



OFFICE OF STATE TAX COMMISSIONER
STATE OF NORTH DAKOTA

Cory Fong
TAX COMMISSIONER

June 27, 2008

Honorable Merle Boucher
Chairman, Tribal & State Relations Committee
North Dakota Legislative Assembly
Bismarck, ND 58505-0360

Re: Native American Motor Vehicle Fuel and Special Fuel Tax Refunds

Dear Representative Boucher and Committee Members:

Thank you for your request to present information to you pertaining to motor vehicle fuel tax and special fuel tax refunds for tribal members in North Dakota. Administration of this area of state law by the North Dakota Office of State Tax Commissioner ("Tax Department") has undergone significant transformation over the last few years and I welcome the opportunity to update you in this regard.

Previously, I informed your Committee that the State, through the Tax Department, is a party to Collection and Administration Agreements with Tribes from three North Dakota Native American Reservations. The Standing Rock Sioux Tribe on the Standing Rock Reservation, Spirit Lake Tribe on the Spirit Lake Reservation, and Three Affiliated Tribes on the Fort Berthold Reservation, are each parties to separate motor vehicle fuel tax and special fuel tax Collection and Administration Agreements with the Tax Department.

Each of these Agreements provide that the Tax Department will continue to collect and administer the State's motor vehicle fuel taxes and special fuel taxes on fuel purchases made by non-Native Americans on each Reservation under North Dakota Century Code chapters 57-43.1 and 57-43.2. The terms of each Agreement further provide that the Tax Department will collect and administer the Tribal Government's motor vehicle fuel taxes and special fuel taxes on fuel purchases made on the Tribe's Reservation by its enrolled members based upon Ordinances enacted by that Tribe's Governing Body.

In the absence of any Collection and Administration Agreement, state law provides for a refund of state fuel taxes paid by a Native American if the purchase was made on the Reservation where that Native American is enrolled. However, in the case of the Tribes cited above, where each has enacted Ordinances through their Tribal Governments imposing Tribal fuel tax on purchases by enrolled members of that Tribe in lieu of state taxes, none of the Ordinances contain a refund provision for those Tribal fuel taxes paid.

This holds true universally for motor vehicle fuel and special fuel purchased by members of the Standing Rock Tribe and Spirit Lake Tribe because the Agreements with those Tribes have been in place for a number of years. In other words, enrolled members of both Tribes have been paying Tribal tax on motor vehicle fuel and special fuel purchased on their respective reservations, and are ineligible for a refund of state taxes because they did not pay the state taxes when making those fuel purchases.

In contrast, the Agreement between the Tax Department and Three Affiliated Tribes was entered into in late 2007. As of October 1, 2007, motor vehicle fuel and special fuel purchased by enrolled members of the Three Affiliated Tribes made on the Fort Berthold Reservation were subject to the Tribes' fuel taxes, and no longer the state's fuel taxes. However, purchases of motor vehicle fuel and special fuel by enrolled members of the Three Affiliated Tribes made on the Fort Berthold Reservation from January 1, 2007 through September 30, 2007, were subject to the state's fuel taxes. Accordingly, enrolled members of the Three Affiliated Tribes who made purchases of motor vehicle fuel and special fuel on the Fort Berthold reservation during this January 2007 to September 2007 "window" are eligible to receive a refund of the state fuel taxes paid, provided they satisfy the requirements of state law regarding proof of purchase.

The state has engaged in preliminary discussions with representatives of the Turtle Mountain Band of Chippewa Tribe, pertaining to the negotiation of an Agreement similar to the existing three Agreements discussed above. However, at present, no Agreement is in place and enrolled members of the Turtle Mountain Band of Chippewa who make fuel purchases on their Reservation continue to pay state fuel taxes on those purchases. As such, they remain eligible for a refund of those taxes paid, provided they satisfy the requirements of state law regarding proof of purchase.

