

TAX COLLECTION AGREEMENT BETWEEN THE STANDING ROCK SIOUX TRIBE AND THE STATE OF NORTH DAKOTA

This Cigarette and Tobacco Products Tax Agreement (“Agreement”) is between the State of North Dakota, by and through its Office of State Tax Commissioner (“State”) and the Standing Rock Sioux Tribe (“Tribe”). The State, and the Tribe, through its Tribal Council (“Council”), the duly established governing body of the Tribe, hereby agree to the following:

1. Statement of Intent

The intent of this Agreement is to:

- A. Provide for the mutual recognition and respect by the State and Tribe of one another’s sovereignty;
- B. Give recognition to the respective tax jurisdiction of the State and Tribe in a mutually satisfactory way that does not compromise either party’s right to assert a position upon termination of the Agreement;
- C. Provide for an efficient method of imposing and collecting taxes on all cigarette and tobacco products sold on the Standing Rock Sioux Reservation;
- D. Distribute the revenue from those taxes in a manner that reflects the proportion of tribal members to non-tribal members residing on the Standing Rock Sioux Reservation;
- E. Avoid litigation; and
- F. Provide for the application of uniform cigarette and tobacco products taxes for tribal members and non-tribal members on the Standing Rock Sioux Reservation.

2. Sovereign Immunity

Nothing contained in this Agreement is or shall be construed to be a waiver of the sovereign immunity of the Tribe, its Tribal Council, officials, or entities. The Tribe expressly retains its sovereign immunity. In the event of a conflict with any other provision of this Agreement, the terms of Paragraph 2 shall prevail and control.

3. Acknowledgements of Authority

The parties acknowledge the following as a basis for this Agreement:

A. Tribal Authority

- 1. The Tribe has jurisdiction to tax certain transactions on the Standing Rock Sioux Reservation.

2. The Tribal Council may, under Article IV Sections 1(a), 1(d), 1(m), 1(n), and 1(p) of the Constitution and By-Laws of the Standing Rock Sioux Tribe, and Section 16.105 of Title XVI of the SRST Law and Order Code, enter into tax collection agreements with the State.

3. Specific to this Agreement, the parties acknowledge that the Tribe has jurisdiction to impose its Tobacco Products Tax on all cigarette and tobacco products sold on the Standing Rock Sioux Reservation.

B. State Authority

1. The State, subject to inherent limitations under law, has concurrent jurisdiction to tax certain transactions involving non-members of the Standing Rock Sioux Tribe on the North Dakota portion of the Standing Rock Sioux Reservation.

2. The State may, under North Dakota Century Code Chapter 54-40.2, enter into agreements with a Native American Tribe.

3. Specific to this Agreement, the parties agree that the State, subject to inherent limitations under law, has concurrent jurisdiction with the Tribe to impose its Cigarette and Tobacco Product Tax on non-members of the Standing Rock Sioux Tribe on the North Dakota portion of the Standing Rock Sioux Reservation.

4. Taxes Included in This Agreement

A. Cigarette and Tobacco Tax

1. The parties agree that for purposes of this Agreement, the State will collect one cigarette or tobacco products tax per transaction made by both members of the Standing Rock Sioux Tribe and non-members of the Standing Rock Sioux Tribe on the North Dakota portion of the Standing Rock Sioux Reservation and distribute the revenue collected from those taxes as provided below in Paragraph 5.

2. The State agrees that it will collect and administer as a contractor the following tribal taxes provided they remain substantially similar to the corresponding state taxes:

Standing Rock Sioux Tribe Law and Order Code Title XVI – Tax Code
Section 16.604 – Tobacco Products Tax

(a) The State is responsible only for the administration and collection of these taxes. The Tribe retains exclusive jurisdiction and tax authority to file and prosecute civil and criminal enforcement actions as needed with respect to the tribal taxes, according to Tribal and Federal laws, and engage in any collection or enforcement action necessary to implement the requirements of this Agreement.

(b) The amount of the tax will be the amount imposed generally in North Dakota for such products, as amended from time to time.

(c) Upon request of the State, the Tribe will assist the State in the assessment and collection of any tax subject to this Agreement.

B. Other Taxes

1. Nothing in this Agreement is meant to preclude the Tribe from imposing other taxes within the jurisdiction of the Standing Rock Sioux Tribe.

2. Nothing in this Agreement is meant to preclude the State from imposing other taxes within the jurisdiction of the State of North Dakota.

5. Remittance of Tax Proceeds and Retention of Administrative Fee

A. Tax Proceeds

1. The State agrees to remit to the Tribe, as a tribal share of revenues collected, an amount equal to eighty seven percent (87%) of the total proceeds collected from the tribal taxes subject to this Agreement and corresponding state taxes.

2. The amount to be distributed to the Tribe shall be based upon the population demographics of the 2010 United States Census. The revenue share shall be changed at the request of either party to reflect any change in the proportion of tribal members to non-tribal members residing on the Reservation, as reported in any subsequent United States Census.

3. The payment specified in Paragraph 5(A)(1), above, less the administrative fee specified in Paragraph 5(B), below, shall be remitted by the State to the Tribe on a monthly basis within thirty (30) days from the end of the calendar month during which the collection occurs. Unless otherwise requested in writing by the Tribe, the remittance shall be by state warrant issued by the State Treasurer, payable to the order of the Standing Rock Sioux Tribe.

