

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

**WASHINGTON COUNTY,
A Political Subdivision of Maine Government**

PLAINTIFFS

V.

CIVIL ACTION NO. CV-2012-158

PASSAMAQUODDY TRIBE

DEFENDANTS

NOTICE OF REMOVAL

Defendant Passamaquoddy Tribe ("Tribe"), by and through counsel, hereby gives notice of the removal of this action from the Superior Court of Penobscot County, Maine to the United States District Court for the District of Maine. In support of this Notice of Removal, Tribe states as follows:

1. This action was originally commenced by Plaintiffs Washington County on November 1, 2012, through the filing of a Complaint in the Superior Court of Washington County, Maine, styled *Washington County*, being Civil Action No. CV-2012-158.

2. The United States District Court for the District of Maine, Bangor, is the court and division embracing the place wherein such action is pending in state court.

3. This removal is effected and has been timely filed within thirty (30) days of the removing defendant being served with process and within one (1) year after commencement of the action, as allowed by 28 U.S.C. § 1446(b).

4. This Court has jurisdiction over this matter and it is properly removed to this Court pursuant to 28 U.S.C. §§ 1331, 1441, and 1446.

Federal Question Jurisdiction

5. This case may be removed to this Court based on 28 U.S.C. §§ 1441 and 1331.

Plaintiffs seek recovery based, in part, upon the alleged failure of Defendant's to pay taxes and/or payments in lieu of taxes on the Defendant's territory. This failure to pay taxes and/or payments in lieu of taxes allegedly dates back to 2006. Plaintiffs also allege that Defendants failed to pay taxes on property not within Defendant's territory.

6. The resolution of Plaintiffs' claims necessarily requires an interpretation of substantial federal issues under the Maine Indian Claims Settlement Act ("MICSA"), 25 U.S.C. §§ 1721-1734 *et seq.*, and 25 U.S.C. §465 and the Maine Implementing Act 30 M.R.S.A §§ 6201-6214 *et seq.* Federal question jurisdiction pursuant to 28 USC § 1331 does not require that a federal cause of action be pleaded on the face of the complaint. *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 125 S. Ct. 2362 (2005). Instead, the complaint must only involve "a controversy respecting the construction and effect of the [federal] laws", which controversy is "sufficiently real and substantial." *Id.* at 2369; *Drawhorn v. Quest Communications Int'l, Inc.*, 121 F. Supp. 2d 554, 562 (E.D. Tex. 2000). Consistent with *Grable*, Plaintiffs' claims present a real and substantial controversy involving the construction and effect of federal law and its application on land deeded to the United States.

7. Plaintiffs claim that they are "authorized to collect taxes and/or payments in lieu of taxes from the Defendant." Plaintiffs' claims appear to rely on provisions of the MICSA.

8. The meaning and application of the MICSA with respect to taxation of property deeded to the United States are substantial issues of federal interest that involve the construction and effect of federal laws and regulations. Claims involving the administration, especially the taxation provisions, of the MICSA raise a federal question. Moreover, there is a strong federal interest in application of federal laws to the federal exemptions from taxation of federally owned

lands. Plaintiffs' Complaint raises substantial federal questions under the MICSA that create federal jurisdiction under 28 U.S.C. §§ 1331 and 1441.

9. Pursuant to 28 U.S.C. § 1446(d), Plaintiffs are being provided with a copy of this Notice of Removal, and a copy of this Notice of Removal is being filed with the Clerk of the Superior Court of Penobscot County, Maine.

10. A copy of all pleading previously filed in the state court action and/or all process, pleadings and orders served on the removing Defendants is attached hereto as Exhibit "A".

11. Consistent with the provisions of 28 U.S.C. § 1446(d), no further proceedings shall be had in this matter in the Superior Court of Penobscot County, Maine.

This, the 27th day of November, 2012.

