

# TOBACCO TAX COMPACT BETWEEN THE STATE OF OKLAHOMA AND THE QUAPAW TRIBE OF OKLAHOMA (THE O-GAH-PAH)

**FILED**

SEP 25 2013

## ARTICLE I PURPOSE AND INTENT OF PARTIES

OKLAHOMA SECRETARY  
OF STATE

WHEREAS, the Quapaw Tribe of Oklahoma (the O-Gah-Pah) (hereinafter referred to as the “Quapaw Tribe” or the “Tribe”), is a federally recognized Indian tribe<sup>1</sup> with inherent sovereign powers of self-government; and

WHEREAS, the State of Oklahoma (hereinafter referred to as “State”) is an independent sovereign state within the United States of America possessed of full powers of state government; and

WHEREAS, both the State of Oklahoma and the Quapaw Tribe recognize that pursuant to applicable law each is a sovereign with dominion over their respective territories and governments. Entry into this contract is not intended nor shall it be construed to cause the sovereignty of either to be diminished; and

WHEREAS, the Tribe and its members<sup>2</sup> are in possession of various tracts of land in its jurisdiction within the State, known and commonly referred to as “Indian Country”; and

WHEREAS, the State, by and through the United States Supreme Court decision *Oklahoma Tax Commission vs. Citizen Band Potawatomi Indian Tribe of Oklahoma*, is authorized to collect state taxes on cigarettes and other tobacco products sold by tribal businesses to non-tribal members; and

WHEREAS, federal Indian law recognizes that tribal jurisdiction is extant in Indian Country regarding the rights of Indian tribes to pass their own laws and be governed by them, including the right to sell cigarettes and other tobacco products to tribal members free from State taxation; and

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<sup>1</sup> “Federally recognized” tribe means any Indian tribe which has met the requirements established by the terms of the Indian Reorganization Act, 48 Stat. 984, as amended; the Oklahoma Indian Welfare Act, 49 Stat. 1967, as amended; or is one of those tribes listed in the Federal Register pursuant to 25 C.F.R. Part 83 as recognized by and receiving services from the Bureau of Indian Affairs, as provided for in *Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs*, 58 Federal Register 54,364 (October 21, 1993).

<sup>2</sup> “Member” means an individual who meets the membership requirements of the Tribe as set forth in its governing document or is listed on the tribal roll of the Tribe as a member, see 25 C.F.R. § 81.1(i) (1996) and 25 C.F.R. § 83.11 (1996).

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WHEREAS, both the State and the Tribe recognize the financial, cultural, educational and economic contributions of each sovereign; and

WHEREAS, both the State and the Tribe recognize the need to develop and maintain good Tribal/State governmental relations; and

WHEREAS, Article 6, Section 8 of the Oklahoma Constitution vests the power and authority to conduct the business of the State with other sovereign states and with the United States to the Governor of the State of Oklahoma; and

WHEREAS, for the purposes of the Oklahoma Constitution and this Compact, the Quapaw Tribe does hereby constitute a sovereign state; and

WHEREAS, in order to fund its tribal governmental programs and services, which include but are not limited to fire protection and emergency medical services provided not only to tribal members but also to the greater community in Ottawa County, the Tribe depends primarily on revenues generated from its various tribal enterprises, including revenues from the sales of cigarettes and other tobacco products; and

WHEREAS, by virtue of the location of the Tribe's Indian country jurisdiction in the far northeastern corner of Oklahoma, the sales of cigarettes and other tobacco products at the Tribe's enterprises must compete with such sales in the nearby bordering States of Kansas and Missouri, which have significantly lower cigarette and tobacco taxes than Oklahoma, and therefore a dramatic increase in cigarette and tobacco taxes at tribal enterprises from those applicable under its existing tobacco compact would seriously threaten tribal funding for its governmental programs; and

WHEREAS, the Tribe provides health insurance to all of its approximately 4,400 members, and therefore shares the State's concern about the health effects of smoking and tobacco use, and currently has in place ongoing programs to discourage smoking and use of other tobacco products; and

WHEREAS, in view of the foregoing special considerations the Tribe and the State have reached certain agreements herein, including that the Compact Tax on cigarettes and other tobacco products will be the State tax rate within the Tribe's jurisdiction, but the portion of such Compact Tax to be rebated to the Tribe will be implemented gradually according to the schedule set forth herein, so as to enable the Tribe to maintain adequate levels of funding for its governmental programs and so as to enable the State to continue to receive revenues from the Compact Tax.

