

**FORT BELKNAP INDIAN COMMUNITY COUNCIL- STATE OF MONTANA
TOBACCO TAX AGREEMENT**

The FORT BELKNAP INDIAN COMMUNITY COUNCIL - STATE OF MONTANA Tobacco Tax Agreement ("Agreement") is entered into this 30th day of September, 2003, by and between the State of Montana, Department of Revenue ("State"), and the Fort Belknap Indian Community Council of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation ("Tribes").

The Fort Belknap Indian Community Council is the governing body of the Tribes and is authorized to enter into this Agreement by Article V of the Tribes' Constitution.

The State is authorized pursuant to the State-Tribal Cooperative Agreements Act, Title 18, chapter 11, MCA, to enter into an agreement in writing with any one or more tribal governments with respect to taxes.

The State and the Tribes agree as follows:

1. General Purposes of Agreement. The purposes of this Agreement are to minimize legal controversy and possible litigation over the taxation of tobacco within the exterior boundaries of the Fort Belknap Indian Reservation ("Reservation"), to mitigate the effects of dual taxation of tobacco by both the Tribes and the State, and to ensure that the same level of taxation is imposed on tobacco sales both within and outside the boundaries of the Reservation. For purposes of this Agreement, the term "tobacco" shall mean tobacco and tobacco products. This section shall be interpreted consistently with the terms and conditions set forth in section 12 of this Agreement.

2. Recitals. This Agreement is made by and between the Fort Belknap Indian Community Council of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation and the State of Montana, acting through its Department of Revenue. The

parties hereto, having conferred together, desire to collect the tobacco tax on all tobacco or tobacco products sold or consumed on the Fort Belknap Reservation for the mutual benefit of all the people of Montana, including members of the Tribes. The parties enter into this Agreement to allow the Department of Revenue the authority to enforce Tribal law in relation to Indians on the Reservation and subject to the terms and conditions herein.

3. Tribal law. The Tribes shall adopt and keep in force an ordinance imposing taxes equal to the Montana taxes on tobacco, which taxes shall apply to tobacco sold to all persons within the Tribes' jurisdiction on the Reservation in a manner similar to the Montana taxes. The Tribes shall supply the State with a current copy of the ordinance as it may be amended from time to time, within sixty (60) days of the enactment or amendment of the ordinance.

4. State law. The State imposes a tax on tobacco distributed within the State's jurisdiction under Title 16, chapter 11, MCA. The State shall notify the Tribes in writing of any changes or amendments to state law which the State believes necessitates an amendment to tribal law under this Agreement within sixty (60) days of any amendment to applicable state law.

5. Collection and administration of taxes. The State and the Tribes agree that tobacco sold on the Reservation shall not be subject to both the state tax and the tribal tax, but shall be subject to one tax. The State agrees to pre-collect all tobacco taxes for sales on the Reservation from the tobacco wholesalers distributing tobacco products on the Reservation and to remit to the Tribes the tribal tobacco tax collected as determined by the formulas described below. All cigarettes sold on the Reservation shall have the state tax insignia affixed.

a. For each calendar year, the Tribes shall receive an amount of the tobacco taxes pre-collected for tobacco sales on the Reservation, which approximates the sales to enrolled members of the Tribes living on the Reservation. The amount of tobacco taxes that the Tribes receive shall be determined by multiplying the total number of enrolled members of the Tribes living on the Reservation as last determined on each March 31 by the Bureau of Indian Affairs, Rocky Mountain Regional Office, times 150 percent of the Montana per capita tobacco tax collected in the prior fiscal year.

b. The State shall distribute the monies due to the Tribes under this Agreement no later than sixty (60) days from the end of each calendar quarter. The State will include, with each distribution, a statement showing how the distribution was determined for that quarter.

c. Distributions will start within sixty (60) days from the end of the first whole calendar quarter after the effective date of this Agreement (said quarter shall be October-December, 2003 quarter) and continue until the expiration or the termination of this Agreement as provided below or required by law. For the purposes of this Agreement, a calendar quarter begins on January 1, April 1, July 1, and October 1 of each year.

d. In the event of termination by either party prior to the end of the term, the State shall be obligated to remit the full amount payable to the Tribes provided for in this Agreement for that period of time up to and including the effective date of termination. This obligation of the State shall survive any termination of this Agreement.

6. Term. This Agreement shall be for a term of one (1) year and shall be automatically renewed for successive terms of one (1) year if no action is taken by either party.

