

No. 24-

IN THE
Supreme Court of the United States

FRANK W. BIBEAU,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

PETITION FOR A WRIT OF CERTIORARI

FRANK BIBEAU
Counsel of Record
BIBEAU LAW OFFICE
909 NW Ninth Street
Grand Rapids, MN 55744
(218) 760-1258
frankbibeau@gmail.com

Counsel for Petitioner

130895



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

The Commissioner of Internal Revenue, a federal agency, applied federal income tax to the on-reservation income of an Indian despite a constitutional provision that Indians Not [be] Taxed and in the absence of an Act of Congress clearly authorizing the tax.

The question presented is: Did the Court of Appeals err in upholding federal income tax on an individual Indian's self-employment income earned on his Tribe's reservation without Treaty, constitutional, or congressional expressly stated authorization for that taxation?

STATEMENT OF RELATED CASES

Frank W. Bibeau v. Commissioner of Internal Revenue,
No. 23-2923, U.S. Court of Appeals for the Eighth Circuit.
Judgment entered July 19, 2024.

*Frank Warren Bibeau v. Commissioner of Internal
Revenue*, Docket No. 11483-20L, U.S. Tax Court.
Judgment entered May 24, 2023.

*Frank Warren Bibeau v. Commissioner of Internal
Revenue*, Docket No. 11483-20L, U.S. Tax Court.
Judgment entered May 25, 2023.

Frank W. Bibeau v. Commissioner of Internal Revenue,
No. 23-2923, U.S. Court of Appeals for the Eighth Circuit.
Judgment entered September 26, 2024.

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CITATIONS TO OPINIONS BELOW

Bibeau v. Commissioner of Internal Revenue, 108 F.4th 1038 (2024), 134 A.F.T.R.2d 2024-5114

Bibeau v. Commissioner of Internal Revenue, T.C. Memo. 2023-66 (2023), T.C.M. (RIA) 2023-066, 2023 RIA TC Memo 2023-066.

JURISDICTIONAL STATEMENT

Under Supreme Court Rule 13 a petition for a writ of certiorari to review a judgment in any case, entered by a United States court of appeals is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. The Eighth Circuit ordered that the petition for rehearing en banc and the petition for rehearing by the panel were both denied on September 26, 2024. On December 12, 2024, Petitioner's Application (24A567) for 30-day extension was granted by Justice Kavanaugh extending the time to file petition until January 24, 2025, this petition is timely filed by that order.

**CONSTITUTIONAL, TREATY AND
STATUTORY PROVISIONS INVOLVED**

Commerce Clause (U.S. Const., art. 1, § 8, cl. 3)

5th Amendment

14th Amendment

16th Amendment

The Chippewa have 44 Treaties with the United States from 1785 to 1867. The primary Treaties involved here are:

1817 Treaty of the Rapids of the Miami of Lake Erie with the Wyandot, Seneca, Delaware, Shawnee, Potawatomi, Ottawa, and Chippewa on Sept. 29, 1817, 7 Stat., 160., Proclamation, Jan. 4, 1819

1825 Treaty with the Sioux and Chippewa, Sacs and Fox, Menominie, Ioway, Sioux, Winnebago, and a portion of the Ottawa, Chippewa, Potawattomie, Tribes, Proclamation, 7 Stat., 272, Feb. 6, 1826.

1826 Treaty with the Chippewa, Stat. 7, 290, Proclamation, Feb. 7, 1827.

1837 Treaty with the Chippewa, July 29, 1837, 7 Stat. 536.

1855 Treaty with the Chippewa, Feb. 22, 1855, 10 Stat., 1165, Ratified Mar. 3, 1855, Proclaimed Apr. 7, 1855.

Trade and Intercourse Act of June 30, 1834, c. 161, s 8, 4 Stat. 730.

Indian Citizenship Act of 1924, Pub. L. No. 68-175, ch. 233, 43 Stat. 253, 253 (codified at 8 U.S.C. § 1401(b))

STATEMENT OF THE CASE

Petitioner Frank Bibeau is an enrolled member of the Chippewa tribe who lives and practices law on the Leech Lake Reservation in Minnesota. In a treaty with the United States, the Chippewa kept the right to “hunt, fish, and gather the wild rice” on their traditional lands. Bibeau says this is really the right to “food, clothing and shelter

and travel, whereby the new canoe is the automobile.” Bibeau and his wife filed joint returns for their 2016 and 2017 tax years. For both years, Bibeau reported income from his law practice [. . . b]ut his self-employment income still led to a total self-employment tax liability for both years of \$6,000. He has never paid this tax debt. (See Tax Court Judge Holmes *Memorandum Opinion* dated May 24, 2023).

The legal services that [Petitioner provided in 2016 and 2017] are for (1) protection of tribal natural resources for hunting, fishing and gathering rights on and off reservation, (2) Election Judge for Minnesota Chippewa Tribe [and Represented Leech Lake Res. in an on-reservation election dispute at Tribal Court] and (3) historical research to support additional tribal and members’ rights under the Chippewa Treaties. (See Petitioner’s *pro se* Petition to U.S. Tax Court dated August 20, 2020).

SUMMARY OF ARGUMENT

No federal treaty, constitutional, or statutory provision expressly authorizes federal taxation of the income of individual Indians earned on their reservations. The decision below perpetuates implicit authorization that should be reviewed and corrected by this Court to comport with originalism and textualism. Further, the Court should resolve a conflict between two canons of construction pertinent to interpreting constitutional and statutory provisions relating to federal taxation of Indians—1) the Tax Law canon of general applicability that would support the tax, and 2) the Indian Law canon which would not support the tax.

The unique nature of the relationship between Indian Tribes and the United States requires clarity as to how the canons will ultimately control interpretation of the Constitution and the Indian Citizenship Act of 1924.

BACKGROUND

Petitioner Frank Bibeau is an enrolled member of the Minnesota Chippewa Tribe, who lives and practices law from his home on restricted, trust lands on the Leech Lake Reservation in Minnesota. Bibeau argues that neither the Indian Citizenship Act of 1924 nor the treaties between the United States and the Chippewas authorize the federal taxation of Indians. Bibeau considers his intramural, self-employment income from *Indian Country* part of his *modernized* usufructuary property rights to hunt, fish, trap and gather to earn a *modest living*,¹ exempt from federal taxation.

The United States Tax Court disagreed and held Bibeau's self-employment income is taxable. The Eighth Circuit below upheld the Tax Court's decision and followed its prior 2-1 divided decision in *Fond du Lac Band of Lake Superior Chippewa v. Frans*, 649 F.3d 849 (8th Cir. 2011), which determined a nexus between the 14th Amendment and the Indian Citizenship Act to enable the State of Minnesota to tax an on-reservation Indian's out-of-state retirement income without express Congressional

1. See *Lac Courte Oreilles Band v. Wisconsin* (Voigt Decision), 700 F.2d 341 (1983). (A trial was held in this case in March 1988 to determine two issues: (1) the economic value of the "modest standard of living" guaranteed [Chippewa] plaintiffs under their treaties with the United States; and (2) the income-generating potential of the available resources in the ceded territory of northern Wisconsin).

authorization or consent of the Indians. The Eighth Circuit’s decision in *Frans* is nearly the opposite that this Court reached just last term in *Trump v. Anderson*, 601 U.S. —, 144 S. Ct. 662, 668 (2024) (per curiam). This petition challenges the federal income taxation by the Executive Branch in the absence of a clearly expressed act of Congress containing intent to apply federal taxation to Indians. Moreover, the Indian Citizenship Act contained a *proviso* stating that by granting Indians citizenship, the Act “shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.” Indian Citizenship Act of 1924, Pub. L. No. 68-175, ch. 233, 43 Stat. 253, 253 (codified at 8 U.S.C. § 1401(b)). A plain reading of the Act’s *proviso* protects Petitioner’s various tribal, Chippewa, and personal and real property from impairment by taxation without Congressional authorization.

INTRODUCTION

Federal income taxation² of Indians has never been authorized by an Act of Congress, with clear and precise language and notice to the Tribes and Indians and with *due process* Congressional hearings about the intent of Congress to authorize federal taxation of all the *Indians not taxed*. This *Indians not taxed* defense, using the express *proviso* in the Indian Citizenship Act of 1924 (ICA 1924),³ is a case of first impression. No act of Congress—

2. See Sixty-eighth Congress. Sess. I. Chap. Chap 234, *Revenue Act of 1924*, pp 253- 354 (102-page act the term “Indian” never mentioned).

3. Id. see also *Indian Citizenship Act of 1924 Sixty-eighth Congress. Sess. I. Chap. Chap. 233*, Indians born in U.S. declared citizens, p 253, also known as the *Snyder Act*.

by either its text or its legislative history—evinces a Congressional intent to subject reservation Indians to federal income taxation for income derived for the benefit and protection of Tribal member’s environmental and cultural rights in *Indian Country*.

Congress has enacted federal laws like the General Allotment Act of 1887 (GAA)⁴ which applied to certain tribes. In 1889 Congress enacted *The Nelson Act, An Act for the Relief and Civilization of the Chippewa Indians in the State of Minnesota*,⁵ in conformity with the GAA. The GAA does speak of individual Indian allotments transitioning to fee lands (which lands would become taxable by states and counties), but not federal taxation.

