

**FORT BELKNAP - MONTANA
ALCOHOLIC BEVERAGES TAX
AGREEMENT**

THIS AGREEMENT is entered into this **1ST** day of **SEPTEMBER, 1993**, by and between the State of Montana, Department of Revenue, hereinafter referred to as "State" and the Fort Belknap Community Council of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation, hereinafter referred to as "Tribes", as an exercise of sovereignty on the part of each for the purposes set forth herein.

The 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, Chapter 11, Title 18, 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 avoid legal controversy and possible litigation over the taxation on the sale of alcoholic beverages within the exterior boundaries of the Fort Belknap Indian Reservation (hereinafter referred to as "Reservation"), to avoid dual taxation of such sales of alcoholic beverages by both the Tribe's and the State, and to ensure that the same level of taxation is imposed on the sale of alcoholic beverages both within and outside the boundaries of the Reservation.

2. State law. The State imposes taxes on sales of alcoholic beverages by all persons within the State's jurisdiction under Part 4, Chapter 1, Title 16, Montana Code Annotated, including the liquor excise and license taxes, §§ 16-1-406 through 411, MCA. The State shall notify the Tribes in writing of any changes or amendments to these provisions which the State believes necessitate an amendment to tribal law under this agreement.

3. Tribal Alcohol Tax. The Tribes, pursuant to their individual Tribal and inherent sovereign authorities, as delegated to the Council under the Tribes' constitution, do herein agree to enforce their ordinance imposing a tax on all alcoholic beverages distributed within the boundaries of the Reservation, and that such tax shall be maintained at levels equal to the levels imposed by section **3-107** of the Tribes Alcoholic Beverages Tax Code, as enacted September 1, 1993. The Tribes agree to provide the State of Montana with a current copy of this ordinance, providing updates, as it may be amended from time to time, within fifteen (15) days of any amendment. Should either the Council or the State Legislature amend their respective alcoholic beverage tax laws, the parties shall meet and agree to modify this Agreement within thirty (30) days of the enactment of such changes, or this Agreement shall be automatically terminated.

4. Subsequent Negotiations on Tax Sharing. Should either party request further negotiations on concerns pertaining to this agreement or on additions/amendments hereto, immediate negotiations shall be scheduled and commenced to discuss alternatives.

5. Collection and Administration of Taxes. The State and the Tribes agree that alcoholic beverages sold on or off the Reservation shall not be subject to both the State tax and the Tribal tax, but shall be subject to one tax. The parties further agree, that because the State has an existing tax collection structure, the State will collect those taxes, resulting from alcoholic beverage sales on the Reservation, for and on behalf of the Tribes, and will remit to the Tribes, all alcoholic beverages taxes set forth in the formulas noted below.

(a) The total amount of remittance distributed to the Tribes shall be the total taxes collected on liquor and beer and wine consumed on the Reservation by tribal members living on the reservation. The amount so consumed will be determined by multiplying the number of enrolled tribal members living on the Reservation as determined by the Bureau of Indian Affairs, Billings Office, by the tax distributed to the state general fund on the per capita consumption per quarter of liquor and beer and wine in Montana as determined by the State for the preceding fiscal year. The first fiscal year population is 2837 and each year thereafter shall be determined using the current year B.I.A. number determined in the spring of the calendar year. However, if the B.I.A. number changes more than five (5%) per cent between years, the maximum number change from the prior year shall not increase or decrease more than five (5%) per cent.

(b) The State shall distribute the moneys 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 and continue until the expiration or the termination of this Agreement as provided in Paragraph 5 or required by law. For the purposes of this Agreement a calendar quarter begins on January 1, April 1, July 1 or October 1 of each year.

(d) The amount payable to the Tribes shall be in the form of a warrant issued by the State of Montana payable to the Tribes and sent to the Chairman of the Tribes.

6. Term. This Agreement shall be for a term of ten (10) years, subject to the renewal provision below, unless terminated in writing by either party upon not less than thirty (30) days written notice to the other. In the event of termination by the State 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.

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. The parties may require independent audits at their own expense. The right of examination or audit shall exist during the term of the Agreement and for a period one year after the date of any termination or expiration of this Agreement. The parties agree to maintain the confidentiality of any confidential information obtained from the other party.

8. Effective date. Subject to the public hearing requirements of state law, this Agreement shall be effective on the 1st day of July, 1993, or the first day of the whole calendar quarter following the initial effective date of the tribal ordinance referenced under Paragraph 3, whichever shall last occur.

9. Amendments, renegotiation 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 ten (10) year term provided in paragraph 5 of this Agreement the parties shall meet and negotiate in good faith a renewal of the Agreement.

10. Reservation of rights and negative declaration. The State and Tribes have entered into this Agreement in part to resolve a legal dispute and avoid litigation on future collection of alcohol taxes on the Fort Belknap Indian Reservation. 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 or advocated by the parties as enlarging or diminishing the jurisdictional authority of either party. During the term of this Agreement, it is the intent of each party to delegate certain responsibilities and to engage in specific conduct necessary to implement and effectuate part 5 of this Agreement. 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 liquor and beer and wine as provided in §§ 16-1-401 through 411, MCA, 1991. It does not apply to any other taxes or fees of any nature collected by the State.

11. 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 State certified mail, return receipt requested, with postage prepaid, addressed as follows:

(i) If to the Tribes:

President, Fort Belknap Community Council
R.R. #1, Box 66
Harlem, Montana 59526

(ii) If to the State:

Director of Revenue
Mitchell Building
Helena, Montana 59620

Attorney General of the State of Montana
215 North Sanders
Helena, MT. 59601

Notice shall be considered given on the date of mailing.

DATED this 1st day of September, 1993.

STATE OF MONTANA

/S/ JOE MAZUREK
Joe Mazurek, Attorney General

/S/ MICK ROBINSON
Mick Robinson, Director of Revenue

FORT BELKNAP COMMUNITY COUNCIL

/S/ WILLIAM MAIN
William Main, President