

**AGREEMENT
CONCERNING TAXATION OF MOTOR VEHICLE FUEL
AND SPECIAL FUEL**

**BETWEEN THE PORT GAMBLE S'KLALLAM TRIBE
AND THE STATE OF WASHINGTON**

I. RECITALS

1.1. The Port Gamble S'Klallam Tribe and the Washington State Department of Licensing (collectively "the parties") have conferred and engaged in government-to-government negotiations in accordance with the authority conferred upon them by their respective legislative bodies, including the Department's authority under RCW 82.36.450 and 82.38.310. This Agreement is the result of each party's mutual good faith effort to resolve the differences between the parties with regard to taxes on the distribution, sale, transfer, use, or possession of motor vehicle fuel and special fuel within the Port Gamble S'Klallam Indian Reservation.

1.2. Each party to this Agreement respects the sovereignty of the other and desires to work within the framework of a government-to-government relationship.

1.3. The parties acknowledge that, pursuant to chapters 82.36 and 82.38 RCW, the State imposes taxes upon the distribution, sale, transfer, use or possession of motor vehicle fuel and diesel and other special fuels within the State, the revenue from which is used exclusively for highway purposes. The Tribe expends Tribal funds each year for public highways and traffic law enforcement

within the Reservation, as well as for other essential governmental purposes.

1.4. The parties mutually acknowledge the need to maintain the integrity and quality of public roads within the Reservation.

II. PURPOSES OF THIS AGREEMENT

2.1. The parties agree that this Agreement constitutes a fair resolution and compromise of the parties' competing contentions. The parties intend that this Agreement completely resolve, as between them, all issues related to motor vehicle fuel taxes and special fuel taxes within the Reservation, and that this Agreement be binding upon the parties and upon persons subject to regulation by the parties.

2.2. This Agreement primarily addresses the establishment of a cooperative framework for taxation and regulation, by the Tribe and by the State, respecting the distribution, sale, transfer, use or possession of "motor vehicle fuel" and "special fuel" when such fuel is distributed, sold, used, or possessed within the Reservation.

2.3. In general, the parties intend that the State of Washington's statutory and regulatory law for taxation with respect to such fuel remain in full force and effect under this Agreement except with respect to:

- a. fuel distributed or sold to the Tribe that the Tribe uses for its essential governmental functions and Tribal businesses, and
- b. fuel distributed or sold to Tribal filling stations to

the extent they resell such fuel through their filling station pumps to Tribal members, Tribal businesses, or the Tribe, by depositing the fuel into the fuel tanks of motor vehicles owned or leased by such Tribal members or Tribal businesses, or into the fuel tanks of Tribal vehicles, where such fuel is not resold, distributed or transferred to any other person or entity.

III. DEFINITIONS

3.1. "Department" means the Washington State Department of Licensing, or any successor agency, and its officials, employees, and agents acting in their official capacity.

3.2. "Distributor" has the meaning given in RCW 82.36.010(3) as it now exists or as it may hereafter be amended.

3.3. "Essential governmental function" has the meaning given in 26 C.F.R. § 305.7871-1(d) (1997).

3.4. "Filling station" means a place of business operated for the purpose of delivering to the general public motor vehicle fuel or special fuel into the fuel tanks of motor vehicles.

3.5. "Motor vehicle" means every self-propelled vehicle designed for operation upon land utilizing motor vehicle fuel or special fuel as the means of propulsion.

3.6. "Motor vehicle fuel" has the meaning given in RCW 82.36.010(2), as it now exists or as it may hereafter be amended.

3.7. "Reservation" means the Port Gamble S'Klallam Reservation together with Tribal trust lands now or hereafter located outside the boundaries of the Reservation over which the

Port Gamble S'Klallam Tribe, exercises governmental authority.

3.8. "Special fuel" has the meaning given in RCW 82.38.020(5) as it now exists or as it may hereafter be amended.