The GAA did provide for *Adopting Habits of Civilized Life* in Section 6 of the GAA asserting “That every Indian . . . *who has voluntarily taken up . . . residence separate and apart from any tribe . . . that has adopted the habits of civilized life . . . is hereby declared to be a citizen of the United States . . . without in any manner impairing or otherwise affecting the rights of any such Indian to tribal or other property.*” This *tribal or other property* language is almost identical to the proviso in the ICA 1924.

4. See General Allotment Act (or Dawes Act), Act of Feb. 8, 1887 (24 Stat. 388, ch. 119, 25 U.S.C. § 331), Acts of Forty-ninth Congress—Second Session, 1887

5. The Statutes at Large of the United States of America from December 1887, to March, 1889, and Recent Treaties, Postal Conventions, and Executive Proclamations. Vol. XXV, pp. 642-646. CHAP 24.- An act for the relief and civilization of the Chippewa Indians in the State of Minnesota. (51st-1st- Ex.Doc.247; 25 Stat. 642).

In the act of March 3, 1921 (41 Stat. 1249-50), citizenship was extended to all members of the Osage tribe of Indians, after the 1906 Act authorized the state of Oklahoma and the County to levy and collect a gross production tax upon all oil and gas produced in Osage County, Oklahoma.⁶

Here on the Leech Lake Reservation, “[i]n July 1924, a little over a month after the passage of the Indian Citizenship Act, the Chippewa Indians of Minnesota⁷ held their annual general council meeting at Cass Lake, Minnesota” and were informed that “[a] law has been passed making the Indians full citizens of the United States and of the States wherein they reside and it will not be for very much longer that we will gather together in this fashion.”⁸ However, the Act of Congress with the clear and precise language that made Indians citizens in 1924, also *clearly intended* to limit the Act’s collateral scope and susceptibility, including removing the word “full” from “full citizenship” in the bill.⁹

6. An Act To amend section 3 of the Act of Congress of June 28, 1906, entitled “An Act for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes.”

7. Now federally identified as the *Minnesota Chippewa Tribe*.

8. See *Challenging American Boundaries: Indigenous People and the “Gift” of U.S. Citizenship*, Kevin Bruyneel, Babson College, Studies in American Political Development, 18 (Spring 2004) at FN 40.

9. See *Indian Citizenship Act: Granted Citizenship but Not Voting Rights*, by Robert Longley, Updated on June 10, 2022. Progressive senators and activists, like the “Friends of the Indians,” and senators on the Senate Indian Affairs Committee were for the Act because they thought it would reduce corruption

In fact, Longley points out that “for whatever reasons it was enacted, the Indian Citizenship Act did not grant Native people voting rights. Except for the Fifteenth and Nineteenth Amendments, which ensure African Americans and women respectively the right to vote in all states, the Constitution grants the states the power to determine voting rights and requirements.”¹⁰

FOURTEENTH AMENDMENT

Indians were specifically not made citizens under the 14th Amendment. “In the bill as originally reported from the Judiciary Committee there were no words excluding [‘]Indians not taxed[‘] from the citizenship proposed to be granted.”¹¹ Due to various concerns expressed “Mr. Trumbull, who reported the bill, modified it by inserting the words [‘]excluding Indians not taxed.[‘]”¹² What was intended by that modification appears from the following language used by him in debate:

** * * Of course we cannot declare the wild
Indians who do not recognize the Government*

and inefficiency in the Department of Interior and the Bureau of Indian Affairs. The removal of the word “full” from “full citizenship” in the final text of the bill was used as a reason why some Native Americans were not immediately granted the right to vote after the enactment of the law.

10. *Id. Native American Voting Rights.*

11. See *Method of Determining “Indians Not Taxed”*, Dept. of Interior Opinion M- 31039 at 991, Nov. 7, 1930, Synopsis of Solicitor’s Opinion. Margold, Solicitor. Approved: November 7, 1940, W. C. Mendenhall, Acting Assistant Secretary.

12. *Id.*

of the United States at all, who are not subject to our laws, with whom we make treaties, who have their own regulations, whom we do not pretend to interfere with or punish for the commission of crimes one upon the other, to be the subjects of the United States in the sense of being citizens. They must be excepted.

The Constitution of the United States excludes them from the enumeration of the population of the United States, when it says that Indians not taxed are to be excluded. It has occurred to me that perhaps an amendment would meet the views of all gentlemen, which used these constitutional words, and said that all persons born in the United States, excluding Indians not taxed, and not subject to any foreign Power, shall be deemed citizens of the United States.” (Cong. Globe, 1st sess., 39th Cong., p. 527.)¹³

The Congressional intent for the constitutional status, *excluding Indians not taxed* was re-affirmed when “[i]n 1870, the U.S. Senate Judiciary Committee declared ‘the 14th amendment to the Constitution has no effect whatever upon the status of the Indian tribes within the limits of the United States.’”¹⁴ Also, in 1870, the Chippewas, as

13. See *Method of Determining “Indians Not Taxed”*, at 990. (Emphasis added).

14. See FN 9 supra above, *Indian Citizenship Act: Granted Citizenship but Not Voting Rights*, by Robert Longley. But Compare *Fond du lac v Frans* 2010, 8th Circuit deciding the 14th Amdt. is the nexus for Indian’s state citizenship enabling state taxation of tribal member for Ohio retirement received on his reservation.

a historic sovereign nation, have 44 treaties with the United States (1795-1871). At all times during all of the 44 Chippewa Treaties with the U.S., the Chippewa were also included as being *Indians not taxed* from the beginning in the U.S. Const. and through the 14th Amendment. Here, Petitioner's Chippewa Treaty Rights are not addressed if a tax case addressed a different tribe, a different treaty, and a different right. See also *U.S. v. Brown* distinguishing Chippewas exclusive treaty rights, from treaty rights to fish in common with the citizens of the territory or United States.

PRINCIPLES OF TREATY AND STATUTORY INTERPRETATION

“Treaty analysis begins with the text,” and treaties “are construed as they would naturally be understood by the Indians.” *Herrera v. Wyoming*, 139 S. Ct. 1686, 1701 (2019) (citation omitted). A court is to “look beyond the written words to the larger context that frames the Treaty, including ‘the history of the treaty, the negotiations, and practical construction adopted by the parties. *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 196 (1999) (citation omitted). Treaties are to be interpreted “liberally, resolving uncertainties in favor of the Indians[.]” *United States v. Brown*, 777 F.3d 1025, 1031 (8th Cir. 2015) (citing *Mille Lacs*, 526 U.S. at 200).

The Supreme Court has explained that “[a]s a general rule, Indians enjoy exclusive treaty rights to hunt and fish on lands reserved to them . . . [and] [t]hese rights need not be expressly mentioned in the treaty.” *United States v. Dion*, 476 U.S. 734, 738, 106 S.Ct. 2216, 90 L.Ed.2d 767 (1986). Individuals may assert these rights “unless [they]

were clearly relinquished by treaty or have been modified by Congress.” Id.

Statutes, likewise, are to be “construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit[.]” *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985). What is essential here for this Chippewa Treaties tax immunity treaty defense is that when

examining each treaty applicable to the territory in question, in light of the *Mille Lacs* methodology, is it possible to determine ***whether usufructuary property rights [to hunt, fish and gather] were retained from the fee simple bundle of property interests for which the treaty negotiators bargained***, in relation to the territory in question. Then, tracing those bargained-for usufructuary property interests to the present to determine whether Congress acted to abrogate the treaty-guaranteed property interest in language intended for that purpose, understood as such by the native signatories to the treaties.”¹⁵

15. *Minnesota v. Mille Lacs Band of Chippewa: 19th Century U.S. Treaty-Guaranteed Usufructuary Property Rights, the Foundation for 21st Century Indigenous Sovereignty* by Peter Erlinder, Law and Inequality [Vol. 33: 143 2015] Professor of Law (ret.), William Mitchell College of Law, St. Paul, MN 55105; Director, International Humanitarian Law Institute, St. Paul, MN 55101. The Author’s research for this Article began on boat launching ramps in Northern Wisconsin in early spring of the 1980s. Legal observers from the Minnesota Chapter of the National Lawyers Guild spent long, cold nights interposed

The most important part of the treaty examination is remembering as the *Smiskin*¹⁶ Court reminded

[t]he Supreme Court’s jurisprudence makes clear, however, that we must interpret a treaty right in light of the particular tribe’s understanding of that right at the time the treaty was made, and *Baker*¹⁷ addressed a different tribe, a different treaty, and a different right.¹⁸

ARGUMENT

CHIPPEWATREATYPROTECTEDUSUFRUCTUARY RIGHTS, TAX IMMUNITY (OR EXEMPTION) AND RIGHT TO EARN A MODEST LIVING

In the *1817 Treaty with Wyandot, Chippewa etc.*,¹⁹ the Chippewa, along with other Tribes cedes lands to the

between 1854 Treaty rights activists from the Lac Courte Oreilles Reservation launching canoes for the spring walleye harvest and armed, non-Indian, anti-Treaty protestors threatening violence under the motto, “Save a Fish, Spear an Indian.”

16. See *U.S. v. Smiskin*, 487 F.3d 1260, 1266-67 (2007)

17. *Id. United States v. Baker*, 63 F.3d 1478, 1484 (9th Cir.1995).