## **ARTICLE II**

### **TERMS OF TAXATION ON SALE OF TOBACCO PRODUCTS**

NOW, THEREFORE, the Quapaw Tribe, by and through its Chairman, John L. Berrey, and the State of Oklahoma, by and through its Governor, Mary Fallin, do hereby enter into this Compact, the terms of such Compact to commence on October 1, 2013, for the mutual benefit of

the Tribe and the State (hereinafter each referred to as a “party” and collectively as the “parties”), to-wit:

- 1) The provisions of this Compact shall govern the rate of taxation and payment of taxes to the Tribe and the State on the retail sales of cigarettes and other tobacco products in the Tribe’s Indian Country located within the boundaries of the State of Oklahoma as defined by federal law, including 18 U.S.C. § 1151, hereinafter referred to as “Compact Jurisdiction” when said retail sales are made by (a) businesses owned by the Tribe, (b) licensees who are members of the Tribe, or (c) businesses licensed by the Tribe in which the majority interest is owned by the Tribe or members of the Tribe, provided that nothing herein shall prohibit the Tribe from enacting any laws and/or regulations regarding the retail sale, use, or possession of cigarettes and other tobacco products in the Tribe’s jurisdiction that would not be in conflict of the laws of the State of Oklahoma with respect to the matters addressed in this Compact or the provisions set forth herein. The entities or groups described in clauses (a), (b), and (c) of this paragraph shall be collectively referred to as the “Retailers” or individually as a “Retailer.” Nothing contained herein shall impair the ability of the Oklahoma Tax Commission to regulate cigarette manufacturers, importers, wholesalers, distributors, distributing agents, jobbers, or warehousemen (“Wholesalers”), provided such regulation shall not interfere with the rights of the Tribe or its Retailers under this Compact.
  
- 2) The Tribe agrees to:
  - a. Require as a condition to licensing and continuation of licensing that all Retailers comply with the provisions of this Compact; and
  - b. Furnish to the Oklahoma Tax Commission the following information with respect to each of the Retailers:
    - i. The owner’s name(s) and address(es);
    - ii. A list of any tobacco-related tax permits held;
    - iii. Documentation or certification that its business premises are located within the Compact Jurisdiction, such as trust land documentation;
    - iv. The location of offices and business records;
    - v. A copy of any reports by any Wholesalers or Retailers to the Tribe documenting all sales of cigarettes and other tobacco products within the Compact Jurisdiction;
    - vi. An annual list of all Wholesalers providing Retailers within the Compact Jurisdiction with cigarettes or tobacco products; and