3.9. "Special fuel dealer" has the meaning given in RCW 82.38.020(7), as it now exists or as it may hereafter be amended.

3.10. "State" means the State of Washington.

3.11. "Tribe" means the Port Gamble S'Klallam Tribe including its Tribal government and is used herein interchangeably with the term "Port Gamble S'Klallam Tribe".

3.12. "Tribal business" means a business that is wholly-owned and operated by the Tribe.

3.13. "Tribal filling station" means a filling station that is wholly-owned and operated by the Tribe or by a Tribal business.

3.14. "Tribal member" means a person who is an enrolled member of the Port Gamble S'Klallam Tribe.

3.15. "Tribal vehicle" means a motor vehicle owned or leased by the Tribe or by a Tribal business, or by the United States and assigned for use by the Tribe.

IV. AGREEMENT

Government-To-Government Cooperation

4.1. The State of Washington and the Port Gamble S'Klallam Tribe shall cooperate to the extent legally permitted to ensure the enforcement of:

- a. The Tribe's laws with respect to the taxation and regulation of Tribal members and Tribal businesses that sell or deliver motor vehicle or special fuel within the

Reservation;

- b. The State's laws and rules respecting the imposition and collection of its fuel taxes from all persons except as provided under this Agreement; and
- c. The terms of this Agreement.

4.2. Upon request, the Tribe shall inform the Washington State Department of Licensing, or any successor agency, which persons or entities it knows to be engaged in the transport of motor vehicle fuel or special fuel to the Reservation.

Framework For Taxation And Regulation

4.3. Subject to ¶ 4.8 , the Department shall collect Washington State motor vehicle and special fuel taxes in accordance with chapters 82.36 and 82.38 RCW, as they now exist or as they may hereafter be amended.

4.4. Except where the Tribe acquires motor vehicle fuel when acting as a distributor licensed under chapter 82.36 RCW , the Tribe, Tribal filling stations, and Tribal businesses shall purchase fuel subject to this Agreement only from persons who are properly licensed in Washington State to distribute fuel or act as a special fuel dealer in accordance with chapter 82.36 RCW and chapter 82.38 RCW, respectively.

4.5. Upon compliance with the procedures described in ¶ 4.9 , the Tribe shall be entitled to a refund from the State of Washington Motor Vehicle Fund of the amount of motor vehicle fuel tax and special fuel tax that any seller, distributor or dealer of such fuels has paid to the State and passed on to, or collected

from, the Tribe, a Tribal filling station, or a Tribal business, measured by gallons of such fuel that:

a. (1) are delivered into and stored at the Tribe's own bulk fuel storage facilities within the Reservation; and (2) thereafter, are deposited only into the fuel tank of a Tribal vehicle; and (3) are used solely for the Tribe's essential governmental functions or Tribal businesses; or

b. are resold at the pump, by a Tribal filling station (1) to Tribal members by deposit directly into the fuel tank of a motor vehicle owned or leased by them, or (2) to the Tribe or Tribal businesses by deposit directly into the fuel tank of a Tribal vehicle.

4.6. Refunds will be made quarterly upon application therefor by the Tribe. The refund process shall be that set out in RCW 82.36.270 , RCW 82.36.310 and RCW 82.38.190 .

Unless the parties agree otherwise, applications shall be made upon the form attached to this Agreement, completed by an authorized representative of the Tribe. The application for refunds shall be based upon records maintained by the Tribe under ¶ 4.11 .

4.7. The Tribe, Tribal filling stations, Tribal businesses, or Tribal members, may also be eligible for refunds under the provisions of RCW 82.36.280 , RCW 82.36.285 , RCW 82.36.290 , RCW 82.36.300 , RCW 82.36.305 , RCW 82.38.080 , RCW 82.38.082 , RCW 82.38.180 , and similar state fuel tax exemption statutes that may

be later adopted, but only (1) to the extent such statutes apply to the Tribe, the Tribal filling station, the Tribal business, or the Tribal member, and to the particular use by them of motor vehicle and special fuels and (2) to the extent a refund is not available to the Tribe with respect to the same gallons of fuel under ¶ 4.5 of this Agreement.

