

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

KEWEENAW BAY INDIAN COMMUNITY,
a federally-recognized Indian tribe, on its own
behalf and as *parens patriae* for its members,

Plaintiff,

v.

File No. 2:05-CV-0224

JAY B. RISING, Treasurer of the State of
Michigan; MICHAEL REYNOLDS,
Administrator of the Collection Division of the
Michigan Department of Treasury; WALTER
A. FRATZKE, Native American Affairs
Specialist of the Michigan Department of
Treasury; and TERRI LYNN LAND, Secretary
of State of Michigan,

Hon. Gordon J. Quist

Defendants.

**AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff Keweenaw Bay Indian Community (the “Community”), by and through its
counsel, states and alleges as follows:

INTRODUCTION

1. The Community brings this action for declaratory and injunctive relief in response to Defendants’ violations of federal law and unlawful interference with the Community’s federally sanctioned activities.

2. Defendants have exercised or caused to be exercised what they have characterized as the “common law set off right of the State” with respect to funds belonging or payable to the Community and/or its members. Defendants have done so, however, in a manner that violates federal, state, and tribal law. Therefore, any such alleged set off right cannot be exercised with respect to such funds or any other funds belonging to the Community or its members.

3. In addition, Defendants have enforced, and continue to enforce, the Michigan Sales Tax Act, Mich. Comp. Laws §§ 205.51-205.78 (the “Sales Tax Act”), and the Michigan Use Tax Act, Mich. Comp. Laws §§ 205.91-205.111 (the “Use Tax Act”), in a manner that violates federal and state law and impermissibly restricts the Community’s and individual Community members’ rights to make purchases free from Michigan sales and use taxes and free from other unlawful and impermissible burdens.

JURISDICTION

4. The District Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1362, because the Community is an American Indian tribe maintaining government-to-government relations with the United States and having a governing body duly recognized by the Secretary of the Interior, and the Community asserts claims arising under the Constitution and laws of the United States, including, but not limited to, the Supremacy Clause of Article VI, Section 2 of the Constitution, the Commerce Clause of Article I, Section 8, Clause 3 of the Constitution, the Indian Trader Statutes, 26 U.S.C. §§ 261-264, and 42 U.S.C. § 1983. The District Court has supplemental jurisdiction over the Community’s state law claims pursuant to 28 U.S.C. § 1367(a), in that the Community asserts claims so related to their federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

VENUE

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because one or more of the Defendants reside in this District, a substantial part of the events or omissions giving rise to the claims occurred in this District, and a substantial part of the property that is the subject of the action is situated in this District.

PLAINTIFF

6. Plaintiff Keweenaw Bay Indian Community is a federally-recognized Indian tribe organized under the Indian Reorganization Act of 1934, 25 U.S.C. § 476, and the successor in interest of the L'Anse and Ontonagon bands of Chippewa Indians. The Community exercises powers of self-governance and governmental jurisdiction over the L'Anse Indian Reservation located in Baraga County, Michigan, and other lands in the Upper Peninsula of Michigan which are held by the United States in trust for the Community.

DEFENDANTS

7. Defendant Jay B. Rising is the Treasurer of the State of Michigan. In this capacity, Defendant Rising oversees the Michigan Department of Treasury (the "Department"), the State agency that administers and enforces the Sales and Use Tax Acts and that conducted the sales and use tax audits and exercised the alleged set off rights described in this Complaint. Defendant Rising is sued in his official and individual capacities.

8. On information and belief, Defendant Michael Reynolds is the Administrator of the Collection Division of the Department. Defendant Reynolds is sued in his official and individual capacities.

9. Defendant Walter A. Fratzke is the Native American Affairs Specialist of the Department. Defendant Fratzke is the Department official charged with administering, enforcing and applying federal and state laws to Michigan tribes and tribal members as they involve Michigan taxes, including sales and use taxes. Defendant Fratzke is sued in his official and individual capacities.

10. Defendant Terri Lynn Land is Secretary of State of the State of Michigan. In this capacity, Defendant Land oversees the Department of State, which manages and administers

programs and services including motor vehicle registration, licensing, taxes and fees. Defendant Land is sued in her official capacity.

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

The Community, its History, and its Members

11. The L'Anse band of Chippewa Indians occupied the area near the base of Keweenaw Bay in Michigan's Upper Peninsula since long before the coming of European explorers and possessed aboriginal title to the same.

12. Pursuant to the Treaty with the Chippewa at La Pointe, Oct. 4, 1842, 7 Stat. 591 (the "1842 Treaty"), the Chippewa Indians of the Mississippi and Lake Superior, including the L'Anse band, ceded to the United States the western half of Michigan's Upper Peninsula, including the Keweenaw Bay area, as well as portions of northern Wisconsin. Article II of the 1842 Treaty provided that the "[t]he Indians stipulate for the right of hunting on the ceded territory, with the other usual privileges of occupancy, until required to remove by the President of the United States, and that *the laws of the United States shall be continued in force, in respect to their trade and intercourse with the whites, until otherwise ordered by Congress*" (emphasis added). At the time the 1842 Treaty was executed, the laws of the United States governing Indian trade and intercourse applied to transactions within Indian country. Accordingly, Article II of the 1842 Treaty provided that the federal Indian trade and intercourse laws would apply to the signatory bands within the area ceded by the 1842 Treaty as though such territory remained Indian country. Congress has never abrogated the 1842 Treaty provision for enforcement of the federal Indian trade and intercourse laws. Accordingly, federal law governing Indian trade and intercourse, including but not limited to the Indian Trader Statutes, 25 U.S.C. §§ 261 to 264, remains applicable to the Community's trade and intercourse within the area ceded by the 1842 Treaty (the "Ceded Area").

13. Pursuant to the Treaty with the Chippewa at La Pointe, Sept. 30, 1854, 10 Stat. 1109 (the “1854 Treaty”), the United States set apart nearly 60,000 acres of lands near the base of Keweenaw Bay as an Indian reservation for the L’Anse and Vieux De Sert Bands of Chippewa Indians. These lands comprise the L’Anse Indian Reservation (the “Reservation”).

14. The Community also is the beneficial owner of additional lands outside the Reservation in the Upper Peninsula which are held by the United States in trust for the Community.

15. The Community exercises sovereign authority and governmental jurisdiction over its Reservation and trust lands, which constitute “Indian country” as defined by federal law and for purposes of determining the scope and validity of state tax and regulatory jurisdiction over the Community, its members, and their activities. The Community has approximately 3,319 enrolled members.

16. The Community’s governing body is its Tribal Council, consisting of 12 persons elected by the enrolled members, 6 each from the L’Anse and Baraga Districts on the east and west sides, respectively, of the Keweenaw Bay. The Tribal Council elects from its own numbers a Tribal President and other officers, who constitute the Executive Council. The current Tribal President is Susan LaFernier. The Tribal Council is vested with all of the sovereign legislative and executive powers of the Community.

17. The Community conducts various economic development activities to generate revenues for other tribal government operations and programs and to provide employment for Community members, including, among others: (1) the Pines Convenience Center, a gas station and convenience store in Baraga, Michigan; (2) KBIC Tire and Flatproofing, a tire and automotive service store in Baraga, Michigan; (3) WCUP-FM Eagle Country radio station in

Baraga, Michigan, and WGLI-FM The Rockin' Eagle radio station in Hancock, Michigan; (4) Ojibwa Casino Resort, a gaming enterprise that conducts gaming and related motel, restaurant and bar, bowling and gift shop activities in Baraga, Michigan; (5) Ojibwa Casino - Marquette, a gaming enterprise that conducts gaming and related restaurant and bar activities in Marquette, Michigan; and (6) KBIC Tribal Construction, a construction enterprise in Baraga, Michigan. Each of these enterprises is located either within the Community's Reservation boundaries, on trust lands, or within the Ceded Area..

18. The Community, through its various tribal government operations and programs, provides essential governmental services to its members and their families, to other Native Americans residing on or near the Reservation and trust lands, and to visitors to the Reservation and trust lands, including such services as police protection and services; natural resources management; environmental protection; housing; medical, dental, mental health, community health and violence intervention programs and services; social services programs; justice administration; education; day care; road maintenance and public works.

19. The Community and its members have purchased, leased, or rented and expect to continue to purchase, lease, or rent from retail sellers a wide variety of goods and services, including but not limited to motor vehicles, office furniture and equipment, household appliances and furnishings, clothing, food and beverages served at restaurants and other eating and drinking establishments, gas, electricity, telephone services, and other telecommunications and similar services. In addition, various contractors and their subcontractors have purchased, leased, or rented and expect to continue to purchase, lease, or rent from Indian and non-Indian suppliers construction materials, supplies, and equipment to be incorporated into or used in the construction of building projects for the Community and its members.

The Community's 1977 Tax Agreement with the State of Michigan

20. On November 21, 1977, the Community and the State of Michigan executed a Tax Agreement acknowledging the nontaxable status of the Community and its members with respect to various Michigan taxes, including sales and use taxes, effective as of November 2, 1977 (the "1977 Tax Agreement").

21. In the area of sales tax, the 1977 Tax Agreement provided for a refund to the Community of sales tax paid by Community members for the period from July 1, 1976, to June 30, 1977, and future periods, computed under a formula set forth in the agreement, and further provided that Community members could purchase free of tax cars, trucks, boats, airplanes, homes, and materials to build new homes.

