



TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

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RE: Opinion on Debts Owed to Tribal Government.

DATE: September 8, 2021

Issues Presented

Whether the Turtle Mountain Band of Chippewa Indians, a sovereign government, has the authority to collect debt owed to the Tribe and whether that debt can be discharged by death?

Conclusion

The Turtle Mountain Band of Chippewa Indians has the authority to collect debt owed to the Tribe. As a general matter, debts to the government are non-dischargeable. Death generally does not extinguish debts. Government agencies can therefore pursue debt collection against decedents through probate or other means.

Analysis

This official opinion sets out the Tribal, federal, and common law principles of government debt collection. It includes an analysis of debt collection against deceased debtors.

The United States government defines a government debt as “any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency.”¹ In absence of a Tribal definition, the Tribe adopts the federal definition as its own: any

¹ 31 U.S.C. § 3701(b)(1); accord 31 C.F.R. § 900.2.

amount of funds that has been determined by an appropriate Tribal official is owed to the Tribe by a person, organization, or entity other than another Federal agency. These government debts are not dischargeable.²

To collect a debt, the government entity or agency must first determine whether a debt exists.³ There are many types of government nontax debt.⁴ For example, debts may arise from “funds owed on account of loans made, insured, or guaranteed by the Government, including any deficiency or any difference between the price obtained by the Government in the sale of a property and the amount owed to the Government on a mortgage on the property.”⁵ Government debts also arise from “any fines or penalties assessed by an agency.”⁶ “Over-payments, including payments disallowed by audits performed by the Inspector General of the agency administering the program,” can establish debts.⁷ The United States Code, 31 U.S.C. § 3701(b)(1), includes a non-exclusive listing of other debts, and is not meant to be an exhaustive description of the types of debts that may be owed to a government agency.⁸ Thus, if a government official determines that money or property is owed to the government entity, then that is “debt” for the purposes of government debt collection.⁹

Government procedures for establishing a debt may vary. Generally, a government agency or entity does not need to go to court or even rely on a statute to establish a debt as long as the appropriate agency official or governmental authority determines the debt is owed.¹⁰ It is well established that “parties receiving monies from the Government under a mistake of fact or law are liable *ex aequo et bono* to refund them, and that no specific statutory authorization upon which to base a claimed right of set-off or an affirmative action for the recovery of these monies is necessary.”¹¹

Government entities are not barred from collecting debt by statutes of limitations; they still retain the right of payment of the debt.¹² Debtors (or the debtor’s personal representative)

² 31 U.S.C. § 3711(a)(1) (requiring agencies to collect all outstanding debts); 31 CFR § 901.1 (“Federal agencies shall aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, that agency.”)

³ See 31 U.S.C. §§ 3701(b), 3711(a).

⁴ Tax debt is not addressed in this Opinion.

⁵ 31 U.S.C. § 3701(b)(1)(A).

⁶ 31 U.S.C. § 3701(b)(1)(F).

⁷ 31 U.S.C. § 3701(b)(1)(C).

⁸ See 31 U.S.C. § 3701(b)(1)(G) (including “other amounts of money or property owed to the Government” in the definition of “debt”).

⁹ 31 U.S.C. § 3701(b).

¹⁰ *Bell v. New Jersey*, 461 U.S. 773, 775 (1983) (holding that the Secretary of Education could administratively determine the amount of a debt); see also *United States v. Beulke*, 892 F. Supp. 2d 1176, 1187 (D.S.D. 2012) (“A court order is not a prerequisite to referring a debtor to [the Treasury Offset Program].”)

¹¹ *Di Silvestro v. United States*, 405 F.2d 150, 155 (2d Cir. 1968)

¹² See, e.g., *United States v. Moriarty*, 8 F.3d 329, 334 (6th Cir. 1993) (“[A]lthough the United States may be precluded by the applicable statute of limitations from bringing an action for

also retain certain rights, and can contest, in court, the government's determination that a debt exists.¹³ However, Tribal law requires that all property disposed of by will is first subject to the payment of the decedents' debts.¹⁴

Government claims generally have priority over claims owed to other creditors.¹⁵ While the federal government has codified this principal, it stems from the common law and should be interpreted broadly in favor of the Tribe.¹⁶ As the Supreme Court explained:

The right of priority of payment of debts due to the government is a prerogative of the crown well known to the common law. It is founded not so much upon any personal advantage to the sovereign, as upon motives of public policy, in order to secure an adequate revenue to sustain the public burthens and discharge the public debts. . . . and as that policy has mainly a reference to the public good, there is no reason for giving to them a strict and narrow interpretation.¹⁷

To protect its right to priority, the Tribe or a Tribal agency should promptly notify the debtor (or debtor's representative) of its claim.