4.8. If the Tribe qualifies and become licensed under chapter 82.38 RCW as a special fuel user and complies with the requirements of that chapter for special fuel users, ¶ 4.3 shall not apply as to special fuel sold or delivered to the Tribe. In that event, the Department may not collect the State's special fuel tax as to special fuel meeting all the criteria for refunds set out in §§ 4.5.a or 4.7 above. However, the State may collect from the Tribe, and the Tribe shall pay to the State, the State's special fuel tax for all other gallons of special fuel obtained or used by the Tribe.

4.9. No refund of motor vehicle or special fuel taxes need be made by the State except as specifically set out in this Agreement. Except as specifically set out in this Agreement, the State may impose and collect, according to state law and regulation now existing or as may hereinafter be amended, the State's motor vehicle fuel and special fuel taxes with respect to any such fuel sold or distributed to, or used or possessed by, any person or entity within the Reservation, including Tribal members who purchase bulk fuel.

4.10. Nothing herein shall preclude the Tribe from choosing

to become a distributor or a special fuel dealer. Should the Tribe choose to become a distributor, the parties shall comply with the provisions of Chapter 82.36 RCW. Should the Tribe choose to become a special fuel dealer, the parties shall comply with the provisions of Chapter 82.38 RCW relating to special fuel dealers.

Tribal Records

4.11. The Tribe shall maintain records as set forth in this paragraph.

a. When the Tribe operates filling stations within the Reservation it shall maintain records of:

(i) all its purchases of motor vehicle fuel and special fuel showing, for each transaction, (1) the identity of the distributor or dealer from whom the fuel was purchased, (2) whether the fuel involved is motor vehicle fuel or special fuel, (3) the number of gallons involved, and (4) the price paid to the distributor or special fuel dealer;

(ii) all sales of such fuels showing, for each transaction, (1) whether the fuel involved is motor vehicle fuel or special fuel, (2) the number of gallons involved, (3) the price, (4) the tax status of the purchaser (Tribe, Tribal business, Tribal member, or other), (5) whether the fuel was deposited directly into the fuel tank of a motor vehicle, and (6) whether an amount equal to the State's tax was collected;

b. When the Tribe operates bulk storage facilities within

the Reservation it shall maintain records of:

(ii) the quantity of all motor vehicle fuel and all special fuel delivered into the Tribe's bulk storage facilities;

(iii) the quantity of all motor vehicle fuel and all special fuel withdrawn from the Tribe's bulk storage facilities;

(iv) the identity of each vehicle for which motor vehicle fuel or special fuel is withdrawn from the Tribe's bulk storage facilities; and

(v) the Tribal programs or Tribal businesses for which all motor vehicle fuel and special fuel withdrawn from the Tribe's bulk storage facilities is used.

- c. Records relating to the use of fuel for which the Tribe may claim an exemption under ¶ 4.7 of this Agreement shall conform to the requirements for such records established by chapters 82.36 RCW or 82.38 RCW ,
- d. When the Tribe acts as a distributor of motor vehicle fuel, the Tribe shall maintain records in accordance with chapter 82.36 RCW and implementing rules. When the Tribe acts as a special fuel dealer, the Tribe shall maintain records in accordance with chapter 82.38 RCW and implementing rules.

4.12. The Tribe shall permit the State or its officers, agents, or designees to review the records described in ¶ 4.11 at the Tribe's regular business offices within the Reservation during

the Tribe's regular business hours. The Tribe shall maintain such records for a minimum of five years from the sale, distribution, withdrawal, or use to which the record relates.

