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Miccosukee Indians Sue Own Former Counsel over Tax Advice

The Miccosukee Indian tribe has severed their longtime business relationship with their former lawyer, Dexter Lehtinen and has filed a lawsuit against him for malpractice. The tribe members allege that Lehtinen gave them wrong legal advice on tax issues regarding their gambling profits that has now landed them in trouble with the IRS.

In the suit, the tribe disclosed that it had paid Lehtinen \$50 million over the last 20 years and that Lehtinen's "negligent misrepresentation" has resulted in about 250 tribe members being subjected to tax assessments, interest and penalties "in the millions of dollars."

But Lehtinen, a former US attorney in South Florida claimed that the tribe's legal action against him has "no basis". Lehtinen said, "As the case proceeds against me, the public will see they have come after the wrong guy."

Lehtinen's account of the matter was that for many years, he had advised them of their tax liability to the government. According to Lehtinen, "(The tribe) always told me they were a sovereign entity and they didn't owe taxes to the federal government. I told them repeatedly for a decade that they have to pay their taxes." Subsequently he had given them a "detailed memo" on the topic last year, an action that got him fired as the tribe's legal counsel in May last year.

Lehtinen also denied the exorbitant legal payments cited in the lawsuit.

Lehtinen, whose wife is US Rep Ileana Ros-Lehtinen, R-Miami, gained prominence in the past for representing the Miccosukee tribe in environmental issues. The decision to terminate his services was made by the new Tribal Council headed by Colley Billie, who replaced longtime chairman Billy Cypress who himself is in trouble with the IRS. Cypress has been sued by the IRS for nonpayment of back taxes amounting to millions of dollars.

The Miccosukee tribe as a whole is a sovereign nation thus exempted from paying taxes. However, individual members of the tribe are liable to pay taxes on their earnings and distribution receipts from the tribe's gambling activities. The amount of gambling revenue and the plan for distributing gambling profits to tribe members is to be submitted the US Bureau of Indian Affairs. But the Miccosukees are the only tribe that has not been doing so. This is in contravention of the Indian Gaming Regulatory Act.

The National Indian Gaming Commission issued a regulation in 2005 requiring all tribes to report their gaming income, file their distribution plan and withhold taxes. But the Miccosukees disagreed and took the IRS to court. They lost the case. US District Judge Alan S. Gold ruled in favor of the IRS. The tribe was ordered to disclose all their financial records to the IRS as part of an investigation into its alleged failure to report and withhold income taxes on gambling profits distributed to its members from 2006-2010.

The tribe said they relied on Lehtinen's counsel to them in their defense in the case. Now they are suing Lehtinen for malpractice in assuring them they were not liable to pay taxes. The suit cites a letter by Lehtinen to the IRS dated June 27, 2006, which said in part, "The Miccosukee Tribal members are not required to pay income tax, nor does the Tribe have any related withholding obligations." But Lehtinen accused the Miccosukee of distorting the truth. "The basis for their not paying taxes was their position — not mine," said Lehtinen.