18. *Id.* citing *Puyallup Tribe v. Dep’t of Game of Wash.*, 391 U.S. 392, 397, 88 S.Ct. 1725, 20 L.Ed.2d 689 (1968)

19. See *1817 Treaty of the Rapids of the Miami of Lake Erie with the Wyandot, Seneca, Delaware, Shawnee, Potawatomi, Ottawa, and Chippewa on Sept. 29, 1817*, 7 Stat., 160., Proclamation, Jan. 4, 1819.

U.S., for several other Tribes to have a reserved home with the *tracts of land granted in fee simple* “to the chiefs, for the use of the Wyandot, Shawnese, Seneca, and Delaware Indians, and the reserve for the Ottawa Indians, **shall not be liable to taxes of any kind so long as such land continues the property of the said Indians.**”²⁰ Here, the Chippewa and other Tribes clearly understood the link between *fee simple* lands being likely considered taxable somewhere, somehow, after they were ceded to the United States. Consequently, here the customary Indian treaty tax immunity the Chippewa held on their lands *was changed* to create a *tax exemption* for the Wyandot, Shawnese, Seneca, and Delaware Indians, and the Ottawa Indians who were receiving tracts of land granted in fee simple.

The Eighth Circuit pointed out in the *U.S. v. Brown*²¹ appeal that the Supreme Court has explained that “[a]s a general rule, Indians enjoy exclusive treaty rights to hunt and fish on lands reserved to them . . . [and] [t]hese rights need not be expressly mentioned in the treaty.” *United States v. Dion*, 476 U.S. 734, 738, 106 S.Ct. 2216, 90 L.Ed.2d 767 (1986). Individuals may assert these rights “unless [they] were clearly relinquished by treaty or have been modified by Congress.” *Id.*

20. *Id.* Art. 15. The tracts of land herein granted to the chiefs, for the use of the Wyandot, Shawnese, Seneca, and Delaware Indians, and the reserve for the Ottawa Indians, *shall not be liable to taxes of any kind so long as such land continues the property of the said Indians.*

21. See *U.S. v. Brown*, 777 F.3d 1025, 1031 (8th Cir. 2015).

The 1837 Treaty with the Chippewa²² did not provide for reservations, because “[t]he privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guarantied to the Indians. . . .”²³ Before that point in time the Chippewa lands yet to be ceded were held by federally recognized title established by the 1825 and reaffirmed by the 1826 Chippewa Treaty. The 1825 Treaty²⁴ provided for Chippewa right to decide who hunts north of the Prairie du Chien treaty boundary line. Chippewa sovereignty and treaty nation status were clear in the 1826 Treaty²⁵ when the U.S. drafters included language that *title to the land has not changed* and the *Chippewas retained jurisdiction over lands* north of the 1825 Prairie du Chien boundary. In the 1855 Treaty with the Chippewa²⁶, Art 7 provides that “the laws which have been or may be enacted by Congress, regulating trade and intercourse with the Indian tribes, to continue and be in force within the several reservations provided for herein.” Leech Lake is one of those 1855 reservations.

22. See *1837 Treaty with the Chippewa*, July 29, 1837, 7 Stat. 536.

23. *Id.* Art. 5.

24. See *1825 Treaty with the Sioux and Chippewa, Sacs and Fox, Menominie, Ioway, Sioux, Winnebago, and a portion of the Ottawa, Chippewa, Potawattomie, Tribes*, Proclamation, 7 Stat., 272, Feb. 6, 1826.

25. See *1826 Treaty with the Chippewa*, Stat. 7, 290, Proclamation, Feb. 7, 1827.

26. See *1855 Treaty with the Chippewa*, Feb. 22, 1855, 10 Stat., 1165, Ratified Mar. 3, 1855, Proclaimed Apr. 7, 1855.

The *Brown*²⁷ 8th Circuit Court recounted [i]n *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F.Supp. 1001 (D.Minn.1971), the Leech Lake Band sought a declaratory judgment that the state of Minnesota could not regulate fishing, hunting, and gathering wild rice within its reservation. The United States, also a plaintiff, contended “that the treaty protected rights to hunt, fish, trap and gather wild rice **are property rights to be used in whatever fashion the Indians, as owners, desire, whether to eat, clothe, or sell.**”²⁸ About 100 years later in the 1944 *State v. Jackson*²⁹ case the Minnesota Supreme Court recognized that

The traditional right of Indians to hunt in the Indian country was recognized by congress as early as 1834. In that year congress enacted a law regulating trade and intercourse with Indian tribes (Act of June 30, 1834, c. 161, s 8, 4 Stat. 730), reframed in the Revised Statutes, and still on the statute books, which included a provision now reading as follows:

27. See *U.S. v. Brown*, 777 F.3d 1025 (2015), citing *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F.Supp. 1001 (D.Minn.1971).

28. *Id.* citing *Dion* noting “[e]xclusive on-reservation hunting, fishing, and gathering rights are implied from the establishment of a reservation for the exclusive use of a tribe.” (Emphasis added). *Id.* The Supreme Court has explained that “[a]s a general rule, Indians enjoy exclusive treaty rights to hunt and fish on lands reserved to them . . . **[and] [t]hese rights need not be expressly mentioned in the treaty.**” *United States v. Dion*, 476 U.S. 734, 738, 106 S.Ct. 2216, 90 L.Ed.2d 767 (1986).

29. *State v. Jackson*, 218 Minn. 429, 16 N.W.2d 752 (1944) (Emphasis added).

‘Every person, Other than an Indian, who, within the limits of any tribe with whom the United States has existing treaties, hunts, or traps, or takes and destroys any peltries or game, except for subsistence in the Indian country, shall forfeit all the traps, guns, and ammunition in his possession, used or procured to be used for that purpose, and all peltries so taken; and shall be liable in addition to a penalty of \$500.’
R.S. § 2137, 25

U.S.C.A. § 216. (Italics supplied.)

By expressly limiting the offense thereby created to persons other than Indians, this statute impliedly excluded Indians.³⁰ The *1834 Trade and Intercourse Act*³¹ also recognizes that Indians have a *commercial right* to hunt, fish and gather not limited to subsistence.

The question in *U.S. v. Brown* was

whether Congress intended the Lacey Act to apply even to Indians who hold fishing rights that are *exclusive* and not shared in common with non-Indians. Certainly, the federal government has the authority to exercise jurisdiction to limit tribe members’ fishing and hunting, *but in order to do so Congress would*

30. 2 *Lewis’s Sutherland, Statutory Construction*, 2d Ed., s 491; *Horack’s Sutherland, Statutory Construction*, s 4915; *Cohen v. Gould*, 177 Minn. 398, 405, 225 N.W. 435, 438.

31. *Trade and Intercourse Act* of June 30, 1834, c. 161, s 8, 4 Stat. 730.

*need to make explicit its intent to abrogate the treaty rights.”*³²

When a Chippewa tribal member is exercising their treaty protected usufructuary rights to hunt, fish, trap and gather, they are exercising property rights to be used in whatever fashion the Indians, as owners, desire, whether to eat, clothe, or sell to earn a modest living.³³ Exercising these usufructuary property rights, is self-employment, and exclusive of non-Indians. Here, the taxing of Bibeau’s Chippewa self-employment income³⁴, if exercising exclusive usufructuary rights income from non-Indians would be for the benefit of the non-Indian public, and be an unjust taking in violation of the 5th Amdt.

Consequently, because Chippewa treaty rights are **not** shared in common with non-Indians, Chippewa treaty rights to hunt, fish and gather (and reserved rights not relinquished like *tax immunity*) are exclusive from the federal government. A recognized treaty property right to exclusive use of resources across the Chippewa ceded territories, separate from the federal government, and separate from non-Indians, *is a tax immunity or tax exemption* for usufructuary self-employment throughout Chippewa’s Indian Country.

32. See *U.S. v Brown*, 2013 WL 6175202, 8, citing *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 594 (1977)(Emphasis added).

33. *United States v. Brown*, 777 F.3d 1025 (2015).

34. By Tax Affidavit for 2016 Bibeau reported self-employment for Leech Lake Res. election dispute in Tribal court and Mille Lacs Band historical Chippewa treaties research. By Tax Aff. for 2017 Bibeau reported representation-legal work for native led environmental protection organization based on White Earth Res. against Line 3 Oil pipeline.

In its May 24, 2023, *Memorandum Opinion* the U.S. Tax Court recognized that Petitioner

is an enrolled member of the Chippewa tribe who lives and practices law on the Leech Lake Reservation in Minnesota. In a treaty with the United States, the Chippewa kept the right to “hunt, fish, and gather the wild rice” on their traditional lands. Bibeau says this is really the right to “food, clothing and shelter and travel, whereby the new canoe is the automobile.” He argues that this means that income from his law practice is tax exempt.³⁵

Here, Bibeau is exercising his modernized usufructuary property to earn a modest living in Indian Country, from his home on restricted trust (not fee simple) lands on the Leech Lake Reservation, which rights are exclusive from the federal government and all other non-Indians.