- vii. If available, any complaints, audit reports or concluded investigation findings related to the wholesale or retail sale of cigarettes or tobacco products within the Compact Jurisdiction.
- 3) The State agrees to provide the following information from the Oklahoma Tax Commission to the Tribe's Tax Commission unless unavailable to the Oklahoma Tax Commission:
  - a. The names and addresses of Wholesalers licensed by the State;
  - b. The number and dollar amount of Compact stamps purchased by Wholesalers for sale to Retailers;
  - c. A copy of any reports by Wholesalers or Retailers to the State documenting wholesale or retail sales within the Compact Jurisdiction;
  - d. A current list of all Wholesalers providing the Retailers with cigarettes or tobacco products; and
  - e. Any complaints, audit reports or concluded investigation findings related to the wholesale or retail sale of cigarettes or tobacco products within the Compact Jurisdiction.
- 4) The State and Tribe stipulate and agree, for the sole purposes of the provisions of paragraph 3 hereof, the Tribe is and shall be considered by the State as a "foreign country" for purposes of permissible disclosures to the Tribe pursuant to 68 O.S. § 205(C)(7), and the Tribe is and shall be considered by the State as an "international authority" for purposes of 68 O.S. § 312(1)(J).
- 5) The State and Tribe further stipulate and agree, for the sole purposes of the provisions of paragraph 3 hereof, this Compact shall constitute a "contract" between the Tribe and the Oklahoma Tax Commission for purposes of permissible disclosures to the Tribe pursuant to 68 O.S. § 205(C)(16). The Tribe and the State, in consideration hereof, stipulate and agree that any information received from the records and files of the Oklahoma Tax Commission or the Quapaw Tribe's Tax Commission will be treated and considered as confidential and privileged, to be used for the Tribe's or the State's purposes in the administration and collection of the Compact Tax, state tobacco taxes and collection of tobacco manufacturer escrow payments under 37 O.S. §§ 600.21 through 600.23, and enforcement under 68 O.S. §§ 360.1 through 360.9, which are the subject of this Compact, and not be disclosed to any third party, including, but not limited to the Tribe's Retailers, non-Tribal retailers of cigarettes and tobacco products, and any and all manufacturers, distributors and wholesalers of cigarettes and other tobacco products. A disclosure to a governmental agency for regulatory or enforcement purposes, to a court in response to a subpoena or other court order, for the State's collection of taxes or manufacturer's escrow payments and related actions, or to enforce the provisions of this Compact through arbitration or court action, shall not constitute a breach of this paragraph, provided

that the party making such disclosure shall take all available steps to protect the confidentiality of the disclosed information.

- 6) The State acknowledges that the Tribe has the absolute right to tax its citizens on tribal lands and that the State tobacco tax does not apply to sales to members of the Tribe that occur on tribal lands. Additionally, the Tribe acknowledges that the State tobacco tax does apply to sales to non-members of the Tribe, even if they occur on tribal lands and without the Tribe's consent.
- 7) The State and Tribe agree to waive their respective absolute taxation rights identified in ¶ 6 above and, instead, impose a Compact Tax, as described herein. The Compact Tax rate will apply on lands owned by the Tribe and its members, which are held in trust by the United States, or which are owned by members of the Tribe and are subject to restricted title, and are within the Tribe's jurisdiction within the State, known and commonly referred to as "Indian Country." The State and Tribe agree that the Compact Tax rate will apply to all sales of cigarettes and tobacco products by Retailers within the Compact Jurisdiction, without reference to the Tribal membership or non-membership status of the ultimate purchasing consumer.
- 8) The Compact Tax amount shall be one-hundred percent (100%) of all applicable State taxes on cigarettes and other tobacco products, in effect at the time of sale. The State and Tribe agree that the tax shall be collected pursuant to ¶ 9 and ¶ 11 of this Compact. Except as provided in subparagraph 8(1), the State and Tribe shall divide all monies generated under the Compact Tax according to the following:
  - a. From October 1, 2013, through December 31, 2015:
    - i. State Portion
      1. The State shall receive six percent (6%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.
    - ii. Tribal Portion
      1. The Tribe shall receive ninety-four percent (94%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.
  - b. From January 1, 2016, through December 31, 2016:
    - iii. State Portion
      1. The State shall receive eight percent (8%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.

iv. Tribal Portion

1. The Tribe shall receive ninety-two percent (92%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.

c. From January 1, 2017, through December 31, 2017:

i. State Portion

1. The State shall receive fifteen percent (15%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.

ii. Tribal Portion

1. The Tribe shall receive eighty-five percent (85%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.

d. From January 1, 2018, through December 31, 2018:

i. State Portion

1. The State shall receive twenty percent (20%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.

ii. Tribal Portion

1. The Tribe shall receive eighty percent (80%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.

e. From January 1, 2019, through December 31, 2019:

i. State Portion

1. The State shall receive twenty-five percent (25%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.

ii. Tribal Portion

1. The Tribe shall receive seventy-five (75%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.

f. From January 1, 2020, through December 31, 2020:

