UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

BILLY CYPRESS, ETHEL HUGGINS, JOHNSON BILLIE, JAMES CLAY, AUDREY CLAY, NINA BILLIE, AGNES BRADY, BETTY CLAY, EDNA TIGERTAIL, EVELYN CYPRESS, GREG KELLY, HEATHER CYPRESS, LUTHER TIGER, MARY KELLY, JASPER NELSON, PRISCILLA BUSTER,

Plaintiff, **Case No._____**

v.

UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF THE TREASURY AND JACOB J. LEW, in his Official Capacity as Secretary of the Treasury,UNITED STATES DEPARTMENT OF THE INTERIOR and SALLY JEWEL, in her Official Capacity as Secretary of the Interior,

Defendants.
_____/

COMPLAINT TO SEEK DECLARATORY RELIEF CONCERNING TREATY RIGHTS AND OTHER FEDERAL LAW

PRELIMINARY STATEMENT

Plaintiffs are aboriginal natives residing on ancestral lands in this judicial district. This is a dispute between Plaintiffs; the United States of America; Department of Interior and Department of the Treasury. Legal disputes between Native Americans, the United States and its Agencies are not uncommon and may be inevitable given that "[t]he relation of [Native American] Tribes . . . to the people of the United States has always been an anomalous one and of a complex character." *United States v. Kagama*, 118 U.S. 375, 381 (1886). The issues

presented here are no exception and involve not only extraordinarily complex issues but also raises issues of first impression for the Court.

For ease of reference in this action, Plaintiff's will use the term "Miccosukee," a term the United States adopted to commonly refer to members of their tribe when identifying themselves in this case.[1] The Miccosukee are a unique people historically, culturally, and, in critical respects, legally. After many decades of misinformation and neglect by the federal government, the Miccosukee continue to find themselves dealing with what has been thought of as an unquestioned and long resolved issue. The most recent of these disputes arises and centers on the imposition of tax liability on Tribal funds earned within the boundaries and lands of the Miccosukee.

The Miccosukee possess an extraordinary heritage of strong Tribal Sovereignty. Following years of armed conflict during the late 1800s, the ancestors of Indians, who would later be identified by the United States as the Miccosukee; resisted removal, relocation and intrusion into their Sovereignty at the hands of the government. The Miccosukee Sovereignty has continued uninterrupted within the State of Florida prior to any "discovery" by invader and explorers from other countries. At one time all of the State of Florida comprised the ancestral lands of the Miccosukee. As other tribes in the United States were forcibly moved onto reservations, the Miccosukee Indians – who were never conquered and never surrendered – moved to areas of Florida where non-Indians would almost never go.

While the history of Miccosukee and the Seminole reflects many parallels, over the years the federal government would come to know of fundamental differences in philosophy, culture

[1] The word Miccosukee is a term of language created and identified by the United States. "Miccosukee" literally means "us:" or "me". When first encountered by the non-Indian government and asked simply "what are you called" the response was simply to identify them as us or me. Miccosukee became the title created by the United States to classify this people.

and legal status. By the 1940's and afterwards, Seminole tribe members began to live on reservations. The Seminole Tribe itself began to pursue a compensation claim against the United States for the 19th century confiscation of lands. The Miccosukee's, on the other hand, remained in the swamps of the Everglades, opposed efforts to claim compensation from the United States government and continued to insist on their right to be left alone, free from governmental interference or impositions. Thus, the Miccosukee culture and inherent Sovereignty embodies a fierce sense of self-sufficiency, self-determination, and independence.

The Miccosukee of today, as in the past, continues this history of self-governance and independent seeking nothing more from the federal government outside of the enforcement and compliance with a number of treaties, Agreements and clear federal statutory law between the Miccosukee and the federal government. The binding treaty obligations set out not only the long standing position of Miccosukee independence free from the influence and regulation of the federal government, but also contain specific language affirming the Miccosukee's inherent sovereign right to govern themselves and reflect negotiations and equitable concessions by the Miccosukee in return for giving up millions of acres of its ancestral lands. The Miccosukee people properly insist that the United States take nothing "more" from them. Central to their unique character is a correspondingly distinctive relationship with the United States best described in Miccosukee language as "pohoan checkish" ("Just leave us alone"). This action seeks to vindicate, enforce and definitively declare the obligations of the United States' and its Agencies pursuant to the treaty obligations and promises as well as the binding statutory provisions contained within the United States Code that affirms the independence and self-sustaining sovereignty of the Miccosukee Tribe and its members.

PLAINTIFFS

1. Plaintiffs are members of the federally-recognized Miccosukee Tribe of Indians of Florida. Plaintiffs have satisfied all membership conditions necessary under the Miccosukee Tribe's Constitution and By Laws, as well as the requirements for serving on the Tribe's General Council. Plaintiffs bring this action after the Tribe's governing body declined to represent them in this cause against the United States and directed Plaintiffs to take lawful action on their own behalf.

2. Pursuant to the laws, traditions and customs of the Miccosukee people the lands on which the Miccosukee live, reside, work, and operate businesses are held for the benefit and use of all the members. More specifically, all members of the Miccosukee have an undivided interest in the use and benefit of Miccosukee lands. Interestingly there is no word in the Miccosukee language that describes individual ownership. The words of individual possession or exclusive control of Tribal lands and property do not exist among the Miccosukee people. Instead the Miccosukee language defines the land as for the use and benefit of all members. As evidence of this fact almost every aspect of how the Miccosukee conduct business is vested in the General Council of the Tribe.[2]

3. Although it has been inherently understood by the Miccosukee in its sovereign laws and customs that Miccosukee lands, wherever located, are equally enjoyed by all the members of the Tribe, in 1961 this inherent right was codified and acknowledged by the United States in the Miccosukee Constitution. The Constitution was required by United States to appease the requirements of the United States and aid the federal government and its agencies in its ability to interact and identify a government that was familiar to the United States. This Constitution was a necessary step for the Miccosukee to create some entity that would be able to

[2] The General Council of the Miccouskee was later codified for the benefit of the United States in the Miccosukee Constitution as ". .*all adult members 18 years of age or older*." Miccosukee Const., Art. III §1.

deal with the federal government on a government-to-government basis. Formally, the Miccosukee Constitution, which was recognized by the United States government pursuant to 25 U.S.C. §476, provides that "[a]ll members of the Miccosukee Tribe" are "accorded equal political rights and equal opportunities to participate in the economic resources and activities of the Tribe." Miccosukee Const., Art. VI, §1.

4. At issue in this case is the ability of the Tribe to utilize its lands to generate revenue to benefit the Tribe and its members. Included in this issue is the inherent right of the Tribe to enact laws, lease lands, identify and define the operation and expenditures of its funds, and the ability of the Tribe to operate in conjunction with its Constitution and customs and traditions relating to the what remains of the Tribes aboriginal land base.

5. Plaintiffs reside and work within the Florida Everglades on a small portion of their aboriginal Tribal lands in the Miccosukee Reserved Area ("MRA") within and bordering the Everglades National Park and on perpetually-leased Indian lands and Federal Reservation lands. The current land designation represents less than one (1%) percent of the total land that was used, occupied or otherwise part of the traditional Miccosukee Nation.

6. As members of the Miccosukee Tribe, Plaintiffs are the beneficiaries of the rights and privileges reserved to, created for and inherent to enrolled members of the Miccosukee Tribe by various relevant treaties and settlement agreements between the Miccosukee Tribe and the United States as well as federal laws and regulations.

7. Additionally, in the process of reducing the aboriginal lands of the Miccosukee, the United States and the Tribe reached various settlements and agreements that reflected not only the value of the land claims, but also the continuing desire to protect the inherent sovereign right of the Miccosukee to govern, provide, and otherwise use all of the Tribal lands for the

benefit of all of the Miccosukee members. These include the rights and privileges accruing to the Miccosukee Tribe and its members from federal statutes such as the Florida Indian Land Claims Settlement Act of 1982, the Miccosukee Settlement Act of 1997, and the MRA Act passed in 1998.

8. Traditionally, and consistent with the policy of the United States when resolving conflicts with Native Americans, the settlement agreements refer to the named Tribe. However, the individual members of a designated 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 acknowledges the individual rights of the members of the Tribe in addition to the collective application of the treaty's terms to the Tribal group. *See, e.g., McClanahan v. State Tax Comm'n. 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). Given the decentralized nature of Miccosukee life at the time of the relevant treaties, the rights and privileges under these treaties were made to the various representatives of clans that now comprise the Miccosukee Tribe to which Plaintiffs belong.

DEFENDANTS

9. The United States of America is the government of the United States, which may be named as a defendant and against which **mandamus, a declaratory judgment and injunctive relief** may be entered, pursuant to 28 U.S.C. §1361, 2201 and 2202, and FED. R. CIV. P. 57 and 65(a).

10. The U.S. Department of the Treasury ("Treasury") is an agency of the federal government, which may be named as a defendant and against which **mandamus, a declaratory judgment and injunctive relief** may be entered, pursuant to 28 U.S.C. §1361, 2201 and 2202, and FED. R. CIV. P. 57 and 65(a).

11. Jacob J. Lew is the Secretary of the Treasury ("Treasury Secretary"), and an employee of the United States and its agency, the Treasury. In this capacity, Secretary Lew may be named as a defendant and is a party against whom **mandamus, declaratory judgment and injunctive relief** may be entered, pursuant to 28 U.S.C. §1361, 2201 and 2202, and FED. R. CIV. P. 57 and 65(a).

12. The U.S. Department of the Interior ("DOI") is an agency of the federal government which may be named as a defendant and against which **mandamus, a declaratory judgment and injunctive relief** may be entered, pursuant to 28 U.S.C. §1361, 2201 and 2202, and FED. R. CIV. P. 57 and 65(a).