4. The State shall furnish the Tribe with an itemized list of the source of the revenue payment specified in Paragraph 5(A)(1) of this Agreement on a monthly basis within thirty (30) days from the end of the calendar month during which the collection occurred.

B. Administrative Fee

The State shall retain, as a service fee for the collection and administration of the tribal taxes subject to this Agreement, one percent (1%) of the payment specified in Paragraph 5(A)(1) of this Agreement.

6. Implementation and Administration of the Agreement

A. Tribal Implementation and Administration

1. The Tribe will cause to be adopted and enforce such tribal laws as are necessary to implement the requirements of this Agreement which shall include, without limitation, assessment, collection, enforcement, and administration provisions.

2. The Tribe agrees that, subject to the provisions of this Agreement, the taxes provided for by Tribal law under this Agreement shall be imposed and collected in connection with all affected transactions occurring on the North Dakota portion of the Standing Rock Sioux Reservation. The tribal taxes covered by this Agreement shall be the same as the corresponding state taxes, and all subsequent amendments thereto, and shall be collected and remitted in the same manner as required under the North Dakota Century Code.

3. The Tribe will notify the State in writing of any enacted changes to the tribal taxes covered by this Agreement. If requested to do so by the Tribe, the State will review any proposed change to a tribal tax covered by this Agreement in advance and advise the Tribe whether the change, if enacted, would, in the view of the State, result in the tribal tax ceasing to be substantially similar to the corresponding state tax.

B. State Implementation and Administration

1. The State agrees to provide the Tribe written notice of any pending changes to the state taxes corresponding to the tribal taxes covered by this Agreement which may result in the tribal taxes ceasing to be substantially similar to the corresponding state tax.

2. The State will give written notice to the Tribe of any enacted changes to state taxes and in the notice will specify which changes would, in the view of the State, result in the affected tribal tax ceasing to be substantially similar to the corresponding state tax if the tribal tax is not amended.

C. Administration and Maintenance of Records

1. The Tribe agrees to keep accurate records setting forth information in sufficient detail to allow for verification that Tribally-owned entities are collecting and remitting the correct amount of tax due under this Agreement.

2. Upon reasonable request of the Tribe, the State shall make available to the Tribe all records of tax filings that relate to the taxes covered by this Agreement.

3. If the State receives a request for information pertaining to this Agreement that it is required to furnish under the State's Open Records laws, the State will inform the Tribe of the request and information released.

7. Effective Date, Duration, and Termination of the Agreement

A. Effective Date

The parties agree that the effective date for collection and administration of cigarette and tobacco taxes in the manner provided by this Agreement shall be May 1, 2015.

B. Duration

Upon the effective date, this Agreement shall remain in effect indefinitely, unless terminated under the provisions of Paragraph 7(C).

C. Termination

1. Either party may terminate this Agreement without cause and without liability, except as to any amounts collected and due to either party, upon thirty (30) days written notice to the other party.

2. Before the Agreement is terminated under this provision, the parties will meet and make a good faith effort to resolve the differences leading to the Notice of Termination. A Notice of Intent to terminate on behalf of the Tribe must be approved by the Tribal Council and executed by the Tribal Chairperson. A Notice of Intent to terminate on behalf of the State must be executed by the State Tax Commissioner.

3. This Agreement shall terminate immediately as to any tribal tax upon the repeal of that tax by the Tribe.

4. In the event of termination of this Agreement, the State shall notify each known taxpayer affected by the termination, by first class mail, sent on or before the date the next payment is due, that it will no longer collect the taxes covered by this Agreement, and that the taxpayer should no longer remit to it the affected tribal tax or taxes.

8. Amendment and Waiver

This Agreement may not be modified or amended, nor may compliance with any provision of it be waived except by an instrument or instruments in writing signed by the party against whom enforcement of any modification, amendment, or waiver is sought.

9. Exemption from Tax

Cigarette and Tobacco Taxes on purchases made by the Tribe and used by the Tribe shall be exempt from the provisions of this Agreement to the maximum extent permitted by law. Any tax on cigarette or tobacco products paid by the Tribe shall be refunded to the Tribe by the State.

10. Notice and Payment

A. Notice

Notice required to be sent to the Tribe under this Agreement shall be sent to:

Tribal Chairperson
Standing Rock Sioux Tribe
PO Box D
Fort Yates, North Dakota 58538

Notice required to be sent to the State under this Agreement shall be sent to:

North Dakota Office of State Tax Commissioner
Sales and Special Tax Section
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0599

B. Payment

Payment required to be sent to the Tribe under this Agreement shall be sent to:

Standing Rock Sioux Tribe
Tax Department
PO Box D
Fort Yates, North Dakota 58538

Notwithstanding the provisions of Section 8, either party may change its Notice address by giving written notice of the change to the other party.

IN WITNESS WHEREOF, the Standing Rock Sioux Tribe and State of North Dakota have caused this Agreement to be executed and delivered by their respective officers, duly authorized.

2/27/15
Date

D-LS
Dave Archambault II, Chairman
Standing Rock Sioux Tribe

2-26-15
Date

Ryan Rauschenberger
Ryan Rauschenberger, Tax Commissioner
State of North Dakota

This Agreement is approved under N.D.C.C. § 54-40.2-04.

5/4/15
Date

Jack Dalrymple
Jack Dalrymple, Governor
State of North Dakota