

UNITED STATES TAX COURT

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MINNIE TIGERTAIL

Petitioner,

Docket No.

VS.

COMMISSIONER OF INTERNAL  
REVENUE,

25 477 - 13

Respondent.

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PETITION

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Minnie Tigertail ("Petitioner") hereby petitions for the redetermination of the deficiency set forth by the Commissioner of Internal Revenue Service (the "Commissioner") in its notice of deficiency dated July 31, 2013 (the "Notice of Deficiency"). As the basis for this proceeding, Petitioner alleges as follows:

1. Petitioner is Minnie Tigertail. Petitioner's mailing address is 4661 SW 153<sup>rd</sup> Court, Miami, FL 33185.

2. The Notice of Deficiency (a copy of which is attached and marked as Exhibit A) was mailed to Petitioner on or about July 31, 2013 on behalf of the Commissioner by the Appeals Team Manager, California Appeals Office, Sacramento, CA 95821-6318.

3. The Commissioner has determined deficiencies and additions to tax for the periods ending December 31, 2000, December 31, 2001, December 31, 2002, December 31, 2003, December 31, 2004, and December 31, 2005, all of which are in dispute as follows:

<u>Penalties or Additions to Tax</u>				
<u>Taxable Year</u>	<u>Additional Tax</u>	<u>§6651(a)(1)</u>	<u>§6651(a)(2)</u>	<u>§6654(a)</u>
December 31, 2000	\$12,556.00	\$2,825.10	\$3,139.00	\$665.28
December 31, 2001	\$15,598.00	\$3,509.55	\$3,899.50	\$614.87
December 31, 2002	\$21,702.00	\$4,882.95	\$5,425.50	\$722.12
December 31, 2003	\$39,252.00	\$8,831.70	\$9,813.00	\$1,012.73
December 31, 2004	\$54,518.00	\$12,266.55	\$13,629.50	\$1,562.35
December 31, 2005	\$72,756.00	\$16,370.10	\$18,189.00	\$2,918.33
Total	\$216,382.00	\$48,685.95	\$54,095.50	\$7,495.68

4. The Commissioner erred in his determination of the tax and penalties set forth in the Notice of Deficiency based upon the following errors:

(a) The Commissioner determined that during the taxable year, 2000, Petitioner received gross wages in the amount of \$13,843 that she did not report on her income tax return. Accordingly, the Commissioner increased Petitioner's taxable income by \$13,843. This determination is erroneous.

(b) The Commissioner determined that during the taxable year 2000, Petitioner received taxable income of \$56,380 from the Miccosukee Tribe of Indians of Florida ("Miccosukee" or the "Tribe") that she did not report on her income tax return. The Commissioner's determination that Petitioner failed to report \$56,380 of taxable income is based on four quarterly distributions to Petitioner from the Tribe's NTDR Account of \$13,000 on February 27, 2000, \$14,000 on May 1, 2000, \$14,480 on September 30, 2000, and \$14,900 on December 4, 2000. Accordingly, the Commissioner increased Petitioner's taxable income by \$56,380. This determination is erroneous.

(c) The Commissioner determined that in 2000 that Petitioner's filing status is single. This determination is erroneous.

(d) The Commissioner determined that in 2000 Petitioner must take the standard deduction. Accordingly, the Commissioner decreased Petitioner's taxable income by \$4,400. This determination is erroneous.

(e) The Commissioner determined that, because in 2000 Petitioner met the single filing requirement she must take a personal exemption. Accordingly, the Commissioner decreased Petitioner's taxable income by \$2,800. This determination is erroneous.

(f) The Commissioner determined that in 2000 Petitioner is entitled to a Federal Withholding Credit of \$1,679. Accordingly, the

Commissioner decreased Petitioner's taxable income by \$1,679. This determination is erroneous.

(g) The Commissioner determined that, because Petitioner did not file an income tax return for the taxable year 2000 within the time prescribed by law and it was not shown that such failure was due to reasonable cause and not due to willful neglect, an addition to tax of four and a half (4.5)% per month (or part of a month), up to a maximum of twenty-two and a half (22.5)% of the net amount due before the date prescribed for the payment of tax, was added to the tax as provided by IRC § 6651(a)(1). Accordingly, an addition to tax was imposed in the amount of \$2,825.10. This determination is erroneous.

