I'm sorry.</p> <p>25 Q You never had any conversation with anyone who was</p>	<p style="text-align: right;">132</p> <p>1 know if there were audits, if that was audit stuff or not,</p> <p>2 and I looked at that, but I didn't read it carefully to be</p> <p>3 able to unequivocally say.</p> <p>4 Q Because I didn't see any documents reflecting audits for '95,</p> <p>5 '96 or '97, but it sounds like you don't know whether there</p> <p>6 were or not?</p> <p>7 A I'm not aware of any.</p> <p>8 Q Okay. I take it, then, you don't know why, if there weren't</p> <p>9 any, you don't know why there weren't any?</p> <p>10 A Well, you have a 1995 Fred Dakota letter saying that, you</p> <p>11 know, the agreement had expired of its own terms, so that</p> <p>12 might have had something to do with it. And I guess if I'm</p> <p>13 not sure if there were audits, I can't say why there weren't</p> <p>14 any, because I wasn't sure if there were or there weren't.</p> <p>15 Q Right. That's what I thought. Okay.</p> <p>16 MR. DUROCHER: Let's mark this.</p> <p>17 (Deposition Exhibit No. 5</p> <p>18 marked for identification.)</p> <p>19 Q (BY MR. DUROCHER) Let me show you what's been marked as</p> <p>20 Exhibit 5.</p> <p>21 A Thank you.</p> <p>22 Q Is this the letter you were referring to?</p> <p>23 A Yes. Did I say '95?</p> <p>24 Q You did?</p> <p>25 A I meant '94.</p>
<p style="text-align: right;">131</p> <p>1 negotiating the 1977 tax agreement with respect to what they</p> <p>2 meant by all persons?</p> <p>3 A No.</p> <p>4 Q Okay.</p> <p>5 A But in general, you know, person is defined generally in</p> <p>6 statute, and it includes its establishment; I used it</p> <p>7 interchangeably.</p> <p>8 Q Do you know whether all persons did, in fact, obtain Michigan</p> <p>9 sales tax licenses?</p> <p>10 A No, I don't know.</p> <p>11 Q Do you know whether anyone did?</p> <p>12 A Do I know?</p> <p>13 Q Do you know whether anyone did within KBIC?</p> <p>14 A No, I don't know.</p> <p>15 Q Okay. Do you know what years audits were conducted?</p> <p>16 A No. I know that they were conducted in the '93/'94, it was</p> <p>17 the subject of this, but I don't know of others.</p> <p>18 Q So you don't know if there was -- you don't know if there</p> <p>19 were audits in 1995 or '96 or '97?</p> <p>20 A No.</p> <p>21 Q Okay. Have you seen any documents suggesting that there</p> <p>22 were?</p> <p>23 A The stuff that was turned over to you, again, I briefly</p> <p>24 looked at that stuff to determine whether it needed to be</p> <p>25 turned over, and I saw some 1980 stuff and whatever. I don't</p>	<p style="text-align: right;">133</p> <p>1 Q Yeah, that's what I thought. You meant this letter, though?</p> <p>2 A Yes.</p> <p>3 Q That's the only question I had for you, as to confirm that</p> <p>4 that's the letter you were referring to.</p> <p>5 A Okay.</p> <p>6 Q Going back to the 1977 tax agreement, are you aware of any</p> <p>7 provision within that agreement that allows for the</p> <p>8 department to assess penalties or interest against the tribe?</p> <p>9 A It would be the same type of response that I gave to you</p> <p>10 before. It goes part and parcel with, you know, tax</p> <p>11 licensing, along with that goes audit, along with that goes,</p> <p>12 you know, offset, things that go with, inherently with that</p> <p>13 type of stuff. That's -- you know, the requirement to pay</p> <p>14 taxes by the resident tribal members except where excluded by</p> <p>15 the agreement. Just that's what comes to mind when you ask</p> <p>16 me that, the general provisions on 35, again, getting back to</p> <p>17 that, statements like that.</p> <p>18 And like I just referred to here, and, again, the</p> <p>19 provision where if some Court found that you couldn't collect</p> <p>20 that on a member or something like that, that that and other</p> <p>21 taxes, you know, implies that there were things in here that</p> <p>22 may or may not be directly or specifically identified. I</p> <p>23 mean, those types of statements apply to me, again, I could</p> <p>24 go through and say the same thing I said before.</p> <p>25 Q Right. Then your answer is the same as before?</p>

<p style="text-align: right;">134</p> <p>1 A Yeah, basically.</p> <p>2 Q The two places that you would find some support for the</p> <p>3 ability to assess penalties or interest would be either the</p> <p>4 licensing requirements or something on the page 35?</p> <p>5 A The licensing requirements, the few, you've said two, but I</p> <p>6 think there are a few, it's the licensing provisions.</p> <p>7 There's the, again, where it states where the RTMs were to</p> <p>8 pay taxes, both on and off the reservation, and then the</p> <p>9 Bates 35, so what is that, three, then?</p> <p>10 Q That's three. And the licensing we've already talked about?</p> <p>11 A I think that was in a couple different places. The</p> <p>12 licensing, which was apart from, although maybe it's assumed</p> <p>13 within a broader statement that all of the retail</p> <p>14 establishments had to be licensed, even if they were a</p> <p>15 resident tribal member. That's not verbatim.</p> <p>16 Q Right, the language?</p> <p>17 A Yeah, it is what it is.</p> <p>18 Q And that's where you said you don't know whether any person</p> <p>19 or establishment was, in fact, licensed, correct?</p> <p>20 A Yeah, that's correct, I'm not sure if they were licensed for</p> <p>21 sales tax or not.</p> <p>22 Q And then with respect to -- this page 35, is there something</p> <p>23 particular on page 35 that you were referring to? Look</p> <p>24 through that.</p> <p>25 A Let me look at it more closely. Like I said, it was some</p>	<p style="text-align: right;">136</p> <p>1 may ask, you should give him time to go through the</p> <p>2 agreement, those are areas that he has identified, but may or</p> <p>3 may not be exhaustive.</p> <p>4 Q (BY MR. DUROCHER) Well, when Mr. Baker wrote to you and</p> <p>5 objected to the offsets back in 2005, you were aware that he</p> <p>6 was claiming that the offsets were not allowed, correct?</p> <p>7 A I don't remember that conversation, but I would assume that</p> <p>8 that's what he was calling about. He didn't tell me that it</p> <p>9 was okay, they didn't relinquish the argument.</p> <p>10 Q And, in fact, he called you on the phone and told you this,</p> <p>11 right?</p> <p>12 A I don't remember how he contacted me.</p> <p>13 Q Okay. You've talked to Mr. Baker on the phone?</p> <p>14 A I talked to John on the phone, via E-mails; we have had a</p> <p>15 dialogue for a long time now.</p> <p>16 Q So if he were to testify that he talked to you on the phone</p> <p>17 about this issue, you wouldn't deny that?</p> <p>18 A No, I wouldn't deny it.</p> <p>19 Q And then you also know that you received correspondence from</p> <p>20 him on this issue?</p> <p>21 A I do.</p> <p>22 Q And based upon the communications made by Mr. Baker, you're</p> <p>23 aware that the tribe is objecting to the offsets?</p> <p>24 A Yes.</p> <p>25 Q Okay. And when the tribe objected, did you ever go back and</p>
<p style="text-align: right;">135</p> <p>1 time ago and I just looked at parts of the agreement, I</p> <p>2 didn't look at the, at the gasoline part.</p> <p>3 Yeah, I was just talking about that kind of qualifier in</p> <p>4 here, it's further agreed that should the State of Michigan</p> <p>5 be required by the order of any Court having jurisdiction</p> <p>6 over both parties, to any subject matter of this agreement to</p> <p>7 refund any claims of money to individual members of the</p> <p>8 Keweenaw Bay Indian Community for the reason that such monies</p> <p>9 were collected by the State contrary to the rights of the</p> <p>10 individual claimant and for taxes which are the subject of</p> <p>11 this agreement.</p> <p>12 It just implies to me that there's other areas that, you</p> <p>13 know, go part and parcel with the overall process, and that</p> <p>14 goes into my tax licensing thing. There could be other taxes</p> <p>15 that aren't covered here, you know, other income tax issues</p> <p>16 and those had been probably addressed somehow, too, I don't</p> <p>17 know.</p> <p>18 Q Okay. But, again, getting back to my question of whether the</p> <p>19 agreement provides for interest and penalties, you've now</p> <p>20 identified for me the areas that you think could perhaps</p> <p>21 imply that?</p> <p>22 A Yeah, possibly.</p> <p>23 MR. MOODY: And, again, for the record, he did not</p> <p>24 study the agreement during the break, I think that if you</p> <p>25 want to ask him specific questions about what the agreement</p>	<p style="text-align: right;">137</p> <p>1 look at the 1977 tax agreement to determine whether offsets</p> <p>2 were allowed?</p> <p>3 A No, I did not, not in that context. I didn't look to see if</p> <p>4 offsets were allowed, I went back and took a look at the tax</p> <p>5 agreement.</p> <p>6 Q Okay. And did you -- and when you looked at the tax</p> <p>7 agreement at that time did you determine that offsets were</p> <p>8 allowed?</p> <p>9 A I really wasn't looking for it in that context.</p> <p>10 Q Okay. At the time that Mr. Baker and the tribe objected, did</p> <p>11 you look at the 1977 tax agreement to determine whether the</p> <p>12 State could obtain penalties or interest from the tribe?</p> <p>13 A That I might have done, that I might have done. And I don't,</p> <p>14 I don't recall specific provisions that provide for interest</p> <p>15 and penalty.</p> <p>16 Q Okay. All right.</p> <p>17 A Nor that they preclude them.</p> <p>18 Q Sure. Do you have a familiarity with respect to any of the</p> <p>19 prior practice between the Department of Treasury and the</p> <p>20 Community with respect to the operation of the 1977 tax</p> <p>21 agreement?</p> <p>22 A I don't think so, but maybe you could ask me again.</p> <p>23 Q Well, I'm just wondering, I know you came in at the end of</p> <p>24 that agreement, after the agreement had already ended,</p> <p>25 wondering if you have any personal knowledge with respect to</p>

<p style="text-align: right;">150</p> <p>1 when it was happening.</p> <p>2 Q Okay. It looks like the hearing was held, at least according</p> <p>3 to this Exhibit 10, it looks like the hearing was held on May</p> <p>4 14, 2002. Do you see that?</p> <p>5 A Oh, okay, yeah, I do.</p> <p>6 Q Does that refresh your memory at all as to when the hearing</p> <p>7 was held?</p> <p>8 A Well, I guess it was held on May 14, 2002.</p> <p>9 Q Well, I know you're basing that just on what you're reading,</p> <p>10 though, right?</p> <p>11 A Yes. I really don't remember the hearing.</p> <p>12 Q Okay. Do you know whether this document is a true and</p> <p>13 accurate copy of the hearing decision?</p> <p>14 A I don't know, I couldn't confirm that. I mean, it looks like</p> <p>15 a hearing determination.</p> <p>16 Q Okay. It's stamped draft at the bottom, do you see that?</p> <p>17 A Yes.</p> <p>18 Q Do you know whether there was a final decision made?</p> <p>19 A I assume there was a final decision made.</p> <p>20 Q Okay. Do you recall the request that we just looked at from</p> <p>21 Mr. Bittorf was made in 1997?</p> <p>22 A Yes.</p> <p>23 Q Do you have any knowledge as to why it took until 2002 to</p> <p>24 conduct the hearing?</p> <p>25 A I don't recall.</p>	<p style="text-align: right;">152</p> <p>1 Exhibit 11. Do you have Exhibit 11 in front of you?</p> <p>2 A I do.</p> <p>3 Q All right. This is Bates numbered 57 through 65, and it's</p> <p>4 entitled, Decision and order of determination. Do you see</p> <p>5 that?</p> <p>6 A I do.</p> <p>7 Q And it looks like it's in the same case as the Exhibit 10 on</p> <p>8 this KBIC sales and use tax issue, right?</p> <p>9 A It has the same docket number.</p> <p>10 Q And have you seen this before?</p> <p>11 A I imagine I have seen it.</p> <p>12 Q Do you believe that either in 2002 or 2005 you would have</p> <p>13 looked at this?</p> <p>14 A I could have, but I don't remember it.</p> <p>15 Q Okay. If you turn to page 64, it's the second to last page</p> <p>16 of the exhibit.</p> <p>17 A Okay.</p> <p>18 Q There's a footnote number two that's part of the decision and</p> <p>19 it says, For this reason and because the agreement was not</p> <p>20 included within the record. Do you see that?</p> <p>21 A Yep.</p> <p>22 Q And then, in fact, it goes on to say, It is presumed for</p> <p>23 purposes of this recommendation that a valid agreement</p> <p>24 existed between the party's encompassing tax and audit</p> <p>25 periods at issue. Do you see that?</p>
<p style="text-align: right;">151</p> <p>1 Q Okay. And I take it from your answers you weren't involved</p> <p>2 in the hearing at all?</p> <p>3 A I don't recall being involved in this hearing, I just don't</p> <p>4 recall it.</p> <p>5 Q Okay. If you turn toward the end of Exhibit 10, about maybe</p> <p>6 10 pages in or so, there's a, it looks like sort of a form</p> <p>7 that's got handwriting on it. Do you see where I'm talking</p> <p>8 about? It's actually -- the first page I'm looking at is</p> <p>9 right after the first page of the decision. Yeah, there you</p> <p>10 go. Well, keep going back. Yeah, it's entitled, Hearing, at</p> <p>11 the top and then it says, Taxpayer Keweenaw Bay Indian</p> <p>12 Community?</p> <p>13 A Yes.</p> <p>14 Q Do you see that?</p> <p>15 A Yes.</p> <p>16 Q Do you recognize this document at all?</p> <p>17 A Does not look familiar.</p> <p>18 Q Okay. All right. Do you have any knowledge as to whether</p> <p>19 the 1977 tax agreement was made available to the hearing</p> <p>20 officer for the purposes of this hearing?</p> <p>21 A I don't know.</p> <p>22 Q Okay.</p> <p>23 (Deposition Exhibit No. 11</p> <p>24 marked for identification.)</p> <p>25 Q (BY MR. DUROCHER) I'll show you what's been marked as</p>	<p style="text-align: right;">153</p> <p>1 A I see that.</p> <p>2 Q Does this refresh your memory at all that you ever learned</p> <p>3 that the hearing officer did not have a copy of the tax</p> <p>4 agreement, the 1977 tax agreement when he made his</p> <p>5 determination?</p> <p>6 A It does not refresh my memory.</p> <p>7 Q Okay. Do you see at the end of the first page, page 57 of</p> <p>8 Exhibit 11, right at the bottom the hearing officer says in</p> <p>9 the second sentence of the last paragraph, Because of the</p> <p>10 agreement in place between the parties during petitioner's</p> <p>11 1992/'93 and 1993/'94 tax years --</p> <p>12 A I'm not on the same page as you.</p> <p>13 Q Yeah, I think you are. Right down at the very bottom.</p> <p>14 A Okay.</p> <p>15 Q It starts out, Because, the last sentence?</p> <p>16 A My page does not say because.</p> <p>17 MR. MOODY: Not on mine.</p> <p>18 Q (BY MR. DUROCHER) Right here, Because --</p> <p>19 A Oh, the very last sentence. I see it, it wasn't at the</p> <p>20 beginning.</p> <p>21 Q So we're on page 57 of Exhibit 11, the very last sentence</p> <p>22 that carries over to the next page.</p> <p>23 A I see.</p> <p>24 Q It says, Because of the agreement in place between the</p> <p>25 parties during petitioner's 1992/'93 and 1993/'94 tax</p>

<p style="text-align: right;">154</p> <p>1 years, and during the audit periods for such tax years;</p> <p>2 neither penalty nor interest are applicable?</p> <p>3 A I see that.</p> <p>4 Q And, again, do you have any facts or information that would</p> <p>5 dispute what the hearing officer found with respect to</p> <p>6 interest and penalties?</p> <p>7 A Nothing other than what I've already referred to.</p> <p>8 Q Okay.</p> <p>9 MR. MOODY: Asked and answered.</p> <p>10 Q (BY MR. DUROCHER) Do you know whether the State, through its</p> <p>11 offsets, collected interest or penalties with respect to</p> <p>12 these assessments?</p> <p>13 A I think that it did.</p> <p>14 Q Okay.</p> <p>15 A I'd have to look at the documents again, but it seems, my</p> <p>16 recollection, that when I matched up, just in a cursory way,</p> <p>17 it looked like everything was collected at that point.</p> <p>18 Q And when did you do this?</p> <p>19 A At some point after, when it was done, you know, when it was</p> <p>20 first brought to my attention.</p> <p>21 Q So this had been --</p> <p>22 A When I started reviewing, you know, as I indicated, I looked</p> <p>23 for the hearing documents and the audit documents, so I</p> <p>24 looked -- and I would have looked at the accounts on the</p> <p>25 computer, the collection accounts that Mike, Mike's folks</p>	<p style="text-align: right;">156</p> <p>1 Q All right. And you believe you did discuss that with him?</p> <p>2 A I think I did discuss that with Russell.</p> <p>3 MR. DUROCHER: Are you going to --</p> <p>4 MR. MOODY: Yeah, you're entitled to talk around to</p> <p>5 determine that a conversation was had, you're -- I will</p> <p>6 instruct the witness not to respond to any of the substance</p> <p>7 or communications that existed. We'll take a question at a</p> <p>8 time, I guess.</p> <p>9 MR. DUROCHER: Sure.</p> <p>10 Q (BY MR. DUROCHER) Were you seeking legal advice from</p> <p>11 Mr. Prins when you talked to him about this?</p> <p>12 A Yes.</p> <p>13 Q Did he provide legal advice?</p> <p>14 A Yes, he responded to me.</p> <p>15 Q As a result -- strike that.</p> <p>16 Did you ever make any effort at any time to reverse the</p> <p>17 collection of interest that the State paid?</p> <p>18 A When?</p> <p>19 Q At any time?</p> <p>20 A For which offset?</p> <p>21 Q Let's start with 2005?</p> <p>22 A 2005, I attempted -- I did not make any attempts to change</p> <p>23 any offsets as that situation was under review; we were</p> <p>24 trying to determine what to do at that particular point.</p> <p>25 Q Okay. And then -- and then what happened?</p>
<p style="text-align: right;">155</p> <p>1 would have. And it took care of the entire liability, so I</p> <p>2 think that's what would have registered with me, that</p> <p>3 whatever was assessed was taken care of via the offsets.</p> <p>4 That's my recollection.</p> <p>5 Q All right. And so that would have included interest, you</p> <p>6 believe?</p> <p>7 A I believe that it included interest and penalties if they</p> <p>8 were on the assessments.</p> <p>9 Q Did you ever have any conversations with anyone within the</p> <p>10 department about whether the State should be collecting</p> <p>11 interest?</p> <p>12 A About interest?</p> <p>13 Q Yeah.</p> <p>14 A Or penalty?</p> <p>15 Q Let's go interest first.</p> <p>16 A Interest. Within the department?</p> <p>17 Q Right.</p> <p>18 A I don't recall specifically. I don't know if I talked about</p> <p>19 it with Mike or not, I'm not sure.</p> <p>20 Q How about penalties, did you ever --</p> <p>21 A Same answer, I don't recall specifically.</p> <p>22 Q Well, how about outside the department?</p> <p>23 A Perhaps with Russ Prins, who is an attorney.</p> <p>24 Q In the AG's office?</p> <p>25 A AG's office.</p>	<p style="text-align: right;">157</p> <p>1 A KBIC filed suit.</p> <p>2 Q Okay. And since then have you made any determination as to</p> <p>3 whether interest should be charged?</p> <p>4 A I stopped looking at the matter at that point.</p> <p>5 Q Do you have, based upon your review of the files, including</p> <p>6 the hearing officer's decision we looked at, Exhibit 11, and</p> <p>7 the audit reports that we've talked about, do you have a</p> <p>8 position on behalf of the department as to whether the</p> <p>9 department should be collecting interest from KBIC with</p> <p>10 respect to this, these audits and this deficiency?</p> <p>11 A I do not have a position on behalf of the department.</p> <p>12 Q Okay. Do you have your own personal belief?</p> <p>13 MR. MOODY: Object as to relevance and lack of</p> <p>14 foundation.</p> <p>15 THE WITNESS: I really have to look at it more</p> <p>16 thoroughly, and it would just be an opinion.</p> <p>17 Q (BY MR. DUROCHER) So you don't have an opinion?</p> <p>18 A I stopped. When it got to Court I figured a Judge is going</p> <p>19 to look at this, there's no point in me speculating at that</p> <p>20 point. I have plenty of other things to speculate on.</p> <p>21 Q All right.</p> <p>22 MR. MOODY: Can we take a two-minute break?</p> <p>23 MR. DUROCHER: Yeah.</p> <p>24 (Whereupon, a short break was taken.)</p> <p>25 MR. DUROCHER: Let's go ahead and mark this.</p>

<p style="text-align: right;">174</p> <p>1 Q (BY MR. DUROCHER) Showing you what's been marked as Exhibit 2 16. This is a document Bates numbered 834 through 841. It's 3 entitled, Michigan Department of Treasury Collections 4 Division, State Treasury Accounts Receivable, Archive 5 Report. Do you have that in front of you? 6 A I do. 7 Q Are you familiar with this document? 8 A I am familiar with these types of documents; I imagine I 9 would have looked at this one. 10 Q You believe you did look at this one? 11 A I imagine I would have looked at this one, I assume I did. 12 Q For what purpose? 13 A The same purpose I looked at all this stuff, the offsets, 14 John Baker's call. 15 Q Okay. And, again, if you go to the third page it appears 16 that with respect to sales tax for the period ending 17 September 1993, no penalty was charged, but it appears 18 there's \$14,419.02 in interest? 19 A I see that. 20 Q We talked about these 2002 offsets, correct -- 21 A Yes. 22 Q -- just briefly? 23 A We've addressed that. 24 Q And what had happened there, offsets had been made in 2002 25 based upon the claimed deficiencies for 1993 and 1994, right?</p>	<p style="text-align: right;">176</p> <p>1 Q And why did you recommend the reversal? 2 A Because we were on the verge of signing a tax agreement with 3 the tribe, and I, as a gesture of good faith, I wanted the 4 tribe to voluntarily pay those amounts and was looking to get 5 into a tax agreement. 6 Q Okay. And I think you said that that never, that the tribe 7 never entered into the tax agreement, right? 8 A Nor paid, that's correct, to both. 9 Q And how long after you learned about the offsets did the 10 reversal take place? 11 A Oh, I don't know what the timing was, I think it moved along 12 fairly quickly, you know, for the reasons that were stated. 13 It was clear that we were moving to the tax agreements, best 14 of my recollection; Julie didn't have any problem for those 15 reasons, those same reasons. She thought it was a valid 16 reason and we wanted them to pay them, it was a gesture of 17 good faith. I mean, these are two, you know, quasi 18 sovereigns going together, trying to -- 19 Q And the reversal that took place, I mean, from a timing 20 standpoint was it two days, a week, 10 days? 21 A I don't recall. 22 Q Okay. And I think you already testified that Mr. DePetro 23 never told you that the tribe would agree to pay those, 24 correct? 25 A I don't recall him ever stating anything to that effect.</p>
<p style="text-align: right;">175</p> <p>1 A I think those offsets were based on the same deficiencies as 2 the '95 that we've been discussing. 3 Q 2005? 4 A 2005. Thank you. 5 Q And in 2002 you didn't know beforehand that the offsets were 6 going to be made? 7 A No, I don't think -- I didn't know ahead of time of that 8 either, I was contacted after the fact. 9 Q Who contacted you? 10 A Probably Chad DePetro, is my recollection. 11 Q And Mr. DePetro was tribal attorney at the time for KBIC? 12 A Yes, he was. 13 Q Do you know whether the offsets that had been done in 2002 14 had been using Federal program funds? 15 A I don't have any detail, or don't recall any detail as to 16 what those, what they were. 17 Q Did you conduct any investigation in 2002 into where the 18 funds had come from for the offset? 19 A I don't recall looking from that perspective. 20 Q All right. Now, in 2002 the offsets were reversed, right? 21 A Yes. 22 Q Were you responsible for reversing those? 23 A Well, I contacted, probably, Julie Croll at the time, and I 24 believe that would have been my recommendation, to reverse 25 them.</p>	<p style="text-align: right;">177</p> <p>1 Q Okay. 2 A He didn't tell me that they would not pay them, either. 3 (Deposition Exhibit No. 17 4 marked for identification.) 5 Q (BY MR. DUROCHER) Do you recall when the first 2005 offsets 6 took place? 7 A No. 8 Q I've handed you a document that's been marked Exhibit 17. Do 9 you have it in front of you? 10 A Exhibit 17, you said? 11 Q Right. 12 A Yes, I do. 13 Q Okay. Can you tell me what this is? 14 A It's a fax cover sheet from John Baker to myself regarding 15 State offsets. 16 Q All right. Do you recall receiving this? 17 A I don't recall specifically receiving it; I don't question 18 whether I did or I didn't. 19 Q Okay. And you believe you did? If it helps, it was produced 20 by your department? 21 A May 25, 2005. I don't dispute it. 22 Q Because Bates number 44 is a Bates number from your 23 department, Mr. Moody's firm. 24 A (Witness nodding head.) 25 Q Do you see that in this letter, or this fax, Mr. Baker is</p>