i. State Portion

1. The State shall receive thirty percent (30%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.

ii. Tribal Portion

1. The Tribe shall receive seventy (70%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.

g. From January 1, 2021, through December 31, 2021:

i. State Portion

1. The State shall receive thirty-five percent (35%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.

ii. Tribal Portion

1. The Tribe shall receive sixty-five percent (65%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.

h. From January 1, 2022, through December 31, 2022:

i. State Portion

1. The State shall receive forty percent (40%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.

ii. Tribal Portion

1. The Tribe shall receive sixty percent (60%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.

j. From January 1, 2023, through such time as this Compact is no longer in effect:

i. State Portion

2. The State shall receive fifty percent (50%) of all Compact Taxes collected on cigarettes and other tobacco products that

are subject to this Compact.

v. Tribal Portion

1. The Tribe shall receive fifty percent (50%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.
- 9) The Tribe agrees that the State may collect the Compact Tax on behalf of both parties directly from the Wholesaler, and that the Wholesaler must collect the Compact Tax directly from the Retailers. The Tribe agrees to require the Retailers to: (A) pay the Compact Tax; and (B) refrain from selling, distributing, transporting, soliciting sales of or in any matter dealing with cigarette brands and products of manufacturers who do not fully comply with the requirements of 37 O.S. §§ 600.21-600.23 and 68 O.S. §§ 360.1-360.9 and only deal in tobacco products of complying manufacturers and brands, as evidenced by their names and list of brands as maintained on the Oklahoma Attorney General's website. If any Retailer purchases cigarettes or tobacco products from an unlicensed Wholesaler, or directly from a manufacturer, or fails to comply with any of its obligations under this paragraph, the Tribe shall take necessary enforcement measures to ensure compliance with this paragraph by the Retailer. If the Retailer continues to violate any obligations of this paragraph fifteen (15) days following notification to the Tribe and Retailer from the State, the State may remove such Retailer from the list of Retailers entitled to benefits under this Compact, and/or the State or the Tribe may take direct legal or equitable action in any State, Federal, or Tribal Court with jurisdiction against such Retailer, until such time as the Retailer is in compliance with its obligations hereunder, makes restitution, and the Tribe and the each State certifies the Retailer's compliance with the Compact to the other. Upon such certification, such Retailer shall be returned to the list. The second time that a Retailer that is not owned by the Tribe purchases cigarettes or tobacco products from an unlicensed Wholesaler, or directly from the manufacturer, or fails to comply with any of its obligations under this numbered paragraph, the State at its option, may require that the Tribe permanently remove the Retailer from the list of Retailers entitled to the benefits under this Compact. In the event the Retailer is a division or enterprise of the Tribe, enforcement actions taken by the State shall be exclusively as set forth in Article III herein.
- 10) The State requires, and the Tribe authorizes, all Wholesalers licensed by the State and selling cigarettes or tobacco products to any Retailer to:
- a. Provide sufficient documentation to the Tribe and to the Oklahoma Tax Commission to demonstrate that the appropriate Compact Taxes have been remitted. Such documentation shall be maintained by the Wholesalers for a period of at least five (5) years following distribution or sale of cigarettes or other tobacco products. If any Wholesaler selling cigarettes or tobacco products to a Retailer fails to properly collect and remit the Compact Tax, the State may take necessary enforcement

measures to ensure compliance with this paragraph by the Wholesaler, including, but not limited to, entry and inspection of records within and without the Compact Jurisdiction. The Tribe agrees to cooperate with the State on such enforcement measures within the Compact jurisdiction.