(h) The Commissioner determined that, because Petitioner did not pay the amount shown as tax on her income tax return for the taxable year 2000 on or before the date prescribed for payment of such tax and it was not shown that such failure was due to reasonable cause and not due to willful neglect, an addition to tax of 0.5% of the net amount due for each month or part of a month for which such failure continues, not exceeding twenty-five (25)% in the aggregate, was added to tax as provided by IRC § 6651(a)(2). Accordingly, an addition to tax was imposed in the amount of \$3,139.00. This determination is erroneous.

(i) The Commissioner determined that, because Petitioner did not pay sufficient estimated tax for the taxable year 2000, an addition to tax for failure

by Petitioner to pay estimated income tax was added to tax as provided by IRC § 6654(a). Accordingly, an addition to tax was imposed in the amount of \$665.28. This determination is erroneous.

(j) The Commissioner determined that during the taxable year, 2001, Petitioner received gross wages in the amount of \$15,395 that she did not report on her income tax return. Accordingly, the Commissioner increased Petitioner's taxable income by \$15,395. This determination is erroneous.

(k) The Commissioner determined that during the taxable year 2001, Petitioner received taxable income of \$68,000 from the Tribe that she did not report on her income tax return. The Commissioner's determination that Petitioner failed to report \$68,000 of taxable income is based on four quarterly distributions to Petitioner from the Tribe's NTDR Account of \$16,000 on February 23, 2001, \$17,000 on June 4, 2001, \$17,500 on September 4, 2001, and \$17,500 on December 1, 2001. Accordingly, the Commissioner increased Petitioner's taxable income by \$68,000. This determination is erroneous.

(l) The Commissioner determined that in 2001 that Petitioner's filing status is single. This determination is erroneous.

(m) The Commissioner determined that in 2001 Petitioner must take the standard deduction. Accordingly, the Commissioner decreased Petitioner's taxable income by \$4,550. This determination is erroneous.

(n) The Commissioner determined that, because in 2001 Petitioner met the single filing requirement she must take a personal exemption. Accordingly, the Commissioner decreased Petitioner's taxable income by \$2,900. This determination is erroneous.

(o) The Commissioner determined that in 2001 Petitioner is entitled to a Federal Withholding Credit of \$1,911. Accordingly, the Commissioner decreased Petitioner's taxable income by \$1,911. This determination is erroneous.

(p) The Commissioner determined that, because Petitioner did not file an income tax return for the taxable year 2001 within the time prescribed by law and it was not shown that such failure was due to reasonable cause and not due to willful neglect, an addition to tax of four and a half (4.5)% per month (or part of a month), up to a maximum of twenty-two and a half (22.5)% of the net amount due before the date prescribed for the payment of tax, was added to the tax as provided by IRC § 6651(a)(1). Accordingly, an addition to tax was imposed in the amount of \$3,509.55. This determination is erroneous.

(q) The Commissioner determined that, because Petitioner did not pay the amount shown as tax on her income tax return for the taxable year 2001 on or before the date prescribed for payment of such tax and it was not shown that such failure was due to reasonable cause and not due to willful neglect, an addition

to tax of 0.5% of the net amount due for each month or part of a month for which such failure continues, not exceeding twenty-five (25)% in the aggregate, was added to tax as provided by IRC § 6651(a)(2). Accordingly, an addition to tax was imposed in the amount of \$3,899.50. This determination is erroneous.

(r) The Commissioner determined that, because Petitioner did not pay sufficient estimated tax for the taxable year 2001, an addition to tax for failure by Petitioner to pay estimated income tax was added to tax as provided by IRC § 6654(a). Accordingly, an addition to tax was imposed in the amount of \$614.87. This determination is erroneous.

(s) The Commissioner determined that during the taxable year, 2002, Petitioner received gross wages in the amount of \$9,553 that she did not report on her income tax return. Accordingly, the Commissioner increased Petitioner's taxable income by \$9,553. This determination is erroneous.

(t) The Commissioner determined that during the taxable year 2002, Petitioner received taxable income of \$92,200 from the Tribe that she did not report on her income tax return. The Commissioner's determination that Petitioner failed to report \$92,200 of taxable income is based on four quarterly distributions to Petitioner from the Tribe's NTDR Account of \$17,600 on March 2, 2002, \$18,500 on May 24, 2002, \$18,700 on September 1, 2002, and \$37,400 on

December 1, 2002. Accordingly, the Commissioner increased Petitioner's taxable income by \$92,200. This determination is erroneous.

(u) The Commissioner determined that in 2002 that Petitioner's filing status is single. This determination is erroneous.

(v) The Commissioner determined that in 2002 Petitioner must take the standard deduction. Accordingly, the Commissioner decreased Petitioner's taxable income by \$4,700. This determination is erroneous.

