

**NORTHERN CHEYENNE - MONTANA AGREEMENT
ON DISTRIBUTION OF UNTAXED CIGARETTES
WITHIN THE EXTERIOR BOUNDARIES OF THE
NORTHERN CHEYENNE RESERVATION**

THIS AGREEMENT is entered into this 22nd day of December, 1992, by and between the State of Montana, Department of Revenue, hereinafter referred to as "State", and the Northern Cheyenne Tribal Council of the Northern Cheyenne Reservation, hereinafter referred to as "Tribe."

The Tribal Council of the Northern Cheyenne is the governing body of the Tribe and is authorized to enter into this Agreement by Article IV, Section 1(a) of the Tribe's Constitution.

The State is authorized to enter into this Agreement pursuant to ch. 697, Laws of 1991 and the State-Tribal Cooperative Agreements Act, 18-11-101, MCA et seq.

The State and the Tribe agree as follows:

1. General purposes of agreement. The purposes of this agreement are to:

(a) ensure that persons within the exterior boundaries of the Northern Cheyenne Reservation who are not legally obligated to pay the State cigarette tax continue to be able to purchase cigarettes within the exterior boundaries of the Northern Cheyenne Reservation without paying the State tax; and,

(b) ensure that the state cigarette sales tax is collected on cigarettes sold within the exterior boundaries of the Northern Cheyenne reservation to persons who are legally obligated to pay the state tax.

2. Reservation Quota. The parties agree to establish a maximum annual quota of cigarettes to be sold tax free ("quota cigarettes") within the exterior boundaries of the Northern Cheyenne Reservation as follows. The annual quota shall initially be 34,354 cartons of cigarettes per calendar year. The parties agree that the amount of the quota may be renegotiated at any time if either party gives notice to the other that it does not believe the quota accurately reflects the actual consumption of cigarettes by persons entitled to purchase cigarettes without paying State taxes. The parties shall have access to each other's records and the records of retailers if renegotiating the amount of the quota. In order to be effective for the next calendar year, a new quota must be renegotiated prior to November 30.

3. Shipment of Cigarettes.

(a) The Tribe shall license each retailer within the exterior boundaries of the Northern Cheyenne Reservation who it determines is entitled to receive quota cigarettes. It shall provide the State with the names of each retailer and the amount of quota cigarettes each retailer is authorized to receive for each calendar year. The information shall be provided at least 10 days before a new calendar year begins. The allocation for each retailer shall be the same as the previous calendar year unless changed by the Tribe. The State shall allow quota cigarettes to be shipped to each license cigarette retailer on the Northern Cheyenne Reservation, in the amount designated by the Tribe for that retailer, from the distributor or distributors selected by each retailer. The distributors shall not collect the state tax on these quota cigarettes from the Tribally licensed retailer, but shall stamp the quota cigarettes and receive a refund of all prepaid taxes from the State. The quota cigarettes may be shipped at anytime during the year as designated by the retailers.

(b) The Tribe agrees that by making available the agreed upon amount of quota cigarettes for sale on the Northern Cheyenne reservation, the State of Montana has fulfilled its legal obligation to make untaxed cigarettes available for purchase and consumption by persons on the Reservation entitled to purchase tax free cigarettes. It is agreed that no additional untaxed cigarettes need to be provided to the Reservation once the total quota amount has been shipped to the designated retailers on the Reservation for any calendar year.

4. Tribal law. The Tribe shall adopt and keep in force an ordinance enforcing the Reservation quota by prohibiting the sale of unstamped cigarettes and by prohibiting the sale of untaxed cigarettes to persons on the Reservation who are not entitled to purchase cigarettes without paying the state tax. In addition, the Tribe shall require licensed retailers to sell at or above the minimum prices that are set in state law, and require the tribally licensed retailers to keep records of all sales of quota cigarettes. The records shall include the names of all the persons who purchase tax exempt cigarettes, and the date and the amounts of all such purchases.

5. Effective date and term.

(a) This Agreement shall be effective the first day of the month following receipt by the parties of written notification that the State has adopted administrative rules and the Tribe has adopted an ordinance which specifically implements this Agreement.

(b) This Agreement shall remain in effect until January 1, 2003, and shall be automatically renewed for additional successive ten years terms if no action is taken by either party. However, this Agreement may be terminated at the end of any calendar year by either party by delivering written notice of termination to the other party on or before November 30. If the State or Tribe terminates any other agreement on taxes, either party may cancel this Agreement at any time after 30 days written notice.

6. Amendments, renegotiation and renewal. This Agreement may be amended only by written instrument signed by both parties.

7. Reservation of rights and negative declaration. The State and Tribe have entered into this Agreement in part to resolve a legal dispute and avoid litigation. The parties agree that by entering into this Agreement, neither the State nor the Tribe 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 the Agreement's terms. This Agreement, conduct pursuant thereto or conduct in the negotiations or renegotiations 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 Tribe is forfeiting any legal rights to apply their respective taxes otherwise except as specifically set forth in this Agreement. This Agreement does not apply to any state tax collected other than the tax on cigarettes as provided in MCA, 1991. It does not apply to any other taxes or fees of any nature collected by the State. This Agreement does not apply to any other tax collected by any other agency or subdivision of the State of Montana.

8. Notices. All notices and other communications required to be given under this Agreement by the Tribe 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) If to the Tribe:

President
Northern Cheyenne Tribal Council
P.O. Box 128
Lame Deer, MT 59043

(b) If to the State:

Director of Revenue
Montana Department of Revenue
Room 455, Mitchell Building
Helena, MT 59620

Notice shall be considered given on the date of mailing.

Dated this 31st day of December, 1992

MONTANA DEPARTMENT OF REVENUE

/S/ DENIS ADAMS
DENIS ADAMS, Director

Dated this ___ day of December, 1992.

NORTHERN CHEYENNE TRIBE

/S/ LLEVANDO FISHER
Llevando Fisher, Sr.
President
Northern Cheyenne Tribal Council