

**CHIPPEWA CREE TRIBE - MONTANA
ALCOHOLIC BEVERAGES TAX AGREEMENT**

The Chippewa Cree Tribe - Montana Alcoholic Beverages Tax Agreement (Agreement) is entered into this 30 day of December, 2020, 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 (i) 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 alcoholic beverages within the exterior boundaries of the Rocky Boy's Reservation (Reservation), to mitigate the effects of dual taxation on the sale of alcoholic beverages by both the Tribe and the State, and to provide an effective means by which revenues generated by the state and tribal taxes on the sale of alcoholic beverages 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 the sale of alcoholic beverages both within and outside the boundaries of the Reservation. For purposes of this Agreement, the term "alcoholic beverages" shall mean alcoholic beverages as that term is defined by state law. 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 Tribe, acting through its Business Committee, and the State. The parties, having conferred together, desire to collect the alcoholic beverages tax on all alcohol sold or consumed on the Reservation for the mutual benefit of all the people of Montana including members of the Tribe. The Tribe agrees to allow the Montana Department of Revenue the authority to enforce state and tribal law in relation to taxation of sales of alcoholic beverages on the Reservation subject to the terms and conditions herein.

3. Tribal Law. While this Agreement is in effect, the Tribe shall adopt and keep in force an ordinance imposing taxes equal to the Montana liquor excise and license taxes and beer, wine, and hard cider taxes, which taxes shall apply to all liquor, beer, wine, and hard cider sold within

the Tribe's jurisdiction on the Reservation in a manner similar to the Montana taxes. The Tribe 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 taxes on the sale of all alcoholic beverages within the State's jurisdiction under Title 16, chapter 1, Part 4, Montana Code Annotated. Specifically, the State imposes an excise tax and a license tax on sales of liquor within Montana. These taxes are included in the posted price of liquor sold by state agency liquor stores, distilleries, airlines, and railroads. Sections 16-1-401 through -404, and -424, MCA. In addition, the State imposes a tax on all beer, wine, and hard cider sold in Montana, which is paid by wholesalers and breweries that sell to licensed Montana retailers. Sections 16-1-406 through -411, MCA.

5. Collection and Administration of Taxes. The State and Tribe agree that alcoholic beverages sold on the Reservation shall not be subject to both the state and the tribal tax, but shall be subject to one tax. As such, taxpayers of taxes imposed on alcoholic beverages within the exterior boundaries of the Reservation shall pay only one tax and are not required to pay both the state tax and tribal tax. The State agrees to assist the Tribe by collecting all taxes for alcohol sold on the Reservation and to remit to the Tribe the tribal liquor, beer, wine, and hard cider taxes collected as determined by the formulas described below.

a. For each calendar quarter, the Tribe shall receive an amount of liquor, beer, wine, and hard cider taxes, which approximates the sales to enrolled Chippewa Cree tribal members living on the Reservation. The amount of liquor, beer, wine, and hard cider taxes that the Tribe receives shall be determined by multiplying the tax on the general fund portion of the Montana per capita consumption of liquor, beer, wine, and hard cider for the calendar quarter, times the total number of enrolled Chippewa Cree tribal members living on the Reservation.

Subject to the provisions below, the Tribe, through affidavit (in the form attached as Exhibit A) of the Director (Tribal Enrollment Director) of the Tribe's Enrollment Office (Tribal Enrollment Office) established by the Business Committee, shall certify by March 31 of each calendar year during the term of this Agreement the number of all enrolled Chippewa Cree tribal members physically then residing within the Reservation's boundaries (Total Resident Enrollment). The Total Resident Enrollment shall be determined by using the Tribe's then current enrollment list, the most recent voting list for Tribal elections (which list is a partial list because it includes only adult tribal members), and other written sources as appropriate. Enrolled Chippewa

