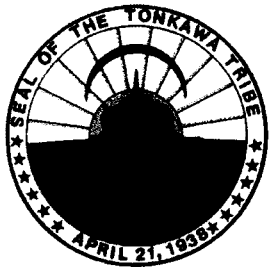
FILED

OCT 15 2013

OKLAHOMA SECRETARY
OF STATE



TOBACCO TAX COMPACT BETWEEN THE STATE OF OKLAHOMA AND THE TONKAWA TRIBE OF OKLAHOMA

ARTICLE I
PURPOSE AND INTENT OF PARTIES

WHEREAS, the Tonkawa Tribe of Oklahoma (hereinafter referred to as "Tribe"), is a federally recognized Indian tribe[1] with inherent sovereign powers of self-government;

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;

WHEREAS, both the State of Oklahoma and the Tonkawa Tribe of Oklahoma 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;

WHEREAS, the Tribe and its members[2] are in possession of various tracts of land in its jurisdiction within the State, known and commonly referred to as "Indian Country";

WHEREAS, the State, by and through the United States Supreme Court decision *Oklahoma Tax Commission vs. Citizen Band Potawatomi Indian Tribe of Oklahoma*, is

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[1] *"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 CFR 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 54364 (October 21, 1993).*

[2] *" 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 CFR § 81.1(i) (1996) and 25 C.F.R. § 83.11 (1996).*

authorized to collect state taxes on cigarettes and other tobacco products sold by tribal businesses to non-tribal members;

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;

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

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

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 Tonkawa Tribe of Oklahoma does hereby constitute a sovereign state;

ARTICLE II
TERMS OF TAXATION ON SALE OF TOBACCO PRODUCTS

NOW, THEREFORE, the Tonkawa Tribe of Oklahoma, by and through its President, Don Patterson, 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 15, 2013, for the mutual benefit of the Tribe and the State, 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 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 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 tax-related 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 name and address 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 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 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.

6) The State acknowledges that the Tribe has the absolute right to tax its citizens for the sale of tobacco 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 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. The State and Tribe shall divide all monies generated under the Compact Tax according to the following:

a. From October 15, 2013, through December 31, 2014:

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 percent (75%) of all Compact Taxes collected on cigarettes and other tobacco products that are subject to this Compact.

b. From January 1, 2015, through December 31, 2016:

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.

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

i. State Portion

1. The State shall receive forty-five percent (45%) 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 fifty-five percent (55%) 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, 2023:

i. State Portion

1. The State shall receive fifty percent (50%) 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 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 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 take direct legal or equitable action in State Court against such Retailer, until such time as the Retailer is in compliance with its obligations hereunder, makes restitution and the Tribe and State certifies the Retailer's compliance to the State. Upon such certification, the Retailer shall be returned to the list The second time that a Retailer 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.

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.

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 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. 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

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 the 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 make the aforementioned tax payments to the Oklahoma Tax Commission.

16) The Tribe agrees that the Tribe and the Tribe 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 Okla. Stat. §§ 600.21 through 600.23 and 68 Okla. Stat. §§ 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.

ARTICLE III
GENERAL PROVISIONS

17) Any dispute arising in the interpretation or performance of this Compact, which is not resolved by good faith negotiation within thirty (30) days, or such longer period as mutually agreed in writing by both parties , shall be subject to any of the following remedies: (1) voluntary unilateral termination, (2) arbitration, or (3) legal proceedings in federal court. Each party agrees to a limited waiver of sovereign immunity from suit, liability, judgment, and collection in arbitration and federal court. Provided, however, that this limited waiver of sovereign immunity from suit is limited to disputes arising under this Compact.

18) 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.

19) This agreement shall terminate on December 31, 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.

20) 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.

21) 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. Furthermore, any rule of construction of ambiguities either in favor of or against a State or Tribal governmental entity is not applicable to this Compact.

22) 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 to the Tribe's Chairman at Post Office Box 1330, Anadarko, OK 73005. Notification by the State and Tribe shall also be filed with the Office of the Oklahoma Secretary of State.

23) The effective date of this Compact shall be October 15, 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.

24) 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 provided herein.

25) 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.

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 10/15/2013

MARY FALLIN, GOVERNOR DATE

Attest:
Chris Reneau
Secretary of State
Assistant

TONKAWA TRIBE OF OKLAHOMA

10-11-13

DON PATTERSON, PRESIDENT DATE

TONKAWA TRIBE OF OKLAHOMA
TONKAWA TRIBAL COMMITTEE
1 RUSH BUFFALO ROAD • PHONE (580) 628-2561 • FAX: (580) 628-3375
WEB SITE: www.tonkawatribe.com
TONKAWA, OKLAHOMA 74653

RESOLUTION NO. T-R-21-13

A RESOLUTION AUTHORIZING THE APPROVAL AND EXECUTION OF A TOBACCO COMPACT BETWEEN THE TONKAWA TRIBE OF OKLAHOMA AND THE STATE OF OKLAHOMA, AND FURTHER AUTHORIZING AND EMPOWERING THE PRESIDENT OF THE TONKAWA TRIBE, DONALD L. PATTERSON, TO EXECUTE SUCH TOBACCO COMPACT ON BEHALF OF THE TONKAWA TRIBE.

