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OKLAHOMA SECRETARY
OF STATE



**TOBACCO TAX COMPACT BETWEEN
THE STATE OF OKLAHOMA AND
THE SAC & FOX NATION**

ARTICLE I
PURPOSE AND INTENT OF PARTIES

WHEREAS, the Sac & Fox Nation (hereinafter referred to as "Nation"), is a federally recognized Indian tribe¹ 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 Sac & Fox Nation 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 Nation and its members² are in possession of various tracts of land in its jurisdiction within the State, known and commonly referred to as "Indian Country";

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).

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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;

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 Nation recognize the financial, cultural, educational and economic contributions of each sovereign;

WHEREAS, both the State and the Nation recognize the need to develop and maintain good Tribal/State governmental relations, and both wish to strive for cooperative economic development in the traditional Sac and Fox Reservation area;

WHEREAS, both the State and the Nation acknowledge that the programs such as health care and social services aid, law enforcement and fire protection offered by both sovereigns are complementary, and that both sovereigns should cooperate to provide the best and most efficient services to those living within the traditional Sac and Fox Reservation area;

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;

WHEREAS, Article 3, Section 2 of the Constitution of the Sac and Fox Nation vests the power and authority to conduct the business of the Nation with other sovereign states, including the State of Oklahoma, and with the United States to the Business Committee of the Nation; and

WHEREAS, for the purposes of the Oklahoma Constitution and this Compact, the Sac & Fox Nation do hereby constitute a sovereign state;

ARTICLE II

TERMS OF TAXATION ON SALE OF TOBACCO PRODUCTS

NOW, THEREFORE, the Sac & Fox Nation, by and through its Chief, George Thurman, 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 January 1, 2013, for the mutual benefit of the Nation and the State (each a "Party" and collectively the "Parties" to this Compact), to-wit:

- 1) The provisions of this Compact shall govern only the rate of taxation and payment methodology of such taxes to the Nation and the State on the retail sales of cigarettes and other tobacco products in the Nation's Indian Country as defined in ¶ 7, hereinafter referred to as "Compact Jurisdiction" when said retail sales are made by (a) businesses owned by the Nation, (b) licensees who are members of

the Nation, or (c) businesses licensed by the Nation. The Nation and the State agree that this Compact shall affect only taxation issues and that nothing herein shall prohibit the Nation from enacting any laws and/or regulations regarding the retail sale, use, or possession of cigarettes and other tobacco products in the Nation's jurisdiction that would not be in conflict of 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 Nation or its Retailers under this Compact, and that no State action will create a competitive disadvantage to the Nation or its Retailers (e.g. the Nation and its Retailers must be eligible for any State tax rebates or other consideration that might be offered to other retailers of tobacco products).

- 2) The Nation 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 unless unavailable to the Nation:
 - i. The owner's name(s) and address(es);
 - ii. A list of any tobacco related 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 Nation 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 Nation'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 Nation stipulate and agree, for the sole purposes of the provisions of paragraph 3 hereof, the Nation is and shall be considered by the State as an exempted party for purposes of permissible disclosures to the Nation pursuant to 68 O.S. § 205 C.7 and the Nation 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 Nation further stipulate and agree, for the sole purposes of the provisions of paragraph 3 hereof, this Compact shall constitute a "contract" between the Nation and the Oklahoma Tax Commission for purposes of permissible disclosures to the Nation pursuant to 68 O.S. § 205.C.16. The Nation 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 Nation's Tax Commission will be treated and considered as confidential and privileged, to be used for the Nation's or the State's purposes in the administration and collection of the Compact Tax (as defined in ¶ 8 below) and the collection of the Master Settlement Agreement's tobacco manufacturer escrow payments under 37 O.S. §§ 600.21 through 600.23, and associated 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 Nation's Retailers, all non-Nation 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, provided that the Party forced to make such a disclosure shall take all available steps to protect the confidentiality of such information in that forum.
- 6) The State acknowledges that the Nation 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 Nation that occur on tribal lands. Additionally, the Nation acknowledges that

the State tobacco tax does apply to sales to non-members of the Nation, even if they occur on tribal lands and without the Nation's consent.

- 7) The State and Nation agree to waive their respective absolute taxation rights identified in ¶ 6 above and, instead, impose the Compact Tax defined in ¶ 8. The Compact Tax rate will apply to the Compact Jurisdiction. For purpose of defining the Compact Jurisdiction, the Nation's "Indian Country" shall be as defined by federal law, including 18 U.S.C. § 1151, including lands owned by the Nation and its members, which are held in trust by the United States, or which are owned by members of the Nation and are subject to restricted title, and are within the Nation's jurisdiction within the State. For ease of administration, the State and Nation 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 Nation agree that the tax shall be collected pursuant to ¶ 9 and ¶ 10 of this Compact. The State and Nation shall divide all monies generated under the Compact Tax according to the following:
 - a. From January 1, 2014, through December 31, 2015:
 - 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 thereafter to be distributed per ¶ 11.a.
 - 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 thereafter to be distributed per ¶ 11.b.
 - b. From January 1, 2016, 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 thereafter to be distributed per ¶ 11.a.
 - ii. Tribal Portion

under this numbered paragraph, the State at its option, may permanently remove the Retailer from the list of Retailers entitled to the benefits under this Compact. Any violations of a Retailer that is an entity owned by the Nation shall be addressed pursuant to ¶ 17.