Cree members physically residing on the Reservation who have off-Reservation mailing addresses (e.g., in cities that are directly adjacent to the Reservation) shall be included in the “Total Resident Enrollment.” In the event the Tribal Enrollment Director does not issue a certification by March 31 of any year subsequent to 2020, the State will use the previous year’s number, unless information exists to demonstrate that the certified number has decreased or increased. In such case, the parties shall meet and negotiate the certified number before July 1 of such calendar year, utilizing the best information available. The Business Committee authorizes the State to review and verify the enrollment records, voting records, and other records as appropriate that are maintained by the Tribe, and any other information the Tribe uses, should the State wish to verify the Total Resident Enrollment for the calendar year. If there is a dispute between the State and the Tribe regarding the proper actual Total Resident Enrollment for any year, the Tribe and the State shall have 30 days to resolve the issue by agreement. If the issue is not resolved within 30 days, the State may use the Total Resident Enrollment figure used for the prior calendar year until a revised Total Resident Enrollment figure is agreed on by both parties. Any revised Total Resident Enrollment figure agreed to by the parties shall be retroactively calculated from January 1 of the current calendar year. To account for the retroactive calculation, a one-time payment adjustment will be included with the payment due for the next full calendar quarter payment. The Total Resident Enrollment for 2020 is 4,061.

b. The State shall distribute the monies due to the Tribe under this Agreement no later than 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 an authorizing resolution of the Business Committee. Distributions shall continue until the expiration or termination of this Agreement as provided below or required by law. For the purposes of this Agreement, the calendar quarters begin 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 commence on January 1, 2021, and terminate on December 31, 2030, subject to Sections 8, 9, and 10 below.

7. **Audits.** Either party has the right to request a third-party audit of the revenue collection and allocation records of the parties to determine the accuracy of the statements or representations called for in this Agreement for the five years immediately preceding the date of the request. The right of a third-party audit shall exist during the term of this Agreement and for a period of one year after the date of any termination or expiration of this Agreement. The parties shall mutually agree upon a third-party auditor, and each shall pay 50% of the costs of the third-party auditor up to a reasonable amount as determined mutually by the parties. The auditor shall be a certified public accountant. The auditor shall be subject to state, federal, and tribal law with regard to the confidentiality of tax information. The auditor shall have no authority to audit taxpayers.

8. **Effective Date.** This Agreement is effective January 1, 2021, 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 hearing, 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, 2021, 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. If this Agreement expires because the term has run, the parties agree that all its terms, except provision 10, will remain in full force and effect until a new agreement is reached or either party gives 30 days written notice that it is cancelled.

10. **Termination.** This Agreement may be terminated by either party upon five (5) years 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.

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, or, if the U.S. District Court lacks jurisdiction, a Montana state district court. 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 attorney's 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. 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 except as specifically provided in this Agreement. 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 may be introduced into evidence in any proceeding involving this Agreement. Neither conduct pursuant to this Agreement nor conduct in the negotiations or renegotiations of this Agreement, shall 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 except to the extent such introduction is permitted by the parol evidence rule in litigation seeking to enforce 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 taxes on alcoholic beverages as provided in §§ 16-1-401 through 411, and -424, MCA. 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.

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:

a. To the Tribe:

Chairman
Chippewa Cree Business Committee
31 Agency Square
P.O. Box 544
Box Elder, Montana 59521

b. To the State:

Governor's Office
PO Box 200801
State Capitol
Helena, Montana 59620-0801

With Copies to:

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

Attorney General
214 North Sanders
Helena, Montana 59620-1401

Notice shall be considered given on the date of mailing.


15. Future Legislatures. As provided in § 15-1-211, MCA, nothing in this Agreement shall be construed as binding any future Legislature.

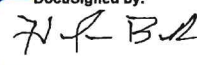
This Agreement consists of 7 pages.

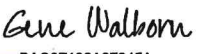
DATED this 20 day of December 2020.
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STATE OF MONTANA


CHIPPEWA CREE TRIBE of the
ROCKY BOY'S RESERVATION

DocuSigned by:

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Steve Bullock
Governor

DocuSigned by:

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Harlan Baker, Chairman
Chippewa Cree Business Committee
(pursuant to authorizing resolution of the
Business Committee)

DocuSigned by:

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Gene Walborn
Director of Revenue

Approved pursuant to § 18-11-105, MCA


Tim Fox *Auotini Knudsen*
Attorney General
by Kristin Hansen