<p style="text-align: right;">178</p> <p>1 notifying you about three offset notifications that they 2 received? 3 A Uh-huh, yes. 4 Q And you see that he tells you that the offsets were using 5 Federal Medicaid payments? 6 A I see that. 7 Q Did you ever conduct any inquiry to find out whether, in 8 fact, Federal Medicaid payments were used for some of the 9 offsets? 10 A I would have looked at -- I believe I got that information 11 from John, he had -- they send, they being the system, STAR, 12 sends out these details, and I believe he had the detail. 13 And I believe I got that from him, where it showed the 14 different, the breakdown of the, of where the money came 15 from. 16 Q Okay. Do you have any -- strike that. 17 Did you conduct any of your own investigation to 18 determine whether what he was telling you was correct? 19 A I looked at the STAR accounts that we saw and I think the 20 best information I had came from John. 21 Q Okay. 22 A And I contacted Mike Reynolds. 23 Q Right. 24 A And I spoke to a number of people regarding the issue, his 25 boss, Mary McDowell, and others.</p>	<p style="text-align: right;">180</p> <p>1 we have to refund this or if we're on good ground. 2 Q And did you ever get any -- did anyone ever provide you with 3 a conclusion? 4 A No, I don't recall a conclusion. I immediately contacted the 5 people that I informed you about. 6 Q Right. 7 A And plus another one: As I saw it there were a couple of 8 issues here, one was can we offset, given John's, the federal 9 stuff, because that was separately raised; and then the other 10 question was if you put it through the Indian box, because 11 that's different. So I queried Elaine Fishoff with regard to 12 that immediately, so I had them working on all different 13 fronts. 14 That coordinating all these people together takes a fair 15 amount of time. It was my -- I wanted to get John an answer 16 so I wanted to draft a letter to see why exactly they thought 17 we could not do this. And so I drafted a letter and I showed 18 it to various people, Russ Prins, Elaine Fishoff, chief 19 deputy treasurer, and I sent that letter to John Baker, and 20 then I think received a response some time in August. 21 Shortly after that there were, had been trying to 22 coordinate, to set up a meeting and then I had learned, I was 23 contacted from the Governor's office that the tribe had 24 intercepted monies going to MEDC, which made it more global. 25 Now all of a sudden MEDC was involved and I think I contacted</p>
<p style="text-align: right;">179</p> <p>1 Q All right. What was the conversation? 2 A It was exactly that, you know, if they had any knowledge on 3 the federal, our capabilities of doing that, those types of 4 things. 5 Q What were you told? 6 A I was not told by anyone that we could not do that. 7 Q Okay. So you spoke with Mr. Mike Reynolds, correct? 8 A I spoke to Mike Reynolds, Mary McDowell. I informed the 9 chief deputy treasurer, Julie Croll at the time, of what 10 happened, and I also contacted Russell Prins from the 11 Attorney General's office, and he -- 12 MR. MOODY: Now, don't -- 13 THE WITNESS: -- spoke, referred me to another 14 Assistant Attorney General, her name was Peg Housner, and I 15 spoke to her, as well. 16 Q (BY MR. DUROCHER) All right. Did you receive any legal 17 advice from Mr. Prins or Ms. Housner? 18 A I received some information, but, again, I think we're 19 getting into the attorney/client. 20 Q But you did receive some advice? 21 A I received information, it was in the process of being 22 reviewed and I was part of the process. I was the 23 facilitator of this, you know, I'm the front end, I'm the 24 contact with the tribe, so I was contacted, and I threw it 25 out to the various areas and let them look and let me know if</p>	<p style="text-align: right;">181</p> <p>1 the Governor's office just on this alone, but then the 2 Governor's office was involved with the MEDC aspect of it, 3 and we were trying to get together. And I think the tribe 4 had contacted the Governor's office, I think John Baker had 5 contacted the Governor's office. 6 So now we needed to get together and discuss, discussing 7 this with Keweenaw Bay, it was my understanding that Keweenaw 8 Bay wanted to talk to the State of Michigan. So we were in 9 the process of setting up a meeting to discuss now that the 10 MEDC payments, you know, that aspect of it and what their 11 position was, and John Wernett's position from the Governor's 12 office on KBIC's ability to offset the MEDC funds. And then 13 to set up and try to get a meeting with the tribe, I think 14 they were seeking that, and everyone was amicable to that but 15 the State needed to get together first. 16 Well, before the State had a chance to do that and to 17 talk to the tribe, then the lawsuit was initiated, and then I 18 think that activity stopped again, and now it's in your hands 19 and Kevin's hands and the Judge. 20 Q If -- well, you said that you initially spoke with 21 Mr. Reynolds and Ms., is it McDowell? 22 A McDowell, that's correct. 23 Q And what did they tell you about the ability to offset with 24 using federal funds? 25 A They had indicated that they had been working with the</p>

<p style="text-align: right;">182</p> <p>1 Attorney General's office, in that and my recollection is --</p> <p>2 MR. MOODY: And let me -- you were all working with</p> <p>3 the Attorney General's office, there is a joint defense</p> <p>4 privilege. I don't know if you're talking about information</p> <p>5 that was shared among all of you coming from the attorney,</p> <p>6 that is still privileged.</p> <p>7 THE WITNESS: No, I wasn't aware of that. They</p> <p>8 were in communication with the Attorney General's office and</p> <p>9 had been working with Peg Housner on that.</p> <p>10 Q (BY MR. DUROCHER) They did that --</p> <p>11 A So that would be attorney/client, then.</p> <p>12 Q Was it your understanding that they had contacted the</p> <p>13 Attorney General's office before they had done the offsets?</p> <p>14 A I think it was with regards to that, not related to KBIC.</p> <p>15 Q Whether they could do it generally, whether they generally</p> <p>16 could offset using federal funds?</p> <p>17 A I think so, yes.</p> <p>18 Q And do you know whether that discussion had taken place</p> <p>19 before or after they had done the offsets with KBIC?</p> <p>20 A I believe that that was before and unrelated to KBIC.</p> <p>21 MR. DUROCHER: And, Kevin, you're not claiming</p> <p>22 advice of counsel on any of this, though, because I think if</p> <p>23 you're claiming advice of counsel, then I think we'd be</p> <p>24 entitled to see what the advice is.</p> <p>25 MR. MOODY: We're not claiming that as a defense,</p>	<p style="text-align: right;">184</p> <p>1 confirm or deny, or something along those lines, and, you</p> <p>2 know, we're going to have to get additional -- that's what</p> <p>3 led me to ask about getting documents from other departments</p> <p>4 because we haven't seen any of the documentation reflecting</p> <p>5 where those payments came from.</p> <p>6 MR. MOODY: I guess to be honest with you, we</p> <p>7 figured that burden is on you. We don't know, we don't</p> <p>8 affirm, confirm or deny, we don't think it would make a</p> <p>9 difference, but to the extent you're suggesting it does make</p> <p>10 a difference then obviously I guess it's our position that</p> <p>11 you've got to establish that they were federal funds.</p> <p>12 MR. DUROCHER: Okay. But in that regard, you know</p> <p>13 I guess I'd like to find out whether there was an effort made</p> <p>14 to collect documents that would reflect where those monies</p> <p>15 came from, because I know we asked for that and I know we</p> <p>16 haven't gotten anything. And I don't know what your position</p> <p>17 is, if you've taken the position that because it's other</p> <p>18 departments within the State of Michigan you don't have the</p> <p>19 duty to produce it, or --</p> <p>20 MR. MOODY: I don't think anybody took any such</p> <p>21 position.</p> <p>22 MR. DUROCHER: I'm not saying you did, I'm just</p> <p>23 saying I don't think we got any documents.</p> <p>24 MR. MOODY: I don't know, there may not have been</p> <p>25 any. I don't know what documents there would be to determine</p>
<p style="text-align: right;">183</p> <p>1 we did obviously talk to lawyers and that's privileged still</p> <p>2 and confidential, but as an official defense that that's what</p> <p>3 we're hanging our hat on, no.</p> <p>4 MR. DUROCHER: Okay.</p> <p>5 MR. MOODY: That, of course, is part and parcel of</p> <p>6 declared conduct, that they did consult with attorneys,</p> <p>7 but --</p> <p>8 Q (BY MR. DUROCHER) What else did you discuss with</p> <p>9 Ms. McDowell and Mr. Reynolds, you know, putting aside any</p> <p>10 privileged communications that they had with the AG's</p> <p>11 office? Did they tell you anything else about the ability to</p> <p>12 offset with federal funds?</p> <p>13 A I can't recall anything outside of that, that would have been</p> <p>14 the focus of the conversation.</p> <p>15 Q Okay. The department's not disputing that federal funds were</p> <p>16 used for offset here, correct?</p> <p>17 A I don't think so. I mean, you know, the funds coming from a</p> <p>18 certain place, kind of view those as KBIC funds.</p> <p>19 MR. MOODY: But it is what it is. I don't know</p> <p>20 whether this witness is in a position to dispute or not</p> <p>21 dispute, but I mean, I think it's certainly the money came</p> <p>22 from a source that is definitive.</p> <p>23 MR. DUROCHER: Yeah, I accept that, I don't know</p> <p>24 that -- I think in your answers to our written discovery</p> <p>25 you've sort of indicated that you're not in a position to</p>	<p style="text-align: right;">185</p> <p>1 where it came from. I think it's simply a matter of matching</p> <p>2 up numbers, taxpayer ID numbers and taking the money.</p> <p>3 MR. DUROCHER: Right, but I think there's got to be</p> <p>4 some kind of program agreement between the Feds and the State</p> <p>5 in order to set this up in the first place.</p> <p>6 THE WITNESS: Mike might be able to know more about</p> <p>7 that.</p> <p>8 MR. DUROCHER: All right. We'll go ahead and mark</p> <p>9 this.</p> <p>10 (Deposition Exhibit No. 18</p> <p>11 marked for identification.)</p> <p>12 Q (BY MR. DUROCHER) I've handed you what's been marked as</p> <p>13 Exhibit 18. Do you have that in front of you?</p> <p>14 A Yes.</p> <p>15 Q Do you recall receiving this letter from Mr. Baker?</p> <p>16 A It looks familiar.</p> <p>17 Q All right. This appears to be a June 15, 2005 letter that</p> <p>18 was faxed to you on June 15, 2005 in which Mr. Baker advises</p> <p>19 you of nine additional offsets, correct?</p> <p>20 A Yes.</p> <p>21 Q And these, these are in addition to the three that he had</p> <p>22 advised you about on May 25, 2005 that's reflected in Exhibit</p> <p>23 17, correct?</p> <p>24 A Correct.</p> <p>25 Q And in Mr. Baker's letter he identifies the sources for</p>

<p style="text-align: right;">186</p> <p>1 these, where these funds came from, do you see that?</p> <p>2 A I do.</p> <p>3 Q And it appears that two of them are motor fuel refunds, do</p> <p>4 you see that?</p> <p>5 A Yes.</p> <p>6 Q And one is a sales tax refund?</p> <p>7 A That's what it says.</p> <p>8 Q Okay. And then it looks like the other six are all federal</p> <p>9 fund programs, correct?</p> <p>10 A If that's what those are, it says WIC.</p> <p>11 Q Right, Women Infant and Children?</p> <p>12 A Medicaid, DHHS, CCDF, whatever that is.</p> <p>13 Q Okay. With respect to DHHS, CCDF, you don't know what that</p> <p>14 is?</p> <p>15 A It's not ringing any bells, no.</p> <p>16 Q Department of Health and Human Services, have you heard of</p> <p>17 that agency?</p> <p>18 A Yeah, I have.</p> <p>19 Q Are you aware that's a federal agency?</p> <p>20 A I'm not real familiar with DHHS.</p> <p>21 Q But you're aware that that's a federal agency?</p> <p>22 A I didn't know what it was named, I mean, I'll take your word</p> <p>23 for it.</p> <p>24 Q You don't have any reason to dispute that this is a</p> <p>25 federally-funded program?</p>	<p style="text-align: right;">188</p> <p>1 MR. MOODY: Asked and answered.</p> <p>2 Q (BY MR. DUROCHER) Okay. You may have answered it about the</p> <p>3 first one, but how about with respect to the second one?</p> <p>4 A This would have been part of the same process, to talk to</p> <p>5 those folks, let them know what it is. And I mean, they, I</p> <p>6 assume, would have -- I guess I don't know if they would have</p> <p>7 known that or not.</p> <p>8 Q Who? I don't understand.</p> <p>9 A Mike and Mary, the -- I don't know enough about their process</p> <p>10 to say what they would know and what they wouldn't, but I</p> <p>11 made people aware of what I was getting and the assertions</p> <p>12 that the tribe was making.</p> <p>13 Q Do you believe you contacted Mike Reynolds and Mary McDowell</p> <p>14 before you received the letter dated June 15, 2005?</p> <p>15 A I don't know what the timing was, what days I went and talked</p> <p>16 to them or called them or talked to them.</p> <p>17 Q Do you know if you made any effort to stop any additional</p> <p>18 offsets after you received the first notice on Exhibit 17?</p> <p>19 A I don't think I did; I had not been told by anyone at this</p> <p>20 point that anything had been done wrong.</p> <p>21 Q Right. Except for Mr. Baker who told you something was</p> <p>22 wrong?</p> <p>23 A Except for John Baker; I'm talking internally from either the</p> <p>24 Attorney General's office or from the Department of Treasury.</p> <p>25 Q Okay. And then after you received the second letter from</p>
<p style="text-align: right;">187</p> <p>1 A I don't have a reason to dispute it, no.</p> <p>2 Q And the second one, child day care. Do you see that?</p> <p>3 A I do.</p> <p>4 Q Do you have any reason to dispute that's a federally-funded</p> <p>5 program?</p> <p>6 A No.</p> <p>7 Q How about WIC, do you know that that stands for Women Infant</p> <p>8 and Children?</p> <p>9 A That I knew.</p> <p>10 Q And that's a federally-funded program?</p> <p>11 A I believe it is.</p> <p>12 Q And then the three others are listed as Medicaid, correct?</p> <p>13 A Yes.</p> <p>14 Q And those are federally-funded programs, correct, or that is</p> <p>15 a federally-funded program?</p> <p>16 A I couldn't say for sure, I don't know if it is or isn't, I</p> <p>17 don't know if that's State or Federal.</p> <p>18 Q Do you have any reason to dispute that those are federal</p> <p>19 programs?</p> <p>20 A No, I don't have any reason to dispute it.</p> <p>21 Q Did you, when you received either of these two letters from</p> <p>22 Mr. Baker advising you about the federal funds that were</p> <p>23 involved in these offsets, did you conduct an investigation</p> <p>24 to determine whether or not federal funds were involved?</p> <p>25 A It would have been what I indicated to you before.</p>	<p style="text-align: right;">189</p> <p>1 Mr. Baker identifying additional federal-funded programs, did</p> <p>2 you take any steps to stop the additional offsets?</p> <p>3 A After this one?</p> <p>4 Q Yes.</p> <p>5 A I don't recall doing so.</p> <p>6 Q Okay. Do you know whether there were additional offsets</p> <p>7 after the June 15th, after the offsets were conducted that</p> <p>8 are referenced in the June 15th letter?</p> <p>9 A I'm not sure. My recollection is it all happened fairly</p> <p>10 quickly once we were made aware of it, and in a short period</p> <p>11 of time the entire liability that was in question was</p> <p>12 satisfied, and, therefore, there wouldn't have been any</p> <p>13 additional offsets.</p> <p>14 Q Okay. All right. And since, since that time, then, to your</p> <p>15 knowledge, there have been no additional offsets?</p> <p>16 A Since that time I don't believe there have been. And there</p> <p>17 was an additional separate liability identified on there and</p> <p>18 I believe that's on hold until this matter is resolved.</p> <p>19 Q What was that liability for, if you know?</p> <p>20 A I guess I'm not sure if I can --</p> <p>21 THE WITNESS: Does he represent the tribe on every</p> <p>22 aspect, or is it only what's before him right now?</p> <p>23 MR. MOODY: I don't know.</p> <p>24 THE WITNESS: It's a 28 1f issue. I mean, I don't</p> <p>25 know if you have carte' blanche, I don't have the power of</p>

<p style="text-align: right;">194</p> <p>1 paragraph, and it says, Treasury, by way of setoff, withheld</p> <p>2 \$17,040 due the petitioner from the next contract year in</p> <p>3 partial satisfaction of the \$55,180. Do you see that?</p> <p>4 A I see that.</p> <p>5 Q Does this refresh your memory that the offset amounts in the</p> <p>6 Whispering Pines case did not involve federal funds?</p> <p>7 MR. MOODY: Well, hold on a second, I want to</p> <p>8 object. Where the monies ultimately came from for a State</p> <p>9 program doesn't mean that there wasn't federal funding, first</p> <p>10 of all, we don't know that. Mr. Fratzke is not a lawyer, and</p> <p>11 again, I object to him being interrogated over the nuances of</p> <p>12 a case. He cited this in the letter, I can appreciate your</p> <p>13 position, but it is what it is and I don't think it's an</p> <p>14 appropriate question for him.</p> <p>15 MR. DUROCHER: Okay. I'm going to go ahead and ask</p> <p>16 it, and I understand your objection.</p> <p>17 Q (BY MR. DUROCHER) My question is whether this refreshed your</p> <p>18 memory that the Whispering Pines case didn't involve offsets</p> <p>19 involving federal programs?</p> <p>20 A I wouldn't feel comfortable stating that without taking time</p> <p>21 to go and read and digest this again. If you want me to</p> <p>22 comment on that more fully, to what I believe you pointed out</p> <p>23 two small excerpts, and I don't want to unequivocally state</p> <p>24 that that's everything that I need to testify to.</p> <p>25 Q Well, unfortunately, as much as I'd like to let you read the</p>	<p style="text-align: right;">196</p> <p>1 Q Right.</p> <p>2 A No.</p> <p>3 Q Okay.</p> <p>4 (Deposition Exhibit No. 21</p> <p>5 marked for identification.)</p> <p>6 Q (BY MR. DUROCHER) I'll show you what's been marked Exhibit</p> <p>7 21. Do you have Exhibit 21 in front of you?</p> <p>8 A Yes.</p> <p>9 Q Do you recognize this?</p> <p>10 A It doesn't look familiar right now.</p> <p>11 Q If you turn to the third page, I'll ask if you recognize the</p> <p>12 handwriting?</p> <p>13 A It looks like my handwriting.</p> <p>14 MR. DUROCHER: And I don't know why, Kevin, this</p> <p>15 isn't Bates numbered, but we certainly received it, and it's</p> <p>16 got Mr. Fratzke's handwriting, and so I concluded that it</p> <p>17 must have been produced by you.</p> <p>18 MR. MOODY: Well, I can't answer that.</p> <p>19 Q (BY MR. DUROCHER) All right. Well, in any event, now that</p> <p>20 you've seen the handwriting, does this refresh your memory</p> <p>21 that at some point, back in 2005, because if you look at the</p> <p>22 bottom it's dated 2005 when this was printed out. Does this</p> <p>23 refresh your memory that in August of 2005 you conducted your</p> <p>24 own research on whether offsets under federal programs would</p> <p>25 be permitted?</p>
<p style="text-align: right;">195</p> <p>1 whole thing, I've only got a certain amount of time to take</p> <p>2 your deposition.</p> <p>3 A I understand.</p> <p>4 Q I think the case will eventually speak for itself, but let me</p> <p>5 ask you this: Do you have any recollection, sitting here</p> <p>6 today, of concluding at the time you sent this letter that</p> <p>7 the Whispering Pines case involved a federal funding program?</p> <p>8 A I don't recall.</p> <p>9 Q Okay. And you would agree with me that this case does not</p> <p>10 involve an Indian tribe, this Whispering Pines case?</p> <p>11 MR. MOODY: Same objection.</p> <p>12 THE WITNESS: I don't know if I could conclude that</p> <p>13 again without looking at it more fully; I don't know who owns</p> <p>14 Whispering Pines, I don't know.</p> <p>15 Q (BY MR. DUROCHER) Okay. Sitting here today, do you recall</p> <p>16 reaching a conclusion when you read this case back in 2005,</p> <p>17 and cited it to Mr. Baker, that it involved an Indian tribe?</p> <p>18 A I don't recall whether or not I thought it involved an Indian</p> <p>19 tribe.</p> <p>20 Q Okay. Certainly nothing in the caption suggests that an</p> <p>21 Indian tribe is involved, right?</p> <p>22 A No, it doesn't.</p> <p>23 Q Okay. Did you conduct any of your own research with respect</p> <p>24 to this issue of use of federal programs for offsets?</p> <p>25 A Other than speaking to these other folks?</p>	<p style="text-align: right;">197</p> <p>1 A It tells me that I looked at this and read it and commented</p> <p>2 on it.</p> <p>3 Q Okay. And your handwriting on the third page says, Are there</p> <p>4 other offset provisions that address those situations. Do</p> <p>5 you see that?</p> <p>6 A I do.</p> <p>7 Q And do you remember what you meant by that?</p> <p>8 A I do not.</p> <p>9 Q Okay. Do you remember whether you conducted additional</p> <p>10 research to find out whether there were other offset</p> <p>11 provisions?</p> <p>12 A No, I don't.</p> <p>13 Q Okay. Do you recall -- strike that.</p> <p>14 Do you recall that this statute that you had pulled up</p> <p>15 referenced administrative offsets in the federal context?</p> <p>16 A I'm sorry?</p> <p>17 Q Yeah. Do you recall that this statute that apparently you'd</p> <p>18 been looking at in 2005 involved administrative offsets in</p> <p>19 the federal context?</p> <p>20 A I do not recall. I don't recall even pulling this down so I</p> <p>21 don't remember.</p> <p>22 Q Okay.</p> <p>23 A I would have to reread the whole thing and I don't know where</p> <p>24 I got the cite to pull it off to begin with, maybe from a</p> <p>25 case.</p>