INDIAN CITIZENSHIP ACT OF 1924

The Indian Citizenship Act was signed into law on June 2, 1924.³⁶ The single-sentence act declares

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all noncitizen Indians born within the territorial

35. See *Bibeau v. Comm. Internal Rev.*, T.C. Memo. 2023-66, Docket No. 11483-20L, Filed May 24, 2023.

36. See Sixty-eighth Congress. Sess. I. Chap. 233 Indians born in U.S. declared citizens, p 253

limits of the United States be, and they are hereby, declared to be citizens of the United States: *Provided, That* the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.

Federal income taxation³⁷ of Indians has never been authorized by an Act of Congress, with clear and precise notice to the Tribes and Indians and with due process Congressional hearings about the intent of Congress to authorize federal taxation of all the *Indians not taxed*. This *Indians not taxed* defense, using the *proviso* in the Indian Citizenship Act of 1924 (ICA 1924), is a case of first impression.

The Tax court relies on *Squire v. Capoeman*,³⁸ which relies on *Choteau v. Burnet*,³⁹ neither of which cases discuss or consider the Indian Citizenship Act of 1924 (ICA 1924). Petitioner explains how these courts have accepted executive branch demands for deference, in the absence of *clear statutory guidance* and absent express congressional intent of federal taxation, the one-sentence ICA 1924 *sub silentio* inferred or implied a congressional grant of *generally applicable* federal taxation of Indians. Incredibly, taxation of Indians was accomplished by the IRS and courts, without any traditional, basic

37. Id. Chap 234, Revenue Act of 1924, pp 253-354 (102-page act), the term Indian never mentioned.

38. *Squire v. Capoeman*, 351 U.S. 1, 76 S.Ct. 611, 100 L.Ed. 883 (1956).

39. *Choteau v. Burnet*, 283 U.S. 691, 694-95 (1931).

Congressional due process of notice to the Indians by express words of intent of federal taxation, which would constitutionally require an opportunity for Tribes and Indians to be heard at Congress before deprivation of important and significant property rights, privileges and (tax) immunities.⁴⁰

16TH AMENDMENT

After the 16th Amdt. was adopted the executive branch began to include Indians generally for “incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.” The 16th Amendment was not ratified until 1913, and only voted on by State citizens, not Indians. This is taxation without representation of Indians. However, the phrase “excluding Indians not taxed” appears in both Article I and the 14th Amdt. of the U.S. Const., which bookend and parallel the time span of the 44 Chippewa Treaties with the U.S. between 1785 and 1867.

INDIAN COMMERCE CLAUSE

Petitioner agrees that Congress has plenary power under the *Indian* Commerce Clause (U.S. Const., art. 1, § 8, cl. 3) and Treaties are the supreme law of the land. (Id. art. 6.) However, there is no legal basis for imputing a contrary understanding of the ICA 1924 *proviso*, which

40. See U.S. Const., art. 1, § 8, cl. 3 *Indian Commerce Clause* [The Congress shall have Power . . .] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. See also *plenary power*.

at any rate would constitute an abrogation of an important tax immunity of Treaty Tribe's right by implication. *See, e.g., United States v. Dion*, 476 U.S. 734, 739 (1986) (treaty abrogation requires "clear evidence that Congress **actually considered** the conflict between its intended action on the one hand and Indian treaty rights on the other, and **chose** to resolve the conflict by abrogating the treaty . . . We do not construe statutes as abrogating treaty rights in a 'backhanded way'.") (quoting *Menominee Tribe of Indians v. United States*, 391 U.S. 404, 412 (1968)) (emphases added).

Consequently, when Congress uses its plenary power to modify or abrogate a treaty status, interest, right, privilege, reserved rights or long recognized immunity of/with Indians, Congress has a trust responsibility and due process obligation to give notice of its intentions to the affected Indians' property interests and rights and hold hearings.

Choteau Progeny of Cases

The line of cases that Commissioner cites to show that Indians being made citizens in 1924 was not necessary for the federal government to begin taxing Indians under the *general applicability* of various tax laws included in the scope of the 16th Amdt. *from whatever source derived*. In 1931, the *Choteau*⁴¹ Supreme Court held that a member of the Osage Tribe, holding *certificate of competency* was liable for income tax on his shares of income from tribal mineral (gas & oil) leases under the Revenue Act 1918, §§ 210, 211(a) 213(a), 40 Stat. 1062, 1065; Act June

41. See *Choteau v. Burnet*, 283 U.S. 691, 694-95 (1931).

28, 1906, c. 3572, 34 Stat. 539. The *Choteau* Court looked to the “language of sections 210 and 211(a)⁴² subjects the income of ‘every individual’ to tax. Section 213(a) includes income ‘from any source whatever.’⁴³ The executive branch’s *Choteau* brief sought deference from the Court like *Chevron*⁴⁴ (but see *Loper infra*). The Court reasoned the Revenue statute was intended to extend tax as far as possible to all species of income⁴⁵ without discussing the ICA 1924.

Why did the courts start taxing Indians?

In a different *U.S. v. Brown* 1993 tax case in Ohio, District Judge Spiegel investigated the history of taxing Indians and explained that

Prior to the Supreme Court’s 1931 decision in *Choteau v. Burnet*,⁴⁶ (1931), general acts of Congress did not apply to Indians, “unless so expressed as to clearly manifest an intention to include them.” See *Elk v. Wilkins*,⁴⁷ (1884). Citing *Elk v. Wilkins*, the Tenth Circuit

42. *Id.* at 600, citing 40 Stat. 1062.

43. *Id.* at 693-694 citing 40 Stat. 1065.

44. *Id.* *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984)

45. *Id.* Revenue Act 1916, 39 Stat. 756, as amended by Act Oct. 3, 1917, 40 Stat. 300.

46. *Choteau*, 283 U.S. 691, 51 S.Ct. 598, 75 L.Ed. 1353

47. *Elk v Wilkins*, 112 U.S. 94, 100, 5 S.Ct. 41, 44, 28 L.Ed. 643 (1884).

in *Blackbird v. Commissioner of Internal Revenue* held that the respondent Indian was exempt from the federal income tax, observing that “[i]t is well established that general Acts of Congress do not apply to Indians, unless so worded as clearly to manifest an intention to include Indians in their operation.”⁴⁸

This rule of statutory construction, the Supreme Court noted almost a generation earlier, had “been recognized for over a hundred years, without exception. . . .” *Choate v. Trapp*⁴⁹ (1912). Thus, it had long been held that to apply laws of general application to the Indians, absent explicit language including them, “would be contrary to the almost unbroken policy in dealing with . . . [the] Indian[s]. Whenever they or their interests ha[d] been the subject affected by legislation they ha[d] been named, and their interests specifically dealt with.” *Blackbird*, 38 F.2d at 977 (citing *Elk*, 112 U.S. 94, 5 S.Ct. 41).

The Internal Revenue Code states that income tax applies to “every individual” and to “all income from whatever source derived.” 26 U.S.C. §§ 1, 61. This clearly makes no specific reference to the Indians. Similarly, the ACT’s summons provisions speaks in terms of “any person,” with no reference to Indians whatsoever. Thus, under the long standing rule of construction, as one former United States

48. *Blackbird v. Comm. of Internal Revenue*, 38 F.2d 976, 977 (10th Cir.1930) (citing *Elk*, 112 U.S. 94, 5 S.Ct. 41).

49. *Choate v. Trapp*, 224 U.S. 665, 675, 32 S.Ct. 565, 569, 56 L.Ed. 941(1912).

Attorney General observed, because it has never been the practice to legislate for . . . [the Indians] generally, . . . [and because] no specific reference . . . is made in the [Internal Revenue] Acts . . . the Indians [were] not subject to the Federal income tax laws.” 34 Ops. Atty. Gen. 439, 444–45 (1925) (opinion of United States Attorney General John G. Sargent).

The *Brown*⁵⁰ Court went onto explain that

in 1931, however, the United States Supreme Court, virtually without explanation, did what amounted to an “about-face” on statutory interpretation in the area of American Indian law. In *Choteau v. Burnet*, 283 U.S. 691, 51 S.Ct. 598, 75 L.Ed. 1353 (1931), the Supreme Court held that the Internal Revenue Act, a generally applicable act of Congress, applied to Indians. *Id.* at 694, 697, 51 S.Ct. at 600, 601. The Court stated that because the Internal Revenue Act “does not expressly exempt the sort of income here involved, nor a person having petitioner’s status [as an Indian] respecting such income . . . ” the act applied to Indians. *Id.* at 694, 51 S.Ct. at 600. ***The Court therefore, in one sentence, with neither explanation nor citation, eradicated over a hundred years of statutory interpretation requiring explicit inclusion of Indians, see Trapp, 224 U.S. at 675, 32 S.Ct. at 569, henceforth requiring explicit exemption of Indians to free them from the scope of statutes of general application. See Choteau, 283 U.S. at 693–94, 51 S.Ct. at 599–600; See also Jay v. White, Taxing Those***

50. *United States v. Brown*, 824 F.Supp. 124, 125-126 (Ohio 1993) commenting on *Choteau*.

They Found Here 53–56 (1972) [hereinafter “White”].

