



# THE MILLE LACS BAND OF OJIBWE INDIANS

*Legislative Branch of Tribal Government*

## **Joint Resolution 12-03-49-07**

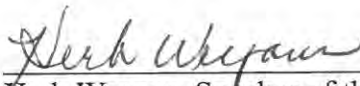
### **A Joint Resolution of Band Government Requesting the Assistance of the United States to Protect the Existing Rights of the Band and its Members on the Mille Lacs Indian Reservation**

- WHEREAS, the Mille Lacs Band of Ojibwe Band Assembly is the duly-elected governing body of the Mille Lacs Band of Ojibwe, a federally-recognized Indian Tribe; and
- WHEREAS, the Chief Executive is empowered to exercise the Executive Branch powers of the Band; and
- WHEREAS, the Band Assembly is the body referred to in the Constitution as the Reservation Business Committee, as established by 3 MLBSA § 1; and
- WHEREAS, together the Chief Executive and the Band Assembly form the Joint Session, as established by 3 MLBSA § 24; and
- WHEREAS, a priority of the Mille Lacs Band Assembly and Chief Executive is to preserve the Band's right to self-determination as a sovereign Indian tribe and to protect the rights of the enrolled members of the Mille Lacs Band of Ojibwe and to provide for their welfare; and
- WHEREAS, recent actions of the Minnesota Department of Revenue, as described in Exhibit A hereto, violate the Band's right to self-determination and the rights of enrolled members of the Band, and threaten the welfare of around one hundred (and possibly more) Band members; and
- WHEREAS, the Mille Lacs Band of Ojibwe believes that, to protect its rights as a sovereign tribal government and to protect the rights and preserve the welfare of its Band members, it has no choice but to request that the United States initiate litigation against the Minnesota Department of Revenue to prevent the Department from violating the rights of the Band and its members; and
- WHEREAS, the particular circumstances supporting this request and the specific litigation being requested are set forth in Exhibit A, which is attached hereto and made a part hereof.

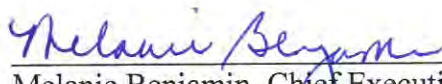
NOW THEREFORE BE IT RESOLVED, that the Band Assembly and Chief Executive request that the United States protect the existing rights of the Band and its members on the Mille Lacs Indian Reservation, as established in the Treaty of 1855, 10 Stat. 1165, by initiating and prosecuting litigation against the Minnesota Department of Revenue to prevent the Department from assessing and collecting Minnesota income taxes from Mille Lacs Band members who live and work within the Reservation.

WE DO HEREBY CERTIFY, that the foregoing resolution was duly concurred with and adopted at a regular session of the Band Assembly in Legislative Council assembled, a quorum of legislators being present held on the 15<sup>th</sup> day of March, 2007 at Hinckley, Minnesota by a vote of 3 FOR, 0 AGAINST, 0 SILENT.

IN WITNESS WHEREOF, we, the Band Assembly hereunto cause to have set the signature of the Speaker of the Assembly to be affixed to this resolution and forwarded to the Chief Executive for Concurrence.

  
\_\_\_\_\_  
Herb Weyaus, Speaker of the Assembly

IN CONCURRENCE, with the action of the Speaker of the Assembly, I, hereunto set my hand to this resolution.

  
\_\_\_\_\_  
Melanie Benjamin, Chief Executive

**OFFICIAL SEAL OF THE BAND**

## EXHIBIT A

- a. Under clearly federal established law, a state cannot impose its income tax on tribal members who live and work within their tribe's reservation. The imposition of a state income tax under such circumstances violates both the tribe's right to self-determination and the rights of the individual tribal members as reservation Indians.
- b. The Minnesota Department of Revenue has long recognized this principle of federal law, and has not sought to tax the income of Mille Lacs Band members who live and work within the Mille Lacs Indian Reservation, as established in the Treaty of 1855, 10 Stat. 1165. However, in 2005, the Department sent tax audit notices to several Band members who reside on fee lands within the Reservation, asserting that they were liable for State income taxes on their reservation-based income. The notices relied exclusively on the assertion of the Mille Lacs County Auditor that the lands on which these members reside were not within the boundaries of the Mille Lacs Reservation.
- c. The affected Band members filed administrative appeals with the Department. They submitted a certification from the Band's Commissioner of Finance confirming that their residences were within the boundaries of the Mille Lacs Indian Reservation, as established in 1855.
- d. In January 2007, the Department notified two Band members that it was denying their appeals. The Department's letter states that it is aware of a dispute between the County and the Band over the status of the Mille Lacs Reservation, and takes the position that fee lands, even though within the 1855 boundaries, are not within the Reservation. The Department provided no further explanation for its position, but stated the taxpayers could submit additional information in a final attempt to convince the Department to change its position.
- e. The taxpayers have submitted additional information to the Department and are awaiting a final decision from the Department in their cases. If the Department adheres to its new position, the taxpayers may be liable for taxes, interest and penalties going back to 2001, as well as for future state income taxes on their reservation income. Moreover, there are *hundreds* of other Band members who are similarly situated, *i.e.*, Band members who live on fee lands with the Mille Lacs Indian Reservation, earn all or significant parts of their income on the Reservation, and have not paid State income taxes on such income. They too may be liable for back taxes, interest and penalties, and for future state income taxes on their reservation income.

- f. In claiming an exemption from Minnesota income tax for their reservation-based income, Mille Lacs Band members have relied on the opinion of the Bureau of Indian Affairs and the Regional Solicitor's Office that the Mille Lacs Reservation continues to exist. In 1991, the Regional Solicitor's Office (then the Field Solicitor's Office) analyzed the factual and legal history of the Reservation and concluded that the Reservation had never been disestablished or diminished. The Regional Solicitor's Office has repeatedly reaffirmed this conclusion since 1991. The Solicitor's Office in Washington D.C., EPA Region V, EPA Regional Counsel, EPA General Counsel, and other federal agencies and officials have all come to the same conclusion.
- g. The materials assembled by the taxpayers for submission to the Department of Revenue demonstrate that this conclusion is clearly correct. Those materials include extensive historical documents, expert reports and analyses, and legal memoranda that were prepared in connection with a lawsuit filed by the County in 2003. (The lawsuit was dismissed because the County lacked standing.) They show that the County's disestablishment claim, which is based on an 1864 Treaty and an 1889 statute (the Nelson Act), is without merit and, indeed, is foreclosed by existing case law. Indeed, these are the very claims the Regional Solicitor's Office has considered, and repeatedly rejected, since 1991.
- h. Under the circumstances, it is appropriate for the Band to request that, if the Minnesota Department of Revenue adheres to its new position and continues to attempt to collect Minnesota income taxes from Band members residing on fee lands within the Mille Lacs Reservation, the United States, through the Bureau of Indian Affairs, initiate litigation to protect the Band's right to self-determination and its members' federal rights as reservation Indians. Since the central issue in such litigation will be whether the Mille Lacs Indian Reservation, as established in 1855, continues to exist, such a request asks only that the Bureau stand behind its longstanding position on this issue, upon which the Band and its members have relied.
- i. The Band does not seek by such litigation to expand its own jurisdiction or alter the status quo in any respect. To the contrary, the Band seeks only to preserve the Band's *existing* right to self-determination and the *existing* rights and immunities of Band members on the Reservation. It is the Department of Revenue's decision to change its longstanding position which has altered the status quo and triggered the need for litigation to protect the existing rights of the Band and its members.