(w) The Commissioner determined that, because in 2002 Petitioner met the single filing requirement she must take a personal exemption. Accordingly, the Commissioner decreased Petitioner's taxable income by \$3,000. This determination is erroneous.

(x) The Commissioner determined that in 2002 Petitioner is entitled to a Federal Withholding Credit of \$836. Accordingly, the Commissioner decreased Petitioner's taxable income by \$836. This determination is erroneous.

(y) The Commissioner determined that, because Petitioner did not file an income tax return for the taxable year 2002 within the time prescribed by law and it was not shown that such failure was due to reasonable cause and not due to willful neglect, an addition to tax of four and a half (4.5)% per month (or part of a month), up to a maximum of twenty-two and a half (22.5)% of the net amount



due before the date prescribed for the payment of tax, was added to the tax as provided by IRC § 6651(a)(1). Accordingly, an addition to tax was imposed in the amount of \$4,882.95. This determination is erroneous.

(z) The Commissioner determined that, because Petitioner did not pay the amount shown as tax on her income tax return for the taxable year 2002 on or before the date prescribed for payment of such tax and it was not shown that such failure was due to reasonable cause and not due to willful neglect, an addition to tax of 0.5% of the net amount due for each month or part of a month for which such failure continues, not exceeding twenty-five (25)% in the aggregate, was added to tax as provided by IRC § 6651(a)(2). Accordingly, an addition to tax was imposed in the amount of \$5,425.50. This determination is erroneous.

(aa) The Commissioner determined that, because Petitioner did not pay sufficient estimated tax for the taxable year 2002, an addition to tax for failure by Petitioner to pay estimated income tax was added to tax as provided by IRC § 6654(a). Accordingly, an addition to tax was imposed in the amount of \$722.12. This determination is erroneous.

(bb) The Commissioner determined that during the taxable year 2003, Petitioner received taxable income of \$163,800 from the Tribe that she did not report on her income tax return. The Commissioner's determination that Petitioner failed to report \$163,800 of taxable income is based on four quarterly

distributions to Petitioner from the Tribe's NTDR Account of \$37,600 on March 1, 2003, \$38,000 on June 1, 2003, \$38,200 on August 30, 2003, and \$40,000 on November 29, 2003, and a gross distribution to Petitioner from the Tribe's General Account of \$10,000 on December 14, 2003. Accordingly, the Commissioner increased Petitioner's taxable income by \$163,800. This determination is erroneous.

(cc) The Commissioner determined that in 2003 that Petitioner's filing status is single. This determination is erroneous.

(dd) The Commissioner determined that in 2003 Petitioner must take the standard deduction. Accordingly, the Commissioner decreased Petitioner's taxable income by \$4,750. This determination is erroneous.

(ee) The Commissioner determined that, because in 2003 Petitioner met the single filing requirement she must take a personal exemption. Accordingly, the Commissioner decreased Petitioner's taxable income by \$2,440. This determination is erroneous.

(ff) The Commissioner determined that, because Petitioner did not file an income tax return for the taxable year 2003 within the time prescribed by law and it was not shown that such failure was due to reasonable cause and not due to willful neglect, an addition to tax of four and a half (4.5)% per month (or part of a month), up to a maximum of twenty-two and a half (22.5)% of the net amount

due before the date prescribed for the payment of tax, was added to the tax as provided by IRC § 6651(a)(1). Accordingly, an addition to tax was imposed in the amount of \$8,831.70. This determination is erroneous.

(gg) The Commissioner determined that, because Petitioner did not pay the amount shown as tax on her income tax return for the taxable year 2003 on or before the date prescribed for payment of such tax and it was not shown that such failure was due to reasonable cause and not due to willful neglect, an addition to tax of 0.5% of the net amount due for each month or part of a month for which such failure continues, not exceeding twenty-five (25)% in the aggregate, was added to tax as provided by IRC § 6651(a)(2). Accordingly, an addition to tax was imposed in the amount of \$9,813. This determination is erroneous.

(hh) The Commissioner determined that, because Petitioner did not pay sufficient estimated tax for the taxable year 2003, an addition to tax for failure by Petitioner to pay estimated income tax was added to tax as provided by IRC § 6654(a). Accordingly, an addition to tax was imposed in the amount of \$1,012.73. This determination is erroneous.