<p style="text-align: right;">198</p> <p>1 Q Okay. Do you recall learning, if you look on that same page 2 that your handwriting is on, the first page that your 3 handwriting is on, it's page two of two on the top right-hand 4 corner. 5 A Okay. 6 Q Do you recall learning that administrative offsets do not 7 apply to claims or debts under the Social Security Act, 8 except for the, you know, limited exceptions there? 9 MR. MOODY: I'm going to object, it clearly calls 10 for a legal conclusion. 11 THE WITNESS: No, I don't recall. 12 Q (BY MR. DUROCHER) Okay. If you turn to the next page, page 13 one of four, under administrative offset, do you see that, 14 section 3716? 15 A Yes. 16 Q Do you see -- is that your handwriting where it says, Federal 17 Government? 18 A Looks like it is. 19 Q Do you know what you meant by that? 20 A No, I'd have to read this and digest it again to know what my 21 line of thinking was at the time. 22 Q Okay. So sitting here looking at it now, it's not ringing a 23 bell at all that you looked at this? 24 A It's ringing a bell now, it's coming back a little bit that I 25 did pull something off and look a little further. Where I</p>	<p style="text-align: right;">200</p> <p>1 you're reading from? 2 Q Right. 3 A Okay. What's your question? 4 Q First, do you see that? 5 A I do see that. 6 Q Where you say discretionary Fed only, do you know what you 7 meant by that? 8 A No, I don't. As I said, I'd have to read this all over again 9 and start from scratch. It's been a long time since I've 10 looked at this, it's been close to two years. 11 Q Okay. Sitting here today, you don't remember anything else 12 than what you've told me about this particular document, 13 Exhibit 21, and your reading of it? 14 A Just that I obviously pulled it off and read it. 15 Q Okay. 16 A Made comments on the side. 17 Q All right. Do you recall discussing it with anyone else? 18 A Russell, I would have talked to Russell. 19 Q Now, you said you would have, that's kind of -- 20 A I did. 21 Q You did. Okay. 22 A I did. 23 Q Do you recall whether you talked to him before or after you 24 looked at it? 25 A I think I spoke to Russell before.</p>
<p style="text-align: right;">199</p> <p>1 got this to begin with and pulled it off, no, I don't 2 remember. Again, I'm assuming I pulled it out of the case, 3 itself. 4 Q Okay. 5 A And I read that. 6 Q The Whispering Pines case? 7 A Possibly. I mean, that's an assumption, I just don't 8 remember. I'm wondering where I got the, the cite or 9 whatever to -- 10 MR. MOODY: Just tell him what you recall. 11 THE WITNESS: I don't -- I just don't recall. 12 Q (BY MR. DUROCHER) Okay. It's possible, and I'll show you 13 another letter that it's possible that you got that cite from 14 Mr. Baker? 15 A Oh, okay. 16 Q Do you recall -- if you look on the next page, it's two of 17 four toward the end of Exhibit 21, there's handwriting that 18 says, Discretionary, Fed only, sounds arbitrary and situation 19 specific. Do you see that? 20 A I see my writing, I see federal only, question mark. 21 Q Do you see there, right next to where you write that, it 22 says, The Secretary of the Treasury shall exempt from 23 administrative offset under this subsection payments, and 24 then it goes on to describe certain payments? 25 A The Secretary of the Treasury shall exempt, is that where</p>	<p style="text-align: right;">201</p> <p>1 Q All right. And -- 2 A But I'm not sure. 3 Q All right. And did you receive legal advice? 4 A *Russell gave me information; I don't recall exactly if it was 5 final. I don't -- 6 MR. MOODY: Well -- 7 THE WITNESS: We're getting into the 8 attorney/client thing again. 9 MR. MOODY: You don't have to describe what it was. 10 THE WITNESS: I believe he gave me advice, yes. 11 Q (BY MR. DUROCHER) Do you recall talking to anyone else 12 besides Mr. Prins? 13 A It was Russ Prins and Peg Housner were the two people that I 14 talked with from the Attorney General's office. 15 Q Anyone else? 16 A Mike and Mary, but I don't -- Mike, perhaps, about Whispering 17 Pines, but I don't recall for sure. 18 Q Do you recall anything about your conversation with Mike or 19 Mary? 20 A I don't -- with regards to what? 21 Q With regards to the research you did? 22 A Whispering Pines? 23 Q Well, either the research you did, the reading of Whispering 24 Pines, or your research with respect to Exhibit 21? 25 A Yeah, I don't remember.</p>

<p style="text-align: right;">202</p> <p>1 Q Okay. Any conversation with anyone else?</p> <p>2 A No, I think that would have covered it.</p> <p>3 Q How about with anyone from the tribe? I know you had</p> <p>4 communications that we've looked at with the tribe, but do</p> <p>5 you recall having any phone conversations?</p> <p>6 A Just the letters, I don't recall discussing this.</p> <p>7 Q Okay. I'm going to mark another exhibit.</p> <p>8 (Deposition Exhibit No. 22</p> <p>9 marked for identification.)</p> <p>10 Q (BY MR. DUROCHER) I'm going to hand you an exhibit that</p> <p>11 been marked as Exhibit 22. Do you have it in front of you?</p> <p>12 A Yes.</p> <p>13 Q All right. Do you recall receiving this letter from</p> <p>14 Mr. Baker?</p> <p>15 A I believe this is the response to my letter, it looks</p> <p>16 familiar.</p> <p>17 Q And you recall receiving it?</p> <p>18 A Yeah, I think I remember receiving this.</p> <p>19 Q All right. And, again, on the first page Mr. Baker</p> <p>20 identifies the offsets being made to a variety of categories</p> <p>21 and funds, do you see that?</p> <p>22 A Yes.</p> <p>23 Q And do you have any basis for disputing anything he says on</p> <p>24 that first page?</p> <p>25 A No, I don't.</p>	<p style="text-align: right;">204</p> <p>1 authorized, then at that point I would have moved forward to</p> <p>2 get with chief deputy, at that point, and get the refunds</p> <p>3 refunded back. But I never received word, and the research</p> <p>4 was being conducted to, I think I told you before, setting up</p> <p>5 meetings to try and discuss Mr. Baker's response and try to</p> <p>6 get conclusions.</p> <p>7 Q Okay. If you look at paragraph six Mr. Baker says, the</p> <p>8 second --</p> <p>9 MR. MOODY: And for the record, I guess we've been</p> <p>10 saying Mr. Baker, this is not actually authored by Mr. Baker.</p> <p>11 MR. DUROCHER: Oh.</p> <p>12 MR. MOODY: Christoph Geiger.</p> <p>13 MR. DUROCHER: Thank you.</p> <p>14 Q (BY MR. DUROCHER) Do you know who that is?</p> <p>15 A That's not ringing any bells.</p> <p>16 Q It says here, Christoph Geiger, deputy tribal attorney?</p> <p>17 A No, I guess I don't know who he is.</p> <p>18 Q You understood that this was coming from KBIC?</p> <p>19 A Yes, it's on KBIC letterhead.</p> <p>20 Q And, in fact, in the first sentence he's saying he's writing</p> <p>21 on behalf of the Community, right?</p> <p>22 A Uh-huh.</p> <p>23 MR. DUROCHER: Thank you, though, Mr. Moody, I</p> <p>24 slipped up on that.</p> <p>25 Q (BY MR. DUROCHER) Paragraph six on page Bates number 29</p>
<p style="text-align: right;">203</p> <p>1 Q Okay. Who would be the best person to know whether what</p> <p>2 Mr. Baker has said here is accurate from the department's</p> <p>3 standpoint?</p> <p>4 MR. MOODY: You're talking about from the source of</p> <p>5 the funding?</p> <p>6 MR. DUROCHER: Yes. Thank you.</p> <p>7 THE WITNESS: Whether this is federal funds or</p> <p>8 not?</p> <p>9 MR. DUROCHER: Right.</p> <p>10 THE WITNESS: Probably Mike would be the one to</p> <p>11 help you with that.</p> <p>12 Q (BY MR. DUROCHER) All right. If you look on page 29, at the</p> <p>13 bottom, the Bates number of Exhibit 22, do you see a</p> <p>14 paragraph numbered six?</p> <p>15 A Yes.</p> <p>16 Q Do you see there that Mr. Baker cites various authorities for</p> <p>17 you, including the statutes that we just looked at?</p> <p>18 A I see that.</p> <p>19 Q Does this refresh your memory at all that you received this</p> <p>20 letter and then conducted your own research on this issue?</p> <p>21 A No, it doesn't, and, again, I wasn't the only one. This</p> <p>22 would have been for my own edification. I contacted Russ</p> <p>23 Prins, Peg Housner, Mike, and these folks were reviewing this</p> <p>24 and I was waiting for answers from them and was not going to</p> <p>25 do anything until I was told to do it. If we weren't</p>	<p style="text-align: right;">205</p> <p>1 says, Mr. Geiger says in the second sentence, Federal</p> <p>2 appropriations shall be applied only to the objects for which</p> <p>3 the appropriations were made, except as otherwise provided by</p> <p>4 law. Do you see that?</p> <p>5 A Yes.</p> <p>6 Q Do you recall reaching any contrary conclusion when you did</p> <p>7 your own research?</p> <p>8 MR. MOODY: Well, I'm going to object. Once again,</p> <p>9 that's an assertion made by Mr. Geiger and it's outside the</p> <p>10 purview of this witness to do legal research and come up with</p> <p>11 his own legal conclusion.</p> <p>12 MR. DUROCHER: Well, I disagree with you,</p> <p>13 Mr. Moody, because I think Mr. Fratzke's own affidavit says</p> <p>14 that his job responsibilities include reviewing statutory</p> <p>15 authorities and judicial opinions, but I understand your</p> <p>16 objection, and Mr. Fratzke, you can go ahead and answer it.</p> <p>17 THE WITNESS: Don't recall coming to any</p> <p>18 conclusions.</p> <p>19 Q (BY MR. DUROCHER) Okay. Do you see where he goes on to say,</p> <p>20 The Federal Government, itself, is forbidden to offset</p> <p>21 Medicaid, Child Day Care, Safe and Stable Families and WIC</p> <p>22 program funds under the Debt Collection Improvement Act?</p> <p>23 A I see that.</p> <p>24 Q And do you recall reaching that conclusion when you did your</p> <p>25 own research?</p>

<p style="text-align: right;">206</p> <p>1 MR. MOODY: Same objection.</p> <p>2 THE WITNESS: I don't recall reaching that</p> <p>3 conclusion or any conclusion.</p> <p>4 Q (BY MR. DUROCHER) Okay. Mr. Geiger goes on to say, the next</p> <p>5 line, It's axiomatic under the Supremacy Clause of the U.S.</p> <p>6 Constitution that State governments are forbidden to offset</p> <p>7 these program funds. Do you see that?</p> <p>8 A Yes, I do.</p> <p>9 Q And would you agree that if the Federal government could not</p> <p>10 offset these program funds then the State would not be able</p> <p>11 to offset the program funds?</p> <p>12 A Don't recall -- I don't know.</p> <p>13 MR. MOODY: Once again, that's clearly calling for</p> <p>14 a legal conclusion that is not based on anything that</p> <p>15 Mr. Fratzke has said he did or that he's required to do.</p> <p>16 Q (BY MR. DUROCHER) And I think you answered while Mr. Moody</p> <p>17 was objecting.</p> <p>18 A I said --</p> <p>19 THE WITNESS: Could you read me back what I said?</p> <p>20 (Requested portion of the record</p> <p>21 was read by the reporter.)</p> <p>22 (Deposition Exhibit No. 23</p> <p>23 marked for identification.)</p> <p>24 Q (BY MR. DUROCHER) I think I'm finished with Exhibit 22, and</p> <p>25 I've just handed you Exhibit 23, and I'd ask if you've seen</p>	<p style="text-align: right;">208</p> <p>1 established? Does this -- does the question assume that they</p> <p>2 already have that information, or are you saying -- I guess I</p> <p>3 don't --</p> <p>4 MR. DUROCHER: I'm not sure I understand your</p> <p>5 objection.</p> <p>6 MR. MOODY: I guess it's not an objection, other</p> <p>7 than a request for clarification, that I'm not sure there's</p> <p>8 enough facts. I guess I don't have to understand it if he</p> <p>9 does.</p> <p>10 Q (BY MR. DUROCHER) Do you understand the question?</p> <p>11 A Well, Treasury gets involved when --</p> <p>12 Q Let me give you a concrete example. A tribal member wants to</p> <p>13 go out to dinner on the reservation and goes to pay for the</p> <p>14 dinner and sales tax is applied to the dinner, but the tribal</p> <p>15 member says, Hey, I'm a tribal member, I don't have to pay</p> <p>16 that. The retailer says, Well, you've got to show me some</p> <p>17 exemption. Does the tribal member have to contact you in</p> <p>18 order to satisfy that retailer to not charge the sales tax?</p> <p>19 MR. MOODY: Well, you can answer, but I'll object</p> <p>20 to the extent that there's no such factual scenario involved</p> <p>21 in this case, but --</p> <p>22 MR. DUROCHER: Okay.</p> <p>23 MR. MOODY: It's a tribal restaurant?</p> <p>24 THE WITNESS: This is owned by the tribe or --</p> <p>25 Q (BY MR. DUROCHER) Let's say it's a tribally-owned</p>
<p style="text-align: right;">207</p> <p>1 this document before?</p> <p>2 A It doesn't look familiar.</p> <p>3 Q Okay. I don't see your handwriting on this one, so I can't,</p> <p>4 I can't tie you to it, but I think it was produced by your</p> <p>5 office or by the department. Did you --</p> <p>6 A It looks like it was from the AG.</p> <p>7 Q Well, let me ask you, do you know whether anyone from the</p> <p>8 department ever requested an Attorney General opinion with</p> <p>9 respect to this question of offsetting federal funds?</p> <p>10 A I don't know.</p> <p>11 Q Did you ever?</p> <p>12 A No, I don't recall ever asking for an official opinion.</p> <p>13 Q Okay.</p> <p>14 A Just my query with Russ on the phone, and starting the</p> <p>15 inquiry process from my perspective.</p> <p>16 Q Okay. You understand that part of this lawsuit involves</p> <p>17 exemptions from the sales and use tax, correct?</p> <p>18 A Yes.</p> <p>19 Q And if a tribal member at KBIC who lives on the reservation</p> <p>20 wants to make a purchase on the reservation from a</p> <p>21 tribally-owned retailer, would the -- would that person be</p> <p>22 entitled to the exemption without getting permission from you</p> <p>23 first?</p> <p>24 MR. MOODY: Can I ask, do we know how the</p> <p>25 individual, or do we know how this information is</p>	<p style="text-align: right;">209</p> <p>1 restaurant?</p> <p>2 A I don't know how Treasury gets involved at that point. I</p> <p>3 mean, we're noticed in a situation where we're contacted and</p> <p>4 someone is seeking clarification as to exemption. So whether</p> <p>5 exemption exists or not there, I think we've established that</p> <p>6 that scenario would not be taxable, the tribe wouldn't</p> <p>7 contact us, the member probably wouldn't contact us.</p> <p>8 Q Okay. So --</p> <p>9 A I would never even know about it.</p> <p>10 Q Okay. How about a nontribal retailer on the reservation and</p> <p>11 the tribal member goes to make a purchase on the reservation</p> <p>12 for a piece of property that's going to be used solely on the</p> <p>13 reservation?</p> <p>14 A In a situation where a tribal exemption is going to be</p> <p>15 claimed, I would need to be notified.</p> <p>16 Q So for example, if a tribal member was going to a local store</p> <p>17 to buy a tube of toothpaste and they're going to charge tax</p> <p>18 on the tube of toothpaste, would the tribal member have to</p> <p>19 contact you in order to avoid having to pay that tax?</p> <p>20 A This is, again, a nontribal store?</p> <p>21 Q Yes.</p> <p>22 MR. MOODY: And you're talking a sales tax?</p> <p>23 MR. DUROCHER: Yes.</p> <p>24 THE WITNESS: I would think that --</p> <p>25 MR. MOODY: I'll object that you're assuming that</p>

<p style="text-align: right;">254</p> <p>1 determine whether or not to grant an exemption to the tribe?</p> <p>2 A I think those are -- again, going through our prior</p> <p>3 conversations, when you're introducing a retailer that is not</p> <p>4 the tribe or the RTM inside their own Indian Country, then</p> <p>5 you involve the White Mountain balancing test.</p> <p>6 Q Okay.</p> <p>7 (Deposition Exhibit No. 37</p> <p>8 marked for identification.)</p> <p>9 Q (BY MR. DUROCHER) I'm going to show you what's been marked</p> <p>10 Exhibit 37. This appears to be communications between you</p> <p>11 and Cynthia Collins at Baraga Telephone?</p> <p>12 A I see a letter from Cynthia Collins from Baraga Telephone</p> <p>13 addressed to me.</p> <p>14 Q And do you recall this inquiry she made?</p> <p>15 A I recall the issue, in general, the details at the time; this</p> <p>16 helps refresh my memory.</p> <p>17 Q All right. And if you turn to the very last page -- well,</p> <p>18 first of all, the third page in is a Michigan Sales and Use</p> <p>19 Tax Certificate of Exemption. Do you see that?</p> <p>20 A I do.</p> <p>21 Q Is that the current form that's used?</p> <p>22 A I don't know if it's in its current form or not, I'm not</p> <p>23 sure. I mean, this looks like a Michigan form, and that's</p> <p>24 the correct form number, 3372 in the left-hand corner,</p> <p>25 whether it's been revised since then, I don't know.</p>	<p style="text-align: right;">256</p> <p>1 A No, I did not. Sorry, I misunderstood you.</p> <p>2 Q That's okay.</p> <p>3 A I thought you said fill out.</p> <p>4 Q If I did, I didn't mean to say it.</p> <p>5 A Okay.</p> <p>6 Q If you turn to the last page it appears to be an E-mail from</p> <p>7 you to Ms. Collins dated October 18, 2005. Is that what this</p> <p>8 is?</p> <p>9 A It looks like it.</p> <p>10 Q And about halfway through the second paragraph you advise</p> <p>11 Ms. Collins if the tribe seeks to exempt itself from state</p> <p>12 taxation, it should contact myself with the appropriate</p> <p>13 details so we may evaluate the specific situation and how it</p> <p>14 comports with Federal Indian Doctrine. Do you see that?</p> <p>15 A I see that, I'm reading it right now.</p> <p>16 Q Okay.</p> <p>17 A Okay. I've read it.</p> <p>18 Q This would be a use tax issue?</p> <p>19 A What are we talking about?</p> <p>20 Q Telephone service?</p> <p>21 A Telephone service. If it's the service, itself, I believe</p> <p>22 that's covered under the use tax act, so that's correct.</p> <p>23 Q Okay. And so this would be a use tax on the tribe, itself?</p> <p>24 A Well, whose the, whose this about?</p> <p>25 Q Well, she says submitted by the Keweenaw Bay Community?</p>
<p style="text-align: right;">255</p> <p>1 Q Okay. Do you know whether the current -- whether this is the</p> <p>2 current, or there's a different current one, do you know if</p> <p>3 the current one has a check mark, a box for checking for</p> <p>4 Native American exemptions?</p> <p>5 A I believe it does not have that box, it's not based on</p> <p>6 Michigan Statute, that exemption, and it's my understanding</p> <p>7 this is meant to reflect Michigan Statute.</p> <p>8 Q Okay.</p> <p>9 A And only to be used for statutory, Michigan statutory</p> <p>10 exemptions.</p> <p>11 Q All right. Did you prepare this, this form?</p> <p>12 A No.</p> <p>13 Q Okay.</p> <p>14 A I'd like to know who did.</p> <p>15 Q Why is that?</p> <p>16 A Well, somebody prepared this form and used it without</p> <p>17 authorization to do so.</p> <p>18 Q I'm sorry, I was --</p> <p>19 A Oh, you meant -- you were looking at it from a different</p> <p>20 context. Oh, you mean the form, itself.</p> <p>21 Q The form, itself?</p> <p>22 A Did I create this form?</p> <p>23 Q Right.</p> <p>24 A Design it.</p> <p>25 Q Right?</p>	<p style="text-align: right;">257</p> <p>1 A Then it would be about the tribe.</p> <p>2 Q So this would be a use tax, the incidence which would fall</p> <p>3 upon the tribe, right?</p> <p>4 A -- If -- yeah, right.</p> <p>5 Q So in that situation, you're stating that the tribe would</p> <p>6 still have to contact you so that you would evaluate the</p> <p>7 specific situation?</p> <p>8 A I want to be notified -- we don't want to put the retailers</p> <p>9 in the middle of this, it's bigger than just the tribe.</p> <p>10 First of all, the tribe has to be federally recognized, are</p> <p>11 they operating inside their own Indian Country. We don't</p> <p>12 want the retailers stuck in that position to determine those</p> <p>13 factors. If we're talking about a residential tribal member</p> <p>14 or someone trying to make the assertion that they're exempt,</p> <p>15 I don't want to put the Baraga Telephone having to look at</p> <p>16 cards, are those cards still valid, are they residents within</p> <p>17 the Indian Country. Does the Baraga Telephone even know what</p> <p>18 Indian Country is. We can't put 4,000 retailers in that</p> <p>19 position, so I need to be contacted in these situations, or</p> <p>20 the department, whoever is assigned to do that to make that</p> <p>21 evaluation.</p> <p>22 Q But you would agree that in this situation, if the requester</p> <p>23 is the Keweenaw Bay Community and it's with respect to a use</p> <p>24 tax for telephone service, that the per se rule would apply?</p> <p>25 A If the -- let's make some assumptions here. If we're talking</p>

<p style="text-align: right;">274</p> <p>1 department's position with respect to the availability of tax 2 exemptions for Native Americans?</p> <p>3 A No, no.</p> <p>4 Q Okay. And the June Haas memo was not, before today, made 5 public, as far as you know, correct?</p> <p>6 A And it's not really made public, I don't think the intent 7 here is to make it public, it's for the purposes of this 8 trial.</p> <p>9 Q Okay. Going back to your affidavit, if you go to page five, 10 paragraph, sub paragraph (13)(g).</p> <p>11 A Okay.</p> <p>12 Q You mentioned that a request for a tax exemption should 13 include the following, and G talks about the place where each 14 component of the sale will take place, which may include 15 information regarding, as appropriate, where the sale was 16 solicited; the sale was made, the contract signed, payment 17 made or delivery made. Do you see that?</p> <p>18 A Uh-huh.</p> <p>19 Q In fact, wouldn't you just turn to the Michigan statutory 20 sourcing rule that we looked at earlier to make that 21 determination?</p> <p>22 A Well, you know, when you're dealing with Indian tribes, 23 it's -- there are some differences. Indian reservation, 24 Indian Country is also the State of Michigan, and when you 25 have an Indian retailer located in an Indian reservation</p>	<p style="text-align: right;">276</p> <p>1 different determinants were identified in there and may be 2 relevant in an evaluation.</p> <p>3 Q In paragraph 15 you say, If the transaction is exempt from 4 the sales tax or use tax under current Treasury guidelines. 5 Again, these guidelines that you're mentioning, these are not 6 written down?</p> <p>7 A Right, these are the guidelines that we're talking about and 8 trying to enumerate for this purpose.</p> <p>9 Q Okay. Do you recall -- in paragraph 22 on page seven, you do 10 mention this fact that the tribes were made aware of this 11 informal process in the late 1990s. Do you see that?</p> <p>12 A Yes.</p> <p>13 Q And you'd mentioned that a little bit earlier, too. That was 14 made available by you?</p> <p>15 A Myself, June, I'm not sure who indicated it. It would have 16 been in the course of the various -- I think I mentioned that 17 we got together every month for the most part.</p> <p>18 Q Right.</p> <p>19 A And would have probably been at the early onset of these 20 negotiations.</p> <p>21 Q You don't have a specific recollection of what was said?</p> <p>22 A No, I don't.</p> <p>23 Q You don't have a recollection of who said it, whether it was 24 you or June?</p> <p>25 A It might have -- I don't recall which one of us it was, but I</p>
<p style="text-align: right;">275</p> <p>1 that's located in Michigan, with regards to that retailer, 2 they are also in Michigan. So trying to balance the 3 balancing test with the tribal situation and evaluate that, 4 that might be, it might be relevant.</p> <p>5 Q But wouldn't you agree that if a retailer, if the transaction 6 takes place within Indian Country, as the Department defines 7 it, it's irrelevant that the Indian Country is within the 8 State of Michigan for purposes of sourcing?</p> <p>9 MR. MOODY: Well, it's been asked and answered.</p> <p>10 MR. DUROCHER: I don't think it has.</p> <p>11 THE WITNESS: I don't know what you mean by why 12 isn't it relevant, I mean --</p> <p>13 Q (BY MR. DUROCHER) I guess I didn't understand your answer 14 because you were saying that a retailer may be in Indian 15 Country, but that Indian Country is also within the State of 16 Michigan. My question was, why do you look at all these 17 different components in paragraph (g) when you have a statute 18 that tells you the sourcing rule?</p> <p>19 A I'm not sure that the Indian equation doesn't alter that to 20 some extent, and that's better to have as much information 21 available to make the decision, you know, what, at this 22 particular point, I mean, this was a good opportunity to put 23 all these down, and to try to think of everything that may or 24 may not be relevant.</p> <p>25 In reading Court cases, it seemed to me that these</p>	<p style="text-align: right;">277</p> <p>1 know the message was communicated because I'm receiving and 2 had been receiving. From that point forward requests.</p> <p>3 Q Okay. You mention, on page 10, in paragraph 32, you mention 4 the possibility of fraud from occurring. One of the reasons 5 for requiring this process is to prevent fraud from 6 occurring, right?</p> <p>7 A That's correct.</p> <p>8 Q What kind of fraud are you referring to?</p> <p>9 A I'm referring to people claiming exemption that they might 10 not otherwise be afforded under law.</p> <p>11 Q But isn't there the same possibility for fraud with respect 12 to the state law exemptions?</p> <p>13 A Well, the difference with state law exemptions -- are you 14 referring to who the purchaser is?</p> <p>15 Q That would be one example, I guess?</p> <p>16 A If the purchaser is not a tribe who is immune from suit and 17 the most effective of our means of collecting, then we can go 18 after the individual. So we don't hold a retailer 19 responsible at that point, we can go after the one who 20 presented them with a faulty certificate. And we don't have 21 that capability with the tribe if they're going to claim 22 sovereignty, then we can't sue them in Court, we can't 23 collect our monies, it's a much more difficult process.</p> <p>24 Q Well, right, except that if it's a tribe that has sovereign 25 immunity then the tribe would have been making a legitimate</p>