The government entity, such as the United States or the Tribe, is entitled to enforce debt collection, through various means, including legal action.¹⁸ Thus, while the agency itself may have administered the funds that are the subject of the debt and appropriately established that a debt exists, the government itself can pursue debt collection.¹⁹

money damages, it continues to have a 'right to payment' against the debtor in this case and thus may enforce that right in other ways.").

¹³ See, e.g., 31 U.S.C. §§ 3711(e)(2) (granting debtors a right to request reconsideration of a debt before the agency reports the debt to a consumer reporting agency), 3716(a)(3) (providing that an agency may only collect a debt through administrative offset if it has provided the debtor with an opportunity for review of the agency's decision), 3720D(b)(5) (providing debtors with a right to request a hearing on the existence and amount of the debt, or on the terms of a repayment schedule, when administrative wage garnishment will be used as a collection tool); see also 5 U.S.C. § 702 (describing a person's right to seek judicial review of agency actions); Tribal Code, § 22.1109 (after exhausting administrative remedies, an aggrieved party may file a claim in tribal court).

¹⁴ See e.g., Turtle Mountain Band of Chippewa Tribal Code § 11.0202 (hereinafter cited as "Tribal Code").

¹⁵ 31 U.S.C. § 3713.

¹⁶ *United States v. State Bank of N.C.*, 31 U.S. 29, 35 (1832); *United States v. Coppola*, No. CV-88-3456, 1994 U.S. Dist. LEXIS 16848, at *25 (E.D.N.Y. Nov. 17, 1994).

¹⁷ *State Bank of N.C.*, 31 U.S. at 35 (interpreting a precursor to 31 U.S.C. § 3713).

¹⁸ *United States v. Summerlin*, 310 U.S. 414, 416 (1940).

¹⁹ *Id.* ("The claim assigned to the Federal Housing Administrator acting on behalf of the United States became the claim of the United States, and the United States thereupon became entitled to enforce it."); see generally, Tribal Code § 4.01 (Judgment and Execution, general provisions).

Death generally does not extinguish government debts.²⁰ Government agencies can therefore pursue debt collection against decedents.²¹ The Tribe has the right, and the duty, to aggressively pursue debt collection efforts on behalf of its agencies, and it can do so through the probate process (although it does not have to).²² It could also simply notify the personal representative of the estate of its claim in writing.

On the Turtle Mountain Reservation, probate is governed by Title 11 of the Tribal Code, § 11.07. The probate process begins with a petition for probate.²³ The Tribal Court must then proceed, “in a summary manner, to adjust and determine the respective rights of all persons interested, including amounts actually owing to the respective creditors, if any, and the rights of such creditors as to priority. If it is claimed that the decedent left a will, the same must apply in determining and adjusting the rights of all persons interested, including creditors, if any, and the Court shall enter findings of fact and conclusions of law.” Once a Tribal Court has ruled, this a judgment against a decedent is considered lawful debt against the estate and the Tribe can collect this.²⁴

The estate’s personal representative owes a fiduciary duty to the government, the creditors, and the heirs of the estate, and is responsible for publicly notifying known creditors and heirs of the probate proceeding.²⁵ The estate representative is also responsible for collecting information on all estate assets and appraising any estate real property. Once the Tribal Court has received all relevant information, it will issue an order of probate on the estate.

²⁰ Fed. Trade Comm’n, Statement of Policy Regarding Communications in Connection with the Collection of Decedents’ Debts, 76 Fed. Reg. 44915 (Aug. 29, 2011) (“When a person dies, creditors and the debt collectors they hire usually have the right to collect on the person’s debts from the assets of his or her estate.”).

²¹ Tribal Code § 4.0206 (“A judgement shall be considered a lawful debt in all proceedings held by the United States Department of the Interior or by the Turtle Mountain Tribal Court of the Turtle Mountain Band of Chippewa Indians Tribe to distribute decedents’ estate.”); 31 U.S.C. § 3711(a)(1) (requiring agencies to collect all outstanding debts); 31 CFR § 901.1 (“Federal agencies shall aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, that agency.”)

²² Tribal Code § 4.0206 (“Lawful debt in proceedings to distribute decedents’ estates”).

²³ Tribal Code, § 11.0702.

²⁴ Tribal Code, § 4.0206.

²⁵ See *United States v. Coppola*, No. 88-3456, 1994 U.S. Dist. LEXIS 16848, at *14-15 (E.D.N.Y. Nov. 17, 1994).