- 10) The State requires, and the Nation authorizes, all Wholesalers licensed by the State and selling cigarettes or tobacco products to any Retailer to:
 - a. Provide sufficient documentation to the Nation 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 outside the Compact Jurisdiction. The Nation agrees to cooperate with 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 Nation'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) Except as adjusted under ¶ 12, the Oklahoma Tax Commission shall distribute the proceeds of the Compact Tax not later than thirty (30) days after the end of the calendar month in which the Compact Tax was collected or within 30 days of the termination of this Compact, as follows:
 - a. That portion received by the State under ¶ 8 shall be distributed according to State law.
 - b. That portion received by the Nation under ¶ 8 shall be distributed to the Nation for any tribal uses determined solely by the Nation. Each distribution to the Nation made under this paragraph shall be accompanied by a report including:
 - i. The total amount of Compact Taxes collected during the current distribution period; and
 - ii. The total amount of Compact Taxes paid by each Retailer;
- 12) The State may withhold all or a portion of a distribution to the Nation under ¶ 8.b when the dispute resolution process has been initiated under ¶ 17 provided that

amount withheld shall be reasonably in proportion to the economic value of the dispute. The State shall notify the Nation in writing when all or a portion of a distribution is to be withheld pending settlement of a dispute under ¶ 17 and must state the reasons for withholding all or a portion of a distribution. Should the Nation prevail in the dispute, the State will pay interest on the amounts withheld as allowed under State law during the time the distribution is withheld.

- 13) The Nation 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 Nation agrees that the Compact Tax, provided for in this Compact, applies only to the Retailers' retail sales of cigarettes to the consumer, and the Nation 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 Nation 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 Nation's Jurisdiction, including sales or transfers to other retailers outside the Nation'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, provided that Retailers may have a reasonable time to sell inventory stamped under the previous compact between the Parties.
- 15) The State and Nation 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 Nation's Retailers from sales and excise taxes imposed by Title 68 of the Oklahoma Statutes in consideration of the agreement by the Nation to require the Wholesalers to remit the Compact Tax to the Oklahoma Tax Commission.

- 16) The Nation agrees that the Nation and the Nation'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 associated with the Master Settlement Agreement set forth in 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) The Parties agree to the following procedures for resolving any dispute arising in the interpretation or performance of this Compact:
- a. **Attempt to Cooperatively Cure.** In the event the either Party has a reasonable basis to believe that any violation of this Compact by the other Party has occurred, the Party perceiving itself to be aggrieved shall provide prompt written notice of such perceived violation to 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. The Parties agree cooperatively to promptly investigate and to cure any such violations, to the extent possible, prior to providing a notice of breach of this Compact.
 - b. **Good Faith Negotiations.** Upon notice by either Party of being unable to cure an issue under ¶ 17.a, the Governor and Chief, or a designee of each, shall commence good faith negotiations to solve the dispute within thirty (30) days or such longer period as mutually agreed in writing by both Parties.
 - c. **Termination and/or Arbitration.** If the good faith negotiations in ¶ 17.b fail, the dispute shall be subject to the following remedies: (1) voluntary unilateral termination, provided that the Parties agree arbitration limited solely to the potential release of any amounts withheld under ¶ 12 as part of that termination or (2) arbitration by a three member panel. The three member arbitration panel shall either be mutually agreed to by the Parties, or upon failure to agree upon a panel of three, each Party will choose an arbitrator and the two chosen by the Parties shall choose the third. Each Party agrees that any arbitration award entered hereunder may be confirmed in any federal court with jurisdiction, and, in the event a federal court lacks jurisdiction, then in any court of suitable jurisdiction. Each Party hereby grants a limited waiver of sovereign immunity from suit, liability, judgment, and collection for arbitration and enforcement limited to (i) federal court and upon failure of federal court jurisdiction, to a court of suitable jurisdiction, (ii) only actions directly related to the interpretation and obligations under this Compact and

brought by the other Party (and no third party), and (iii) the latter of the termination of this Compact or any pending arbitration or enforcement action filed within 60 days of termination.