(ii) The Commissioner determined that during the taxable year 2004, Petitioner received taxable income of \$210,000 from the Tribe that she did not report on her income tax return. The Commissioner's determination that Petitioner failed to report \$210,000 of taxable income is based on four quarterly

distributions to Petitioner from the Tribe's NTDR Account of \$44,000 on February 29, 2004, \$46,000 on May 31, 2004, \$53,800 on August 28, 2004, and \$55,200 on November 27, 2004, and a gross distribution to Petitioner from the Tribe's General Account of \$11,000 on December 12, 2004. Accordingly, the Commissioner increased Petitioner's taxable income by \$210,000. This determination is erroneous.

(jj) The Commissioner determined that in 2004 that Petitioner's filing status is single. This determination is erroneous.

(kk) The Commissioner determined that in 2004 Petitioner must take the standard deduction. Accordingly, the Commissioner decreased Petitioner's taxable income by \$4,850. This determination is erroneous.

(ll) The Commissioner determined that, because in 2004 Petitioner met the single filing requirement she must take a personal exemption. Accordingly, the Commissioner decreased Petitioner's taxable income by \$1,426. This determination is erroneous.

(mm) The Commissioner determined that, because Petitioner did not file an income tax return for the taxable year 2004 within the time prescribed by law and it was not shown that such failure was due to reasonable cause and not due to willful neglect, an addition to tax of four and a half (4.5)% per month (or part of a month), up to a maximum of twenty-two and a half (22.5)% of the net amount

due before the date prescribed for the payment of tax, was added to the tax as provided by IRC § 6651(a)(1). Accordingly, an addition to tax was imposed in the amount of \$12,266.55. This determination is erroneous.

(nn) The Commissioner determined that, because Petitioner did not pay the amount shown as tax on her income tax return for the taxable year 2004 on or before the date prescribed for payment of such tax and it was not shown that such failure was due to reasonable cause and not due to willful neglect, an addition to tax of 0.5% of the net amount due for each month or part of a month for which such failure continues, not exceeding twenty-five (25)% in the aggregate, was added to tax as provided by IRC § 6651(a)(2). Accordingly, an addition to tax was imposed in the amount of \$13,629.50. This determination is erroneous.

(oo) The Commissioner determined that, because Petitioner did not pay sufficient estimated tax for the taxable year 2004, an addition to tax for failure by Petitioner to pay estimated income tax was added to tax as provided by IRC § 6654(a). Accordingly, an addition to tax was imposed in the amount of \$1,562.35. This determination is erroneous.

(pp) The Commissioner determined that during the taxable year 2005, Petitioner received taxable income of \$265,000 from the Tribe that she did not report on her income tax return. The Commissioner's determination that Petitioner failed to report \$265,000 of taxable income is based on four quarterly

distributions to Petitioner from the Tribe's NTDR Account of \$55,000 on February 26, 2005, \$64,000 on May 28, 2005, \$67,000 on August 28, 2005, and \$67,000 on November 27, 2005, and a gross distribution to Petitioner from the Tribe's General Account of \$12,000 on December 17, 2005. Accordingly, the Commissioner increased Petitioner's taxable income by \$265,000. This determination is erroneous.

(qq) The Commissioner determined that in 2005 that Petitioner's filing status is single. This determination is erroneous.

(rr) The Commissioner determined that in 2005 Petitioner must take the standard deduction. Accordingly, the Commissioner decreased Petitioner's taxable income by \$5,000. This determination is erroneous.

(ss) The Commissioner determined that, because in 2005 Petitioner met the single filing requirement she must take a personal exemption. Accordingly, the Commissioner decreased Petitioner's taxable income by \$128. This determination is erroneous.

(tt) The Commissioner determined that, because Petitioner did not file an income tax return for the taxable year 2005 within the time prescribed by law and it was not shown that such failure was due to reasonable cause and not due to willful neglect, an addition to tax of four and a half (4.5)% per month (or part of a month), up to a maximum of twenty-two and a half (22.5)% of the net amount

due before the date prescribed for the payment of tax, was added to the tax as provided by IRC § 6651(a)(1). Accordingly, an addition to tax was imposed in the amount of \$16,370.10. This determination is erroneous.

(uu) The Commissioner determined that, because Petitioner did not pay the amount shown as tax on her income tax return for the taxable year 2005 on or before the date prescribed for payment of such tax and it was not shown that such failure was due to reasonable cause and not due to willful neglect, an addition to tax of 0.5% of the net amount due for each month or part of a month for which such failure continues, not exceeding twenty-five (25)% in the aggregate, was added to tax as provided by IRC § 6651(a)(2). Accordingly, an addition to tax was imposed in the amount of \$18,189.00. This determination is erroneous.