13. Sally Jewell is the Secretary of the Interior ("Interior Secretary"), and an employee of the United States and its agency, the DOI. In this capacity, Secretary Jewell may be named as a defendant and is a party against whom **mandamus, declaratory judgment and injunctive relief** may be entered, pursuant to 28 U.S.C. §1361, 2201 and 2202, and FED. R. CIV. P. 57 and 65(a).

14. The Treasury Defendants, among other things, seek to impose withholding obligations upon the Tribe and personal-income tax liability upon Plaintiffs for monetary distributions originating from a gross-revenues tax and lease fee imposed by the Tribe on any and all businesses conducting any operations on, or using, Tribal lands. In doing so, Treasury Defendants have ignored, among other things, the United States' unique treaty obligations to

members of the Miccosukee Tribe, federal statutes relevant to the Miccosukee Tribe and its members and well settled law relating to the inherent authority of the Tribe to govern and control those matters occurring within the boundaries of its lands and which affect its people and those interacting within its boundaries under the provisions of 25 U.S.C. § 459(e); 1745; 1750(e) and 2210 all of which prohibit and exempt the taxation of revenues derived from the lands of the Miccosukee Tribe without restriction.

15. The DOI Defendants have violated their obligations to Plaintiffs in connection with: (1) lands taken into trust for Plaintiffs and the Miccosukee Tribe's benefit, including but not limited to, those lands taken into trust in connection with the Florida Indian Land Claims Settlement Act of 1982 and the Miccosukee Settlement Act of 1997; (2) their commitments under the MRA Act; (3) provisions, duties and obligations under 25 U.S.C. 459(e) as well as the enforcement and protection of the Tribe and the assets of its members under the exclusive authority of the DOI as mandated by 25 U.S.C. § 2 and 25 CFR §1.2.

16. As a result of Defendants' actions, Plaintiffs have suffered, presently suffer and will continue to suffer personal harm. The gravamen of this lawsuit is the United States government's violations of its obligations and promises owed to members of the Miccosukee Tribe along with the failure of both the DOI and Treasury to enforce and follow agreements and enforce federal statutes in the best interest of the Tribe and its members. As such, Plaintiffs have an identifiable personal stake in assuring that the United States and all of its agencies honor the treaty and statutory obligations owed to members of the Miccosukee Tribe. If the United States government does not honor obligations and imposes personal income-tax liability on the Plaintiffs as Tribe members, their lives as an intact Miccosukee people will be undermined. The present lawful use of the trust land—free from government burdens and imposition—allows

Tribe members to sustain themselves as a cohesive community that retains its cultural and linguistic identity. To substantially undercut their means of independent self-sufficiency will lead to the departure of Miccosukee's from Indian country and impose a financial and cultural assimilation that they have long resisted.

JURISDICTION AND VENUE

17. This Court has jurisdiction of this civil action under 28 U.S.C. §1331 (civil actions arising under the Constitution, laws, or treaties of the United States) notwithstanding 28 U.S.C. §2201(a) and 26 U.S.C. §7421.

18. The Miccosukee Reserved Area Act passed in 1998 contains a specific waiver of sovereign immunity providing that "[t]he Tribe may bring a civil action in the United States district court for the district in which the MRA is located to enjoin the United States from violating any provision of this Act." 16 U.S.C. 410, §8(i)(2).

19. In instances where threatened action by government is concerned, putting a challenger to the choice between abandoning his rights or risking prosecution is a dilemma that it was the very purpose of the Declaratory Judgment Act to ameliorate. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007).

20. This Court has personal jurisdiction over Defendants as they are purporting to implement and enforce the laws set forth herein against Plaintiffs within this judicial district.

21. Venue in the Southern District of Florida is proper under 28 U.S.C. §1391(e) because this is a civil action against the United States, or an agency thereof, and officers and employees of the United States, acting in their official capacity; Plaintiffs reside within the Southern District of Florida; and a substantial part of the events or omissions giving rise tot he claims occurred within the Southern District of Florida.

HISTORICAL BACKGROUND

22. The present legal issues require an overview of past decades to provide the perspective critical to determining this controversy. The relevant past begins with the earliest Spanish settlements in 1512, a time when some 25 indigenous groups totaling more than 50,000 people inhabited the land later to become Florida. Historians believe that, while these people were arguably of Creek origin, at least two separate language groups were in use among them. Despite linguistic and other distinctions, these Florida Indian communities would eventually be described as Seminoles.

23. Through treaties, Spain repeatedly confirmed the Indians' rights to all the Florida lands with minor concessions such as Spanish properties at St. Augustine. In 1763, when Great Britain acquired Florida, beginning with the Royal Proclamation of 1763, it expressly acknowledged the tribal rights to these lands. When Spain reacquired Florida in 1783, it reaffirmed its recognition of tribal lands in such agreements as the 1784 Treaty of Pensacola. The tribal rights to millions of acres of Florida was analyzed and discussed by Chief Justice John C. Marshall who concluded that the Indian tribes including those now known as Miccosukee were entitled to the benefits of treaties with Spain by virtue of the terms of their acquisition. *Mitchel v. United States*, 9 Pet. At 754-55.

24. Despite their acknowledged legal rights, Florida's Indians faced hardships and war. The United States deployed a bogus treaty—with Indians supposedly ceding all their land in exchange for a reservation in Central Florida—as the scenario for confiscation. As modern historians have confirmed, the alleged Seminole representatives had no authority to enter into these supposed "agreements." In fact, at the time, there was not even a tribal government to authorize such actions. Florida's Indians lived as family clans rather than through a centralized

tribal structure during the 1800's. Even so, the United States invoked these unauthorized and sham agreements with false leaders who represented only themselves as a pretext to take tribal lands and remove many native Floridians to Oklahoma. And so the First, Second and Third Seminole Wars were fought during a period from 1817 to 1838. As a result of those armed conflicts, which in military terms were essentially a draw, the U.S. was able to deport most "Seminoles" from Florida to "Indian Country" in Oklahoma. This appalling and arrogant mistreatment was sadly consistent with the government's policies toward many Native Americans, policies of removal at gunpoint and forced assimilation.

25. Many, however, were determined to remain in Florida. As Buffalo Tiger, the founding Chairman of the Miccosukee Tribe, once explained:

> We were killed. So many of us were killed. Many White soldiers after us and killed us and kept a lot of our people and, sent them to Oklahoma.

To resist removal, they moved south into swamps where non-Indians would not follow. Severe hardships were endured because of the constant movement and concealment to avoid American troops. The already deep mistrust of non-Indians was further embedded and became, very understandably, a core element of Florida Indian culture and philosophy. Fishing, hunting and limited forms of farming enabled them to live off the land in the southern regions of Florida.

United States Treaty Obligations End The Wars

26. In 1842, President John Tyler and the Department of War directed General William J. Worth to negotiate a treaty to bring the Florida Indian war to an end. On July 22, 1842, General Worth reached an agreement with an emissary of the Florida Indians, Fosse Hadjo:

> Colo Worth stated to Fosse Hadjo that he had but a short talk to make. He had received word from the Great Father in Washington

> that there must be no more fighting between his white & red children and that no more blood must be shed between them, but they must be friends and shake hands together, that although he lives a great distance from them he see the bleached bones of those who have been killed and it makes his heart said. That the Great Father who sends this word is not the same they had some time since but has bee recently chosen by his wife and children. He is willing his red children should remain in Florida or go to Arkansas as they may prefer: . . .
>
> Minutes of Talk Held at Fore Brooke, July 22, 1842, Florida Territorial Papers, 517.

27. Agreement was reached on these terms. The treaty further provided that territory south of Peace Creek in Central Florida and east of Lake Okeechobee would be the land of Florida's Indians. There would always be peace, and Florida's Indians would always be free from federal financial impositions and burdens. Reached by the highest authorities of the United States and of Indians then known as Seminoles, the treaty confirmed that Indians were to be "left alone" on their lands. While no central tribal government then existed, the family-based clans aligned to accept the treaty. From that time to the present day, the Miccosukee clans continue to honor the mutual pact "to be left alone."

28. In May, 1845, President James Polk approved the establishment of a "District set apart for the use and occupancy of the Seminoles in Florida," the words then used for Seminoles and Miccosukees. Further confirming the continuing existence of the 1842 treaty, President Millard Fillmore sent a message to Congress observing that "ever since the arrangement above referred to, the Indians have manifested a desire to remain at peace with the whites."

The Miccosukee Adhere to the Agreement "To Be Left Alone"

29. As the 1900's began, non-Indians increasingly moved into Fort Lauderdale, and the lower east coast of Florida, which, in turn, prompted further Indian movements south and west where hamlets were formed on swampland hammocks. Contact with non-Indians was

peaceful but rare. When the Tamiami Trial opened in 1928 the Miccosukee opened camps alongside which it allowed tourists to pay for hand-made souvenirs or to see alligator wrestling.

30. Over time, particular tracts of land were selected by non-Indian officials to be set aside for Indians. Several areas had been dedicated in the late 1800's for Seminole reservations including Brighton, Big Cypress and Dania (later Hollywood). In 1917, the State of Florida assigned portions of Monroe County to the Seminoles. In general, though, these measures meant little to many of Florida's Native Americans who continued to live and survive in the Everglades.

31. Starting in 1920's, some Seminole families began to move onto the Dania Reservation. Increasingly, more Seminoles would relocate to reservations and begin to receive assorted federal benefits. The Miccosukee, however, did not accept life on federal reservations nor would the Miccosukee live off of federal resources.