- 18) 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 provided that the Oklahoma law applied shall not contradict federal law regarding Indian sovereignty.
- 19) This agreement shall terminate on October 1, 2020. Nothing in this Compact shall prevent the Parties by mutual agreement from establishing an earlier or later termination date or otherwise modifying this agreement. Either Party may unilaterally terminate this Compact without cause by giving the other Party one hundred eighty (180) days written notice in accordance with ¶ 22. 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.
- 20) By entering into this Compact, the Nation does not concede that the laws of the State of Oklahoma, including its tax and licensing laws, apply to the Nation or its members regarding activities and conduct within the Nation'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.
- 22) Notice shall be by United States mail, postage prepaid. Any notice required hereunder to the State shall be delivered to (a) the Governor of the State of Oklahoma at 2300 N. Lincoln Blvd., Room 212, Oklahoma City, Oklahoma 73105-4890 and (b) to the Office of the Oklahoma Secretary of State at 2300 N. Lincoln Boulevard, Ste. 101, Oklahoma City, OK 73105-4897. Notification by the State shall be made by the Governor or designee in writing to (a) the Nation's Chief at Chief, Sac & Fox Nation, 920883 S. Hwy 99, Bldg "A", Stroud, Oklahoma 74079 and (b) to Sac and Fox Nation Tribal Counsel at 4000 One Williams Center, Tulsa, Oklahoma 74172.
- 23) The effective date of this Compact shall be January 1, 2014, when fully executed by both Parties, and there is attached hereto a properly certified copy of the properly prepared and approved resolution of the Business Committee of the Nation authorizing the Nation to enter into and execute this agreement. The approved resolution shall be accompanied by a letter from counsel for the Nation certifying that such resolution, 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 Nation's government or to interfere in any way with the Nation's election of its

governmental officers. This Compact shall not alter tribal, federal or state civil adjudicatory or criminal jurisdiction, except as to the taxation matters contained herein.

- 25) This Compact comprises the entirety of the agreement between the Parties. 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.

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

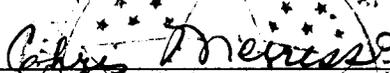


MARY FALLIN, GOVERNOR

10/31/2013

DATE

Attest:



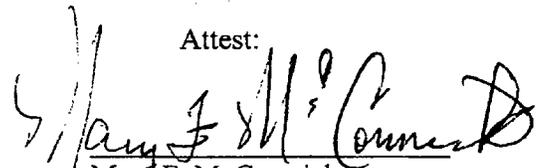
Secretary of State
Assistant

SAC & FOX NATION



GEORGE THURMAN, CHIEF

Attest:



Mary F. McCormick,
Secretary





SAC AND FOX NATION

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RESOLUTION SF-14-28

SAC AND FOX NATION
RECONVENED SPECIAL BUSINESS COMMITTEE MEETING
SAC AND FOX MULTI-PURPOSE BUILDING
SHAWNEE, OKLAHOMA

OCTOBER 25, 2013

FILED
DATE Oct 27 2013
SECRETARY
SAC & FOX NATION
Mary F. McCormick

A RESOLUTION AUTHORIZING AND APPROVING THE TOBACCO TAX COMPACT BETWEEN THE STATE OF OKLAHOMA AND THE SAC AND FOX NATION.

- WHEREAS,** the Business Committee of the Sac and Fox Nation met in a Reconvened Special meeting held the 25th day of October 2013, there being a quorum present, and
- WHEREAS,** the Business Committee is authorized to transact business and act on behalf of the Nation pursuant to the Constitution and Laws of the Sac and Fox Nation, and
- WHEREAS,** the Sac and Fox Nation is a federally recognized Nation with sovereign powers of self-government, and
- WHEREAS,** the Sac and Fox Nation encourages financial, cultural, educational and economic growth to the Nation through economic development, and
- WHEREAS,** federal Indian law recognizes that tribal jurisdiction is extant in Indian Country regarding the rights of Indian Nations to pass their own laws and be governed by themselves, including the right to sell cigarette and tobacco products to tribal members free from state taxation, and
- WHEREAS,** the Sac and Fox Nation recognizes the need to develop and maintain good government to government relations at this time.

NOW, THEREFORE BE IT RESOLVED THAT the Business Committee of the Sac and Fox Nation does hereby approve the Tobacco Tax Compact between the State of Oklahoma and the Sac and Fox Nation, and

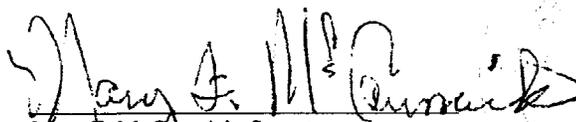
BE IT FURTHER RESOLVED THAT the Sac and Fox Nation agrees to pay only taxes on cigarette and tobacco products assessed by the State of Oklahoma and does not agree to pay any other fees or assessments that might be added by the State of Oklahoma, and

BE IT FINALLY RESOLVED THAT the Principal Chief and Secretary are authorized to negotiate and to execute any and all documents and agreements necessary to carry out this action.

CERTIFICATION

WE, George Thurman, Principal Chief and Mary F. McCormick, Secretary of the Sac and Fox Nation, do hereby certify that Resolution SF-14-28 to be a true and exact resolution as approved by the Business Committee in a Reconvened Special meeting held at the Sac and Fox Multi-Purpose Building, Shawnee, Oklahoma on the 25th day of October 2013, by a vote of: George Thurman-Yes, Orvena Gregory-Yes, Mary F. McCormick-Yes, Jared A. King-Yes, and Stella Nullake-Yes.


George Thurman, Principal Chief
Sac and Fox Nation


Mary F. McCormick, Secretary
Sac and Fox Nation