Respectfully submitted,

PASSAMAQUODDY TRIBE, DEFENDANT

By Its Attorney

FRANCIS LEGAL

By:


CRAIG E. FRANCIS

CRAIG E. FRANCIS (ME BAR #9424)
FRANCIS LEGAL
28 Norwood Street
Portland, ME 04103
Telephone: (207) 253-9155
Facsimile: (207) 518-9467

CERTIFICATE OF SERVICE

I hereby certify that I have served via United States mail, postage prepaid, a true and correct copy of the foregoing to:

Penny Reckards
Clerk of Penobscot County Superior Court
78 Exchange Street
Bangor, ME 04401

F. David Walker, IV, Esq
Rudman Winchell
84 Harlow Street—P.O. Box 1401
Bangor, ME 04402-1401

This, the 27th day of November, 2012.



CRAIG E. FRANCIS

STATE OF MAINE
PENOBSCOT, ss.

SUPERIOR COURT
Civil Action
Docket No:

WASHINGTON COUNTY,
A Political Subdivision of Maine
Government

Plaintiff

v.

PASSAMAQUODDY TRIBAL GOVERNMENT,
Defendant

COMPLAINT

NOW COMES the Plaintiff, Washington County, by and through its attorneys, Rudman
Winchell, states as follows:

PARTIES

1. The Plaintiff, Washington County, is a political subdivision of the government for
the State of Maine.

2. The Defendant, Passamaquoddy Tribal Government, is a quasi-governmental
entity having ownership and jurisdiction over certain lands situated in Washington County.

VENUE AND JURISDICTION

3. Venue is proper in this Court pursuant to 14 M.R.S.A. § 505, as the Plaintiff is a
County and the Defendant is located within the County of Washington and State of Maine.

4. This Court has subject matter jurisdiction over this action pursuant to 14
M.R.S.A. § 5954, because it is an action seeking declaratory relief, monetary damages, and
concerns the construction and validity of certain statutory provisions.

BACKGROUND

5. Washington County is authorized to collect payments in lieu of taxes ("PILOT's") from the Passamaquoddy Tribe pursuant to the terms of the Maine Indian Claims Settlement Agreement of 1980, federally codified at 25 U.S.C. §§ 1721-1734 ("Maine Indian Claims Settlement Act") and codified by the state legislature at 30 M.R.S. §§ 6201-6214 ("Maine Implementing Act").

6. Under the Settlement, the Passamaquoddy Tribe and the Penobscot Indian Nation are responsible to county and other taxing authorities for PILOT's on all real and personal property within their respective Indian Territory, except real or personal property within that territory used predominantly for governmental purposes.

7. PILOT's are not defined in dollar amounts, but rather are to be in an amount equal to that which would otherwise be imposed by a county, a district, the State, or other taxing authority on such real and personal property.

8. The Implementing Act further provides for direct taxation of Indian property not within Passamaquoddy Tribal territory.

9. As a result of these provisions, Washington County has had, at all relevant times, the statutory authority to collect PILOT's for all real and personal property within Passamaquoddy territory and to directly tax property not within Passamaquoddy territory.

10. For multiple years, the Passamaquoddy Tribal Government has failed to pay taxes directly levied upon it for property not within Passamaquoddy territory.

11. For multiple years, the Passamaquoddy Tribal Government has failed to pay PILOT's for real and personal property within their Passamaquoddy territory.

COUNT I
Declaratory Judgment

12. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 11 above, as though fully stated herein.

13. Pursuant to the statutory authority set forth above, Washington County has issued lawful PILOT's and taxes on the Passamaquoddy Tribal Government which it has refused, or otherwise failed to pay.

14. The Passamaquoddy Tribal Government is currently delinquent with respect to these PILOT's and/or taxes dating back to 2006.

15. A controversy has arisen between the parties concerning the meaning and effect of the above-cited statutory provisions as well as Washington County's authority to issue PILOT's and levy taxes on the Passamaquoddy Tribal Government.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order declaring that Washington County has the authority to impose PILOT's on the Passamaquoddy Tribal Government and to directly tax Passamaquoddy Tribal Government property outside of Passamaquoddy Tribal Government territory, together with costs, interest, and such other and further relief as the court deems just under the circumstances.