WHEREAS, the Tonkawa Tribe is a federally recognized tribe of American Indians under the authority of the Oklahoma Indian Welfare Act of 1936, and

WHEREAS, the Tonkawa Tribal Committee is empowered by the Tribal Constitution and By-Laws to speak for, and act in behalf of the Tonkawa Tribe of Oklahoma, and

WHEREAS, the Tonkawa Tribal Committee has the duty and responsibility to act in the best interest of the Tribe regarding Health, Welfare, Education, and Employment, and

WHEREAS, the Tonkawa Tribal Committee is vested with the authority to act regarding all Tribal laws, ordinances and other matters, and

WHEREAS, the Tonkawa Tribal Committee has determined that the best interests of the Tonkawa Tribe and Tonkawa Tribal members is served by entering into a Tobacco Tax Compact with the State of Oklahoma covering the sale of tobacco products to be sold on Tonkawa Indian Country lands, and

WHEREAS, that the Tobacco Tax Compact with the State of Oklahoma contains appropriate provisions that are protective of the governmental authority of the Tonkawa Tribe, and

NOW THEREFORE BE IT RESOLVED, that the Tonkawa Tribal Committee authorizes the entry into the attached Tobacco Tax Compact between the Tonkawa Tribe of Oklahoma and the State of Oklahoma and specifically authorizes President Donald L. Patterson to execute said Compact on behalf of the Tonkawa Tribe of Oklahoma, effective October 15, 2013.

CERTIFICATION

We, the undersigned officers of the Tonkawa Tribal Committee, do hereby certify that the foregoing Resolution T-R-21-13 was adopted at a duly called and convened Tonkawa Tribal Committee Meeting October 15, 2013 by a vote of 3 FOR 0 AGAINST 0 ABSENT.

Donald L Patterson
President

Michael E. Martin
Vice-President

Racheal N. Starr
Secretary-Treasurer

PITCHLYNN LAW, PLLC

Gary S. Pitchlynn
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ARBITRATOR

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Telephone: 405.360.9600
Fax: 405.447.4219

October 10, 2013

The Honorable Mary Fallin, Governor
State of Oklahoma
2300 N. Lincoln Blvd., Room 212
Oklahoma City, OK 73105-4890

RE: Tribal Authority to enter into Tribal/State Tobacco Compact.

Dear Governor Fallin:

As legal counsel to the Tonkawa Tribe of Oklahoma, a federally recognized tribe of Indians reorganized under the authority of the Thomas-Rogers Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967) and governed by a Tribal Constitution (as amended) which was originally adopted and ratified on April 21, 1938, I provide this letter opinion in regard to the authority of the Tonkawa Tribal Committee to approve the execution of the Tonkawa Tribe/State of Oklahoma Tobacco Compact of 2013 through the signature of President Donald L. Patterson on behalf of the Tonkawa Tribe. Under the authority of Article IV of the Tonkawa Constitution, a President, Vice-President and Secretary -Treasurer are elected for terms of two (2) years by the tribal membership and collectively make up the legislative body of the Tonkawa Tribe under the title of the Tribal Committee. A Quorum of two (2) members of the Tribal Committee are required for the approval of any official act by the Tribal Committee, which has historically acted by the passing of Tribal Committee Resolutions. At Article V of the Tonkawa Constitution, the Tribal Committee is established and empowered among other things "to transact business and otherwise speak or act on behalf of the Tribe in all matters in which the Tribe is empowered to act".

It is my opinion that by the passage of Tonkawa Tribal Committee Resolution No. T-R-21-13 entitled, *"A Resolution Authorizing the Approval and Execution of a Tobacco Compact Between the Tonkawa Tribe of Oklahoma and the State of Oklahoma, and Further Authorizing and Empowering the President of the Tonkawa Tribe, Donald L. Patterson, to Execute such Tobacco Compact on Behalf of the Tonkawa Tribe"*, the duly elected legislative body has lawfully authorized the execution of the agreement by the President of the Tonkawa Tribe of Oklahoma in accordance with the Constitution and Laws of the Tonkawa Tribe.

Respectfully,

Gary S. Pitchlynn
Attorney for the Tonkawa Tribe of Oklahoma

cc: Tonkawa Tribal Committee
% President Donald L. Patterson