Regardless of its reasoning, however, the Supreme Court has spoken with abundant clarity in at least one respect. The prevailing rule by which we are bound is that general acts of Congress, including the Internal Revenue Code, apply to Indians unless a statute or a treaty expressly exempts them. *Fed. Power. Comm. v. Tuscarora Indian Nation*, 362 U.S. 99, 115–16, 80 S.Ct. 543, 4 L.Ed.2d 584 (1960); *Superintendent v. Tax Commissioner*, 295 U.S. 418, 420–421, 55 S.Ct. 820, 821–22, 79 L.Ed. 1517 (1935); *Choteau*, 283 U.S. at 693–94, 51 S.Ct. at 599–600;

The *Choteau* Court never mentioned the ICA 1924 because it was not necessary to the existing taxation case of Osage Indians. Here, the *Choteau* Court decides emancipation of Indians instead, without Congress, saying

[i]t does not follow, however, that [the Indians] cannot be subjected to a federal tax. The intent to exclude must be definitely expressed, where, as here, the general language of the act laying the tax is broad enough to include the subject-matter.⁵¹

Here, the 1931 *Choteau* Court simply relies on a 1910 certificate of competency for citizenship, a 1906 Act homesteading, 16th Amdt. and 1918 Revenue Act, using *general applicability* concepts for federal taxation of an Indian, before Congress adopted the ICA 1924.

51. Id. citing *Heiner v. Colonial Trust Co.*, 275 U. S. 232, 48 S. Ct. 65, 72 L. Ed. 256.

INDIANS AND THEIR PROPERTY INTERESTS

Indians and their property interests in Tuscarora is exactly what the Congressional ICA 1924 *proviso* was addressing and attempting to protect. The line of federal courts supporting taxing Indians discussed by the *Brown* Court (Ohio D.) above have not been willing to consider the *proviso* half of the single sentence act from a property rights and true plenary power, trust responsibility, due process aspect. This Court needs to determine the *reasonable* meaning and Congressional intent of the ICA 1924 *proviso*, because Congress has not expressly authorized the federal taxation of Indians.

FOND DU LAC V. FRANS

In *FDL v. Frans*⁵² (hereinafter *Frans*), *dissenting* Judge Murphy argued the ICA 1924 decoupled taxation from citizenship, which the majority did not support saying it did not create a tax exemption. From a Chippewa treaty rights perspective under *Mille Lacs*⁵³, *Dion*⁵⁴, *Brown*⁵⁵ and *Menominee*⁵⁶ all those Courts start point

52. See *Fond du Lac Band of Lake Superior Chippewa v Frans*, 649 F.3d 849, 851, (2011) Rehearing and Rehearing En Banc Denied Oct. 13, 2011.

53. *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 196 (1999)

54. *United States v. Dion*, 476 U.S. 734, 738, 106 S.Ct. 2216, 90 L.Ed.2d 767 (1986)

55. *United States v. Brown*, 2013 WL 6175202 and *United States v. Brown*, 777 F.3d 1025, 1031 (8th Cir. 2015)

56. *Menominee Tribe v. United States*, 391 U.S. 404, 413, 88 S.Ct. 1705, 20 L.Ed.2d 697 (1968).

examination is determining what the Indians understood at the time of treaties. The *Frans* majority missed this Court’s important guidance because if citizenship were all that was necessary to give states authority to tax tribal members, the Supreme Court would not have rejected the imposition of state cigarette,⁵⁷ personal-property,⁵⁸ income,⁵⁹ or motor-fuel taxes⁶⁰ on tribal members who reside within state borders and within *Indian country*.

This Court needs to review this instant *Bibeau* (following *Frans* holdings) decision in light of this Supreme Court’s recent rulings in *Trump v. Anderson*⁶¹ and *Loper*⁶² as the 8th Circuit *ignored both*. This June in *Loper*, the Court explained “statutory ambiguity, . . . is not a reliable indicator of actual delegation of discretionary authority to agencies. *Chevron* thus allows agencies to change course even when Congress has given them no power to do so”⁶³[,] adding “*Chevron* is overruled.”⁶⁴

57. *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 152 (1980).

58. *Id.*; See also *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 477 (1976). See also *Bryan v Itasca* (1976).

59. *McClanahan v. State Tax Comm’n of Ariz.*, 411 U.S. 164, 93 S.Ct. 1257 (1973)

60. *Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450, 458 (1995).

61. See *Trump v. Anderson*, 601 U.S. — (2024), 144 S.Ct. 662.

62. See *Loper Bright Ent. Et al v. Raimondo, Sec. of Commerce et al* No. 22–451, 603 U.S. — (2024)

63. *Id.* at 33

64. *Id.* at 35

This past March, in *Trump v. Anderson*⁶⁵ the Supreme Court held that

[u]nder the Amendment, States cannot abridge privileges or immunities, deprive persons of life, liberty, or property without due process, deny equal protection [. . .] See Amdt. 14, §§ 1, 2. *On the other hand, the Fourteenth Amendment grants new power to Congress to enforce the provisions of the Amendment against the States.* It would be incongruous to read this particular Amendment as granting the States the power—*silently no less*—to disqualify a candidate for federal office.⁶⁶

But compare the 8th Circuit *Frans* decision *mistaken use* of the 14th Amdt. because “it would be incongruous to read this particular Amendment as granting the States the power—*silently no less*—to [tax Indians]” without express authorization by Congress “by *appropriate legislation*”⁶⁷. The ICA 1924 is not *appropriate legislation*

65. See *Trump v. Anderson*, 601 U.S. —, 144 S.Ct. 662, 668 (2024)

66. *Id.* (Emphasis added).

67. See Public Law 280, 28 U.S.C. § 1360. State civil jurisdiction in actions to which Indians are parties, “(b) *Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.*” See also *Bryan v Itasca County*, 426 US 373, 392 (1976), *Reversing Bryan v. Itasca County*, 303 Minn. 395, 228 N.W.2d 249 (Minn. Mar 28, 1975). (Emphasis added).

about taxation. Consequently, it would also be incongruous to read this particular Amendment as granting the 8th Circuit *Frans* Court the power—silently no less—to give Minnesota a new right to tax on reservation Indians without express Congressional authorization “by appropriate legislation”. Consequently, the ICA 1924 does not pass the smell test of expressly authorizing taxation *by appropriate legislation* for the *Frans* Court to grant state taxation, or here now for federal taxation of Petitioner.

The 8th Circuit *Frans* Court and the Tax Court in *Bibeau v. CIR* relied on *Squire v. Capoeman*, 351 U.S. 1, 76 S.Ct. 611, 100 L.Ed. 883 (1956). In 1953, Congress created Public Law 83-280, 28 U.S.C. § 1360 *State Civil Jurisdiction in Actions to which Indians are Parties*, provides in part “[n]othing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian . . . in Indian Country.”⁶⁸ Again, much like the ICA 1924, Public Law 83-280(b) denies state taxation of any real or personal property for on reservation income. See *Bryan v. Itasca County, Minn.*⁶⁹ The *Bryan* Court deciding and explaining that the State of Minnesota and Itasca county lacked authority under Pub.L. 83-280 to impose a personal property tax on Bryan’s mobile home located on land held in trust for members of his tribe on the Leech Lake Reservation, because that imposition of such a tax contravened federal law. Like Bryan, Bibeau’s

68. *Id.* See also 18 U.S.C. § 1162, 25 U.S.C. § 1322(b), and 25 U.S.C. § 1321(b).

69. See *Bryan v. Itasca County*, 426 U.S. 373 (1976) Held: *Public Law 280* did not grant States the authority to impose taxes on reservation Indians. 426 U. S. 379-393

home with his law office is *located on land held in trust for members of his tribe on the Leech Lake Reservation.*

The 8th Circuit *Frans* majority *comments*⁷⁰ that the

dissent emphasizes this [8th Circuit] court’s observation that reservation-residing Native Americans are not subject to “municipal civil regulatory control.” *Shakopee Mdewakanton Sioux Cmty.*, 771 F.2d at 1157, citing *Bryan v. Itasca County, Minn.*, 426 U.S. 373, 388, 96 S.Ct. 2102, 48 L.Ed.2d 710 (1976) (reservation Native Americans are not subject to “the full panoply of civil regulatory powers . . . of state and local governments”) (footnote omitted).

Here, the majority declares the *Frans* “case involves the narrow question *whether the State may tax a reservation Indian for income earned exclusively on the reservation.*”⁷¹ This would also be the description of the Supreme Court’s decision in *Bryan v. Itasca* (1976). However, Petitioner Bibeau distinguishes his self-employment income, as a Tribal attorney working with intramural, tribal cultural and resource issues *is* Bibeau’s method of earning a modest living from a *modernized* exercising of treaty protected usufructuary rights across Indian Country from restricted trust lands on the Leech Lake Reservation, like in *Bryan*.

Despite that lack of express congressional intent, guidance and authorization, federal courts have held Indians are taxable before Congress adopted the ICA

70. See *Frans*, FN 5.

71. *Id.* at 852.

1924. The *Frans* Court decided that “because citizenship provides a constitutional nexus, Minnesota’s taxation complies with due process” under the 14th Amdt.⁷² The ICA 1924 was not briefed by the *Frans* parties for the 8th Circuit, instead citizenship was argued by the divided panel.