<p style="text-align: right;">278</p> <p>1 claim, right?</p> <p>2 A Perhaps, maybe not, we've described per se rules, but there</p> <p>3 could be instances where they are taxable, as well.</p> <p>4 Q But we were talking about the identity, I thought. We were</p> <p>5 talking about the potential for identity fraud where you go</p> <p>6 in and say, I have an exemption because I'm X, because I'm</p> <p>7 buying for the tribe?</p> <p>8 A I wasn't speaking just in the form of identity, I was</p> <p>9 speaking just in general that if a tribe was doing that and</p> <p>10 asserting an exemption, they may or may not be afforded that</p> <p>11 exemption. And Treasury needs the ability to evaluate that</p> <p>12 to determine whether or not we agreed with that assertion.</p> <p>13 And if the retailer -- first of all, you're putting the</p> <p>14 retailer in the middle of that transaction. If we can't</p> <p>15 collect from the retailer, we can't go back after the tribe</p> <p>16 if there were faulty assertions given to the individual, not</p> <p>17 just necessarily their identity, but other facts involved in</p> <p>18 the equation, in the per se rules that we discussed before.</p> <p>19 Q Do you have that same concern with respect to tribal members?</p> <p>20 A Well, tribal members, I mean, you know, it's different with</p> <p>21 tribal members, they're not afforded the same exemption, or</p> <p>22 even immunities that the tribe is, but nevertheless, it's</p> <p>23 still a grayer area than what it is if Skip Durocher is a</p> <p>24 Michigan resident and clearly not a member of the tribe and</p> <p>25 not residing in Indian Country. I'm not entirely sure what I</p>	<p style="text-align: right;">280</p> <p>1 Community that was seeking the exemption, correct, from</p> <p>2 Ms. Collins advising you?</p> <p>3 A It appeared to be, but I don't know.</p> <p>4 Q And it was for telephone service on the reservation, correct?</p> <p>5 A (Witness nodding head.)</p> <p>6 Q And in that situation, you agree that the legal incidence</p> <p>7 would fall on the tribe?</p> <p>8 A We made a number of assumptions, and I would, you know,</p> <p>9 recommend you go back and look to that, and I said that in a</p> <p>10 particular situation, given those per se rules, there was an</p> <p>11 exemption there.</p> <p>12 Q Right. And so in that, in the one example that you've given</p> <p>13 of fraud, you don't have a basis for saying that the tribe</p> <p>14 was not entitled to an exemption in that situation, right?</p> <p>15 A I don't think we gave an example specifically of any fraud</p> <p>16 that had taken place; the idea is that there's a potential</p> <p>17 for fraud there without our reviewing a situation ahead of</p> <p>18 time.</p> <p>19 Q Well, because paragraph 34 starts out, The State's fear of</p> <p>20 fraud and under-collection of taxes is not abstract. Do you</p> <p>21 see that starting in paragraph 34?</p> <p>22 A Okay.</p> <p>23 Q And then you say, For example, and then you give this example</p> <p>24 that we just got done talking about?</p> <p>25 A Okay. All right. Well, I thought we were talking about the</p>
<p style="text-align: right;">279</p> <p>1 can do in Indian Country with regards to a member who's maybe</p> <p>2 not a resident there, but is camped out there. I mean, there</p> <p>3 are just different situations. Plus, when you start talking</p> <p>4 about resident tribal members, you're talking about, again,</p> <p>5 you know, smaller transactions and then it's a large number</p> <p>6 situation. There's lots of differences.</p> <p>7 Q The only example I've seen in your affidavit of fraud is in</p> <p>8 paragraph 34 where you're referencing this form that was</p> <p>9 filled out and signed by the tribal government enterprise</p> <p>10 rather than have the State sign it. The --</p> <p>11 A The State wouldn't sign it.</p> <p>12 Q Oh, who would sign it?</p> <p>13 A Well, it was an exemption certificate that wasn't meant for</p> <p>14 tribal exemption; that's an exemption certificate that is</p> <p>15 intended for statutory provisions under Michigan Statute.</p> <p>16 Q All right. So your concern, though, was that this was an</p> <p>17 exemption form signed by the tribe, itself, claiming</p> <p>18 exemption, and you felt that it was inappropriate because any</p> <p>19 exemption should have come from your office, correct?</p> <p>20 A Well, with regards to tribal situations and tribal member</p> <p>21 situations, as we just got into, it's a different situation</p> <p>22 than what you normally have. We can't go after a situation</p> <p>23 after the fact as easily there.</p> <p>24 Q Okay. But in any event, in that particular situation, I</p> <p>25 think we agreed that it appeared to be Keweenaw Bay Indian</p>	<p style="text-align: right;">281</p> <p>1 one -- oh, this was the one on behalf of the Community?</p> <p>2 Q Right. I want to show you one more --</p> <p>3 A We made a number of assertions that, you know, this was,</p> <p>4 indeed, in Indian Country. I don't know if these facts are</p> <p>5 true in that situation, so I would have still evaluated it</p> <p>6 and solicited that information directly from the tribe. I</p> <p>7 know Susan LaFemier and people, and then I would know that</p> <p>8 this, indeed, was the tribe, so on and so forth.</p> <p>9 Q Right. My only point is based upon the information that we</p> <p>10 have, you have no reason to believe that this was a</p> <p>11 fraudulent transaction, or that there was a fraudulent</p> <p>12 attempt to obtain an exemption?</p> <p>13 A It was done improperly, is what I will say.</p> <p>14 Q Right.</p> <p>15 A And ultimately, that particular transaction may have been</p> <p>16 exempt.</p> <p>17 Q And in the department's view, this exemption, this claim of</p> <p>18 exemption was done improperly?</p> <p>19 A That's correct.</p> <p>20 Q It's up to the Court to decide ultimately what's proper and</p> <p>21 what's not?</p> <p>22 A That's fine, I'm speaking from my -- I'm not speaking on</p> <p>23 behalf of the Court.</p> <p>24 Q You bet. I understand.</p> <p>25 A Especially when we are on the record.</p>

EXHIBIT AAA

Excerpts of Deposition of Michael Reynolds (May 3, 2007)

MICHAEL REYNOLDS, MAY 3, 2007

Page 1

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MICHIGAN
3

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

8 Plaintiff,

9 -VS-

CASE NO. 2:05-CV-0224
10 Honorable Gordon J. Quist
11

12 ROBERT J. KLEINE, Treasurer of the
13 State of Michigan; JAY RISING, former
14 Treasurer of the State of Michigan;
15 MICHAEL REYNOLDS, Administrator of
16 the Collection Division of the Michigan
17 Department of Treasury; WALTER A. FRATZKE,
18 Native American Affairs Specialist of the
19 Michigan Department of Treasury; and
20 TERRI LYNN LAND, Secretary of State of
21 Michigan,

22 Defendants.
23 _____/
24
25

MICHAEL REYNOLDS, MAY 3, 2007

Page 2

1 THE DEPOSITION OF MICHAEL REYNOLDS, was
 2 taken by the Plaintiff before Quentina Rochelle Snowden,
 3 Certified Shorthand Reporter-5519 and Notary Public, being
 4 taken at the offices of Miller, Canfield, Paddock and
 5 Stone, PLC, One Michigan Avenue, Suite 900, Lansing,
 6 Michigan, commencing at or about the hour of 8:30 a.m.,
 7 on Thursday, May 3, 2007, pursuant to the applicable
 8 Michigan Court Rules.
 9 APPEARANCES:
 10 Dorsey & Whitney, LLP
 11 BY: SKIP DUROCHER
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 13 Minneapolis, Minnesota 55402
 14 (612) 340-7855
 15 E-mail: durocher.skip@dorsey.com
 16 Appearing on behalf of the Plaintiff.
 17
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 22 (517) 483-4989
 23 E-mail: moody@millercanfield.com
 24 Appearing on behalf of the Defendants.
 25

Page 4

1 Thursday, May 3, 2007
 2 Lansing, Michigan
 3 8:30 a.m.
 4 -oOo-
 5 MICHAEL REYNOLDS
 6 after having been first duly sworn to tell the
 7 truth, was examined and testified upon his oath as
 8 follows:
 9 -oOo-
 10 EXAMINATION
 11 BY MR. DUROCHER:
 12 Q Good morning, Mr. Reynolds.
 13 A Good morning.
 14 Q My name is Skip Durocher. I represent the Keweenaw
 15 Bay Indian Community in a lawsuit that's been filed
 16 in Federal Court here in Michigan. Are you familiar
 17 generally with the lawsuit?
 18 A I have a copy of it, yeah.
 19 Q I'm going to be asking you some questions here this
 20 morning about some matters that I think that you
 21 were involved in that affected the tribe.
 22 And have you ever been deposed before?
 23 A I think this is the third time.
 24 Q Okay. I'll give you just a couple of rules that
 25 you're probably already familiar with, but you

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1 EXAMINATION INDEX
 2 FOR
 3 MICHAEL REYNOLDS
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ATTORNEY'S NAME	EXAMINATION	RE-EXAMINATION
BY MR. DUROCHER	04	

EXHIBIT NUMBER	DESCRIPTION	PAGE	MARKED
NO. 42	PRINTOUT OF ACCOUNT COMMENTS SCREEN	70	
NO. 43	VENDOR OFFSET LETTER COPY DATED 5-10-05	110	
NO. 44	DEPARTMENT OF TREASURY CORRESPONDENCE DATED 5-25-06	119	

(EXHIBITS ATTACHED TO THE TRANSCRIPT.)

Page 5

1 understand you're under oath this morning, right?
 2 A Yes.
 3 Q That means you got to tell me the truth when I'm
 4 asking you questions, which means you got to
 5 understand my questions. So if at any time I ask a
 6 question that's not terribly artful, or maybe is a
 7 little hard to understand, just let me know and I'll
 8 try to rephrase it or restate it for you, okay?
 9 A Okay.
 10 Q If you don't hear me, tell me that. I speak pretty
 11 loud, but if I get soft spoken, let me know, if you
 12 need me to restate a question.
 13 You also have to make sure that you answer
 14 orally. You can't nod your head or shake your head.
 15 Makes it very difficult for our Court Reporter to
 16 understand what you mean.
 17 A I will try to remember that.
 18 Q Mr. Moody and I will keep you honest on that.
 19 Lastly, we have to make sure we don't talk
 20 over one another. Yesterday, Mr. Fratzke and I were
 21 having a little bit of trouble, because a lot of
 22 times the witness will kind of have an idea of where
 23 the lawyer is going with the question and try to
 24 answer before the question is finished. So, try to
 25 make sure that I'm finished with my question, maybe

2 (Pages 2 to 5)

MICHAEL REYNOLDS, MAY 3, 2007

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<p>1 Q Sure. You understand generally that this is a 2 lawsuit at least partly about offsets that were 3 performed relating to the Keweenaw Bay Indian 4 Community? 5 A Correct. 6 Q So my question is: You looked at this offset memo 7 or document. Did it help refresh your memory about 8 how the offset procedures worked with respect to the 9 offsets that were performed with KBIC? 10 A We have -- let me rephrase that. Our offset process 11 is not designed for any particular account. Our 12 offset process is designed across the board. It's 13 -- it's basically an automatic system that if a 14 vendor payment or a payment of any sort is going out 15 it runs before the receivable database. 16 Q All right. So, to answer my question though, did 17 this document at all refresh your memory about 18 anything that took place with respect to the offsets 19 with Keweenaw Bay Indian Community? 20 A Again, it's a general policy statement. There's no 21 -- no reflection of any individual type situation in 22 it. 23 Q Okay. All right. You also mentioned you were 24 looking at three or four memos that you had issued 25 to your staff. What did those relate to?</p>	<p>1 A Collection staff. 2 Q All right. 3 A And supervisors. Some may have gone to the 4 supervisors, some may have gone to the actual staff. 5 Q All right. And that would include the people who 6 work in the special procedures unit? 7 A Correct. 8 MR. DUROCHER: Okay. Kevin, have those 9 been produced? 10 MR. MOODY: I don't know. 11 THE WITNESS: I provided them in discovery. 12 That's all I could say. 13 MR. MOODY: It should have been. 14 MR. DUROCHER: Yeah. I don't recall seeing 15 them. That doesn't mean we don't have them. We'll 16 have to check and see. We may ask you for them 17 again, or you know, see what the status of those 18 is. 19 MR. MOODY: There's -- it's on the 20 documentation. I don't know everything 21 individually. So if you get specific memo and dates 22 and whatnot that you want, throw it together in 23 another request and we'll go through and see if we 24 already provided them or not. 25 MR. DUROCHER: I don't know any more than</p>
Page 11	Page 13
<p>1 A Basically that if we, through the course of 2 operation ran into an account that we found out was 3 related to some tribal issue, I needed to know about 4 it and we would get in touch with Walt Fratzke and 5 find out where we stood, what we should do. The 6 account would be put on hold and we would not take 7 any action on that point. 8 Q You said there were three or four of those? 9 A I believe there were two that I issued and I believe 10 that there was one that one of my assistants issued. 11 Q Who was your assistant? 12 A At that time it was Shirley Smith. 13 Q All right. And do you recall the dates of these 14 memos? 15 A Not in particular. But -- no, I do not remember the 16 dates. 17 Q How about the years that they were -- 18 A The year, well, I think -- I think Shirley's was 19 issued in '99 or 2000. I believe there was another 20 one that I would have been involved with in 2003. 21 And I think there was a third one in 2000 -- some 22 time in 2005. 23 Q Okay. And these are each one-page memos? 24 A Yes, very brief. 25 Q And who do they go to?</p>	<p>1 what Mr. Reynolds can tell me on these, but we'll 2 take a look and see if we know whether they have 3 been produced, then we'll get back to you. 4 MR. MOODY: Okay. And I'll take a look 5 too. 6 MR. DUROCHER: Okay. Thanks. 7 BY MR. DUROCHER, CONTINUING: 8 Q But you didn't believe -- strike that. 9 You don't believe that these memos that 10 you're talking about involve any like 11 attorney/client communication, right? 12 A No. It was just direction to staff. 13 Q Okay. It wasn't any deliberative process? 14 A No. 15 Q Okay. All right. So I think you told me that you 16 looked at some assessments, three or four memos that 17 we have talked about, then the offset policy? 18 A Correct. 19 Q Was that pretty much it? 20 A Yes. 21 Q Did you meet with anyone? 22 A Well, I met with legal Counsel. 23 Q And who's that? 24 A Uhm -- 25 Q Mr. Moody?</p>

4 (Pages 10 to 13)

MICHAEL REYNOLDS, MAY 3, 2007

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<p>1 reporting to you?</p> <p>2 A Yes.</p> <p>3 Q Okay. And tell me how that worked. What kind of</p> <p>4 staff did you have below you?</p> <p>5 A I believe in '99 I had three assistants, Will</p> <p>6 Smalls, William Frier and Shirley Smith.</p> <p>7 Q All right. And has that changed since 1999?</p> <p>8 A Yes.</p> <p>9 Q How has it changed?</p> <p>10 A Currently I only have two assistants. One is still</p> <p>11 Will Smalls. Mr. Frier was over our field</p> <p>12 operations. He has retired and he's been replaced</p> <p>13 by Tyson Howard.</p> <p>14 Q What happened to Shirley Smith?</p> <p>15 A She left state employment.</p> <p>16 Q And no replacement?</p> <p>17 A No.</p> <p>18 Q Is that an open position that's going to be</p> <p>19 replaced?</p> <p>20 A No. No.</p> <p>21 Q What -- since 1999, have you held the same title?</p> <p>22 A Yes.</p> <p>23 Q Tell me again the title.</p> <p>24 A Administrator of the Collection Division.</p> <p>25 Q And so the Collection Division is made up of Will,</p>	<p>1 A Well, that number has varied too.</p> <p>2 Q Approximately?</p> <p>3 A Seven to ten.</p> <p>4 Q Okay. And is there a hierarchy?</p> <p>5 A Yes.</p> <p>6 Q How does the hierarchy work within that unit?</p> <p>7 A We have a supervisor over the unit.</p> <p>8 Q Who was the supervisor in 1999?</p> <p>9 A Betty Lott.</p> <p>10 Q What's the last name?</p> <p>11 A Lott, L-O-T-T.</p> <p>12 Q Is she still the supervisor?</p> <p>13 A Yes.</p> <p>14 Q Then she has individuals working beneath her?</p> <p>15 A Yes.</p> <p>16 Q All right. Is there one individual that would have</p> <p>17 been responsible for the offsets with respect to</p> <p>18 Keweenaw Bay Indian Community?</p> <p>19 A The system does the offset.</p> <p>20 Q So there wouldn't be one person responsible for a</p> <p>21 particular taxpayer?</p> <p>22 A No.</p> <p>23 Q Okay. And who were the people that worked for Ms.</p> <p>24 Lott, do you know any of the names?</p> <p>25 A I -- I can give you just probably one. The rest of</p>
Page 27	Page 29
<p>1 you and then your two assistants?</p> <p>2 A Currently, yes, and then several units.</p> <p>3 Q All right. Tell me how that works. What are the</p> <p>4 units?</p> <p>5 A Well we have our Special Procedures Unit, excuse me,</p> <p>6 we have our Interface Unit. Currently we have two</p> <p>7 Telephone Units. We have Support Units. And we</p> <p>8 have a Field Operation. And then we also oversee</p> <p>9 our private contractor that does collections.</p> <p>10 Q All right. And all of these different units</p> <p>11 ultimately report to you?</p> <p>12 A Yes.</p> <p>13 Q All right. Which of these special -- I'm sorry,</p> <p>14 which of these units would have been involved in any</p> <p>15 way with respect to offsets that were applied</p> <p>16 against Keweenaw Bay Indian Community?</p> <p>17 A The Special Procedures Unit handles all offsets.</p> <p>18 Q All right. These other units that you told me about</p> <p>19 wouldn't have any connection with offsetting?</p> <p>20 A No.</p> <p>21 Q Who works within Special Procedures Unit, let's</p> <p>22 start in 1999, if you remember?</p> <p>23 A There's no way I'll remember all the peoples' names,</p> <p>24 but --</p> <p>25 Q How many people worked there?</p>	<p>1 them I'm not -- the people come and go.</p> <p>2 Q Okay.</p> <p>3 A Marsha Porter.</p> <p>4 Q That's somebody that currently works there?</p> <p>5 A Yes.</p> <p>6 Q Did she work there all the way back to 1999?</p> <p>7 A Yes.</p> <p>8 Q All right. That's the only name you know?</p> <p>9 A That's the only one that comes to mind at the</p> <p>10 moment, yes.</p> <p>11 Q Okay. Fair enough. Let's talk about your duties as</p> <p>12 the administrator in the Collections Division. What</p> <p>13 are your responsibilities?</p> <p>14 A To oversee the operation. To oversee the management</p> <p>15 staff. I did forget one unit and I should talk</p> <p>16 about.</p> <p>17 Q All right. What's that?</p> <p>18 A It's called the STAR team.</p> <p>19 Q I have heard that name before.</p> <p>20 A It's the group that -- that oversees our computer</p> <p>21 operations. And also, one of the other -- well, and</p> <p>22 then we have our field operation, so that's part of</p> <p>23 the function. In addition, we have our private</p> <p>24 contractor that does collections for us, so we're</p> <p>25 also -- the management team is also overseeing that.</p>

8 (Pages 26 to 29)

MICHAEL REYNOLDS, MAY 3, 2007

Page 30	Page 32
<p>1 Q All right. And have your responsibilities changed</p> <p>2 at all from -- between 1999 and today?</p> <p>3 A In broad general terms, no.</p> <p>4 Q Okay. Do you know how long the state of Michigan</p> <p>5 has been using offsets to collect taxes allegedly</p> <p>6 due?</p> <p>7 A No, I don't.</p> <p>8 Q But it has certainly since 1991, correct?</p> <p>9 A Correct.</p> <p>10 Q But you don't know anything about the history of</p> <p>11 when it first developed or anything like that?</p> <p>12 A That's correct.</p> <p>13 Q Okay. Can you explain how the offset procedure</p> <p>14 works generally without respect to any particular</p> <p>15 taxpayer?</p> <p>16 A Yes.</p> <p>17 Q Okay. Why don't you walk me through that and I'll</p> <p>18 probably jump in with questions from time to time.</p> <p>19 A Okay.</p> <p>20 Q First maybe you can explain what do you understand</p> <p>21 an offset to be in the context of this lawsuit and</p> <p>22 what we're talking about?</p> <p>23 A Well, I will just respond in terms of an offset.</p> <p>24 In general, it is our taking of a payment</p> <p>25 that is leaving the state and applying it to a debt</p>	<p>1 A One example.</p> <p>2 Q Then the computer system would generate a warrant</p> <p>3 for that amount?</p> <p>4 A Correct.</p> <p>5 Q Okay. And there could be other reasons why the</p> <p>6 state may owe money rather than for tax refund?</p> <p>7 A Yes.</p> <p>8 Q Okay. And in that case, a warrant would also be</p> <p>9 prepared, correct?</p> <p>10 A Yes.</p> <p>11 Q Okay. All right. So I'm sorry, I jumped in.</p> <p>12 A Okay. So that system is generating a file that is</p> <p>13 -- would generate warrants or electronic payments.</p> <p>14 When that file for the day is generated, it is</p> <p>15 compared to our accounts receivable for that day and</p> <p>16 if there are any matches by account number -- and I</p> <p>17 think we do a slight comparison on name then it's</p> <p>18 automatically taken and applied to the account.</p> <p>19 Q Okay. And the state's computer system that you're</p> <p>20 referencing, that's not called the STAR system,</p> <p>21 right?</p> <p>22 A No.</p> <p>23 Q Do you know is there a name for the state's</p> <p>24 system?</p> <p>25 A MAIN.</p>
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<p>1 that is owed to the state. So if a payment is going</p> <p>2 to any individual or entity and they owe us a debt,</p> <p>3 we, through the system, take the -- take the money</p> <p>4 and apply it to the account and notify the</p> <p>5 individual or the entity.</p> <p>6 Q All right. And from a computer -- you said this is</p> <p>7 all automated, right?</p> <p>8 A Yes.</p> <p>9 Q And so there's a computer system called the STAR</p> <p>10 system?</p> <p>11 A Yes.</p> <p>12 Q Under this STAR system, there's I assume some sort</p> <p>13 of software setup, so that when it shows that</p> <p>14 taxpayer X is entitled to some refund from the</p> <p>15 state, there's a search to determine whether or not</p> <p>16 there's monies that are owed to the state by</p> <p>17 taxpayer X?</p> <p>18 A Well, it actually works a little bit different.</p> <p>19 Q Well, walk me through that then.</p> <p>20 A The State's MAIN system is the system that generates</p> <p>21 the warrants from the state.</p> <p>22 Q What's a warrant?</p> <p>23 A It's a check, in essence.</p> <p>24 Q If the state owes someone money for a tax refund is</p> <p>25 one example.</p>	<p>1 Q MAIN system, the M-A-I-N?</p> <p>2 A Correct.</p> <p>3 Q Then Collection has set up its own system within the</p> <p>4 MAIN system?</p> <p>5 A No, they're separate systems.</p> <p>6 Q But they're interfaced somehow?</p> <p>7 A Yes.</p> <p>8 Q That's the interface you're talking about is where</p> <p>9 with the STAR system would determine whether on any</p> <p>10 given day, monies are owed by a taxpayer that may</p> <p>11 have to offset what -- the offset funds that may be</p> <p>12 going out from the state?</p> <p>13 A I think interface is a little too strong a word. I</p> <p>14 think we actually compare the file to the</p> <p>15 receivables file of checks or payments for the day</p> <p>16 against the receivables.</p> <p>17 Q When you say "we compare", who does that?</p> <p>18 A Two computers, they're the "we".</p> <p>19 Q Okay. And then so what happens in the event that</p> <p>20 the STAR system discovers that a taxpayer owes money</p> <p>21 to the state and the state is -- has a warrant that</p> <p>22 it's preparing for money to go out to that same</p> <p>23 taxpayer, what happens in that instance?</p> <p>24 A We -- we take the money and apply it to the account.</p> <p>25 Q And that's all -- that's also done by computer?</p>