The state law providing eligibility for a refund under qualifying circumstances, N.D.C.C. Section 57-41.1-03.2, provides that the purchases be made from a retail fuel dealer located on the Reservation where the Native American is an enrolled member. Because of this specific, clear statutory language, purchases of motor vehicle fuel and special fuel from areas outside the exterior borders of the Reservations, such as lands held in trust by the U.S. Secretary of Interior, are subject to state fuel taxes and not eligible for a refund under this law. The Trenton Indian Service Area, cited in your letter, is an example of trust land.

Additionally, your letter cited observations made by Ms. Cheryl Kulas, Executive Director of the Indian Affairs Commission, regarding the experiences of individual Native Americans related to the motor vehicle fuel tax and special fuel tax refund process in North Dakota. The Tax Department recognizes the importance and need for ongoing communication and collaboration with each Tribe, and its members, about motor vehicle fuel and special fuel taxation. To that end, the Tax Department will continue to work with the Indian Affairs Commission to explore opportunities to educate the various Tribes and their membership about state and Tribal motor vehicle fuels and special fuel tax laws and ordinances, the state fuel tax refund process, and the

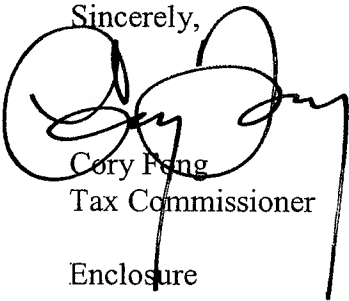
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impact the existing and pending Agreements have on individual Native Americans in North Dakota.

Finally, I offer for your information the enclosed Report on 2007 Individual Native American Motor Fuels Tax Refunds (as of June 16, 2008). As you can draw from this Report, 94% of all refund requests received by the Tax Department from Native Americans have been processed and paid. In real numbers, out of 144 claims submitted thus far, only eight have been denied for the reasons provided. Five of those eight were returned to the claimants with instructions on how to correct their claims for resubmission.

Thank you again for the opportunity to provide more information regarding the motor vehicle fuel tax and special fuel tax refund process in North Dakota, and the relationships we have forged with three of the state's Tribal Governments. If you have any further questions or comments in this regard, please contact me at (701) 328-2770.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cory Peng', is written over the printed name and title. The signature is stylized with loops and a long vertical line extending downwards.

Cory Peng
Tax Commissioner

Enclosure

2007 INDIVIDUAL NATIVE AMERICAN MOTOR FUEL REFUNDS **(refunds for the 2007 calendar year issued through 6/16/08)**

Of 144 applications by 129 different individuals, **94% (136) of the refunds have been paid.**

82% of the 136 payments were fully paid (112); 18% were partially paid (24).

Of the 136 paid claims, 13 applications had been returned to applicants; the applicants corrected and resubmitted.

Of the 8 unpaid applications (6%),

3 claims (2%) were not able to qualify at all (full denial) due to

- (1) receipts from a reservation other than the reservation of enrollment,
- (2) prior year receipts (claim period for 2006 expired June 30, 2007)
- (3) receipts from a reservation with a tribal agreement (Spirit Lake).

5 applications (4%) that were returned to applicants with information on how to correct them have not been (but still could be) resubmitted.

Reasons for returned applications:

(letter included how to remedy situation)

- application received without receipts
- receipts were received without application
- no tribal ID or partial tribal ID provided
- receipts don't identify applicant
- missing signature or social security number

Reasons for partial denial:

17 of the 24 partially paid claims were Oct-Dec receipts from TAT claims.

TAT receipts after 9/30/2007 don't qualify for a refund due to tribal tax as of 10/1/2007.

The remaining 7 partially paid claims were partially denied for one or more reasons listed below:

- receipts from off reservation purchases
- receipts from a reservation other than reservation of enrollment
- included diesel fuel with gas refund or vice versa (invalid receipts returned with applicable application if tax amount was greater than \$5)
- transposed numbers or other error in calculation such as requesting \$.23 per dollar instead of \$.23 per gallon
- fuel type or gallons not indicated on receipt
- receipts from 2008 submitted with an application for 2007