22. In the area of use tax, the 1977 Tax Agreement provided that Community members could purchase free of tax telephone service, vehicles, watercraft, and snowmobiles.

23. The 1977 Tax Agreement did not contain any provisions that permitted the Department to conduct sales or use tax audits of the Community, to assess sales or use tax liability against the Community, or to offset refunds payable under the 1977 Tax Agreement to the Community, or that otherwise waived the sovereign immunity of the Community in any respect.

24. On April 29, 1997, the Department notified the Community that it was terminating any tax agreements in effect between the Community and the State, effective as of May 29, 1997. However, the Department, through Defendant Fratzke, has taken the position that the 1977 Tax Agreement expired on or around April 20, 1994.

25. While other tribes in Michigan have elected to enter into voluntary agreements with the State of Michigan regarding the imposition of state taxes since the termination of the

Community's 1977 Tax Agreement, the Community has elected, in an exercise of its sovereign prerogative, not to enter into a tax agreement with the State.

The Sales Tax Act

26. Michigan's Sales Tax Act imposes a 6% tax on retail sales, leases, and rentals of tangible personal property. "Tangible personal property" includes, among other things, motor vehicles, office furniture and equipment, household appliances and furnishings, clothing, food and beverages served at restaurants and other eating and drinking establishments, electricity, gas, and construction materials.

27. The Sales Tax Act requires purchasers who qualify for statutory exemptions to provide proof of exempt status to the seller, but such purchasers are not required to secure pre-approval from a Department official prior to each purchase.

The Use Tax Act

28. Michigan's Use Tax Act imposes a 6% tax on the use, storage, or consumption of certain specified tangible personal property in Michigan. Every seller is required to collect the use tax from the consumer.

29. The Use Tax Act presumes that tangible personal property purchased, leased, or rented outside of Michigan is subject to use tax if brought into Michigan within 90 days of the purchase date.

30. Michigan's use tax is imposed on, among other things, the use, storage, or consumption of motor vehicles in Michigan if purchased, leased, or rented out of state, the use of certain telephone and other telecommunications services, and the use of hotel lodging services.

31. The Use Tax Act requires persons who qualify for statutory exemptions to provide proof of exempt status to the seller, but such persons are not required to secure pre-approval from a Department official prior to each transaction.

The 1993-94 Sales and Use Tax Audits and the Subsequent Offsets

32. Beginning in 1995 and continuing through mid-1996, the Department conducted separate sales and use tax audits of the Community with respect to each of its fiscal years ending September 30, 1993, and September 30, 1994 and the Department issued its final reports with respect to these audits in May and June 1996.

33. On information and belief, the Department set forth in its audit transmittal letters the following proposed sales and use tax deficiencies (the “1993-94 Sales Tax Deficiencies” and the “1993-94 Use Tax Deficiencies,” and collectively the “1993-94 Tax Deficiencies”) to be satisfied in part by offsets to refunds payable under the 1977 Tax Agreement to the Community (the “1996 Audit Offsets”):

<u>Tax Types and Years</u>	<u>1993-94 Tax Deficiencies</u>	<u>1996 Audit Offsets</u>	<u>Net 1993-94 Tax Deficiencies</u>
1993 Sales Tax	\$59,498.00	\$30,394.00	\$29,104.00 ¹
1994 Sales Tax	\$82,587.00	\$37,856.00	\$44,731.00
1993 Use Tax	\$18,214.00	\$4,600.00 ²	\$ 13,614.00
1994 Use Tax	\$25,978.00	\$14,989.00	\$10,989.00
<u>Totals:</u>	\$186,304.00	\$87,839.00	\$98,438.00

34. On information and belief, all of the 1993-94 Sales Tax Deficiencies arose from sales made by the Community at its gaming facility and related motel, restaurant and bar, bowling, and gift shop facilities on the Reservation. On information and belief, all of the 1993-

¹ As a result of a subtraction error, the audit report mistakenly identified this deficiency as \$29,498.00.

94 Use Tax Deficiencies, likewise, arose from payments by the Community's customers for services provided by the Community at its gaming and related facilities on the Reservation, for motel and banquet room rentals, bowling shoe rentals, and telephone charges.

35. In the case of each audit for which the Community has a complete copy of the Department's audit transmittal letter, the Department auditor concluded that "[p]enalty and interest are not applicable as they are not address[ed] in the agreement."

36. On May 14, 2002, the Department held an informal conference regarding the 1993-94 Tax Deficiencies. The Community did not appear for or participate in the conference, although the tribal attorney attempted to participate in the conference by telephone and was ignored. Department Referee Mark A. Meyer issued an Informal Conference Recommendation (the "Recommendation") upholding the 1993-94 Tax Deficiencies. On September 20, 2002, the Department issued its Decision and Order of Determination (the "Decision") in accordance with Referee Meyer's Recommendation. The Decision and the Recommendation each stated that neither penalties nor interest shall be applied.

37. On September 27, 2002, following the issuance of the Decision, the Department issued Final Bills For Taxes Due (Final Assessments) to the Community with respect to the 1993-94 Tax Deficiencies, in the following amounts, including interest contrary to the Department's Decision:

² The audit transmittal letter stated that the 1996 offset was a \$14,989.00 gasoline tax refund, but this refund appears to have been mistakenly offset by both the 1993 and the 1994 Use Tax Deficiencies. Later communications from the Department clarify this error.

<u>Tax Type and Year</u>	<u>Tax Liability</u>	<u>Interest</u>	<u>Total</u>
1993 Sales Tax	\$21,671.00	\$11,302.71	\$32,973.71
1994 Sales Tax	\$44,731.00	\$23,330.01	\$68,061.01
1993 Use Tax	\$13,614.00	\$ 7,100.47	\$20,714.47
1994 Use Tax	\$10,989.00	\$ 5,731.33	\$16,720.33
<u>Totals:</u>	\$91,006.00	\$47,464.51	\$138,469.52

38. Since September 27, 2002, the Department has sent to the Community a Monthly Statement of Account purporting to summarize the balances owed by the Community to the Department with respect to 1993 and 1994 Michigan sales and use taxes. These Monthly Statements of Account show that penalties and interest have accrued on these balances, contrary to the Department's decision. These balances, including interest and penalties accruing since September 27, 2002, are referred to in this Complaint as the "1993-94 Sales Tax Assessments" and the "1993-94 Use Tax Assessments," and collectively as the "1993-94 Tax Assessments."

39. In November 2002, Defendants or their predecessors offset or caused to be offset funds belonging to the Community and/or its members to satisfy, in whole or in part, the 1993-94 Tax Assessments (the "2002 Offsets"). On information and belief, the 2002 Offsets were made with respect to the following fund categories on the following approximate dates in the following approximate amounts:

<u>Fund Category</u>	<u>Approximate Offset Date(s) in 2002</u>	<u>Offset Amount(s)</u>
Federal Medicaid Program	November 19 and 25	\$ 651.77
Federal Community Health Program	November 19	\$ 7,897.00
Federal Child Day Care Program	November 19	\$ 273.81
State Department of Transportation Funds	November 20	\$128,051.19
<u>Total:</u>		\$136,873.77

40. The 2002 Offsets occurred without warning or opportunity to contest the offsets.

41. When the Community raised objections to the 2002 Offsets in November and December 2002, the Department, through Defendant Fratzke and/or others, reversed the offsets. The 2002 Offsets are not at issue in this litigation.

42. In May and June 2005, Defendants once again offset or caused to be offset funds belonging to the Community and/or its members to satisfy, in whole or in part, the 1993-94 Tax Assessments (the "2005 Offsets"). On information and belief, the 2005 Offsets were made with respect to the following fund categories on the following approximate dates in the following approximate amounts:

<u>Fund Category</u>	<u>Approximate Offset Date(s) in 2005</u>	<u>Offset Amount</u>
Federal Medicaid Program	May 10, 17, 25, and 31; June 7	\$ 4,157.61
Federal Women, Infant & Children Program	June 7	\$28,670.42
Federal Safe and Stable Families Program	May 25	\$ 410.00
Federal Child Day Care Program	May 10; June 7	\$ 928.28
State Motor Fuel Tax Refunds	June 1, 2, and 8	\$55,623.48
Unknown at present	June 14	\$13,715.11
<u>Total:</u>		\$103,504.90

43. Like the 2002 Offsets, the 2005 Offsets occurred without warning or opportunity to contest the offsets.

44. The Community raised similar objections to the 2005 Offsets as it raised to the 2002 Offsets and requested that the Department reverse the offsets as it did in 2002. Defendant Fratzke responded that the Department made the 2005 Offsets in reliance on “the common law right of the State to set off any liquidated sums which may be due it by a citizen against any refund or income tax which may be due the citizen.” Defendant Fratzke further stated on June 28, 2005, that the Department would further evaluate the situation upon receiving the Community’s reasoning and support for its position, and would refund any of the 2005 Offsets where warranted. Although the Community provided such reasoning and support on August 9, 2005, the Department has failed to reverse any of the 2005 Offsets.

