

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA**

Case No. 14-MC-20938/ALTONAGA

UNITED STATES OF AMERICA,

Petitioner,

v.

**COLLEY BILLIE, as Chairman of the
MICCOSUKEE GENERAL COUNSEL,
And MICCOSUKEE TRIBE OF INDIANS
OF FLORIDA,**

Respondent.

**COLLEY BILLIE'S RESPONSE TO PETITION TO ENFORCE INTERNAL
REVENUE SERVICE**

Colley Billie as Chairman of the Miccosukee Tribe files this response to the Petition to Enforce Internal Revenue Service Summons issued on May 18, 2013. In Support thereof it states:

1. On March 12, 2013 the Internal Revenue Service (IRS) filed a Petition to Enforce Internal Revenue Service Summons (ECF No. 1).
2. Although the parties continue to pursue good faith negotiations, this Court ordered on July 14, 2014 (ECF No. 18) that a response be filed on July 21, 2014.
3. The IRS seeks to enforce a summons issued to the Chairman of the Miccosukee Tribe, Colley Billie, as records custodian.

4. The Chairman Colley Billie responds requesting that this Court deny such petition.

ARGUMENT

The Court must deny the Internal Revenue Service's Petition to Enforce the Summons for two reasons. First, it lacks jurisdiction to enforce the Internal Revenue Service's summons issued to Colley Billie as chairman of the Miccosukee Tribe because it involves matters of tribal self governance and requires interpretation of tribal law. Second, even if the Court finds that it has jurisdiction, the Chairman, as an elected tribal official, does not possess and control the records requested unless the Miccosukee General Council approves such release.

This Petition to Enforce the IRS Summons presents an intra tribal dispute. It requires the interpretation and written and unwritten Miccosukee Law and Customs. An intra tribal dispute is that which involves a matter of tribal self governance and relates to the control of internal relations. *Montana v. United States*, 450 U.S. 544, 564 (1981). “Jurisdiction to resolve internal tribal disputes and to interpret tribal constitutions and laws lies with the Indian tribes and not the district courts.” *United States v. Wheeler*, 435 U.S. 313, 323–36, 98 S.Ct. 1079, 55 L.Ed. 2d 303 (1978). Courts have found the following to be intra-tribal disputes: issues regarding tribal membership and membership requirements (*Martinez v. Southern Ute Tribe of Southern Ute Reservation*, 249 F.2d 915 (10th Cir. 1957), *Prairie Band of Pottawatomie Tribe of Indians v. Udall*, 355 F.2d 364 (10th Cir. 1966), *Wopsock v. Natchees*, 279 Fed. Appx. 679, 2008 WI 2152435 (10th Cir. May 23, 2008); issues regarding an internal controversy among Indians over tribal

government (*Motah v. United States*, 402 F.2d 1 (10th Cir. 1968)); issues regarding the right to vote in tribal elections (*Harjo v. Kepple*, 420 F.Supp. 1110, 1117 (D.C. Dist. 1976); issues regarding which tribal council is rightly in place under the tribal constitution (*Sac and Fox Tribe of the Mississippi in Iowa v. Bear*, 258 F.Supp.2d 938 (N.D. Ia. 2003); election disputes between competing tribal councils over which council is authorized to govern tribe and casino (*Sac and Fox Tribe of Mississippi in Iowa, Election Bd. v. Bureau of Indian Affairs*, 439 F.3d 832 (8th Cir. 2006); issues regarding the appointment of a tribal official under tribal law (*Kaw Nation ex rel. McCauley v. Lujan*, 378 F.3d 1139 (10th Cir. 2004); dispute between tribal members and members of the tribal council over who controls the financial assets of the tribe (*Wade v. Blue*, 369 F.3d 407 (4th Cir. 2004); issues regarding the validity of a tribal resolution under tribal law (*Potts v. Bruce*, 533 F.2d 527 (10th Cir. 1976); criteria to determine if someone is of Indian blood (*Groundhog v. Keeler*, 442 F.2d 674 (10th Cir. 1971). Although no case has decided the issue presented herein, forcing a tribal officer to release tribal records in contradiction to tribal law, such as the Miccosukee General Council Resolution MGC 02-14, attached herein as an Exhibit, is an intra tribal dispute because it affects matters of self governance and requires interpretation of tribal law. This issue must therefore be adjudicated in tribal court.

However, even if this Court finds that it has jurisdiction, Chairman Colley Billie cannot comply with the Summons because he has no possession and control of the records requested. “Because a proceeding to enforce an IRS summons is an adversary proceeding in which the Defendant may contest the summons ‘on any appropriate

ground,”” *United States v. Rylander*, 460 U.S. 752, 757 (1983), “[l]ack of possession or control of records is surely such a ground.” *Id.* Tribal records can only be released by written authorization of the general council, which was denied by the Miccosukee General Council, the Tribe's legislative body on June 12, 2014.

Wherefore, Chairman Colley Billie respectfully requests that this Court deny the Petition to Enforce the IRS Summons.

Respectfully submitted this July 21, 2014.

s/ Bernardo Roman III _____
Bernardo Roman III, Esquire
Fla. Bar No. 0002739
Tribal Attorney, Miccosukee Tribe of
Indians of Florida
P.O. Box 440021, Tamiami Station
Miami, Florida 33144
Tel: (305) 894-5214
Fax: (305) 894-5212
E-mail: bromanlaw@bellsouth.net
*Attorney for Colley Billie as Chairman of
the Miccosukee Tribe of Indians of
Florida*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 21, 2014 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Bernardo Roman III
Bernardo Roman III, Esquire

SERVICE LIST

United States v. Colley Billie
Case No. 14-MC-20938-ALTONAGA
United States District Court for the Southern District of Florida

ROBERT L. WELSH
S.D. Fla. Bar No. A5500117
WILLIAM E. FARRIOR
S.D. Fla. Bar No. A5501479
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 14198
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-6068
Facsimile: (202) 514-9868
Robert.L.Welsh@usdoj.gov
William.E.Farrior@usdoj.gov



Miccosukee Tribe of Indians of Florida

Business Council Members

Colley Billie, Chairman

Roy Cypress, Jr., Assistant Chairman
Jerry L. Cypress, Treasurer

Gabriel K. Osceola, Secretary
William M. Osceola, Lawmal

MICCOSUKEE GENERAL COUNCIL

RESOLUTION NO. MGC- 02-14

WHEREAS, the Miccosukee Tribe of Indians of Florida ("Miccosukee Tribe") is a sovereign Tribal Nation and a Tribe as defined by the Indian Reorganization Act of June 18, 1934; and

WHEREAS, under the Miccosukee Constitution and By-Laws, the authority of the Miccosukee Tribe of Indians of Florida is vested in the Miccosukee General Council; and

WHEREAS, the Miccosukee Business Council is vested with the authority, under the Miccosukee Constitution and By-Laws, to conduct the affairs of the Miccosukee Tribe of Indians of Florida;

NOW, THEREFORE, BE IT RESOLVED, that the Miccosukee General Council has denied the request by the Miccosukee Business Council to provide documents and information in response to the Internal Revenue Service's Summons to Colley Billie, as Chairman and Records Custodian for the Miccosukee Tribe for the tax years 2006 through 2010 issued on May 18, 2012.

CERTIFICATION

This shall certify that the foregoing resolution, MGC- 02-14, was adopted by the members of the Miccosukee General Council during a special called and duly constituted General Council meeting held on the Miccosukee Reserved Area, Miami-Dade County, Florida on the 12th day of June 2014 by a vote of 33 for 0 against 02 abstentions.

SECRETARY

Miccosukee Tribe of Indians of Florida