32. Thus, although for non-Indians, the Miccosukee and Seminole people have often been viewed indistinguishably, there are important differences. The basic language of the Miccosukee has its genesis in Mikulski, one of two languages spoken in Spanish Florida. Creek is the basis for the Seminole language and the two are not mutually intelligible. Even more important was the Miccosukee's tenacious commitment to continuing a traditional way of life in the Everglades, including areas near the Tamiami Trial. Correspondingly undiminished was the Miccosukee's implacable opposition to life on federal reservations. As Buffalo Tiger explained in an interview, the root of that opposition was based on the history of forced removal and the Miccosukees' implacable resistance to any action that would undermine their unique identity:

> They don't want any government idea to influence our people. . . . They don't want influence from U.S. government. They like to do their own, what they know. . . . I get to be spokesman to make sure the government realize and recognize that. . . . They don't

> even want to talk about reservation. They don't even want to talk about going to school. Those things they left out because they say, no, we stay where we are. . . . They do not want, particularly Miccosukees . . . they don't want any reservations. Because government set it up and government trying to influence us in the school and all that. So that's why they don't want it.

33. The decades of wars during the 1800's, followed by relentless policies of removal, were replaced by more than a century of abject federal neglect. But these Native Americans endured a myriad of hardships on their own while proudly maintaining their isolation and independence. In the 1930's the administration of President Franklin D. Roosevelt promised better times for American Indians. Respect was to replace the past practices of forced assimilation. In 1935, Secretary of the Interior Harold Ickes and Indian Affairs Commission John Collier traveled to Florida to meet with Florida's Indians. As a result of that meeting, the government issued a public statement of commitment to the restoration of their lands and preservation of the right to live in the area being proposed for the Everglades National Park.

34. As the dialogue with the federal government evolved, the already existing distinctions between the tribes further crystallized between Seminoles situated in areas surrounding Dania and the Miccosukee traditional Indians living further to the south in the Everglades and near the Tamiami Trial. This second group, living in the southern portion of Seminole country, delivered a petition to the government emphasizing their adamant demands to remain wholly independent in order to continue their "peaceful pursuits . . . [free] from the ever-changing and hindering policies of the white man." This position became well understood by the government. As an Indian Affairs field officer described the two groups, the Seminoles were the "Northern Group," while the Miccosukees, were the "Southern Group." Recognizing the major division between the two, the Indian Affairs Bureau viewed the Northern Group living largely on reservations, as more "progressive" and the U.S. began providing services to them. For example,

a cattle-raising project was funded for the reservation Indians. Meanwhile, the off-reservation Southern Group, which refused to participate in Indian Affairs programs, faced increasing pressure to leave their homeland.

35. Official correspondence further documented the unique status of Miccosukees. In a 1936 letter from the Everglades National Park Commission to Dave Sholtz, the Governor of Florida, the Commission's Chairman wrote of Florida's Indians saying, "He will 'be let alone' to do as he pleases, and that is what he wants, and is entitled to." That same year, Governor Sholtz wrote to the U.S Secretary of the Interior (using the generic term for Florida Indians but referring only to the Southern Group) and stated:

> 1st. So far as the State of Florida is concerned, the Seminoles wish to be "left alone" – that is, they wish to be permitted to range anywhere over the present Everglades territory without being confined to a reservation.

36. Much of this correspondence was generated in response to a meeting held with Florida Indians at Monument Lake on or about February 22, 1936, where the Miccosukee informed Governor Sholtz that they simply wished "pohoan checkish," which is usually translated as "to be left alone." This meeting took place after Florida Indians learned that Florida politicians believed that the Miccosukee should be subject, like every other Florida citizen, to various state laws, including hunting and fishing regulations. Fearing that the "white man" was now seeking to alter their prior agreements with Florida's Indians, Miccosukee elders emphasized that they expected the "white man" not to intrude into their affairs.

37. By 1949, the Indians who refused reservation life and would not accept federal benefits were variously described as the "Southern Group," "Tamiami Trail Group," "Traditional Seminoles," "True Seminoles of Florida," and, of course, as Miccosukees. As before, no central

structure for the Tribe traditionally existed at the time. But one governmental report acknowledged that, "[t]he clan must be taken as the basic economic unit."

Miccosukees Continue To Honor The Principles
Of Independence, Self-Determination And Self-Sufficiency

38. In 1950, Seminoles of the Northern Group began to prepare a claim for compensation from the United States under the Indian Claims Commission Act of 1946. Underscoring their legal and philosophical differences, an attorney retained by members of the Southern Group strongly objected and emphasized that these Indians—by then living principally along the Tamiami Trail—would not participate in any federal claims process. Through the Sheriff of Collier County, Florida, southern Indians contacted Florida U.S. Senator Spessard Holland to protest the monetary claims being pursued by Seminoles. That protest was forwarded to the Bureau of Indian Affairs. The response to Senator Holland from Indian Affairs recognized the separate status of the objectors:

> If any Tribal Indians do not desire to participate in any award to the Seminole Indians they will not have to accept any per capita payment or other benefits derived from a favorable judgment.

Although the traditional Indians could not prevent the Seminole claimants from seeking compensation for the wrongly confiscated lands, their opposition and refusal to participate would remain steadfast.

39. In 1953, the traditional, southern Indians, submitted through counsel another formal protest to the federal government stating;

> The General Council has stated it is not their desire or intention, now or in the future, to accept any money from the United States government.

Facing diametrically opposed positions from Florida Indians, the government acknowledged the reality of "two lingual groups" which were further described as "two distinct bands – Cow

Creeks and Miccusukais." This spelling has now been superseded by "Miccosukee." As Buffalo Tiger described the Miccosukee perspective:

> Miccosukees, have experience with white society and their government. The words they have promised to each other were never kept. Our people taught us "never believe a government, never trust them." And "never take anything from them because what they give you, they are going to be talking about it the next day." They want something in return. So, they tell us not to take anything from them. So, the Miccosukees never wanted a government reservation.….
>
> When the government start dealing with the Creek people and the Seminole people, trying to start these reservations, we are not part of that. We have no part; take no part in that.…
>
> If the United States' government were to put a fence around the reservation and you agree to live on it, you are defeated and you should never be defeated.

The government understood at the time that the off-reservation group was "rabidly opposed to any change in their way of life." A Bureau of Indian Affairs functionary further noted, "[t]hey feel they are getting along alright and have left the impression that they want to be left alone."

40. In a resounding declaration of the unique character of the Miccosukee and the uncompromising insistence that they "be left alone," the Buckskin Declaration was presented to frame their status and position in the Miccosukee's own words. Delivered on March 1, 1954 to the United States Capital Building in Washington in conjunction with public hearings that Congress was holding, the petition said, among other things:

> We, the Mikasuki Tribe of the Seminole Nation, have made no requests of any kind upon your government since the McComb Treaty of 1839. We have never asked for nor taken any assistance, in money or in any other thing, from your Nation.
>
> We have for over one hundred years lived on lands in the Everglades, some of which were established as Indian Reservations, and for over one hundred years we have not been discontent with our relationship, because you let us alone and we

> left you alone. For over one hundred years we have not allowed the conduct we have received from your government to disturb us in spite of many insults to our Nation, chief of which has been the deliberate confusion of our Mikasuki Tribe of Seminole Indians, governed by our General Council, with the Muskogee Tribe of Seminole Indians in order to avoid recognition of our tribal government, independence, rights and customs.
>
> There has been filed before the Indian Claims Commission in your government, without our authority, a claim, supposedly by us, and supposedly to compensate our Tribe with money for lands taken from us by the United States Government in the past. We want no money. . . .

41. According to Buffalo Tiger, the primary spokesman for the Tribe when the Buckskin Declaration was presented to the United States, the tribal delegation explained the Declaration to the United States' representative in emphatic terms. Mr. Tiger said, among other things:

> And we give it to him and tell him, we explain to him what exactly it means. They can read it. What this said exactly is that we did not want anything from anybody . . . We thought that the land we were hunting and we live on it many, many years belonged to us.

42. Following the issuance of the Buckskin Declaration, President Eisenhower assigned a Special Representative to meet with these traditional Indians. Unfortunately, the ensuing dialogue did not resolve major issues. That same year, the Miccosukees again protested the claims being made by the "representatives of the three federal reservations." Although the protest to the Indian Claims Commission was rejected, the government's recognition of the major disagreement between non-reservation Indians and reservation Seminoles was further documented by the Bureau of Indian Affairs:

> But the main cleavage in the Tribe—between the traditionalist Trail Indians and the progressive-minded reservation people—is obviously neither transitory nor trivial. It involves a fundamental difference in outlook, a sharp contrast in aspirations for the future. The two groups are in all probability completely irreconcilable and

> will have to be administratively dealt with as wholly separate entities. Any program or proposed solution which ignores these facts and attempts to treat the Florida Seminoles as a homogeneous tribe is almost certainly foredoomed to failure.

At a Congressional hearing the following year, Buffalo Tiger, then interpreting for Jimmie Billie, emphasized "you must recognized those people (Seminoles) and us down here (Miccosukees) as two separate setups." At congressional hearings Buffalo Tiger also spoke to legislators such as Florida's U.S. Senators George Smathers and James Holy, Chairman of the House Subcommittee on Indian Affairs. As Buffalo Tiger explained, "We just say we don't want anything from white man. I guess that did it. So the Senators in Congress who were in charge of the Committees and all that agreed."

Formal Recognition of the Miccosukee Tribe of Indians of Florida

43. By 1957, the State of Florida recognized the Everglades Miccosukee General Council under the leadership of Buffalo Tiger as a separate Indian group. Following Florida's acknowledgment, Indian Affairs Commissioner Emmons granted federal recognition on January 27, 1958 in a letter to the "Everglades Miccosukee Tribe of Seminole Indians," a recognition which also acknowledged the separate identity of the Seminole Indians of Florida.