Tribal Laws

4.13. The only filling stations allowed on the Port Gamble S'Klallam Reservation are operated by the Tribe or a Tribal business as defined in section 3.12 of this agreement. The Tribe agrees to prohibit any entity except the Tribe, Tribal filling stations and Tribal businesses from the following activities within the Port Gamble S'Klallam Reservation:

- a. operating filling stations,
- b. reselling or transferring fuel obtained from a tribal filling station; unless the Tribe shall establish and implement a procedure for regulation of fuel within the Reservation which the Tribe and the State of Washington agree conforms to the requirements applicable to tribally licensed filling stations under the consent decree entered by the federal district court in *Confederated Tribes of the Colville Reservation v. DOL, et al.*, District Court No. CY-92-248-JLO.

The Tribe agrees to require that any business that acquires fuel in bulk shall comply with chapters 82.36 and 82.38 RCW in acquiring and using such fuel, except as otherwise provided in this agreement with respect to the Tribe, Tribal filling stations and Tribal businesses.

4.14. During each tribal fiscal year (January 1 to December 31), the Tribe shall budget for the enforcement of traffic laws on

highways, roads, or streets open to the public within the Reservation, or for the design, construction, or maintenance of such highways, roads, or streets, at least an amount of money equal to (a) the amount of motor vehicle fuel tax and special fuel tax refunded under ¶ 4.5 of this Agreement, plus (b) any amount of special fuel tax not collected pursuant to ¶ 4.8 of this Agreement for which the Tribe would have been eligible for a refund under ¶ 4.5 had the tax been collected pursuant to ¶ 4.3. The Tribe shall furnish to the State or provide the State access to Tribal records demonstrating that the Tribe has complied with this paragraph. Access to such records shall be at the Tribe's business offices within the Reservation during the Tribe's regular business hours.

Dispute Resolution

4.15. Neither the Tribe, nor the State, nor officers acting on either government's behalf, may petition any court to enforce this Agreement unless (a) the dispute resolution process described in ¶ 4.16 has been followed in good faith to completion without successful resolution, or unless (b) the other party fails to enter into the dispute resolution process or terminates the process before its completion.

4.16. Should a dispute arise between the Port Gamble S'Klallam Tribe and the State upon an issue of compliance with the Agreement by either government, or by their officers, employees or agents, the Tribe and State shall attempt to resolve the dispute through the following dispute resolution process:

a. Either party may invoke the dispute resolution process

by notifying the other, in writing, of its intent to do so. The notice shall set out the issues in dispute and the notifying party's position on each issue.

- b. The first stage of the process shall include a face-to-face meeting between representatives of the two governments to attempt to resolve the dispute by negotiation. The meeting shall be convened within 30 days of the date of the written notice described in ¶ 4.16.a. The representatives of each government shall come to the meeting with the authority to make recommendations to settle the dispute.
- c. If the parties are unable to resolve the dispute within 60 days of the date of the written notice described in ¶ 4.16.a., the parties shall engage the services of a mutually-agreed-upon qualified mediator to assist them in attempting to negotiate the dispute. Cost for the mediator shall be borne equally between the two governments.
- d. Both parties shall pursue the mediation process in good faith until the dispute is resolved or until the mediator determines that the parties are not able to resolve the dispute. If the parties cannot agree upon a format for the mediation process, the format shall be that directed by the mediator. If the dispute is resolved, that resolution shall be memorialized by the mediator and shall bind the parties.

- e. If either party terminates the process before completion, the other party may petition the United States District Court for the Western District of Washington for enforcement of the Agreement as to the disputed and unresolved issue or issues. If the parties cannot agree on who the mediator should be, or if the mediator determines that the dispute can not be resolved in the mediation process, or if the dispute is not resolved within 60 days of the date the mediator is selected, either party may petition the United States District Court for the Western District of Washington for enforcement of this Agreement as to the disputed and unresolved issue or issues.
- f. Subject to the dispute resolution processes set out herein, the parties consent to the jurisdiction of the United States District Court for the Western District of Washington in any action brought for the limited purpose of enforcing this Agreement. Neither party may assert sovereign immunity as a defense to such an action.

