

**FIRST AMENDMENT TO  
FORT PECK - MONTANA  
TOBACCO TAX AGREEMENT**

THIS FIRST AMENDMENT TO FORT PECK - MONTANA TOBACCO TAX AGREEMENT is entered into on June 1, 2005, between the State of Montana, Department of Revenue ("State") and the Assiniboine and Sioux Tribes of the Fort Peck Reservation ("Tribes").

RECITALS

WHEREAS, the State and the Tribes entered into the Fort Peck - Montana Tobacco Tax Agreement ("Agreement") on December 15, 1999; and

WHEREAS, the Agreement may be amended by the parties pursuant to Section 11 of the Agreement; and

WHEREAS, the parties desire to amend certain provisions of the Agreement;

NOW THEREFORE, the State and the Tribes agree to amend the Agreement as follows:

Section 3 of the Agreement is amended to read as follows:

Tribal Law. The Board shall adopt and keep in force an ordinance imposing taxes equal to the Montana taxes on tobacco, which tax shall apply to tobacco sold to all persons within the Tribes' jurisdiction within the exterior boundaries of the Reservation in the manner similar to the Montana taxes. The Board shall supply the State with a current copy of this ordinance and shall within sixty (60) days of amendment to such ordinance provide the State with the amended ordinance. Within sixty (60) days of notification from the State pursuant to Section 4 of this Agreement, the Board shall amend the tribal ordinance so that the ordinance imposes taxes equal to the Montana taxes on tobacco. The amended ordinance shall be effective on the effective date of the amended state law.

Section 5(a) is amended to read as follows:

For each calendar quarter, the Tribes shall receive an amount of tobacco taxes pre-collected for tobacco sales on the Reservation that 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 150 percent of the Montana per capita tobacco tax collected for the calendar quarter, times the total number of enrolled members of the Tribes living on the Reservation.

The total number of enrolled members of the Tribes living on the Reservation shall be determined by the Tribes from the Tribes' official rolls, or from information maintained for the Tribes by the United States, along with other information necessary to determine place of residence. The Tribes shall certify to the State by March 31<sup>st</sup> of each year the number of enrolled members of the Tribes living on the Reservation as of January 1<sup>st</sup> of each calendar year. In the event that the Tribes do not certify the number of enrolled members of the Tribes living on the Reservation in any given year, the State may use the previous year's certification. Upon request of the State, the Tribes will authorize the State to review the information used by the Tribes to determine the number of tribal members living on the Reservation for auditing purposes as provided in Section 8 of this Agreement.

The Montana per capita tobacco tax is based on the net sum of tobacco taxes in all funds into which cigarette and tobacco taxes are deposited, subsequent to the deduction or addition of refunds, credits, and corrections.

Section 5(b) is amended to read as follows:

The State shall distribute the monies due to the Tribes under this Agreement no later than thirty (30) days from the end of each calendar quarter. The State shall include with each distribution a statement showing how the distribution was determined for that quarter, including specific information regarding the calculation used to arrive at the distribution. Distributions shall 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<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup>, and October 1<sup>st</sup> of each year.

Section 5(c) is amended to read as follows:

In the event of termination by either party prior to the end of the term, the State shall 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 the termination. This obligation of the State shall survive any termination of this Agreement.

Section 5(d) is amended to read as follows:

The remittance amount payable to the Tribes shall be in the form of a warrant issued by the State of Montana payable to the Tribes and mailed to the Chairman of the Board, unless the Tribes specify in writing that the State should remit payment in some other manner.

Section 6 is amended to read as follows:

Term. This Agreement shall be for a term of ten (10) years and one month, commencing June 1, 2005, and terminating June 30, 2015, subject to the renewal provision, as set forth in Section 11, unless terminated in writing by

either party, with or without cause, upon not less than thirty (30) days written notice to the other.

Section 13 is amended to read as follows:

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:

a. To the Tribes:

Chairman  
Fort Peck Tribal Executive Board  
P.O. Box 1027  
Poplar, MT 59255

b. To the State:

Governor's Office  
P.O. Box 200801  
State Capitol  
Helena, MT 59620-0801

With copies to:

Director of Revenue  
Montana Department of Revenue  
Room 455, Mitchell Building  
Helena, MT 59620  
Attorney General  
215 North Sanders  
Helena, MT 59601-1401

As required by Section 11 of the Agreement, the parties' signatures are set forth below. Except as expressly amended hereby, all terms and conditions of the Agreement remain in full force and effect.

Dated this 1<sup>st</sup> day of June, 2005.

STATE OF MONTANA

ASSINIBOINE AND SIOUX TRIBES  
OF THE FORT PECK RESERVATION

/S/ BRIAN SCHWEITZER  
Brian Schweitzer  
Governor

/S/ RAY K. EDER  
Ray K. Eder, Chairman  
Fort Peck Tribal Executive Board

/S/ DAN BUCKS  
Dan Bucks  
Director, Department of Revenue

Approved pursuant to §18-11-105, MCA:

/S/ MIKE MCGRATH  
Mike McGrath  
Attorney General