44. In 1962, the Miccosukee Tribe of Indians of Florida enacted a constitution and by-laws for self-governance as a Native American democracy. Membership in the Tribe was generally limited to "children of one-half degree or more Miccosukee Indian blood," the highest standard imposed by any Native-American Tribe. The purpose was to limit membership to those who in fact shared the same way of life, language and values. By contrast, many Tribes authorize membership with Indian ancestry of only 1/32. Reflecting the Miccosukee spirit that the *community* of tribe 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 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 most powerful governing body and all tribal officers serve the General Council. *Id.*, Art. III, §3. Along with providing for governance through the Miccosukee General Council, the constitution also established officer positions as well as provisions for the Business Council to act when the General Council is not in session. Subject to the General Council's oversight, broad operational authority was entrusted to the Business Counsel. Civil rights were conferred on individual members along with the right to participate in Tribal elections.

45. Reflecting its deeply held values of independence and self-sufficiency, over the next eight years the Miccosukee Tribe led all others in demanding greater rights of self-determination from the Bureau of Indian Affairs.

46. In 1970, President Nixon formulated a new Indian policy, a key component of which was allowing tribes to contract with the BIA and Indian Health Service to operate as government's providing services for their members, including social services, health care, road management and resource development. Prior to the Nixon Administration, federal employees working under the supervision of Washington, D.C. bureaucrats provided these services on Indian reservations. President Nixon's proposal would require that these types of programs be turned over to tribes within 120 days of a tribal request. *See* "Making a Difference: The Federal Policy of Indian Tribal Self-Determination & Self-Governance," S. Bobo Dean.

47. The Miccosukee Tribe, then under the leadership of Buffalo Tiger took full advantage of this opportunity to operate *all* services for the Miccosukees. Their proposal, unprecedented at the time, sought to shutter the BIA Miccosukee Agency and transfer the duties

and responsibilities exercised by the BIA in the case of other tribes to the elected tribal chairman, Buffalo Tiger.

48. The Tribe, promoting its self-sufficiency, created the Miccosukee Corporation as a wholly-owned subsidiary of the Tribe to run its BIA-funded programs. In June 1971, the government, recognizing and approving the Tribe's decision to self-govern, officially "contracted" all former BIA programs to the Tribe. This arrangement has remained in place ever since. This was the first time such a monumental array of services had been taken over by an Indian tribe from the BIA. That members of the Miccosukee Tribe were the first to do so was yet another iteration of their words to government officials throughout their history as well as at Monument Lake in 1936: "Pohoan Checkish" ("Just leave us alone").

49. Around the same time as the Tribe's successful efforts to obtain autonomy from the BIA, the claims process pursued by the Seminoles continued to trigger repeated Miccosukee objections. In the 1970's, a $16,000,000 settlement was proposed as compensation for the government's confiscations of millions of acres of Indian land. In a telegram sent to the Federal Claims Commissioner on March 24, 1976, the Miccosukee General Council again renounced any claims declaring:

> …WE WANT TO MAKE IT CLEAR TO YOU AND THE WORLD OUR TRIBE DOES NOT WANT YOUR MONEY AND HAVE NEVER ASKED FOR ANY MONEY FROM YOUR COMMISSION OR ANYONE ELSE. YOU SHOULD KNOW THAT THE U.S. MADE STRONG TREATIES THAT PROTECT OUR TRIBE AND OUR FLORIDA LANDS FOR US FOREVER – SO NO ONE CAN TRICK US OUT OF THE LANDS OR FORCE US TO SELL IT. OUR LAND IS NOT FOR SALE.

As Buffalo Tiger expressed the Miccosukee's unwavering opposition, "We don't want that money. They can have it." For the Miccosukee it was always about the land, and the right to make independent use of the land to support their lives and provide for their futures. As Buffalo

Tiger further explained, "The land can support us and our operations." Receiving cash was no solution. The refusal to accept federal government funding, part of their well-known policy of isolationism, also reflected an understandable mistrust of non-Indians as well as the value of independence and self-government. In the words of Buffalo Tiger: "Because, as I already said, we do not trust the white man. So the Miccosukee would not take anything from him."

50. In 1978, the claims pursued by Seminoles reached the halls of Congress. Florida's iconic Lawton Chiles, then a member of the U.S. Senate, spoke forcefully about the 120 years of neglect accorded to Florida's Indians in contrast to decades of federal benefits received by the Seminoles who had relocated to Oklahoma. Like other tribes throughout the U.S., individual Oklahoma Seminoles had received numerous federal benefits including individual allotments of land. To this day, Miccosukee's have not accepted individual allotments of property from the government. In legal terms, the land they occupy is owned by the United States which holds it in trust for the Miccosukee people. These lands, however, are also unmistakably part of their once vast ancestral homeland in the Everglades.

51. Strikingly, even though, the Miccosukee's were a major part of the communities whose land had been wrongly taken, they wanted no money – just to be left alone on swamp acreage that no one else wanted. From millions of acres in the 1800's to a hundred thousand in the mid 1900's, by the 1990's, the Miccosukee's had come to live principally on 695 acres along the Tamiami Trial. Still refusing to accept any of the extensive benefits given to other Native Americans. Miccosukee's have survived based on the land. Hunting and fishing could obviously not sustain Tribe members given the drastic reduction of their lands. Moreover, due to the concerns of environmental regulators, light industry, even farming is not allowable given the critical location of the Tamiami Land in the path of the flow of Everglades waters. Exercising

their rights of sovereignty and self-determination, Miccosukee's conduct self-sustaining activities—including lawful gaming—on their ancestral homeland, which pursuant to longstanding treaty and governmental recognition embody their right "to be let alone" from taxation and other federal impositions.

Federal Legislation Concerning the Miccosukees and Their Land

52. The Miccosukee people's present-day land is comprised of: (i) Federal Indian Reservations, which include those 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 of Tribal members to portions of the Everglades; and (v) rights to traditional use and occupancy in Everglades National Park and Big Cypress National Preserve; all pursuant to federal law.

53. The tapestry of law defining Tribe members' 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. That federal legislation includes the Florida Indian Land Claims Settlement Act of 1982 (25 U.S.C. §1741, *et. seq.*), the Miccosukee Settlement Act of 1997 (25 U.S.C. §1750, *et. seq.*) and the Miccosukee Reserved Area Act passed in 1998 (16 U.S.C. §410, *et. seq.*). This triptych of federal legislation concerning the Miccosukee comports with and further validates the right to be

"left alone" - to be allowed to sustain their well-being free from federal interference or imposition. Notwithstanding these long-standing statutes, Treasury Defendants only began investigating the Tribe in 2005 for alleged violations of tax laws.

Indian Land Claims Settlement Act of 1982

54. Subject to certain excepted interests, Courts have held that any "aboriginal" rights that the Miccosukee Tribe had to Florida land were extinguished when, as part of a 1982 court settlement, the United States paid $16 million to the Seminole Nation of Indians to compensate its members for their territory. Strikingly, even though courts consider the Miccosukee Tribe a successor in interest to the Seminole Nation, none of the proceeds went to or have been accepted by the Miccosukee's. 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").

55. 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. *See also* 1982 Settlement Agreement at 2, 3, 7, 8. Although the Miccosukee Tribe received a perpetual leasehold to a tract of land north of Everglades National Park, this was not land that Tribe members lived on or could realistically use to sustain themselves. Nonetheless, the 1982 Settlement illustrates the framework of non-interference and 25 U.S.C. §1744 provides that nothing in the Indian Land Claims Settlement Act of 1982 would, extinguish "any right, title, interest or claim to lands" in Florida "which is based on use or occupancy. . ." That same legislation further provided that the United States would hold the subject lands transferred from the State of Florida "to be held in trust for the use and benefit of the Miccosukee Tribe of Indians. . . 25 U.S. C. §1747(a). It should be noted that contained within the settlement claims for which the Miccosukee gave up millions of acres of land for which they had a rightful title,

Congress included language which clearly exempts these lands, and all subsequent lands of the Miccosukee from any federal or state tax. 25 U.S.C. §1750(e).

56. Although the Miccosukee settled their claims at the same time as many of the Tribes in the Eastern portion of the United States, the Miccosukee remain the only Tribe to have any statutory reference or statement regarding the taxability of their lands, funds derived from said lands, and codify this exemption as part of the terms for settlement of their land claims.

The Intervening Passage of the Indian Gaming Regulatory Act ("IGRA")

57. In 1988 Congress enacted the IGRA, 25 U.S.C. §§2701-2721. The intent of the IGRA was to, among other things, 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.

58. The IGRA accords special recognition to Miccosukee gaming rights pursuant to 25 U.S.C. §2719. While generally prohibiting gaming on lands acquired in part by the United States for the benefit of an Indian Tribe after October 17, 1988, a special recognition and exemption was created for the Miccosukee's, providing that:

> (2) Subsection (a) of this section 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.

59. In 1990, the Tribe started its gaming operations at this location. At the time that the gaming operations opened, the Tribe already had in place its gross-receipts tax, which the Tribe passed in 1984. Said tax was applicable to all businesses that utilized the lands of the

Miccosukee regardless of who ran, operated, or utilized said lands. The gross-receipts tax was passed 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. As noted earlier, the Miccosukee Constitution explicitly provides that tribal members shall share in the "economic resources" of the Tribe and, thus, a member's share of the Tribe's tax collections was an essential attribute of self-governance. Significantly, the Miccosukee Constitution had been approved federally several decades earlier.

60. In contrast to taxing a member's share of tax collections, IGRA levied federal taxes only on "net revenues" from tribal gaming, 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). Accordingly, Congress must be presumed to have not intended to cover the existing gross receipts tax imposed by the Miccosukee's, which already existed at the time and was well-known to Congress which had accorded a specific and special recognition to Miccosukee gaming rights.

61. The DOI has promulgated guidelines governing the review and approval of Per Capita Distribution Plans which expressly apply to distribution from "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. This definition "does not apply to payments which have been set aside by a tribe for special purposes or programs, such as payments made for social welfare, medical assistance, education, housing or other similar, specifically identified needs." *Id.* Thus, even under the "net income" scheme, IGRA

recognizes that governmental and other distributions to tribal members are not subject to federal income tax.