- b. Payment of the Compact Tax on cigarettes shall be evidenced by use of a single joint stamp, sometimes known as the “unity rate” stamp, which Oklahoma licensed Wholesalers shall purchase from the Oklahoma Tax Commission and affix to packs of cigarettes sold to the Tribe’s licensed Retailers. The Compact Tax shall be collected by the Oklahoma Tax Commission, by the sale of the single joint/unity rate stamp to Wholesalers.
- 11) The Oklahoma Tax Commission shall distribute to the Tribe the Tribal Portion of the Compact Tax receipts not yet distributed to the Tribe not later than thirty (30) days after the end of each calendar month.
  - 12) The State may withhold all or a portion of a distribution to the Nation when the dispute resolution processes hereunder have been invoked, provided that the amounts withheld shall reasonably relate to the amount in controversy. The State shall notify the Tribe in writing when a distribution is to be withheld and/or reduced and must state the reasons for withholding and/or reducing the distribution. Justifications which may be asserted for withholding and/or reducing distribution of the Tribal Portion of the Compact Tax include, but are not limited to:
    - a. The notice and invocation of termination rights pursuant to Article III of this agreement, including the right of setoff;
    - b. Unlawful or extra-legal interference by the Tribe in the collection of Compact Tax receipts; and
    - c. Receipt of duly authorized Court or Arbitration orders to withhold or enjoin payment.

Should the Tribe prevail in any such dispute, the State will pay interest on the amounts withheld during the time such sums were withheld, as allowed by State law.

- 13) The Tribe agrees that it will require the Retailers to purchase cigarettes and other tobacco products only from Wholesalers that are duly licensed by the State of Oklahoma. The Tribe agrees that the Compact Tax, provided for in this Compact, applies only to the Retailers’ retail sales of cigarettes to the consumer, and the Tribe agrees to require its Retailers not to sell or otherwise transfer cigarettes or tobacco products stamped with the tax stamp authorized under this Compact to anyone other than the consumer. Except for transfers between Retailers authorized to sell tobacco products at the designated Compact Tax rate for each location under this Compact, the Tribe agrees to prohibit its Retailers from selling or otherwise transferring cigarettes or other tobacco products stamped with

Compact tax stamps to anyone other than the consumer at retail outlets located in the Tribe's Jurisdiction, including sales or transfers to other retailers outside the Tribe's Jurisdiction.

- 14) All cigarettes sold by the Retailers shall bear a single joint use/unity rate stamp, evidencing that the Compact Tax has been paid by the Retailer.
- 15) The State and Tribe further stipulate and agree, that
  - a. Unstamped cigarettes, counterfeited stamped cigarettes, mutilated stamped cigarettes, tobacco products and brands not approved (as reflected by publication on the Oklahoma Attorney General Website), and cigarettes and tobacco products on which the Compact Tax is required to be paid pursuant to this Compact and which has not been paid, are contraband and each party has the right to seize such contraband within its respective jurisdiction.
  - b. The State's prohibition against Cigarette Rolling Vending Machines, 68 O.S. § 380, shall also apply to all businesses, facilities, and retailers, regardless of tribal ownership and/or operation, that are within the Compact Jurisdiction.
  - c. The State shall exempt all sales of cigarettes and other tobacco products to and by the Tribe's Retailers from sales and excise taxes imposed by Title 68 of the Oklahoma Statutes in consideration of the agreement by the Tribe to require the Wholesalers to remit the Compact Tax to the Oklahoma Tax Commission.
- 16) The Tribe agrees that the Tribe and the Tribe's Retailers will not sell, distribute, transport, solicit sales for, or in any manner deal with cigarette brands and tobacco products of a manufacturer who does not fully comply with the requirements of 37 O.S. §§ 600.21 through 600.23 and 68 O.S. §§ 360.1 through 360.9, and will only deal in tobacco products of complying manufacturers, as evidenced by the placement of the manufacturer's name and its product brands on the list of complying manufacturers and brands maintained on the Oklahoma Attorney General's website. In the event the State has a reasonable basis to believe that any sales, distribution, transportation or solicitation is occurring in violation of this paragraph, the State shall provide prompt notice of such to the Tribe, and work cooperatively with the Tribe to investigate and to cure any such violations, to the extent possible, prior to issuing a notice of breach of this Compact. The Tribe shall respond to such notice promptly and on an expedited basis.
- 17) The Tribe shall be permitted to allocate, appropriate, and expend its portion of the Compact Tax in any manner and for any purpose, within the sole discretion of the Tribe's Business Committee.

