

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

POARCH BAND OF CREEK INDIANS

Plaintiff,

v.

**JAMES H. HILDRETH, JR., in his official
Capacity as Tax Assessor of Escambia
County, Alabama,**

Defendant.

Civil Action No.: 1:15-cv-00277

COMPLAINT

NATURE OF THE ACTION

1. This is an action seeking declaratory and injunctive relief against the Tax Assessor of Escambia County, Alabama, in his official capacity, in order to prevent the Defendant from violating federal law by assessing taxes on certain real property that is held in trust by the United States for the benefit of the Poarch Band of Creek Indians (the Tribe).

2. The Tribe seeks (1) a declaration that the assessment of local property taxes on real property held in trust by the United States for the benefit of the Tribe, as well as tribally owned structures and permanent improvements attached thereto (collectively, the Trust Property), is unlawful, and (2) preliminary and permanent injunctions against any future assessment of local property taxes on the Trust Property.

PARTIES

3. The Tribe is a federally recognized Indian Tribe with trust lands located within the exterior geographic boundaries of the State of Alabama, including within the exterior

geographic boundaries of Escambia County (the County). The Tribe is the only federally recognized tribe in the State of Alabama.

4. Defendant James H. Hildreth, Jr., (Hildreth) is the Tax Assessor of Escambia County, Alabama. His official duties include, *inter alia*, the assessment of taxes on real and business personal property located within the County.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action under 28 U.S.C. § 1331. The Court also enjoys jurisdiction pursuant to the Indian Commerce Clause, U.S. Const. Art. I, § 8, cl. 3, which grants Congress plenary authority to regulate commerce with Indian tribes. The Court also has jurisdiction pursuant to 28 U.S.C. § 1362, which grants federal district courts original jurisdiction over all civil actions brought by an Indian tribe and arising under the Constitution, laws, or treaties of the United States, and federal common law.

6. Venue in this Court is proper under 28 U.S.C. § 1391, as the Tribe's claims arise primarily from actions and events occurring within this district, and the property at issue and the Defendant are located within this district.

FACTS

7. The United States holds title to approximately 229.5 acres of land within the exterior boundaries of Escambia County in trust for the exclusive use and benefit of the Tribe (the Trust Lands).

8. True and correct copies of deeds and other relevant documentation showing the United States' ownership, in trust, of the Trust Lands are attached hereto as Exhibit A.

9. The Tribe occupies and exercises jurisdiction over its Trust Lands. It also exercises powers of self-governance within those lands, including the provision of governmental services such as law enforcement, fire protection services, a judicial system, social services, tribal member housing, environmental monitoring, and health services.

10. The Tribe also operates certain businesses within its Trust Lands, including a gaming enterprise.

11. In connection with its governmental and business operations, the Tribe has constructed and maintains a number of permanent improvements on lands held in trust by the United States for the Tribe's benefit. These permanent improvements, together with the Trust Lands on which they are constructed, are referred to herein as the "Trust Property."

12. The Tribe has consistently been a good neighbor to the County. While the Tribe is a sovereign entity not subject to state or local control or jurisdiction, it has voluntarily contributed to the economic welfare of the County and its citizens. In addition to providing jobs and economic opportunities, it contributes substantial sums to the County government and other local entities, including local public schools and infrastructure projects. The Tribe also makes its governmental services, including its fire department, available to those outside of its Trust Lands.

13. Defendant Hildreth's direct challenges to the Tribe's sovereignty and the status of the Tribe's Trust Property seek to undermine the Tribe and its sovereignty and jeopardize the Tribe's ability to continue its contributions to its neighbors.

14. Federal law, including but not limited to Art. VI, Cl. 2 of the United States Constitution, 25 U.S.C. § 465, and a substantial body of case law, expressly provides that lands

titled in the name of the federal government and held in trust by the United States for the benefit of an Indian tribe are exempt from state and local taxation.

15. Permanent improvements on land held in trust by the United States for the benefit of an Indian tribe are subject to the same tax treatment as the land itself.

16. Since the Tribe's federal recognition, no county tax assessor has ever assessed taxes against the Tribe's Trust Property. This is fully consistent with federal law barring state and local taxation of lands held in trust by the United States for the benefit of an Indian tribe.

