

due process clause. The Band accordingly seeks an order enjoining the Commissioner from unlawfully imposing the income tax upon Band members who reside on the Fond du Lac Reservation and derive their income from out-of-state sources.

COUNT I

Imposition of the State's income tax on the out-of-state earnings of tribal members who are domiciled on their tribe's reservation is preempted by federal law. The Supreme Court has repeatedly held that Congress possesses exclusive authority over the regulation over Indian tribes and members on their reservation, and that states can only tax reservation Indians when Congress has expressly authorized such taxation. See, e.g., Oklahoma Tax Comm'n v. Chickasaw Nation, 515 U.S. 450, 455-56 (1995); Montana v. Blackfeet Tribe, 471 U.S. 759, 764 (1985); and McClanahan v. Arizona Tax Comm'n, 411 U.S. The State has not and cannot demonstrate such congressional authority for imposing its tax under these circumstances.

COUNT II

State taxation of the out-of-state income of reservation Indians does not satisfy the nexus requirements between the State and the object of taxation as established under the due process and commerce clauses of the U.S. Constitution. See, e.g., Hunt-Wesson, Inc. Franchise Tax Board of California, 528 U.S. 458, 463-64 (2000); and Minnesota v. J.C. Penney Co., 311 U.S. 435, 444 (1940). For non-residents, the nexus requirement is generally satisfied by conferral by the State of the privilege of conducting business within the State's borders; for residents, it is

generally satisfied by conferral of the general right of domicile. Neither justification of the tax is present in this case, because the right of Indians to live on their reservations is in no way derived from the State. McClanahan.

COUNT III

State taxation of income derived from out-of-state sources by tribal members who are domiciled on their tribe's reservation infringes upon the tribal right of self-government as established under federal law, and which the United States has an affirmative trust responsibility to protect. Williams v. Lee, 358 U.S. 217, 220 (1959). The Band has the inherent right to regulate its members and territory, including the right to tax activities on its lands. Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 137-42 (1982); and Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134, 152 (1980)

PARTIES

2. The Fond du Lac Band of Lake Superior Chippewa is a federally recognized Indian tribe which occupies the Reservation pursuant to the Treaty of LaPointe with the United States, 10 Stat. 1109. The Reservation is geographically located within the boundaries of the State. The Band brings this action on its own behalf and on behalf of its members.

3. Ward Einess is the Commissioner of Revenue of the State of Minnesota ("Commissioner"), a duly appointed government official who is responsible, inter alia, for the collection of income taxes in the State of Minnesota.

JURISDICTION AND VENUE

4. This Court has original jurisdiction over the Band's claim pursuant to 28 U.S.C. §§ 1331 and 1362 in that the Band seeks to enjoin the Commissioner from assessing and collecting taxes on members of the Band for income derived from outside of the State of Minnesota in violation of federal common law limiting the authority of states within Indian country, and limitations under the due process and commerce clauses of the United States Constitution requiring a nexus between the State and the party sought to be taxed. Moe v. Salish & Kootenai Tribes, 425 U.S. 463, 465-66 (1976).

5. Venue is proper pursuant 28 U.S.C. § 1391(a) because all the events and omissions giving rise to the claims raised herein occurred within the District of Minnesota.

CAUSE OF ACTION

6. Leonard M. Houle is an enrolled member of the Band who served in the United States Army from 1948-1968. During his term of service, he was never stationed in Minnesota, and never performed any services in Minnesota. Upon his retirement from the Army, Mr. Houle established permanent residence on the Reservation, where he has lived since. The income which is being taxed by the State is Mr. Houle's military pension from the United States Veterans Administration.

7. On September 26, 2008, the Minnesota Department of Revenue issued a notice of levy to Mr. Houle in the amount of \$626.80, representing taxes on his veterans pension. On

September 25, 2008, Mr. Houle received a notice from Wells Fargo Bank that the levy had been seized from his account, along with a charge of \$100.00 as a processing fee.

8. On October 20, 2008, Band Chairwoman Karen R. Diver sent a letter to Governor Tim Pawlenty challenging the State's authority to impose its income tax on the out-of-state earnings of Band members residing on the Reservation.

9. On December 11, 2008, the Commissioner sent a response letter to Chairwoman Diver asserting that "tribal members living on a reservation located within the boundaries of Minnesota are residents of Minnesota for income tax purposes", and that the Department will only treat income earned by tribal members residing on their reservation as exempt where such income is wholly derived from reservation sources.

10. The imposition of state income tax on a tribal member for income derived from outside the boundaries of the State, based on the member's residence on the Reservation, is barred by federal common law limiting the authority of states within Indian country, and by the requirements arising from the due process and commerce clauses of the United States Constitution that there be a nexus between the State and the party sought to be taxed.

RELIEF SOUGHT

For these reasons, the Fond du Lac Band requests that the Court enter judgment in its favor as follows:

A. A declaration that the State of Minnesota has no authority to impose its income tax on Mr. Houle or any other tribal member residing on the Reservation with respect to income earned outside the boundaries of the State;

B. A permanent injunction prohibiting the Commissioner from seeking to impose a tax on Mr. Houle or any other tribal member residing on the Reservation with respect to income earned outside the boundaries of the State of Minnesota; and

C. Costs, fees and such further relief as deemed appropriate by the Court in the interests of justice.

Respectfully submitted this 18th day of February 2009.

s/Dennis J. Peterson

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