## ARTICLE III

### GENERAL PROVISIONS

18) The parties shall attempt to resolve all disputes amicably and voluntarily whenever possible. A party asserting noncompliance or seeking an interpretation of this Compact first shall serve written notice on the other party. The notice shall identify the specific Compact provision alleged to have been violated or in dispute and shall specify in detail the asserting party's contention and any factual basis for the claim. Representatives of the State and the Tribe shall meet within thirty (30) days of receipt of notice in an effort to resolve the dispute.

- a. Any and all disputes arising, whether directly or indirectly, out of the interpretation, performance or enforcement of this Compact, which are not resolved by good faith negotiations with thirty (30) days, shall be determined: (1) through litigation in the United States District Court for the Northern District of Oklahoma, and any courts to which appeals therefrom may be taken (the "Specified Courts"), which shall have the sole and exclusive jurisdiction of any and all such disputes; or (2) if the Specified Courts lack jurisdiction, through an arbitration, as set forth herein; or (3) by unilateral termination.
- b. In any arbitration hereunder, a dispute shall, unless otherwise agreed upon by the parties, be resolved by three arbitrators, one of which shall be chosen by the State, one of which shall be chosen by the Tribe, and one of which shall be chosen by the other two arbitrators selected. Such arbitration shall be conducted at a location to be agreed upon by the parties or, in the absence of such agreement, by the arbitrators. The arbitrators shall issue written findings of fact and conclusions of law, which may be confirmed in accordance with the Federal Arbitration Act, and reduced to a judgment. The party initiating an arbitration shall be responsible for the payment of all costs associated with such filing. The parties each shall pay one-half of the fees and costs of the arbitrators.
- c. The parties hereto mutually waive any claim of sovereign immunity they might have, including but not limited to, Eleventh Amendment immunity or exhaustion of tribal remedies, to the extent, and only to the extent, necessary for a determination of rights and liabilities, if any, by the Specified Courts or in an arbitration and for the enforcement of any determination upon its becoming a final, non-appealable judgment. The limited waiver of sovereign immunity granted herein shall not be construed to allow any award of money damages, including direct, consequential, punitive, or exemplary damages against either party, and neither shall this waiver permit the allowance of any award of attorney's fees or costs.
- d. The parties agree that nothing herein is intended to create a direct right of action against the Tribe or the State by any person or entity not a party hereto through court action, arbitration or otherwise for any matter related to this Compact, its interpretation or performance or nonperformance of the parties hereto, except as

otherwise set forth herein, and the limited waiver of sovereign immunity set forth herein shall not extend to any person or entity or party other than the State and the Tribe.

- 19) Applicable federal and Oklahoma law shall govern the resolution of any and all disputes relating to the interpretation, performance, or breach of this Compact, or any disputes otherwise arising under this Compact, regardless of venue. The waivers of immunity provided hereunder by the State and the Tribe shall be construed and applied in accordance with applicable federal, state, and tribal law.
- 20) This agreement shall terminate on December 30, 2023. Nothing in this Compact shall prevent the parties by mutual agreement from establishing an earlier or later termination date or otherwise modifying this agreement.
- 21) By entering into this Compact, the Tribe does not concede that the laws of the State of Oklahoma, including its tax and licensing laws, apply to the Tribe or its members regarding activities and conduct within the Tribe's Jurisdiction.
- 22) Neither party shall be deemed the drafter of this Compact in the event of any action to interpret its terms. Therefore, the rule of construction that in the case of an ambiguity, the ambiguity is construed against the author is not applicable.
- 23) Notice shall be by United States mail, postage prepaid. Any notice required hereunder to the State shall be delivered to the Governor of the State of Oklahoma at 2300 N. Lincoln Blvd., Room 212, Oklahoma City, Oklahoma 73105-4890. Notification by the State shall be made by the Governor or designee in writing, separately, to the Chairman of the Quapaw Tribe and to the Tribal Administrator of the Quapaw Tribe at P.O. Box 765, Quapaw, Oklahoma, 74363-0765. Notifications by the State and Tribe shall also be filed with the Office of the Oklahoma Secretary of State.
- 24) The effective date of this Compact shall be October 1, 2013, when fully executed by all parties, and there is attached hereto the original, or a properly certified copy, of the properly prepared and approved resolution of the legislative body, or similar document of the Tribe authorizing the Tribe to enter into and execute this agreement. The approved resolution, or similar document, shall be accompanied by a letter from counsel for the Tribe certifying that such resolution, or other tribal action, fully and regularly complies with tribal law and was obtained in accordance with all necessary legal and procedural requirements.
- 25) Either party may unilaterally terminate this Compact without cause by giving the other party one hundred and eighty (180) days' written notice in accordance with Paragraph 23 hereof. Both parties agree that should either invoke unilateral termination that the terminating party will meet at least twice within sixty (60) days of providing notice, if the non-terminating party so requests.
- 26) Nothing in this Compact shall be deemed to authorize the State to regulate the Tribe's government or to interfere in any way with the Tribe's election of its