1924 PROVISIO

Most important for the due process rights of Indian’s is that the line of cases including and following the *Choteau* Court have all failed to interpret the 1924 Act’s *Provisio*, itself, *before presuming citizenship* or the *so-called silence* grants Congressional guidance for federal taxation of Indians. The Commissioner argues the Indians need a specific, express *tax exemption* from the same Congress, that silently, never gave notice of intent to tax Indians. Congress was silent about taxation and everything else in 1924, *except* the ICA included an important *provisio* that has been ignored and not been interpreted appropriately by this Court.

The *provisio* creates a new, express statutory *due process* property right protection, with very clear, express congressional intent which “Provided, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property.”⁷³ *Other property* in

72. See *Fond du Lac Band of Lake Superior Chippewa v Frans*, 649 F.3d 849, 851, (2011) Rehearing and Rehearing En Banc Denied Oct. 13, 2011.

73. See *Indian Citizenship Act* of 1924, ch. 233, 43 Stat. 253 *current version codified* as 8 U.S.C. § 1401(b).

the case of Petitioner includes a tax immunity property right historically held by the Chippewas. Tribal nation tax immunity recognition was *mutually understood and extended* by the parties *as nations*, several times in Treaties with the Chippewa.⁷⁴

5TH AMENDMENT DUE PROCESS

Exercising plenary power under the Indian Commerce clause of the U.S. Constitution requires due process *notice* and *opportunity to be heard* when a tribal, tax immunity, tribal property right is being modified or abrogated because all 44 Chippewa Treaties with the United States were ratified by 1867, which means the 5th Amdt. due process should be applied. The 5th Amdt. provides that *no person* shall be “deprived of life, liberty or property without due process of law.” The term “no person” includes Indians and Petitioner after the ICA 1924. The 5th Amdt. makes no reference to *Indians not taxed* and protects against unjust taking of *private* (tribal or other) *property* for public use, without just compensation.

The actual **due process** required between Congress exercising plenary power and trust responsibility, and Indians and Tribes with treaties and various rights, privileges and immunities under the Indian Commerce Clause of the United States Constitution *requires actual notice of the intended legislative impacts*, like federal taxation, to the affected Indians and Tribes and **opportunity to be heard**, at Congress before deprivations

74. See 1837 Treaty with the Chippewa contains four (4) references to Chippewa nations and 1825 Treaty Chippewa signatory *1st chief of the Chippewa nation*, Saulte St. Marie.)

of property rights and interests.⁷⁵ Moreover, “[t]he Supreme Court has made clear that if there is a treaty right that protects the relevant conduct, the question is whether Congress has abrogated that right, not whether the right has specifically exempted the party to the treaty from an Act that would otherwise generally apply.”⁷⁶ The ICA 1924 was not an Act of *general applicability* on its face because (1) the Act applies only to Indians, and (2) the Act contains a *proviso* for *when citizenship should not be used as a status to impair tribal and other property*.

The express *due process required* proviso part of the ICA 1924 clearly states “under this subsection shall not in any manner impair or otherwise affect the right of such person to *tribal or other property*.” (Emphasis added). This *proviso* part of the ICA 1924 has not been reasonably examined nor explained and therefore not fairly considered, by any court, including this *Frans* majority. The majority in *Frans* used the 14th Amdt. *due process nexus* to the *citizenship act* to get for taxation of Indians, without first initiating a congressional 5th Amdt. *due process subsection required (proviso)* proceeding on the potential impacts or impairments of citizenship Indian, before unreasonably inferring state taxation is now required of Indians *by appropriate legislation*.⁷⁷ Taxation of Indians, especially by a state is not what Congress intended in 1924, 1953 or 1868 (14th Amdt.).

These tax immunity property rights are too important to be abrogated by implication, inference and absent

75. See *Dion*, 476 U.S. at 737–40

76. *Id.* including silent or reserved rights

77. See *Frans* majority at 851.

clearly expressed intentions of Congress explaining why it is necessary, and if abrogating a property right, to compensate the taking. This Court can correct the “property principles subject to constitutional protections, [as] a starting place for a treaty jurisprudence that makes use of property-based legal concepts to empower those without power in the way that *Goldberg v. Kelly*⁷⁸ property-based jurisprudence brought power to those who had only an “expectation interest” in continuing to receive government benefits, at another time in history.”⁷⁹

CONCLUSION

The federal taxation of Indians has not been authorized by an express act of Congress, silence is not consent. Petitioner asks this Court to reverse the ruling of the Tax Court below and find that Congress never authorized the federal taxation of the income of Indians; or, in the alternative, to find that federal taxing authority cannot tax income derived from specific, treaty-protected activities.

As Erlinder’s Chippewa Treaty analysis explains

In Minnesota v. Mille Lacs Band of Chippewa Indians,⁸⁰ the U.S. Supreme Court unanimously

78. *Erlinder* 2015 Conclusion, 227-228 citing *Goldberg v. Kelly* 397 U.S. 254 (1970). In *Goldberg v. Kelly*, the Supreme Court ruled that the Due Process Clause of the Fourteenth Amendment requires an evidentiary hearing before a recipient of government benefits can be deprived of those benefits.

79. *Id.*

80. See *Treaty-Guaranteed Usufructuary Rights: Minnesota v. Mille Lacs Band of Chippewa Indians Ten Years On*, by Peter

held that, by guaranteeing Anishinabe (Chippewa) rights to hunt, fish, and gather in the first portion of Minnesota territory ceded to the United States in 1837, U.S. treaty negotiators severed the right to *use* the land, a concept known as usufructuary property rights since Roman times,⁸¹ from formal title to the land.⁸² And, by so doing, the U.S. government vested the Anishinabe with treaty-guaranteed off-reservation usufructuary rights that could not be lawfully taken from them without congressional authorization,⁸³ either in a treaty or legislation, expressed in language understood as such a taking by the Anishinabe.

Petitioner is exercising his exclusive, treaty protected usufructuary rights to earn a modest living, living on trust lands on the Leech Lake Reservation, working on intramural, environmental and cultural issues for the benefit of the Tribe and members.

Erlinder, (2011), citing *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 175, 29 ELR 20557 (1999).

81. *Id.* Usufruct, n. [fr. Latin usufructus] Roman & civil law. A right to use and enjoy the fruits of another's property for a period without damaging or diminishing it, although the property might naturally deteriorate over time. . . . La. Civ. Code art. 535. Usufructuary, n. Roman & civil law. One having the right to a usufruct; specif. a person who has the right to the benefits of another's property. 1 C.J.S. Estates §§2-5, 8, 15-21, 116-28, 137, 243.

82. *Id.* See generally *Recognizing and Protecting Native American Treaty Usufructs in the Supreme Court: The Mille Lacs Case*, 21 Pub. Land & Resources L. Rev. 169 (2000).

83. *Id.* *United States v. Dion*, 476 U.S. 734, 16 ELR 20676 (1986).

Respectfully submitted,

FRANK BIBEAU

Counsel of Record

BIBEAU LAW OFFICE

909 NW Ninth Street

Grand Rapids, MN 55744

(218) 760-1258

frankbibeau@gmail.com

Counsel for Petitioner

Dated: January 24, 2025

APPENDIX

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**APPENDIX A — TAX DECISION OF THE
UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT, FILED JULY 19, 2024**

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 23-2923

FRANK W. BIBEAU,

Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

United States Tax Court

Submitted: June 11, 2024

Filed: July 19, 2024

Before LOKEN, ERICKSON, and GRASZ, Circuit Judges.

GRASZ, Circuit Judge.

Frank Bibeau, an enrolled member of the Minnesota Chippewa Tribe, considers his self-employment income exempt from federal taxation. The United States Tax Court disagreed and held his self-employment income is taxable. On appeal, Bibeau argues that neither the Indian

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Citizenship Act of 1924 nor the treaties between the United States and the Minnesota Chippewa Tribe authorize the taxation of Indians.¹ We affirm the tax court’s ruling.

I.

Bibeau is an enrolled member of the Chippewa tribe who lives and practices law on the Leech Lake Reservation in Minnesota. For the 2016 and 2017 tax years, Bibeau earned self-employment income from his law practice, which he and his wife reported on their joint federal income tax return. Bibeau reported a large net operating loss carryforward that was enough to shield his income from taxes for both 2016 and 2017. But this loss did not shield Bibeau’s law-practice income from federal self-employment taxes. Bibeau has never paid these tax debts.

In January 2019, the Commissioner of Internal Revenue sent Bibeau a letter advising him of his right to a Collection Due Process (CDP) hearing. Bibeau requested a CDP hearing, during which he argued his 2016 and 2017 income was exempt from self-employment taxes. The Commissioner disagreed and sent Bibeau a notice of determination sustaining the Internal Revenue Service’s (IRS) decision to collect the tax. Bibeau then petitioned the tax court, challenging the IRS determination. There, Bibeau argued Indians generally are exempt from federal taxes or, alternatively, that treaties between the government and the Chippewa exempted his income from federal taxes.

1. Bibeau refers to himself as an “Indian” and the Chippewa as a “tribe.” We will do the same.

Appendix A

The tax court sustained the notice of determination. It explained Indians are subject to federal tax laws unless a law or treaty specifically provides otherwise. The tax court held neither the Indian Citizenship Act of 1924, Pub. L. No. 68-175, ch. 233, 43 Stat. 253 (codified at 8 U.S.C. § 1401(b)) (the Act) nor the 1837 Treaty between the United States and the Minnesota Chippewa Tribe (the 1837 Treaty) contain a specific exemption from federal taxation. Bibeau now appeals.