62. Thus, the IGRA does not address distributions made to tribal members arising from a gross-receipts tax applied to all of a tribe's businesses. The plain reason for this exemption, or failure of IGRA to address said distributions is clear as said funds are not "gaming revenue" but instead are to be considered Tribal revenue for which no tax should apply. As a result of IGRA's precise and ultimately inapplicable language, and based further on the Tribe's unique relationship with the United States as reflected in treaty obligations and other relevant laws, distributions from a gross-receipts tax to Miccosukee Tribe members are not taxable.

Miccosukee Settlement Act of 1997

63. Passed against the backdrop of the 1982 Settlement Act and the IGRA, was the Miccosukee Settlement Act of 1997 ("1997 Settlement Act"). The 1997 Settlement Act arose from a lawsuit brought by the Tribe involving the taking of certain lands in connection with the State of Florida's construction of highway 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 certain monetary payments and 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."). Thus, in accordance with the statutory framework, including the Indian Reorganization Act of 1934, the Tribe - through its tribal leaders - serves as co-trustee with the United States for the benefit of its tribal members. As a historical matter, the lands conveyed were once part of the Miccosukee's' vast ancestral homeland.

64. Among those lands conveyed and taken into trust for the Tribe were 6.09 acres located at Krome Avenue as well as parcels that are on the north side of current U.S.-41 (i.e., the

Tamiami Trail). The Tamiami Trail runs in an east and west direction north of the boundary of the Everglades National Park and the Miccosukee Reserved Area. The Tamiami Trail transports an estimated 5,200 vehicles per day between Miami and Naples and it is estimated that it will transport 9,200 vehicles per day in 2020.

65. The 1997 Settlement Act, 25 U.S.C. §1750c, also reflects the policy of non-interference with Miccosukee's and explicitly states:

> (a) Rule of construction
>
> Nothing in this part or the Settlement Agreement shall—
>
> (1) affect the eligibility of the Miccosukee Tribe or its members to receive any services or benefits under any program of the Federal Government; or
>
> (2) diminish the trust responsibility of the United States to the Miccosukee Tribe and its members.

Moreover, consistent with policy accords and Treaty obligations reached between the United States and Miccosukee clans, the 1997 Settlement Act further provided:

> (b) Taxation
>
> (1) In general
>
> (A) Moneys
>
> None of the moneys paid to the Miccosukee Tribes 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 conserved to be a taxable event.

66. This federal tax exemption applied to lands that would be taken into trust and located in the area where the Miccosukee Tribe was already engaging in gaming. As stated previously, among the lands taken into trust as part of the 1997 Settlement Act were 6.09 acres located along Krome Avenue. Congress in passing the 1997 Settlement Act and approving the underlying Settlement Agreement dated April 28, 1996, did so with the knowledge that the lands being taken into trust included lands located in the Krome Avenue area. This is the same area where Congress provided in IGRA a unique and emphatic endorsement of the Tribe's gaming activities in 25 acres "located within one mile of the intersection of . . . Krome Avenue and the Tamiami Trail" for gaming purposes. 25 U.S.C. §2719(b)(2). Importantly, while the other federal legislation governing the Tribe's land holdings has provided for substantial limitations on the Tribe's economic opportunities, the Krome Avenue area is a fundamentally different matter. That area is the only area that Congress has taken a deliberate "hands off" approach to development with the full knowledge that it would be used for gaming.

67. Indeed, the fact that the Miccosukee Reserved Area Act of 1998 ("MRAA"), discussed further below, was making its way through Congress and passed in or around the same time that the Interior Secretary approved the April 28, 1996 Settlement Agreement, suggests that the federal government, including Congress, knew that the effect of the MRAA's provision limiting Class II and Class III gaming on the MRA was to confirm the understanding between the Miccosukee Tribe and the federal government that the Tribe would conduct gaming only in the Krome Avenue area. In sum, in light of the contemporaneous nature of the 1997 Settlement Act and the 1998 MRAA one must impute to Congress knowledge of what was being done in both of these statutory enactments specific to the Miccosukee Tribe.

68. Thus, the statutory exemption in the 1997 Settlement Act extends to the Tribe's gaming operations in the Krome Avenue area that was in existence at the time and, indeed, had been explicitly granted to the Miccosukees when Congress passed IGRA in 1988. Not only was this the intent of the federal government at the time, Tribe leaders, one of whom is the lead Plaintiff, negotiated the Settlement Agreement at issue in the 1997 Settlement Act and confirm the same understanding: in substance, vast lands were being given to the Florida Department of Transportation in exchange for those Krome Avenue lands and further confirmation of a federal and state tax exemption running with the 6.09 acres it was receiving as well as the 25 acres where they were already operating their gaming operations.

69. The no-federal-taxation language in the 1997 Settlement Act also presents a statutory issue arising from the fact that Indian tribes are not entities subject to federal income tax. While Indian tribes do not pay income tax, the 1997 Settlement Act nevertheless states that "none of the moneys [or lands conveyed] to the Miccosukee Tribe . . . shall be taxable under Federal or State law" or considered a "taxable event." Under these circumstances, the use of the phrase "Miccosukee Tribe" must be equated or viewed coextensively with *individual* Tribe members. Failing to do so gives no import to the phrase and renders the entire subsection surplasage in so far as it restates what is already well-established law. Accordingly, because statutory-interpretation principles require that real meaning and content be given to the no-federal-taxation language that language necessarily must encompass *individual* Tribe members within its plainly stated federal tax exemption.

The Miccosukee Reserved Area Act

70. From approximately 1964 to 1998, the Miccosukee Tribe lived and governed their own affairs on an area located within the Everglades Park as recognized by a "Special Use Permit" issued by the National Park Service. The Special Use Permit Area was comprised of 333.3 acres on the northern boundary of the Park. Despite the indisputable fact that the Everglades Park was the ancestral homeland of the Miccosukee people the Tribe's members have had to fight for the most basic of necessities: housing.

71. In the early 1990s, the Tribe and the National Park Service had a dispute over whether the Tribe could build housing for its members on the portion of the Park it inhabits along the Tamiami Trail. In 1996, Secretary of Interior Babbitt authorized the Tribe to build 30 houses along this parcel, but refused a requested expansion. Although the Army Corps of Engineers had granted a "dredge and fill" permit for a larger project, the Park Service refused. The Tribe sued for their rights to build housing.

72. The dispute led to the passage in 1998 of the Miccosukee Reserved Area Act (MRAA), Pub. L. No. 105–313 (1998), which replaced the permit system with a more permanent legal framework. The MRAA ultimately provides for the permanent residence of Miccosukee-Tribe members on 666.6 acres located on the Everglades Park without the need for the Tribe to seek and obtain any further permission or approval from the federal land management agency. The vast majority of the members and leaders of the Tribe reside within the MRA's reservation housing, which has been provided to them by the Tribe. In addition to being used for individual housing, the MRA land is also used by the Tribe to provide tribal governmental and administrative offices, judicial chambers, police and fire stations, school buildings, a health clinic, a library, a water tower an various cultural and recreational facilities for the benefit of the

tribal members. The MRA also has tribal cultural exhibits, attractions, services and enterprises for both tribal members and visitors to this reservation enclave.

73. "The MRAA is replete with traditional notions of tribal self-determination and non-interference." *See Micccosukee Tribe of Indians of Florida v. United States*, No. 00–3453-CIV, 2000 WL 35623105 at *7 (S.D. Fla. Dec. 15, 2000). In the MRAA, Congress found, among other things, that "[s]ince the commencement of the Tribe's permitted use and occupancy of the Special Use Permit Area, the Tribe's membership [had] grown, as [had] the needs and desires of the Tribe and its members for modern housing, governmental and administrative facilities, schools, and cultural amenities, and related structures." §2(2). One of the stated "Purposes" of the MRA Act was therefore to "replace the special use permit with a legal framework under which the Tribe [could] live permanently and govern [its] own affairs in a modern community within the Park." §3(1). Section 5(b) of the MRAA further provides that "the Tribe shall have the exclusive right to use and develop the MRA in perpetuity in a manner consistent with this Act for purposes of the administration, education, housing, and cultural activities of the Tribe, including commercial services necessary to support those purposes."

74. The MRAA contains a specific waiver of sovereign immunity providing that "[t]he Tribe may bring a civil action in the United States district court for the district in which the MRA is located to enjoin the United States from violating any provision of this Act." 16 U.S.C. 410, §8(i)(2).

75. The MRAA views "the Tribe" as encompassing its members as evidenced by its initial reference to the Tribe, which states: "Since 1964, the Miccosukee Tribe of Indians of Florida *have lived* and governed *their own affairs* on a strip of land on the northern edge of the

Everglades National Park pursuant to permits from the National Park Service and other legal authority." *Id.* at §2(1) (emphasis added).

76. The Tribe's members are beneficiaries of the statutory scheme. *See, e.g., id.* at §2(2), §6(b)(2); §8(e)(2)-(3). The statute also provides that the Tribe's members "shall not be held liable for any injury, loss, damage or harm that occurs with respect to the MRA and is caused by an action or failure to act by the United States . . . (including the failure to perform *any obligation* of the United States under [the] Act). *Id.* at §8(f)(2).

77. Based on the MRAA's purpose, structure and language, Plaintiffs are entitled to bring a claim seeking a declaration of their rights under the MRAA.

78. Notwithstanding these long-standing statutes and the fact that the Tribe began its gaming operations in 1990, the Treasury Defendants only began investigating the Tribe in 2005 for alleged violations of tax laws.

The Current Controversies

79. Despite the history of treaty obligations, the well-documented official correspondence and proceedings and federal legislation all confirming the Miccosukee's right to be left alone, the IRS now seeks to ignore Plaintiffs' rights. Indeed, notwithstanding the long-standing statutes discussed above and the fact that the Tribe began its gaming operations in 1990, the Treasury Defendants only began investigating the Tribe in 2005 for alleged violations of tax laws.