17. Defendant Hildreth has been aware of the trust status of the Trust Lands and the fact that such lands are exempt from local taxation since at least August 18, 1986, when the Office of the Attorney General of Alabama responded to his inquiry with an opinion letter correctly stating that the Tribe's Trust Lands "will be exempt from taxation in the future" and that "there is no authority for state taxation" of such lands. Ala. Atty. Gen. Op. 86-00327 (Aug. 18, 1986), a true and correct copy of which is attached hereto as Exhibit B.

18. On June 4, 2012, in response to an inquiry from the Escambia County Commission, the Acting Assistant Secretary—Indian Affairs reaffirmed that the Tribe's Trust Lands within the exterior geographic boundaries of Escambia County are "held in trust by the United States for the benefit of the [Tribe]. As such, the [Tribe] enjoys all rights and privileges associated with having its Reservation held in trust by the United States under Federal law." June 4, 2012 Ltr. from Donald E. Laverdure to David M. Stokes, a true and correct copy of which is attached as Exhibit C.

19. Despite his personal knowledge and the United States' repeated acknowledgement of the status of the Tribe's Trust Lands, on or about January 7, 2014,

Defendant Hildreth informed the Tribe that his office was initiating an audit “for the purpose of valuing and assessing for taxation all property of the Poarch Band, both real and personal, which is situated in Escambia County.” Jan. 7, 2014 Ltr. from Jim Hildreth to Buford Rolin, a true and correct copy of which is attached as Exhibit D.

20. Defendant Hildreth’s letter further indicated that it “constitute[d] a demand” for the Tribe to proceed with listing and describing all real and personal property, including land and improvements, that the Tribe owned or held in Escambia County. *Id.*

21. On or about February 28, 2014, the Tribe provided Defendant Hildreth with the requested list of its property in Escambia County, exclusive of the Trust Property. The Tribe also reminded Defendant Hildreth that lands held in trust by the United States for the benefit of an Indian tribe are exempt from local taxation pursuant to federal law and provided him with deeds and documentation showing that the Trust Lands are so held. *See* Feb. 28, 2014 Ltr. from Buford Rolin to Jim Hildreth, a true and correct copy of which is attached as Exhibit E (enclosures omitted).

22. On or about March 6, 2014, Mr. Hildreth responded, characterizing the Tribe’s property listing as “incomplete and non-responsive” on the grounds that it did not include the Trust Property. He further informed the Tribe that his office would proceed with an audit for the purpose of valuing and assessing “*all* property of which the [Tribe] is the owner or holder within Escambia County,” specifically including the Trust Property. He further threatened that “penalties and fees provided for by [Alabama] law” would be assessed against the Tribe. March 6, 2014 Ltr. from Jim Hildreth to Lori Stinson, a true and correct copy of which is attached as Exhibit F.

23. On or about March 17, 2014, the Tribe responded to Mr. Hildreth, citing a number of federal court decisions supporting the Tribe's position as well as the June 4, 2012 letter from the Acting Assistant Secretary—Indian Affairs quoted in paragraph 17, *supra*. See March 17, 2014 Ltr. from Lori Stinson to Jim Hildreth, a true and correct copy of which is attached as Exhibit G (enclosure omitted).

24. On April 10, 2014, the United States District Court for the Middle District of Alabama issued an opinion affirming that the Tribe's Trust Lands in Escambia County are held in trust by the United States for the benefit of the Tribe. See *Alabama v. PCI Gaming Auth.*, 15 F. Supp. 3d 1161, 1182 & 1184 (M.D. Ala. 2014) (Watkins, C.J.) (appeal pending, 11th Cir. Case No. 14-12004). The Tribe informed Defendant Hildreth of this decision on or about April 22, 2014. See April 22, 2014 Ltr. from Lori Stinson to Jim Hildreth, a true and correct copy of which is attached as Exhibit H (enclosure omitted).

25. When the Defendant made no further response after receiving Chief Judge Watkins' *PCI Gaming* decision, the Tribe assumed that the matter was closed. Then, on or about March 2, 2015, the Tribe received a letter from Defendant Hildreth stating this his office had completed its appraisal of all of the Tribe's property in Escambia County, specifically including the Trust Property, and that he was prepared to issue an assessment. See Feb. 26, 2015 Ltr. from Jim Hildreth to Stephanie Bryan, a copy of which is attached as Exhibit I.

26. On April 1, 2015, representatives of the Tribe met with Defendant Hildreth and his legal counsel to discuss the threatened assessment. During that meeting, Defendant Hildreth indicated that he intended to proceed with assessing purported current and escaped taxes and penalties against the Tribe's Trust Property. Defendant Hildreth also provided the

Tribe with a list of land and property that he intended to assess. A copy of that document, which lists all or substantially all of the Tribe's Trust Property that is located within the exterior geographic boundaries of Escambia County, is attached as Exhibit J.

27. All or substantially all of the property listed on Exhibit J is Trust Property.

28. As of the date of this Complaint, the County's publicly available GIS website, www.alabamagis.com/Escambia/ (the County GIS site), lists the owner of all of the property listed on Exhibit J as "United States of America in," which, on information and belief, means "United States of America in trust for the Poarch band of Creek Indians." The County GIS site also identifies each parcel listed in Exhibit J as "Indian RSV," which, on information and belief, stands for "Indian Reservation."

29. Also as of the date of this Complaint, the County GIS site has removed all tax exemption designations for the parcels listed in Exhibit J and provides purported taxable values for each such parcel.

30. Based on the Defendant's statements and all of the foregoing information, the Tribe is informed and believes, and on that basis alleges, that the Defendant is proceeding with the unlawful assessment of local property taxes on the Tribe's Trust Property and will purport to assess unlawful fees and penalties against the Tribe no later than June of 2015.

31. Defendant Hildreth's promised assessment of taxes on the Tribe's Trust Lands, like any assertion of state or local taxing jurisdiction or authority over the Tribe's Trust Property, violates federal law, infringes tribal sovereignty, and is subject to declaratory and injunctive relief from this Court.

32. Under Alabama law, property that is lawfully subject to taxation is automatically subject to a tax lien each year, and the amount of that lien is quantified through the assessment process. *See, e.g.*, Ala. Code § 40-1-3. By threatening to proceed with an assessment of the Tribe's Trust Property or issuing an assessment, Defendant Hildreth is asserting that the Trust Property is subject to local taxation and that, pursuant to Alabama law, the County has a lien against the Trust Property.

33. Any putative lien against the Tribe's Trust Property is void and unenforceable as a matter of federal law, and the assertion of such a lien infringes the Tribe's sovereignty.

COUNT I – DECLARATORY RELIEF

34. The Tribe hereby repeats and incorporates by reference the allegations in paragraphs 1 - 33 of the Complaint.

35. The Tribe is entitled to a declaration that the Trust Property is *per se* exempt from local property taxes pursuant to federal law, including but not necessarily limited to Art. VI, Cl. 2 of the United States Constitution, 25 U.S.C. § 465, the decisions of the United States Supreme Court in *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973), *McCurdy v. United States*, 264 U.S. 484 (1924), *United States v. Rickert*, 188 U.S. 432 (1903), and other federal case law.

36. The Tribe is also entitled to a declaration that the assessment of local property taxes on or against the Tribe's Trust Property constitutes and affects an impermissible and unlawful interference with the Tribe's sovereignty and ability to govern itself.

37. The Tribe is entitled to a further declaration that, for the reasons set forth in the two immediately preceding paragraphs, any putative assessment of local property taxes on or

against the Tribe's Trust Property, as well as any putative lien resulting therefrom, is void, unlawful, and unenforceable.

38. The Tribe is entitled to a further declaration that any putative lien against its Trust Property arising out of, resulting from, or relating to local property taxes is void and unenforceable as a matter of federal law

COUNT II – PRELIMINARY INJUNCTION

39. The Tribe hereby repeats and incorporates by reference the allegations in paragraphs 1 - 38 of the Complaint.

40. The Tribe is entitled to a preliminary injunction preventing the Defendant from proceeding with the assessment of local property taxes against the Tribe's Trust Property and the imposition or assessment of any related fees and penalties against the Tribe or the Trust Property pending the resolution of this case on the merits.

41. In light of settled federal law exempting land held in trust by the United States for the benefit of an Indian tribe from state and local taxes such as those at issue here, the Tribe is substantially likely to succeed on the merits of this case.

42. The Defendant's assessment of local property taxes and related fees and penalties against the Tribe and its Trust Property constitutes an unlawful assertion of jurisdiction over the Tribe's Indian lands and an invasion of and irreparable injury to the Tribe's sovereignty and right of self-governance.

43. The Defendant has no legitimate interest in the assessment of unlawful taxes on the Tribe's Trust Property, so the potential harm to the Tribe easily outweighs any harm that the granting of the requested relief will have on the Defendant.

44. Granting a preliminary injunction will serve the public interests in seeing federal law upheld and in preserving tribal sovereignty and self-governance rights, and it will have no negative impact on the public interest because the Defendant will not suffer any prejudice to his ability to assess taxes, penalties, and fees owed on the Tribe's Trust Property in the unlikely event that he ultimately prevails in the litigation.

COUNT III – PERMANENT INJUNCTIVE RELIEF

45. The Tribe hereby repeats and incorporates by reference the allegations in paragraphs 1 - 44 of the Complaint.

46. In furtherance of and in conjunction with the Tribe's prayer for declaratory relief and emergency and preliminary injunctive relief, the Tribe also seeks permanent injunctive relief to prevent ongoing and future efforts by the Defendant to unlawfully assess local property taxes on the Tribe's Trust Property.

47. Specifically, the Tribe seeks a permanent injunction enjoining the Defendant, and his successors in office, from attempting to assess any local property tax on the Tribe's existing Trust Property as well as any other Trust Property that may come to be owned or beneficially owned by the Tribe within the exterior geographic boundaries of Escambia County.

WHEREFORE, the Tribe respectfully requests an order or orders from the Court that:

(1) Declares that the assessment and collection of local property taxes on the Tribe's Trust Property is preempted and prohibited by federal law;

(2) Declares that any putative liens against the Tribe's Trust Property arising out of, resulting from, or relating to local property taxes are void and unenforceable as a matter of federal law;

(3) Declares that the assessment and collection of local property taxes on the Tribe's Trust Property constitutes and affects an impermissible and unlawful interference with the Tribe's inherent sovereignty and right of self-governance;

(4) Preliminarily enjoins the Defendant from proceeding with any assessment of local property taxes on or against the Trust Property or the putative assessment of any related fees or penalties on or against the Tribe or the Trust Property;

(5) Permanently enjoins the Defendant and his successors in office from assessing local property taxes and any related fees and penalties on or against the Tribe and the Trust Property as well as any additional Trust Property that may come to be owned by the Tribe or held in trust by the United States for the benefit of the Tribe within the exterior geographic boundaries of Escambia County;

(6) Awards attorneys' fees and costs of litigation to the Tribe;

(7) Awards such further relief as the Court deems just and proper; and

(8) Retains the Court's jurisdiction for purposes of enforcing the Court's order.

Respectfully submitted this 26th day of May, 2015.

s/ David C. Smith
David C. Smith
D.C. Bar No. 998932
dcsmith@ktslaw.com
Kilpatrick Townsend & Stockton LLP
607 14th Street, N.W., Suite 900

Washington, D.C. 20005
Telephone: (202) 508-5800
Fax: (202) 505-5858

Mark Reeves
GA Bar No. 141847
mreeves@ktslaw.com
Kilpatrick Townsend & Stockton LLP
Enterprise Mill, Suite 230
1450 Greene Street
Augusta, GA 30901
Telephone: (706) 823-4206
Facsimile: (706) 828-4488

Charles A. Dauphin (DAU001)
cdauphin@dauphinparis.com
DAUPHIN PARIS, LLC
300 Vestavia Parkway
Suite 3400
Birmingham, Alabama 35216
Telephone: (205) 637-0591
Fax: (205) 979-6019

Attorneys for Plaintiff¹

¹ Applications for Mr. Smith's and Mr. Reeves's *pro hac vice* admission to the Court's bar will be filed in accordance with the Court's local rules.