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<p>1 A Yes.</p> <p>2 Q All right. So, what human contact is there with</p> <p>3 respect to this offset procedure on any given day?</p> <p>4 Any?</p> <p>5 A Not on an account basis, no.</p> <p>6 Q Okay. You said that there's a notice that's</p> <p>7 prepared?</p> <p>8 A Yes.</p> <p>9 Q That's computer-generated as well?</p> <p>10 A Correct.</p> <p>11 Q What does that notice look like?</p> <p>12 A I think we provided copies through our discovery of</p> <p>13 those offset letters.</p> <p>14 Q Okay. And maybe we'll see those, but you have to</p> <p>15 help me out because I may have seen a document that</p> <p>16 I don't recognize as the notice.</p> <p>17 A Okay. Basically it says we have taken the offset,</p> <p>18 it lists the assessment number, it lists where the</p> <p>19 money was applied and it gives the total that was</p> <p>20 applied. And it lists interface. I believe</p> <p>21 interface is a unit of contact if there's a</p> <p>22 problem.</p> <p>23 Q Does that notice go out before the offset occurs or</p> <p>24 after?</p> <p>25 A I'm going to say I believe it goes out just after.</p>	<p>1 system that was --</p> <p>2 A Yes. There was a different state system there. The</p> <p>3 warrants were physical warrants that were stopped.</p> <p>4 And I mean there's some mechanical things that</p> <p>5 changed. I don't remember those details.</p> <p>6 Q Was there more human involvement before MAIN came on</p> <p>7 the scene?</p> <p>8 A No. I think it was still the automatic. The</p> <p>9 check's gone out, we take it, boom.</p> <p>10 Q Okay. So, it sounds like at least the way you have</p> <p>11 described the system, there's very little human</p> <p>12 involvement in the actual determination of the</p> <p>13 particular offset?</p> <p>14 A As the checks are going out, that's correct.</p> <p>15 Q Okay. So what do the people in the special</p> <p>16 procedures unit do?</p> <p>17 A They -- well, they have many functions, but in</p> <p>18 regard to offsets, the function they perform is to</p> <p>19 answer those questions when a taxpayer entity calls</p> <p>20 in and said you have taken my money, I don't</p> <p>21 understand, or feel there's an issue with that, that</p> <p>22 offset.</p> <p>23 Q Okay. So a special procedures unit isn't designed</p> <p>24 just to deal with offsets?</p> <p>25 A No. No, it's not.</p>
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<p>1 I'm not 100 percent sure that -- the timing there,</p> <p>2 but I believe it all happens within a single</p> <p>3 night.</p> <p>4 Q Okay. All right. So, the -- by the time the notice</p> <p>5 is received by the taxpayer, the offset has already</p> <p>6 occurred?</p> <p>7 A Yes.</p> <p>8 Q Okay. Have there been changes to the system since</p> <p>9 you have been involved in Collections?</p> <p>10 A Changes to the overall STAR system?</p> <p>11 Q Yes.</p> <p>12 A Of course.</p> <p>13 Q How about to procedures that are used for purposes</p> <p>14 of conducting these offsets, has it always been the</p> <p>15 same procedure as far as you --</p> <p>16 A Well, when MAIN came in there obviously was a</p> <p>17 change. MAIN came in part way through this period</p> <p>18 of when I was in Collections.</p> <p>19 Q When did that happen?</p> <p>20 A I believe that the date would have been somewhere</p> <p>21 around '94, '95.</p> <p>22 Q How did it work before MAIN came in?</p> <p>23 A You know right now I would have a hard time</p> <p>24 remembering. It was quite awhile ago.</p> <p>25 Q Was there a different system, a different computer</p>	<p>1 Q All right. Who's -- do you know who was responsible</p> <p>2 for designing the STAR system?</p> <p>3 A I don't know who was responsible. No. I know names</p> <p>4 of people that may have been involved. But I don't</p> <p>5 know who was responsible.</p> <p>6 Q Who currently oversees the STAR system?</p> <p>7 A That's under myself and my manager Kevin Olson of</p> <p>8 the STAR team.</p> <p>9 Q Okay. So he's the manager of the STAR team?</p> <p>10 A Correct.</p> <p>11 Q Okay. You have mentioned one document, this offset</p> <p>12 document that you looked at that basically describes</p> <p>13 sounds like in fairly general terms Michigan's</p> <p>14 offset policy; is that right?</p> <p>15 A Yes.</p> <p>16 Q Are there other documents that describe in more</p> <p>17 detail how the offsets work, you know, sort of the</p> <p>18 way you have described them to me, more the</p> <p>19 logistical part of things?</p> <p>20 A Well, there's a procedural document that would talk</p> <p>21 about the procedures to use when dealing with that</p> <p>22 offset.</p> <p>23 Q Explain a little bit more what you mean by that when</p> <p>24 you say "dealing with that offset"?</p> <p>25 A I've not looked at that document in quite awhile.</p>

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<p>1 Q Okay.</p> <p>2 A But it would provide information to the person</p> <p>3 that's receiving the phone call that would -- if</p> <p>4 you know -- if they needed to refer to it, that</p> <p>5 would tell me what that sequence is, offsets</p> <p>6 automatic or manual, there are a few manuals. And</p> <p>7 that would then talk about the fact they have to</p> <p>8 take the phone call, research the account, determine</p> <p>9 what's there, if there is an issue take it to their</p> <p>10 supervisor.</p> <p>11 Q Okay. And that's a hard copy procedural document</p> <p>12 that's distributed to people in the Special</p> <p>13 Procedures Unit or available to them?</p> <p>14 A It used to be a hard copy.</p> <p>15 Q Okay. It's now on computer now?</p> <p>16 A I'm sure some other people still have the hard copy</p> <p>17 around.</p> <p>18 Q Then you said that there are some manual offsets?</p> <p>19 A Correct.</p> <p>20 Q How does that work?</p> <p>21 A That is a situation where we may, through having</p> <p>22 done an automatic offset, find an account that</p> <p>23 there's an issue with, so we would have to take that</p> <p>24 account number, and enter it into the system and</p> <p>25 then it would -- when that match occurs, then it</p>	<p>1 that.</p> <p>2 Q How about that other procedure that tells what to do</p> <p>3 when you get the phone call from a taxpayer? Is</p> <p>4 that also manual suppressed or is there another</p> <p>5 procedure or title?</p> <p>6 A I don't know what that would be.</p> <p>7 Q I'm sure --</p> <p>8 A I'm sure it has offset in its name someplace.</p> <p>9 Q Any other offset-related procedures?</p> <p>10 A Not to my knowledge, no.</p> <p>11 Q Okay. So we have talked about these two offsets</p> <p>12 procedures that you have mentioned, right?</p> <p>13 A Uh-huh.</p> <p>14 Q And we have talked about the one offset document</p> <p>15 that you looked at in preparation for the</p> <p>16 deposition?</p> <p>17 A Correct.</p> <p>18 Q Are there any other documents within your department</p> <p>19 that discuss or describe offsets?</p> <p>20 A I think we have a copy of the Whispering Pines court</p> <p>21 case.</p> <p>22 Q Are you familiar with that case?</p> <p>23 A I have read it a long time ago when I first came to</p> <p>24 Collections.</p> <p>25 Q What do you recall about that case, what does it</p>
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<p>1 would push that into a file and we would have to</p> <p>2 review the -- we would review the account to</p> <p>3 determine whether we need to take the offset or</p> <p>4 release it.</p> <p>5 Q All right. And you said that's when an issue would</p> <p>6 come up, right?</p> <p>7 A Yeah. We would be notified that there's an issue by</p> <p>8 the taxpayer.</p> <p>9 Q So this would be after the fact?</p> <p>10 A After the fact, correct.</p> <p>11 Q Are there any manual offsets that take place before</p> <p>12 the computer ever gets involved?</p> <p>13 A No.</p> <p>14 Q So after the fact any issue comes up for any reason</p> <p>15 then there's a procedure that tells how to do the</p> <p>16 offset manually or to change?</p> <p>17 A Yes.</p> <p>18 Q All right. And that also is an electronic</p> <p>19 procedure?</p> <p>20 A It's on the system, yeah, it's not paper.</p> <p>21 Q Is there a name for that, for those procedures you</p> <p>22 mentioned?</p> <p>23 A Manual suppress is I think what they call it.</p> <p>24 Q Manual suppress, that's the manual offset?</p> <p>25 A Yeah, that's that process of manually reviewing</p>	<p>1 stand for?</p> <p>2 A Just that somebody challenged our rights to offset</p> <p>3 and we were upheld through that process. I believe</p> <p>4 it was Community Health, although I'm not 100</p> <p>5 percent sure of that. It was Community Health</p> <p>6 payment that was going out that we intercepted and</p> <p>7 applied.</p> <p>8 Q Do you recall whether the offset in that case was a</p> <p>9 state fund that was being used as an offset?</p> <p>10 A I don't know.</p> <p>11 Q All right. Anything else other than the Whispering</p> <p>12 Pines' decision and these other offset documents you</p> <p>13 mentioned?</p> <p>14 A No.</p> <p>15 Q No other memos that you're aware of that discuss</p> <p>16 offset policy?</p> <p>17 A No. Any memo would just restate those -- those</p> <p>18 items.</p> <p>19 Q Well, I'm confused by your answer now. Are you</p> <p>20 saying there are other memos, but they would just be</p> <p>21 restating some of these things or --</p> <p>22 A Well, if somebody posed the question on offsets, our</p> <p>23 response would be the Revenue Act and Whispering</p> <p>24 Pines.</p> <p>25 Q Okay. How about advice from the attorney general's</p>

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<p>1 involved.</p> <p>2 Q Okay. And can you give me an example of a situation</p> <p>3 that you can recall where that happened? And I</p> <p>4 don't want a name of a specific taxpayer, but I want</p> <p>5 an idea of an offset that was taking place where the</p> <p>6 agency said, hey, we want to talk about this, we</p> <p>7 don't think this is appropriate.</p> <p>8 A I would say the one that comes to mind, daycare</p> <p>9 payments.</p> <p>10 Q Okay. So tell me what happened in that particular</p> <p>11 instance.</p> <p>12 A Well, just that. We ended up taking a daycare</p> <p>13 payment and the agency called us and we have been in</p> <p>14 discussions ever since. And at this time, our</p> <p>15 Counsel has advised that there's no clear legal --</p> <p>16 MR. MOODY: Well, I want to caution against</p> <p>17 advice coming from the attorney general's office.</p> <p>18 This is an issue that may be involved in this case,</p> <p>19 so I guess I would ask you not to discuss that.</p> <p>20 THE WITNESS: Okay.</p> <p>21 BY MR. DUROCHER, CONTINUING:</p> <p>22 Q The daycare payment you're referring to here were</p> <p>23 those Federally fund daycare payments or state</p> <p>24 funds?</p> <p>25 A I think that's one of the issues under discussion.</p>	<p>1 A I don't believe we've talked about it in that</p> <p>2 context.</p> <p>3 Q Okay. So, to the best of your understanding what is</p> <p>4 the issue being raised with respect to the child</p> <p>5 care payments? What is the agency saying to your</p> <p>6 department?</p> <p>7 A We shouldn't be taking the money because of its</p> <p>8 program.</p> <p>9 Q And do you have any understanding as to why they</p> <p>10 feel that way?</p> <p>11 A The issue I would say is tied up in the two</p> <p>12 different statutes. The one that says we should</p> <p>13 offset and their program that says they're recipient</p> <p>14 should receive the funds.</p> <p>15 Q Okay. So maybe I can tell you what I -- I will tell</p> <p>16 you what I understand you're saying and see if I'm</p> <p>17 correct. They're saying basically, hey, this money</p> <p>18 is designed to go to people who need it for child</p> <p>19 care and you're taking it away from them and it's</p> <p>20 offset, we don't think that's right?</p> <p>21 A Right.</p> <p>22 Q Okay. And if I understand your testimony, that</p> <p>23 issue has not been resolved in your department as to</p> <p>24 whether --</p> <p>25 A Whether they're exempt.</p>
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<p>1 Q Okay. With respect to state daycare funds that are</p> <p>2 owed to a citizen of the state of Michigan, is there</p> <p>3 -- does your department have a policy on whether</p> <p>4 that can be offset?</p> <p>5 A Our policy is not driven by type of payment. Our</p> <p>6 policy is as I said, driven by the Constitution of</p> <p>7 the Revenue Act and Whispering Pines.</p> <p>8 Q So your answer is, it doesn't make -- as far as your</p> <p>9 department is concerned, it doesn't make a</p> <p>10 difference whether it's a Federally funded amount --</p> <p>11 Federally funded amount that's coming through the</p> <p>12 system or a state funded amount? Is that my</p> <p>13 understanding? Am I understanding you correctly?</p> <p>14 A Our system doesn't know that at all.</p> <p>15 Q Right.</p> <p>16 A And so we have to work that out with the agency when</p> <p>17 it occurs.</p> <p>18 Q And I understand the agency, at least the agency</p> <p>19 with respect to child care, has raised this as an</p> <p>20 issue, right?</p> <p>21 A Uh-huh. Yes.</p> <p>22 Q And my question is: As a result of this issue being</p> <p>23 raised, has there been a determination that it is</p> <p>24 okay to offset state funds that are directed with</p> <p>25 respect to child care as an offset?</p>	<p>1 Q All right. Whether and -- do you know when that</p> <p>2 issue is going to be resolved?</p> <p>3 A No.</p> <p>4 Q Is it in litigation?</p> <p>5 A No.</p> <p>6 Q Okay.</p> <p>7 A Not to my knowledge.</p> <p>8 Q Okay. And in the context of that dispute, has the</p> <p>9 question of Federal funds come up for or the issue</p> <p>10 of Federal funds come up?</p> <p>11 A Yes.</p> <p>12 MR. MOODY: Asked and answered.</p> <p>13 BY MR. DUROCHER, CONTINUING:</p> <p>14 Q If I understand correctly, you're saying that that</p> <p>15 particular issue with respect to whether Federal</p> <p>16 funds can be offset has also not been determined by</p> <p>17 your department?</p> <p>18 A Correct.</p> <p>19 Q Do you know how it's going to be determined?</p> <p>20 A At this point, no.</p> <p>21 Q How long has this been an issue?</p> <p>22 A I would say two years, roughly.</p> <p>23 Q Since 2005?</p> <p>24 A Roughly. I don't remember the exact date.</p> <p>25 Q Was it an issue -- strike that.</p>

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<p>1 You're aware that there were offsets taken 2 with respect to my client, Keweenaw Bay Indian 3 Community, correct? 4 A Yes. 5 Q Were you aware of this issue before the KBIC offsets 6 were taken? 7 A I'm trying to compare dates. 8 Q Okay. 9 A And I am not sure that that would be a true 10 statement, no. 11 Q You don't know one way or the other? 12 A No. 13 Q How would you find that out? 14 A I would have to look at when that issue first 15 cropped up, and when the offset occurred. 16 Q And what agency was it that raised this issue with 17 respect to child care? 18 A I think that runs through Community Health. 19 Q Okay. That's a state agency? 20 A Another department, yes. 21 Q And it's your belief that it was Community Health 22 that raised this issue? 23 A Yes. 24 Q So you would go back to look at what, the 25 correspondence when you first got a letter from</p>	<p>1 with it once it's been addressed. 2 Q Explain that. 3 A If it's determined that something would be exempt 4 from offset, the MAIN system has a mechanism to 5 recognize that. 6 Q So it could identify, for example, Federal funds 7 that are coming through -- 8 A No. Not to my knowledge. 9 Q Okay. So how could it exempt something? 10 A It exempts it by program. By batches created by the 11 agency. 12 Q Okay. So, if there is a program that has Federal 13 funds, that program could be identified as exempt? 14 Am I understanding that? 15 MR. MOODY: Well, I'm going to object as to 16 whether simple involvement of Federal funds, I think 17 you're mischaracterizing what he said. There are 18 times when there's a determination made, but I don't 19 believe he -- he did review the line on Federal 20 funds. 21 BY MR. DUROCHER, CONTINUING: 22 Q Well, that's what I'm trying to figure out. If it 23 was determined -- let's just pretend at some point 24 here Community Health wins out, or perhaps my client 25 wins out in this case, and there's a determination</p>
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<p>1 Community Health saying, hey, what are you doing? 2 A Yes. 3 Q And you just don't know right now when that was? 4 A Offhand, no. I don't, no. 5 Q Since you got this letter from Community Health 6 raising this issue, has the -- has your department 7 continued to offset with respect to child care 8 payments? 9 A Yes. 10 Q All right. Any other -- you identified this one 11 example of an agency coming in and complaining. Are 12 there other examples you can identify for me? 13 A Not that I remember offhand. No. 14 Q We've talked about the question of Federal funds 15 being offset, right -- 16 A Yes. 17 Q -- just this morning? 18 Other than the issue that's been raised in 19 this lawsuit, and other than the issue that's been 20 raised by Community Health, are you aware of any 21 other circumstance in which someone -- someone or 22 some entity has objected to an offset with respect 23 to Federal funds? 24 A Not at the moment. I mean, that discussion occurs 25 occasionally. Our system is designed to -- to deal</p>	<p>1 made that the state of Michigan cannot use Federal 2 funds to offset amounts that otherwise are owed by 3 the state to a Michigan taxpayer. Okay, are you 4 with me? 5 A You're going to need to repeat that. 6 Q Okay. Let's assume that at some point the decision 7 is made that your department can no longer use 8 Federal funds to offset amounts owed to taxpayers. 9 A Okay. 10 Q Okay. Could that -- could the system be set up so 11 Federal funds would be -- would be exempt from 12 offsets? 13 A In its current state? You need -- you're going to 14 need to -- 15 Q Sure. I'm just saying do you know if there is a way 16 that computer -- 17 A In the current system? 18 Q Right. 19 A No, I don't believe so. 20 Q So the software -- something would -- some program 21 would have to be created within the software to -- 22 to somehow extricate Federal funds from the STAR 23 system? 24 A STAR doesn't -- STAR is the recipient of funds. 25 Q Right. There would have to be some software system</p>

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<p>1 Q Do you recall when that occurred?</p> <p>2 A No, I do not.</p> <p>3 Q Do you recall if it was before or after the first</p> <p>4 offsets with respect to KBIC?</p> <p>5 A No, I can't say.</p> <p>6 Q Do you -- are you aware that some tribes in the</p> <p>7 state of Michigan have tax agreements with the</p> <p>8 state?</p> <p>9 A Well -- Walt has discussed the existence of</p> <p>10 agreements with me, yes.</p> <p>11 Q Okay. Do you know whether these other one or two --</p> <p>12 offset issues with other tribes whether those</p> <p>13 involved tribes that were -- that had tax agreements</p> <p>14 with the state?</p> <p>15 A I'm going to say no.</p> <p>16 Q You don't know one way or the other?</p> <p>17 A No.</p> <p>18 Q Mr. Fratzke didn't tell you that one way or another</p> <p>19 on that?</p> <p>20 A Our discussion is do I refund it or do we keep it.</p> <p>21 That's where that discussion falls.</p> <p>22 Q With respect to these other tribes, were the offsets</p> <p>23 reversed?</p> <p>24 A I don't --</p> <p>25 MR. MOODY: I think I'm going to object at</p>	<p>1 A STAR is the accounts receivable system.</p> <p>2 Q Okay.</p> <p>3 A It does not contain any payment information</p> <p>4 whatsoever. That's the system I deal with.</p> <p>5 Q Okay.</p> <p>6 A Funding sources where money comes from, that's</p> <p>7 clearly not within STAR. Any of that would have to</p> <p>8 be in the MAIN system.</p> <p>9 Q I see.</p> <p>10 A So there's, you know, we just deal with here's the</p> <p>11 payment, doesn't matter what source it came from.</p> <p>12 We don't even know, and it's applied to the account.</p> <p>13 Q Sure. So if Mr. Fratzke though came to you, and</p> <p>14 said from now on we need to not offset with respect</p> <p>15 to Federal funds or we can't offset with respect to</p> <p>16 Indian tribes, then you would have to talk to</p> <p>17 someone else within the state who is responsible for</p> <p>18 the MAIN computer to come up with some system?</p> <p>19 A It wouldn't -- it wouldn't -- I don't believe that</p> <p>20 question would come to me. It would go to our chief</p> <p>21 accountant, Palmer Giron and they would deal with</p> <p>22 that change to the MAIN system. That system is not</p> <p>23 under my control or responsibility.</p> <p>24 Q All right. What's under your control and</p> <p>25 responsibility is the automatic offsetting that</p>
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<p>1 this point as to what -- on 281(f) grounds. I am</p> <p>2 not sure this is an area that we should be getting</p> <p>3 into, the treatment of a particular taxpayer.</p> <p>4 MR. DUROCHER: I disagree, Kevin. I think</p> <p>5 if I am not asking for identity, I think I would be</p> <p>6 entitled to the information. And I don't -- I think</p> <p>7 maybe we don't have a -- let's see if we have a</p> <p>8 fight --</p> <p>9 MR. MOODY: Go ahead.</p> <p>10 BY MR. DUROCHER, CONTINUING:</p> <p>11 Q You said you don't recall how they were treated?</p> <p>12 A No.</p> <p>13 Q Okay. One thing I didn't mention to you was,</p> <p>14 you know, if you need to take a break at any time</p> <p>15 feel free to tell me, we can take a break. But we</p> <p>16 have been going about an hour, a little bit longer,</p> <p>17 so we're going to take a short break.</p> <p>18 THE WITNESS: Okay.</p> <p>19 (Off the record at 9:47 a.m.)</p> <p>20 (Back on the record at 9:59 a.m.)</p> <p>21 BY MR. DUROCHER, CONTINUING:</p> <p>22 Q Go ahead. You needed to clarify --</p> <p>23 A Yeah. Clarification on that discussion between STAR</p> <p>24 and MAIN and your comments about Federal offsets.</p> <p>25 Q Yes.</p>	<p>1 occurs every day?</p> <p>2 A Right.</p> <p>3 Q All right.</p> <p>4 A Our part of that.</p> <p>5 Q Right.</p> <p>6 A We don't even control the file that comes to us,</p> <p>7 we --</p> <p>8 Q Okay. All right. And but what you -- but you're</p> <p>9 also -- your division, that you oversee, does take</p> <p>10 calls then once an offset is challenged, right?</p> <p>11 A If a taxpayer questions it, yes.</p> <p>12 Q And your department has the ability to then manually</p> <p>13 override an offset and reverse it?</p> <p>14 A On an account basis.</p> <p>15 Q Right. Right, on a particular taxpayer?</p> <p>16 A Yes.</p> <p>17 Q So for example, as in this case, KBIC contacted your</p> <p>18 department and challenged the offset, your</p> <p>19 department would have the ability to then override</p> <p>20 that offset and reverse it?</p> <p>21 A Correct.</p> <p>22 Q Okay. All right. Well thanks for that</p> <p>23 clarification. I was misunderstanding exactly how</p> <p>24 those systems work together.</p> <p>25 A All right.</p>

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1 Q Let's talk now about KBIC. And you know who I'm
 2 referring to when I say KBIC?
 3 A Yes.
 4 Q It's an Indian tribe known as the Keweenaw Bay
 5 Indian Community.
 6 A Yes.
 7 Q Sometimes I refer to them as the Community,
 8 sometimes I refer to them as KBIC, but you know who
 9 I am talking about?
 10 A Yes.
 11 Q Maybe I'll call them the tribe. I suppose if you
 12 have any questions, let me know if you don't know
 13 who I'm referring to.
 14 A Okay.
 15 Q When's the first time -- strike that.
 16 Did you grow up in Michigan?
 17 A Yes.
 18 Q Had you heard of the tribe outside of your
 19 employment?
 20 A Well, I have vacationed the UP a lot so I probably
 21 have heard of them.
 22 Q Okay. So even before the offset issue arose in this
 23 case, that you know, that's the subject of this
 24 case, you were aware that Keweenaw Bay Indian
 25 Community was a Federally recognized Indian tribe in

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1 northern Michigan?
 2 A I don't -- tribes, they're tribes I don't -- don't
 3 think about whether they're Federally recognized or
 4 not. I would have no clue if somebody told me we're
 5 Federally recognized, I would not know.
 6 Q Okay. But anyways you knew there's a tribe in
 7 Michigan called the Keweenaw Bay Indian Community?
 8 A Yes.
 9 Q When is the first time you had any involvement with
 10 Keweenaw Bay Indian Community with respect to your
 11 employment in the state?
 12 A I would have to say when it was recognized that we
 13 took the offset. That would have been the first
 14 time it would have come to my attention.
 15 Q And do you recall that there were two different
 16 occasions when offsets were taken against the tribe?
 17 A I know it was more than once.
 18 Q Okay. Do you know whether there were more than two
 19 occasions?
 20 A Well, by review of the disclosure things obviously
 21 our offsets have happened more than -- I mean, they
 22 happen.
 23 Q All right. And actually I'm referring I guess to
 24 blocks of offsets. Are you aware that there was at
 25 least one offset taken in 2002?