80. Relying on its own view of taxation laws, the Internal Revenue Service is now seeking to impose taxes upon distributions made to Miccosukees that are derived from their land and not from any traditional notions of individual compensation or profit-making. An

examination of the Miccosukee's use of trust land in sustaining their self-sufficiency, establishes that no such impositions are permitted by applicable federal obligations and law.

81. In contrast to the once vast reaches of the Miccosukee's traditional Everglades homeland, today Miccosukee tribal members have come to reside almost exclusively within a remote, 695-acre tract of tribal reservation lands. Part of the Everglades National Park fronting the south side of the Tamiami Trail, these lands were designated by Congress as the MRA. The MRA is recognized as a permanent home for the tribal members and as "Indian country" pursuant to the MRAA, 16 U.S.C. § 410. The MRA is treated as an Indian reservation for some purposes, such as determining the authority of the Tribe to govern its own affairs. 16 U.S.C. 410, § 5(c)(I), (2)(A). Significantly, Congress further specifically acknowledged the Miccosukee's independent self-governance of its tribal trust lands and tribal members by completely excluding them from the omnibus provisions of Public Law 280.

82. Neither the Miccosukee's vast aboriginal homelands nor the limited landholdings of today within the MRA have ever been suitable for allotment of land parcels to individuals to provide economic self-sufficiency as contemplated by the Indian Reorganization Act. As a result, in effort to attain tribal self-sufficiency, the Tribe undertook an extended effort to acquire undeveloped acreage fronting Tamiami Trail and Krome Avenue at the edge of the Miccosukee's historic Everglades homeland. As described earlier, the sole purpose of the Tribe's acquisition of the Krome trust parcels was to establish resort enterprises in order to provide economic development for the Tribe and to provide for the care and welfare of its dependent tribal members.

83. The keystone, six-acre corner parcel of the Krome trust land - right at the intersection of Tamiami Trail and Krome Avenue - was placed in trust for the Tribe pursuant to

the 1997 Settlement Act, ratifying a settlement agreement between the Tribe and the State of Florida and 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 Act's provision that none of the trust lands would be taxable under federal or state law constituted a clear expression of congressional intent not to subject the Tribe's trust lands, or income derived therefrom by the Tribe and its tribal members, to federal income taxation.

84. Along the same line, Congress also directed, pursuant to the Indian Gaming Regulatory Act (IGRA), that other parcels of the Krome trust land be acquired and taken into trust by the United States for the "exclusive use" of the Tribe's members "entitled ... to residence at such reservation." 25 U.S.C. § 2719(b)(3). As referenced earlier, to ensure that gaming would be one of the resort enterprises allowed on the Krome trust land, Congress included a specific exception when it enacted IGRA whereby Congress specifically provided for the Tribe's newly acquired Krome trust land to be used for gaming activity. 25 U.S.C. § 2719(b)(2)(B) - (C).

Miccosukee Tribal Distributions Are Not Taxable Under IGRA

85. The IRS' "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 Bureau of Indian

Affairs regulations define "per capita payment" as "the distribution of money ... which is paid directly from the net revenues of any tribal gaming activity." 25 C.F.R. Section 290.2.

86. These definitions of taxability simply do not apply to distributions received by Plaintiffs. The Tribe's trust payments to its tribal members are not per capita payments made directly from the net revenues of its gaming operations as defined by IGRA. To the contrary, the trust payments are made from a separate tribal trust account of distributable tribal revenues, which are comprised of: (1) its revenues from the Tribe's fixed tax assessments on 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 - the assessments on gross revenues, the fuel tax revenues and the income revenues - are derived by the Tribe through its self-governing powers of taxation of enterprises and activities located on and using the resources of tribal lands held in trust by the United States.

87. These revenues are not only plainly derived from the land, but are also anchored upon self-governance. The federally-approved Miccosukee Constitution provides that each member of the Tribe shall have the opportunity to “participate in the economic resources and activities of the Tribe.” The Constitution also authorizes its General Council "[t]o levy and collect assessments and to impose fees ... upon members and non-members doing business within the reservation." Pursuant to this authority, the Tribe's current reservation tax assessment is a 7.75% levy on the gross revenues generated by all enterprises located on tribal trust land, including a 7.75% assessment on gaming and other resort revenues from the Krome trust land. From 1985 to the present, the Tribe has consistently used portions of both its reservation tax assessment revenues and its other trust land the periodic trust payments to its tribal members

have been funded entirely by portions of the Tribe's reservation tax assessment revenues and other trust land income distributions.

88. Derived from tribal lands held in trust by the United States, the determinations of the Tribe's trust account funds are applied in the sole discretion of the Tribe's independent tribal government. They are not based on any right or property interest of the tribal members or upon the performance of any work or service by the tribal members. To the contrary, these are distributions of trust income, founded upon the Tribe's historic relationship with its members, whose tribal identity and continued participation in tribal affairs is deemed vital to the perpetuation of the Tribe's traditional life and culture. The disbursements of trust income are essential to sustaining tribal members in their existing communities where they continue to maintain this separate language, identity and culture. Disruption and interference with the ability of Miccosukee's to live together on what is left of their tribal lands might well force, in effect, the removal of Miccosukee's to find livelihoods elsewhere, thereby effectively imposing an assimilation that Miccosukee's continue to oppose.

89. As described earlier, IGRA's narrow authorization for federal taxation applies only to direct, per capita payments from net gaming revenues. This restricted, explicit taxation is explainable only if Congress itself assumed that the imposition of such taxation on the distribution of tribal trust land income would otherwise be precluded. Indeed, Congress gave no indication -- except with respect to per capita payments that might be made from the net revenue of tribal gaming -- that it intended to abolish any existing exemptions for distributions of tribal trust taxation and trust income to dependent tribal members. Moreover, as a statutory exception, IGRA's "federal taxation" provision must be strictly and narrowly construed under established federal precedents that require any imposition of tax burdens upon Native Americans must be

specific and explicit. Similarly, under the terms of Revenue Ruling 67-284, these exempt trust funds would not be taxable absent an express imposition of federal income taxation by Congress. Even under "ordinary" rules of taxation, its limited applicability to per capita payments made directly from gaming "net revenues" could not be broadened to include other types of tribal revenues derived from tribal trust lands.

90. Absent express legislation to the contrary, the Miccosukee tribal government possessed inherent sovereign power to continue its internal tribal taxation of gross revenues from enterprises operating on tribal trust land and to obtain income from the use of its tribal trust lands. The Tribe likewise retained its authority to distribute those tribal trust revenues by making periodic, tax exempt payments to its dependent tribal members, none of whom had any individual ownership of tribal lands and almost all of whom themselves resided within the MRA and other common tribal trust lands.

91. Therefore, the income tax issues posed by the Miccosukee situation presented unique circumstances: the imposition of federal income tax on tribal payments received by dependent tribal members having no independent fee ownership of tribal lands, where the distributed revenues are comprised of the tribal tax assessments on and tribal income from land uses, enterprises and activities on common tribal lands held in trust by the United States.

92. As a result, the tribal income and tribal tax revenues generated by the Tribe from its lands held in trust by the United States are “otherwise exempt from Federal income tax” as trust income when distributed as trust payments to its dependent tribal members. The dependent tribal members such as the Miccosukee - having no personal ownership of tribal lands and still living or eligible to live on those trust lands - would not be liable for federal income tax on the

Tribe's distributions of tribal revenues that are derived from the Tribe's use and taxation of tribal lands held in trust by the United States.

SUBJECT-MATTER JURISDICTION

93. Subject-matter jurisdiction is permitted under 28 U.S.C. §2201 and sovereign immunity has been waived by Section 702 of the Administrative Procedures Act ("APA"). 5 U.S.C. §702. In cases, seeking specific, non-monetary relief the APA's waiver of sovereign immunity applies to any suit whether under the APA or not. The 1976 Amendments to Section 702 eliminated the sovereign-immunity defense in virtually all actions for non-monetary relief against a United States agency or officer acting in an official capacity. Accordingly, Plaintiffs' claims seeking declaratory relief are within Section 702's waiver.

94. The Anti-Injunction Act does not bar given the exception set forth in *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1 (1962) and *South Carolina v. Regan*, 465 U.S. 367 (1984). The Supreme Court has held that the Declaratory Judgment Act's ability to provide declaratory relief is no broader than the Anti-Injunction Act's exception.

95. Under *Regan*, this Court has subject-matter jurisdiction because no alternative avenue exists for Plaintiffs to vindicate their claim. In *Regan*, the Supreme Court held that the purpose of the Anti-Injunction Act was to encourage the efficient collection of taxes and encourage refund proceedings to litigate tax claims. *See Regan*, 465 U.S. at 378-80. Accordingly, the Court held that the Anti-Injunction Act did not apply where Congress had created no adequate remedy to litigate the claims. *Id.* at 378.

96. If Plaintiffs' rights to be free from the regulatory scheme at issue arise from the Miccosukee Tribe's Treaty of 1842, statutes subsequently passed that conform to that treaty or from the General Allotment Act, the Anti-Injunction Act is inapposite. There is no alternative

remedy available that would permit the Plaintiffs to obtain the necessary relief with regard to the Miccosukee Tribe members' treaty rights.