45. The Community and the State of Michigan are parties to a consent judgment entered in the case Keweenaw Bay Indian Community v. State of Michigan, et al., No. 2:94-CV-262 (W.D. Mich. Feb. 2, 2001) (“Consent Judgment”). The Consent Judgment settled a federal

lawsuit that the Community had brought against the State of Michigan under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq. (“IGRA”), regarding the Community’s ability to conduct gaming on certain of its trust lands in Marquette County, Michigan. Pursuant to the Consent Judgment, the Community agreed, among other things, to make semi-annual payments to or for the benefit of the State of Michigan in an amount equal to 8% of the net win at each casino derived from class III electronic games of chance, as defined in IGRA. The Consent Judgment provided that the Community must make the semiannual 8% payments no later than 60 days after October 1 and March 31 of each year. The Community, through its Tribal Council, delayed making the semiannual 8% Fund payments that were due in May 2005, while the Community attempted to obtain the Department’s agreement to reverse the 2005 Offsets. Because the Department did not agree to reverse the 2005 Offsets, the Community subsequently determined to offset against the 8% Fund payment that was due in May 2005 with respect to the Ojibwa Casino Resort in Baraga, Michigan, amounts that were due to the Community and its members from the Department and other State agencies.

Recent Applications of Michigan’s Sales and Use Tax Acts to the Community and its Members with Respect to Their Purchases

46. As further described in Paragraphs 47 to 58, with one notable exception (involving construction materials, supplies, and equipment), the Community generally has been able to purchase, lease, or rent goods and services free of Michigan sales and use taxes, although with respect to certain classes of property the Community generally has been required to obtain pre-approval of specific transactions from Defendant Fratzke or other Department officials. In contrast, Community members generally have *not* been able to purchase, lease, or rent goods and services free of Michigan sales and use taxes. In addition, on information and belief, Defendants and/or their predecessors and/or their subordinates have instructed a number of retailers to

collect sales tax on the sale, lease, or rental of goods and services to Community members and have interfered with the Community's ability routinely to make nontaxable purchases of goods and services.

(a) **Motor Vehicles**

47. The Community has purchased, leased, or rented and expects to continue to purchase, lease, or rent a variety of types of motor vehicles for use in its economic development activities and other governmental operations and programs. The Community currently owns, leases, or rents approximately 83 motor vehicles which are principally garaged within the Community's Reservation and trust lands. The Community generally has been able to purchase, lease, or rent such vehicles free of Michigan sales and use taxes, although Defendant Rising and one or more of his predecessors and Defendant Fratzke have required the Community to secure pre-approval from Defendant Fratzke or other Department officials prior to each purchase, lease, or rental and also have required the Community to inform the Department for what purpose each vehicle will be used by the Community.

48. Community members have purchased, leased, or rented and/or expect to purchase, lease, or rent one or more motor vehicles to be principally garaged within the Community's Reservation and trust lands. Although the Community members have attempted to purchase, lease, or rent such vehicles free of sales and use taxes, the Community members generally have been unable to do so. Representative transactions in which sales or use tax has been collected from Community members with respect to motor vehicles include:

(a) Jennifer Misegan, an enrolled member of the Community living within the Community's Reservation, purchased a motor vehicle in 2005 in a transaction in which title to and risk of loss with respect to the vehicle transferred within the Reservation. On information and belief, an employee of the motor

vehicle retailer from which Ms. Misegan purchased her car called Defendant Land's office and was instructed by a subordinate of Defendant Land that sales tax must be charged because the Community had not entered into a tax agreement with the State. On information and belief, the instructions to motor vehicle retailers by Defendant Land's office that sales tax must be charged on sales to Community members have been given pursuant to explicit instructions from or with the explicit approval of Defendant Fratzke and with the explicit or tacit approval of Defendants Rising and Land and their predecessors.

(b) In 2000, Todd Chosa, an enrolled member of the Community living within the Community's Reservation, purchased a motor vehicle in Wisconsin. A subordinate of Defendant Land's predecessor required Mr. Chosa to pay Michigan's use tax, as well as Michigan's vehicle registration fee, as a condition to obtaining a Michigan license plate. On information and belief, this requirement has been imposed on Community members' registration for license plates pursuant to explicit instructions from or with the explicit approval of Defendant Fratzke and with the explicit or tacit approval of Defendants Rising and Land and their predecessors. Mr. Chosa sought a refund of the use tax, which was denied by the Department, but he prevailed in his appeal before the Michigan Tax Tribunal on the basis that the use tax could not validly be imposed as a matter of federal law. The Department has appealed the Tax Tribunal's decision to the Michigan Court of Appeals.

(b) **Office Furnishings and Equipment, Household Appliances and Furnishings, Clothing, and Food and Beverages Served at Restaurants and Other Eating and Drinking Establishments**

49. The Community has purchased, leased, or rented and expects to continue to purchase, lease, or rent office furnishings and equipment which it uses in its economic development activities and its other governmental operations and programs. The Community generally has been able to purchase, lease, or rent such office furnishings and equipment free of Michigan sales and use taxes.

50. Community members have purchased, leased, or rented and/or expect to purchase, lease, or rent office furnishings and equipment, household appliances and furnishings, clothing, and food and beverages served at restaurants and other eating and drinking establishments. Although the Community members have attempted to purchase, lease, or rent such property free of sales and use taxes, the Community members generally have been unable to do so.

(c) **Electricity, Gas, Telephone and Other Telecommunications Services, and Similar Goods and Services**

51. The Community has purchased and expects to continue to purchase electricity, gas, telephone and other telecommunications services, and similar goods and services which it uses in its economic development activities and other governmental operations and programs, from such retail sellers as Baraga Telephone, MCI, Alltel, Upper Peninsula Power Company, SEMCO Energy, Ferrellgas, and Ontonagon County Rural Electrification Association. Although the Community generally has been able to purchase such goods and services free of Michigan sales and use taxes, the Community has been charged such taxes.

52. On information and belief, Defendant Fratzke, with the explicit or tacit approval of Defendant Rising and his predecessors, has attempted to interfere with the Community's ability routinely to make nontaxable purchases of electricity, gas, telephone and other

telecommunications services, and similar goods and services. For example, on May 10, 2004, Defendant Fratzke wrote a letter to the Upper Peninsula Power Company purporting to explain (a) the federal tax immunities of Indian tribes and Indian traders, which explanation was contrary to federal law, as well as (b) the Department's procedural prerequisites for granting an immunity in a specific case, which exceeded the "minimal burdens" permitted under federal law. In the letter, Defendant Fratzke stated:

With regards to transactions involving Indian Tribes not operating under a State/Tribal tax agreement, the Department will review individual claims of exemption based on the specific circumstances surrounding that claim. Information needed to evaluate the claim would include the name of the Tribe and the individual purchaser (including title), the section of the tribal government using the property or receiving the service, what that use will be and the function of the Department or Section, and the physical address of the Department or Section actually using the product.

Upon receipt of the information, the State will evaluate the situation and determine if it is in agreement with the requester as to whether or not the State tax is federally preempted. If so, the Department will send a letter to the seller acknowledging the specific exemption.

53. Community members have purchased and/or expect to purchase electricity, gas, telephone and other telecommunications services, and similar goods and services from many or all of the same retail sellers from which the Community purchases such services. Although the Community members have attempted to purchase such goods and services free of sales and use taxes, the Community members generally have been unable to do so. Representative transactions in which sales or use tax has been collected from Community members with respect to electricity, gas, telephone and other telecommunications services, and similar goods and services include:

(a) Community members Michael and Susan LaFernier have been and continue to be required to pay sales and use taxes as part of their bills for electricity, gas,

and telephone and other telecommunications services provided to their home on the Reservation by Ontonagon County REA, SEMCO Energy, and Baraga Telephone, respectively.

(b) Community members Duane and Jennifer Misegan have been and continue to be required to pay sales and use taxes as part of their bills for electricity, gas, and telephone and other telecommunications services provided to their home on the Reservation by Ontonagon County REA, Ferrellgas, and Baraga Telephone, respectively.

54. On information and belief, Defendant Fratzke and/or other Department officials, with the explicit or tacit approval of Defendant Rising and his predecessors, has or have misinformed retailers regarding Community members' entitlement as a matter of federal law to make nontaxable purchases of electricity, gas, telephone and other telecommunications services, and similar goods and services. For example, on March 26, 2003, Kent Maki, the District Manager of Ferrellgas, wrote a letter to Mr. and Mrs. Misegan indicating that Ferrellgas had received the following instructions from one or more Department officials, which instructions were contrary to federal law:

Your Tribe is in negotiations with the State of Michigan right now to become tax exempt. However, it has not been settled as of yet. Until it is finalized the people in your Tribe will have to pay sales and use tax. Your name has been put on the list in our tax department and as soon as we receive word from the State of Michigan that this matter has been settled in court you will become tax exempt.

(d) Construction Materials and Equipment

55. As part of the execution of its governmental duties, the Community recently constructed the Niiwinakeaa Center, a government services building located on the Reservation near the Community's main government administration building. The Niiwinakeaa Center includes a technical center for the Community's community college, meeting facilities for tribal

elders, tribal youth, other tribal social groups, the tribal historic preservation committee, and other tribal committees, a gymnasium, and other recreational facilities. The cost of the project was approximately \$3,468,000.