(vv) The Commissioner determined that, because Petitioner did not pay sufficient estimated tax for the taxable year 2005, an addition to tax for failure by Petitioner to pay estimated income tax was added to tax as provided by IRC § 6654(a). Accordingly, an addition to tax was imposed in the amount of \$2,918.33. This determination is erroneous.

5. The facts upon which Petitioner relies as the basis of her case are as follows:

(a) Petitioner is a member of a federally recognized Indian tribe, residing on ancestral lands in southern Florida. For ease of reference and for

purposes of this petition, Petitioner will refer to the tribe of which she is a member as the “Tribe” or “Miccosukee,” which is the term the United States adopted to refer to her tribe. The Miccosukee are a unique people historically, culturally, and, in critical respects, legally.

(b) The Internal Revenue Service (“IRS”) seeks to impose a tax on distributions made from the Tribe to Petitioner. But the Tribe’s unique culture and history, and federal legislation enacted in the 20<sup>th</sup> century, preclude such taxation. In this legal action the Petitioner seeks to protect her right to receive the distributions at issue from her Tribal government free from federal taxation.

(c) In order to fully understand why the distributions from the Tribe to Petitioner are not taxable, it is imperative to understand the Tribe’s culture and history. Upon information and belief, under the laws, traditions and customs of the Miccosukee people, all of the Tribe’s interests in land are actually the interests of all of the Tribal members. In fact, there is no word in the Miccosukee language that describes individual land ownership. Instead the native language defines the land as for the use and benefit of all members. Thus, upon information and belief, all members of the Miccosukee Tribe -- including the Petitioner -- have an undivided interest in the use and benefit of Miccosukee lands.

(d) Reflecting the Miccosukee world view that the *community* of Tribal members embodies the voice of the “Tribe,” the Miccosukee Constitution



provides for governance through a General Council that is not comprised of any particular group of persons, but rather of “all adult members 18 years of age or over” of which “25 members . . . constitute a quorum.” Miccosukee Const., Art. III, §1. The General Council is the Tribe’s governing body and all tribal officers serve the General Council. Id., Art. III, §3.

(e) The Miccosukee Tribe has a unique and long history of self-sufficiency and independence from the United States government, best described in Miccosukee language as “pohoan checkish” (“just leave us alone”). For example, in 1971, the Tribe elected to operate all Bureau of Indian Affairs-funded programs itself. For many years, the Tribe also steadfastly objected to any payments from the United States government to settle land claims, insisting instead that its land would support the Tribe’s people and their operations.

(f) Throughout the decades, Miccosukees have survived based on their ancestral land. Initially they relied on hunting and fishing, but these were rendered insufficient when Tribal lands were reduced by the U.S. government and tribal members accordingly began using their land in new ways. However, due to the concerns of environmental regulators, light industry and farming were not permitted due to the critical location of the Tamiami Land in the path of the flow of Everglades waters. Accordingly, exercising their rights of sovereignty and self-

determination, Miccosukees began conducting other self-sustaining activities on their lands. These activities include lawful gaming.

(g) In legal terms, the land the Miccosukees occupy today is owned by the United States, which holds the land in trust for the Miccosukee people. These lands are part of the Miccosukees' once vast ancestral homeland in the Everglades. Upon information and belief, the Tribe's current land base represents less than one percent (1%) of the total land that was used, occupied or otherwise part of the traditional Miccosukee territory.

(h) Upon information and belief, the Miccosukee people's present-day land is comprised of: (i) Federal Indian Reservations, which include those land interests located within the Everglades (Alligator Alley Reservation), the Miccosukee Resort and Convention Center and Tobacco Shop (Reservations at Krome), and the Miccosukee gas station and Miccosukee Restaurant located along Tamiami Trail (Reservation at Tamiami Trail); (ii) perpetual Indian Reservation rights to a portion along the border of Everglades National Park (designated by Congress as the Miccosukee Reserved Area ("MRA")); (iii) a perpetual lease for the use and occupancy of substantial portions of Water Conservation Area 3A, a vast area of the Everglades which both the United States and Florida guarantee will be maintained in its natural state in perpetuity; (iv) aboriginal title to portions of

the Everglades; and (v) rights to traditional use and occupancy in Everglades National Park and Big Cypress National Preserve.

(i) The tapestry of law defining the Miccosukees' relationship with the United States is varied and includes federal legislation specifically passed to address the Miccosukee people's long-standing relationship with the Everglades and their economic rights on this land. The federal legislation that establishes the Miccosukees' land rights includes the Florida Indian Land Claims Settlement Act of 1982 (25 U.S.C. §1741, *et. seq.*), the Indian Gaming Regulatory Act (25 U.S.C. §2701, *et. seq.*), and the Miccosukee Settlement Act of 1997 (25 U.S.C. §1750, *et. seq.*).