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1 A I believe that was the date, yes.
 2 Q Okay. And then you're aware that more offsets were
 3 taken in 2005?
 4 A Yes.
 5 Q Okay. Are you aware of any other time frames other
 6 than 2002 or 2005 where offsets were taken against
 7 the Keweenaw Bay Indian Community?
 8 A I think Walt had called me and asked if there was
 9 one previous. We had checked our records and we
 10 could not find any.
 11 Q Okay. But there is a way to check your records on
 12 that?
 13 A Yes.
 14 Q All right. What do you do, you type in taxpayer
 15 name and you can determine that?
 16 A Well, we would go by the name. Also our system when
 17 an account is closed, completed, it is removed from
 18 the system so we would ask for an archive report,
 19 paper report that would give us the details of the
 20 account.
 21 Q Okay. And so, back in 2002, when the first offset
 22 took place, at that time Mr. Fratzke asked you to
 23 check and see whether there were earlier offsets?
 24 A I don't remember the timing of that. I think some
 25 time during that period of 2002 to 2005, an issue

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1 was raised about another offset and we tried to
 2 verify whether it existed or didn't.
 3 Q And you concluded that there had been no other
 4 offsets?
 5 A We could not find one.
 6 Q Okay. So, let's go back to the 2002 time frame.
 7 Tell me what's the first thing you remember
 8 hearing about KBIC and offsets in 2002.
 9 A Well, my memory is Walt called us and told us it
 10 happened because the tribe called him. So I would
 11 go to my special procedures unit and say here's the
 12 account number, verify it happened, find out the
 13 details.
 14 Q All right. So you believe you received a call from
 15 Mr. Fratzke?
 16 A Yes.
 17 Q All right. Do you know whether the tribe first
 18 contacted someone in special procedures?
 19 A I don't know. I mean, that would be part of the
 20 system history text. Just offhand I do not
 21 remember.
 22 Q And I don't know what you mean by that, "part of the
 23 system history text." What do you mean by that?
 24 A When a person contact -- anybody that calls us we
 25 have the ability to enter the fact that that contact

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<p>1 occurred.</p> <p>2 Q Okay. And did you go back for purposes of this</p> <p>3 lawsuit, go back and look to see whether there was</p> <p>4 any documentation like that?</p> <p>5 A We reviewed the account, yes.</p> <p>6 Q Okay. And that's a computer screen?</p> <p>7 A Yes.</p> <p>8 Q Did you find anything?</p> <p>9 A I think there were a few notes in there, but I don't</p> <p>10 remember dates of those notes, versus dates of when</p> <p>11 Walt called. If an issue crops up with our</p> <p>12 procedures -- special procedures unit, as I</p> <p>13 mentioned before, that is forwarded to the</p> <p>14 supervisor --</p> <p>15 Q Okay.</p> <p>16 A -- who then would have brought it to me. So I</p> <p>17 really don't know what the record shows, but I don't</p> <p>18 believe that happened.</p> <p>19 Q All right. Do you know whether you printed off and</p> <p>20 produced in this case the screens that you went back</p> <p>21 and looked at with respect to KBIC?</p> <p>22 A Through discovery?</p> <p>23 Q Yes.</p> <p>24 A Well, they were looked at. I know we looked at</p> <p>25 them.</p>	<p>1 If for some reason there's a reference that got</p> <p>2 overlooked then we would send it to you. But I</p> <p>3 suspect it's probably because they went to Walt.</p> <p>4 Baker and Walt have been contacting each other for</p> <p>5 years.</p> <p>6 BY MR. DUROCHER, CONTINUING:</p> <p>7 Q Let me explore something else though. What would</p> <p>8 you look at on the screen? Would it be a log of the</p> <p>9 days contents?</p> <p>10 A Log of -- yeah, it's by date. Comments by date,</p> <p>11 yes.</p> <p>12 Q All right. So you wouldn't be looking -- you</p> <p>13 wouldn't be typing in Keweenaw Bay Indian Community</p> <p>14 and pulling up a screen that shows all the activity</p> <p>15 with respect to Keweenaw Bay Indian Community or</p> <p>16 would you?</p> <p>17 A For delinquent taxes for that account number?</p> <p>18 Q Right.</p> <p>19 A Yes.</p> <p>20 Q So you do that. Has that been produced?</p> <p>21 A Well, again, I know we looked at it. I -- I don't</p> <p>22 remember --</p> <p>23 Q Right.</p> <p>24 MR. DUROCHER: Okay. That's what I'm</p> <p>25 getting at, Kevin. If there's -- I can see if there</p>
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<p>1 Q All right. But then -- did you -- do you know</p> <p>2 whether they were printed off and produced in this</p> <p>3 case?</p> <p>4 A No. I don't -- don't recall.</p> <p>5 Q You don't know one way or the other or you don't</p> <p>6 think they were?</p> <p>7 A I don't recall one way or the other.</p> <p>8 MR. DUROCHER: All right. I guess that's</p> <p>9 another thing we would ask for.</p> <p>10 MR. MOODY: Well, the thing is if it wasn't</p> <p>11 produced, its probably because it didn't show</p> <p>12 anything. And if I understand correctly, the screen</p> <p>13 would show a contact from -- coming from KBIC.</p> <p>14 Question is whether it came to Walt or to SPU. I</p> <p>15 suspect it probably went to Walt but --</p> <p>16 THE WITNESS: Can I make a statement here?</p> <p>17 BY MR. DUROCHER, CONTINUING:</p> <p>18 Q Yeah, please.</p> <p>19 A The normal procedure with any tribes is they don't</p> <p>20 talk to us, they talk to Walt.</p> <p>21 Q No, I understand that.</p> <p>22 A And so you know --</p> <p>23 MR. MOODY: But to shorten it, yeah, go</p> <p>24 ahead and put that in and we'll check and see if</p> <p>25 there is no reference, then there's nothing there.</p>	<p>1 is a days log and there was no call that came in</p> <p>2 that day, then it wouldn't make sense to produce it.</p> <p>3 But if there is screens that they can plug in to</p> <p>4 access information about Keweenaw Bay Indian</p> <p>5 Community and offset activities, it sounds like the</p> <p>6 witness isn't sure whether that was printed off and</p> <p>7 produced. And that's what I would like to have</p> <p>8 checked.</p> <p>9 MR. MOODY: Uhm --</p> <p>10 BY MR. DUROCHER, CONTINUING:</p> <p>11 Q Am I misunderstanding something, Mr. Reynolds?</p> <p>12 A Every account has a log of contact.</p> <p>13 Q Right.</p> <p>14 A Yeah. And I don't know whether they called us or</p> <p>15 didn't call us.</p> <p>16 Q Right.</p> <p>17 A I know in the discovery process I had staff review</p> <p>18 that. So --</p> <p>19 Q Okay.</p> <p>20 A That's all I can respond to at this point.</p> <p>21 Q But you could go in on your STAR system, you can go</p> <p>22 in and check the Keweenaw Bay Indian Community</p> <p>23 account?</p> <p>24 A Yes.</p> <p>25 Q What will it show on that screen, typically?</p>

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<p>1 A It would show some of the -- the users that touch</p> <p>2 the account, the actions they take are recorded, if</p> <p>3 there is any -- through codes and other things. If</p> <p>4 it's something that requires a comment, a comment is</p> <p>5 entered.</p> <p>6 (Deposition Exhibit Number 42 was marked</p> <p>7 for identification.)</p> <p>8 BY MR. DUROCHER, CONTINUING:</p> <p>9 Q This is Reynolds 42. Mr. Reynolds, I'm handing you</p> <p>10 -- the reason this is Number 42 is because we went</p> <p>11 through 41 exhibits with Mr. Fratzke yesterday.</p> <p>12 A Okay.</p> <p>13 Q This is Exhibit 42. And you know, I thought maybe I</p> <p>14 would show you this now to see if this will help</p> <p>15 give us some context to the screens that you're</p> <p>16 talking about.</p> <p>17 A This is the screen.</p> <p>18 Q Okay. So, this appears to be a two-page document</p> <p>19 dated -- let's see somewhere in here I think I saw</p> <p>20 -- I guess there's some entry dates. The first one</p> <p>21 being November 26, 2002 it shows the name Keweenaw</p> <p>22 Bay Indian Community. Bates numbers on the pages</p> <p>23 are 859 and 860. So maybe you can walk me through</p> <p>24 and kind of explain what this is.</p> <p>25 A Well, this is the -- for want of a better term --</p>	<p>1 there's little numbers down at the bottom of the</p> <p>2 page.</p> <p>3 A Oh.</p> <p>4 Q All right. The reason I say that, it looks like</p> <p>5 chronologically the first entry on the second page</p> <p>6 is the earliest entry; is that right?</p> <p>7 A Yes.</p> <p>8 Q All right. The first entry is February 21, 1997; is</p> <p>9 that right?</p> <p>10 A Uh-huh.</p> <p>11 Q I know I have worked on other cases with computer</p> <p>12 entries and there's a lot of jargon and shorthand</p> <p>13 terms and things like that, so I'm wondering if we</p> <p>14 can just walk through and you can tell me what these</p> <p>15 things say, okay?</p> <p>16 A Okay, yeah.</p> <p>17 Q If you know. So, how about that first entry for</p> <p>18 1997.</p> <p>19 A Sent to special procedures to change assessment date</p> <p>20 to blank for those assessments. And it would have</p> <p>21 been entered by our hearings unit. And the person</p> <p>22 would be PAW. I don't recognize those initials.</p> <p>23 Q It would be somebody who handled the hearing, you'd</p> <p>24 expect, somebody from treasury?</p> <p>25 A Somebody in hearings. I don't know whether that</p>
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<p>1 the history text of an account.</p> <p>2 Q Okay.</p> <p>3 A And it would record -- the purpose is to record</p> <p>4 anything that needed to be documented outside of</p> <p>5 normal account system changes.</p> <p>6 Q And so this is someone from the special procedures</p> <p>7 unit actually sitting down and typing in the</p> <p>8 computer?</p> <p>9 A It could be anyone who has access to STAR --</p> <p>10 Q Okay.</p> <p>11 A -- typing in a comment. It wouldn't necessarily</p> <p>12 just be restricted to special procedures.</p> <p>13 Q Who else has access to STAR?</p> <p>14 A All the collections staff.</p> <p>15 Q Okay. Mr. Fratzke?</p> <p>16 A I don't know offhand.</p> <p>17 Q Okay. You do?</p> <p>18 A Yes.</p> <p>19 Q Okay. All right. It looks like it'd probably make</p> <p>20 sense if we chronologically go to second page of</p> <p>21 Exhibit 42 first; is that right?</p> <p>22 A Yes.</p> <p>23 Q And are you on the second page?</p> <p>24 A Yes.</p> <p>25 Q Oh, I mean the second physical page, page 860. See</p>	<p>1 would be the clerk or who. But somebody in</p> <p>2 hearings.</p> <p>3 Q What is the purpose of changing an assessment date?</p> <p>4 A Assessments come to us with dates on them.</p> <p>5 Q Okay.</p> <p>6 A This indicates to me that that -- for whatever</p> <p>7 reason, that process wasn't -- wasn't clean or good</p> <p>8 or had an error in it. So the date needed to be</p> <p>9 changed.</p> <p>10 Q But here they're changing the date to 00-00-0000,</p> <p>11 right?</p> <p>12 A Yes.</p> <p>13 Q So what significance does that have with respect to</p> <p>14 your unit?</p> <p>15 A I think it relates to the system and the</p> <p>16 restrictions within the system based on dates.</p> <p>17 Q So, I guess I don't understand what that means. Did</p> <p>18 the numbers after the dates, those four I numbers,</p> <p>19 you know --</p> <p>20 A Yes.</p> <p>21 Q Those are the assessments?</p> <p>22 A Correct.</p> <p>23 Q Those are assessment numbers?</p> <p>24 A Yes.</p> <p>25 Q And those assessments were made -- do you know when</p>

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<p>1 those assessments were made?</p> <p>2 A Not without looking, no.</p> <p>3 Q Okay. I will represent to you that the assessments</p> <p>4 were made in 1996, okay?</p> <p>5 A Okay.</p> <p>6 Q Do you know why the assessment date wouldn't be 1996</p> <p>7 here?</p> <p>8 MR. MOODY: If you know.</p> <p>9 THE WITNESS: Again, you know, there --</p> <p>10 this -- the system prevents certain things from</p> <p>11 happening based on dates.</p> <p>12 BY MR. DUROCHER, CONTINUING:</p> <p>13 Q Okay.</p> <p>14 A Once an assessment is final, the system doesn't</p> <p>15 allow things to happen, or it allows things to</p> <p>16 happen.</p> <p>17 Q Okay.</p> <p>18 A And I guess the next comment is the one that</p> <p>19 would --</p> <p>20 Q Oh, okay.</p> <p>21 A -- would characterize this.</p> <p>22 Q All right.</p> <p>23 A If based on the date there are system codes that</p> <p>24 won't allow liens to happen until after an</p> <p>25 assessment is final, this change and the fact that</p>	<p>1 Q Two different things. Okay. Does the collection</p> <p>2 group have anything to do with liens?</p> <p>3 A Yes.</p> <p>4 Q What would happen if a lien request was approved?</p> <p>5 A We would generate a document that would go to the</p> <p>6 County and it would be recorded as a lien against</p> <p>7 property.</p> <p>8 Q Have you ever done that with an Indian tribe?</p> <p>9 A I don't know.</p> <p>10 Q Okay. All right. So they -- in 1999 the lien</p> <p>11 request is denied. Do you know who denied that?</p> <p>12 A Our initials at the end of that is JF and COL. That</p> <p>13 tells me it was a collection person. That person</p> <p>14 has retired. That person's name was Joe Freer.</p> <p>15 Q He would have been -- he would have been the one</p> <p>16 that would have denied the lien request?</p> <p>17 A Yes.</p> <p>18 Q Is that because the assessments were still in</p> <p>19 hearing status?</p> <p>20 MR. MOODY: If you know.</p> <p>21 THE WITNESS: Well it could be a</p> <p>22 combination of that. When that approval comes to</p> <p>23 you, you look at the account. Clearly there's a</p> <p>24 history text that changes the date and it's by</p> <p>25 hearing. So I don't know the exact reason.</p>
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<p>1 hearing made it tells me they put the assessments in</p> <p>2 hearings and therefore, we want to make sure the</p> <p>3 thing was not -- the account was not liened.</p> <p>4 Q Okay. All right.</p> <p>5 A So when that happened, we had already had -- the</p> <p>6 second comment says we already had had a request.</p> <p>7 Liens require approval --</p> <p>8 Q Right.</p> <p>9 A -- I mean, somebody requests them, a supervisor or</p> <p>10 management approves them. So a lien request denied,</p> <p>11 their request was denied. All hearing and all</p> <p>12 assessments in hearings status. We cannot put an</p> <p>13 account in hearing status if the date is final. So</p> <p>14 they went back to allow the hearing status to occur</p> <p>15 so a hearing could happen.</p> <p>16 Q So in 1999 someone had made a request to put a lien</p> <p>17 on based on the assessments?</p> <p>18 A Yes.</p> <p>19 Q And what's the ramifications from your group if a</p> <p>20 lien is allowed?</p> <p>21 A Ramifications?</p> <p>22 Q Right. Here the lien request is denied. If a lien</p> <p>23 request was allowed, does that mean you could do an</p> <p>24 offset?</p> <p>25 A Liens and offsets are two different things.</p>	<p>1 BY MR. DUROCHER, CONTINUING:</p> <p>2 Q Right.</p> <p>3 A But clearly there's a note there and he followed</p> <p>4 that note.</p> <p>5 Q Right. Ordinarily you would not expect to see a</p> <p>6 lien approved if an assessment is at a hearing?</p> <p>7 A Right. Right.</p> <p>8 Q Then there's no activity for another almost for over</p> <p>9 two years, right?</p> <p>10 A Right.</p> <p>11 Q Then May 8, 2001 can you tell me what that means,</p> <p>12 what that says?</p> <p>13 A Well, TP is taxpayer. CPS is correspondence. And</p> <p>14 we have the word summons. So we received a summons</p> <p>15 dated February 16th, '01. Treasury named is</p> <p>16 Defendant. CPS forwarded to AG's office for review.</p> <p>17 Q Okay.</p> <p>18 A So we forwarded that document to the AG's office for</p> <p>19 review.</p> <p>20 Q Did you retain a copy of that? Do you know would</p> <p>21 your collections group retain a copy?</p> <p>22 A As of that date, I don't believe so.</p> <p>23 Q You didn't have a procedure in place at that time</p> <p>24 that you would keep a copy?</p> <p>25 A We have record retention procedures. I don't -- I</p>

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<p>1 just offhand I couldn't tell you whether that would 2 -- would have been kept or how it was kept or if it 3 still exists. 4 Q Okay. Do you know what type of lawsuit this was? 5 A No. I mean, this is all the information we have. 6 Q Okay. And you never went back, and once this 7 lawsuit started went back and tried to find this 8 summons that was dated February 16, 2001? 9 A Not to my knowledge. 10 MR. DUROCHER: Do you know whether the AG's 11 office, Kevin, has a copy of that? 12 MR. MOODY: Petition? 13 MR. DUROCHER: Yeah. 14 MR. MOODY: I couldn't tell you. 15 MR. DUROCHER: Okay. That's something I 16 think we would also ask for. I know Mr. Baker's 17 letter to Mr. Fratzke that we looked at yesterday 18 said this was in litigation, and I think Mr. Fratzke 19 said yesterday that that was an error, but now that 20 I see there was a summons sent here and that's -- I 21 hadn't realized that. 22 You don't know what that's referring to 23 either? 24 MR. MOODY: Well I believe that this 25 account is by taxpayer, not necessarily by</p>	<p>1 A And I just, offhand, I don't know -- I don't 2 remember whose they are. 3 Q Okay. All right. Then let's go to the next entry 4 here, which is April 17, 2002. 5 A Yes. 6 Q All right. Can you read that one for me? 7 A Petition for review of administrative division and 8 attachments received on April 16th, sent to Debbie 9 Puckett, who is my secretary in the Collection 10 Administration, has to do with seizure of cigarettes 11 in January of 2002. And it was sent by Sandra Braun 12 in our bankruptcy unit. And I guess this is the 13 place I make the comment that the bankruptcy unit 14 received it, they may not have been the intended 15 party so they forwarded it. So it's kind of like 16 the summons. Were we the intended party? I can't 17 tell from here. But our procedure is to forward it, 18 so -- 19 Q And that's what you did in the next entry? 20 A Yes. Received above petition and forwarded it to 21 Walt Fratzke. 22 Q Then the next entry is September 20, 2002? 23 A Yes. 24 Q All right. Can you walk through that one? 25 A Hearings order dated 9/20/02 assessment, then</p>
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<p>1 assessment. And you do get into the cigarette tax 2 issues and there was a property tax dispute at one 3 point too, wasn't there? And a lien I think would 4 be going to property tax -- I -- 5 THE WITNESS: Probably. Can I make a 6 clarification here? 7 MR. MOODY: Sure. 8 THE WITNESS: Just to help this out. If 9 collections received a summons, we don't try to 10 determine what it pertains to. We just record the 11 fact that we got it. So that's what that is. It's 12 a record. I can -- 13 MR. MOODY: I suspect it has nothing to do 14 with our case. That's -- 15 MR. DUROCHER: That may be right. 16 MR. MOODY: You had the -- I'm assuming 17 that's what this whole thing is -- 18 MR. DUROCHER: That may be right. I don't 19 remember the dates on those. But okay, that's 20 helpful. 21 BY MR. DUROCHER, CONTINUING: 22 Q Then the initials at the end? 23 A Well, those would be the people in special 24 procedures. 25 Q Okay.</p>	<p>1 there's the number, upheld as originally issued. 2 And then it gives the amounts. 3 Q Okay. 4 A Assessment number upheld as originally issued. And 5 there's the amounts. And they go -- they step 6 through -- 7 Q Yep. 8 A -- all four assessments removed from hearings hold, 9 docket closed and Dianne Mulnicks (ph) -- I don't 10 know whether she still works for the department or 11 not, but, she's the one who removed it, somebody not 12 in collections. 13 Q And what's OPRD? 14 A I don't remember. We have had a lot of different 15 unit changes. Obviously that was a unit, most 16 likely it stands for operations, but other than 17 that, I don't know. 18 Q And while a -- while a debt like this -- or 19 assessments like this are in hearing status, no 20 offsets would occur? 21 A Correct. 22 Q Because there's no final amount that's due? 23 A It's not based on the final amount. It's based on 24 the hearing code and status. 25 Q Okay.</p>

21 (Pages 78 to 81)