56. The Niiwinakeaa Center was constructed pursuant to a contract between the Community and Gundlach-Champion, Inc. (“GCI”) dated June 26, 2003, and effective October 20, 2003. Pursuant to the terms of the contract, at the Community’s direction, title or possession and, if applicable, the risk of loss, as applicable, with respect to materials, supplies, and equipment purchased, leased, or rented by GCI and/or its subcontractors for incorporation into or use in the construction of the Niiwinakeaa Center was transferred within the Reservation. The United States Department of Agriculture provided the Community with a grant of \$40,000 and loans of \$1,436,000 for the project. On information and belief, Defendant Fratzke or other Department official, with the explicit or tacit approval of Defendant Rising, informed one or more representatives of GCI and/or its subcontractors that purchases, leases, and rentals of materials, supplies, and equipment by GCI and/or its subcontractors for incorporation into or use in the construction of the Niiwinakeaa Center were subject to Michigan sales and use taxes. On information and belief, Defendant Fratzke informed the President of GCI that GCI should not itemize Michigan sales and use taxes separately on its statements and invoices delivered to the Community. GCI and its subcontractors paid Michigan sales and use taxes with respect to purchases, leases, and rentals of materials, supplies, and equipment by GCI and/or its subcontractors for incorporation into or use in the construction of the Niiwinakeaa Center, and the economic burden of such taxes was passed through to the Community pursuant to the terms of its contract with GCI. The amount of such taxes was approximately \$50,000.

57. The Community will likely undertake additional construction projects in the future as part of the execution of its governmental duties.

58. Community members have undertaken construction projects in the past for business and personal purposes and are likely to do so in the future. On information and belief, many of the contractors and subcontractors have paid Michigan sales and use taxes with respect to their purchases, leases, and rentals of materials, supplies, and equipment to be incorporated into or used in such projects, and the economic burden of such taxes has been passed through by the contractors and subcontractors to the Community members.

Irreparable Harm to the Community and its Members

59. The 1993-94 Tax Assessments, the 1996 Audit Offsets, the 2005 Offsets, and the impositions of the Sales and Use Tax Acts described in Paragraphs 47 to 58 have caused and will continue to cause irreparable harm to the Community and its members because, among other reasons, they violate the federal rights of the Community and its members, constitute a violation of the Community's sovereignty recognized by longstanding federal law, threaten the Community's government operations and continued vitality, and diminish Community funds and resources available to provide health care, day care, other social services, police, natural resources management, education, and other essential governmental services for Community members, residents, and visitors, as well as to provide employment for Community members. Moreover, the Community's efforts in urging the Department to reverse the 2005 Offsets necessarily have diverted funds and other resources away from programs providing essential governmental services and employment for Community members. Defendants' continued attempts to collect the 1993-94 Tax Assessments and continued failure to reverse the 2005 Offsets will further diminish Community funds and resources available to provide these services

and employment and will delay or possibly eliminate these services and employment. None of these serious and potentially devastating harms to the Community and its members can be measured in dollars.

GENERAL STATEMENT OF FEDERAL LAW

60. Under established federal law, absent explicit congressional permission to the contrary, the imposition of a state tax the legal incidence of which falls upon an Indian tribe or tribal member with respect to activities within Indian country is categorically barred as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution. With respect to property principally housed, garaged, and stored by an Indian tribe or tribal member within Indian country but used both within and without Indian country, a state is without power to impose a tax upon the property or the use thereof unless such tax is apportioned to the actual amount of use outside Indian country. These categorical principles will be referred to herein as the *per se* rule against state taxation of Indian tribes and tribal members.

61. Under established federal law, absent explicit congressional permission to the contrary, the imposition of a state tax the legal incidence of which falls upon an “Indian trader” within the meaning of 25 U.S.C. §§ 261-264 also is categorically barred as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution. This categorical principle will be referred to herein as the *per se* rule against state taxation of Indian traders.

62. In situations in which the *per se* rules do not apply, an analysis balancing the federal, tribal, and state interests is used to determine whether a state may validly impose a tax (or other regulatory law) affecting an Indian tribe or tribal member. If the balance lies against the state’s interest in imposing the tax and federal law is not to the contrary, the state may *not* impose its tax (or other regulatory law). Under a related doctrine of federal law, a state may not

validly impose a tax (or other regulatory law) affecting an Indian tribe or tribal members if the tax (or other regulatory law) unlawfully infringes on the rights of tribal self-government.

63. Federal law also prohibits states from imposing more than minimal burdens on Indian tribes and their members in assisting with the collection or administration of state taxes.

COUNT I
1993-94 Sales Tax Assessments, 1996 Audit Offsets, and 2005 Offsets – *Per Se* Rule Against State Taxation of Tribes
(Declaratory Judgment, 28 U.S.C. § 2201)

64. The Community realleges the allegations set forth in Paragraphs 1 through 63 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

65. The 1993-94 Sales Tax Assessments, and the 1996 Audit Offsets and 2005 Offsets relating thereto, are invalid as a matter of federal law under the *per se* rule, because: (a) the legal incidence of the Michigan sales tax falls upon the retail seller (as held by Michigan courts), in this case the Community, (b) the Community's Reservation, where the sales in question took place, constitutes Indian country, and (c) Congress has not permitted the tax.

66. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that the 1993-94 Sales Tax Assessments, and the 1996 Audit Offsets and 2005 Offsets relating thereto, are invalid as a matter of federal law and violate the Supremacy Clause in Article VI of the United States Constitution;

(b) that the Community is not subject to criminal or civil liability for any failure to pay the 1993-94 Sales Tax Assessments; and

(c) that the 1996 Audit Offsets and 2005 Offsets relating to the 1993-94 Sales Tax Assessments must be reversed and the funds improperly withheld from the Community pursuant to these offsets must be restored to the Community.

67. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any further actions by Defendants or their successors to collect the 1993-94 Sales Tax Assessments, through offsets or otherwise, would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT II
1993-94 Tax Assessments, 1996 Audit Offsets, and 2005 Offsets – Balancing of Interests
(Declaratory Judgment, 28 U.S.C. § 2201)

68. The Community realleges the allegations set forth in Paragraphs 1 through 67 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

69. The federal and tribal interests outweigh any legitimate interest of Michigan with respect to each of the 1993-94 Tax Assessments, the 1996 Audit Offsets, and the 2005 Offsets and, therefore, each are invalid as a matter of federal law and violate the Supremacy Clause in Article VI of the United States Constitution.

70. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that each of the 1993-94 Tax Assessments, the 1996 Audit Offsets, and the 2005 Offsets are invalid as a matter of federal law and violate the Supremacy Clause in Article VI of the United States Constitution;

(b) that the Community is not subject to criminal or civil liability for any failure to pay the 1993-94 Tax Assessments; and

(c) that the 1996 Audit Offsets and the 2005 Offsets must be reversed and the funds improperly withheld from the Community pursuant to these offsets must be restored to the Community.

71. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any further actions by Defendants or their successors to collect the 1993-94 Tax Assessments, through offsets or otherwise, would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT III
1993-94 Tax Assessments, 1996 Audit Offsets, and 2005 Offsets – Infringement of Rights of Tribal Self-Government
(Declaratory Judgment, 28 U.S.C. § 2201)

72. The Community realleges the allegations set forth in Paragraphs 1 through 71 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

73. Each of the 1993-94 Tax Assessments, the 1996 Audit Offsets, and the 2005 Offsets unlawfully infringe on the rights of tribal self-government of the Community and violate the Community's inherent sovereign right to make its own laws and be ruled by them and, therefore, each are invalid as a matter of federal law and violate the Supremacy Clause in Article VI of the United States Constitution.

74. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that each of the 1993-94 Tax Assessments, the 1996 Audit Offsets, and the 2005 Offsets are invalid as a matter of federal law and violate the Supremacy Clause in Article VI of the United States Constitution;

(b) that the Community is not subject to criminal or civil liability for any failure to pay the 1993-94 Tax Assessments; and

(c) that the 1996 Audit Offsets and the 2005 Offsets must be reversed and the funds improperly withheld from the Community pursuant to these offsets must be restored to the Community.

75. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any further actions by Defendants or their successors to collect the 1993-94 Tax Assessments, through offsets or otherwise, would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT IV
1993-94 Tax Assessments, 1996 Audit Offsets, and 2005 Offsets – Violation of Indian
Commerce Clause
(Declaratory Judgment, 28 U.S.C. § 2201)

76. The Community realleges the allegations set forth in Paragraphs 1 through 75 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

77. The 1993-94 Tax Assessments, the 1996 Audit Offsets, and the 2005 Offsets each unlawfully interfere with commerce with the Indian tribes and, therefore, violate the Indian Commerce Clause in Article I, Section 8, Clause 3 of the United States Constitution.

78. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that each of the 1993-94 Tax Assessments, the 1996 Audit Offsets, and the 2005 Offsets violate the Indian Commerce Clause;

(b) that the Community is not subject to criminal or civil liability for any failure to pay the 1993-94 Tax Assessments; and

(c) that the 1996 Audit Offsets and the 2005 Offsets must be reversed and the funds improperly withheld from the Community pursuant to these offsets must be restored to the Community.

79. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any further actions by Defendants or their successors to collect the 1993-94 Tax Assessments, through offsets or otherwise, would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT V
2005 Offsets – Violations Relating to Federal Programs
(Declaratory Judgment, 28 U.S.C. § 2201)

80. The Community realleges the allegations set forth in Paragraphs 1 through 79 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

81. The 2005 Offsets of federal program funds are invalid as a matter of federal law and violate the Supremacy Clause in Article VI of the United States Constitution because such offsets violate the terms and purposes of the federal statutes and regulations to which the federal program funds relate and violate general federal law restrictions on federal appropriations.

82. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that the 2005 Offsets are invalid as a matter of federal law and violate the Supremacy Clause in Article VI of the United States Constitution; and

(b) that the 2005 Offsets must be reversed and the federal program funds improperly withheld from the Community pursuant to these offsets must be restored to the Community.

83. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any further actions by Defendants or their successors to collect the 1993-94 Tax Assessments through offsets of federal program funds would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT VI
2005 Offsets – Deprivations of Federal Rights
(42 U.S.C. § 1983)

84. The Community realleges the allegations set forth in Paragraphs 1 through 83 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

85. Defendants Rising's, Reynolds', and Fratzke's (the "Treasury Defendants") actions and failures to act relating to the 2005 Offsets have deprived the Community of clearly established federal rights of which a reasonable person would have known, including but not limited to the following:

- (a) the right to be free from takings of property without just compensation guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution;
- (b) the right to be free from unreasonable seizures of property guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution; and
- (c) the right to be free from deprivations of property without due process of law guaranteed by the Fourteenth Amendment of the United States Constitution.

Upon information and belief, the deprivation of these rights occurred by, at the direction of, or with the knowledge and consent of Treasury Defendants.

86. Upon information and belief, Treasury Defendants' deprivations of federal rights of the Community were conducted under color of state law. Treasury Defendants' actions

involved exercises of power made possible only because Treasury Defendants are or were at the time of the deprivations clothed with the authority of state law.

87. Treasury Defendants' actions giving rise to the deprivations of federal rights of the Community were and continue to be conducted in Treasury Defendants' individual capacities.

88. The Community has suffered damage as a result of these actions, including but not limited to money damages for lost governmental revenue and lost federal program services.

COUNT VII
1993-94 Tax Assessments, 1996 Audit Offsets and 2005 Offsets – Sovereign Immunity
(Declaratory Judgment, 28 U.S.C. § 2201)

89. The Community realleges the allegations set forth in Paragraphs 1 through 88 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

90. The Community is a sovereign Indian tribe, enjoying all benefits and rights of a sovereign, including the right to sovereign immunity from uncontested suit, seizures of property, or other judicial or administrative process.

91. The 1993-94 Tax Assessments violated the sovereign immunity enjoyed by the Community.

92. Through the 1996 Audit Offsets and the 2005 Offsets, Defendants have caused to be seized property destined for delivery to the Community. To the extent that the seized property was owned by the Community, the seizures violated the sovereign immunity enjoyed by the Community.

93. The Community is entitled to a declaration pursuant to 28 U.S.C. § 2201 that seizures of tribal property by Defendants are precluded by the sovereign immunity enjoyed by the Community.

94. The Community also is entitled to a declaration pursuant to 28 U.S.C. § 2201 that any future seizures of tribal property by Defendants or their successors would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT VIII

**1996 Audit Offsets and 2005 Offsets – Unlawful Conversion of Funds – Federal Law
(Declaratory Judgment, 28 U.S.C. § 2201)**

95. The Community realleges the allegations set forth in Paragraphs 1 through 94 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

96. The 1996 Audit Offsets and the 2005 Offsets constitute acts wrongfully exerted over personal property belonging to the Community and/or its members in denial of or inconsistent with their rights therein.

97. The Community is entitled to a declaration pursuant to 28 U.S.C. § 2201 that the 1996 Audit Offsets and the 2005 Offsets constitute an unlawful conversion of funds as a matter of federal law and violate the Supremacy Clause in Article VI of the United States Constitution.

98. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any further actions by Defendants or their successors to collect the 1993-94 Tax Assessments through offsets would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT IX

**Sales Tax – Sales to Community and its Members – *Per Se* Rule Against State Taxation
of Indian Traders
(Declaratory Judgment, 28 U.S.C. § 2201)**

99. The Community realleges the allegations set forth in Paragraphs 1 through 98 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

100. The imposition of sales tax on retail sellers with respect to their sale, lease, or rental of motor vehicles, office furniture and equipment, household appliances and furnishings, clothing, food and beverages served at restaurants and other eating and drinking establishments, electricity, gas, and other tangible personal property to the Community and its members within the Reservation and trust lands is invalid as a matter of federal law under the *per se* rule, because (a) the legal incidence of the Michigan sales tax falls upon the retail sellers, (b) the retail sellers in these situations are Indian traders (and in some cases also are Community members), (c) the Community's Reservation and trust lands constitute Indian country, and (d) Congress has not permitted the tax.

101. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that the imposition of sales tax and other requirements of the Sales Tax Act on retail sellers with respect to their sale, lease, or rental of tangible personal property to the Community and its members within the Reservation and trust lands is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution; and

(b) that such retail sellers are not subject to criminal or civil liability for any failure to pay sales tax or otherwise satisfy the requirements of the Sales Tax Act with respect to such sales, leases, or rentals.

102. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any actions by Defendants or their successors to assess or collect the Michigan sales tax, to impose or enforce other requirements of the Sales Tax Act with respect to such sales, leases, or rentals, or to provide erroneous or misleading information to retailers with respect to the

applicability of the Sales Tax Act to such sales, leases, or rentals would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT X
Sales Tax – Sales to Community and its Members – Balancing of Interests
(Declaratory Judgment, 28 U.S.C. § 2201)

103. The Community realleges the allegations set forth in Paragraphs 1 through 102 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

104. The federal and tribal interests against the imposition of Michigan's sales tax on retail sellers with respect to their sale, lease, or rental of motor vehicles, office furniture and equipment, household appliances and furnishings, clothing, food and beverages served at restaurants and other eating and drinking establishments, electricity, gas, and other tangible personal property to the Community and its members within the Reservation and trust lands outweigh any legitimate interest of Michigan in imposing the taxes and, therefore, the imposition of such taxes with respect to such sales, leases, and rentals is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution.

105. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that the imposition of sales tax and other requirements of the Sales Tax Act on retail sellers with respect to their sale, lease, or rental of tangible personal property to the Community and its members within the Reservation and trust lands is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution; and

(b) that such retail sellers are not subject to criminal or civil liability for any failure to pay sales tax or otherwise satisfy the requirements of the Sales Tax Act with respect to such sales, leases, or rentals.

106. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any actions by Defendants or their successors to assess or collect the Michigan sales tax, to impose or enforce other requirements of the Sales Tax Act with respect to such sales, leases, or rentals, or to provide erroneous or misleading information to retailers with respect to the applicability of the Sales Tax Act to such sales, leases, or rentals would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XI

Sales Tax – Sales to Community and its Members – Infringement of Rights of Tribal Self-Government (Declaratory Judgment, 28 U.S.C. § 2201)

107. The Community realleges the allegations set forth in Paragraphs 1 through 106 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

108. The imposition of Michigan's sales tax on retail sellers with respect to their sale, lease, or rental of motor vehicles, office furniture and equipment, household appliances and furnishings, clothing, food and beverages served at restaurants and other eating and drinking establishments, electricity, gas, and other tangible personal property to the Community and its members within the Reservation and trust unlawfully infringes on the rights of self-government of the Community and violates the Community's inherent sovereign right to make its own laws and be ruled by them and, therefore, is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution.

109. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that the imposition of sales tax and other requirements of the Sales Tax Act on retail sellers with respect to their sale, lease, or rental of tangible personal property to the Community and its members within the Reservation and trust lands is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution; and

(b) that such retail sellers are not subject to criminal or civil liability for any failure to pay sales tax or otherwise satisfy the requirements of the Sales Tax Act with respect to such sales, leases, or rentals.

110. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any actions by Defendants or their successors to assess or collect the Michigan sales tax, to impose or enforce other requirements of the Sales Tax Act with respect to such sales, leases, or rentals, or to provide erroneous or misleading information to retailers with respect to the applicability of the Sales Tax Act to such sales, leases, or rentals would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XII

Sales Tax – Sales to Community and its Members – Indian Commerce Clause (Declaratory Judgment, 28 U.S.C. § 2201)

111. The Community realleges the allegations set forth in Paragraphs 1 through 110 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

112. The imposition of Michigan's sales tax on retail sellers with respect to their sale, lease, or rental of motor vehicles, office furniture and equipment, household appliances and furnishings, clothing, food and beverages served at restaurants and other eating and drinking

establishments, electricity, gas, and other tangible personal property to the Community and its members within the Reservation and trust lands unlawfully interferes with commerce with the Indian tribes and, therefore, violates the Indian Commerce Clause in Article I, Section 8, Clause 3 of the United States Constitution.

113. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that the imposition of sales tax and other requirements of the Sales Tax Act on retail sellers with respect to their sale, lease, or rental of tangible personal property to the Community and its members within the Reservation and trust lands is invalid as a matter of federal law and violates the Indian Commerce Clause; and

(b) that such retail sellers are not subject to criminal or civil liability for any failure to pay sales tax or otherwise satisfy the requirements of the Sales Tax Act with respect to such sales, leases, or rentals.

114. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any actions by Defendants or their successors to assess or collect the Michigan sales tax, to impose or enforce other requirements of the Sales Tax Act with respect to such sales, leases, or rentals, or to provide erroneous or misleading information to retailers with respect to the applicability of the Sales Tax Act to such sales, leases, or rentals would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XIII
Use Tax – Use by Community and its Members – *Per Se* Rule Against State Taxation
of Tribes and Tribal Members
(Declaratory Judgment, 28 U.S.C. § 2201)

115. The Community realleges the allegations set forth in Paragraphs 1 through 114 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

116. The imposition of use tax on the Community and its members with respect to their use, storage, or consumption of (a) motor vehicles principally garaged within the Reservation and trust lands, (b) telephone and other telecommunications services originating or terminating within the Reservation and trust lands or, in the case of mobile telecommunications services, where the mobile telecommunications device is principally used, stored, or consumed within the Reservation and trust lands, and (c) other tangible personal property or services principally used, garaged, stored, or consumed within the Reservation and trust lands is invalid as a matter of federal law under the *per se* rule, because (d) the legal incidence of the Michigan use tax falls upon the consumer, (e) the consumers in these situations are the Community and its members, (f) the Community's Reservation and trust lands constitute Indian country, and (g) Congress has not permitted the tax.

117. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that the imposition of use tax and other requirements of the Use Tax Act on the Community and its members with respect to such use, storage, or consumption is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution; and

(b) that the Community and its members and their retail sellers are not subject to criminal or civil liability for any failure to pay or collect use tax or otherwise satisfy the requirements of the Use Tax Act with respect to such use, storage, or consumption.

118. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any actions by Defendants or their successors to assess or collect the Michigan use tax, to impose or enforce other requirements of the Use Tax Act with respect to such use, storage, or consumption, or to provide erroneous or misleading information to retailers with respect to the applicability of the Use Tax Act to such use, storage, or consumption would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XIV

Sales and Use Taxes – Construction Projects for Community – Balancing of Interests (Declaratory Judgment, 28 U.S.C. § 2201)

119. The Community realleges the allegations set forth in Paragraphs 1 through 118 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

120. The federal and tribal interests against the imposition of Michigan's sales and use taxes with respect to materials, supplies, and equipment incorporated into or used in the construction of the Community's Niiwinakeaa Center and in other construction projects for the Community on its Reservation and trust lands outweigh any legitimate interest of Michigan in imposing the taxes and, therefore, the imposition of such taxes with respect to such materials, supplies, and equipment is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution.

121. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that the imposition of sales and use taxes and other requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution; and

(b) that the Community and its contractors, subcontractors, and suppliers are not subject to criminal or civil liability for any failure to pay or collect sales or use tax or otherwise satisfy the requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment.

122. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any actions by Defendants or their successors to assess or collect Michigan sales or use tax, to impose or enforce other requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment, or to provide erroneous or misleading information to contractors, subcontractors, and suppliers with respect to the applicability of the Sales and Use Tax Acts to such materials, supplies, and equipment would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XV

Sales and Use Taxes – Construction Projects for Community – Infringement of Rights of Tribal Self-Government (Declaratory Judgment, 28 U.S.C. § 2201)

123. The Community realleges the allegations set forth in Paragraphs 1 through 122 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

124. The imposition of Michigan's sales and use taxes with respect to materials, supplies, and equipment incorporated into or used in the construction of the Community's Niiwinakeaa Center and in other construction projects for the Community on its Reservation and

trust lands unlawfully infringes on the rights of tribal self-government of the Community and violates the Community's inherent sovereign right to make its own laws and be ruled by them and, therefore, is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution.

125. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that the imposition of sales and use taxes and other requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution; and

(b) that the Community and its contractors, subcontractors, and suppliers are not subject to criminal or civil liability for any failure to pay or collect sales or use tax or otherwise satisfy the requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment.

126. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any actions by Defendants or their successors to assess or collect Michigan sales or use tax, to impose or enforce other requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment, or to provide erroneous or misleading information to contractors, subcontractors, and suppliers with respect to the applicability of the Sales and Use Tax Acts to such materials, supplies, and equipment would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XVI

**Sales and Use Taxes – Construction Projects for Community – Indian Commerce Clause
(Declaratory Judgment, 28 U.S.C. § 2201)**

127. The Community realleges the allegations set forth in Paragraphs 1 through 126 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

128. The imposition of Michigan's sales and use taxes with respect to materials, supplies, and equipment incorporated into or used in the construction of the Community's Niiwinakeaa Center and in other construction projects for the Community on its Reservation and trust lands unlawfully interferes with commerce with the Indian tribes and, therefore, violates the Indian Commerce Clause in Article I, Section 8, Clause 3 of the United States Constitution.

129. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that the imposition of sales and use taxes and other requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment violates the Indian Commerce Clause; and

(b) that the Community and its contractors, subcontractors, and suppliers are not subject to criminal or civil liability for any failure to pay or collect sales or use tax or otherwise satisfy the requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment.

130. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any actions by Defendants or their successors to assess or collect Michigan sales or use tax, to impose or enforce other requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment, or to provide erroneous or misleading information to contractors, subcontractors, and suppliers with respect to the applicability of the Sales and Use Tax Acts to such materials, supplies, and equipment would constitute an act in excess of

Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XVII
Sales and Use Taxes – Construction Projects for Community Members – Balancing
of Interests
(Declaratory Judgment, 28 U.S.C. § 2201)

131. The Community realleges the allegations set forth in Paragraphs 1 through 130 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

132. The federal and tribal interests against the imposition of Michigan's sales and use taxes with respect to materials, supplies, and equipment incorporated into or used in the construction of housing and in other construction projects for Community members on the Community's Reservation and trust lands outweigh any legitimate interest of Michigan in imposing the taxes and, therefore, the imposition of such taxes with respect to such materials, supplies, and equipment is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution.

133. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that the imposition of sales and use taxes and other requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution; and

(b) that the Community members and their contractors, subcontractors, and suppliers are not subject to criminal or civil liability for any failure to pay or collect sales or use tax or otherwise satisfy the requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment.

134. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any actions by Defendants or their successors to assess or collect Michigan sales or use tax, to impose or enforce other requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment, or to provide erroneous or misleading information to contractors, subcontractors, and suppliers with respect to the applicability of the Sales and Use Tax Acts to such materials, supplies, and equipment would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XVIII

Sales and Use Taxes – Construction Projects for Community Members – Infringement of Rights of Tribal Self-Government (Declaratory Judgment, 28 U.S.C. § 2201)

135. The Community realleges the allegations set forth in Paragraphs 1 through 134 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

136. The imposition of Michigan's sales and use taxes with respect to materials, supplies, and equipment incorporated into or used in the construction of housing and in other construction projects for Community members on the Community's Reservation and trust lands unlawfully infringes on the rights of tribal self-government of the Community and violates the Community's inherent sovereign right to make its own laws and be ruled by them and, therefore, the imposition of such taxes with respect to such materials, supplies, and equipment is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution.

137. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that the imposition of sales and use taxes and other requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution; and

(b) that the Community members and their contractors, subcontractors, and suppliers are not subject to criminal or civil liability for any failure to pay or collect sales or use tax or otherwise satisfy the requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment.

138. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any actions by Defendants or their successors to assess or collect Michigan sales or use tax, to impose or enforce other requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment, or to provide erroneous or misleading information to contractors, subcontractors, and suppliers with respect to the applicability of the Sales and Use Tax Acts to such materials, supplies, and equipment would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XIX
Sales and Use Taxes – Construction Projects for Community Members – Indian Commerce Clause
(Declaratory Judgment, 28 U.S.C. § 2201)

139. The Community realleges the allegations set forth in Paragraphs 1 through 138 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

140. The imposition of Michigan's sales and use taxes with respect to materials, supplies, and equipment incorporated into or used in the construction of housing and in other construction projects for Community members on the Community's Reservation and trust lands

unlawfully interferes with commerce with the Indian tribes and, therefore, violates the Indian Commerce Clause in Article I, Section 8, Clause 3 of the United States Constitution.

141. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that the imposition of sales and use taxes and other requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment violates the Indian Commerce Clause; and

(b) that the Community members and their contractors, subcontractors, and suppliers are not subject to criminal or civil liability for any failure to pay or collect sales or use tax or otherwise satisfy the requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment.

142. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any actions by Defendants or their successors to assess or collect Michigan sales or use tax, to impose or enforce other requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment, or to provide erroneous or misleading information to contractors, subcontractors, and suppliers with respect to the applicability of the Sales and Use Tax Acts to such materials, supplies, and equipment would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XX

**Sales and Use Taxes – Sales to and Use by Community and its Members – 1842 Treaty
(Declaratory Judgment, 28 U.S.C. § 2201)**

143. The Community realleges the allegations set forth in Paragraphs 1 through 142 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

144. Article II of the 1842 Treaty requires the continued enforcement of the federal trade and intercourse laws, rather than state laws, with respect to the Indians' trade and intercourse within the Ceded Area. Congress has never repealed this provision of Article II and thus, within the Ceded Area, the federal trade and intercourse laws continue in force and preempt state laws with respect to the trade and intercourse of the Community and its members. In so providing, the treaty provision creates rights that cannot be burdened with a state tax.

145. The imposition of sales and use tax with respect to the Community's and Community members' (1) purchase, lease, or rental of motor vehicles, office furniture and equipment, household appliances and furnishings, clothing, food and beverages served at restaurants and other eating and drinking establishments, electricity, gas, and other tangible personal property sold within the Ceded Area, or (2) use, storage, or consumption of motor vehicles principally garaged within the Reservation and trust lands, telephone and other telecommunications services originating or terminating within the Reservation and trust lands or, in the case of mobile telecommunications services, where the mobile telecommunications device is principally used, stored, or consumed within the Reservation and trust lands, and other tangible personal property or services principally used, garaged, stored, or consumed within the Ceded Area is invalid as a matter of federal law pursuant to Article II of the 1842 Treaty.