(j) As part of a 1982 court settlement, the Tribe agreed to give up all aboriginal title claims to land in Florida subject to certain "excepted interests" identified in paragraph 3(c) of the Settlement Agreement. That legislation further provided that the United States would hold the subject lands transferred from the State of Florida "in trust for the use and benefit of the Miccosukee Tribe of Indians. . . ." 25 U.S. C. §1747(a). This settlement is commonly known as the Indian Land Claims Settlement Act of 1982 codified at 25 U.S.C. §§ 1741–1749 ("1982 Settlement Act").

(k) The next federal legislation to affect Miccosukee land interests was passed in 1988, when Congress enacted the Indian Gaming Regulatory Act, 25

U.S.C. §2701, *et. seq.* ("IGRA"). The intent of IGRA was, among other things, to provide a statutory basis for the operation of gaming by Indian tribes to promote tribal economic development, self-sufficiency, and strong tribal governments and a statutory basis for the regulation of Indian gaming to ensure the tribes are the primary beneficiaries. 25 U.S.C. sec. 2702(1) and (2).

(l) IGRA accords special recognition to Miccosukee gaming rights in section 2719 of the Act. While generally prohibiting gaming on lands acquired by the United States for the benefit of an Indian Tribe after October 17, 1988, the Act includes a special exemption for the Miccosukees, providing that:

(2) Subsection (a) of this section [which prohibits gaming on lands taken into trust after 1988] shall not apply to--

(B) the interest of the Miccosukee Tribe of Indians of Florida is approximately 25 continuous acres of land, more or less in Dade County, Florida located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(m) In 1990, the Tribe took advantage of the right granted to it in IGRA to operate gaming on the 25 acres of land located within a mile of the Krome Avenue/Tamiami Trail intersection and started its gaming operations there.

(n) Upon information and belief, long before the Tribe began operating gaming at this location, it had implemented a fee for the use of its lands that was calculated in terms of the gross receipts of that use. That fee is at issue in

this litigation. The fee was enacted pursuant to the Tribe's constitutional authority "to levy and collect assessments and to impose fees . . . upon members and non-members doing business within the reservation." Miccosukee Const. Art. V, §3. Thus, when Tribal gaming began operating, it was subject to the previously enacted tribal fee. Upon information and belief, the Tribe has continuously collected this land use fee from the Tribal gaming operation, as well as from every other business operating on Tribal lands subject to the fee.

(o) The funds that the Tribe collects through its fee assessment are part of the Tribe's economic resources. The Miccosukee Constitution explicitly provides that tribal members shall share in the "economic resources" of the Tribe. Accordingly, the Tribe distributes funds collected through the fee assessment to all members of the Tribe, including Petitioner. Those distributions are not "net revenues" from tribal gaming within the meaning of IGRA.

(p) IGRA calls for the levy of federal taxes on per capita payments to Tribal members of "net revenues" from tribal gaming. 25 U.S.C. §2710(b)(3)(D). Net revenues are defined as "gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees." 25 U.S.C. §2703(9).

(q) The IRS's "Internal Revenue Manual" guidelines narrowly define 'per capita payments' as "those payments made or distributed to all

members of the tribe or to identified groups of members which are paid directly from the net revenues of any gaming activity.” IRS Internal Revenue Manual, 4.88.1.6.1-2. Likewise, the Department of Interior has promulgated guidelines governing the review and approval of Revenue Allocation Plans, which expressly apply to the distribution by a tribe of its gaming “net revenues.” 25 C.F.R. §290, *et. seq.* The guidelines define “per capita payments” as “the distribution of money or other thing of value to all members of the tribe, or to identified groups of members, which is paid directly from the net revenues of any tribal gaming activity.” *Id.* at §290.2. These guidelines do not apply to payments that are not sourced from the net revenues of a tribal gaming activity.

(r) The Tribe’s distributions to Petitioner are not per capita payments made directly from the net revenues of its gaming operations as defined by IGRA. Upon information and belief, the payments made to Petitioner were from tribal trust accounts funded by distributable tribal revenues, which are comprised of: (1) its revenues from the gaming operation’s use of land, calculated as a percentage of the gross revenues of the Tribe’s gaming enterprises; (2) its fuel tax on the Tribe’s fueling station; and (3) its income from tribal leases, licenses and enterprises on other tribal trust lands. All of these tribal revenues are derived by the Tribe through its self-governing powers and activities located on and using the resources of tribal lands held in trust by the United States.