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<p>1 A The amounts still show within the system.</p> <p>2 Q All right. Is this -- what we're looking at here,</p> <p>3 is this part of the STAR system?</p> <p>4 A Yes.</p> <p>5 Q Okay. But anyway the STAR system would not</p> <p>6 recognize until after the hearing status is removed,</p> <p>7 it wouldn't recognize these debts as something that</p> <p>8 needed to be collected?</p> <p>9 A It would not show them as something needed to be</p> <p>10 collected and it has some restrictions on what can</p> <p>11 happen when it's in those statuses.</p> <p>12 Q Okay. When you and Mr. Fratzke talked about Indian</p> <p>13 tribes and offsets, was there ever any discussion</p> <p>14 about attempting to exempt Indian tribes from the</p> <p>15 MAIN computer, you know, so that offsets wouldn't</p> <p>16 occur whenever it was an Indian tribe?</p> <p>17 A All the discussions I remember are if it happens,</p> <p>18 call me, talk to me, and we'll let you know whether</p> <p>19 to refund it or not.</p> <p>20 Q Okay. All right. So now we're on the 11/25/02,</p> <p>21 November 25th, 2002.</p> <p>22 A Yep.</p> <p>23 Q Can you walk through that one?</p> <p>24 A Corrected assessment on all four assessments listed</p> <p>25 above. I'm not sure what SBT --</p>	<p>1 that from within your department on a particular</p> <p>2 account?</p> <p>3 A On a particular account, correct.</p> <p>4 Q Okay. So, if for example, if Mr. Fratzke had said,</p> <p>5 I don't want any -- I don't want to do any offsets</p> <p>6 with respect to any Indian tribe, your office would</p> <p>7 then figure out the account ID for each Indian</p> <p>8 tribe, and then place a bypass so they wouldn't be</p> <p>9 offset?</p> <p>10 A I'm going to say it probably doesn't work quite that</p> <p>11 cleanly because I would have to have the account</p> <p>12 number. You can do a search.</p> <p>13 Q Right.</p> <p>14 A But if you're not exact, I mean, we don't -- we --</p> <p>15 we only search by name or by account number.</p> <p>16 Q Okay.</p> <p>17 A That's the only groupings we have.</p> <p>18 Q All right.</p> <p>19 A So if the name's not correct, you know, you're</p> <p>20 looking for something, who knows what you're going</p> <p>21 to find. Whether you're going to find all of them</p> <p>22 or not, you got to be given the account number in</p> <p>23 order to make this effective.</p> <p>24 Q Who has the master list of the account numbers?</p> <p>25 A I would turn to Walt Fratzke and say, who?</p>
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<p>1 Q Should be tax only?</p> <p>2 A Should be tax only, no interest. And again Diana</p> <p>3 Mulnicks was the one that did that, not a collection</p> <p>4 person.</p> <p>5 Q Do you know why it says should be tax only, no</p> <p>6 interest?</p> <p>7 A No.</p> <p>8 Q All right. So what happens when she says should be</p> <p>9 tax only, no interest, does somebody then have to do</p> <p>10 something to change it?</p> <p>11 A She did it.</p> <p>12 Q Okay.</p> <p>13 A She did it. Corrected assessments. She corrected</p> <p>14 the assessments.</p> <p>15 Q Oh, I see. Okay.</p> <p>16 Then we go to page -- the first page of</p> <p>17 Exhibit 42 which is Bates number 859. And on that</p> <p>18 same day it shows November 26, 2002. Can you read</p> <p>19 that one for me?</p> <p>20 A Account placed on bypass per M. Reynolds, myself.</p> <p>21 Q What does that mean?</p> <p>22 A I instructed them to put the account on bypass not</p> <p>23 -- not have the account number entered into the</p> <p>24 system to prevent any offsets from occurring.</p> <p>25 Q So you can do that -- you have the ability to do</p>	<p>1 Q Is this a taxpayer ID? Is the account number the</p> <p>2 same as the taxpayer ID?</p> <p>3 A Yes. Yes.</p> <p>4 Q So Mr. Fratzke could get the taxpayer ID from the</p> <p>5 various Indian tribes, give those to you, you could</p> <p>6 then say bypass all of those?</p> <p>7 A We can bypass them, yes.</p> <p>8 Q There was never any discussion about doing that?</p> <p>9 A No, there was never any direction to do that.</p> <p>10 Q Right. Well, and not any discussion or direction;</p> <p>11 is that right?</p> <p>12 A I may have asked the question.</p> <p>13 Q Do you think you did?</p> <p>14 A I don't -- I don't know if I did or not.</p> <p>15 Q Okay.</p> <p>16 A I mean, normally if we're having a problem I will</p> <p>17 say, What else do we need to watch out for? It will</p> <p>18 be worded as a general question.</p> <p>19 Q Mr. Fratzke never said let's bypass all tribes --</p> <p>20 A Correct.</p> <p>21 Q -- for offsets?</p> <p>22 A Not that I remember.</p> <p>23 Q Okay. So the account is placed on bypass per Mike</p> <p>24 Reynolds on --</p> <p>25 A Per my direction.</p>

22 (Pages 82 to 85)

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<p>1 Q -- on November 26th?</p> <p>2 A Correct.</p> <p>3 Q How did that come about?</p> <p>4 A I don't remember. I don't remember.</p> <p>5 Q Now, this -- this -- these entries don't show that</p> <p>6 the offsets occurred, right?</p> <p>7 A No. This -- this screen does not show that the</p> <p>8 offsets occurred.</p> <p>9 Q But clearly by November 26, 2002 the offsets had</p> <p>10 occurred for 2002?</p> <p>11 A Yes.</p> <p>12 Q Right. And can you tell from this when -- how much</p> <p>13 earlier than November 26th?</p> <p>14 A Not from these screens.</p> <p>15 Q Do you know?</p> <p>16 A No, I don't remember how much earlier they were.</p> <p>17 Q Okay. What do you recall happening that prompted</p> <p>18 the entry here that says account placed on bypass?</p> <p>19 A Again, all the -- the discussion I've had with Walt</p> <p>20 is, it tells me that I would have talked to Walt or</p> <p>21 Walt would have called me and said put it on bypass.</p> <p>22 Q All right. And you believe here that based upon the</p> <p>23 entries we have seen, that if the Community -- if</p> <p>24 someone from the Community had contacted the</p> <p>25 Department of Treasury, you don't believe it was</p>	<p>1 A Walt is our expert. That's who I turned to.</p> <p>2 Q Right. And you don't remember that conversation?</p> <p>3 A No, not in particular, no.</p> <p>4 Q Do you remember any conversations you had</p> <p>5 internally?</p> <p>6 A Well, my conversation would be with my staff. Did</p> <p>7 you put it on bypass?</p> <p>8 Q Right.</p> <p>9 A I mean, that verbal verification, that's what that</p> <p>10 is.</p> <p>11 Q I'm going to make a lawyer's distinction here though</p> <p>12 I know you know things happened based on what we're</p> <p>13 looking at in Exhibit 42, right? Because that's</p> <p>14 their reporting, so you know they happened and</p> <p>15 you're telling me this is how it happened?</p> <p>16 A Correct.</p> <p>17 Q I'm asking do you have an independent recollection</p> <p>18 of any conversations you had with anyone in your</p> <p>19 department or --</p> <p>20 A No.</p> <p>21 Q -- or your division?</p> <p>22 A No.</p> <p>23 Q Okay. We're on the second entry on the first page</p> <p>24 there.</p> <p>25 A Right.</p>
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<p>1 that they contacted someone within your department,</p> <p>2 correct?</p> <p>3 A Correct. If they had, it would show on here when</p> <p>4 they did.</p> <p>5 Q Sure. So, it's your belief that someone contacted</p> <p>6 Mr. Fratzke, and then Mr. Fratzke likely contacted</p> <p>7 you?</p> <p>8 A Yes.</p> <p>9 Q All right. And do you remember that conversation?</p> <p>10 A No.</p> <p>11 Q All right. Do you know what occurred?</p> <p>12 A Well, I'm going to say based on that comment --</p> <p>13 Q Right. But you just don't have recollection of what</p> <p>14 was discussed between --</p> <p>15 A No.</p> <p>16 Q -- you and Mr. Fratzke?</p> <p>17 A No.</p> <p>18 Q Do you keep notes of those kinds of things?</p> <p>19 A No. The notes are supposed to be in the account.</p> <p>20 No.</p> <p>21 Q All right. So, do you recall conversations with</p> <p>22 anyone else about the KBIC offset that occurred in</p> <p>23 2002?</p> <p>24 A Other than within our staff, no.</p> <p>25 Q Okay.</p>	<p>1 Q November 26th, 2002. Can you read that one for me?</p> <p>2 A Refund of all offsets that have occurred since</p> <p>3 9/20/02 are to be done as soon as possible.</p> <p>4 Q Now, does that suggest to you that September 20,</p> <p>5 2002 is when the offsets occurred?</p> <p>6 A Yes, or thereabouts.</p> <p>7 Q And then did you actually enter this one?</p> <p>8 A Yes. My initials are behind it, yes.</p> <p>9 Q All right. And again, you believe that this would</p> <p>10 have been based on that same conversation with Mr.</p> <p>11 Fratzke?</p> <p>12 A Correct.</p> <p>13 Q But you don't remember anything about that?</p> <p>14 A No.</p> <p>15 Q Okay. Do you know how much the offsets were?</p> <p>16 A Well, the next line tells you --</p> <p>17 Q All right.</p> <p>18 A -- when they were entered by our special procedures</p> <p>19 person.</p> <p>20 Q All right. Let's go through that?</p> <p>21 A Well, not the offsets, the refund. But it tells me</p> <p>22 that we refunded, I would assume they're the same.</p> <p>23 Q Okay.</p> <p>24 A E-mail from M. Reynolds, that's the one above.</p> <p>25 Collection Administration requested rush refund of</p>

23 (Pages 86 to 89)

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<p>1 vendor offsets as of 9/20/02.</p> <p>2 Q And when you say "vendor offsets", who's the vendor?</p> <p>3 A Well, that's -- again, we talked about the MAIN</p> <p>4 system. All our people refer to that as the vendor</p> <p>5 system, that's the thing that generates the checks.</p> <p>6 Q Okay.</p> <p>7 A Refunds processed for. And then it names the</p> <p>8 individual refunds --</p> <p>9 Q Okay.</p> <p>10 A -- that were processed.</p> <p>11 Q All right.</p> <p>12 A Request forwarded to Betty Lott, supervisor for</p> <p>13 approval. And Angie was the person at that time, I</p> <p>14 remember Angie now, now that I see the name. And</p> <p>15 she's in the SP, special procedures unit.</p> <p>16 Q Right. Betty Lott was the -- was and still is the</p> <p>17 director of that unit?</p> <p>18 A Supervisor.</p> <p>19 Q Supervisor. Okay. And from looking at this can you</p> <p>20 tell what funds were used as offsets?</p> <p>21 A No.</p> <p>22 Q How would you find that out?</p> <p>23 A We would have to do some research either with our</p> <p>24 finance and accounting group or we would have to</p> <p>25 call the agency and have them do the research.</p>	<p>1 A We have to adjust -- really it says IDA,</p> <p>2 intradepartmental adjustment from -- I lost track of</p> <p>3 the R -- collections procedures for those amounts.</p> <p>4 So they have to -- once we have done the refund, we</p> <p>5 have to adjust the account detail to show that that</p> <p>6 money is -- take money off the account.</p> <p>7 Q Okay.</p> <p>8 A As -- you know, it removes it as a payment.</p> <p>9 Q Okay. So then, effectively what happens this would</p> <p>10 be one of your special procedures people is going</p> <p>11 and doing an manual override, right?</p> <p>12 A They're doing a manual adjustment to the account.</p> <p>13 Q The adjustment would result in the vendor payments,</p> <p>14 the payments that were due based on what the vendor</p> <p>15 computer system told you, those would then be</p> <p>16 authorized to be sent to the taxpayer?</p> <p>17 A The vendor payment tells us there's an offset, the</p> <p>18 STAR system posts that detail to the account.</p> <p>19 Q Okay.</p> <p>20 A To do the refund, they have to go and create a check</p> <p>21 outside of STAR, and then they have to change the</p> <p>22 detail within the account.</p> <p>23 Q That's what special procedures would do?</p> <p>24 A That's what this reflects.</p> <p>25 Q Okay. All right. Now, it doesn't show -- this</p>
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<p>1 Q Okay. And no effort was made to do that?</p> <p>2 A No.</p> <p>3 Q Do you recall any discussion about the type of</p> <p>4 offsets that were at issue here back in 2002?</p> <p>5 A No. It's an offset. It occurred. We were told to</p> <p>6 refund it, we'll refund it.</p> <p>7 Q You don't recall Mr. Fratzke telling you why he</p> <p>8 wanted these offsets reversed?</p> <p>9 A No.</p> <p>10 Q Okay. Next entry November 26, 2002. Can you go</p> <p>11 through that one more for me?</p> <p>12 A Approved refer to Will Smalls via e-mail for rush</p> <p>13 approval. Pam Butler, that's our manager, our</p> <p>14 collection -- one of our collection managers. So</p> <p>15 she's approving that request after Betty Lott would</p> <p>16 have -- again the system will show an approval if</p> <p>17 you're looking at the -- the screen that does the</p> <p>18 approval, it shows the initials. Pam wanted to make</p> <p>19 sure since this was a rush that it didn't get lost</p> <p>20 and so she actually entered it showing she sent an</p> <p>21 e-mail to the assistant administrator for approval.</p> <p>22 Q Okay. So -- okay. Then, let's go through the last</p> <p>23 entry there on the page.</p> <p>24 A Okay.</p> <p>25 Q November 27th, 2002.</p>	<p>1 Exhibit 42 doesn't show any entries beyond November</p> <p>2 27th, 2002.</p> <p>3 A Correct.</p> <p>4 Q Do you know why that is?</p> <p>5 A We moved our entries -- our history tax to our MARKS</p> <p>6 system.</p> <p>7 Q Okay. What is a MARKS system?</p> <p>8 A STARS, our accounts receivable system, that was</p> <p>9 built many years ago.</p> <p>10 Q Okay.</p> <p>11 A It had in its initial design incorporated a lot of</p> <p>12 enforcement functions. It is a mainframe system.</p> <p>13 We have through our contract with the contractor we</p> <p>14 have a much more modern system where we now handle</p> <p>15 our collection functions, not the accounting</p> <p>16 functions with the dollars but the collection,</p> <p>17 collection history notes, and other collection</p> <p>18 functions that we do.</p> <p>19 Q Okay. So any activity after November 27th, 2002</p> <p>20 would be found on the MARKS system?</p> <p>21 A Correct.</p> <p>22 Q All right. And is there activity since November</p> <p>23 27th, 2002?</p> <p>24 A I mean, our -- if there was, our discovery would</p> <p>25 have turned that over. I don't remember --</p>

24 (Pages 90 to 93)

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<p>1 Q All right.</p> <p>2 A -- right now. I suspect there's our comments out</p> <p>3 there. There's quite a gap in time. So I suspect</p> <p>4 there's more history text there.</p> <p>5 Q Okay. The MARKS system was the reason -- what was</p> <p>6 the reason for turning the Keweenaw Bay Indian</p> <p>7 Community comments over to the MARKS system after</p> <p>8 November 26, 2002?</p> <p>9 A It's the system we used --</p> <p>10 Q It wasn't because it was KBIC?</p> <p>11 A -- for everybody.</p> <p>12 Q Everybody transferred over?</p> <p>13 A Yep. Yep.</p> <p>14 MR. DUROCHER: Have you seen the comments</p> <p>15 since November 27th, 2002?</p> <p>16 MR. MOODY: I don't know the documents well</p> <p>17 enough. I mean, do you have a copy of the screen?</p> <p>18 I mean, it seems to me initially you were surprised</p> <p>19 when you were asking him about screens, but you had</p> <p>20 it right there. Are you sure --</p> <p>21 MR. DUROCHER: I'm not sure of anything.</p> <p>22 I'm sort of like you.</p> <p>23 MR. MOODY: It's -- yeah, you know --</p> <p>24 MR. DUROCHER: We'll see.</p> <p>25 MR. MOODY: We went through and turned over</p>	<p>1 Q Okay.</p> <p>2 A -- similar to these.</p> <p>3 Q All right. The -- you show on November 26, 2002 on</p> <p>4 Exhibit 42 that the account is placed on bypass,</p> <p>5 right?</p> <p>6 A Yes.</p> <p>7 Q Did at some point then you have to take the account</p> <p>8 off of bypass?</p> <p>9 A I don't -- the normal process is to put something on</p> <p>10 bypass when the issue is resolved and remove it.</p> <p>11 Q Okay.</p> <p>12 A The bypass itself is at times subject to, I won't</p> <p>13 call it malfunction, but sometimes it doesn't catch</p> <p>14 everything and we have done research trying to</p> <p>15 figure out why and we haven't. So occasionally even</p> <p>16 though we put an account on bypass occasionally an</p> <p>17 offset still occurs.</p> <p>18 Q Here's the question. In 2002, offsets occur with</p> <p>19 respect to KBIC, right?</p> <p>20 A Uhm-hum.</p> <p>21 Q Mr. Fratzke finds out about it and calls you and</p> <p>22 says, put this on a bypass, reserve the bypass. And</p> <p>23 you do that?</p> <p>24 A Uh-huh.</p> <p>25 Q 2005 it happens again?</p>
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<p>1 everything in good faith.</p> <p>2 MR. DUROCHER: And I'm not questioning</p> <p>3 that.</p> <p>4 MR. MOODY: If you look at it and the 2005</p> <p>5 screen isn't there, that specifically, you know,</p> <p>6 we'll try and pull things out.</p> <p>7 MR. DUROCHER: I'm guessing we don't have</p> <p>8 it. This -- you know, as we were talking, it all of</p> <p>9 a sudden triggered the thought on this one. I don't</p> <p>10 recall seeing something similar --</p> <p>11 THE WITNESS: It wouldn't look similar.</p> <p>12 MR. DUROCHER: It wouldn't look similar?</p> <p>13 Oh, okay.</p> <p>14 MR. MOODY: Totally different.</p> <p>15 THE WITNESS: It's going to look totally</p> <p>16 different.</p> <p>17 MR. DUROCHER: Let's walk through the</p> <p>18 documents I have then we'll figure out whether we</p> <p>19 have got it or not.</p> <p>20 BY MR. DUROCHER, CONTINUING:</p> <p>21 Q All right. Do you recall any other activity</p> <p>22 occurring after 2002 with respect to KBIC?</p> <p>23 A Well, we know we took other offsets so there should</p> <p>24 be other comments some place to show what we were</p> <p>25 doing --</p>	<p>1 A Uh-huh.</p> <p>2 Q Do you know why it happened again in 2005?</p> <p>3 A Well, first I would have to see the history text to</p> <p>4 see if there was any direction and then second as I</p> <p>5 said, that's for whatever reason, that computer</p> <p>6 system is not perfect, and occasionally even when</p> <p>7 numbers are on bypass and we go back and verify,</p> <p>8 that system still takes that automatically.</p> <p>9 Q Do you recall in 2005, after the second round of</p> <p>10 offsets occurred, do you recall ever trying to</p> <p>11 figure out why they occurred?</p> <p>12 A Whenever we have an occurrence, where the bypass</p> <p>13 seems to fail, I always go to my STAR manager</p> <p>14 saying, have we learned anything new? It's just one</p> <p>15 of those things within that computer system that we</p> <p>16 have not been able to pinpoint.</p> <p>17 Q Is it your belief that the reason the offsets were</p> <p>18 taken in 2005 is because the bypass system failed?</p> <p>19 A I don't know.</p> <p>20 MR. MOODY: Asked and answered.</p> <p>21 BY MR. DUROCHER, CONTINUING:</p> <p>22 Q Do you know whether someone instructed your</p> <p>23 department to go ahead and take this bypass system</p> <p>24 off?</p> <p>25 A We would have to look at the history text.</p>

25 (Pages 94 to 97)

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<p>1 would likely tell us why this account, KBIC account, 2 was retained within collection? 3 A . I don't know that it will. It may be that it was in 4 the action codes. Possibly this period it was still 5 in hearing. So if it's in hearing it won't go to 6 MARKS so the notice -- 7 Q I can tell you the hearing -- it was no longer in 8 hearing. The hearing decision was back in 2002. 9 A Okay. 10 Q So that -- 11 A Well, but we don't have the history text from this 12 current period to know what -- 13 Q Right. Well, we'll keep looking maybe we'll find 14 it. 15 A Maybe we'll find it. 16 Q On Exhibit 14, do you see that there's a previous 17 balance listed of \$159,941.53? 18 A Yes. 19 Q And then down below it says accrued penalty 20 interest? 21 A Uh-huh. 22 Q Do you know why interest would be showing up on this 23 document in light of the history notes we had seen? 24 A Our system has been designed to compute interest. 25 Q Okay.</p>	<p>1 something not in evidence. But go ahead. 2 THE WITNESS: No. We have a million 3 accounts on the system. I have 80 people. There is 4 no way to look at every account. We have devised 5 some mechanisms to try to catch things. Others we 6 have to adjust after the fact. 7 BY MR. DUROCHER, CONTINUING: 8 Q When -- is it Ms. Mulnicks? 9 A Yes. 10 Q Said that she was going to adjust to take out the 11 interest, would -- that's what she said, right? 12 A Interest that had already been applied. 13 MR. MOODY: Well, I'll -- 14 BY MR. DUROCHER, CONTINUING: 15 Q Right. So this \$3,000 of interest, is it your 16 belief that interest generated since the time she 17 had taken the interest off back in 2002? 18 A Most likely. 19 Q All right. Does this document, Exhibit 14, give you 20 any hint or clue as to why an offset would have 21 occurred in 2005? 22 A We have the word collectible on there. It is 23 starred. I believe this copy is cut off. I believe 24 the STAR relates to the verbiage on the side. Based 25 on the fact that it says it's collectible means that</p>
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<p>1 A It computes interest, there's no exceptions. 2 Q Okay. 3 A None. 4 Q So how does that -- how does that translate then to 5 what is going to be paid by the taxpayer if there is 6 a decision made that the interest shouldn't be 7 charged, but your system is generating interest? 8 A It has to be manually adjusted. 9 Q Okay. And is -- but this account -- I'm sorry, this 10 document, Exhibit 14, was generated by your 11 department? 12 A By my -- by our STAR system. 13 Q And it was -- this would have been actually sent to 14 Keweenaw Bay, correct? 15 A Sent to that address, right. 16 Q So here, the Keweenaw Bay is being told that it owes 17 \$162,944.56, correct? 18 A Yes. 19 Q That's including \$3,000 of interest? 20 A Yes. 21 Q Now, wouldn't somebody have gone back and looked at 22 the history notes to learn that they shouldn't have 23 been charging interest before this would have been 24 sent out? 25 MR. MOODY: I will object as assuming</p>	<p>1 the status of the account was in a collectible 2 status. So, at that level, an offset could occur. 3 That does not tell me whether it was on bypass or 4 wasn't on bypass. That's not part of this document. 5 Q So if the system was on bypass and it showed as 6 collectible, it still shouldn't be offset; is that 7 right? 8 A Rephrase -- restate that for me. 9 Q Well, because this document you're saying it shows 10 that it is collectible, right? 11 A Right. 12 Q And I'm asking if that's the case, if it was shown 13 as collectible on Exhibit 14 and the KBIC account 14 was in bypass mode -- 15 A Correct. 16 Q -- would an offset occur or not? 17 A Again, the bypass is -- if it's there, it would not 18 occur with the exception that that's not a perfect 19 function. 20 Q All right. And the fact that an account may be on 21 bypass, would not mean that collectibles shouldn't 22 show up on the monthly statement of account? 23 A The two aren't necessarily related. In reality, a 24 lot of times they are, but, you know, you could -- 25 you could have a collectible and there's an issue on</p>

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MICHAEL REYNOLDS, MAY 3, 2007

Page 110	Page 112
<p>1 one assessment that makes us want to look at it and</p> <p>2 put it on manual suppress and take a look at the</p> <p>3 account before we do something.</p> <p>4 Q Is a copy of this document that's generated by STAR,</p> <p>5 retained at in the department?</p> <p>6 A No, I don't believe we retain this document.</p> <p>7 Q Okay. So it's spit out and sent to the --</p> <p>8 A Correct.</p> <p>9 Q -- taxpayer?</p> <p>10 A Correct. Well -- well, I need to -- I need to</p> <p>11 restate that. I don't know.</p> <p>12 Q Okay. The only reason I ask, I don't know that we</p> <p>13 have a better copy of this.</p> <p>14 A Yeah. I don't -- I don't know. I -- I don't know</p> <p>15 there.</p> <p>16 Q Okay. All right. How about this -- this is a new</p> <p>17 Exhibit I'm going to show you.</p> <p>18 (Deposition Exhibit Number 43 was marked</p> <p>19 for identification.)</p> <p>20 BY MR. DUROCHER, CONTINUING:</p> <p>21 Q I'm showing you a document that has been produced by</p> <p>22 the department in this case. It's going to be</p> <p>23 marketed as Exhibit 43. And it's Bates number down</p> <p>24 at the bottom 689 through 701. Do you have that in</p> <p>25 front of you?</p>	<p>1 Q Okay. Can you tell me how -- there's multiple</p> <p>2 copies here of similar letters.</p> <p>3 A Correct.</p> <p>4 Q What properties --</p> <p>5 A That represents individual payments.</p> <p>6 Q Okay.</p> <p>7 A Made by the vendor system.</p> <p>8 Q Okay. So, if three payments came in on one day, all</p> <p>9 relating to Medicaid, but they were three separate</p> <p>10 payments that were supposed to go to KBIC and they</p> <p>11 were going to be used to offset a debt allegedly</p> <p>12 owed by KBIC, that would generate three separate</p> <p>13 vendor offset copies?</p> <p>14 A We would see three separate payments. We wouldn't</p> <p>15 know the source, yes.</p> <p>16 Q Let's just walk through here. On the first page is</p> <p>17 May 10, right?</p> <p>18 A Yes.</p> <p>19 Q And it's addressed to Keweenaw Bay Nursery, right?</p> <p>20 A Yes.</p> <p>21 Q And so that would be the name of the recipient of</p> <p>22 the warrant? That -- you know, if the payment from</p> <p>23 for let's say from child care was due to Keweenaw</p> <p>24 Bay Nursery, that's how this Keweenaw Bay -- that's</p> <p>25 how the name shows up here?</p>
Page 111	Page 113
<p>1 A Yes.</p> <p>2 Q It looks like the title of this at least the first</p> <p>3 page is vendor offset letter copy?</p> <p>4 A Correct.</p> <p>5 Q Are you familiar with this document?</p> <p>6 A This is the document I referred to earlier when an</p> <p>7 offset occurs this is the notice that goes out.</p> <p>8 Q All right. So there would have been a similar</p> <p>9 notice that would have gone out in 2002?</p> <p>10 A Correct.</p> <p>11 Q Do you know whether your department retained a copy</p> <p>12 of the notice that went out in 2002?</p> <p>13 A I think we have had a change in retention there. I</p> <p>14 don't remember what that is.</p> <p>15 Q Okay. I don't know that I've seen that. I think if</p> <p>16 I would have it I would have brought it along so --</p> <p>17 A Vaguely I think there's a change that falls in there</p> <p>18 some place. I can't place the date.</p> <p>19 Q Okay. All right. Now if you look through this,</p> <p>20 would you agree that this would be -- well, strike</p> <p>21 that.</p> <p>22 These are separate letters that would each</p> <p>23 be generated based upon a separate source of funds</p> <p>24 that were being used as an offset?</p> <p>25 A No.</p>	<p>1 A All of our match starts with the account number.</p> <p>2 Q Okay.</p> <p>3 A And so I -- I have got to say, which looking at the</p> <p>4 account number if it's a clean match, then the</p> <p>5 system looks at a portion of the name.</p> <p>6 Q Okay.</p> <p>7 A And also, would potentially take it.</p> <p>8 Q All right.</p> <p>9 A So -- I mean, that's the process.</p> <p>10 Q All right. Because here, obviously the names are</p> <p>11 different, because down below it says your accounts</p> <p>12 receivable account number and they give the tax ID</p> <p>13 number for Keweenaw Bay Indian Community, correct?</p> <p>14 A Yes.</p> <p>15 Q But the warrant that was going to be issued was to</p> <p>16 the Keweenaw Bay Nursery, correct?</p> <p>17 A No. No, I can't say that.</p> <p>18 Q All right.</p> <p>19 A Again, we'll go back to account number. We had a</p> <p>20 clear account number match, we took it, it generated</p> <p>21 the letter with the name off our system.</p> <p>22 Q Right. But where would you get the name Keweenaw</p> <p>23 Bay Nursery?</p> <p>24 A It would have come from a registration, from a tax</p> <p>25 return that was filed. It would come internal to</p>