COUNT II
Damages

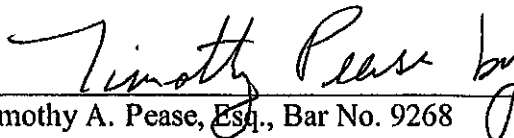
16. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 15 above, as though fully stated herein.

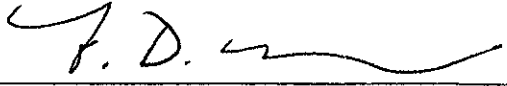
17. The Passamaquoddy Tribal Government has refused, or otherwise failed, to meet its obligation to pay certain taxes and PILOT's lawfully levied by Washington County.

18. Washington County has incurred damages as a direct result of the failure of the Passamaquoddy Tribal Government to meet its obligation to pay certain taxes and PILOT's lawfully levied by Washington County.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order awarding money damages, requiring that the Passamaquoddy Tribal Government satisfy all delinquent taxes and PILOT's levied by the Plaintiff, together with costs, interest, and such other and further relief as the court deems just under the circumstances.

Dated at Bangor, Maine this 15th day of October, 2012.


Timothy A. Pease, Esq., Bar No. 9268 ^{by FDW Bar# 9584}


F. David Walker, IV, Esq., Bar No. 9584
Rudman Winchell
Attorney for Plaintiff
84 Harlow Street – P.O. Box 1401
Bangor, ME 04402-1401
Tel: (207) 947-4501

SUPERIOR COURT
PENOBSCOT, ss.

Docket No. _____

DISTRICT COURT

Location _____

Docket No. CV-2012-158

WASHINGTON COUNTY _____ Plaintiff

SUMMONS

Joseph S. Sobocinski
PASSAMAQUODDY TRIBAL _____ Defendant

GOVERNMENT
8 KENNEBASIN ROAD _____ Address
PRINCETON, ME 04668 _____

The Plaintiff has begun a lawsuit against you in the (~~District~~) (Superior) Court, which holds sessions at (street address) 78 Exchange Street, in the Town/City of Bangor, County of Penobscot, Maine. If you wish to oppose this lawsuit, you or your attorney **MUST PREPARE AND SERVE A WRITTEN ANSWER** to the attached Complaint **WITHIN 20 DAYS** from the day this Summons was served upon you. You or your attorney must serve your Answer, by delivering a copy of it in person or by mail to the Plaintiff's attorney, or the Plaintiff, whose name and address appear below. You or your attorney must also file the original of your Answer with the court by mailing it to the following address: Clerk of (~~District~~) (Superior) Court, 78 Exchange Street, Bangor, Maine 04401
(Mailing Address) (Town, City) (Zip)

before, or within a reasonable time after, it is served.

IMPORTANT WARNING

IF YOU FAIL TO SERVE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU IN YOUR ABSENCE FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR EMPLOYER MAY BE ORDERED TO PAY PART OF YOUR WAGES TO THE PLAINTIFF OR YOUR PERSONAL PROPERTY, INCLUDING BANK ACCOUNTS AND YOUR REAL ESTATE MAY BE TAKEN TO SATISFY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS LAWSUIT, DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.

If you believe the plaintiff is not entitled to all or part of the claim set forth in the Complaint or if you believe you have a claim of your own against the Plaintiff, you should talk to a lawyer. If you feel you cannot afford to pay a fee to a lawyer, you may ask the clerk of court for information as to places where you may seek legal assistance.

Date: October 15, 2012

(Seal of Court)

F. David Walker, IV, Esq., Bar 9584

Clerk

(Attorney for) Plaintiff
Rudman Winchell

Address
P.O. Box 1401, Bangor, ME 04402-1401
207-947-4501 Telephone