II.

As citizens of the United States, Indians are subject to federal tax requirements unless *specifically exempted* by a treaty or act of Congress dealing with Indian affairs. *See Squire v. Capoeman*, 351 U.S. 1, 6 (1956). As Bibeau has failed to adequately point to any statute or treaty specifically exempting his self-employment income, he is subject to self-employment taxes.

Tax court decisions are reviewed “in the same manner and to the same extent” as civil district court decisions tried without a jury. *See* 26 U.S.C. § 7482. “Since the question in this case is a purely legal one, our review is de novo.” *Estate of Robinson v. C.I.R.*, 15 F.3d 779, 781 (8th Cir. 1994).

Bibeau does not contend that his self-employment income is exempt from federal income taxation under any provision of the Internal Revenue Code. Instead, he claims the Act lacks clear and precise language authorizing Congress to tax Indians. Bibeau holds this view because

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he thinks Congress must *expressly authorize* the federal taxation of Indians before income taxes can be levied. There are two problems with this argument.

First, Indians, as citizens of the United States, are generally subject to taxation. Any other notion ignores Congress’s explicit mandate that “every individual[,]” 26 U.S.C. § 1(c), will be taxed on “all income from whatever source derived,” 26 U.S.C. § 61(a). Since the Act took effect in 1924, all native-born Indians have been citizens of the United States, 8 U.S.C. § 1401(b), and the Internal Revenue Code does not grant tax exemptions solely because someone is an Indian—a suggestion Supreme Court precedent clearly precludes. *See Capoeman*, 351 U.S. at 6; *Choteau v. Burnet*, 283 U.S. 691, 694–95 (1931); *see also Perkins v. Comm’r*, 970 F.3d 148, 154 (2d Cir. 2020) (“[A]bsent a specific exemption, American Indians are not, by virtue of their status, exempt from paying federal income taxes.”).

Second, Bibeau’s argument cuts against the well-established legal proposition that Indians are “subject to federal income tax unless *specifically exempted* by treaty or statute.” *Jourdain v. Comm’r*, 617 F.2d 507, 509 (8th Cir. 1980) (emphasis added). *See Capoeman*, 351 U.S. at 6 (“[T]o be valid, exemptions to tax laws should be clearly expressed.”); *Superintendent of Five Civilized Tribes, for Sandy Fox, Creek No. 1263 v. Comm’r*, 295 U.S. 418, 420 (1935) (holding that where “[t]he general terms of the taxing act include the income under consideration,” any exemption “must derive plainly from agreements with the [Tribe] or some act of Congress dealing with their affairs”).

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Bibeau is correct that treaties and statutes relating to the rights of Indians should be liberally construed in their favor. See *Carpenter v. Shaw*, 280 U.S. 363, 367 (1930); *Oregon Dep't. of Fish & Wildlife v. Klamath Indian Tribe*, 473 U.S. 753, 766 (1985) (“[D]oubts concerning the meaning of a treaty with an Indian tribe should be resolved in favor of the tribe.”). “The effect of th[is] rule[] of interpretation is to make it possible for language that could not have been concerned with the income tax to nevertheless create an exemption from it.” *Lazore v. Comm’r*, 11 F.3d 1180, 1184 (3d Cir. 1993). Nonetheless, that “principle comes into play only if a statute or treaty contains language *which can reasonably be construed to confer income exemptions.*” *Holt v. Comm’r*, 364 F.2d 38, 40 (8th Cir. 1966) (emphasis added). The Supreme Court “has repeatedly said that tax exemptions are not granted by implication” to Indians. *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 156 (1973) (quoting *Okla. Tax Comm’n v. United States*, 319 U.S. 598, 606 (1943)).

This court has already determined the purpose of the Act. In *Fond du Lac Band of Lake Superior Chippewa v. Frans*, we held the Act maintained Indians’ “pre-existing right to tribal and other property” but “does not create a tax exemption.” 649 F.3d 849, 851 (8th Cir. 2011). Bibeau leans on the tribal property proviso² in the Act, but in *Frans* we explained that it reflected “a settled and persistent purpose on the part of Congress . . . to place

2. The tribal property proviso states, “the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.” Indian Citizenship Act of 1924, Pub. L. No. 68-175, ch. 233, 43 Stat. 253 (codified at 8 U.S.C. § 1401(b)).

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individual Indians who have abandoned tribal relations . . . upon the same footing” regarding tribal property “as though they had maintained their tribal relations.” *Id.* at 851 (second ellipses in original) (quoting *Oakes v. United States*, 172 F. 305, 308–09 (8th Cir. 1909)). The proviso does not exempt Indians from taxation as citizens. *See id.* at 851.

Bibeau cursorily repeats his argument made before the tax court that his income is exempt from taxation under Article 5 of the 1837 Treaty. Bibeau asserts his income is exempt because he “defend[s] the tribal treaty protected rights held by other Chippewa.” He also appears to argue that Article 5 protects the right to make a “modest living” relating to treaty-protected activities. These contentions are without merit.

On its face, Article 5 contains no “clearly expressed” exemption from income tax. *Capoeman*, 351 U.S. at 6. Article 5 states, in its entirety: “The privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guarantied to the Indians, during the pleasure of the President of the United States.” 1837 Treaty, art. 5, 7 Stat. 536. Article 5 does not refer to taxation, and as Bibeau admits, the treaties between the Chippewa and the United States “make no mention of tax, taxing or taxation[.]” Nor does the 1837 Treaty contain other terms that might potentially address taxation.

Bibeau contends *Minnesota v. Mille Lacs Band of Chippewa Indians* supports Indians not being taxed under

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the 1837 Treaty. 526 U.S. 172 (1999). But nothing in *Mille Lacs* suggests such a conclusion. *Mille Lacs* simply held the usufructuary rights to “hunting, fishing, and gathering the wild rice” guaranteed in Article 5 were not abrogated by an 1855 treaty, by Minnesota’s admission into the Union, or by an 1850 Executive Order. *Id.* at 195, 200, 205. Thus, the 1837 Treaty protects Chippewa Indians’ right to make a “modest living” from hunting, fishing, and gathering wild rice, *see United States v. Brown*, 777 F.3d 1025, 1031 (8th Cir.2015); it does not guarantee Indians can live tax-free.

Bibeau’s final argument fares no better. He argues tribal “sovereign tax immunity” is recognized in Article 1, § 2, cl. 3 of the U.S. Constitution and the Fourteenth Amendment. He is incorrect. “[C]onstitutional references to ‘Indians not taxed’ merely reflect the fact that some Indians were not taxed by the states in which they resided; the references do not restrain the federal government from taxing Indians.” *Jourdain*, 617 F.2d at 508–09.

III.

Where, as here, no treaty or statute expressly or implicitly exempts Bibeau’s income from taxation, “[t]here can be no question about the power of Congress to levy an income tax upon [it]” *Holt*, 364 F.2d at 42. We affirm the tax court’s decision.

**APPENDIX B — MEMORANDUM OPINION
OF THE UNITED STATES TAX COURT,
FILED MAY 24, 2023**

UNITED STATES TAX COURT

T.C. Memo. 2023-66

Docket No. 11483-20L

FRANK WARREN BIBEAU,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Filed May 24, 2023

MEMORANDUM OPINION

HOLMES, *Judge*: Frank Bibeau is an enrolled member of the Chippewa tribe who lives and practices law on the Leech Lake Reservation in Minnesota. In a treaty with the United States, the Chippewa kept the right to “hunt, fish, and gather the wild rice” on their traditional lands. Bibeau says this is really the right to “food, clothing and shelter and travel, whereby the new canoe is the automobile.” He argues that this means that income from his law practice is tax exempt.

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The Commissioner in reply urges us instead to follow binding Eighth Circuit and Supreme Court precedent.

Background

Bibeau and his wife filed joint returns for their 2016 and 2017 tax years. For both years, Bibeau reported income from his law practice and a sizable net operating loss carryforward that was enough to shield his income from income tax. But his self-employment income still led to a [*2] total self-employment tax liability for both years of \$6,000. He has never paid this tax debt.

In January 2019, the Commissioner sent him a letter asking him to pay. Bibeau timely requested a collection due process (CDP) hearing.¹ During the hearing, his only argument was that the income he earned in 2016 and in 2017 was exempt from self-employment tax under treaties between the Chippewa and the United States. The Commissioner disagreed and sent him a notice of determination sustaining the IRS's decision to levy on his property to collect the tax.² Bibeau timely petitioned

1. The IRS at first denied his request for a CDP hearing on the grounds that his arguments were frivolous. Bibeau objected, and the IRS did finally grant him a hearing.

2. The settlement officer referred in one section to "Notice of Federal Tax Lien," rather than a "Notice of Intent to Levy." There are somewhat different rules for liens and levies, but neither party made any allegation that this mistake in nomenclature in any way prejudiced Bibeau. The notice is therefore valid. *See John C. Hom & Assocs. v. Commissioner*, 140 T.C. 210, 213 (2013) ("Mistakes in a notice will not invalidate it if there is no prejudice

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our Court, and challenges only his liability.³ The parties submitted the case for decision on stipulated facts.