29 (Pages 110 to 113)

MICHAEL REYNOLDS, MAY 3, 2007

Page 134	Page 136
<p>1 Q Okay.</p> <p>2 A It does go on to describe something about that.</p> <p>3 But, it says sales tax.</p> <p>4 Q Do you know what SUW stands for here?</p> <p>5 A Sales use withhold.</p> <p>6 Q Because down below, I see it says refund pre-paid</p> <p>7 sales tax on gasoline. Do you see that?</p> <p>8 A Correct.</p> <p>9 Q So, these are -- looks like three different sources</p> <p>10 of payments, right, on this page? All relating to</p> <p>11 sales tax refund?</p> <p>12 A Reading this page, it appears they're all the same</p> <p>13 to me.</p> <p>14 Q Right, but three different payments?</p> <p>15 A Three different payments, yes. Right.</p> <p>16 Q All right.</p> <p>17 A Yep.</p> <p>18 Q That's all I think I have for you on Exhibit 44. I</p> <p>19 do have one other question for you generally about</p> <p>20 this.</p> <p>21 This -- these documents were produced from</p> <p>22 the Department of Treasury. I don't think this</p> <p>23 accounts for all the 2005 offsets. Do you have any</p> <p>24 knowledge as to why we wouldn't have received all of</p> <p>25 them?</p>	<p>1 BY MR. DUROCHER, CONTINUING:</p> <p>2 Q I'm going to ask you to pull out Exhibit 17, Mr.</p> <p>3 Reynolds.</p> <p>4 A Yes.</p> <p>5 Q I would ask you to take a look at Exhibit 17 and</p> <p>6 tell me if you recognize it.</p> <p>7 A No, I don't believe I do.</p> <p>8 Q All right. Do you know an individual by the name of</p> <p>9 John Baker?</p> <p>10 A No.</p> <p>11 Q All right. You certainly know Mr. Fratzke. We have</p> <p>12 talked about him, right?</p> <p>13 A Correct.</p> <p>14 Q Its spelled wrong here on the --</p> <p>15 A Yeah. Yeah.</p> <p>16 Q All right. But Mr. Baker is a tribal attorney for</p> <p>17 the Keweenaw Bay Indian Community. And if you look</p> <p>18 through this letter you'll see that Mr. Baker is</p> <p>19 advising Mr. Fratzke that he has learned of three</p> <p>20 offsets that have occurred in 2005, and in the</p> <p>21 paragraph toward the bottom of the page, Mr. Baker</p> <p>22 says, this offset is not appropriate because Federal</p> <p>23 funds are involved. Do you see that?</p> <p>24 A Yes.</p> <p>25 Q Does this refresh your memory at all about any</p>
Page 135	Page 137
<p>1 A When we did our discovery we would have looked for</p> <p>2 everything we can find. If there was something</p> <p>3 missing, you know, if it was a vendor offset letter</p> <p>4 then it was missing in -- in processing someplace.</p> <p>5 Q Okay. All right.</p> <p>6 A That's all I can say.</p> <p>7 Q Do you recall learning that when you were doing the</p> <p>8 search, that there were some of these documents that</p> <p>9 appeared to be missing with respect to certain</p> <p>10 offsets?</p> <p>11 A I think our supervisor may have said we may not have</p> <p>12 been able to obtain all the documents.</p> <p>13 Q Okay.</p> <p>14 A Seems to me there was -- there was some discussion</p> <p>15 there.</p> <p>16 Q All right. Do you remember what the explanation</p> <p>17 was?</p> <p>18 A Couldn't find them.</p> <p>19 Q Okay.</p> <p>20 A That's --</p> <p>21 Q Okay. That's all I have for 44.</p> <p>22 MR. DUROCHER: Take a short break?</p> <p>23 MR. MOODY: Sure.</p> <p>24 (Off the record at 11:28 a.m.)</p> <p>25 (Back on the record at 11:37 a.m.)</p>	<p>1 conversations you had with Mr. Fratzke in 2005, with</p> <p>2 respect to the Keweenaw Bay offsets?</p> <p>3 A No.</p> <p>4 Q Okay.</p> <p>5 A No.</p> <p>6 Q Tell me what do you recall about what happened in</p> <p>7 2005 with respect to these offsets?</p> <p>8 A Well --</p> <p>9 MR. MOODY: What aspect? I mean do you</p> <p>10 have a time frame? From the first time he heard of</p> <p>11 it --</p> <p>12 BY MR. DUROCHER, CONTINUING:</p> <p>13 Q Starting then. Because I assume you didn't know</p> <p>14 about the offsets before they occurred in 2005?</p> <p>15 A Correct.</p> <p>16 Q So at some point after the offsets -- the first</p> <p>17 offsets occurred you learned about them?</p> <p>18 A I believe Walt called us, told us they occurred,</p> <p>19 told us they occurred as before, we -- and we've</p> <p>20 looked at the history text before, the process would</p> <p>21 be the same. We'd pull it up, verified that we did</p> <p>22 it. If Walt says refund them, we'll use the same</p> <p>23 process we did before and refund them.</p> <p>24 Q All right. Did Mr. Fratzke tell you to refund them?</p> <p>25 A I would have to look at the history text to</p>

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MICHAEL REYNOLDS, MAY 3, 2007

Page 138	Page 140
<p>1 understand, you know, where we were on that issue.</p> <p>2 Q All right. Do you know whether these offsets have</p> <p>3 been reversed?</p> <p>4 A Well, I believe based on the documents I don't think</p> <p>5 they have at this point.</p> <p>6 Q Sitting here today, do you have any independent</p> <p>7 recollection of any communications that you had with</p> <p>8 Mr. Fratzke on this issue?</p> <p>9 A No, I would -- again, I'm relatively certain he</p> <p>10 called us and our history text should show that and</p> <p>11 we would have been waiting for -- for direction.</p> <p>12 Q Okay. Prior to the deposition today, did you go</p> <p>13 back and look at the history text for 2005?</p> <p>14 A It seems to me when you first asked in discovery,</p> <p>15 that -- that I did glance through them.</p> <p>16 Q All right. What did you learn from that?</p> <p>17 A Well, that the -- basically what I have been saying.</p> <p>18 We communicate with Walt, and if Walt tells us we</p> <p>19 need to refund it, you can see in my comments to my</p> <p>20 staff to get it done.</p> <p>21 Q Do you recall anything else other than that with</p> <p>22 respect to the history notes?</p> <p>23 A No.</p> <p>24 Q Do you recall whether you discussed it with Mr.</p> <p>25 Fratzke the fact that a state agency was also</p>	<p>1 dealt with it in the same manner we did before. We</p> <p>2 would have gotten the -- our Counsel involved and we</p> <p>3 would have talked to the agency, and tried to figure</p> <p>4 out what's the right -- which statutes the right</p> <p>5 thing that applies.</p> <p>6 Q All right. And who was the Counsel in the AG's</p> <p>7 office? Was it Mr. Bishop that you dealt with?</p> <p>8 A No. I believe Peg Housner and Russ Prines were the</p> <p>9 two involved in that.</p> <p>10 Q All right. And internally, did you have any</p> <p>11 discussions with like Mary MacDowell about this</p> <p>12 issue?</p> <p>13 A Which issue?</p> <p>14 Q The Federal fund issue.</p> <p>15 A We talked about the program issue.</p> <p>16 Q Okay.</p> <p>17 A Daycare monies being offset, yes. I have had</p> <p>18 discussions with Mary in that regard.</p> <p>19 Q Okay. Tell me about those discussions.</p> <p>20 MR. MOODY: Well, I want to caution you if</p> <p>21 you were talking about communications either with</p> <p>22 Peg Housner or Russ Prines or conversations</p> <p>23 resulting from conversations with them where you're</p> <p>24 talking about legal advice, that you are not to</p> <p>25 disclose that. But otherwise, go ahead and answer.</p>
Page 139	Page 141
<p>1 raising similar concerns with respect to this issue?</p> <p>2 A I don't know.</p> <p>3 Q All right.</p> <p>4 A I don't know. He would have had to say there are --</p> <p>5 given me a program reason --</p> <p>6 Q Right.</p> <p>7 A -- and I don't remember --</p> <p>8 Q All right.</p> <p>9 A -- whether I did or not.</p> <p>10 Q All right. And I think you said you never saw a</p> <p>11 copy of Exhibit 17?</p> <p>12 A No. This is not familiar to me.</p> <p>13 Q All right. Do you recall -- and you don't recall</p> <p>14 Mr. Fratzke asking you to investigate whether you</p> <p>15 can be offsetting with respect to Federal programs?</p> <p>16 A No.</p> <p>17 Q All right. So your only discussions with respect to</p> <p>18 this Federal program issue, the question of whether</p> <p>19 offsets can be done with Federal programs, has been</p> <p>20 as a result of Community Health raising this issue</p> <p>21 with your department?</p> <p>22 A Yes.</p> <p>23 Q Okay. And no other agencies have brought it up?</p> <p>24 A Again, there may have been other agency that have, I</p> <p>25 just don't remember it currently and we would have</p>	<p>1 THE WITNESS: Just the issues. And I</p> <p>2 believe Mary MacDowell attended a couple of those</p> <p>3 meetings.</p> <p>4 BY MR. DUROCHER, CONTINUING:</p> <p>5 Q With the AG's office?</p> <p>6 A And the agency, yes, if I remember correctly.</p> <p>7 Q Were there any meetings that you had with the agency</p> <p>8 that -- where the attorney general's office did not</p> <p>9 have representatives there?</p> <p>10 A No, I don't believe so.</p> <p>11 Q How many meetings did you attend with the Community</p> <p>12 -- the agency?</p> <p>13 A I think just one.</p> <p>14 Q All right. And when you attended that -- when did</p> <p>15 that meeting take place, approximately?</p> <p>16 A Oh, boy, a rainy day about a year and a half ago.</p> <p>17 That's all I can tell you right now. I would have</p> <p>18 to go back and check the calendar and see when it</p> <p>19 was..</p> <p>20 Q Who do you recall being there from Community Health?</p> <p>21 A I'm not good with names. I have -- I'm drawing a</p> <p>22 blank right now.</p> <p>23 Q Okay. Did they have attorneys there?</p> <p>24 A Yes.</p> <p>25 Q From their department?</p>

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EXHIBIT BBB

**Defendants' Responses to Plaintiffs' Second Set of
Interrogatories and Requests For The Production Of
Documents (June 13, 2007)**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiff,

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.

Case No. 2:05-cv-0224

Hon. Gordon J. Quist

**DEFENDANTS' RESPONSES TO PLAINTIFF'S SECOND SET OF
INTERROGATORIES TO DEFENDANTS**

NOW COME Defendants, by and through their attorneys, MILLER, CANFIELD,
PADDOCK AND STONE, P.L.C., and hereby respond to Plaintiff's Second Set of
Interrogatories to Defendants as follows:

GENERAL OBJECTION

Defendants object to these Interrogatories to the extent they seek information within the possession and control of the entire State of Michigan, which has not been named as a defendant in this action. If the Plaintiff intended to bring this action against the State of Michigan, it has pleaded the action against improper defendants in an improper forum.

INTERROGATORY NO. 1: Identify all current or former employees, agents, or representatives of the State with knowledge of the sources of the funds with respect to which the 2002 Offsets and the 2005 Offsets were made.

ANSWER: Defendants object to this interrogatory as vague and ambiguous because the meaning of the phrase "sources of the funds" is unclear. Without waiving that objection, Defendants state that if "sources of the funds" means federal versus state sources, no such determination in that regard was made by the State; therefore, no persons have knowledge of the sources of the funds. However, if "sources of the funds" means the State agency that possessed the funds when they were offset, persons with knowledge beyond that of Defendants Fratzke and Reynolds are Betty Lott and Angela Evans.

INTERROGATORY NO. 2: Identify all acts of the State to place the Community's account in "bypass" status with respect to offsets by the State.

ANSWER: In the fall of 2002, on receipt of inquiries from the Community regarding offsets to its account, Defendant Fratzke called Defendant Reynolds to request that the Community's account be placed in bypass status. Defendant Reynolds then sent a notice to Treasury's Special Procedures Unit that a directive was added to the account history to place the account in bypass status. At the time, the State was negotiating a tax agreement with the

Community, the finalization of which appeared to be imminent. As a sign of good faith, the State reversed the 2002 Offsets. Defendants have no recollection that the Community challenged the validity of the 2002 Offsets, and Defendants did not research that issue. Instead, the amounts due for the 1993-1994 sales and use tax assessments were intended to be negotiated in conjunction with the tax agreement, allowing KBIC to pay them voluntarily. A comment on the STAR system dated November 26, 2002, reflects placement of the Community's account in bypass status. This was to prevent further offsets from occurring temporarily, while the tax agreement was being negotiated. Unfortunately, however, KBIC ceased settlement discussions and never executed the tax agreement.

In 2005, on receipt of inquiries from the Community regarding offsets to its account, Defendant Fratzke wrote to the Community seeking support for its position that the offsets were improper. While awaiting the Community's response and while researching the validity of the offsets, Defendant Fratzke contacted Defendant Reynolds and again requested that the Community's account be placed in bypass status.

INTERROGATORY NO. 3: Identify any acts of the State to remove the Community's account from "bypass" status with respect to offsets by the State.

ANSWER: Sometime after the Community failed to enter a tax agreement with the State as anticipated in 2002 and failed to establish that the 2002 Offsets were inappropriate, the State removed the Community's account from bypass status. The Community's account history does not reveal, and Defendants do not recall, any affirmative act by anyone in Treasury or elsewhere to remove the Community's account from bypass status after November 2002. The lack of documentation indicates that the Community's account was removed from bypass status through system maintenance by Treasury Special Procedures staff.

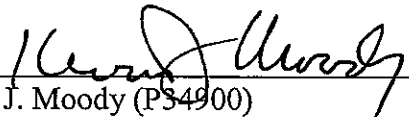
With respect to the 2005 bypass, the Community responded to Defendant Fratzke's letter in August 2005. Before a final determination had been made regarding the validity or invalidity of the offsets made by the State, the Community withheld payments required under its gaming compact in September 2005 and then filed the current action in November 2005. These actions by the Community mooted any further action with regard to the bypass status.

AS TO OBJECTIONS:
Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

June 13, 2007

By: _____


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MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

VERIFICATION

STATE OF MICHIGAN)
) SS.
COUNTY OF INGHAM)

Walter Fratzke, Indian Affairs Specialist, states under oath that he has read the foregoing Defendants' Responses to Plaintiff's Second Set of Interrogatories to Defendants; that the Responses, subject to inadvertent or undiscovered errors, are based on and therefore necessarily limited by the recollection and actions of employees, records and information still in existence, presently recollected and thus far discovered in the course of the preparation of these Responses; and that subject to these limitations, the Responses are true to the best of his knowledge, information and belief.


WALTER FRATZKE

On this 13 day of June, 2007, Walter Fratzke personally appeared before me and stated under oath that he, in the above capacity, has read these Responses to Interrogatories by him subscribed.



LALIB:151166.1\060531-00068

PENNY S. DOOLITTLE
Notary Public, State of Michigan
County of Ingham
My Commission Expires Aug. 28, 2012
Acting in the County of _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiff,

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.

Case No. 2:05-cv-0224

Hon. Gordon J. Quist

**DEFENDANTS' RESPONSES TO PLAINTIFF'S SECOND SET OF REQUESTS FOR
THE PRODUCTION OF DOCUMENTS TO DEFENDANTS**

NOW COME Defendants, by and through their attorneys, MILLER, CANFIELD,
PADDOCK AND STONE, P.L.C., and hereby respond to Plaintiff's Second Set of Requests for
the Production of Documents to Defendants as follows:

REQUESTS FOR DOCUMENTS

1. All documents identifying social services and essential governmental services
provided to the Community, to Community members, and to guests of the Community by the
State of Michigan in each of the past five years and identifying the amount of Michigan sales and
use taxes that have been used to pay for these services.

ANSWER: Defendants object to this request to the extent it seeks information within the possession and control of the entire State of Michigan, which has not been named as a defendant in this action. If the Plaintiff intended to bring this action against the State of Michigan, it has pleaded the action against improper defendants in an improper forum. Defendants further object that the request is overly burdensome and seeks irrelevant information. Defendants also object to the request on the basis of impossibility; it is impossible for Defendants to provide a breakdown of services provided to the Community, its members and its guests or to identify the amount of Michigan sales and use taxes that have been used to pay for the services.

Without waiving these objections, responsive documents within the possession, custody or control of Defendants are being produced with this response.

2. All documents identifying the federal program funds with respect to which the Department made the 2002 Offsets and the 2005 Offsets and, for each program, identifying the federal legislation establishing the terms of the program and the federal legislation appropriating funds for the program.

ANSWER: Defendants object to this request to the extent it seeks information within the possession and control of the entire State of Michigan, which has not been named as a defendant in this action. If the Plaintiff intended to bring this action against the State of Michigan, it has pleaded the action against improper defendants in an improper forum. Without waiving the objection, Defendants state that responsive documents are not within their control and possession.

3. All agreements to which the State, the United States, or the Community was a party in effect at any time during the last five years relating to any of the foregoing federal programs.

ANSWER: Defendants object to this request to the extent it seeks information within the possession and control of the entire State of Michigan, which has not been named as a defendant in this action. If the Plaintiff intended to bring this action against the State of Michigan, it has pleaded the action against improper defendants in an improper forum. Without waiving the objection, Defendants state that responsive documents are not within their control and possession.

4. All plans and procedures adopted by the State in effect at any time during the last five years relating to any of the foregoing federal programs.

ANSWER: Defendants object to this request to the extent it seeks information within the possession and control of the entire State of Michigan, which has not been named as a defendant in this action. If the Plaintiff intended to bring this action against the State of Michigan, it has pleaded the action against improper defendants in an improper forum. Without waiving the objection, Defendants state that responsive documents are not within their control and possession.

5. The letter from Garfield Hood dated October 13, 1977, referred to in the cover letter accompanying the 1977 Tax Agreement marked as Exhibit 4 at the deposition of Defendant Fratzke.

ANSWER: Responsive documents are being produced with this response.

6. S.B.T. Pool Letter # 217 referred to in the memorandum from Bernard H. Brawley to Sydney Goodman dated February 4, 1983, marked as Exhibit 41 at the deposition of Defendant Fraztke.

ANSWER: Responsive documents are being produced with this response.

7. All documents that describe, memorialize, reflect or refer to any policies or procedures of the State of Michigan regarding offsets, including but not limited to the following: (1) the Department's "offset policy document" that was described by Defendant Reynolds in his deposition (see Reynolds Dep. Tr. pp. 7-9), (2) the three or four memoranda that Defendant Reynolds issued to staff addressing tribal offset matters that were described by Defendant Reynolds in his deposition (see Reynolds Dep. Tr. pp. 7, 10-13), and (3) the document addressing offset procedures that was described by Defendant Reynolds in his deposition (see Reynolds Dep. Tr. pp. 37-38).

ANSWER: Responsive documents are being produced with this response.

8. All documents that describe, memorialize, reflect or refer to any exemptions from offsets recognized by the State of Michigan, including but not limited to the "list of programs that have been exempted from offset through STAR" that was described by Defendant Reynolds in his deposition. (See Reynolds Dep. Tr. pp. 163-165.)

ANSWER: Responsive documents are being produced with this response.

9. All documents that describe, memorialize, reflect or refer to the placement of the Community's account in "bypass" status with respect to offsets by the State of Michigan that was described by Defendant Reynolds in his deposition. (See Reynolds Dep. Tr. p. 83.)

ANSWER: Responsive documents are being produced with this response or were previously produced.

10. All documents that describe, memorialize, reflect or refer to any removal of the Community's account from "bypass" status with respect to offsets by the State of Michigan.

ANSWER: Defendants do not possess any responsive documents.

11. The remittance advices issued by the State of Michigan with respect to the offsets on May 10, May 17, and June 14, 2005, described in paragraph 42 of the Second Amended Complaint.

ANSWER: Defendants do not possess any responsive documents. The State of Michigan does not retain remittance advices and has no capability to reproduce prior remittance advices.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

June 13, 2007

By: 

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LALIB:151167.1\060531-00068

EXHIBIT CCC

Affidavit of Defendant Jay Rising

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

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

Plaintiff,

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.

Case No. 2:05-cv-0224

Hon. Gordon J. Quist

AFFIDAVIT OF JAY RISING

AFFIDAVIT OF JAY RISING

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

Jay Rising states the following under oath:

1. If called as a witness I am competent to testify and have personal knowledge of the facts stated below, except those stated on information and belief.
2. I am the former Treasurer of the State of Michigan and was in office between January 2003 and February 2006.
3. I did not direct or encourage anyone at the Michigan Department of Treasury to take the Keweenaw Bay Indian Community's account off of bypass status or to take offsets against the Keweenaw Bay Indian Community's account in 2005.
4. I did not know in advance that the Michigan Department of Treasury computer systems were going to take offsets against the Keweenaw Bay Indian Community's account in May and June 2005.
5. I have never come to a conclusion concerning whether the Keweenaw Bay Indian Community is or was entitled to a refund of the offsets taken in 2005.
6. It is my understanding and belief that Michigan Department of Treasury personnel were discussing whether the Keweenaw Bay Indian Community was entitled to a refund of the 2005 offsets with counsel from the Department of Attorney General when this lawsuit was filed, ending further consideration of the matter before a conclusion on the request for a refund could be reached.


Further affiant sayeth not.



Jay Rising

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

Subscribed and sworn to before me
this 30 day of OCTOBER, 2007.

s/ 
NOTARY PUBLIC
Oakland County, Michigan *ACTING IN WAYNE*
My Commission Expires: 9-4-2012

LALIB:155505.2\060531-00068
DRAFT 10/29/07 5:36 PM

EXHIBIT DDD

**Michigan Department of Treasury memoranda concerning
tax audits for 1978-1981**

TO BE FILED UNDER SEAL

EXHIBIT EEE

**Offset Notices to Keweenaw Bay Indian Community
(May and June 2005)**

TO BE FILED UNDER SEAL