(s) The next federal statute to affect the Miccosukees' lands was the Miccosukee Settlement Act of 1997 ("1997 Settlement Act"), which was passed against the backdrop of the 1982 Settlement Act and IGRA. The 1997 Settlement Act arose from a lawsuit brought by the Tribe involving the taking of certain Tribal lands in connection with the State of Florida's construction of Interstate 75. See 25 U.S.C. §1750(1). As part of that settlement, in exchange for transferring certain lands to Florida, the Tribe received monetary payments and approximately fifty acres of new reservation lands. Id. at §1750(5); §1750d ("The lands transferred and held in trust for the Miccosukee Tribe under section 1750c(4) of this title shall be Miccosukee Reservation lands."). The new reservation lands included a parcel of land located at the intersection of Krome Avenue and the Tamiami Trail, which partially overlaps the area where the Tribe began its gaming operation in 1990.

(t) The 1997 Settlement Act explicitly provides in section 1750e:

(b) Taxation

(1) In general

(A) Moneys

None of the moneys paid to the Miccosukee Tribe under this part of the Settlement shall be taxable under Federal or State law.

(B) Lands

None of the lands conveyed to the Miccosukee Tribe under this part or the Settlement Agreement shall be taxable under Federal or State law.

(2) Payments and conveyances not taxable events

No payment or conveyance referred to in paragraph (1) shall be considered to be a taxable event.

(u) Petitioner was a member of the Tribe during 2000, 2001, 2002, 2003, 2004, and 2005. As a member of the Tribe, Petitioner is entitled to a share of the Tribe's economic resources, including fees collected from members and non-members of the Tribe for doing business on or otherwise using Tribal lands.

(v) During 2000, 2001, 2002, 2003, 2004, and 2005, Petitioner received distributions of money from the Tribe. The IRS seeks to impose a tax on those distributions. An examination of the various agreements and legislation related to the Miccosukees' land establishes that no such impositions are permitted by applicable federal obligations and law.

(w) As a member of the Miccosukee Tribe, Petitioner is a beneficiary of the rights and privileges reserved to and/or created for enrolled members of the Miccosukee Tribe.

(x) Traditionally, and consistent with the policy of the United States when resolving conflicts with Native Americans, the settlement agreements



reflected in federal legislation reference the Tribe as a whole rather than its individual members. However, the individual members of a Native American Tribe inherently possess the same level of protection and rights as the collective Tribe and as such any treaty or settlement with the federal government also acknowledges, and inheres to the benefit of, the individual members of the Tribe. See, e.g., McClanahan v. State Tax Commissioner of Ariz., 411 U.S. 164 (1973) (“To be sure, when Congress has legislated on Indian matters, it has, most often, dealt with tribes as collective entities. But those entities are, after all, composed of individual Indians, and the legislation confers individual rights.”); Mason v. Sams, 5 F.2d 255 (W.D. Wash. 1925) (individual tribe-member plaintiffs held to have exclusive fishing rights based on treaty obligations).

(y) The 1997 Settlement Act authorized transfers to the Tribe of “new reservation lands to be held in trust by the United States.” 25 U.S.C. §1750(5). In enacting this law, Congress expressly provided that this trust land would be “for the use and benefit of the Miccosukee Tribe as Miccosukee Indian Reservation lands.” Congress further provided that: “None of the lands conveyed to the Miccosukee Tribe under this part or the Settlement Agreement shall be taxable under Federal or State law.” 24 U.S.C. §§1750(7); 1750e(c)(1)(B). The 1997 Settlement Act’s provision that none of the trust lands would be taxable under federal or state law constituted a clear expression of congressional intent to

free the trust lands conveyed pursuant to the Act, and any income derived therefrom by Tribal members, of federal taxation.

(z) That the 1997 Settlement Act precludes federal taxation of distributions to Petitioner from a Tribal fee on use of the conveyed lands arises from the statutory language. The 1997 Settlement Act states that “none of the moneys [and none of the lands] conveyed to the Miccosukee Tribe . . . shall be taxable under Federal or State law” or considered a “taxable event.” But the Miccosukee Tribe does not pay federal tax. Thus, the words “Miccosukee Tribe” must refer to something other than the Tribe itself, because if they refer to the Tribe itself the provision is superfluous. Under these circumstances, the term “Miccosukee Tribe” must refer to the *individual* Tribal members. Because statutory interpretation principles require that real meaning and content be given to the no-federal-taxation language, that language necessarily must include *individual* Tribe members within its plainly stated federal tax exemption. Interpreting that language as referring to the Tribe itself would impermissibly render the clause “mere surplusage.” See Williams v. Taylor, 529 U.S. 362, 404 (2000); Duncan v. Walker, 533 U.S. 167, 174 (2001).