146. Accordingly, the Community is entitled to the following declarations pursuant to 28 U.S.C. § 2201:

(a) that the imposition of sales and use taxes and other requirements of the Sales and Use Tax Acts with respect to such purchases, leases, rental, use, storage, and consumption of goods and services by the Community and its members violates the 1842 Treaty; and

(b) that the Community, its members, and their retail sellers are not subject to criminal or civil liability for any failure to pay or collect sales or use tax or otherwise satisfy the requirements of the Sales and Use Tax Acts with respect to such purchases, leases, rental, use, storage, and consumption.

147. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any actions by Defendants or their successors to assess or collect the Michigan sales and use taxes, to impose or enforce other requirements of the Sales and Use Tax Acts with respect to such purchases, leases, rental, use, storage, and consumption, or to provide erroneous or misleading information to retailers with respect to the applicability of the Sales and Use Tax Acts to such purchases, leases, rental, use, storage, and consumption would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XXI

**Sales and Use Taxes – Construction Projects for Community and its Members – 1842 Treaty
(Declaratory Judgment, 28 U.S.C. § 2201)**

148. The Community realleges the allegations set forth in Paragraphs 1 through 147 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

149. The Community is also entitled to the following declarations regarding the 1842 Treaty pursuant to 28 U.S.C. § 2201:

(a) that the imposition of sales and use taxes and other requirements of the Sales and Use Tax Acts with respect to materials, supplies, and equipment incorporated into or used in the construction of the Niiwinakeaa Center, housing, and in other construction projects for the Community and its members within the Ceded Area violates the 1842 Treaty; and

(b) that the Community, its members, and their and their contractors, subcontractors, and suppliers are not subject to criminal or civil liability for any failure to pay or collect sales or use tax or otherwise satisfy the requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment.

150. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any actions by Defendants or their successors to assess or collect the Michigan sales and use taxes, to impose or enforce other requirements of the Sales and Use Tax Acts with respect to such materials, supplies, and equipment, or to provide erroneous or misleading information to contractors, subcontractors, and suppliers with respect to the applicability of the Sales and Use Tax Acts to such materials, supplies, and equipment would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XXII

Sales and Use Taxes – Pre-Approval Requirements – Minimal Burdens (Declaratory Judgment, 28 U.S.C. § 2201)

151. The Community realleges the allegations set forth in Paragraphs 1 through 150 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

152. Defendants, without statutory authority, impose an informal system of requiring the Community to secure pre-approval from Defendant Fratzke or other Department officials prior to its exercise of its right to make sales and use tax-exempt purchases of motor vehicles for use in its economic development activities and other governmental operations and programs.

153. The burdens imposed upon the Community under Defendants' system are far in excess of any statutory or administrative requirements that other individuals and entities in Michigan must satisfy when making sales and use tax-exempt purchases.

154. These burdens exceed the minimal burdens that are allowed under federal law. Therefore, Defendants' system is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution.

155. The Community is accordingly entitled to a declaration pursuant to 28 U.S.C. § 2201 that any attempt by Defendants to impose or enforce any system requiring pre-approval from Defendant Fratzke, the Department, or any other Michigan agency or official of any tax-exempt purchase, lease, or rental of motor vehicles or other goods and services made by the Community, its members, and their contractors, subcontractors, and suppliers, or any other system requiring affirmative acts or reporting that constitutes more than a minimal burden on the exercise by the Community, its members, and Indian traders of their right to make tax-exempt purchases of goods or services, is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution.

156. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any further action by Defendants or their successors to impose or enforce any such systems with respect to such purchases would constitute an act in excess of any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XXIII
Sales and Use Taxes – Pre-Approval Requirements – Infringement of Rights of Tribal Self-Government
(Declaratory Judgment, 28 U.S.C. § 2201)

157. The Community realleges the allegations set forth in Paragraphs 1 through 156 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

158. Defendants' system of requiring the Community to secure pre-approval from Defendant Fratzke or other Department officials prior to its exercise of its right to make sales and use tax-exempt purchases of motor vehicles for use in its economic development activities and

other governmental operations and programs unlawfully infringes on the rights of tribal self-government of the Community and violates the Community's inherent sovereign right to make its own laws and be ruled by them and, therefore, is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution.

159. The Community is accordingly entitled to a declaration pursuant to 28 U.S.C. § 2201 that any attempt by Defendants to impose or enforce any system requiring pre-approval from Defendant Fratzke, the Department, or any other Michigan agency or official of any tax-exempt purchase, lease, or rental of motor vehicles or other goods and services made by the Community, its members, and their contractors, subcontractors, and suppliers, or any other system requiring affirmative acts or reporting is invalid as a matter of federal law and violates the Supremacy Clause in Article VI of the United States Constitution.

160. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any further action by Defendants or their successors to impose or enforce any such systems with respect to such purchases would constitute an act in excess of any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XXIV

Sales and Use Taxes – Pre-Approval Requirements – Indian Commerce Clause (Declaratory Judgment, 28 U.S.C. § 2201)

161. The Community realleges the allegations set forth in Paragraphs 1 through 160 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

162. Defendants' system of requiring the Community to secure pre-approval of specific transactions from Defendant Fratzke or other Department officials prior to its exercise of its right to make sales and use tax-exempt purchases of motor vehicles for use in its economic development activities and other governmental operations and programs unlawfully interferes

with commerce with the Indian tribes and, therefore, violates the Indian Commerce Clause in Article I, Section 8, Clause 3 of the United States Constitution.

163. The Community is accordingly entitled to a declaration pursuant to 28 U.S.C. § 2201 that any attempt by Defendants to impose or enforce any system requiring pre-approval from Defendant Fratzke, the Department, or any other Michigan agency or official of any tax-exempt purchase, lease, or rental of motor vehicles or other goods and services made by the Community, its members, and their contractors, subcontractors, and suppliers, or any other system requiring affirmative acts or reporting violates the Indian Commerce Clause.

164. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any further action by Defendants or their successors to impose or enforce any such systems with respect to such purchases would constitute an act in excess of any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XXV
Sales and Use Taxes – Pre-Approval Requirements – Sovereign Immunity
(Declaratory Judgment, 28 U.S.C. § 2201)

165. The Community realleges the allegations set forth in Paragraphs 1 through 164 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

166. The Community is a sovereign Indian tribe, enjoying all benefits and rights of a sovereign, including the right to sovereign immunity from uncontested suit, seizures of property, or other judicial or administrative process.

167. Defendants' system of requiring the Community to secure pre-approval from Defendant Fratzke or other Department officials prior to its exercise of its right to make sales and use tax-exempt purchases of motor vehicles for use in its economic development activities and other governmental operations and programs violates the sovereign immunity enjoyed by the

Community and, therefore, violates the Supremacy Clause in Article VI of the United States Constitution.

168. The Community is accordingly entitled to a declaration pursuant to 28 U.S.C. § 2201 that any attempt by Defendants to impose or enforce any system requiring pre-approval from Defendant Fratzke, the Department, or any other Michigan agency or official of any tax-exempt purchase, lease, or rental of motor vehicles or other goods and services made by the Community or any other system requiring affirmative acts or reporting by the Community violates the sovereign immunity enjoyed by the Community.

169. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any further action by Defendants or their successors to impose or enforce any such systems with respect to such purchases would constitute an act in excess of any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XXVI
Sales and Use Taxes – Pre-Approval Requirements – 1842 Treaty
(Declaratory Judgment, 28 U.S.C. § 2201)

170. The Community realleges the allegations set forth in Paragraphs 1 through 169 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

171. Defendants' system of requiring the Community to secure pre-approval from Defendant Fratzke or other Department officials prior to its exercise of its right to make sales and use tax-exempt purchases of motor vehicles within the Ceded Area for use in its economic development activities and other governmental operations and programs violates the 1842 Treaty and, therefore, violates the Supremacy Clause in Article VI of the United States Constitution.

172. The Community is accordingly entitled to a declaration pursuant to 28 U.S.C. § 2201 that any attempt by Defendants to impose or enforce any system requiring pre-approval from Defendant Fratzke, the Department, or any other Michigan agency or official of any tax-

exempt purchase, lease, or rental of motor vehicles or other goods and services made by the Community, its members, and their contractors, subcontractors, and suppliers within the Ceded Area, or any other system requiring affirmative acts or reporting with respect to such purchases, leases, or rentals, violates the 1842 Treaty.

173. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any further action by Defendants or their successors to impose or enforce any such systems with respect to such purchases would constitute an act in excess of any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XXVII
1993-94 Tax Assessments, 1996 Audit Offsets, and 2005 Offsets – Breach of 1977 Tax Agreement
(Declaratory Judgment, 28 U.S.C. § 2201, 28 U.S.C. § 1367)

174. The Community realleges the allegations set forth in Paragraphs 1 through 173 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

175. The Community is entitled to a declaration pursuant to 28 U.S.C. § 2201 that the 1993-94 Assessments, and the 1996 Offsets and 2005 Offsets related thereto, breached the 1977 Tax Agreement, which did not authorize the Department to conduct sales or use tax audits of the Community, to assess sales or use tax liability against the Community, to assess penalties or interest against the Community, or to make offsets such as the 1996 Offsets and the 2005 Offsets.

176. The Community also is entitled to a declaration pursuant to 28 U.S.C. § 2201 that any further actions by Defendants to collect the 1993-94 Assessments, through offsets or otherwise, would constitute an act in excess of Defendants' authority and any authority under the 1977 Tax Agreement.

COUNT XXVIII

**1993-94 Tax Assessments – Violation of Department’s Decision
(Declaratory Judgment, 28 U.S.C. § 2201, 28 U.S.C. § 1367)**

177. The Community realleges the allegations set forth in Paragraphs 1 through 176 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

178. The Community is entitled to a declaration pursuant to 28 U.S.C. § 2201 that to the extent that the 1993-94 Tax Assessments include penalties and interest, the 1993-94 Tax Assessments violate the terms of the Department’s Decision.

179. The Community also is entitled to a declaration pursuant to 28 U.S.C. § 2201 that any further actions by Defendants or their successors to collect the penalties and interest included in the 1993-94 Tax Assessments, through offsets or otherwise, would constitute an act in excess of Defendants’ authority under the Decision.

COUNT XXIX

**1996 Audit Offsets and 2005 Offsets – Violation of Alleged Set Off Rights
(Declaratory Judgment, 28 U.S.C. § 2201, 28 U.S.C. § 1367)**

180. The Community realleges the allegations set forth in Paragraphs 1 through 179 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

181. The Community is entitled to a declaration pursuant to 28 U.S.C. § 2201 that the 1996 Audit Offsets and the 2005 Offsets violate any set off right of the State under state law because the 1993-94 Tax Assessments were not “liquidated sums.” Moreover, the 2005 Offsets of federal program funds were not funds owed by the State to the Community as referenced by Defendant Fratzke in his letter described in Paragraph 44 herein.

182. The Community also is entitled to a declaration pursuant to 28 U.S.C. § 2201 that any further actions by Defendants or their successors to collect the 1993-94 Tax Assessments through offsets would constitute an act in excess of Defendants’ authority under state law.

COUNT XXX

**1996 Audit Offsets and 2005 Offsets – Unlawful Conversion of Funds – Tribal Law
(Declaratory Judgment, 28 U.S.C. § 2201, 28 U.S.C. § 1367)**

183. The Community realleges the allegations set forth in Paragraphs 1 through 93 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

184. The 1996 Audit Offsets and the 2005 Offsets constitute acts wrongfully exerted over personal property belonging to the Community and/or its members in denial of or inconsistent with their rights therein.

185. The Community is entitled to a declaration pursuant to 28 U.S.C. § 2201 that the 1996 Audit Offsets and the 2005 Offsets constitute an unlawful conversion of funds as a matter of tribal law.

186. The Community is further entitled to a declaration pursuant to 28 U.S.C. § 2201 that any further actions by Defendants or their successors to collect the 1993-94 Tax Assessments through offsets would constitute an act in excess of Defendants' authority and any authority that the State of Michigan could confer on Defendants or any of its officials.

COUNT XXXI

**Community Offsets with Respect to Baraga Casino 8% Fund – Tribal Law
(Declaratory Judgment, 28 U.S.C. § 2201, 28 U.S.C. § 1367)**

187. The Community realleges the allegations set forth in Paragraphs 1 through X inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

188. The Community's offsets with respect to the Baraga Casino 8% fund constitute a lawful exercise of the Community's set off rights under tribal law.

189. The Community is entitled to a declaration pursuant to 28 U.S.C. § 2201 that the Community's offsets with respect to the Baraga Casino 8% fund constitute a lawful exercise of the Community's set off rights under tribal law.

COUNT XXXII
Preliminary and Permanent Injunction
(Fed. R. Civ. P. 42, 65, 28 U.S.C. § 1983)

190. The Community realleges the allegations set forth in Paragraphs 1 through 181 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

191. Defendants' or their predecessors' actions with respect to the 1993-94 Tax Assessments, the 1996 Audit Offsets, the 2005 Offsets, and the impositions of the Sales and Use Tax Acts described in paragraphs 47 to 58 are invalid because, among other things, said actions violate the Supremacy Clause in Article VI of the United States Constitution, the Community's inherent right to sovereignty, the Indian Commerce Clause of the United States Constitution, and other federal laws, including but not limited to the Indian Trader Statutes, 25 U.S.C. §§ 261-264, and 42 U.S.C. § 1983.

192. Defendants or their predecessors have taken or caused to be taken various actions against the Community, including but not limited to the following:

- (a) the 1993-94 Tax Assessments;
- (b) the 1996 Audit Offsets;
- (c) the 2005 Offsets; and
- (d) the impositions of the Sales and Use Tax Acts described in paragraphs 47 to 58.

193. These actions have irreparably harmed, and continue to irreparably harm the Community.

194. The Community is entitled to injunctive relief pursuant to Fed. R. Civ. P. 65 and 42 U.S.C. § 1983 as follows:

- (a) enjoining Defendants from taking any further actions to collect the 1993-94 Tax Assessments, through offsets or otherwise;

(b) ordering Defendants to reverse the 1996 Audit Offsets and the 2005 Offsets and restore to the Community the funds improperly withheld as a result of the offsets;

(c) enjoining Defendants from taking any further actions to impose or collect Michigan's sales and use taxes with respect to purchases, leases, rentals, use, storage, or consumption of goods and services by the Community and its members, and with respect to materials, supplies, and equipment incorporated into or used in construction of construction projects for the Community and its members, within the Community's Reservation and trust lands and within the Ceded Area, and from taking any further actions to impose or enforce other requirements of the Sales and Use Tax Acts with respect to such purchases, leases, rentals, use, storage, and consumption, and with respect to such materials, supplies, and equipment;

(d) enjoining Defendants from providing erroneous or misleading information to contractors, subcontractors, suppliers, and other retailers with respect to the applicability of the Sales and Use Tax Acts to such purchases, leases, rentals, use, storage, and consumption, and with respect to such materials, supplies, and equipment; and

(e) enjoining Defendants from imposing or enforcing any system requiring pre-approval from Defendant Fratzke, the Department, or any other Michigan agency or official of any tax-exempt purchase, lease, or rental of motor vehicles or other goods and services made by the Community, its members, and their contractors, subcontractors, and suppliers, or any other system requiring affirmative acts or reporting that constitutes more

than a minimal burden on the exercise by the Community, its members, and Indian traders of their right to make tax-exempt purchases of goods or services.

COUNT XXXIII
Costs and Attorneys' Fees
(28 U.S.C. § 1988)

195. The Community realleges the allegations set forth in Paragraphs 1 through 186 inclusive, and by this reference incorporates each such allegation herein as if set forth in full.

196. The Community has incurred substantial costs of suit and attorneys' fees in prosecuting their claims against Defendants.

197. The Community respectfully requests that the Court order Defendants, or any of them, to pay the Community's reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

WHEREFORE, the Community respectfully requests that this Court:

(a) Enter a judgment in favor of the Community declaring that the 1993-94 Tax Assessments, the 1996 Audit Offsets, the 2005 Offsets, and the impositions of the Sales and Use Tax Acts described in paragraphs 47 to 58 are invalid;

(b) Order Defendants to reverse the 1996 Audit Offsets and the 2005 Offsets and restore to the Community the funds improperly withheld as a result of the offsets;

(c) Enjoin Defendants from taking any further actions to collect the 1993-94 Tax Assessments, through offsets or otherwise;

(d) Enjoin Defendants from taking any further actions to impose or collect Michigan's sales and use taxes with respect to purchases, leases, rentals, use, storage, and consumption of goods and services by the Community and its members, and with respect to materials, supplies, and equipment incorporated into or used in construction projects for the Community and its members, within the Community's Reservation and trust lands

and within the Ceded Area, and to impose or enforce other requirements of the Sales and Use Tax Acts with respect to such purchases, leases, rentals, use, storage, and consumption;

(e) Enjoin Defendants from providing erroneous or misleading information to contractors, subcontractors, suppliers, and other retailers with respect to the applicability of the Sales and Use Tax Acts to such purchases, leases, rentals, use, storage, and consumption, and with respect to such materials, supplies, and equipment;

(f) Enjoin Defendants from imposing or enforcing any system requiring pre-approval from Defendant Fratzke, the Department, or any other Michigan agency or official of any tax-exempt purchase, lease, or rental of motor vehicles or other goods and services made by the Community, its members, and their contractors, subcontractors, and suppliers, or any other system requiring affirmative acts or reporting that constitutes more than a minimal burden on the exercise by the Community, its members, and Indian traders of their right to make tax-exempt purchases of goods or services.

(g) Award the Community all of its costs and expenses, including attorneys' fees;

(h) Award the Community its actual damages from Defendants Rising, Reynolds, and Fratzke; and

(i) Award the Community such other relief as the Court deems just and appropriate.

Dated: October 28, 2005.

Respectfully submitted,

DORSEY & WHITNEY LLP

By s/Skip Durocher

Skip Durocher (MN Bar No. 208966)

Mary J. Streitz (MN Bar No. 016186X)

Christopher R. Duggan (MN Bar No. 0302788)

Suite 1500

50 South Sixth Street

Minneapolis, MN 55402

Tel: (612) 340-7855

Fax: (612) 340-2807

LAW, WEATHERS & RICHARDSON, P.C.

Stephen D. Turner (P21636)

Gregory N. Longworth (P49249)

Bridgewater Place

333 Bridge Street, N.W., Suite 800

Grand Rapids, MI 49504-5360

Telephone: (616) 459-1171

John R. Baker, Esq.

Tribal Attorney's Office

Keweenaw Bay Indian Community

107 Beartown Road

Baraga, Michigan 49908

Telephone: (906) 458-4106

Fax: (906) 353-7174

Attorneys for Plaintiff