

FORT PECK – MONTANA
TOBACCO TAX AGREEMENT

THIS AGREEMENT is entered into by and between the State of Montana, Department of Revenue, hereafter referred to as “State” and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, hereafter referred to as “Tribes”.

The Tribal Executive Board (hereafter referred to as “Board”) is the governing body of the Tribes and is authorized to enter into this Agreement by Article VII, Section 1, of the Tribes’ Constitution.

The State is authorized to enter into this Agreement pursuant to the State-Tribal Cooperative Agreements Act, Chapter 11, Title 18, M.C.A.

The State and Tribes agree as follows:

1. General Purposes of Agreement. The purposes of this Agreement are to minimize legal controversy over the taxation of tobacco sales within the exterior boundaries of the Fort Peck Reservation (hereafter referred to as “Reservation”), to mitigate the effects of dual taxation of tobacco sales by both Tribes and State, and to ensure that the same level of taxation is 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 consistent with the terms and conditions set forth in Section 12 of this Agreement.

2. Recitals. This Agreement is made by and between the Assiniboine and Sioux Tribes of the Fort Peck Reservation and the State of Montana, acting through its Department of Revenue. The parties, having conferred together,

desire to collect tobacco tax on all tobacco or tobacco products sold or consumed on the Fort Peck Reservation for the mutual benefit of all the people of Montana, including the residents of the Reservation. The parties enter into this Agreement to allow the Department of Revenue the authority to collect taxes in accordance with Tribal law on the Reservation subject to the terms and conditions herein.

3. Tribal Law. The Tribal Executive 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 as it may be amended from time to time. Upon 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 within 60 days of the effective date of the amended state law.

4. State Law. The State imposes a tax on tobacco distributed within the State's jurisdiction under Chapter 11, Title 16, M.C.A. The State shall notify the Board in writing of any changes or amendments to these provisions.

5. Collection and Administration of Taxes. The State and the Tribes agree that tobacco sold on the Reservation shall not be subject to both the state tax and the tribal tax, but shall be subject to one tax. The State agrees to pre-collect all tobacco taxes for sales on the Reservation from the tobacco

wholesalers distributing tobacco products within the exterior boundaries of the Reservation and to remit to the Tribes the tribal tobacco tax collected as determined by the formulas described below. All cigarettes sold within the exterior boundaries of the Reservation shall have the state tax insignia affixed.

a. The Tribes shall receive an amount of tobacco taxes pre-collected for tobacco sales within the exterior boundaries of the Reservation that approximates the sales to enrolled tribal members living within the exterior boundaries of the Reservation. The amount of tobacco taxes that the Tribes receive shall be determined by multiplying the total number of enrolled members of the Assiniboine and Sioux Tribes residing within the exterior boundaries of the Reservation as last determined on or about each March 31, from the Bureau of Indian Affairs, Billings Area Office, times 150% percent of the Montana per capita tobacco tax collected in the prior fiscal year.

b. The State shall distribute the monies due to the Tribes under this Agreement at 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 amount. As provided in (a), the distributions shall be adjusted each year in the quarter beginning April 1 to reflect changes in the Reservation's resident member population and in the quarter beginning January 1 to reflect changes in the State's per capita tobacco tax collections for the prior fiscal year.

c. Distributions shall commence at the end of the first calendar quarter after the effective date of this Agreement and continue until the expiration or

termination of this Agreement as provided below or required by law. For the purposes of this Agreement, a calendar quarter ends on March 31, June 30, September 30, and December 31 of each year.

d. 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. As indicated in (b) of this Section, a statement showing how the distribution was determined for the quarter shall accompany the remittance, including specific information regarding the calculation used to arrive at the distribution amount.

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 either party 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. Review. The parties may review this Agreement at any time. The review shall include a good faith discussion of any issue that either party determines to be appropriate. The review may include good faith negotiations concerning any other method suggested by either party for determining the taxes received by the parties.

8. 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 this Agreement and for a period of one year after the date of termination or expiration of this Agreement. The parties agree to maintain the confidentiality of any information obtained from the other party that is protected as confidential pursuant to either Tribal or State laws.

9. Effective Date. This Agreement is effective after a public hearing as required by Section 18-11-103, M.C.A., has been held and comments are received and considered. The State shall notify the Tribes in writing as soon as possible after all comments have been considered whether or not the Agreement is effective and the date the Agreement is effective. In addition, this Agreement is subject to the approval of the Montana Attorney General and upon the Tribes having an ordinance in place as described in paragraph 2, on the date of the public hearing. If the Assiniboine or Sioux Tribes approves this Agreement by December 15, 1999, the amount of distribution to the Tribes for collected taxes shall be calculated beginning on January 1, 2000.

10. Termination of Prior Tobacco Agreements. The date this Agreement becomes effective, all prior agreements regarding tobacco regulation or sales between the parties are hereby terminated. Specifically, the Agreement on Distribution of Untaxed Cigarettes on the Fort Peck Reservation is terminated on the date this Agreement becomes effective.

11. Amendments, Renegotiations and Renewal.

a. This Agreement may be amended only by written instrument signed by both parties.

b. Prior to expiration of the initial ten-year term of this Agreement, the parties shall meet to negotiate in good faith a renewal of the Agreement for an additional ten-year term, and thereafter shall meet to negotiate successive ten-year renewals of this Agreement. The parties in each negotiation of a renewal term shall seek to agree on a distribution of tax revenues on substantially the same basis as the one provided above, in light of the circumstances existing at that time. Should the parties fail to meet and renegotiate this Agreement in a timely manner, this Agreement shall continue to be effective until such time as the parties renegotiate or terminate this Agreement as provided herein.

12. Reservation of Rights and Negative Declaration. The State and Tribes have entered into this Agreement to minimize legal controversy over the taxation of tobacco within the exterior boundaries of the Fort Peck Reservation. The parties agree that by entering into this Agreement, neither the State nor the Tribes 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 Tribes 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 products as provided in Sections 16-11-101 through 206, M.C.A. 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. Nothing in this Agreement shall be deemed a concession by either party to the other party's jurisdictional claims or any type of admission thereto, or a waiver of the right to challenge such claims. Nothing in this Agreement shall prejudice the right of any individual to challenge the regulatory or adjudicatory jurisdiction of any party. Neither this Agreement nor the activities of the parties pursuant to this Agreement shall be utilized to affect the legal or equitable position of any party in any future litigation.

13. 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:

(i) To the Tribes:

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

(ii) To the State:

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

Attorney General
215 North Sanders
Helena, MT 59601-1401

Notice shall be considered given on the date of mailing.

DATED this 15th day of December, 1999.

STATE OF MONTANA

/S/ MARY BRYSON

Mary Bryson
Director of Revenue

ASSINIBOINE AND SIOUX TRIBES

/S/ ARLYN HEADDRESS

Arlyn Headdress
Tribal Executive Board

Approved pursuant to § 18-11-105, M.C.A.

/S/ JOE MAZUREK

Joe Mazurek
Attorney General