

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

(1) HAROLD MEASHINTUBBY and)
(2) NELLIE MEASHINTUBBY,)
)
 Plaintiffs,)
)
 vs.)
)
(1) SHELLY PAULK, Chairperson of the)
Oklahoma Tax Commission;)
(2) MARK WOOD, Vice-Chairperson of the)
Oklahoma Tax Commission;)
(3) CHARLES PRATER, Secretary-Member)
of the Oklahoma Tax Commission,)
)
 Defendants.)

Case No.: 22-cv-059-KEW

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Before the Court are Plaintiffs Harold and Nellie Meashintubby, and, for their Complaint for declaratory and injunctive relief against Defendants Shelly Paulk, Chairperson of the Oklahoma Tax Commission (“OTC”), Mark Wood, Vice-Chairperson of the OTC, and Charles Prater, Secretary-Member of the OTC, allege and state as follows:

I. INTRODUCTION

In *McClanahan v. Arizona State Tax Comm’n*, 411 U.S. 164 (1973), the U.S. Supreme Court held that, absent express congressional authorization, a State could not subject a tribal member living on a reservation whose income was derived from reservation sources to a state income tax. The Supreme Court has since further clarified the rule as a categorial approach on the limits of State authority to tax in Indian country: “Absent cession of jurisdiction or other federal statutes permitting it, a State is without power to tax reservation lands and reservation Indians.” *Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450, 458 (1995).

On July 9, 2020, the U.S. Supreme Court issued its ruling in the landmark case of *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020) and held that the boundaries of the reservation lands promised to the Muscogee (Creek) Nation through treaties were never disestablished and are Indian country lands as defined under 18 U.S.C. § 1151. Even though *McGirt* involved a criminal jurisdiction question under the Major Crimes Act, the Indian country classification for the reservation lands applies to both civil and criminal jurisdiction issues. *See, e.g., Indian Country, U.S.A. Inc. v. State of Okl. ex rel. Oklahoma Tax Comm'n*, 829 F.2d 967, 973 (10th Cir. 1987).

The *McGirt* reasoning and analysis have since been applied to recognize the continuing existence of other Indian reservations in Oklahoma. In *Sizemore v. Oklahoma*, 2021 OK CR 6, the Oklahoma Court of Criminal Appeals affirmed the lower court's determination that various treaties established the Choctaw Reservation for the Choctaw Nation, and that those reservation boundaries were never disestablished by Congress. The Court concluded that all land within the exterior boundaries of the entire Choctaw Reservation is Indian country.

In this action, Plaintiffs are individual enrolled members of the Choctaw Nation of Oklahoma who reside and earn income from sources within the exterior boundaries of the Choctaw Reservation. Plaintiffs thus fall squarely within the law preempting the State of Oklahoma from assessing, levying, and collecting tax, including penalties and interest, from their income.

Defendants are individuals who are authorized under the laws of the State of Oklahoma to administer and enforce State tax laws and policy. 68 Okla. Stat. § 101, *et. seq.* Despite recent Federal and State court rulings affirming that the Reservation boundaries of certain Tribes in Oklahoma were never disestablished by Congress, Defendants continue to assert that these Reservation lands are not Indian country to exempt Tribal members' income tax.

To protect their rights under Federal law, Plaintiffs file this action against Defendants in their official capacity as Commissioners for the OTC under the doctrine of *Ex Parte Young*, 209 U.S. 123 (1908) to obtain declaratory judgment and prospective

injunctive relief against the continued and unlawful assessment, levy, and collection of State taxes, including penalties and interest, from the income of Plaintiffs who both reside and earn that income from sources within the Choctaw Reservation. Plaintiffs also seek recovery of income taxes for Tax Year 2020 that was paid to Defendants under protest through a statutory process provided under Oklahoma State law.

II. JURISDICTION AND VENUE

1. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because Plaintiffs' claims are based on a Federal question under Article I, Section 8, Clause 3 of the U.S. Constitution (the "Indian Commerce Clause"), Article II, Section 2, Clause 2 of the U.S. Constitution (the "Treaty Clause"), Article VI, Paragraph 2 of the U.S. Constitution (the "Supremacy Clause"), Treaties between the United States and the Choctaw Nation (the 1830 Treaty of Dancing Rabbit Creek, Sep. 27, 1830, 7 Stat. 333; the Treaty of Doaksville, Jan. 17, 1837, 11 Stat. 573; the 1855 Treaty of Washington, June 22, 1855, 11 Stat. 611; the 1866 Treaty of Washington, Apr. 28, 1866, 14 Stat. 769), 18 U.S.C. § 1151, 25 U.S.C. § 1322, the Act of June 16, 1906, Ch. 3335, 34 Stat. 267 (1906) (the "Oklahoma Enabling Act"), and the federal common law relating to Indians.

2. The Court has supplemental jurisdiction under 28 U.S.C. § 1367 to adjudicate Plaintiffs' claim under Oklahoma State law, 68 O.S. § 226, seeking to recover an unlawful tax assessment and amount paid to Defendants under protest, including recovery of any attorney's fees and other costs and expenses as provided in Section 226. The State law claim is related to this Court's original jurisdiction question of whether the State income tax is preempted under Federal law to form part of the same case or controversy under Article III of the U.S. Constitution.

3. Venue in the Eastern District of Oklahoma is appropriate under 28 U.S.C. § 1391(b)(2) because it is the judicial district in which "a substantial part of the events or omissions giving rise to the claim occurred" and where "a substantial part of property that is the subject of the action is situated."

III. PARTIES

4. Plaintiff Harold Meashintubby is an enrolled member of the Choctaw Nation of Oklahoma (the “Nation”) and resides in McAlester, Oklahoma (Pittsburg County) located within the exterior boundaries of the Choctaw Reservation.

5. Plaintiff Nellie Meashintubby is the spouse of Harold Meashintubby, is an enrolled member of the Nation, and resides in McAlester, Oklahoma (Pittsburg County) located within the exterior boundaries of the Choctaw Reservation.

6. Defendant Shelly Paulk is the Chairperson for the OTC.

7. Defendant Mark Wood is the Vice-Chairperson for the OTC.

8. Defendant Charles Prater is the Secretary-Member for the OTC.

IV. LEGAL FRAMEWORK

9. The State lacks jurisdiction to assess, levy, and collect taxes upon the income of Tribal members who both reside and earn that income from sources within the Indian country to which the Tribal member belongs. *Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450 (1995); *Oklahoma Tax Comm’n v. Sac and Fox Nation*, 508 U.S. 114 (1993); *McClanahan v. Arizona*, 411 U.S. 164 (1973); see also Oklahoma Administrative Code 710:50-15-2(b)(1). However, this rule of law does not exist in a vacuum. It is supported by a foundation of other Indian law principles that existed well before *McGirt*, including application of Treaty rights and well-established Supreme Court precedent holding that States generally lack jurisdiction over Indians and Indian affairs in Indian country unless expressly allowed by Congress.

10. In the landmark Supreme Court case of *McClanahan v. Arizona*, 411 U.S. 164 (1973), the Court relied on certain fundamental Indian law principles articulated in *Worcester v. Georgia*, 6 Pet. 515 (1832) where the Court held there “this concept of Indian reservations as [being] separate, although dependent nations, [means] that state law could have no role to play within the reservation boundaries.” The

McClanahan Court, in holding that Reservation Indians who both reside and earn income from Reservation sources were exempt from State income tax, relied on the *Worcester* reasoning even though *Worcester* was not an income tax case. The Court stated:

Although *Worcester* on its facts dealt with a State's effort to extend its criminal jurisdiction to reservation lands, **the rationale of the case plainly extended to state taxation within the reservation as well.**

McClanahan, 411 U.S. at 169. (emphasis added). The *McClanahan* Court provides that the legal framework must begin with an analysis of the relevant Treat(ies) between the Tribe and the United States.

A. Treaties Between Choctaw Nation and the United States

11. The Choctaw Nation and other Indian tribes and nations once occupied the southern and southeastern parts of the United States. *Choctaw Nation v. Oklahoma*, 397 U.S. 620 (1970). Once the United States' policy was aimed at removing Indians lands west of the Mississippi, the government began negotiating and entering into treaties with the Indian tribes, including the Choctaw Nation, to provide the terms of removal for these lands.

12. The 1830 Treaty of Dancing Rabbit Creek, Sep. 27, 1830, 7 Stat. 333 secured to the Nation "the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation . . . and that no part of the land granted to them shall ever be embraced in any Territory or State." Art. IV.

13. The Treaty of Doaksville, Jan. 17, 1837, 11 Stat. 573 permitted the Chickasaws to form "a district within the limits of their country, to be held on the same terms that the Choctaws now hold it, except for the right of disposing of it . . ." Art. I.

14. The 1855 Treaty of Washington, June 22, 1855, 11 Stat. 611 modified the western boundary of the Choctaw Reservation. Article Four of the 1855 Treaty made the Choctaw and Chickasaw governments independent of each other. The Treaty also guaranteed that “the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government, and full jurisdiction, over persons and property . . .” Art. VII.

15. The 1866 Treaty of Washington, Apr. 28, 1866, 14 Stat. 769 contained an express reaffirmation of “all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations.” Art. X. The Choctaw right of self-governance was also reaffirmed in Article Seven by expressly providing that no legislation shall infringe on the Tribes’ “rights, laws, privileges, or customs . . .” Art. VII.

16. Nothing in these Treaties limited the Nation’s jurisdiction in the Reservation to only criminal matters or authorized State jurisdiction over Tribal members’ income in the Reservation. In fact, the 1855 Treaty clearly guaranteed the Nation, not the State, with the “unrestricted right of self-government, and full jurisdiction, over persons and property” within the Reservation.

B. No Other Act of Congress Has Provided for State Taxation Authority Against Tribal Members’ Income in the Reservation.

17. In 1953, Congress enacted “Public Law 280” that allowed some states to assert limited civil and criminal jurisdiction in Indian country. “Public Law 280” was later codified as amended at 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-26, 28 U.S.C. § 1360. The law as initially enacted delegated jurisdiction to six states and later offered any other state the option of accepting the same delegation of jurisdiction. A 1968 amendment made subsequent state assumptions of jurisdiction subject to consent by the Tribes. See 25 U.S.C. §§ 1321(a), 1322(a), & 1326.

18. The State of Oklahoma never accepted the delegation of jurisdiction in Indian country, and, subsequent to the 1968 amendment, the State has never obtained

Tribal consent to assert criminal and civil jurisdiction in Indian country. For purposes of this action, the State is thus acting the outside the authority provided by Congress by asserting civil/taxation jurisdiction in Indian country without Tribal consent as required by 25 U.S.C. § 1322.

19. The “Oklahoma Enabling Act,” 34 Stat. 267 (June 16, 1906) (the “Enabling Act”) was enacted by Congress to allow the people of the Oklahoma and Indian territories to form the framework for Oklahoma’s statehood; however, nothing in the Enabling Act authorized State taxation jurisdiction over Tribal members’ income in the Reservation. Rather, Congress imposed restrictions on State authority affecting Indians and Indian property. Section 1 of the Enabling Act provides:

[N]othing contained in the said constitution [of Oklahoma] shall be construed to limit or impair the rights of person or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreement, law, or otherwise

Section 3 of the Enabling Act further provides:

That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States.

20. All the above reflect no congressional authority or intent for the State to be able to tax the income of individual Choctaw Tribal members who both reside and earn that income within the exterior boundaries of the Choctaw Reservation.

V. FACTUAL ALLEGATIONS

A. **The State's Own Actions Affirm *McGirt* Applies to Civil and Taxation Matters.**

21. On July 9, 2020, the U.S. Supreme Court in *McGirt v. Oklahoma* held that the Muscogee (Creek) Nation reservation boundaries were never disestablished by Congress and is Indian country under the definition provided at 18 U.S.C. § 1151. The Court thus concluded that the State of Oklahoma lacked criminal jurisdiction against an Indian for a crime that occurred within the Creek Reservation boundaries. However, under clearly-established Federal and State law, a reservation that is declared as Indian country within the meaning of Section 1151 will have both criminal and civil applications.¹ See, e.g., *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 208 n.5 (1987); *Indian Country, U.S.A. Inc. v. Okla. Tax Comm'n.*, 829 F.2d 967, 973 (10th Cir. 1987); *State ex rel. May v. Seneca-Cayuga Tribe*, 711 P.2d 77, 82, 1985 OK 54 (Okla. 1985) (citing *DeCouteau v. Dist. Ct.*, 420 U.S. 425 (1975)).

i. **Oklahoma Governor Invokes Civil Regulatory Provision Applicable for Oklahoma Indian Country.**

22. Soon after the *McGirt* ruling, State officials (including Defendants) took the formal position that there are civil and taxation ramifications in the reservations. On July 22, 2020, Oklahoma Governor Kevin Stitt wrote a letter to Andrew Wheeler, then-Administrator for the Environmental Protection Agency (the "EPA"). Citing *McGirt*, Governor Stitt requested the EPA approve the State to administer all EPA approved environmental programs in all areas of the State that are in Indian country pursuant to § 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation

¹ Also, a Federal Court in the Western District of Oklahoma recently issued an Order finding the Muscogee (Creek) Nation Reservation meets the definition of "Indian lands" under the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201, *et seq.* In so finding, the Court rejected the State's position that *McGirt* limited the Muscogee Reservation to only criminal matters under the Major Crimes Act. *State of Oklahoma, et al. v. U.S. Dep. of the Interior, et al.*, No. 5:21-cv-00719-F (W.D. Okla. Dec. 22, 2021).

Equity Act of 2005 (“SAFETEA”).² SAFETEA is a civil regulatory law governing the application of State environmental programs in Oklahoma Indian country. There would be no need for the Governor, relying on *McGirt*, to request the application of SAFETEA in Oklahoma Indian country if *McGirt* was limited to only criminal matters. A copy of the Governor’s letter is attached as Exhibit “A.”

23. On October 1, 2020, the EPA approves Governor Stitt’s request. In its letter, the EPA Administrator refers to the definition of Indian country at 18 U.S.C. § 1151, and states “[a]lthough this definition is codified in the federal criminal code, it is also relevant for purposes of civil jurisdiction.” The EPA letter further states, “As described in the State’s July 2020 letter, the impetus for the State’s request was the [*McGirt* decision]. In that case, the Supreme Court held that the Creek Nation’s Reservation in eastern Oklahoma had not been disestablished by Congress and remained Indian country under federal law.” A copy of the EPA Administrator’s letter is attached as Exhibit “B.”

ii. Oklahoma Agencies Approve Intergovernmental Agreement for Indian Children on the Reservations.

24. On or about August 14, 2020, the State, by and through the State’s Department of Human Services and Office of Juvenile Affairs, entered into a “Intergovernmental Agreement Between the State of Oklahoma and the Choctaw Nation of Oklahoma Regarding Jurisdiction Over Indian Children Within the Tribe’s Reservation” (the “Agreement”). On information and belief, the Oklahoma Attorney General’s office assisted with the development of the Agreement on behalf of the State. A copy of the Agreement is attached as Exhibit “C.”

25. The Agreement was necessary due to provisions in the Indian Children Welfare Act (“ICWA”) that provides Indian tribes with exclusive jurisdiction over child custody proceedings involving an Indian child that resides or is domiciled within a reservation. 25 U.S.C. § 1911(a). ICWA is a civil statute providing for the

² Public Law 109-59, 119 Stat. 1144 (Aug. 10, 2005).

protection and preservation of Indian families and children in Indian country. It is not a criminal statute. And nothing in ICWA is based on a premise that the reservation in question exists for only criminal purposes.

26. The Agreement was necessary after the *McGirt* ruling to preserve the status quo regarding child custody matters in the Reservation. The terms of the Agreement are based on ICWA provisions and clearly reference the Nation's Reservation. Part IV of the Agreement states: "The parties have agreed to enter into this jurisdiction sharing Agreement based on the premise that the Choctaw Nation of Oklahoma has exclusive jurisdiction over any child custody proceeding involving an Indian child domiciled within the boundaries of the Tribe's reservation as provided for in 25 U.S.C. § 1911(a)."

iii. Oklahoma Tax Commission Report on Impact of *McGirt* to Taxation Matters.