governmental officers. This Compact shall not alter tribal, federal or state civil adjudicatory or criminal jurisdiction, except as to waivers expressly provided herein.

- 27) No State action shall create a competitive disadvantage for the Tribe's Retailers with respect to non-tribal cigarette and tobacco products retailers. The Tribe's retailers shall be eligible for any State tax rebates or other consideration that may be offered to other non-tribal retailers of tobacco products.
- 28) This Compact comprises the entirety of the agreement between the parties hereto. Any and all prior or contemporaneous representations, predictions, warranties or other inducements, however denominated, are merged within the terms of this Compact, and shall not survive its execution. There are no representations, promises, predictions, warranties, inducements or other agreements, however denominated, between the parties other than as set forth herein. This Compact may not be amended or modified except by written agreement, approved and executed by the parties hereto.

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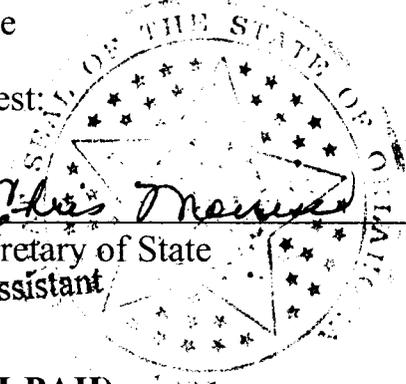
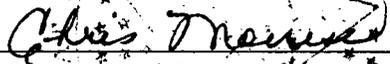
IT IS AGREED:

Each of the undersigned represents that they are duly authorized, and has the authority, to execute this agreement on behalf of the designated party.

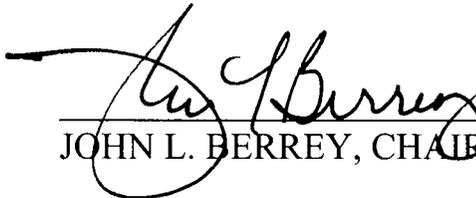
**STATE OF OKLAHOMA**

  
\_\_\_\_\_  
MARY FALLIN, GOVERNOR

9-24-13  
\_\_\_\_\_  
Date

Attest:   
  
\_\_\_\_\_  
Secretary of State  
Assistant

**QUAPAW TRIBE OF OKLAHOMA (THE O-GAH-PAH)**

  
\_\_\_\_\_  
JOHN L. BERREY, CHAIRMAN

9-21-13  
\_\_\_\_\_  
Date

# QUAPAW TRIBE OF OKLAHOMA

P.O. Box 765  
Quapaw, OK 74363-0765

(918) 542-1853  
FAX (918) 542-4694

## Resolution No. 092113-A

### A RESOLUTION RATIFYING A NEW COMPACT BETWEEN THE STATE OF OKLAHOMA AND THE TRIBE RELATING TO TAXATION OF CIGARETTES AND TOBACCO PRODUCTS