Discussion

Like all Americans, Indians⁴ are subject to federal tax laws unless there is a specific law or treaty that provides otherwise. *Squire v. Capoeman*, 351 U.S. 1, 6, 76 S. Ct. 611, 100 L. Ed. 883, 1956-1 C.B. 605 (1956). The canons that require us to strictly construe exemptions from income tax, however, are in tension with those that govern the interpretation of treaties between Indian tribes and the United States. While exemptions from income taxation are to be strictly construed, *see, e.g., McCamant v.*

to the taxpayer.”)

3. Because the Commissioner assessed the tax as Bibeau reported it on his returns, he had the right to challenge this liability at the hearing and before us. *See Montgomery v. Comm’r*, 122 T.C. 1, 10 (2004). Because he was a resident of Minnesota when he filed his petition, appellate venue presumptively lies in the Eighth Circuit. *See* 26 U.S.C. § 7482(b)(1)(G)(i).

Since Bibeau and his wife filed jointly for both of the years at issue, the Commissioner sent the notice of determination to both of them. Bibeau’s wife, however, did not sign the petition and is therefore not a party to this case.

4. Nomenclature is fraught in this field. Bibeau refers to himself, however, as an “Indian” and the Chippewa as a “tribe.” Much of the literature in this area also refers to “Indian law” and “Indian treaties” and the like; to maintain some continuity with this legal-historical past, we too will use the traditional terms.

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Commissioner, 32 T.C. 824, 834 (1959), Indian treaties “are to be construed, so far as possible, in the [*3] sense in which the Indians understood them,” *Choctaw Nation of Indians v. United States*, 318 U.S. 423, 432, 63 S. Ct. 672, 87 L. Ed. 877, 97 Ct. Cl. 731 (1943). This means that “[t]he construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of [the Indians].” *Choate v. Trapp*, 224 U.S. 665, 675, 32 S. Ct. 565, 56 L. Ed. 941 (1912).

This canon telling us to construe Indian treaties favorably to Indians does not, however, “create favorable rules.” *Jourdain v. Commissioner*, 71 T.C. 980, 990 (1979). And in the case of exemptions from taxation, the Supreme Court has held that “to be valid, exemptions to tax laws should be *clearly expressed*.” *Capoeman*, 351 U.S. at 6 (emphasis added).

Bibeau had two arguments for how the treaties between the United States and the Chippewa express an exception from taxation for his self-employment income. He first argues that the 1837 Treaty with the Chippewa, July 29, 1837, art. 5, 7 Stat. 536, 537, protects his right to make a “modest living.”⁵ The actual language of this 1837

5. The Supreme Court held that the rights granted under the 1837 Treaty were not abrogated by a subsequent treaty entered into in 1855, when Minnesota was admitted to the Union, or the President’s 1850 Executive Order. *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 195, 202, 207, 119 S. Ct. 1187,

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Treaty doesn't use this phrase, but only states that the Chippewa will be guaranteed "[t]he privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded."

Bibeau points us to *United States v. Brown*, 777 F.3d 1025, 1031 (8th Cir. 2015), an Eighth Circuit case where that court held that the 1837 Treaty "indicate[s] that the Indians believed they were reserving unrestricted rights to hunt, fish, and gather throughout a large territory." In deciding whether the right to fish included the right to sell fish, the court looked to history and concluded that the "Chippewa Indians' exercise of their usufructuary rights included selling what they hunted, fished, or gathered in order to make a *modest living*." *Id.* (emphasis added). Bibeau says that his law practice is analogous to hunting, fishing, and gathering wild rice in that it also enables him to make a "modest living."⁶ He asserts that the right to make a "modest [*4] living" is what the 1837 Treaty means by its preservation of the Indians' rights to "hunting, fishing, and gathering the wild rice." Continuing the analogy, Bibeau argues that the right to "hunt, fish,

143 L. Ed. 2d 270 (1999).

6. In 2016, Bibeau earned his income through representing the Leach Lake Band of Ojibwe in the tribal court regarding an on-reservation dispute and conducting historical research, data-gathering, compilation, and assembly of the treaties for the Mille Lacs Band of Ojibwe. Similarly, his 2017 income was earned by representing a nonprofit charity to protect tribal and individual rights on and off the reservation.

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and gather the wild rice” really means the right to “food, clothing and shelter and travel, whereby the new canoe is the automobile.”

We are not persuaded.

The right to hunt, fish, and gather may be the means to a “modest living,” but the Treaty does not clearly express an intent that it means a modest, *tax-free* living. *Brown* made no holding about whether Chippewa would owe tax on the sale of the fish they caught, much less a broad holding that includes an exemption from tax of any Chippewa earning a “modest income” from any other source. It held only that the Chippewa were not criminally liable for violating federal law because of their right to fish retained under the 1837 Treaty. *Brown*, 777 F.3d at 1032. There is no discussion in the opinion about whether the right to sell fish under the 1837 Treaty created an exemption from tax on the sale.

We ourselves have held that “we are constrained from finding [a tax] exemption in the absence of some textual support.” *Perkins v. Commissioner*, 150 T.C. 119, 128-29 (2018) (quoting *Lazore v. Commissioner*, 11 F.3d 1180, 1187 (3d Cir. 1993), *aff’g in part, rev’g in part* T.C. Memo. 1992-404), *aff’d*, 970 F.3d 148 (2d Cir. 2020). Practicing law or conducting research does not yield income derived from “hunting, fishing, or gathering the wild rice.” There is nothing in the language of the 1837 Treaty to expand the

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activities that it protects beyond those it explicitly lists.⁷ Interpreting the 1837 Treaty to imply exemption from tax on income from activities not even mentioned in the treaty would undoubtably generate a new rule. This is something we cannot do. *Jourdain*, 71 T.C. at 990.

[*5] Bibeau has a second argument as a fallback. He argues that he is exempt from federal taxation because there is no treaty in which the Chippewa granted the United States *any* right to tax members of the tribe or their income from *any* activity. Bibeau contends, quoting *United States v. Winans*, 198 U.S. 371, 381, 25 S. Ct. 662, 49 L. Ed. 1089 (1905), that treaties between the United States and Indians are “not a grant of rights to the Indians, but a grant of rights from them—a reservation of those not granted.”

When it comes to exemptions from tax, however, the Supreme Court has stated “that Indians are citizens and that in ordinary affairs of life, not governed by treaties or remedial legislation, [Indians] are subject to the payment of income taxes as are other citizens.” *Capoeman*, 351

7. The Eighth Circuit was even careful to reserve the question of whether the Treaty entitled the Chippewa to use modern technology in the exercise of their Treaty rights—“This case presents no issue of whether the treaty protection includes the use of new technologies since the Chippewa used nets to catch fish at the time the treaty was made.” *Brown*, 777 F.3d at 1031. This suggests that the right to fish, and in turn sell fish, may be limited to the understanding of what it meant to fish at the time the 1837 Treaty was executed.

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U.S. at 6. This means that the absence of tax terms from a treaty does not imply the Indians reserved their right to be free of taxation—instead, it means that an exemption from taxation does not exist. In other words, “tax exemptions are not granted, by implication, to Indians.” *Jourdain*, 71 T.C. at 990.

Bibeau acknowledges that *Capoeman* is precedent, but he flags for us what he considers to be a mistake in the Supreme Court’s reasoning, that is, its failure to consider the 1924 Indian Citizenship Act in its legal analysis. The Indian Citizenship Act stated that by granting Indians citizenship, the Act “shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.” Indian Citizenship Act of 1924, ch. 233, 43 Stat. 253, 253. Bibeau argues that this is evidence that Congress intended to preserve not only the rights that were explicitly granted by treaties, but also those that were implicitly reserved—including the right to be free of taxation.

Here Bibeau crashes into clear Eighth Circuit caselaw. That court has squarely held that the Indian Citizenship Act maintained Indians’ “pre-existing right to tribal and other property” but “does not create a tax exemption.” *Fond du Lac Band of Lake Superior Chippewa v. Frans*, 649 F.3d 849, 851 (8th Cir. 2011).⁸ We are therefore

8. Bibeau also argues that the right to be free of taxation can only be abrogated if it was clearly relinquished by treaty or modified by Congress. Since we are constrained to hold there is no such right, we need not discuss what it might take to relinquish it.

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constrained from inferring from the silence of the Indian Citizenship Act an exemption for Indians from federal income taxation.

[*6] We must find for the Commissioner and hold that Bibeau's self-employment income is taxable.

Decision will be entered for respondent.

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**APPENDIX C — DECISION OF THE
UNITED STATES TAX COURT,
ENTERED MAY 25, 2023**

UNITED STATES TAX COURT
Washington, DC 20217

Docket No. 11483-20L

FRANK WARREN BIBEAU,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Entered May 25, 2023

DECISION

Following the opinion of the Court in T.C. Memo. 2023-66, filed May 24, 2023, it is

DECIDED that respondent may proceed with the collection of petitioner's federal income-tax liability for the tax years 2016 and 2017, as described in the Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330, dated July 21, 2020.

/s/ Mark V. Holmes
Judge

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**APPENDIX D — ORDER OF THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT,
FILED SEPTEMBER 26, 2024**

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-2923

FRANK W. BIBEAU,

Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

Appeal from the United States Tax Court
(11483-20L)

Filed September 26, 2024

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

September 26, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik