

TAX COLLECTION AGREEMENT BETWEEN THE THREE AFFILIATED TRIBES AND THE STATE OF NORTH DAKOTA

This Motor Vehicle Fuel Tax and Special Fuel Tax Collection Agreement (“Agreement”) is between the State of North Dakota, by and through its Office of State Tax Commissioner (“State”) and the Three Affiliated Tribes (“Tribes”). The State, and the Tribes, through their Tribal Business Council (“TBC”), the duly established governing body of the Tribes, hereby agree to the following:

1. Statement of Intent

The intent of this Agreement is to:

- A. Provide for the mutual recognition and respect by the State and Tribes of one another’s sovereignty;
- B. Give recognition to the respective tax jurisdiction of the State and Tribes in a mutually satisfactory way that does not compromise either party’s right to assert a position upon termination of the Agreement;
- C. Provide for an efficient method of imposing and collecting taxes on motor vehicle fuels and special fuels sold to consumers on the Fort Berthold Indian Reservation;
- D. Distribute the revenue from those taxes in a manner that reflects the proportion of tribal members to non-tribal members residing on the Fort Berthold Indian Reservation;
- E. Avoid litigation; and
- F. Provide for the application of uniform motor vehicle fuel taxes and special fuels taxes for tribal members and non-tribal members on the Fort Berthold Indian Reservation.

2. Sovereign Immunity

Nothing contained in this Agreement is or shall be construed to be a waiver of the sovereign immunity of the Tribes, their Tribal Business Council, officials, or entities. The Tribes expressly retain their sovereign immunity. In the event of a conflict with any other provision of this Agreement, the terms of Paragraph 2 shall prevail and control.

3. Acknowledgements of Authority

The parties acknowledge the following as a basis for this Agreement:

A. Tribal Authority

- 1. The Tribes have jurisdiction to tax certain transactions on the Fort Berthold Indian Reservation.
- 2. The Tribal Business Council may, under Section 5(d) of Article VI of the

Constitution and By-Laws of the Three Affiliated Tribes, enter into tax collection agreements with the State.

3. Specific to this Agreement, the parties acknowledge that the Tribes have jurisdiction to impose their Motor Vehicle Fuel Tax and Special Fuel Tax on fuel purchases made on the Fort Berthold Indian Reservation.

B. State Authority

1. The State, subject to inherent limitations under law, has concurrent jurisdiction to tax certain transactions involving non-members of the Three Affiliated Tribes on the Fort Berthold Indian Reservation.

2. The State may, under North Dakota Century Code Chapter 54-40.2, enter into agreements with Native American Tribes.

3. Specific to this Agreement, the parties agree that the State, subject to inherent limitations under law, has concurrent jurisdiction with the Tribes to impose its Motor Vehicle Fuel Tax and Special Fuel Tax on fuel purchases made by non-members of the Three Affiliated Tribes on the Fort Berthold Indian Reservation.

4. Taxes Included in This Agreement

A. Motor Vehicle Fuel and Special Fuel

1. The parties agree that for purposes of this Agreement, the State will collect one motor vehicle fuel tax and special fuel tax per transaction made by both members of the Three Affiliated Tribes and non-members of the Three Affiliated Tribes on the Fort Berthold Indian Reservation and distribute the revenue collected from those taxes as provided below in Paragraph 5.

2. The State agrees that it will collect and administer as a contractor the following tribal taxes provided they remain substantially similar to the corresponding state taxes:

Three Affiliated Tribes Tax Ordinance
Chapter 9 - Motor Vehicle Fuel Tax &
Chapter 10 - Special Fuel Tax

(a) The State is responsible only for the administration and collection of these taxes. The Tribes retain exclusive jurisdiction and tax authority to file and prosecute civil and criminal enforcement actions as needed with respect to the tribal taxes, according to Tribal and Federal laws, and engage in any collection or enforcement action necessary to implement the requirements of this Agreement.

(b) The amount of the tax will be the amount imposed generally in North Dakota for such products, as amended from time to time.

(c) Upon request of the State, the Tribes will assist the State in the assessment and collection of any tax subject to this Agreement.

B. Other Taxes

1. Nothing in this Agreement is meant to preclude the Tribes from imposing other taxes within the jurisdiction of the Three Affiliated Tribes.

2. Nothing in this Agreement is meant to preclude the State from imposing other taxes within the jurisdiction of the State of North Dakota.

5. Remittance of Tax Proceeds and Retention of Administrative Fee

A. Tax Proceeds

1. The State agrees to remit to the Tribes, as a tribal share of revenues collected, an amount equal to seventy percent (70%) of the total proceeds collected from the tribal taxes subject to this Agreement and corresponding state taxes.

2. The amount to be distributed to the Tribes shall be based upon the population demographics of the 2000 United States Census. The revenue share shall be changed at the request of either party to reflect any change in the proportion of tribal members to non-tribal members residing on the Reservation, as reported in any subsequent United States Census.

3. The payment specified in Paragraph 5(A)(1), above, less the administrative fee specified in Paragraph 5(B), below, shall be remitted by the State to the Tribes on a monthly basis within thirty (30) days from the end of the calendar month during which the collection occurs. Unless otherwise requested in writing by the Tribes, the remittance shall be by state warrant issued by the State Treasurer, payable to the order of the Three Affiliated Tribes.

4. The State shall furnish the Tribes with an itemized list of the source of the revenue payment specified in Paragraph 5(A)(1) of this Agreement on a monthly basis within thirty (30) days from the end of the calendar month during which the collection occurred.

B. Administrative Fee

The State shall retain, as a service fee for the collection and administration of the tribal taxes subject to this Agreement, one percent (1%) of the payment specified in Paragraph 5(A)(1) of this Agreement.

6. Implementation and Administration of the Agreement

A. Tribal Implementation and Administration

1. The Tribes will cause to be adopted and enforce such tribal laws as are necessary to implement the requirements of this Agreement which shall include, without limitation, assessment, collection, enforcement, and administration provisions.

2. The Tribes agree that, subject to the provisions of this Agreement, the taxes provided for by Tribal law under this Agreement shall be imposed and collected in connection with all affected transactions occurring on the Fort Berthold Indian Reservation. The tribal taxes

covered by this Agreement shall be the same as the corresponding state taxes, and all subsequent amendments thereto, and shall be collected and remitted in the same manner as required under the North Dakota Century Code.

3. The Tribes will notify the State in writing of any enacted changes to the tribal taxes covered by this Agreement. If requested to do so by the Tribes, the State will review any proposed change to a tribal tax covered by this Agreement in advance and advise the Tribes whether the change, if enacted, would, in the view of the State, result in the tribal tax ceasing to be substantially similar to the corresponding state tax.

B. State Implementation and Administration

1. The State agrees to provide the Tribes written notice of any pending changes to the state taxes corresponding to the tribal taxes covered by this Agreement which may result in the tribal taxes ceasing to be substantially similar to the corresponding state tax.

2. The State will give written notice to the Tribes of any enacted changes to state taxes and in the notice will specify which changes would, in the view of the State, result in the affected tribal tax ceasing to be substantially similar to the corresponding state tax if the tribal tax is not amended.

C. Administration and Maintenance of Records

1. The Tribes agree to keep accurate records setting forth information in sufficient detail to allow for verification that Tribally-owned entities are collecting and remitting the correct amount of tax due under to this Agreement.

2. Upon reasonable request of the Tribes, the State shall make available to the Tribes all records of tax filings that relate to the taxes covered by this Agreement.

3. If the State receives a request for information pertaining to this Agreement that it is required to furnish under the State's Open Records laws, the State will inform the Tribes of the request and information released.

7. Effective Date, Duration, and Termination of the Agreement

A. Effective Date

The parties agree that the effective date for collection and administration of motor vehicle fuel taxes and special fuel taxes in the manner provided by this Agreement shall be September 1, 2007.

B. Duration

Upon the effective date, this Agreement shall remain in effect indefinitely, unless terminated under the provisions of Paragraph 7(C).

C. Termination

1. Either party may terminate this Agreement without cause and without liability, except as to any amounts collected and due to either party, upon thirty (30) days written notice to the other party.

2. Before the Agreement is terminated under this provision, the parties will meet and make a good faith effort to resolve the differences leading to the Notice of Termination. A Notice of Intent to terminate on behalf of the Tribes must be executed by the Tribal Business Council. A Notice of Intent to terminate on behalf of the State must be executed by the State Tax Commissioner.

3. This Agreement shall terminate immediately as to any tribal tax upon the repeal of that tax by the Tribes.

4. In the event of termination of this Agreement, the State shall notify each known taxpayer affected by the termination, by first class mail, sent on or before the date the next payment is due, that it will no longer collect the taxes covered by this Agreement, and that the taxpayer should no longer remit to it the affected tribal tax or taxes.

8. Amendment and Waiver

This Agreement may not be modified or amended, nor may compliance with any provision of it be waived except by an instrument or instruments in writing signed by the party against whom enforcement of any modification, amendment, or waiver is sought.

9. Exemption from Tax and Refunds

Motor vehicle fuel and special fuel used in a vehicle owned or leased by the Tribes and used for governmental purposes shall be exempt from motor vehicle fuel taxes and special fuel taxes. Any tax paid on motor vehicle fuel or special fuel for such vehicles shall be refunded to the Tribes by the State.

10. Notice and Payment

A. Notice

Notice required to be sent to the Tribes under this Agreement shall be sent to:

Tribal Chairperson
Three Affiliated Tribes
404 Frontage Road
New Town, North Dakota 58763-9402

Notice required to be sent to the State under this Agreement shall be sent to:

North Dakota Office of State Tax Commissioner
Motor Vehicle Fuel Tax and Special Fuel Tax Section
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0599

B. Payment

Payment required to be sent to the Tribes under this Agreement shall be sent to:

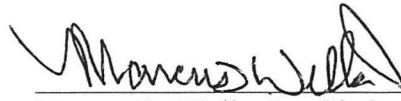
Three Affiliated Tribes
Tax Department
404 Frontage Road
New Town, North Dakota 58763-9402

Either party may change its Notice address by giving written notice of the change to the other party.

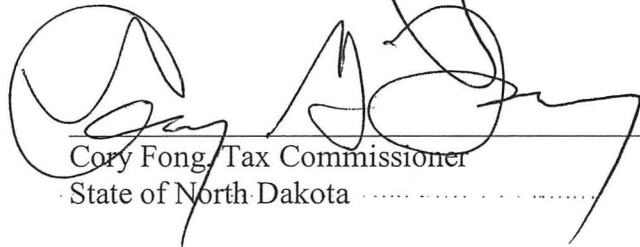
IN WITNESS WHEREOF, the Three Affiliated Tribes and State of North Dakota have caused this Agreement to be executed and delivered by their respective officers, duly authorized.

May 30, 2007
Date

5/30/07
Date



Marcus D. Wells, Jr., Chairman
Three Affiliated Tribes



Cory Fong, Tax Commissioner
State of North Dakota

This Agreement is approved under N.D.C.C. § 54-40.2-04.

Sept. 4, 2007
Date



John Hoeven, Governor
State of North Dakota