**WHEREAS**, the Quapaw Tribe of Indians of Oklahoma (O-Gah-Pah) is a federally recognized Indian Tribe and is governed by a Governing Resolution adopted by the Quapaw Indian Council on August 19, 1956, and approved by the Commissioner of Indian Affairs on September 20, 1957; and

**WHEREAS**, the Quapaw Tribe asserts tribal governmental jurisdiction to the fullest extent recognized by law over the lands within the original Quapaw Reservation, as established as a homeland for the Quapaw Nation by the Treaty of May 13, 1833; and

**WHEREAS**, the Governing Resolution delegates authority to the Quapaw Tribal Business Committee to speak and act on the behalf of the Quapaw Tribe; and

**WHEREAS**, the Quapaw Tribal Business Committee is thus empowered and obligated to transact Tribal business, including entering into intergovernmental agreements and compacts, and also including regulating the health, safety, and welfare of Tribal members and other persons within the jurisdiction of the Tribe; and

**WHEREAS**, under the prevailing precedent of the United States Supreme Court the sales of cigarettes and tobacco products by the tribe and by tribal enterprises and by tribal members to non-Indians may be subject to state taxation, which law has fostered the development of tribal-state compacts to address states' desire to enforce such taxes in Indian country while at the same time acknowledging tribal sovereignty and jurisdiction; and

**WHEREAS**, in November 2004 the Tribe entered into a compact with the State of Oklahoma, by and through the Governor of the State of Oklahoma, relating to taxation of cigarettes and tobacco products sold within the Indian country of the Tribe (the "2004 Tobacco Compact"), which compact expired by its terms as of June 30, 2013, subject to termination upon six months notice by either party; and

**WHEREAS**, in late 2012, Governor Mary Fallin, invoking the termination clause in the existing tribal-state tobacco compacts, notified all of the Oklahoma Indian nations—including the Quapaw Tribe—that the State was thereby terminating all such compacts as of June 30, 2013; and

**WHEREAS**, subsequent to receiving the notice of termination, the Tribal Business Committee, through its designees and counsel, began negotiations for a new tribal-state tobacco taxation compact; and

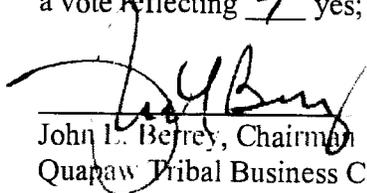
**WHEREAS**, a proposed tribal-state tobacco taxation compact, to become effective as of October 1, 2013, and to expire on December 30, 2023 (the "2013 Tobacco Compact"), has been negotiated and presented to the Business Committee for its review and approval, and the Business Committee desires to approve such compact to replace the 2004 Tobacco Compact.

**NOW, THEREFORE BE IT RESOLVED THAT** the Tribal Business Committee hereby ratifies and approves the 2013 Tobacco Compact between the Tribe and the State of Oklahoma regulating the collection of state taxes on cigarette and tobacco products sold within the Indian country jurisdiction of the Tribe, which compact is to become effective as of October 1, 2013, and further hereby authorizes the Chairman of the Tribal Business Committee to execute and deliver such compact on behalf of the Tribe.

**BE IT FURTHER RESOLVED THAT** the Tribal Business Committee hereby expressly approves the 2013 Tobacco Compact in its entirety, including the provisions relating to mutual limited waivers of the immunity of the State of Oklahoma and the Tribe from suit to permit each party to enforce the 2013 Tobacco Compact, but which limited waiver of immunity does not and shall not permit either party to obtain monetary damages from the other as part of such enforcement proceedings.

#### CERTIFICATION

The foregoing resolution of the Quapaw Tribal Business Committee was presented and duly adopted at a regular meeting of the Tribal Business Committee on September 21, 2013, with a vote reflecting 7 yes; 0 no; 0 abstaining; and 0 absent.

  
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John L. Berrey, Chairman  
Quapaw Tribal Business Committee

  
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Thomas Crawfish Mathews, Vice-Chairman  
Quapaw Tribal Business Committee