7. Audits. Either party may examine or audit the records of the other party to determine the accuracy of the statements or representations called for in this Agreement. In addition, either party may require an audit of the other party by an independent auditor, at the party's own expense. The right of examination or audit shall exist during the term of this Agreement and for a period of one year after the date of termination or expiration of this Agreement. To the extent permitted by applicable law, the parties agree to maintain the confidentiality of any confidential information obtained from the other party.

8. Effective date. This Agreement is effective October 1, 2003, so long as the following conditions precedent are met: the Tribes have adopted and provided a copy to the State of an ordinance as required by section 3 above; this Agreement has been approved by the State Attorney General, as required by § 18-11-105, MCA, and a public hearing, as required by § 18-11-103, MCA, has been held and comments received and considered. If the State has not received comments that would cause the State, in its sole discretion, to refuse entry into this Agreement, the State will notify the Tribes in writing as soon as possible after all comments have been considered, whether or not this Agreement is effective.

9. Amendments and Renewal.

a. This Agreement may be amended only by written instrument signed by both parties.

b. Six months prior to expiration of the initial term provided in this Agreement, the parties should meet to negotiate in good faith a renewal of this Agreement.

10. Termination.

a. This Agreement may be terminated, for any reason, with or without cause, at the end of any quarter with thirty (30) days written notice of termination to the other party.

b. The Fort Belknap Indian Community Council/Montana Cigarette Agreement, dated September 30, 1993, terminates upon execution of this Agreement. This Agreement supersedes all tobacco agreements entered into between these parties prior to execution of this Agreement.

11. Jurisdiction and Venue. The parties agree and stipulate that venue and jurisdiction for enforcement of the terms hereof lie in the United States District Court, Great Falls Division, Great Falls, Montana. In the event of a breach by either party of any of the terms hereof, upon written notice to the breaching party of the substance of the alleged breach and the remedies sought, the non-breaching party shall be entitled to suspend any of the non-breaching party's obligations hereunder to the extent of the breach, and petition the United States District Court of Montana for the appropriate relief. Appropriate relief shall be limited to monetary judgment against the breaching party, including costs and attorneys' fees, arising from the breach, and such other relief as is necessary to put the non-breaching party in the same position it would have been in had the breaching party fully performed. The failure to pursue a remedy for one or more breaches is not a waiver of any right to enforce a subsequent breach of the same or a different term hereof.

12. Reservation of rights and negative declaration. The State and Tribes have entered into this Agreement in part to resolve any potential legal disputes and avoid litigation. The parties agree that by entering into this Agreement, neither the State nor the Tribes shall be deemed to have waived any rights, arguments, or defenses available in litigation on any subject. This Agreement is specifically not intended to reflect or be viewed

as reflecting in this or any context either party's position with respect to the jurisdictional authority of the other. Nothing in this Agreement or in any conduct undertaken pursuant thereto shall be deemed as enlarging or diminishing the jurisdictional authority of either party, except to the extent necessary to implement and effectuate this Agreement's terms. This Agreement, conduct pursuant thereto or conduct in the negotiation or renegotiation of this Agreement, shall not be offered as evidence, otherwise referred to in any present or future litigation, or used in any way to further either party's equitable or legal position in any litigation. By entering into this Agreement, neither the State nor the Tribes are forfeiting any legal rights to apply their respective taxes except as specifically set forth in this Agreement. This Agreement does not apply to any state tax collected other than the tax on tobacco products as provided in §§ 16-11-101 through -206, MCA.

13. Notices. All notices and other communications required to be given under this Agreement by the Tribes and the State shall be deemed to have been duly given when delivered in person or posted by United States certified mail, return receipt requested, with postage prepaid, addressed as follows:

i. If to the Tribes:

President
RR #1 Box 66
Harlem, Montana 59526

ii. If to the State:

Director of Revenue
Mitchell Building
125 North Roberts
PO Box 5805
Helena, Montana 59604-5805

Notice shall be considered given on the date of mailing. This Contract consists of seven (7) pages.

DATED this 30th day of September, 2003.

State of Montana

Fort Belknap Indian Community Council

/S/ LINDA M. FRANCIS
LINDA M. FRANCIS, Director
Department of Revenue

/S/ BENJAMIN SPEAKTHUNDER
BENJAMIN SPEAKTHUNDER, President

Approved pursuant to § 18-11-105, MCA

/S/ MIKE MCGRATH
MIKE MCGRATH, Attorney General
Montana Department of Justice

I, Cleo Hamilton, Superintendent, Fort Belknap Agency, Bureau of Indian Affairs, United States Department of the Interior, do hereby approve this agreement.

/S/ CLEO HAMILTON
Superintendent