Implementation

4.17. The State and the Tribe, not less than one year after execution of this Agreement, shall confer, on a government-to-government basis, to evaluate the effectiveness of the Agreement and to attempt to mutually agree upon solutions to any problems that may have arisen.

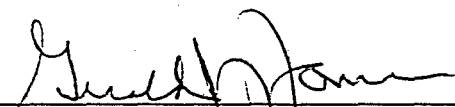
Neither the Port Gamble S'Klallam Tribe nor the State are

creating, or intend to create, any rights in third parties which would result in any claims of any nature whatsoever against the Tribe or the State as a result of this agreement. Neither party has waived immunity from third party suits or claims of any kind or nature whatsoever against them, and nothing in this agreement shall be construed to effect a waiver, in whole or in part, of said immunity.

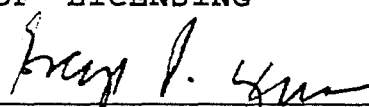
4.18 This Agreement addresses only the taxation and regulation of motor vehicle fuel and special fuel and shall not be construed as affecting any other area of Tribal or State taxation or regulation.

DATED this 1st day of December, 1997.

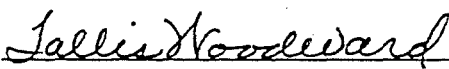
PORT GAMBLE S'KLALLAM TRIBE

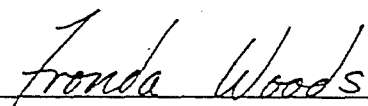

GERALD J. JONES, Chairman

WASHINGTON STATE DEPARTMENT
OF LICENSING


EVELYN P YENSON, Director

Approved as to form:


TALLIS WOODWARD
Tribal Attorney
Port Gamble S'Klallam Tribe


FRONDA WOODS
Assistant Attorney General

THE)
)
 PORT GAMBLE)
)
 S'KLALLAM)
)
 BUSINESS COMMITTEE)
)
 OF THE)
)
 PORT GAMBLE)
)
 S'KLALLAM)
)
 COMMUNITY COUNCIL)

I.
 WHEREAS, the Port Gamble S'Klallam Indian Community is organized under the Indian Reorganization act of June 18, 1934; and

II.
 WHEREAS, under its Constitution and Bylaws adopted August 5, 1939, the Community Council was designated as the governing body of the Port Gamble S'Klallam Indian Community; and

III.
 WHEREAS, by resolution dated April 22, 1956, the Port Gamble S'Klallam Community Council delegated the authority to conduct the business of the Port Gamble S'Klallam Indian Community to the Port Gamble S'Klallam Business Committee; and

IV.
 WHEREAS, the Port Gamble Band of S'Klallam Tribe and the State of Washington do not agree on the nature and extent of the State's authority to tax motor vehicle fuel on the Port Gamble S'Klallam Reservation, if any; and

V.
 WHEREAS, the Port Gamble Business Committee has reviewed the motor fuel tax agreements between the State of Washington and Confederated Tribes of the Colville Reservation and between the State and the Lummi Nation and find that the agreements represent a compromise between the parties which allows for "revenue sharing" of taxes collected by the State which are refunded to the tribal government to be budgeted for road related purposes; and

VI.
 WHEREAS, the Port Gamble Business Committee and Washington State through its Department of Licensing have agreed to modify the Colville and Lummi motor vehicle fuel tax agreements to better meet the unique circumstances of the Port Gamble S'Klallam Tribe including the tribal prohibition on the operation of filling stations or the reselling or transferring of fuel from a tribal filling station, except by the Tribe, Tribal filling station and Tribal businesses; and

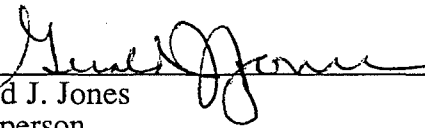
VII.