27. Finally, on September 30, 2020, the Executive Director for the OTC released a "Report of Potential Impact of *McGirt v. Oklahoma*" (the "Report"). The Report was addressed to the Governor's Commission on Cooperative Sovereignty and focused on the Creek Reservation but also included analysis if the *McGirt* reasoning extended to the Reservations for the other Five Nations. A copy of the Report is attached as Exhibit "D."

28. The Report provided an in-depth analysis on the legal background and U.S. Supreme Court holdings providing for the State income tax exemption for Tribal Citizens and Members in Indian country. Nothing in the OTC's Report provided any analysis or Supreme Court precedent holding that the Creek Reservation could be limited to only criminal matters. In fact, just the opposite. The Report provided conclusory statements affirming that the impact of the *McGirt* ruling would definitely apply to State income tax collection.

The following are excerpts from the Report:

1. “Although *McGirt* arose from a criminal proceeding, the implications of the decision extent to many other areas of Oklahoma law, including the taxes and fees administered by the Oklahoma Tax Commission.” Report, pg. 2.

2. “Although the *McGirt* Court limited its holding to defining the Creek Nation’s ‘Indian country’ for purposes of the Major Crimes Act, the OTC cannot ignore the Court’s clarification of the boundaries of ‘Indian country,’ as defined in 18 U.S.C. 1151(a), because Oklahoma law relies heavily on Section 1151 to define ‘Indian country’ for state purposes.” Moreover, because the State’s taxing power falls within its civil regulatory jurisdiction, the OTC must be cognizant of the federal limitations on such jurisdiction within Indian country.” Report, pg. 4.

3. “*McGirt* plainly held that the Creek Reservation survived allotment and remains intact today. [cite omitted]. Therefore, the provisions of Oklahoma Administrative Code 710:50-15-22³ now apply in all lands within the Reservation boundaries described in the Muscogee (Creek) Treaty of 1866. Consequently, the State may not tax the income of individual Creek Nation citizens who reside within the Reservation boundaries, to the extent that the income is generated within those boundaries.” Report, pg. 8.

4. “The holding in *McGirt* was limited to defining only the Creek Nation’s Indian country, stating that ‘[e]ach tribe’s treaties must be considered on their own terms, and the only question before us concerns the Creek,’ [cite omitted]; however, the OTC recognizes the potential for broader impact of the decision and a similar analysis may be applied to other tribes in the future.” Report, pg. 13.

29. Despite the OTC’s clear pronouncements in its Report, it has obviously altered its position on this issue. On December 7, 2020, the OTC General Counsel, Elizabeth Field, wrote in a letter to Blaine Peterson, President and CEO of the Oklahoma Society of Certified Public Accountants that *McGirt* was limited to criminal

³ Oklahoma Administrative Code (“OAC”) 710:50-15-2(a)(1) defines “Indian Country” as “formal and informal reservations, dependent Indian communities, and Indian allotments, the Indian titles to which have not been extinguished, whether restricted or held in trust by the United States. [See: 18 U.S.C. § 1151]” Further, OAC 710:50-15-2(b)(1) provides that the income of an enrolled Tribal member shall be exempt from Oklahoma individual income tax when “the member is living within ‘Indian Country’ under the jurisdiction of the tribe to which the member belongs; and, the income is earned from sources within ‘Indian Country’ under the jurisdiction of the tribe to which the member belongs.”

matters and the “*McGirt* decision has not been expanded to apply to any civil matters, including taxation.” Ms. Field also wrote that until a court expands *McGirt* to taxes, the OTC’s administration or enforcement of the State’s tax laws are not impacted. A copy of Ms. Field’s letter is attached as Exhibit “E”.

B. Despite Supreme Court Law, the State Administrative Code, and Defendants’ Position in its Report, Plaintiffs’ Claim for the Indian Country Exemption Is Denied by Defendants.

30. Plaintiffs are enrolled members of the Choctaw Nation. They reside in McAlester, Oklahoma, which is geographically located within the exterior boundaries of the Choctaw Reservation. And Plaintiffs’ income for tax years 2017 and 2020 was earned from sources within the Reservation. See Affidavit of Harold and Nellie Meashintubby attached as Exhibit “F”

31. Plaintiffs amended their Oklahoma Income Tax Return for Tax Year 2017 to claim the exemption on the basis they lived and earned income in 2017 from sources within the Choctaw Reservation.

32. The OTC sent a letter, issued on June 3, 2021, responding to Plaintiffs’ 2017 amendment and declared the “[e]xempt Tribal Income exclusion has been disallowed or adjusted” and included a tax balance due. The OTC letter did not provide a legal basis for denying the exemption based on Plaintiffs’ residency and income sources being from the Choctaw Reservation. A copy of the OTC’s June 3, 2021, letter is attached as Exhibit “G”.

33. Plaintiffs responded by timely filing with the OTC a protest letter, dated July 15, 2021, objecting to the OTC’s decision to deny the exemption for Tax Year 2017 and request a formal protest under the Oklahoma administrative process. To date, Plaintiffs have not received any response from the OTC. A copy of Plaintiffs’ July 15, 2021, protest letter is attached as Exhibit “H”.

34. Plaintiffs filed their Oklahoma Income Tax Return for Tax Year 2020 and again claimed the exemption on the basis they lived and earned income in 2020 from sources within the Choctaw Reservation.

35. The OTC sent a letter, issued on October 19, 2021, responding to Plaintiffs' exemption claim for Tax Year 2020 and declared the "[e]xempt Tribal Income exclusion has been disallowed or adjusted" and included a tax balance due. The OTC letter did not provide a legal basis for denying the exemption based on Plaintiffs' residency and income sources being from the Choctaw Reservation. A copy of the OTC's October 19, 2021, letter is attached as Exhibit "I".

36. In response, Plaintiffs sent to the OTC Chairman a letter, dated November 12, 2021, and included a payment of the total tax due being paid under protest and included a notice of intent to file suit under Oklahoma law, 68 O.S. § 226 (the "226 Letter"). The 226 Letter was timely mailed within 30 days from the date of mailing to Plaintiffs and provided formal notice to Defendants of Plaintiffs' objections to the tax assessment, including any associated fees, penalties, and interest. A copy of the 226 Letter is attached as Exhibit "J".

37. Plaintiffs' 226 Letter was sent to Defendants within one year of the date of Defendants' assessment in accordance with Section 226.

38. As stated in Plaintiffs' 226 Letter, and as incorporated by this Complaint, Defendants' assessment, and collection of the State income tax against Plaintiffs are in violation of the Indian Commerce Clause, the Treaty Clause, the Supremacy Clause, the Treaties between the Choctaw Nation and the United States, 18 U.S.C. § 1151, 25 U.S.C. § 1322, the Oklahoma Enabling Act, and various rulings by the U.S. Supreme Court.

39. Despite paying the total tax due under protest under Section 226, Plaintiffs received a notice from the OTC demanding payment of the interest and penalty amounts due for Tax Year 2020. The OTC also threatened Plaintiffs with additional collection action including "referral to a third party collection agency, the issuance of a tax lien, wage garnishment, levy of your bank account, referral to the

Federal Treasury Offset Program (TOP), intercept of State refunds or overpayments, and/or additional collection and court cost fees applied to your unpaid tax balance.” A copy of the OTC’s collection letters, one dated December 15, 2021, and the second dated January 18, 2021, is attached as Exhibit “K”.

VI. COUNTS

COUNT ONE: Declaratory Judgment Under 28 U.S.C. § 2201

40. Plaintiffs incorporate all allegations in the preceding paragraphs and further allege as follows:

41. As explained in this Complaint, the status of the Choctaw Reservation as Indian country under 18 U.S.C. § 1151(a) is not in question; however, Defendants’ unprecedented position that the Reservation is limited to only criminal matters has caused undue burden and harm to Plaintiffs and other similarly situated Tribal members who rely on well-established Federal law addressing the parameters of criminal, civil, and taxation matters in Indian country.

42. For years prior to the *McGirt* decision, both Federal and State law recognized that Indian country status has both civil and criminal implications. Due to Defendants’ actions, however, Plaintiffs find it necessary to file this action seeking a judicial declaration that the Choctaw Reservation is Indian country for purposes of preempting State taxation, including penalties and interest, upon Plaintiffs’ income.

COUNT TWO: Injunctive Relief

43. Plaintiffs incorporate all allegations in the preceding paragraphs and further allege as follows:

44. Based on the Court’s declaration in Count One, Plaintiffs request the Court issue a preliminary and permanent injunction against Defendants’ unlawful

actions. Plaintiffs will file with the Court a separate motion and supporting brief that fully outlines the basis for seeking prospective injunctive relief against Defendants' ongoing violations of Federal law based on the following:

- A. Unless enjoined by the Court, Defendants will continue to exercise unlawful State civil and taxation jurisdiction in the Choctaw Reservation against Plaintiffs in violation of the aforementioned Treaties and other Federal law.
- B. Defendants' unlawful actions are ongoing, and the injuries to Plaintiffs constitute irreparable harm.
- C. There is no adequate and complete remedy at law to stop Defendants' unlawful actions against Plaintiffs.

45. In the event the Court determines the Tax Injunction Act, 28 U.S.C. § 1341, or other rule of law applies to the income taxes in question, the Plaintiffs seek an alternative remedy of injunctive relief against the interest and penalties, in any form, upon Plaintiffs as the Tax Injunction Act does not apply to interest and penalties.

COUNT THREE: Recovery of Tax Paid Under Protest Pursuant to 68 O.S. § 226

46. Plaintiffs' action is also recognized under State law, 68 O.S. § 226, which affords a legal remedy and right of action in any State or Federal court where, as here, the taxes complained of are claimed to be in violation of the U.S. Constitution or other certain Federal law.

47. Plaintiffs have complied with the provisions of Section 226 by timely sending to Defendants a notice of intent to sue along with a payment under protest of the income tax assessed for Tax Year 2020.

48. The Court should find in favor of Plaintiffs' claims against the unlawful State taxation under the U.S. Constitution and other Federal law cited in this Complaint and order recovery to Plaintiffs of the income tax previously paid under protest along with a reasonable attorney fee and costs in accordance with Section 226.

The Tax Injunction Act does not apply to a party seeking recovery of taxes paid under protest in accordance with Section 226.

REQUEST FOR RELIEF

WHEREFORE, premises considered, the Plaintiffs respectfully pray for judgment in their favor and against Defendants as follows:

- (A) Pursuant to 28 U.S.C. § 2201, enter a declaratory judgment holding:
 - (1) That the Choctaw Reservation is Indian country within the meaning and application of Federal law prohibiting Defendants from assessing, levying, and collecting taxes, including penalties and interest, upon the income of Plaintiffs, and;
 - (2) That Plaintiffs are not subject to or required to pay taxes, including any applicable interest or penalties, to the State of Oklahoma, through the Defendants, upon the income earned by Plaintiffs from sources within the exterior boundaries of the Choctaw Reservation.
- (B) Ordering a preliminary and permanent injunction restraining and prohibiting Defendants, and all their employees, agents, and those acting in concert or participation with them from assessing, levying, and collecting Oklahoma state taxes, including penalties and interest, upon Plaintiffs' income;
- (C) Alternatively, if the Court determines the Tax Injunction Act or other rule of law prohibits relief against income taxes, the Court should order a preliminary and permanent injunction restraining and prohibiting Defendants, and all their employees, agents, and those acting in concert or participation with them from imposing and taking any assertive action against Plaintiffs to collect interest or to penalize Plaintiffs in any form, under any State law for unpaid taxes;

- (D) Enter a judgment against Defendants pursuant to 68 O.S. § 226 and order a recovery to Plaintiffs of income tax paid under protest for Tax Year 2020, and;
- (E) All other relief, legal or equitable, including attorney's fees and costs, as allowed by law and as the Court finds just and equitable.

Respectfully submitted,

/s/ O. Joseph Williams

By: _____
O. Joseph Williams, OBA # 19256
RESERVATION LEGAL
SOLUTIONS, PLLC
The McCulloch Building
114 N. Grand Avenue, Suite 520
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ATTORNEY FOR PLAINTIFFS
HAROLD & NELLIE MEASHINTUBBY

VERIFICATION

STATE OF OKLAHOMA)
)
COUNTY OF Pittsburg) SS

Harold Meashintubby, of lawful age, being first duly sworn upon oath, states:

That he is a named Plaintiff in the foregoing *Complaint for Declaratory and Injunctive Relief*, that he has reviewed the allegations in the *Complaint* and that he affirms the facts presented are true and correct to the best of his knowledge and belief.

Further Affiant Saith Not.

Harold Meashintubby
HAROLD MEASHINTUBBY

Subscribed and sworn to before me, a Notary Public, on this 16th day of February 2022.



Monique Ramirez
Notary Public

My Commission Expires: 08/09/2023

VERIFICATION

STATE OF OKLAHOMA)
) SS
COUNTY OF Pittsburg)

Nellie Meashintubby, of lawful age, being first duly sworn upon oath, states:

That she is a named Plaintiff in the foregoing *Complaint for Declaratory and Injunctive Relief*; that she has reviewed the allegations in the *Complaint* and that she affirms the facts presented are true and correct to the best of her knowledge and belief.

Further Affiant Saith Not.

Nellie Meashintubby
NELLIE MEASHINTUBBY

Subscribed and sworn to before me, a Notary Public, on this 16th day of February 2022.



Monique Ramirez
Notary Public

My Commission Expires: 08/09/2023



J. Kevin Stitt
Office of the Governor
State of Oklahoma

July 22, 2020

Andrew Wheeler, Administrator
Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: The State of Oklahoma's Request to Administer EPA Approved Environmental Programs
in Areas of the State that are in Indian Country

Dear Administrator Wheeler:

Consistent with the extent to which the State of Oklahoma implemented environmental programs throughout the State prior to the U.S. Supreme Court's recent decision in *McGirt v. Oklahoma*, 591 U.S. ___ (2020), the State of Oklahoma requests approval to administer all U.S. Environmental Protection Agency ("EPA") approved environmental programs in areas of the State that are in Indian Country (except as outlined below under "Exceptions to Request") pursuant to § 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 ("SAFETEA"), Public Law 109-59, 119 Stat. 1144 (Aug. 10, 2005).¹ This request includes all Oklahoma environmental programs approved by EPA, and specifically includes but is not limited to the following programs:

Oklahoma Department of Environmental Quality:

Land Protection Division -

- Resource Conservation and Recovery Act ("RCRA") Programs
 - Subpart C hazardous waste program, 40 C.F.R. Part 262, Subpart LL

¹ This request is only seeking approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014) and the Stigler Act, 25 U.S.C. §§ 331 *et seq.*

- Subpart D permit program, 59 Fed. Reg. (Aug. 16, 1994)
- Coal Combustion Residual (“CCR”) State Program: program approval, 83 Fed. Reg. 30356 (June 28, 2018)
- **Safe Drinking Water Act, 42 U.S.C. § 300h et seq., Underground Injection Control Programs –**
 - Underground Injection Control (“UIC”) for Classes I, III, IV and V wells, 40 C.F.R. Part 147, Subpart LL, § 147.1850

Air Quality Division -

- **Clean Air Act Programs –**
 - State Implementation Plan (40 C.F.R. Part 52, Subpart LL, §§ 52.1920 – 52.1960)
 - State Operating Permits Program (“Title V Program”), 40 C.F.R. Appendix A-2, Part 70 (State of Oklahoma)
 - Standards of Performance for New Stationary Sources (“NSPS”), 40 C.F.R. Part 60, Subpart A, § 60.4(b)(38)
 - National Emission Standards for Hazardous Air Pollutants (“NESHAP”), 40 C.F.R. Part 61, Subpart A, §§ 61.04(b)(38) and 61.04(c)(6)(iv)
 - Approval and Promulgation of State Plans for Designated Facilities and Pollutants, 40 C.F.R. Part 62, Subpart LL, §§ 62.9100 *et seq.*
 - National Emission Standards for Hazardous Air Pollutants (“NESHAP”), Delegation Status for Part 63 Standards - State of Oklahoma, 40 C.F.R. Part 63, Subpart A, § 63.99(a)(37)
 - Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities (“Lead-Based Paint Program”), 63 Fed. Reg. 49574 (Sept. 16, 1998)
 - Lead-Based Paint Renovation, Repair and Painting, and Pre-Renovation Education Activities in Target Housing and Child Occupied Facilities (“RRP Program”), 79 Fed. Reg. 1799 (Jan. 10, 2014)
 - Ambient Air Monitoring Reference and Equivalent Methods, 40 C.F.R. Part 53 and Ambient Air Quality Surveillance, 40 C.F.R. Part 58

Water Quality Division -

- **Clean Water Act, 33 U.S.C. §1251 et seq., Delegated Programs -**
 - Water Quality Related Effluent Limitations, 33 U.S.C. § 1312
 - Effluent Limits, 33 U.S.C. § 1311
 - National Performance Standards, 33 U.S.C. § 1316
 - Toxic and Pretreatment, 33 U.S.C. § 1317
 - National Pollutant Discharge Elimination System, 33 U.S.C. § 1342

- Disposal of Sewage Sludge, 33 U.S.C. § 1345

- **Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*, Primacy Programs -**
 - Interim Enhanced Surface Water Treatment Rule
 - Stage 1 Disinfection Byproducts Rule
 - Consumer Confidence Rule
 - Administrative Penalty Authority
 - Arsenic Rule
 - Public Notification Rule
 - Radionuclide Rule
 - Filter Backwash Recycling Rule
 - Long Term 1 Surface Water Treatment Rule
 - New PWS Definition
 - Lead and Copper Rule
 - Stage 2 Disinfection Byproducts Rule
 - Long Term 2 Surface Water Treatment Rule
 - Ground Water Rule
 - Revised Total Coliform Rule
 - Variance and Exception Rule

Oklahoma Department of Agriculture, Food and Forestry:

- **Clean Water Act, 33 U.S.C. §1251 *et seq.*, Delegated Programs –**
 - National Pollutant Discharge Elimination System, 33 U.S.C. § 1342 (includes Concentrated Animal Feeding Operations, Pesticides, and Storm water from agricultural construction)

Oklahoma Water Resources Board:

- **Clean Water Act, 33 U.S.C. §1251 *et seq.* –**
 - Water Quality Standards and Implementation plans, 33 U.S.C. § 1313

Oklahoma Corporation Commission:

- State Underground Storage Tank Prevention Detection and Compliance (2 C.F.R. § 200; 2 C.F.R. § 1500; 40 C.F.R. § 33; 40 C.F.R. § 35(a))
- Leaking Underground Storage Tank Trust Fund Program (Corrective Action) (2 C.F.R. § 200; 2 C.F.R. § 1500; 40 C.F.R. § 33)

- State & Tribal Response Program (2 C.F.R. § 200; 2 C.F.R. § 1500; 40 C.F.R. § 33; 40 C.F.R. § 35(a))
- State Underground Water Source Protections (2 C.F.R. § 200; 2 C.F.R. § 1500; 40 C.F.R. § 33; 40 C.F.R. § 35(a); 40 C.F.R. § 147.1851)

EXCEPTIONS TO REQUEST

This request does not seek approval to administer any programs in Indian country on lands, including rights-of-way running through the same, that -

- (A) Qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. § 1151(c);
- (B) Are held in trust by the United States on behalf of an individual Indian or Tribe; or
- (C) Are owned in fee by a Tribe, if the Tribe –
 - (i) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party; and
 - (ii) never allotted the land to a member or citizen of the Tribe.

Furthermore, this request does not seek approval to administer the Oklahoma Corporation Commission (“OCC”)’s UIC Program for Class II wells (40 C.F.R. Part 147, Subpart LL, § 147.1851) in Osage County, Oklahoma.

The environmental programs covered by this request include but are not limited to programs administered by the following State agencies: the Oklahoma Department of Environmental Quality; the Oklahoma Department of Agriculture, Food and Forestry; the Oklahoma Water Resources Board; and the OCC. The State of Oklahoma reserves the right to amend this request or make future requests for approval pursuant to SAFETEA.

Thank you for your consideration and action on this request. If you have any questions or need further information, please contact Kenneth E. Wagner, Oklahoma Secretary of Energy & Environment, at Kenneth.Wagner@ee.ok.gov or (405) 522-7099.

Sincerely,



Kevin Stitt
Governor of the State of Oklahoma



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

October 1, 2020

THE ADMINISTRATOR

The Honorable J. Kevin Stitt
Governor of the State of Oklahoma
Oklahoma State Capitol
2300 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

**Re: Approval of State of Oklahoma Request Under Section 10211(a) of the
Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005**

Dear Governor Stitt:

On July 22, 2020, the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Pub. Law 109-59, 199 Stat. 1144, 1937 (August 10, 2005) ("SAFETEA"), to administer in certain areas of Indian country the State's environmental regulatory programs that were previously approved by the U.S. Environmental Protection Agency ("EPA") outside of Indian country. EPA hereby approves Oklahoma's request.

SAFETEA

The applicable provision of SAFETEA, which is limited to Oklahoma, states as follows:

SEC. 10211. ENVIRONMENTAL PROGRAMS.

(a) OKLAHOMA.—Notwithstanding any other provision of law, if the Administrator of the Environmental Protection Agency (referred to in this section as the "Administrator") determines that a regulatory program submitted by the State of Oklahoma for approval by the Administrator under a law administered by the Administrator meets applicable requirements of the law, and the Administrator approves the State to administer the State program under the law with respect to areas in the State that are not Indian country, on request of the State, the Administrator shall approve the State to administer the State program in the areas of the State that are in Indian country, without any further demonstration of authority by the State.

EXHIBIT "B"

Pub. Law 109-59, 199 Stat. 1144, 1937.

EPA recognizes that typically, in the absence of express authorization from Congress states do not have jurisdiction in Indian country¹ to implement regulatory programs under the federal environmental laws administered by EPA. *See, e.g., Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 527 n.1 (1998). Therefore, EPA generally excludes Indian country from its approvals of state environmental regulatory programs. However, where a federal statute expressly provides for state program administration in Indian country, EPA must apply that law and approve a proper request for such state administration.

Section 10211(a) of SAFETEA is such a law. The statute mandates that EPA approve a request from the State of Oklahoma to administer regulatory programs in areas of the State that are in Indian country where the statute's elements are met. The statute applies to (1) any regulatory program, (2) submitted by Oklahoma for approval by EPA under a law administered by EPA, where EPA has (3) determined that the program meets applicable requirements of the law, and (4) approved the program with respect to areas in the State that are not Indian country, and (5) the State requests to administer the program in areas of the State that are in Indian country. So long as these circumstances are present, SAFETEA requires approval of the State's request "[n]otwithstanding any other provision of law" and "without any further demonstration of authority by the State." Consistent with Congress's plenary authority over Indian affairs, the statute expressly abrogates any prior potentially inconsistent legal requirement or limitation of law, including any potential jurisdictional impediment to the State's regulation in Indian country or other requirement under federal environmental laws administered by EPA. The statute provides EPA no discretion to weigh additional factors in rendering its decision.

Oklahoma's July 2020 request seeks approval under SAFETEA to administer environmental regulatory programs submitted by the State that EPA has determined meet applicable requirements of federal environmental law and has approved outside of Indian country.² Because these basic statutory criteria are met, EPA is required to approve the State's request to

¹ Section 10211 of SAFETEA does not define Indian country. Indian country, however, is defined under federal law at 18 U.S.C. § 1151 to mean (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Although this definition is codified in the federal criminal code, it is also relevant for purposes of civil jurisdiction. *See, e.g., DeCoteau v. District County Court*, 420 U.S. 425, 427 n.2 (1975).

² As described above, Section 10211(a) requires approval of the State's request where EPA previously has determined that a regulatory program submitted by the State meets applicable requirements of federal environmental law, and EPA has approved the program to apply outside of Indian country. EPA interprets the required determination that the State's program meets applicable requirements of federal environmental law as applying at the time the program was previously approved outside of Indian country. This is consistent with Congress's intent to mandate approval of the State's request under SAFETEA "[n]otwithstanding any other provision of law," which includes the provisions of the statutes administered by EPA. Although SAFETEA thus mandates approval in the first instance, EPA notes that the Agency's ordinary statutory and regulatory authorities to oversee and review state programs will continue to apply as the programs are implemented.

administer these previously approved regulatory programs in the areas of Indian country described in the State's request.

Geographic Scope of Approval

As described in the State's July 2020 letter, the impetus for the State's request was the recent decision of the U.S. Supreme Court in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). In that case, the Supreme Court held that the Creek Nation's Reservation in eastern Oklahoma had not been disestablished by Congress and remained Indian country under federal law. Prior to *McGirt*, the State had, as a practical matter, implemented environmental programs in much of the area that was held by the Supreme Court to be Indian country. EPA understands the State's reference to *McGirt* as an explanation of the State's intent substantially to reestablish the geographic scope of the State's environmental programs as implemented prior to the Supreme Court's decision, but at this time generally not to extend the State's programs into areas of Indian country over which the State had not previously implemented such programs.³ In keeping with this general intent, the State's request applies to Indian country throughout the State, but expressly excludes three categories of land over which the State had not administered regulatory programs prior to *McGirt*. As stated in the request:

This request does not seek approval to administer any programs in Indian country on lands, including rights-of-way running through the same, that –

(A) Qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. § 1151(c);

(B) Are held in trust by the United States on behalf of an individual Indian or Tribe; or

(C) Are owned in fee by a Tribe, if the Tribe –

(i) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party; and

(ii) never allotted the land to a member or citizen of the Tribe.

³ EPA has identified two instances in which the State's July 2020 request deviates from the geographic scope of the State's programs as implemented prior to *McGirt*. First, the State's request seeks extension of its Safe Drinking Water Act Underground Injection Control Program (other than Class II wells) into Osage County. Prior to *McGirt*, EPA had regulated all classes of wells under this program in that county. Second, consistent with the D.C. Circuit's decision in *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014), the State's Clean Air Act State Implementation Plan ("SIP") applies on non-reservation areas of Indian country – most notably, Indian allotments – in the State. Prior to *McGirt*, the State had thus implemented its SIP on Indian allotments, including allotments that are now understood (per the Supreme Court's decision) to be located within the exterior boundaries of an Indian reservation. To the extent an allotment is located on an Indian reservation, it would be excluded from the D.C. Circuit's holding that SIPs apply on non-reservation areas of Indian country. The State's July 2020 request excludes Indian allotments, and thus does not request extension of Oklahoma's SIP onto such reservation allotments.

The request also expressly excludes the Safe Drinking Water Act Class II Underground Injection Control program in Osage County, Oklahoma.⁴

Consistent with the State's letter, EPA's approval of the State's request applies to Indian country throughout the State but does not extend to any of the excluded areas. EPA will retain authority to directly implement environmental regulatory programs under statutes administered by the Agency in all such excluded areas. Nothing in this decision is intended to change or address tribal authority under tribal law outside the scope of a program under a statute administered by EPA.

Programmatic Scope of Approval

The State's July 2020 letter requests approval under SAFETEA with regard to all of the State's existing EPA-approved environmental regulatory programs,⁵ including a series of programs identified in the letter that are administered by the Oklahoma Department of Environmental Quality, the Oklahoma Department of Agriculture, Food and Forestry, the Oklahoma Water Resources Board, and the Oklahoma Corporation Commission. Consistent with the State's request, EPA is approving the State under SAFETEA to administer all environmental regulatory programs approved by EPA to apply outside of Indian country, including, but not limited to, the environmental regulatory programs identified below. Each of the programs covered by this approval has been submitted to EPA – *i.e.*, they involve a submission by the State for EPA's consideration under a law administered by EPA – and approved by EPA as meeting applicable requirements of federal environmental law outside of Indian country. These programs thus satisfy the necessary criteria of SAFETEA Section 10211(a). To the extent EPA's prior approvals of these State programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by this approval under SAFETEA. Because each of the programs identified below is now approved to include the requested areas of Indian country, any future revisions or amendments to these identified programs will similarly extend to the covered areas of Indian country without any further need for additional requests under SAFETEA.⁶

⁴ Section 10211(a) of SAFETEA does not specify any required minimum geographic area of Indian country to be included in a request from Oklahoma. EPA interprets the provision as providing sufficient flexibility for the State to exclude certain areas of Indian country from its request and to mandate EPA approval of such a limited request so long as the basic criteria of the statute are met.

⁵ Section 10211(a) of SAFETEA addresses only "regulatory program[s]" administered under federal environmental laws. The provision does not address funding provided under EPA grant programs. The provision also does not address any exercise of State regulatory authority outside the scope of a program approved by EPA under a federal environmental statute administered by EPA.

⁶ However, should the State apply to EPA in the future for approval of any program that has not been previously approved outside of Indian country, the State would also need to submit a request under SAFETEA to the extent the State wishes to administer that program in any area of Indian country. This is consistent with the language of Section 10211(a), which contemplates that a request from Oklahoma will relate to a regulatory program that has already been submitted to EPA and approved by EPA to apply outside of Indian country.

List of Programs⁷

RCRA:

- Subtitle C hazardous waste program (42 U.S.C. § 6921, *et seq.*; 40 C.F.R. Part 272, Subpart LL)
- Subtitle D permit program (42 U.S.C. § 6941, *et seq.*; 40 C.F.R. Parts 239 and 258)
- Coal Combustion Residual State Program (42 U.S.C. § 6945(d); 40 C.F.R. Part 257, Subpart D)
- Subtitle I Underground Storage Tank Program (42 U.S.C. § 6991, *et seq.*; 40 C.F.R. § 282.86)

CAA:

- State Implementation Plan (42 U.S.C. § 7410; 40 C.F.R. Part 52, Subpart LL – 40 C.F.R. §§ 52.1920 -52.1960)
- Standards of Performance for New Stationary Sources (42 U.S.C. §§ 7411(b) and (c), 7429; 40 C.F.R. Part 60)
- National Emission Standards for Hazardous Air Pollutants (42 U.S.C. § 7412; 40 C.F.R. Part 61, Subpart A – 40 C.F.R. § 61.04(b)(38) and § 61.04(c)(6)(iv))
- Approval and Promulgation of State Plans for Designated Facilities and Pollutants (42 U.S.C. §§ 7411(d) and 7429; 40 C.F.R. Part 62, Subpart LL – 40 C.F.R. §§ 62.9100 – 62.9191)
- National Emission Standards for Hazardous Air Pollutants, Delegation Status for Part 63 Standards—State of Oklahoma (42 U.S.C. § 7412; 40 C.F.R. Part 63, Subpart A – 40 C.F.R. § 63.99(a)(37))
- State Operating Permits Program (42 U.S.C. §§ 7661a(d) – 7661f; 40 C.F.R. Part 70, Appendix A, Oklahoma)
- Ambient Air Monitoring Reference and Equivalent Methods and Ambient Air Quality Surveillance, 42 U.S.C. §§ 7601(a), 7619 (40 C.F.R. Parts 53 and 58)

CWA:

- Pretreatment (33 U.S.C. § 1317; 40 C.F.R. Parts 129 and 403)
- National Pollutant Discharge Elimination System Programs authorized for Oklahoma Department of Environmental Quality and Oklahoma Department of Agriculture, Food, and Forestry (33 U.S.C. § 1342; 40 C.F.R. Parts 122-125)
- Disposal of Biosolids and Sewage Sludge (33 U.S.C. § 1345; 40 C.F.R. Part 503)
- Water Quality Standards and Implementation plans (33 U.S.C. § 1313; 40 C.F.R. Parts 130 and 131)

⁷ EPA has reorganized the list of regulatory programs included in Oklahoma's July 2020 letter to track the statutes administered by EPA, avoid unnecessary references and duplication, and reference relevant statutory and regulatory provisions that reflect the requested programs. Consistent with the State's request to include all regulatory programs approved by EPA outside of Indian country (and the statement that the list of programs included in the July 2020 letter was non-exclusive), EPA has included certain regulatory programs that were not separately identified in the State's July 2020 letter. Because Section 10211(a) of SAFETEA applies only to regulatory programs, EPA has not included any references to environmental grant authorities under EPA statutes or regulations that were included in the State's July 2020 letter.

SDWA:

- Underground Injection Control (UIC) Program for Classes I, II (excluding Osage County, Oklahoma), III, IV and V wells, (42 U.S.C. §§ 300h-300h-8; 40 C.F.R. §§ 147.1850 and 1851)
- Public Drinking Water System Program (42 U.S.C. § 300f, *et seq.*; 40 C.F.R. Part 143-149)

FIFRA

- State Pesticides Certification and Training Plan (7 U.S.C. §136i; 40 C.F.R. Part 171)
- Experimental Use Permits (7 U.S.C. § 136c; 40 C.F.R. Part 172)
- Delegated State Enforcement and Training (7 U.S.C. § 136u)
- Enforcement Primacy (7 U.S.C. § 136w-1)
- Public Health, Quarantine, and Crisis Exemptions (7 U.S.C. § 136p; 40 C.F.R. Part 166)
- Special Local Needs Registrations (7 U.S.C. § 136v; 40 C.F.R. Part 162)

TSCA

- Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities (“Lead-Based Paint Program”) (15 U.S.C. § 2682; 40 C.F.R. Part 745)
- Lead-Based Paint Renovation, Repair and Painting, and Pre-Renovation Education Activities in Target Housing and Child Occupied Facilities (15 U.S.C. § 2684; 40 C.F.R. Part 745)
- Asbestos in Schools (15 U.S.C. § 2643; 40 C.F.R. Part 763)

Tribal Consultation

EPA greatly values its government-to-government relationships with the federally recognized tribes in Oklahoma. Section 10211(a) of SAFETEA includes no procedural requirements to govern EPA’s mandatory decision. However, consistent with longstanding Agency policy,⁸ EPA invited Indian tribes located in Oklahoma to consult with the Agency and to provide their views regarding the State’s July 2020 request. On September 8, 2020, EPA conducted a tribal consultation meeting open to all tribes in Oklahoma. The Agency also conducted individual consultation meetings with seven tribes in Oklahoma. EPA has carefully reviewed and considered input provided by the tribes in developing this decision.

Consistent with the Agency’s various statutory and regulatory authorities, EPA will continue to exercise oversight of the State’s environmental programs as they are implemented throughout Oklahoma, including in the areas of Indian country covered by this approval, consistent with its general trust responsibility to federally recognized tribes. EPA encourages coordination and cooperation among the tribes, the State, and EPA, and the Agency is prepared to work collaboratively with our inter-governmental partners on environmental issues of mutual interest.

⁸ See, e.g., EPA Policy for the Administration of Environmental Programs on Indian Reservations, November 8, 1984; EPA Policy on Consultation and Coordination with Indian Tribes, May 4, 2011.

Conclusion

As required by Section 10211(a) of SAFETEA, EPA approves the State of Oklahoma's July 22, 2020, request to administer the environmental regulatory programs described above in the specified areas of Indian country.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Wheeler", with a long horizontal flourish extending to the right.

Andrew R. Wheeler

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE
STATE OF OKLAHOMA AND THE CHOCTAW NATION OF OKLAHOMA
REGARDING JURISDICTION OVER INDIAN CHILDREN WITHIN THE TRIBE'S
RESERVATION**

FILED

AUG 17 2020

OKLAHOMA SECRETARY
OF STATE

I. PREAMBLE

The Indian Child Welfare Act of 1978 was passed by Congress to reverse the trend of destruction of Indian families. The intent of the Act was to protect Indian children and families by defining how cases involving Indian children should be handled. The Act's provisions respected the broad authority that Indian tribes had long exercised over Indian children located within tribal jurisdictions, and the United States Supreme Court recognized that, "the ICWA designates the tribal court as the exclusive forum for the determination of custody and adoption matters for reservation-domiciled Indian children, and the preferred forum for nondomiciliary Indian children." Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 52-53 (1989).

This Agreement is the result of a partnership formed by the Choctaw Nation of Oklahoma and the State of Oklahoma. The intent of this Agreement is to further streamline the jurisdictional provisions put forth in the Indian Child Welfare Act and create concurrent jurisdiction on the reservation of the Choctaw Nation of Oklahoma with the State of Oklahoma and its political subdivisions.

II. DEFINED TERMS.

As used in this section, the term—

- (1) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual;
- (2) "child custody proceeding" shall mean and include—
 - (A) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
 - (B) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

EXHIBIT "C"

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(C) “preadoptive placement” which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(D) “adoptive placement” which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(3) “Department” means the Oklahoma Department of Human Services, or other agency having responsibility for child protection and welfare in the state of Oklahoma.

(4) “Choctaw Nation of Oklahoma” means the federally recognized Indian Tribe known as the Choctaw Nation of Oklahoma;

(5) “Indian child” means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(6) “State or state” means the state of Oklahoma.

(7) “the most recent treaty or agreement” means—
(A) the Treaty of April 28, 1866, 14 Stat. 769;

(8) “Tribe or tribe” means the Choctaw Nation of Oklahoma.

III. LEGAL AUTHORITY

The Indian Child Welfare Act (hereinafter the “Act”) 25 U.S.C. 1901 et seq. (Public Law 95-608), authorizes states and Indian tribes to enter into agreements concerning the care and custody of Indian children and jurisdiction over child custody proceedings involving such children. Oklahoma law similarly authorizes “[t]he Director of the Department of Human Services and the Executive Director of the Office of Juvenile Affairs ... to enter into agreements with Indian tribes in Oklahoma regarding care and custody of Indian children as authorized by the Federal Indian Child Welfare Act, 25 U.S.C. § 1919.” Okla. Stat. tit. 10, § 40.7. The State of Oklahoma and the Choctaw Nation of Oklahoma, through their undersigned representatives, hereby enter into the following Agreement to provide for concurrent jurisdiction as authorized by §1919 of the Act. In the event the Choctaw Nation of Oklahoma enters into a separate agreement or MOU with the State, those separate agreements shall control.

IV. CONCURRENT JURISDICTION

The parties have agreed to enter into this jurisdiction sharing Agreement based on the premise that the Choctaw Nation of Oklahoma has exclusive jurisdiction over any child custody proceeding involving an Indian child domiciled within the boundaries of the tribe's reservation as provided for in 25 U.S.C. §1911(a).

Within the reservation boundaries of the Choctaw Nation of Oklahoma, as those boundaries are described in the most recent treaty or agreement between the Tribe and the United States, the State of Oklahoma and the Tribe shall share concurrent jurisdiction over any Indian child domiciled within its reservation, except as follows:

(1) The Tribe shall retain exclusive jurisdiction over any child custody proceeding involving an Indian child domiciled or located on lands:

(A) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; or

(B) land held in trust by the United States on behalf of an individual Indian or Tribe;

or

(C) land owned in fee by a Tribe, if the Tribe—

(i) acquired fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party; and (ii) never allotted the land to a citizen or member of such Tribe.

(2) Where an Indian child is a ward of a Tribe's court, the Tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

V. DETERMINATION OF TRIBAL OR STATE COURT JURISDICTION

Except in cases of emergency, the following procedures will apply to initiation of involuntary child custody proceedings in an Oklahoma court regarding an Indian child who is domiciled or resident on the Tribe's reservation, but not domiciled on the lands described above in Section (IV)(1). In cases of emergency, the procedures set forth in Part VI of this Agreement, regarding emergency foster care placements, shall be followed.

(1) Involuntary child custody proceedings where the State of Oklahoma is a party.

Prior to the State filing any petition to initiate an involuntary child custody proceeding in an Oklahoma court, the Department will seek to determine whether the Indian child is a ward of a

tribal court or whether the child is domiciled or located on the lands described above in Section IV(1).

In seeking to determine whether the child is a ward of tribal court, the Department will contact the Tribe concerning the matter. If the child is a ward of tribal court, the Tribe has exclusive jurisdiction and the Department shall refer the case to the appropriate tribal authorities.

If the child is domiciled on the Tribe's reservation but is not a ward of the court or domiciled or located on lands described in Section IV(1), the Department will, at the earliest possible time, notify the Tribe of its intent to request the State file a petition in the State court on or after a specified date. The notice will include all documents and records in support of the necessity of initiating an involuntary child custody proceeding, and the Tribe must be given notice prior to the filing of the deprived petition. If, prior to the date specified in the notice to the Tribe, a child custody proceeding is commenced in the tribal court then the matter will proceed in tribal court.

With respect to children identified in a notice sent by the Department, the Tribe will immediately notify the Department of any child custody proceeding commenced in tribal court prior to the date specified in the notice.

If the Department is notified or has knowledge that a child custody proceeding has been commenced in tribal court, the State will not file a child custody proceeding in State court and, upon request, will assist in the tribal court adjudication of the matter, including providing records and/or testimony from the Department.

The Department will keep a record on a case-by-case basis of the inquiries made to determine whether a child is a ward of the tribal court and of the facts considered in reaching a decision that the child is or is not domiciled or resident on an Indian reservation. This record, upon request, will be provided to the Indian child's tribe, parent or Indian custodian, and any guardian ad litem appointed to represent the child.

If an Indian child is domiciled or located within the Tribe's reservation and the child is not a member of or eligible for membership in the Tribe, nothing in this Agreement shall relieve the Department of any responsibilities to the child's tribe imposed by the Act. If, in such circumstances, the provisions of this Agreement and the provisions of the Act are in conflict, the provisions of the Act shall prevail.

- (2) Voluntary child custody proceedings and involuntary child custody proceedings where the State of Oklahoma is not a party.

In guardianships, adoptions, or other child custody proceedings where the State of Oklahoma is not a party and the child is domiciled or located within the reservation of the Tribe, the party initiating the child custody proceeding may file said action in either the state or tribal court. The state or tribal court that makes the first child custody determination concerning a particular child shall retain exclusive, continuing jurisdiction over the child custody proceeding, unless the Tribe seeks to transfer the matter to tribal court. The tribal court may relinquish its exclusive, continuing

jurisdiction if the court finds that such relinquishment would be in the best interest of the child. The state court shall transfer any voluntary custody proceeding, or any involuntary custody proceeding where the State of Oklahoma is not a party, to the tribal court if requested by the tribe. The good cause provisions of 25 U.S.C. § 1911(b) and the accompanying regulations shall not operate to deny transfer to tribal court as the tribal court would have otherwise had exclusive jurisdiction. Provided, however that transfers requested by a parent, guardian, or other party pursuant to 25 U.S.C. § 1911(b) shall control, absent tribal court declination, as to any requests to transfer a foster care placement or termination of parental rights to the relevant tribal court.

Either the state or tribal court may exercise temporary, emergency jurisdiction over an Indian child if the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling of the child is subjected to or threatened with mistreatment or abuse. Upon being informed that an initial child custody determination has been made previously by a tribal or state court, the court that exercised temporary, emergency jurisdiction over the Indian child should immediately communicate with that court to resolve the emergency, protect the safety of the child, and determine a period for the duration of the temporary order.

VI. EMERGENCY FOSTER CARE PLACEMENT OVER WARDS OF TRIBAL COURTS AND/OR CHILDREN DOMICILED ON LANDS DESCRIBED IN IV(1)

In general, if an Indian child is a ward of the tribal court or domiciled or located on lands described above at IV(1), neither the Department nor the state courts may exercise any authority to place the child in foster care, unless authorized to do so under the laws of the Tribe.

However, if such an Indian child is located off the reservation the Department may take steps to obtain a state court order authorizing an emergency placement of the child in foster care in order to prevent imminent physical damage or harm to the child, including sexual abuse.

Following placement, the Department will make active efforts to make it possible to return the child to its home and shall take necessary steps to insure that the emergency foster care placement of the child terminates immediately when such placement is no longer necessary to prevent imminent physical damage or harm to the child, including sexual abuse. Upon termination of the placement, the child shall immediately be returned to his/her parent(s) or Indian custodian(s).

Whenever an Indian child is placed in emergency foster care, the Department will seek tribal court approval of such placement at the earliest possible time, but in no event shall an emergency foster care placement extend for a period longer than 72 hours, excluding Saturdays, Sundays and holidays, without an order of the tribal court approving such placement, or if the tribal court is unable to issue an order within the 72 hour period, a state court order approving such placement. The Department will immediately seek dismissal of the state court proceeding as soon as the tribal court exercises jurisdiction over the child.

VII. WAIVER OF AGREEMENT PROVISIONS

A duly designated representative of the State and a Tribe, on a case-by-case basis, may agree in writing to waive any of the provisions of this agreement. The waiver shall identify the provision(s) to be waived, the case or circumstances to which the waiver is applicable, the reasons for the waiver and the duration of the waiver.

Any provision of this Agreement may be waived generally by agreement of the State and the Tribe, without regard to a particular case or circumstance. A general waiver of any provision of this Agreement shall take effect upon the date the State and the Tribe agree to such a waiver.

VIII. AMENDMENTS TO AGREEMENT

The State or Tribe may amend or modify this Agreement at any time upon mutual consent. Amendments shall be effective when approved in the same manner as required for approval of the original Agreement.

IX. TERMINATION OF AGREEMENT

This Agreement or any part thereof may be revoked by mutual consent or by either the State or the Tribe upon ninety (90) days written notice to the other parties. The notice shall state the reasons for and the effective date of the revocation. The parties agree to extend full faith and credit to all child custody determinations rendered under this Agreement in any court prior to revocation and consent not to petition to invalidate any such action.

Prior to notification of revocation, a party considering revocation shall, whenever possible, seek to cooperatively explore with the other party ways in which to avoid revocation.

Prior to the effective date of any revocation, the parties agree to cooperate in assuring that the revocation will not unnecessarily result in a break in service or in disruption of the services provided to Indian children and families.

X. RETROACTIVITY

The State and Tribe agree that the concurrent jurisdiction provisions of this Agreement apply to any cases, actions, or proceedings pending at the time this Agreement becomes effective. Any cases pending in the state courts involving an Indian child domiciled on the Tribe's reservation shall continue in the state courts pursuant to the concurrent jurisdiction described in this Agreement. The Tribe hereby ratifies and agree to extend full faith and credit to all child custody determinations rendered in any state court prior to this Agreement, except those child custody determinations involving an Indian child domiciled or located on lands identified in Section IV(1), and consent not to petition to invalidate any such action under 25 U.S.C. § 1914 on the basis that such action violated § 1911(a).

XI. NO WAIVER OF OTHER RIGHTS

Except as otherwise agreed herein, this Agreement shall not be deemed as a waiver or abandonment of any jurisdictional power or prerogatives of the Tribe, the State, or any of its subdivisions. Nothing herein shall constitute a waiver of the Tribe's right to subsequently request transfer of any child custody proceeding to tribal court.

XII. NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Agreement waives the sovereign immunity of the Tribe for any purpose or for any action in any forum.

SIGNATURE PAGE FOR THE STATE OF OKLAHOMA


**INTERGOVERNMENTAL AGREEMENT BETWEEN THE
STATE OF OKLAHOMA AND THE CHOCTAW NATION OF OKLAHOMA
REGARDING JURISDICTION OVER INDIAN CHILDREN WITHIN THE TRIBE'S
RESERVATION**

Pursuant to the authority provided by Okla. Stat. tit. 10, § 40.7, the following agree on behalf of the State to this Agreement:

Approved:


Justin Brown
Director, Oklahoma Department of Human Services

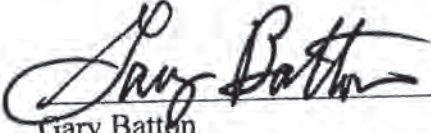
8.14.20
Date


Rachel Canuso Holt
Interim Executive Director, Oklahoma Office of Juvenile Affairs

8/14/2020
Date

SIGNATURE PAGE FOR THE CHOCTAW NATION OF OKLAHOMA
INTERGOVERNMENTAL AGREEMENT BETWEEN THE
STATE OF OKLAHOMA AND THE CHOCTAW NATION REGARDING
JURISDICTION OVER INDIAN CHILDREN WITHIN THE TRIBE'S RESERVATION

Approved:



Gary Batton
Chief, Choctaw Nation of Oklahoma

8/12/00
Date



OKLAHOMA
Tax Commission

**REPORT OF POTENTIAL IMPACT
OF MCGIRT V. OKLAHOMA**

EXHIBIT "D"



OKLAHOMA Tax Commission

OFFICE OF THE EXECUTIVE DIRECTOR

September 30, 2020

To the Honorable Members of the Oklahoma Commission on Cooperative Sovereignty:

On behalf of the Oklahoma Tax Commission, I am pleased to submit our report of the potential impact of the United States Supreme Court's decision in *McGirt v. Oklahoma*, 591 U.S. ___ (2020).

The Oklahoma Tax Commission anticipates a significant immediate and ongoing fiscal impact resulting from the expanded boundaries of the Muscogee (Creek) Nation under *McGirt*. The report primarily addresses the Muscogee (Creek) Nation, but includes applicable analysis and fiscal impact estimates should the reasoning in *McGirt* be extended to apply to all Five Civilized Tribes in Oklahoma.

The report is based on the Oklahoma Tax Commission's interpretation of *McGirt*, the existing statutes and case law as of September 30, 2020, and is submitted with the understanding that Congress has exclusive authority to modify the boundaries of the Creek Reservation at any time.

The Oklahoma Tax Commission remains committed to its mission of serving the people of Oklahoma by promoting tax compliance through quality service and fair administration.

Respectfully submitted,



Jay Doyle, Executive Director





OKLAHOMA
Tax Commission

TABLE OF CONTENTS

I.	Executive Summary	2
II.	Overview.....	3
III.	Areas of Anticipated Impact	4
IV.	Nature and Extent of the Impact	13
V.	Suggestions for Mitigation of Potential Impact	20



I. EXECUTIVE SUMMARY

The United States Supreme Court decision in *McGirt v. Oklahoma* clarified the boundaries of the Muscogee (Creek) Nation (“Creek Nation”) by defining the Creek Nation’s “Indian country” for purposes of 18 U.S.C. § 1151(a) of the Major Crimes Act. Although *McGirt* arose from a criminal proceeding, the implications of the decision extend to many other areas of Oklahoma law, including the taxes and fees administered by the Oklahoma Tax Commission (“OTC”). The decision changes the geographical area in which the OTC has jurisdiction to levy and enforce the State’s taxes, but it does not directly affect the procedures already in place to administer those taxes. The OTC anticipates the primary fiscal impact of *McGirt* will be reflected in reduced collections for individual income tax and sales/use tax, due to increased numbers of Creek Nation tribal members eligible to earn exempt income and make purchases exempt from sales/use tax.

United States Supreme Court precedent establishes that the State of Oklahoma (“State”) is without jurisdiction to tax certain income earned by tribal citizens while residing in their tribe’s Indian country. The exclusion from income tax is currently administered by the OTC, and codified in Oklahoma Administrative Code § 710:50-15-2. *McGirt* does not change the procedures in place to verify claims for the exclusion, but rather expands the area in which Creek Nation tribal members may live and work to qualify for the exclusion. The OTC estimates a potential per-year revenue impact of \$21.5 million, resulting from an increased use of the tribal income exclusion in Oklahoma Administrative Code § 710:50-15-2 by members of the Creek Nation. Further, there is a potential additional revenue impact of \$64.5 million, reflecting possible Creek Nation tribal member refund claims for the 2017–2019 tax years, for which the statute of limitations is still open. If *McGirt* is expanded to apply to all Five Civilized Tribes, there is a potential per-year revenue impact of \$72.7 million, with an additional \$218.1 million estimated impact for potential refund claims for the 2017–2019 tax years.

For sales and use tax purposes, *McGirt* expands the area in which businesses and tribes may make tax-exempt sales to Creek Nation tribal members. Tribal and non-tribal businesses operating in the Creek Nation’s Indian country are not required to collect taxes on sales to Creek Nation tribal members. Although businesses *are* required to collect and remit the appropriate sales taxes from non-tribal members, there remains an issue with enforcement against tribal businesses that may successfully claim sovereign immunity. The OTC estimates reduced sales/use tax collections resulting from exempt purchases made by Creek Nation tribal members in Creek Nation Indian country could have a per-year revenue impact of \$38.1 million. If *McGirt* is expanded to apply to all Five Civilized Tribes, there is a potential per-year impact of \$132.2 million.



The United States Supreme Court has previously held that the OTC cannot impose motor vehicle excise taxes and registration fees on tribal members residing in their tribe's Indian country. Creek Nation tribal members residing on Creek Nation tribal lands were not required to pay Oklahoma's motor vehicle excise tax or register their vehicles with the State of Oklahoma prior to *McGirt*. The OTC reviewed both OTC and Creek Nation licensing practices, and anticipates a minimal fiscal impact resulting from reduced motor vehicle excise tax and registration fee collections.

Similarly, there is little to no fiscal impact expected with respect to collections from gross production and petroleum excise taxes or ad valorem taxes. The OTC continues to evaluate the potential impact of other tax types not discussed in detail herein, including excise taxes imposed on various transactions, but expects the impact will be fairly limited for most other tax types as compared to income and sales/use taxes.

Although the State generally lacks authority to expand its state taxing jurisdiction within Indian country through state legislation, there are other potential avenues to mitigate the impact of *McGirt*. Congress may explicitly authorize a state to exercise its power of taxation within the boundaries of Indian country. In addition, the State has the ability to enter into compacts with the tribes which would benefit both the State and tribal governments. Historically, tribal compacts have been a powerful tool for facilitating cooperation and revenue-sharing between tribal and state governments, allowing the State to avoid the otherwise difficult task of administering and enforcing state taxes on tribal lands.

II. OVERVIEW

On July 20, 2020, Governor Kevin Stitt issued Executive Order 2020-24, creating the Oklahoma Commission on Cooperative Sovereignty (the "Commission") to address concerns and make recommendations to the State and the United States Congress in light of the United States Supreme Court's Opinion *McGirt v. Oklahoma*, 591 U.S. ___ (2020). In furtherance of the Commission's objectives, Governor Stitt directed any agency, board, or commission that believes it may be impacted by the *McGirt* decision to submit a Report of Potential Impact to the Commission specifying the area(s) in which the agency anticipates an impact, the nature and extent of the impact, including fiscal impact, and what, if any, steps it has taken, or suggests be taken, to mitigate the potential impact. The OTC submitted a Notice of Potential Impact to the Commission on August 28, 2020, and now submits the following detailed analysis of the potential impact on the OTC's administration of Oklahoma tax laws.



The Supreme Court's decision in *McGirt* has necessitated a review of the State's authority to regulate activity in Indian country. "Indian country" is defined in 18 U.S.C. § 1151(a) as "all land within the limits of any Indian reservation . . . notwithstanding the issuance of any patent, and including rights-of-way running through the reservation." *McGirt* held that the Creek Reservation was never disestablished by Congress, and the land reserved for the Creek Nation since the 19th century remains Indian country. *McGirt*, p. 1 (syllabus).

Although the *McGirt* Court limited its holding to defining the Creek Nation's "Indian country" for purposes of the Major Crimes Act, the OTC cannot ignore the Court's clarification of the boundaries of "Indian country," as defined in 18 U.S.C. § 1151(a), because Oklahoma law relies heavily on Section 1151 to define "Indian country" for state purposes. Moreover, because the State's taxing power falls within its civil regulatory jurisdiction, the OTC must be cognizant of the federal limitations on such jurisdiction within Indian country.

In the United States Supreme Court's 1832 decision in *Worcester v. Georgia*, the Court held that states lack the power to exercise their civil regulatory jurisdiction within the territorial limits of Indian nations. The Court described such nations as "distinct political communities, having territorial boundaries, within which their authority is exclusive. . . ." *Worcester v. Georgia*, 31 U.S. 515, 557 (1832). Over the ensuing years, the Court modified its holding in *Worcester* "in cases where essential tribal relations were not involved and where the rights of Indians would not be jeopardized. . . ." *Williams v. Lee*, 358 U.S. 217, 219 (1959). The Court has recognized a limited state taxing jurisdiction over certain persons and transactions in "Indian country" as that term is defined in 18 U.S.C. § 1151, as discussed below.

III. AREAS OF ANTICIPATED IMPACT

The OTC is responsible for the administration and enforcement of state tax laws and the collection of a majority of all state-levied taxes and fees. Although there is a potential impact on the OTC's ability to administer and collect all tax types within the Creek Reservation boundary, the primary revenue impact will likely derive from individual income taxes and sales/use taxes. The OTC anticipates that the analysis related to those tax types will be applicable to many of OTC's other areas of regulatory authority.



Individual Income Taxes

The State is prohibited from imposing tax upon the income of individual members of federally recognized Indian tribes as long as the individual tribal member lives and earns the income from sources within Indian country under the jurisdiction of the tribe to which the member belongs. Oklahoma Administrative Code § 710:50-15-2, which governs the application of Oklahoma individual income tax to Native Americans, provides:

710:50-15-2. Application of the Oklahoma Individual Income Tax to Native Americans

(a) Definitions. The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) "Indian Country" means and includes formal and informal reservations, dependent Indian communities, and Indian allotments, the Indian titles to which have not been extinguished, whether restricted or held in trust by the United States. [See: 18 U.S.C. § 1151]

(2) "Informal reservations" means and includes lands held in trust for a tribe by the United States and those portions of a tribe's original reservation which were neither allotted to individual Indians, nor ceded to the United States as surplus land, but were retained by the tribe for use as tribal lands.

(3) "Dependent Indian communities" means and refers to a limited category of Indian lands that are neither reservations nor allotments, and that satisfy the following two requirements:

(A) They have been set aside by the federal government for the use of the Indians as Indian land; and,

(B) They are under federal superintendence.

(b) Instances in which income is exempt. The income of an enrolled member of a federally recognized Indian tribe shall be exempt from Oklahoma individual income tax when:

(1) The member is living within "Indian Country" under the jurisdiction of the tribe to which the member belongs; and, the income is earned from sources within "Indian Country" under the jurisdiction of the tribe to which the member belongs; or,

(2) The income is compensation paid to an active member of the Armed Forces of the United States, if the member was residing within his tribe's "Indian Country" at the time of entering the Armed Forces of the United States, and the member has not elected to abandon such residence.

(c) Instances in which income is not exempt. The income of an enrolled member of a federally recognized Indian tribe shall not be exempt from Oklahoma individual income tax when:

(1) The income is derived from sources outside of "Indian Country", regardless of the taxpayer's residence.



(2) The member resides in Oklahoma, but not within "Indian Country", regardless of the source of the income.

(3) Either the source of the income or the place of residence is under the jurisdiction of a tribe of which the taxpayer is not a member.

(4) The member claims residence within "Indian Country" primarily by virtue of various Indian health, social, educational, welfare and financial programs. Even though administered by the Tribe within its own service area, these are merely forms of general federal aid, and are not sufficient to support a finding of "Indian Country" for purposes of this Section.

(5) The member claims residence on unrestricted, non-trust property, owned by an Indian Housing Authority. Such property does not fall within the definition of "Indian Country," nor does residence thereon constitute residence within a dependent Indian community.

(d) Part-time residency. If an enrolled member of a federally recognized Indian tribe resides within "Indian Country" for a portion of the year, and resides outside "Indian Country" for a portion of the year, such enrolled member shall be taxed based upon where such enrolled member resided when the income in question was earned.

OKLA. ADMIN. CODE § 710:50-15-2.

The provisions of Section 710:50-15-2 accurately reflect existing United States Supreme Court precedent relating to a state's jurisdiction to impose state income taxes on a member of a federally recognized Indian tribe. The Court has long articulated two grounds for holding that a state lacks the power to tax a tribal member living on tribal land and deriving income from tribal land: (1) the "Indian sovereignty" doctrine and (2) federal preemption.

The "Indian sovereignty" doctrine, known as the *Williams* test, was articulated by the Court in 1959: in cases where a state attempts to exercise its civil jurisdiction over a tribal citizen for acts occurring in Indian country, "absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them." *Williams v. Lee*, 358 U.S. 217, 220 (1959).

The second barrier, federal preemption, results from the Supremacy Clause in Article VI of the United States Constitution, which provides that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Constitution, Art. VI, para. 2. Pursuant to the Supremacy



Clause, state laws (including tax laws) that conflict with federal laws are preempted and cannot be enforced.

In *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164 (1973), the United States Supreme Court held that the State of Arizona had no power to tax the income of a Navajo citizen who resided on the Navajo Reservation and whose income was wholly derived from on-reservation sources. The Court also held the state income tax at issue to be barred both by the *Williams* test and by federal preemption.

Two decades later, in *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114 (1993), the Court affirmed that the *McClanahan* holding was not confined to state taxation of income earned by tribal citizens on their tribe's reservation but extended to such income earned in their tribe's Indian country. The Court held that "a tribal member need not live on a formal reservation to be outside the State's taxing jurisdiction; it is enough that the member live in 'Indian country.' Congress has defined Indian country broadly to include formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States. See 18 U.S.C. §1151." *Okla. Tax Comm'n v. Sac and Fox Nation*, 508 U.S. at 123.

The *McClanahan* rule does not, however, apply to income earned outside Indian country, even if the taxpayer is the tribe itself. See *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973). "Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State. That principle is as relevant to a State's tax laws as it is to state criminal laws." *Mescalero Apache Tribe*, 411 U.S. at 148–49 (internal citations omitted). Likewise, the *McClanahan* rule does not apply to income earned by tribal members who reside outside of their tribe's Indian country. In *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450 (1995), the Court considered this question and held such income was within the state's taxing jurisdiction, even if the income was derived directly from the tribe. *Okla. Tax Comm'n v. Chickasaw Nation*, 515 U.S. at 462–67.

Further, the State may impose income tax on income of a tribal citizen who lives and earns income in the Indian country of another tribe (e.g., a Chickasaw citizen who lives and works in Creek Nation Indian country). See *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 512 (1991) (upholding the state's right to collect state sales tax on tribal sales to non-members); *Duro v. Reina*, 495 U.S. 676, 686–87 (1990) (noting that "[e]xemption from state taxation for residents of a reservation . . . is determined by tribal membership, not by reference to Indians as a general class"). As the *Duro* Court explained, taxation of certain transactions of tribal members on the reservation is prohibited "because this



would interfere with internal governance and self-determination. But this rationale does not apply to taxation of nonmembers, even where they are Indians . . .” because the nonmembers are not constituents of the governing tribe. *Duro*, 495 U.S. at 686–87, citing *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134 (1980).

As the above-cited cases make clear, the geographic area relevant in determining whether a state’s taxing power is limited is a tribe’s Indian country. In *Oklahoma Tax Commission v. Sac and Fox Nation*, the Court applied the definition of “Indian country” in 18 U.S.C. § 1151 for state tax purposes; Section 1151 provides, in relevant part:

the term “Indian country” . . . means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

18 U.S.C. § 1151.

McGirt plainly held that the Creek Reservation survived allotment and remains intact today. *McGirt v. Oklahoma*, 591 U.S. ____ (2020). Therefore, the provisions of Oklahoma Administrative Code § 710:50-15-2 now apply in all lands within the Reservation boundaries described in the Muscogee (Creek) Treaty of 1866. Consequently, the State may not tax the income of individual Creek Nation citizens who reside within the Reservation boundaries, to the extent that the income is generated within those boundaries. If the tribal citizen is a part-year resident of the area, the exemption is limited to income generated in the area during the time of residence. Income of individual Creek Nation citizens who reside outside of Creek Nation Indian country remains subject to Oklahoma income tax, even if the income is derived from working for the tribe.

The OTC currently has procedures in place to verify claims for the exclusion pursuant to Oklahoma Administrative Code § 710:50-15-2, and does not anticipate significant changes to the verification process will be necessary.



Sales and Use Taxes

In evaluating the State's authority to impose sales taxes in Indian country, it is necessary to consider the citizenship of both the purchaser and the retailer.

Sales by a Tribal Entity

The State lacks the power to impose its sales tax on sales made by a tribal entity to a tribal member on tribal land. Imposition of such a tax would be barred either under the *Williams* test or by federal preemption. See also, *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. at 158 (noting that members of the tribes "are immune from any state tax"). Case law, however, indicates the State may impose its sales tax on sales made by a tribal entity to a non-tribal member, although the tax may be held to be barred in certain scenarios, and tribes may successfully defend against the State's collection actions by invoking sovereign immunity, making collection difficult even where appropriate. In addition, the State may impose a minimal burden on tribal businesses for collection and enforcement of the state sales tax validly imposed on non-tribal member purchasers. See *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 483 (1976).

In *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991), the United States Supreme Court considered state taxation of sales of tobacco products to non-tribal members. Although the issue in *Citizen Band Potawatomi* involved tax on cigarette purchases, the Court's holding applies generally to sales taxes imposed on purchases occurring on tribal lands. The Court affirmed the State's right to impose sales taxes on tribal sales of tobacco products to non-tribal members, but denied the State's requested relief based on the tribe's successful assertion of sovereign immunity. The State's authority to tax non-tribal members on tribal lands extends to purchases made by Indians who are not members of the tribe in question. See *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. at 160–61.

It should be noted that the potential exists for purchasers to be subject to double taxation on sales occurring on tribal land. "The power to tax transactions occurring on trust lands and significantly involving a tribe or its members is a fundamental attribute of sovereignty which the tribes retain unless divested of it by federal law or necessary implication of their dependent status." *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. at 152. Unless Congress has provided otherwise, the power of taxation by the tribe "may be exercised over members of the tribe and over nonmembers, so far as such nonmembers may accept privileges of trade, residence, etc., to which taxes may be attached as conditions." *Id.* Imposition



of the tribal sales tax does not prohibit the State from imposing its sales tax on transactions where such tax is otherwise authorized.

Sales by a Non-Tribal Entity

Sales by a non-tribal entity to a non-tribal member are subject to sales tax. If the State has the power to tax sales to a non-tribal member by a *tribal* entity, it certainly has the power to tax such sales by a *non-tribal* entity. Neither federal preemption nor the *Williams* test provides grounds for exemption.

The State does not have jurisdiction to impose sales tax on sales made by a non-tribal entity to a tribal member within the boundaries of that member's tribal land. In *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450, the Court disallowed Oklahoma's collection of the state motor fuels tax from a tribal retailer because the legal incidence of the tax fell on the retailer. As the Court noted: "a State is without power to tax reservation lands and reservation Indians. Taking this categorical approach, we have held unenforceable a number of state taxes whose legal incidence rested on a tribe or on tribal members inside Indian country." *Chickasaw Nation*, 515 U.S. at 458 (internal citations omitted). Under Oklahoma law, the legal incidence of the sales tax falls on the purchaser. 68 O.S. §1361. In consequence, the State may not tax sales of goods by non-tribal members to tribal members in their tribe's Indian country.

Levy of Use Tax in Indian Country

The Oklahoma Use Tax Code, 68 O.S. § 1401 *et seq.*, requires use tax to be paid on purchases of tangible personal property which are purchased in a manner such that, pursuant to Oklahoma Administrative Code § 710:65-15-1, sales tax is not due, but which are brought into the State for storage, use, or other consumption. 68 O.S. § 1402; OKLA. ADMIN. CODE § 710:65-21-3. The use tax is levied "at the time of importation or storage of the property within the state." 68 O.S. § 1402. The State does not have jurisdiction to impose use tax on Creek Nation tribal members for purchases of tangible personal property stored, used or consumed within the boundaries of the Creek Reservation, for the reasons outlined above.

Enforcement

As discussed above, in *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, the United States Supreme Court affirmed the State's right to impose sales taxes on sales by the tribe to non-tribal members, but denied relief based on the tribe's assertion of sovereign immunity. Because of the State's limited regulatory authority within



Indian country, the OTC's ability to audit and collect taxes against tribal businesses is significantly hampered.

Motor Vehicle Excise Taxes and Registration Fees

The State imposes a vehicle registration fee “at the time of initial registration by the owner and annually thereafter” for all vehicles. 47 O.S. § 1132(A). The Oklahoma Vehicle License and Registration Act, 47 O.S. § 1101 *et seq.*, provides for various exemptions from registration fees, but there is not a specific statutory exemption for tribal members. In addition, an excise tax is imposed “upon the transfer of legal ownership of any vehicle registered in this state and upon the use of any vehicle registered in this state and upon the use of any vehicle registered for the first time in this state.” 68 O.S. § 2103(A)(1). Various exemptions from the motor vehicle excise tax are set forth in 68 O.S. § 2105, but there is not a specific statutory exemption for tribal members.

In *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114 (1993), the Court held that the OTC could not impose motor vehicle excise taxes and registration fees on Sac and Fox tribal members residing in Sac and Fox Indian country. The Sac and Fox opinion establishes that the OTC cannot require tribal members residing in their tribe's Indian country to register their vehicles with the State.¹

The Supreme Court in *McGirt* held that for purposes of the Creek Nation, the term “Indian country” includes all the lands within the Creek Reservation in the tribe's 1866 treaty with the United States. The OTC is prohibited from imposing motor vehicle excise taxes and motor vehicle registration fees upon Creek Nation citizens residing within the Creek Reservation.

Gross Production and Petroleum Excise Taxes

The OTC does not anticipate an impact on gross production collections as a result of *McGirt*. The Gross Production Tax Code levies a tax on the production of oil unless specifically exempted. 68 O.S. § 1001 *et seq.* In addition, an excise tax is levied upon the production of petroleum oil pursuant to 68 O.S. § 1101. Royalty interest income is specifically subject to the

¹ Certain tribes have motor vehicle registration and license tag compacts with the State, including the Chickasaw Nation, Choctaw Nation, and Cherokee Nation, which allow the OTC to license and register vehicles owned by tribal members, and to issue license plates designed by the Nations. Pursuant to the compacts, a portion of funds collected, which otherwise would be apportioned to the State's General Revenue Fund, is remitted to the Nation. A search of the Oklahoma Secretary of State's website indicates that no such compact is currently in place for the Creek Nation.



OKLAHOMA Tax Commission

gross production and petroleum excise taxes. 68 O.S. § 1001(C); 68 O.S. § 1101(A). The Oklahoma Court of Civil Appeals addressed the issue of whether the State is entitled to levy gross production and petroleum excise taxes on oil and gas produced from restricted allotted Indian land in *In the Matter of the Gross Production and Petroleum Excise Tax Protest of Rudolph Bruner*, 2006 OK CIV APP 21, 130 P.3d 767. The *Bruner* Court held that the Congressional Act of May 10, 1928, C 517, 45 Stat. 495 provided authority for levy of these two specific taxes, and the Act was a constitutional exercise of Congress' power because it did not constitute an illegal breach of prior agreements between the Creek Nation and the United States. *Id.*, 2006 OK CIV APP 21, ¶¶ 9, 14, 130 P.3d at 770–71.

Although the State may constitutionally impose gross production and petroleum excise taxes on allotted lands, the State may not impose a tax on unallotted lands owned by the tribe without clear Congressional authority. *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 765 (1985). The Gross Production Tax Code recognizes this exemption in 68 O.S. § 1008, which notes “the interest in such production owned by the restricted Indian or exempt governmental entity” is exempt from tax. 68 O.S. § 1008(A). Pursuant to this section, only land held by a tribe itself is eligible for an exemption from gross production tax, not land held by individual tribal members.

McGirt clarified the current boundaries of the Indian country over which the Creek Nation has jurisdiction, but it did not restore ownership of previously allotted or alienated lands back to the tribe. Therefore, lands owned by the Creek Nation itself remain exempt from gross production and petroleum excise taxes, and allotted lands, whether owned by a tribal member or a non-tribal member, remain subject to such taxes.

Ad Valorem Taxes

The OTC does not anticipate an impact on collection of ad valorem taxes as a result of *McGirt*. “All property in this state, whether real or personal, except that which is specifically exempt by law, and except that which is relieved of ad valorem taxation by reason of the payment of an in lieu tax, shall be subject to ad valorem taxation.” 68 O.S. § 2804. Ad valorem taxes are not imposed upon lands owned by Indian tribes or held in trust by the United States. Article 1, Section 3 of the Oklahoma Constitution provides:

The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been



extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States. Land belonging to citizens of the United States residing without the limits of the State shall never be taxed at a higher rate than the land belonging to residents thereof. No taxes shall be imposed by the State on lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use.

Oklahoma Constitution, Article 1, § 3.

Once title of the government or the tribe is extinguished, through sale or an act of Congress, lands become subject to ad valorem taxation under the laws of the State. See generally, *Hoskins v. Abbott*, 1942 OK 465, 127 P.2d 815. As noted above, *McGirt* clarified the current boundaries of the Indian country over which the Creek Nation has jurisdiction, but it did not restore ownership of previously allotted or alienated lands back to the Tribe. Therefore, the OTC does not expect any significant changes to the administration or collection of ad valorem taxes.

IV. NATURE AND EXTENT OF IMPACT

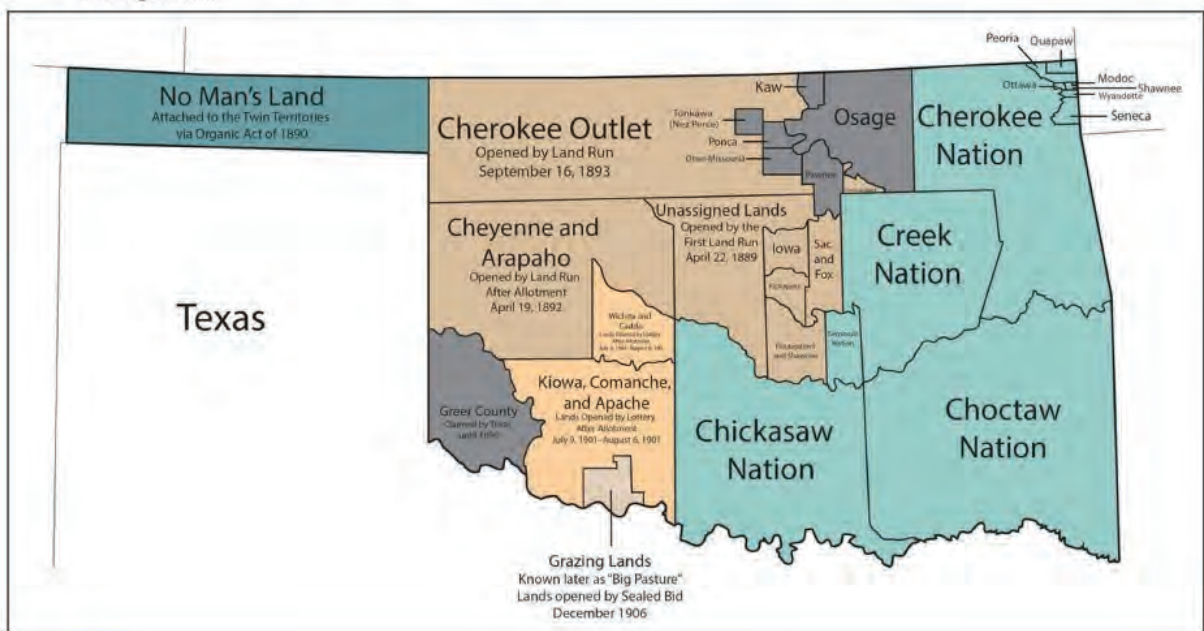
As discussed above, *McGirt* significantly expanded the area qualifying as Creek Nation Indian country. The holding in *McGirt* was limited to defining only the Creek Nation's Indian country, stating that "[e]ach tribe's treaties must be considered on their own terms, and the only question before us concerns the Creek," *McGirt*, p. 37; however, the OTC recognizes the potential for broader impact of the decision and a similar analysis may be applied to other tribes in the future.² The boundaries generally utilized in the OTC's estimates of potential revenue impact are reflected in the map below.

² The Chickasaw and Cherokee tribes are currently involved in litigation in McClain County and Craig County, respectively, in which they are seeking to present evidence to the Courts regarding their respective tribes' reservation boundaries, and to prove to the Courts that their tribal reservations have not been disestablished by Congress.



OKLAHOMA Tax Commission

Indian Territory Boundaries, 1889
(Pre-Organic Act)



Individual Income Taxes

The OTC performed a detailed analysis to estimate the potential income tax revenue impact of the expanded land area within which exempt tribal income may be earned post-*McGirt*, with the following considerations and limitations:

1. Claims for income tax refunds generally must be filed within three years from the date the income taxes were paid, 68 O.S. § 2373. For this reason, most taxpayers claiming refunds of income taxes paid on exempt tribal income will only be eligible to receive refunds for tax years 2017–2019.
2. Although *McGirt* only applies to the Creek Nation, current population estimates for each of the Five Civilized Tribes were analyzed based on Indian Territory boundaries from 1889.
3. Data limitations do not allow for a granular analysis linking (a) the jurisdiction of the tribe to which the member belongs and (b) that the tribal member lives within



Indian country governed by that member's tribe. The data available to the OTC consists of current estimates of the total Native American population of the Five Civilized Tribes within each of the Indian Territory boundaries from 1889. With the required linkage between tribal member and tribal jurisdiction not available, these estimates are likely high.

Census data was used to estimate the Native American population in the land area of the Five Civilized Tribes (the "Oklahoma tribal sovereignty areas" or "OTSAs"). Note that the Census data does not distinguish between tribes, only identifies residents as American Indian or Alaska Native (Census Bureau naming conventions). Housing demographics were then reviewed in an effort to determine the number of Native American households within the tribal boundaries based on population estimates. The total estimated number of Native American households was used as a proxy for income tax returns filed.

An analysis was performed, as shown in Table 1 below (Creek area highlighted), calculating the estimated income tax impact of expanding the boundaries within which the tribal income exclusion may be claimed. The estimated number of Native American households was multiplied by the estimated cost per return (tax expenditure) of the tribal income exclusion pre-*McGirt*. Table 1 reflects a single year tax estimate as well as an additional three-year total to reflect the potential prior year refund claims for periods for which the statute of limitations is still open (2017–2019). This cost has not previously been calculated for the Oklahoma Tax Commission Tax Expenditure Report because, unlike other state tax incentives, the tribal income exclusion is mandated by federal law. The average tax expenditure was estimated by using the Oklahoma Individual Income Tax Micro Simulation Model utilizing data for tax years 2016–2018.



OKLAHOMA Tax Commission

Table 1
Income Tax Impact Using Estimated Cost Per Return of Tribal Exemption Pre-McGirt

	Census Tribal Area ¹						Total
	Cherokee OTSA	Chickasaw OTSA	Choctaw OTSA	Creek OTSA	Seminole OTSA	Creek / Seminole Joint OTSA	
Total Population	517,039	312,615	231,451	792,241	23,008	2,065	1,878,419
Native American Population	87,352	21,972	28,150	57,716	4,490	430	200,110
% Native American	17%	7%	12%	7%	20%	21%	11%
Occupied housing units	193,358	116,803	89,000	307,485	8,487	735	715,868
Estimated Native American Housing Units ²	32,667	8,209	10,825	22,401	1,656	153	75,911
Estimated average net tax per return	958	958	958	958	958	958	958
Per year	31,295,162	7,864,648	10,369,907	21,459,933	1,586,672	146,623	72,722,944
2017-2019	93,885,486	23,593,944	31,109,720	64,379,798	4,760,016	439,868	218,168,832

¹Total Population, Native American Population and Housing Units - My Tribal Area U.S. Census Bureau: Source: 2014-2018 American Community Survey 5-Year Estimates <https://www.census.gov/tribal/index.html>

The Census Bureau collects data for the American Indian and Alaska Native (AIAN) population and publishes specific counts, estimates, and statistics. My Tribal Area gives you quick and easy access to selected statistics from the American Community Survey (ACS). The ACS provides detailed demographic, social, economic, and housing statistics every year for the nation's communities. My Tribal Area is powered by the Census Application Programming Interface (API).

² Estimated Native American Housing Units are a proxy for income tax returns.

For the Creek Nation only, there is a potential per-year revenue impact of \$21,459,933, and an additional estimated revenue impact of \$64,379,798 reflecting potential prior year refund claims. If *McGirt* is expanded to apply to all Five Civilized Tribes, this analysis results in a potential impact of \$72,722,944 per tax year, and an additional \$218,168,832 for three previous tax years. This calculation assumes that one hundred percent (100%) of the Native American population within the Creek Nation OTSA consists of members of the Creek Nation, and that all such members work within the Reservation boundaries. The OTC believes the estimated tax expenditure per return is the best approximation of the actual cost per return; however, the estimate is likely high.



The revenue impact estimates above reflect total possible claims for the exclusion from individual income tax, and do not take into account those Creek Nation tribal members who are already claiming the exclusion. Table 2 below reflects the total tax expenditure related to the tribal income exclusion, for all tribes, for tax years 2016–2018.

Table 2
Income Tax Impact of Tribal Income Tax Exclusion for 2016–2018

Tax Expenditure Amount for Exempt Tribal Income	
2016	\$1,574,000
2017	\$1,212,000
2018	\$1,334,000

The OTC does not capture data identifying the tribe to which taxpayers claiming the exclusion belong; however, the OTC estimates that approximately 17.5 percent of the pre-*McGirt* claims for exclusion may be attributed to members of the Creek Nation. The Creek Nation's website reported 65,070 enrolled Creek Nation tribal members in Oklahoma for 2019, which is approximately 17.5 percent of Oklahoma's estimated 371,104 Native American residents for 2019 (according to Census Population Estimates).

It is reasonable to conclude that an average of recent tax expenditures for exempt tribal income can be subtracted from the projections in Table 1 above to arrive at a possible future impact amount. The average expenditure over the 2016–2018 periods totals \$1,373,333, which can be subtracted from the estimated total per-year impact of \$72,722,944. For the Creek Nation only, an average of \$240,333 can be subtracted from an estimated per-year impact of \$21,459,933.

Sales and Use Taxes

The OTC also conducted an analysis of the potential impact on sales and use tax revenue using a methodology similar to that used for income tax. Based upon Oklahoma's current population of 3,956,571, and the total state sales and use taxes of \$2,614,514,000 projected to be collected in FY21, an average sales/use tax expenditure of \$661 is estimated per person. Table 3 below (Creek area highlighted) provides an estimate of the impact for FY21 calculated by multiplying the total Native American population by the estimated Oklahoma per capita sales and use tax expenditure (\$661).



Table 3
Sales and Use Tax Impact Using Estimated Oklahoma Per Capita Sales and Use Tax Expenditure

Sales and Use Tax Analysis by Census Tribal Area ¹								
	Oklahoma Total	Cherokee OTSA	Chickasaw OTSA	Choctaw OTSA	Creek OTSA	Seminole OTSA	Creek / Seminole Joint OTSA	Total 5 Civilized Tribe Boundaries
Total Population ²	3,956,571	517,039	312,815	231,451	792,241	23,008	2,065	1,878,419
Native American Population		87,352	21,972	28,150	57,716	4,490	430	200,110
% Native American		17%	7%	12%	7%	20%	21%	11%
State Sales Tax Estimate FY 21	\$ 2,291,367,000							
State Use Tax Estimate FY 21	\$ 323,147,000							
Total	\$ 2,614,514,000							
Per Capita Sales and Use Tax	\$ 661	\$ 661	\$ 661	\$ 661	\$ 661	\$ 661	\$ 661	\$ 661
Estimate Within Tribal Areas		\$ 57,722,484	\$ 14,519,164	\$ 18,801,605	\$ 38,138,906	\$ 2,967,005	\$ 284,145	\$ 132,233,289

¹Total Population, Native American Population - My Tribal Area. U.S. Census Bureau; Source: 2014-2018 American Community Survey 5-Year Estimates <https://www.census.gov/tribal/index.html>

The Census Bureau collects data for the American Indian and Alaska Native (AIAN) population and publishes specific counts, estimates, and statistics. My Tribal Area gives you quick and easy access to selected statistics from the American Community Survey (ACS). The ACS provides detailed demographic, social, economic, and housing statistics every year for the nation's communities. My Tribal Area is powered by the Census Application Programming Interface (API).

²Quick Facts - Oklahoma U.S. Census Bureau <https://www.census.gov/quickfacts/facttable/OK/PST045219>

For the Creek Nation only, this analysis results in an estimated impact on sales/use tax collections of \$38,138,906 for FY21. If *McGirt* is expanded to apply to all Five Civilized Tribes, this analysis results in a potential impact of \$132,233,289 for FY21.

As noted for the income tax analysis above, the estimated sales and use tax impact is likely high because data limitations do not allow for a granular analysis linking (a) the jurisdiction of the tribe to which the member belongs and (b) that purchases are being made within Indian country governed by that member's tribe. Further, the estimate does not account for Creek Nation tribal members presently making some or all purchases exempt from sales and use taxes as a result of other exemptions, nor does it account for persons who do not purchase goods or taxable services due to age or other factors.

In addition to the estimated fiscal impact to the State, expansion of the Creek Reservation boundaries will have a significant administrative impact on businesses making sales to customers within the Reservation. While the levy of tax is upon the purchaser, the "primary burden for operation of the sales tax system is upon the vendor of merchandise, the performer of taxable services, and the renter or lessor of property, and requires that they collect the tax from the purchaser, user or consumer." OKLA. ADMIN. CODE § 710:65-7-2(a). Liability for such taxes is on the vendor, unless properly completed documentation is maintained showing such purchaser is



exempt from imposition of the tax. See generally, OKLA. ADMIN. CODE § 710:65-7-6. Post-*McGirt*, vendors making exempt sales to members of the Creek Nation within the Creek Reservation will be required to verify eligibility for the exemption and maintain documentation showing the sale was made to a member of the Creek Nation, or risk facing liability for all uncollected taxes.

Motor Vehicle Excise Taxes and Registration Fees

The OTC has reviewed and considered the following factors in evaluating the potential impact of *McGirt* on collection of motor vehicle excise taxes and registration fees:

- The Court in *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114, held that the OTC could not impose motor vehicle taxes on tribal members residing in their tribe's Indian country.
- The Creek Nation Tax Commission currently issues tribal license plates to its eligible members.
- According to its website, the Creek Nation Tax Commission primarily titles and registers personal vehicles, commercial vehicles, motorcycles, recreational vehicles, trailers, farm trucks and trailers, and all-terrain vehicles. It does not currently register boats or manufactured homes. To be eligible for a tribal license plate issued by the Creek Nation Tax Commission, the vehicle owner must be an enrolled member of the Creek Nation and reside within the jurisdictional boundaries of the Creek Nation.
- The current licensing practice of the Creek Nation is consistent with *McGirt's* expansion of what constitutes Indian country for such purposes.

Based on the foregoing, the OTC estimates that *McGirt* will result in a minimal reduction in motor vehicle collections.



V. SUGGESTIONS FOR MITIGATION OF POTENTIAL IMPACT

Authority for a state to exercise its civil regulatory jurisdiction within the territorial limits of Indian nations is controlled by federal law, and Oklahoma has limited state taxing jurisdiction over certain persons and transactions within “Indian country,” as that term is defined in 18 U.S.C. § 1151. The State generally lacks authority to modify those limitations through state legislation. However, the State’s jurisdiction could be expanded through an Act of Congress specifically subjecting citizens of the Indian nations located within the State’s borders to state taxes. Such legislation could take a variety of forms—from a very broad possibility of eliminating all restrictions on state taxation, to a more narrow approach of authorizing only certain state taxes or taxation of certain types of transactions.

In the absence of federal legislation which may mitigate the impact of *McGirt*, the State could enter one or more compacts with the tribes for collection and apportionment of various tax types. Historically, the State and the tribes have engaged in compacts for cigarette and tobacco taxes, motor fuel taxes, and license tags.

In 1992, as a result of the United States Supreme Court ruling in *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 512 (1991), the Oklahoma Legislature enacted 68 O.S. § 346, authorizing the Governor to enter into cigarette and tobacco products tax compacts on behalf of the State with federally recognized Indian tribes or nations of this State. A few years later, in 1996, as a result of the United States Supreme Court ruling in *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450 (1995), the Oklahoma Legislature enacted 68 O.S. § 500.63, recognizing the “interest of this state to resolve disputes between the state and federally recognized Indian tribes on [the issue of state government taxation of motor fuel sales made by Indian tribes] by entering into contracts” under which the Indian tribes would be compensated for any lost tribal motor fuel tax revenues, while also allowing “both the State and the Indian tribes to benefit from tax revenues from sales of motor fuel on Indian country.” The Creek Nation has entered a motor fuel compact and a tobacco compact with the State, both of which are currently still in effect.

Although the Oklahoma Legislature defined the provisions of the tobacco and motor fuel compacts by statute, such legislation is not required for further compact negotiations. The State has entered multiple motor vehicle and license tag compacts with Indian tribes without a statutory guideline for the terms of the compact. The Executive Branch of the State is well positioned to



evaluate its authority to enter into any new compacts, and to negotiate the terms of the compacts in the best interest of the State.

The benefit of tribal compacts should not be discounted. During the last two fiscal years, the State received over \$73 million in cigarette and tobacco tax collections as a result of compact sales. While a portion of the compact sales would be subject to tax even in the absence of the compact, collection of those tax amounts may have been difficult due to claims of sovereign immunity and the State's limited enforcement authority on tribal land. Engaging in a compact for sales tax collections, for example, could significantly mitigate the impact of the expanded Creek Reservation boundaries under *McGirt*.

The OTC anticipates an immediate impact on tax collections as a result of *McGirt*, with the bulk of the initial potential impact occurring during FY21. Income tax collections are a primary area of concern, as qualifying individual tribal members may (1) immediately halt income tax withholding from their wages, (2) begin claiming the income tax exclusion on 2020 individual income tax returns, or 2019 individual income tax returns for which a valid extension has been filed, and (3) file amended income tax returns claiming refunds for prior years within the statute of limitations. Because *McGirt* held that the Creek Reservation was never disestablished, the decision applies retroactively, and allows taxpayers to claim tax refunds for prior years. The OTC will continue to administer the tax laws of the State using the processes and procedures currently in place, and is prepared to assist in implementation of any statutory or other changes which may impact the above analysis.



OKLAHOMA Tax Commission

OFFICE OF THE GENERAL COUNSEL

December 7, 2020

Blaine Peterson

President and CEO, OSCP
1900 NW Expressway, Suite 910
Oklahoma City, OK 73118-1898

Re: Request for additional information relating to the Report of Potential Impact of
McGirt v. Oklahoma

Dear Mr. Peterson,

Thank you for your inquiry regarding the Oklahoma Tax Commission's ("OTC") administration of various tax types following the United States Supreme Court decision in *McGirt v. Oklahoma*. As you are probably aware, the *McGirt* Court limited its holding to criminal matters under the Major Crimes Act only. At this time, the *McGirt* decision has not been expanded to apply to any civil matters, including taxation.

The OTC's Report of Potential Impact of *McGirt v. Oklahoma*, filed with the Commission on Cooperative Sovereignty on September 30, 2020 as directed by Executive Order No. 2020-24, outlines the *potential* impact on administration and revenue; however, until a court of competent jurisdiction expands *McGirt* to apply to administration of taxes, the expansion of the boundaries of the Muscogee (Creek) Nation under *McGirt* does not impact OTC's administration or enforcement of the tax laws of the State.

As additional guidance becomes available, we would be happy to send it to you for distribution to your membership. If you have any questions, please feel free to contact me.

Sincerely,

Elizabeth Field

Elizabeth Field
General Counsel

EXHIBIT "E"



AFFIDAVIT OF HAROLD AND NELLIE MEASHINTUBBY

STATE OF OKLAHOMA)
COUNTY OF Pittsburg) SS

Harold Meashintubby and Nellie Meashintubby, husband and wife, of lawful age, being first duly sworn upon oath, states:

1. They are both duly enrolled members of the Choctaw Nation of Oklahoma. A copy of their Choctaw Nation Membership cards is attached as Exhibit **F-1**.

2. Their residence is in McAlester, Oklahoma, which has been their residence for many years including for Tax Years 2017 through the present. Their residence in McAlester, Oklahoma, County of Pittsburg, is located within the exterior boundaries of the Choctaw Nation Reservation.

3. The income for Harold and Nellie Meashintubby that was declared for Tax Years 2017 and 2020 was earned from sources within the exterior boundaries of the Choctaw Nation Reservation.

Further Affiant Saith Not.

Harold Meashintubby

HAROLD

MEASHINTUBBY

Subscribed and sworn to before me, a Notary Public, on this 16th day of February 2022.

Monique Ramirez

My Commission Expires: 08/09/2023

Notary Public



Nellie Meashintubby

NELLIE

MEASHINTUBBY

Subscribed and sworn to before me, a Notary Public, on this 16th day of February 2022.

Monique Ramirez

Notary Public

My Commission Expires:

08/09/2023





Harold Meashintubby

Harold David Meashintubby
 [Redacted]
 McAlester, OK, 74501
 Membership #: CN [Redacted]
 DOB: [Redacted]
 Gender: Male

Tribal Membership Card
Choctaw Nation of Oklahoma
 P.O. Box 1210
 Durant, OK 74702-1210



CHOCTAW NATION
 Faith • Family • Culture

Terry Stephens
 Director, CDIB/Membership

[Signature]
 Chief, Choctaw Nation

Date Approved: 8/19/2019
 Date Expires: 08/19/2024



Nellie Meashintubby

Nellie Marie (Sam) Meashintubby
 [Redacted]
 McAlester, OK, 74501
 Membership #: CN [Redacted]
 DOB: [Redacted]
 Gender: Female

Tribal Membership Card
Choctaw Nation of Oklahoma
 P.O. Box 1210
 Durant, OK 74702-1210



CHOCTAW NATION
 Faith • Family • Culture

Terry Stephens
 Director, CDIB/Membership

[Signature]
 Chief, Choctaw Nation

Date Approved: 4/2/2019
 Date Expires: 04/02/2024



OKLAHOMA

Tax Commission



HAROLD and NELLIE MEASHINTUBBY
 [REDACTED]
 MCALESTER OK 74502-0753

Date Issued: June 3, 2021

Letter ID: [REDACTED]

Taxpayer ID: [REDACTED]

DLN: [REDACTED]

AMI

Dear Taxpayer,

Your return for the tax period ended December 31, 2017 has been adjusted as indicated.

Account: Individual Income Tax ([REDACTED])

Line	Description	Reported	Adjusted
Line 2	Oklahoma Subtractions (511-A)	\$ [REDACTED]	\$ [REDACTED]
Line 7	Oklahoma Adjusted Gross Income	\$ [REDACTED]	\$ [REDACTED]
Line 13	Oklahoma Taxable Income	\$ [REDACTED]	\$ [REDACTED]
Line 14	Oklahoma Income Tax	\$ [REDACTED]	\$4,109.00
Line 22	Balance	\$ [REDACTED]	\$4,109.00
Line 30	Paid With Original Return	\$0.00	\$869.00
Line 33	Total Payments & Credits	\$ [REDACTED]	\$4,109.00
Line 34	Overpayment (Line 21 - Line 33)	\$ [REDACTED]	\$0.00
Line 38	Amount To Be Refunded	\$ [REDACTED]	\$0.00

Description of adjustment(s):

- There is a mathematical error on line "OK Schedule A, Line #10: Taxpayer needs to provide supporting documents (such as trust deeds) to show that Taxpayer is residing and working in a land that is an Indian allotment, restricted, or held in trust by the United States during the tax year" of your return.
- Exempt Tribal Income exclusion has been disallowed or adjusted. In order to qualify, all three requirements must be met: be a tribal member, live and work on Indian land to which the member belongs.

Refer to a copy of your return and the return instructions to better understand the adjustment.

As mandated by Oklahoma Statute, Title 68 Section 221(C), this change will become final 60 days after the date of this notice unless a written protest is submitted explaining your position why the adjustment is not accurate or fails to meet statutory guidelines. Protests should be submitted within 60 days.

To submit online:

- Visit our Oklahoma Taxpayer Access Point (OkTAP) at: <http://oktap.tax.ok.gov>
- On the OkTAP page select the **Submit Documentation** link under the **I Want To**

MEASHINTUBBY

Page 2

column

To make payments, visit our web site at www.tax.ok.gov. Note that state income tax refunds are subject to offset for other state or municipality debt. Also, any balance due reflected on this notice does not include interest or penalty that may apply.

For questions regarding this notice or if other assistance is needed, contact us at www.tax.ok.gov or (405) 521-3160.

Sincerely,

Oklahoma Tax Commission

July 15, 2021

Nellie Meashintubby

██████████
McAlester, OK 74502

Oklahoma Tax Commission
P.O. Box 269060
Oklahoma City, OK 73126-9060

Re: Denial of Exempt Tribal Income Exclusion

I recently received a letter ID# ██████████ stating my Exempt Tribal Income claim has been denied.

The State of Oklahoma is prohibited from imposing tax upon the income of individual members of federally recognized Indian tribes as long as said individual tribal member lives and earns the income from sources within Indian Country under the jurisdiction of the tribe to which the member belongs.

Oklahoma Administrative Code § 710:50-15-2, which governs the application of Oklahoma individual income tax to Native Americans, provides: "Indian Country" means and includes formal and informal reservations, dependent Indian communities, and Indian allotments; the Indian titles to which have not been extinguished, whether restricted or held in trust by the United States. [See: 18 U.S.C. § 1151] of 710:50-15-2.

I'm a member of the Choctaw Nation of Oklahoma as verified by the included copy of my Tribal Membership Card.

I live within the "Indian Country" of the Choctaw Nation of Oklahoma as established by the physical address of my place of domicile along with supporting documents that have been previously submitted to you but, I am providing along with this letter.

My income is derived within the "Indian Country" of the Choctaw Nation of Oklahoma.

The Oklahoma State Constitution: Article I, Section 1-3 states:

Unappropriated public lands - Indian lands - Jurisdiction of United States.

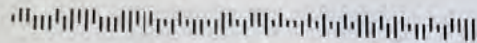
The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States. Land belonging to citizens of the United States residing without the limits of the State shall never be taxed at a

higher rate than the land belonging to residents thereof. No taxes shall be imposed by the State on lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use.

Respectfully, I strongly and formally object to the automatic dismissal of my original claim without probable cause or explanation, I request a formal protest.

Best regards,

Nellie Meashintubby


OKLAHOMA
 Tax Commission


HAROLD and NELLIE MEASHINTUBBY
 [REDACTED]
 MCALESTER OK 74502-0753

Date Issued: October 19, 2021

Letter ID: [REDACTED]

Taxpayer ID: [REDACTED]

DLN: [REDACTED]

AMI

Dear Taxpayer,

Your return for the tax period ended December 31, 2020 has been adjusted as indicated.

Account: Individual Income Tax ([REDACTED])

Line	Description	Reported	Adjusted
Line 2	Oklahoma Subtractions (511-A)	\$ [REDACTED]	\$0.00
Line 7	Oklahoma Adjusted Gross Income	-\$60.00	\$ [REDACTED]
Line 13	Oklahoma Taxable Income	\$0.00	\$ [REDACTED]
Line 14	Oklahoma Income Tax	\$0.00	\$6,377.00
Line 39	Tax Due	\$0.00	\$6,377.00

Description of adjustment(s):

- A copy of your federal return was not provided.
- There is a mathematical error on line 2, from line 10 of schedule 511-A. The documents required to verify the Exempt Tribal Income claimed are detailed in the Oklahoma Individual Income Tax Forms and Instructions booklet, or found on-line at our website. This is the reason for the adjustment of your return.
- Exempt Tribal Income exclusion has been disallowed or adjusted. In order to qualify, all three requirements must be met: be a tribal member, live and work on Indian land to which the member belongs.

Refer to a copy of your return and the return instructions to better understand the adjustment.

As mandated by Oklahoma Statute, Title 68 Section 221(C), this change will become final 60 days after the date of this notice unless a written protest is submitted explaining your position why the adjustment is not accurate or fails to meet statutory guidelines. Protests should be submitted within 60 days.

To submit online:

- Visit our Oklahoma Taxpayer Access Point (OkTAP) at: <http://oktap.tax.ok.gov>
- On the OkTAP page select the **Submit Documentation** link under the **I Want To** column

To make payments, visit our web site at www.tax.ok.gov. Note that state income tax refunds are subject to offset for other state or municipality debt. Also, any balance due

2501 N. Lincoln Blvd. | Oklahoma City, OK | 73194
www.tax.ok.gov

EXHIBIT "I"

Harold Meashintubby
Nellie Meashintubby
[REDACTED]
McAlester, OK 74502

November 12, 2021

VIA CERTIFIED MAIL

Clark Jolley, Chairperson
Oklahoma Tax Commission
2501 N. Lincoln Blvd.
Oklahoma City, OK 73194

Re: Payment Under Protest and Notice of Intent to File Suit Under 68 O.S. § 226

To the Chairperson of the Oklahoma Tax Commission:

This letter is in response to a letter we received from the Oklahoma Tax Commission (OTC) (Letter ID [REDACTED]), issued on October 19, 2021, stating that the “Exempt Tribal Income exclusion has been disallowed or adjusted” and assessing taxes owed in the amount of \$6,377.00.

Pursuant to 68 O.S. § 226, and without waiving any objections to the jurisdiction of the OTC to tax and regulate in Indian country, enclosed please find check no. 1001 in the amount of \$6,377.00 that is being paid under protest. This is formal notice to the OTC of our objection to this tax assessment, including any associated fees, penalties, and interest. Also, this is formal notice to the OTC of our intention to file a lawsuit for the recovery of this tax assessment, including recovery of any attorney’s fees and other costs and expenses associated with preparation of our case, all in accordance with Section 226.

Without waiving any right to submit additional legal arguments or objections, we provide the following reasons for submitting this objection:

A. The State is without jurisdiction to levy and collect taxes from the income of Tribal members who both reside and earn that income within the Indian country to which the Tribal member belongs. *Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450 (1995); *Oklahoma Tax Comm’n v. Sac and Fox Nation*, 508 U.S. 114 (1993); *McClanahan v. Arizona*, 411 U.S. 164 (1973); *see also* Oklahoma Administrative Code 710:50-15-2. The term “Indian country” is codified at 18 U.S.C. § 1151.

B. Taxpayers Harold and Nellie Meashintubby are members of the Choctaw Nation of Oklahoma, a federally-recognized Indian tribe, and reside in McAlester, Oklahoma, which is

EXHIBIT "J"

geographically situated within the exterior boundaries of the Choctaw Nation Reservation. The continued existence of the Choctaw Nation Reservation was recently affirmed by the Oklahoma Court of Criminal Appeals (OCCA) in the case of *State v. Sizemore*, 2021 OK CR 6. Also, Taxpayers' income is from sources within the exterior boundaries of the Choctaw Nation Reservation. Thus, Taxpayers satisfy all legal requirements for the Exempt Tribal Income exclusion under both Federal law and the State's own administrative code.

C. On July 9, 2020, the U.S. Supreme Court issued its ruling in the landmark case of *McGirt v. Oklahoma*, 140 S.Ct. 2452, and, in a 5-4 decision, held that the boundaries of the reservation lands promised to the Creek Nation through treaties were never disestablished by Congress. Even though *McGirt* involved a criminal jurisdiction question, the ultimate holding that the Nation's Reservation continues to exist as the Nation's Indian country did not limit the legal status of the Reservation to only criminal matters. Although Section 1151 is included in the U.S. Code under Title 18 (Crimes and Criminal Procedure) and provides a definition of Indian country for purposes of determining Federal criminal jurisdiction, numerous Federal court rulings have confirmed this classification applies to questions of both civil and criminal jurisdiction. See, e.g., *Indian Country, U.S.A. Inc. v. State of Okl. ex rel. Oklahoma Tax Com'n*, 829 F.2d 967, 973 (10th Cir. 1987). The Indian country classification is the appropriate benchmark "for approaching the allocation of federal, tribal, and state authority with respect to Indians and Indian lands." *Id.* (citing *Solem v. Bartlett*, 465 U.S. 463, 465 n.2 (1984); *DeCoteau v. District County Court*, 420 U.S. 425, 427-28 & n.2 (1975); *Cheyenne-Arapaho Tribes of Oklahoma v. Oklahoma*, 618 F.2d 665 (10th Cir. 1980)).

D. On April 1, 2021, the OCCA, in *State v. Sizemore*, applied the same analysis the Supreme Court used in *McGirt* to determine that the Choctaw Nation Reservation boundaries were never disestablished by Congress and thus remain the Indian country of the Choctaw Nation under 18 U.S.C. § 1151(a). The Court's analysis was based on certain Treaties regarding the Choctaw Reservation boundaries, including the 1898 Atoka Agreement, 30 Stat. 495 and the 1830 Treaty of Dancing Rabbit Creek, 7 Stat. 333.

E. In the seminal Supreme Court case regarding state income tax collection efforts on Reservation Indians in *McClanahan v. Arizona*, 411 U.S. 164 (1973), the Court relied on the Indian law principles articulated in *Worcester v. Georgia*, 6 Pet. 515 (1832) where the Court held there "this concept of Indian reservations as [being] separate, although dependent nations, [means] that state law could have no role to play within the reservation boundaries." The *McClanahan* Court, in holding that Reservation Indians who both reside and earn income from Reservation sources were exempt from State income tax, relied on the *Worcester* rationale even though *Worcester* was not an income tax case. The Court specifically found:

Although *Worcester* on its facts dealt with a State's effort to extend its criminal jurisdiction to reservation lands, the rationale of the case plainly extended to state taxation within the reservation as well.

McClanahan, 411 U.S. at 169. Notably, the current issue of whether the legal status of the Reservation under *McGirt* applies beyond criminal matters is analogous to the factual situation in *McClanahan* and may be compared in reference to the *McClanahan* quote cited above:

“Although *McGirt* on its facts dealt with a State’s effort to extend its criminal jurisdiction to reservation lands, the rationale of the case plainly extended to state taxation within the reservation as well.”

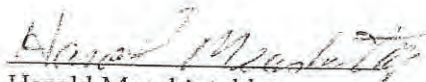
F. The Oklahoma Supreme Court has also acknowledged the significance of the Indian country legal classification:

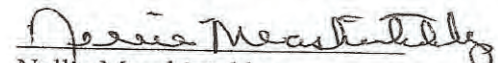
The touchstone for allocating authority among the various governments has been the concept of “Indian Country,” a legal term delineating the territorial boundaries of federal, state, and tribal jurisdiction. Historically, the conduct of Indians and interests in Indian property within Indian Country have been matters of federal and tribal concern. Outside Indian Country, state jurisdiction has obtained.

Ahboah v. Housing Auth. of the Kiowa Tribe, 660 P.2d 625, 627 (Okla. 1983).

G. None of the above-cited cases describe an 1151 Reservation as being a reservation for only criminal purposes or a reservation for only civil purposes. As the courts have held, the term “Indian country” has a distinct legal significance identifying the Tribal territory where Tribal law and Federal law are the primary authority, whether in criminal, civil, or taxation matters.

Sincerely,


Harold Meashintubby


Nellie Meashintubby



OKLAHOMA Tax Commission



HAROLD and NELLIE MEASHINTUBBY
MCALESTER OK 74502-0753

Date Issued: December 15, 2021
Letter ID: [REDACTED]
Taxpayer ID: ***-**-****

COL

Dear Taxpayer,

Our records indicate a balance remaining on your 2020 income tax account.

TAX DUE -----	\$	0.00
PENALTY -----	\$	318.85
INTEREST -----	\$	1,007.22
TOTAL DUE -----	\$	1,326.07

Interest amount shown may include Underpayment of Estimated Tax Interest.

Payment can be made online at <http://oktap.tax.ok.gov> or remit using the enclosed envelope, along with the billing coupon below.

If you need more time to pay your balance, visit <http://oktap.tax.ok.gov> to see if you are eligible for an OkTAP Pay Plan - **OR** - you may contact (405) 521-2212. You will need to reference the Letter ID number provided in the upper right-hand corner of this letter.

DO NOT DELAY: Failure to pay the balance due in full, or to establish and adhere to a pay plan, by the due date on the billing coupon below may cause your account to be referred for additional collection activity. Additional collection activity may include, but is not limited to: referral to a third party collection agency, the issuance of a tax lien, wage garnishment, levy of your bank account, referral to the Federal Treasury Offset Program (TOP), intercept of State refunds or overpayments, and/or additional collection and court cost fees applied to your unpaid tax balance.

Do not fold, staple or paperclip

Please Detach Here and Return with Payment

Do not tear or cut below line

BLC OKLAHOMA TAX COMMISSION PAYMENT

bL121

MAILING ADDRESS CHANGE
(ENTER NEW MAILING ADDRESS BELOW)

HAROLD MEASHINTUBBY

Account ID:	[REDACTED]
Media Number:	[REDACTED]
Reporting Period:	December 31, 2020
Due Date:	January 10, 2022

Total Due \$1,326.07

Amount of Payment:

Please remit only one check per coupon

EXHIBIT "K"



OKLAHOMA Tax Commission



HAROLD and NELLIE MEASHINTUBBY
MCALESTER OK 74502-0753

Date Issued: January 18, 2022
Letter ID: [REDACTED]
Taxpayer ID: [REDACTED]

*Received
1/25/22*

COL

URGENT: YOUR TAX DELINQUENCY REMAINS UNPAID

Dear Taxpayer,

Our records indicate you have not responded to our request for payment in full or established a pay plan for the balance remaining on your 2020 income tax account.

TAX DUE -----	\$	0.00
PENALTY -----	\$	318.85
INTEREST -----	\$	1,007.22
TOTAL DUE -----	\$	1,326.07

Payment can be made online at <http://oktap.tax.ok.gov> or remit using the enclosed envelope, along with the billing coupon below.

If you need more time to pay your balance, visit <http://oktap.tax.ok.gov> to see if you are eligible for an OkTAP Pay Plan - **OR** - you may contact (405) 521-2212. You will need to reference the Letter ID number provided in the upper right-hand corner of this letter.

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CALL OUR OFFICE TODAY TO RESOLVE THIS MATTER: (405) 521-2212

Do not fold, staple or paperclip

Please Detach Here and Return with Payment

Do not tear or cut below line

BLC OKLAHOMA TAX COMMISSION PAYMENT

bL121

MAILING ADDRESS CHANGE
(ENTER NEW MAILING ADDRESS BELOW)

HAROLD MEASHINTUBBY

Account ID:	[REDACTED]
Media Number:	[REDACTED]
Reporting Period:	December 31, 2020
Due Date:	February 10, 2022

Total Due **\$1,326.07**

Amount of Payment: _____

Please remit only **one** check per coupon