

CHIPPEWA CREE TRIBE - MONTANA
TOBACCO TAX AGREEMENT

The Chippewa Cree Tribe - Montana Tobacco Tax Agreement ("Agreement") is entered into by and between the State of Montana ("State"), and the Chippewa Cree Tribe of the Rocky Boy's Reservation ("Tribe").

The Chippewa Cree Business Committee ("Business Committee") is the governing body of the Tribe and is authorized by Article VI, Section 1, Subsection (a), (f), and (j) of the Tribe's Constitution to enter into this Agreement.

The State is authorized pursuant to the State-Tribal Cooperative Agreements Act, Title 18, chapter 11, MCA, to enter into this Agreement.

The State and the Tribe 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 Rocky Boy's Reservation ("Reservation"), to mitigate the effects of dual taxation of tobacco by both the Tribe and the State, and to provide an effective means by which revenues generated by the state and tribal taxes on tobacco products may be shared and distributed. In order to accomplish these purposes, the State and the Tribe agree that the same level of taxation shall be 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 13 of this Agreement.

2. Recitals. This Agreement is made by and between the Chippewa Cree Tribe of the Rocky Boy's Reservation, acting through its Business Committee and the State of Montana. The parties hereto, having conferred together, desire to collect the tobacco tax on all tobacco or tobacco products sold or consumed on the Reservation for the mutual benefit of all the people of Montana including members of the Tribe. The parties enter into this Agreement to share tobacco tax revenues collected pursuant to this Agreement in relation to taxation of tobacco sales on the Reservation.

3. Tribal Law. While this Agreement is in effect, the Business Committee 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 Tribe's jurisdiction on the Reservation in a manner similar to the Montana taxes. The Business Committee 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 Tribe 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. 5. Collection and Administration of Taxes. The State and Tribe agree that tobacco sold on the Reservation shall not be subject to both the state and the tribal tax, but shall be subject to one tax. The State agrees to assist the

Tribe by pre-collecting tobacco taxes for sales on the Reservation from the tobacco wholesalers distributing tobacco products on the Reservation and to remit to the Tribe 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 and all other tobacco products shall be taxed.

a. For each calendar quarter, the amount of tobacco taxes that the Tribe receives 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 Chippewa Cree tribal members residing on the Reservation. 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.

For the calendar year beginning January 1, 2006 only, the parties agree that the number of Chippewa Cree tribal members residing on the Reservation shall be 3,519. The parties further agree that, for the calendar year beginning January 1, 2007, the total number of Chippewa Cree tribal members residing on the Reservation shall be determined by using the Chippewa Cree tribal enrollment population as well as the member's place of residence as determined by a methodology set out by the Business Committee. The methodology developed by the Business Committee shall be provided to the State by June 30, 2006.

The Business Committee authorizes the State to review the enrollment records maintained by the Tribe and any other information the Tribe uses to

establish the number of enrolled members residing on the Reservation in order that the State may audit the methodology used by the Tribe as provided in Section 7 of this Agreement. If no methodology is provided by June 30, 2006, or if the State finds the methodology to be inadequate to determine the number of Chippewa Cree tribal members residing on the Reservation and the parties cannot correct the inadequacy prior to December 31, 2006, this agreement shall terminate on December 31, 2006.

For the calendar year beginning on January 1, 2008, and for each calendar year remaining in the term of this Agreement, the Business Committee shall certify to the State by March 31st of each year the number of enrolled Chippewa Cree tribal members residing on the Reservation as of January 1 of that calendar year. In the event the Business Committee does not issue a recertification by March 31, the State may use the previous year's certification. The Business Committee authorizes the State to review the enrollment records maintained by the Tribe and any other information the Tribe uses to determine place of residency should the State wish to conduct an audit as provided in Section 7 of this Agreement.

b. The State shall distribute the monies due to the Tribe under this Agreement no later than thirty (30) 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. This distribution shall be sent to the Business Committee unless the Business Committee otherwise instructs the State. Said instruction will be in writing and will include the appropriate

authorization from the Business Committee. Distributions will begin within thirty (30) days from the end of the first calendar quarter after the effective date of this Agreement and continue until the expiration or the termination of this Agreement as provided in Sections 5.a, 6 and 10 or as 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.

c. 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 Tribe 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.

6. Term. This Agreement shall be for a term of ten (10) years, commencing January 1, 2006, and terminating December 31, 2016, subject to the renewal provision below.

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 its own expense. The right of examination or audit shall exist during the term of the 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.

The Business Committee shall assist the State in an audit of its methodology for determination of the number of enrolled tribal members residing on the Reservation by providing the information requested in an efficient and timely manner. Should the Tribe contract with a third party to provide this methodology, the Tribe will ensure that the third party will provide requested documentation to the State and agree to answer audit questions.

8. Effective Date. This Agreement is effective January 1, 2006, so long as the following conditions precedent are met: the Tribe has adopted and provided a copy to the State of an ordinance as required by Section 3 above; the Agreement has received the final approval of the Business Committee; the Agreement has been approved by the State Attorney General, as required by § 18-11-105, MCA; and a public meeting, as required by § 18-11-103, MCA, has been held and comments received and considered. If the referenced conditions precedent have not been met by January 1, 2006, this Agreement is effective on the first day of the next calendar quarter after all conditions precedent have been met.

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 the Agreement.

10. Termination.

a. This Agreement may be terminated by either party upon one hundred eighty (180) days written notice to the other party for circumstances not constituting cause, or upon thirty (30) days written notice for circumstances constituting cause. "Cause" means any material change in circumstances that alters or affects the terms of the Agreement, whether express or implied, foreseen or unforeseen.

b. The Chippewa Cree Tribe of the Rocky Boy's Reservation Cigarette Tax Cooperative Agreement with the State of Montana, dated August 24, 1992, terminates on the effective date of this Agreement. This Agreement supercedes all tobacco agreements and amendments thereto entered into between these parties prior to the effective date 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 court 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 they 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. Mutual Limited Waiver of Sovereign Immunity. The State has waived its sovereign immunity from suit for contract actions arising under the Agreement, see, Title 18, chapter 1, part 4, MCA, and for tort actions, see Title 2, chapter 9, part 1, MCA. The Tribe expressly grants a limited waiver of sovereign immunity from suit for litigation pertaining to this Agreement, provided that the Tribe's waiver shall be no more extensive than the State's waiver pursuant to Title 18, chapter 1, part 4, MCA, and Title 2, chapter 9, part 1, MCA, and shall only extend to the State and no other parties. Neither party waives its sovereign immunity except as provided in this Agreement.

13. Reservation of Rights and Negative Declaration. The State and Tribe 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 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 other than litigation claiming a breach of this Agreement. By entering into this Agreement, neither the State nor the Tribe is 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 as provided in §§ 16-11-101 through 206, MCA.

14. 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:

i. To the Tribe:

Chairman
Chippewa Cree Business Committee
Rocky Boy Route
P.O. Box 544
Box Elder, MT 59521

ii. To the State:

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

With Copies to:

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

Attorney General
214 North Sanders
Helena, MT 59620-1401

Notice shall be considered given on the date of mailing.

This Contract consists of ten (10) pages.

DATED this ____ day of _____, 2005.

STATE OF MONTANA

CHIPPEWA CREE TRIBE
of the ROCKY BOY'S RESERVATION

Brian Schweitzer
Governor

John "Chance" Houle, Chairman
Chippewa Cree Business Committee

Dan Bucks
Director of Revenue

United States Department of Interior
Bureau of Indian Affairs

Approved pursuant to
§ 18-11-105, MCA

Mike McGrath
Attorney General