NOW THEREFORE BE IT RESOLVED, that the Port Gamble S'Klallam Business Committee authorizes the Chairman, or the Vice-Chairman, to sign the AGREEMENT CONCERNING TAXATION OF MOTOR VEHICLE FUEL AND SPECIAL FUEL between the Port Gamble S'Klallam Tribe and the State of Washington, signifying the approval of the Tribe of said Agreement.

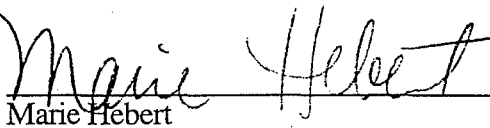
CERTIFICATION

WE HEREBY CERTIFY that on this date there was a regular meeting held of the Port Gamble S'Klallam Business Committee on the Port Gamble S'Klallam Indian Reservation, at which time a quorum was present;

WE FURTHER CERTIFY, that the above numbered resolution, was at said meeting, introduced, evaluated, and was passed by a vote of 4 FOR, 0 AGAINST, dated this 12th day of November, 1997.



Gerald J. Jones
Chairperson



Marie Hebert
Secretary

CLAIM FOR REFUNDS OF FUEL TAX

FUEL TAX REFUND
PERMIT NUMBER

THIS PERMIT NUMBER MUST
APPEAR ON ALL CLAIMS FILED
FOR REFUND OF FUEL TAX

CLAIM PERIOD

From: _____

To: _____

FUEL TYPE: (CIRCLE ONE)

GAS DIESEL AIRCRAFT

FOR OFFICIAL USE ONLY

Important: Instructions on back of yellow copy

CODE	FUND	DATE	CCC	CODE	FUND	DATE	CCC	CODE	FUND	DATE	CCC	CODE	FUND	DATE	CCC
GALLONS				GALLONS				GALLONS				GALLONS			
COST				COST				COST				COST			

FUEL TO BE ACCOUNTED FOR

1. Opening Inventory
2. Gallons Purchased
3. **TOTAL TO ACCOUNT FOR**

**ACCOUNTING FOR TAX PAID FUEL
REFUNDABLE GALLONS**

4. Boats
5. Combines/Tractors
3. Stationary Engines
7. Unlicensed Vehicles
8. Metered Fuel
9. Cement Mixer
10. Transport Elderly/Handicapped
11. Garbage Truck
12. Fuel Oil/Milk Truck
13. Aircraft Mo-Gas
14. Tax Exempt Marine Dealer
15. Exported (submit cert.)
16. Other

17. **TOTAL REFUNDABLE** _____

NON REFUNDABLE

18. Licensed Vehicles
19. Sales/Deliveries
20. Unaccountable Fuel
21. Closing Inventory

22. **TOTAL NON REFUNDABLE** _____

23. **ACCOUNTED FOR**

CLAIM COMPUTATION

24. Refundable Gallons
25. Cost of Line 24
26. Refund Claimed
27. Less: use tax
28. Less: coastal protection fund
29. **AMOUNT DUE Claimant** _____

LIST OF EQUIPMENT

TYPE	MAKE	YEAR
A.	_____	_____
B.	_____	_____
C.	_____	_____
D.	_____	_____
E.	_____	_____
F.	_____	_____
G.	_____	_____
H.	_____	_____
I.	_____	_____
J.	_____	_____

USE CLASSIFICATION

- | | | |
|---------------------|----------------|--------------------|
| _____ Marine dealer | _____ Farming | _____ Commerical |
| _____ Logging | _____ Marine | _____ Construction |
| _____ Government | _____ Aircraft | _____ Other |

INVOICE REQUIREMENTS

- Name and address of the seller
- Purchaser's name, equipment number/name, boat number, etc.
- Complete date of sale (month, day and year)
- Type of fuel delivered
- Number of gallons delivered
- Price per gallon
- Total amount of sale
- Amount of fuel tax paid. The amount of the tax paid need not be separately stated if the invoice bears the notation that the price includes the tax.

I certify under penalties of perjury that this claim is, true, correct and complete.

Signature _____ Date _____ Tel. No. _____