

# dbrr DAILY BUSINESS REVIEW

**ON APPEAL** Court refuses to quash summonses

## Tribe dealt another blow

by **John Pacenti**  
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The Miccosukee Indian tribe received another setback Monday in its attempt to keep investigators out of its affairs when a federal appeals court upheld civil tax summonses for tribal records at financial institutions.

The Internal Revenue Service issued four summonses in 2010 to financial institutions to determine whether the tribe complied with federal withholding requirements from 2006 to 2009.

Judge William Pryor of the U.S. Court of Appeals for the Eleventh Circuit wrote the decision, finding that even though the tribe is not subject to income tax, it is subject to withholding and reporting requirements from profits made on its gambling operations.

He was joined in the unanimous opinion by Judge Rosemary Barkett and U.S. District Judge Timothy C.



A.M. HOLT

**A federal appeals court ruled against the Miccosukee tribe, upholding civil tax summonses from the IRS.**

Batten Sr. of Atlanta, sitting by designation.

"The claim to tribal sovereign im-

**SEE MICCOSUKEES, PAGE A5**

FROM PAGE A1

## MICCOSUKEES: Appellate ruling the latest setback for tribe

munity here fails for two reasons," Pryor wrote in the 11-page opinion. "First, the summonses are not suits against the tribe. Second, tribal sovereign immunity cannot bar a suit by the United States."

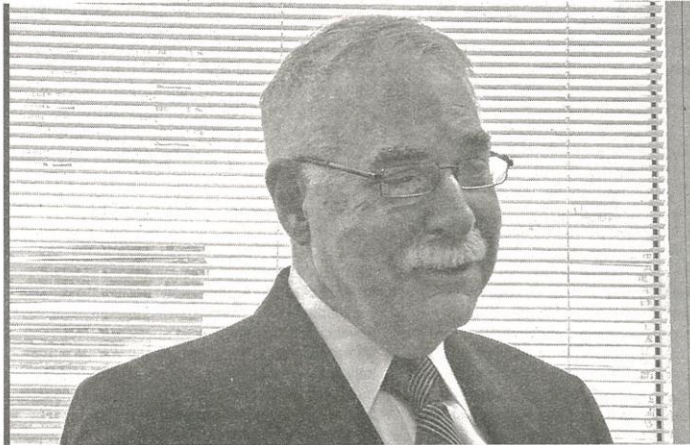
Attorneys for the Miccosukees initially lost before Senior U.S. District Judge Alan S. Gold in Miami, who refused to quash the summonses based on the tribe's sovereign immunity and claims they were issued for an improper purpose, irrelevant, overreaching and in bad faith.

The IRS opposed the petition, saying investigations show the tribe has failed to meet its tax obligations as far back as 2000.

Gold found sovereign immunity does not prevent the issuance of legitimate IRS summonses when enforcing tax law. He found the summonses were not overreaching but looking for specific records.

The summonses were issued to American Express, Citibank, Morgan Stanley and Wachovia Bank to produce documents associated with the tribe's bank and brokerage accounts.

"Indian tribes wanted sovereignty, but they also wanted to reach out to the public for gaming and cigarette sales," said Gunster tax litigator Martin Press in Fort Lauderdale. "It's hard to put your hand in and not get caught in regular society. You can't have it both ways. You can't be a sovereign and sell to the public at the same time."



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Attorney Bernard Roman, who represents the tribe, had no comment by deadline.

The appellate ruling is the latest setback for the tribe in federal court. It has

sued its former attorneys — Guy Lewis and Michael Tein at Lewis Tein in Miami and Dexter Lehtinen of Tew Cardenas in Miami — as well as Morgan Stanley & Co. for alleged breach of fiduciary duty.

### WHAT'S AT STAKE?

**Whether the Miccosukee tribe can claim sovereignty in an Internal Revenue Service investigation of whether the tribe met its tax burden on gambling profits.**

U.S. District Judge Marcia Cooke in Miami ruled earlier this month that the complaint was insufficient and gave the tribe 30 days to amend it.

The tribe also has sued Lewis Tein in Miami-Dade Circuit Court for alleged malpractice.

Lewis and Lehtinen are former U.S. attorneys in Miami. Lehtinen has said in pleadings he set aside \$20 million to pay the IRS, but that money was depleted under the leadership of Miccosukee chairman Colley Billie.

Billie replaced Billy Cypress, who hired Lewis Tein and Lehtinen.

Lewis Tein filed a motion asking for sanctions against the tribe in the malpractice case. The Oct. 12 motion asserts the Miccosukees filed frivolous lawsuits as "a political ploy" to shift blame for the IRS problems to the tribe's former officers and outside lawyers.

"It's just people throwing mud at each other," Press said. "It's going to be up to the courts to clean it up."

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