97. The policy motivating the Anti-Injunction Act does not and should not apply to a context such as Plaintiffs'. The Anti-Injunction Act is ill-suited to apply to the unique situation of tribe members' whose *personal* income tax liability is inextricably intertwined with broader, derivative-based rights arising from treaties and statutory enactments *specific* to their ancestral homeland and their Tribe's specific and unique arrangement or "deal" with the United States. Under these circumstances, a refund litigation does not afford Plaintiffs adequate relief. Plaintiffs are challenging an intertwined regulatory scheme violated their rights under the Treaty of 1842 and subsequently passed statutes conforming thereto. A limited tax proceeding affords relief that is wholly incomplete for Plaintiffs. It would not include, by a way of example, a declaration that the federal *regulatory* scheme at issue violates the Treaty of 1842, federal legislation specific to the Miccosukee Tribe or the General Allotment Act. This result would be inconsistent with the Anti-Injunction Act and the Treaty of 1842. Thus, the *Regan* exception to the Anti-Injunction Act permits Plaintiffs' suit to proceed.

CAUSES OF ACTION

COUNT I

(Declaratory Relief Pursuant to 28 U.S.C. § 2201—Existence of a Valid Treaty Between the Miccosukee Tribe & the United States)

98. Plaintiffs hereby repeat each and every allegation contained in paragraphs 1 through 97 of this Complaint as if set forth herein fully at length.

99. Income that is exempt under treaty or statute is nontaxable. *Squire v. Capoeman*, 351 U.S. 1 (1956). Income is tax exempt when the governing treaty or statute contains language which can reasonably be construed to confer an exemption. *Id.*

100. Pursuant to *Squire* Plaintiffs' case must be decided with regard to relevant treaties and statutes, congressional policy concerning Indians, and the guardian-ward relationship existing between the United States and Indians.

101. IRS Revenue Rule(s) regarding the tax-exempt status of income received by an enrolled member of an Indian tribe are not binding on this Court and cannot overcome treaty obligations or federal statutes to the extent they are inconsistent. *See Stubbs, Overbeck & Assocs. v. United States*, 445 F.2d 1142, 1146-47 (5th Cir. 1971).

102. Plaintiffs submit that the promises and obligations made to the Miccosukee Tribe, its clans and its corresponding members in 1842 constitute a valid treaty memorializing an agreement with the United States that included a right to be left alone and a right to use their land, including subsequently acquired lands, without any federal interference or impositions, which would include interference in the form of federal taxation.

103. The United States, including the Defendants, have acted and continue to act in a manner inconsistent with the promises and obligations made to the Miccosukee Tribe, its clans and its members in 1842.

104. Consequently, there is an actual case in controversy between the parties that is ripe for judicial review and determination.

105. Plaintiffs hereby seek a declaratory judgment that in 1842 a valid and enforceable treaty was created between the United States and the Miccosukee Tribe, its clans and its members.

WHEREFORE, Plaintiffs pray that this Court declare that in 1842 a valid and enforceable treaty was created between the United States and the Miccosukee Tribe, its clans and its members and that this Court further declare the essential terms of the federal obligation to leave

the Miccosukee's alone and without federal interference, burdens or taxation for the lawful use made of Tribal trust property.

COUNT II

(Declaratory Relief Pursuant to 28 U.S.C. § 2201—Violation of the Treaty & Statutory Obligations)

106. Plaintiffs hereby repeat each and every allegation contained in paragraphs 1 through 97 of this Complaint as if set forth herein fully at length.

107. From the outset, the United States government's position was that income derived by dependent tribal members from either common tribal trust lands or individual allotted trust lands was exempt from federal income tax. In a series of opinions, the Attorney General rejected the imposition of federal income tax, concluding that with respect to income of tribal members derived from trust lands it could "not lightly be assumed that Congress intended to tax the ward for the benefit of the guardian." 34 Op. Atty. Gen. 439, 445 (1925). *See also* 34 Op. Atty. Gen. 275, 281 (1924); 35 Op. Atty. Gen. 1 (1925); and 35 Op. Atty. Gen. 107 (1926). Two of these Attorney General opinions were published as Treasury Decisions, which constituted official decisions of the federal agency charged with implementing the tax code. T.D. 3570, III-I Cum.Bull. 85 (1924); and TD. 3754, JV-2 CumBul1. 37 (1925).

108. The Department of Interior agreed with both the Attorney General and the Treasury Department in a "Solicitor General Opinion" issued on January 26, 1926, which determined that the income of dependent tribal members derived by the tribe from its common reservation trust lands was not subject to federal income tax. 1926 WL 4020 (Sol. Gen.). The Interior Department's opinion reported that the tribal members were, like the Miccosukee, "unallotted tribal Indians in the fullest sense of that term," and summarized their dependent, non-taxable status as follows:

> We are here dealing with unallotted tribal Indians residing on a large "reservation" set apart for their use, the legal title to which rests not in the Indians, either individually or as a tribe, but in the United States ....
>
> The income here in question ... was derived from sources almost entirely, if not exclusively, within the reservation set apart for the use of the tribe of which he is a member, and for the reasons herein given I am of the opinion that such income is not taxable under existing Internal Revenue law.

Id. at p. 3.

109. Consistent with these administrative determinations by all three of the federal agencies responsible for determining the legal status of individual tribal members, the Interior Department's then acknowledged expert in Indian law concluded that: "It is clear that the exemption accorded tribal and restricted Indian lands extends to the income derived directly therefrom." Cohen, Handbook of Federal Indian Law (1941), p. 265.

110. During the following decade, while the administrative interpretations of the Attorney General, Treasury Department and Department of Interior continued in force, Congress enacted several revenue acts related to income taxation without including any reference to tribes or dependent tribal members (Revenue Acts of 1926, 1928, 1932 and 1934). Congress also enacted the comprehensive Indian Reorganization Act of 1934, which terminated the individual allotment of tribal trust lands to individual members, ended the prevailing assimilationist policy and instituted a new national policy of strengthening independent tribal self-government and promoting tribal economic self-sufficiency. Again, in this Act, Congress made no specific reference to changing the income tax status of tribes or of their dependent tribal members.

111. As a result, the trust-land income to tribes and dependent tribal members remained exempt from both state and federal income taxation. While IGRA has created a

specific and explicit statutory authorization for "federal taxation" on direct distributions of net revenues from gaming, that exception to the trust doctrine exemption must be strictly construed.

112. Even where Congress has authorized a legislative exception to the tax exemption of income from tribal trust land, that exception is to be strictly construed and narrowly applied - not to be expanded by "ordinary" rules of taxation followed by the Treasury Department. Thus, with respect to the income of dependent tribal members derived from tribal lands held in trust by the United States, the taxable payments would only include direct distributions from the "net revenues" of gaming operations on tribal trust lands. Taxation could not be expanded to impose federal taxation on tribal trust payments made from internal tribal taxation of gaming as well as other tribal trust income.

113. Accordingly, in accordance with this implied-trust doctrine, the prorated distribution of tribal revenues from tribal lands held in trust by the United States for the benefit of dependent tribal members would remain exempt from federal taxes as long as the individuals remained dependent members of the tribe and restricted "wards" of the United States.

114. In the Miccosukee case, the three threshold requirements for establishing an exception to taxability of income under the trust doctrine would be: (1) the dependent, non-ownership status of the individual tribal member receiving the income; (2) the trust status of the tribal land from which the income is being derived and (3) the sovereign, trustee status of the Tribe in generating, taxing and distributing income from tribal trust lands for the benefit of its members. The Miccosukee trust income and tribal tax assessment revenues from tribal trust lands meet all three of these requirements.

115. As is clearly established, the tribal members have no ownership of tribal lands and live almost exclusively within the Miccosukee Reserve Area and are thus wholly dependent

members, having their housing, medical care, education, police and fire protection and general welfare provided by the Tribe. Additionally, the land upon which the gaming, resort and other tribal revenues are generated and tribal lands specifically acquired and held in trust by the United States for their benefit.

116. Finally, the Tribe has assumed the role of trustee under the Indian Reorganization Act and in the exercise of its inherent self-government taxing powers, generates and distributes trust income and tax revenues as trust payments for its dependent tribal members in order to provide for their well-being and to maintain the community as a Tribe. Thus, the nexus of the income sought to be taxed is located at the very center of the implied trust obligations of the United States and the inherent powers of Miccosukee self-governance. Accordingly, it would be unreasonable to infer that Congress, mindful of the government's trusteeship, would intend to impose federal income taxation as a burden upon both the dependent tribe and its dependent members.

117. Given the trust obligations of the United States as trustee of tribal lands for the benefit of tribes and their dependent tribal members – it would be wrong to conclude that federal law would impose an income tax on dependent tribal members for income derived from development and use of lands held in trust by the United States for their benefit.

118. It is clear, therefore, that the Miccosukee Tribe's tax assessments on gross revenues of its commercial gaming and other resort enterprises located on tribal trust lands constitute an exercise of power essential to tribal self-government and are not taxable. This is a function of the fact that these lands were acquired to enhance tribal economic independence and were placed in trust by the United States for the purpose of achieving economic self-sufficiency and enhancing tribal independence.

119. Notwithstanding the protections afforded to Tribe and its members, the Defendants have nevertheless asserted that the Tribe and its members are required to pay taxes under federal law from the tribal distributions made from the Miccosukee's own tax collections. This not only ignores the governing federal statutes, it would violate treaty obligations.

120. As described earlier, pursuant to the 1842 Treaty, the Miccosukee's are not subject to the payment of any taxes to Defendants arising from tribal distribution made from the Miccosukee tax collections and are to be "left alone" – free from governmental interferences and imposition concerning their self-supporting activities on their land.

121. Consequently, there is an actual case in controversy between the parties that is ripe for judicial review and determination.

122. Plaintiffs hereby seek a declaratory judgment that paying monies to the Defendants under these circumstances is contrary to, and violates, the guarantees provided to the Miccosukee Tribe, its members, and tribally-licensed entities under the Treaty of 1842, as well as relevant federal statutes governing the Miccosukee Tribe and its members' use of tribal land described above.

WHEREFORE, Plaintiffs pray that this Court declare that paying monies to the Defendants from the tribal distributions made from a gross-receipts tax on tribal-owned businesses violates the Treaty of 1842 and other federal laws.