(aa) Well-established canons of construction dictate that courts must interpret statutes and their implementing regulations in a manner that benefits Indian Tribes. Courts have held that “[i]n construing the applicable statutes and

regulations, the [c]ourt must adhere to '[t]he canons of construction applicable in Indian law,'" County of Oneida v. Oneida Indian Nation, 470 U.S. 226, 247 (1985), which hold that " 'statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit,'" Montana v. Blackfeet Tribe of Indians, 471 U.S. 759, 766 (1985), and that the "trust relationship and its application to all federal agencies that may deal with Indians necessarily requires the application of a similar canon of construction to the interpretation of federal regulations" HRI, Inc. v. EPA, 198 F.3d 1224, 1245 (10th Cir.2000)).

(bb) Alternatively, the distributions to Petitioner are exempt from federal income tax because they are directly derived from the land.

(cc) For many tribes other than the Miccosukee Tribe, the federal government allotted tribal land to individual tribal members. Income that tribal members derive from those individual allotments is not taxable.

(dd) Upon information and belief, neither the Miccosukee Tribe's aboriginal homelands nor the limited landholdings of today within the MRA have ever been suitable for allotment of parcels to individuals to provide economic self-sufficiency. Accordingly, the Tribe made significant -- and ultimately successful -- efforts to acquire undeveloped acreage fronting Tamiami Trail and Krome Avenue at the edge of the Tribe's historic Everglades homeland.

(ee) The payments received by the Miccosukee Tribe's members including Petitioner, none of whom, upon information and belief, have independent fee ownership of tribal lands, are comprised of the tribal assessments on and tribal income from the use of common tribal lands held in trust by the United States. These distributions are similar to the tax-free income derived from the individual allotments of land given to other tribes. Further, the Miccosukee Tribe's world view that the *community* of tribe members embodies the voice of the Tribe, and its particular history with the United States government, distinguishes this tribe from others.

(ff) The Tribe's distributions to Petitioner are made for the use of her undivided interest in the tribal lands, and not based upon the performance of any work or service by her. Because all members of the Miccosukee Tribe have, upon information and belief, an undivided interest in the use and benefit of Miccosukee lands, the Tribe's distributions can be viewed as similar to rental payments to its members for the use of *their* land. Courts and the IRS have long viewed rental payments as directly derived from the land, and thus excludable from the income of Indians. Saunooke v. U.S., 9 Cl.Ct. 537 (1986); Rev. Rul. 67-284, 1967-2 C.B. 55; CCA 201007053 (May 7, 2009).

(gg) Alternatively, the distributions at issue are per capita payments of tribal trust resources. Accordingly, the Tribe's distributions to Petitioner are

exempt from federal income tax under the Per Capita Act. See 25 U.S.C. §117a *et. seq.*; 25 U.S.C. §1407.

(hh) Alternatively, upon information and belief, in making the distributions at issue, the Tribe was motivated by a sense of generosity, rather than a sense of moral obligation or legal duty, and anticipated no economic benefit. Accordingly, Petitioner's distributions may properly be viewed as non-taxable gifts under Section 102 of the Internal Revenue Code because the Tribe has the requisite donative intent. See Commissioner v. Duberstein, 363 U.S. 278, 289 (1960); Griesen v. U.S., 831 F.2d 916 (9th Cir. 1987).

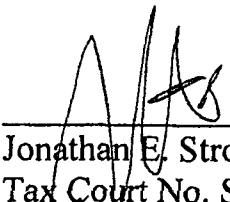
(ii) Alternatively, a portion of the distributions at issue represent a refund of tax previously paid to the Tribe by Petitioner for which she did not receive a federal income tax benefit. Accordingly, the refunded portion of Petitioner's previously paid tax should be excluded from Petitioner's taxable income. See I.R.C. § 111.

(jj) Petitioner reasonably relied in good faith on certain third-party professionals in determining that the distributions at issue should not be included in her gross income. Therefore, all penalties proposed by the Commissioner in the Notice of Deficiency should be abated based on reasonable cause including, but not limited to, all penalties pursuant to IRC §§ 6651(a)(1) and 6651(a)(2).

WHEREFORE, the Petitioner prays that this Court determine that there is no deficiency in any tax, that all penalties are not applicable and/or be abated based on reasonable cause, and that the Court grant Petitioner such other and further relief to which she may be entitled.

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