COUNT III

(Declaratory Relief Pursuant to 28 U.S.C. § 2201—Violation of the Treaty of 1842)

123. Plaintiffs hereby repeat each and every allegation contained in paragraphs 1 through 97 of this Complaint as if set forth herein fully at length.

124. Pursuant to the Treaty of 1842, the Miccosukee Tribe and its members are not subject to the payment of any monies to Defendants arising from tribal distributions made from a gross-receipts tax on tribal-owed businesses.

125. Notwithstanding the benefits and protections afforded to the Tribe and its members under the Treaty of 1842, the Defendants have nevertheless asserted that the Tribe and its members are required to pay taxes under federal law from the tribal distributions made from the gross-receipts tax on tribal-owned businesses.

126. Consequently, there is an actual case in controversy between the parties that is ripe for judicial review and determination.

127. Plaintiffs hereby seek a declaratory judgment that paying taxes to the Defendants under these circumstances is contrary to, and violates, the guarantees provided to the Miccosukee Tribe, its members, and tribally-licensed entities under the Treaty of 1842, relevant federal statutes governing the Miccosukee Tribe and its members' use of tribal land, and what the Miccosukee would have understood and interpreted at the time of the Treaty

128. Plaintiffs hereby seek a declaratory judgment that the Miccosukee Tribe, its members, and tribally-licensed entities are not subject to paying monies to the Defendants as such a requirement is contrary to, and violates, the guarantees provided to the Miccosukee Tribe and its members under the Treaty of 1842.

WHEREFORE, Plaintiffs pray that this Court declare that the payment of monies to Defendants from tribal distributions made from a gross-receipts tax on tribal-owned businesses violates the Treaty of 1842.

COUNT IV

(Declaratory Relief Pursuant to 25 U.S.C. § 349—Statutory Exemption for Income Derived from Indian Trust Lands)

129. Plaintiffs hereby repeat each and every allegation contained in paragraphs 1 through 97 of this Complaint as if set forth herein fully at length.

130. 25 U.S.C. §349 provides that no federal tax shall be imposed on income derived from Indian trust land. The United States government's interpretations of the Internal Revenue Act determined that income derived by dependent tribal members from either common tribal trust lands or individual allotted trust lands was exempt from federal income tax. In a series of opinions, the Attorney General rejected the imposition of federal income tax, concluding that with respect to income of tribal members derived from trust lands it could "not lightly be assumed that Congress intended to tax the ward for the benefit of the guardian." 34 Op. Atty. Gen. 439, 445 (1925). *See also* 34 Op. Atty. Gen. 275, 281 (1924); 35 Op. Atty. Gen. 1 (1925); and 35 Op. Atty. Gen. 107 (1926).

131. Two of these Attorney General opinions were published as Treasury Decisions. T.D. 3570, III-I Cum.Bull. 85 (1924); and TD. 3754, JV-2 CumBul1. 37 (1925). The Department of Interior also agreed and issued its own "Solicitor General Opinion" on January 26, 1926, concluding that the income of dependent tribal members derived by the tribe from its common reservation trust lands was not subject to federal income tax. 1926 WL 4020, at *3 (Sol. Gen.). During the following decade, while these various administrative interpretations continued in force, Congress enacted several revenue acts related to income taxation without including any reference to tribes or dependent tribal members (Revenue Acts of 1926, 1928, 1932 and 1934).

132. Congress also enacted the comprehensive Indian Reorganization Act of 1934, which instituted a new national policy of strengthening independent tribal self-government and promoting tribal economic self-sufficiency. In this Act, Congress made no specific reference to changing the income-tax status of tribes or of their dependent tribal members. As a result, the

trust-land income to tribes and dependent tribal members remained exempt from both state and federal income taxation, which has necessarily been accepted in the course of comprehensive federal legislation addressing Native Americans.

133. Further, the clear provisions of 25 U.S.C. §1750(d); 459(e) and 2210 exempt the lands of the Miccosukee from state and federal taxation including any "Any distribution of such [revenue] to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income." 25 U.S.C. §459(e).

134. As a result, taxation cannot not be expanded to impose federal taxation on tribal trust payments made from internal tribal taxation of gaming, as well as other tribal trust income. Thus, in accordance with this implied-trust doctrine, the prorated distribution of tribal revenues from tribal lands held in trust by the United States for the benefit of dependent tribal members would remain exempt from federal taxes as long as the individuals remained dependent members of the tribe and restricted "wards" of the United States.

135. Tribal members have no ownership of tribal lands and live almost exclusively within the Miccosukee Reserve Area and are thus wholly dependent members, having their housing, medical care, education, police and fire protection and general welfare provided by the Tribe. Additionally, the land generating the gaming, resort and other tribal revenues are tribal lands specifically acquired and held in trust by the United States for tribal members' benefit.

136. Finally, the Tribe has assumed the role of trustee under the Indian Reorganization Act and in the exercise of its inherent self-government taxing powers, generates and distributes trust income and tax revenues as trust payments for its dependent tribal members in order to provide for their well-being and to maintain the community as a Tribe. Thus, the nexus of the income that Defendants seek to tax is located at the very center of the implied trust obligations of

the United States and the inherent powers of Miccosukee self-governance. Accordingly, it would be unreasonable to infer that Congress, mindful of the government's trusteeship, would intend to impose federal income taxation as a burden upon both the dependent tribe and its dependent members.

137. It is clear, therefore, that the Miccosukee Tribe's tax assessments on gross revenues of its commercial gaming and other resort enterprises located on tribal trust lands constitute an exercise of power essential to tribal self-government and are not taxable. This is a function of the fact that these lands were acquired to enhance tribal economic independence and were placed in trust by the United States for the purpose of achieving economic self-sufficiency and enhancing tribal independence.

138. Defendants' imposition of tax liability upon Tribe members for tribal distributions made from the Miccosukee Tribe's violates 25 U.S.C. §349. Consequently, there is an actual case in controversy between the parties that is ripe for judicial review and determination.

139. Plaintiffs hereby seek a declaratory judgment that paying income taxes under these circumstances is contrary to and violates the General Allotment Act, particularly 25 U.S.C. §349.

140. Plaintiffs hereby seek a declaratory judgment that they are exempt from paying income taxes on distributions made from a tribal gross-receipts tax on commercial gaming and other tribal-resort enterprises, because such income is derived from Indian trust land exempt from taxation.

WHEREFORE, Plaintiffs pray that this Court declare that Defendants' actions violate 25 U.S.C. §349.

COUNT V

(Declaratory Relief Pursuant to 25 U.S.C. § 2703(9), 25 C.F.R. §290—Violation of IGRA)

141. Plaintiffs hereby repeat each and every allegation contained in paragraphs 1 through 97 of this Complaint as if set forth herein fully at length.

142. IGRA has created an express statutory authorization for federal taxation on direct distributions of "net revenues" from gaming, but that exception to the trust-doctrine exemption must be strictly construed. Thus, with respect to the income of dependent tribal members derived from tribal lands held in trust by the United States, the taxable payments would only include direct distributions from the "net revenues" of gaming operations on tribal trust lands.

143. While IGRA's narrow authorization for federal taxation applies only to direct, per capita payments from net gaming revenues, Defendants have taken the contrary imposition and have invoked 25 U.S.C. §2703(9) and 25 C.F.R. §290 as a basis to impose income-tax liability on Plaintiffs. Consequently, there is an actual case in controversy between the parties that is ripe for judicial review and determination.

144. Plaintiffs hereby seek a declaratory judgment that incurring income-tax liability under these circumstances is contrary to and violates the IGRA, particularly 25 U.S.C. §2703(9), and regulations promulgated pursuant thereto, 25 C.F.R. §290, *et. seq*.

145. Plaintiffs hereby seek a declaratory judgment that the IGRA does not apply to the "income" alleged to be taxable by Defendants in so far as the purported "income" sought to be taxed under the IGRA is, in fact, derived and paid from a tribal gross-revenues tax as an essential attribute of self-governance on commercial gaming and other tribal-resort enterprises and not from "net revenues" of gaming operations.

WHEREFORE, Plaintiffs pray that this Court declare that IGRA, 25 U.S.C. §2703(9) does not apply to money paid to Tribe members from a gross-revenues tax on commercial gaming, tribal-resort enterprises and other tribe-related businesses.

COUNT VI

(Relief from Continued Violations of U.S. Constitution, Art. I, Sec. 8, cl. 3, and Art. VI, cl. 2)

146. Plaintiffs hereby repeat each and every allegation contained in paragraphs 1 through 97 of this Complaint as if set forth herein fully at length.

147. Defendants' actions in seeking to impose federal income tax liability against Plaintiffs unduly encroaches upon the supremacy of treaty rights affecting commerce of the Miccosukee Tribe, and federal power over interstate and foreign commerce and commerce with Indians set forth in the United States Constitution, Article I, Section 8, Clause 3, and Article VI, cl. 2.

148. Defendants' interpretation, application, and enforcement of the Internal Revenue Code, the IGRA, the Miccosukee Settlement Act of 1997, the Indian Land Claims Settlement Act of 1982, and the Miccosukee Reserve Act violates the sovereign and commerce rights of the Miccosukee Tribe of which Plaintiffs are members. The direct result of these violations is the imposition of income-tax liability upon the Plaintiffs.

WHEREFORE, Plaintiffs pray that this Court declare that Defendants' interpretation, application, and enforcement of the Internal Revenue Code, the IGRA, the Miccosukee Settlement Act of 1997, the Indian Land Claims Settlement Act of 1982, and the Miccosukee Reserve Act violates the sovereign and commerce rights set forth in the United States Constitution, Article I, Section 8, Clause 3, and Article VI, cl. 2.

Respectfully submitted this 3rd day of June 2014

/s/ Robert O. Saunooke
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