

AGREEMENT
CONCERNING TAXATION OF MOTOR VEHICLE FUEL AND SPECIAL FUEL
BETWEEN THE MAKAH INDIAN TRIBE AND THE STATE OF WASHINGTON

I. RECITALS

1.1. The Makah Indian Tribe (“Tribe”) and the State of Washington (“State”) (collectively “the parties”) have conferred and engaged in government-to-government negotiations in a mutual, good faith effort to reach an arrangement in regard to state fuel taxes on the distribution, sale, transfer, use, or possession of motor vehicle fuel and special fuel within the Makah Reservation (“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 RCW 82.36 and 82.38, the State imposes a fuel tax upon the distribution, sale, transfer, use or possession of motor vehicle fuel and 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 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’ mutual interests. So long as this agreement remains in effect, 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.

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’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 governmental functions and conduct of tribal enterprises; and
- b. the amount of fuel calculated from the formula set forth in ¶ 4.3.

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(15), as it now exists or as it may hereafter be amended.

3.3. "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.

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

3.5. "Motor vehicle fuel" has the meaning given in RCW 82.36.010(20), as it now exists or as it may hereafter be amended.

3.6. "Reservation" means the Makah Reservation together with tribal trust lands located outside the boundaries of the Reservation over which the Makah Tribe exercises governmental authority.

3.7. "Special fuel" has the meaning given in RCW 82.38.020(23), as it now exists or as it may hereafter be amended.

3.8. "State" means the State of Washington.

3.9. "Tribe" means the Makah Indian Tribe.

3.10. "Tribal business" means a business that is owned and operated by the Tribe.

3.11. "Tribal filling station" means a filling station that is owned and operated by the Tribe or by a tribal member business.

3.12. "Tribal member" means a person who is an enrolled member of the Makah Tribe.

3.13. "Tribal member business" means a business or enterprise that is owned and operated by an enrolled tribal member.

3.14. "Tribal enrollment" means the number of enrolled members of the Makah Tribe as reported by the tribal Enrollment Office.

3.15. "Tribal service area" means Clallam County.

IV. AGREEMENT

Government-To-Government Cooperation

4.1. The State and the 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, non-tribal filling stations, tribal filling stations, and 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.

Framework for Taxation and Regulation

4.2. The Department shall collect Washington State motor vehicle and special fuel taxes in accordance with RCW 82.36 and 82.38, as they now exist or as they may hereafter be amended. The Tribe shall by ordinances require non-tribal filling stations, tribal filling stations, tribal businesses, and tribal members and tribal member businesses to purchase fuel subject to this Agreement only from persons who are properly licensed in Washington State to distribute fuel or act as a distributor in accordance with RCW 82.36 and RCW 82.38. Such ordinances shall become effective within six months of the execution of this Agreement, or as otherwise agreed by the parties.

4.3. Upon compliance with the procedures described in this Agreement, the Tribe shall receive a refund from the State of Washington Motor Vehicle Fund of:

- a. The average per capita number of gallons consumed within the State, as determined by the Washington State Department of Transportation, on an annual basis, multiplied by the number of enrolled Makah tribal members residing within the tribal service area as defined in ¶ 3.15. The resultant figure is then multiplied by the state fuel tax rate in effect to arrive at an annual dollar amount to be refunded to the Tribe. In the event of a fuel tax increase or decrease, the dollar amount to be refunded on a monthly basis will be adjusted to reflect this change.
- b. The number of gallons claimed for refund for tribal government vehicles for federal fuel tax purposes on Internal Revenue Service (IRS) claim form 4136. These gallons are then multiplied by the state fuel tax rate in effect to arrive at a dollar amount to be refunded to the Tribe. In the event of a fuel tax increase or decrease, the dollar amount to be refunded on a monthly basis will be adjusted to reflect this change. A copy of the IRS form 4136 shall accompany the refund request.

4.4. For the amount computed in ¶ 4.3.a., refunds will be made in 1/12 increments (monthly), beginning the first day of the month following acceptance of this Agreement. For the amount computed in ¶ 4.3.b., refunds will be made following acceptance of this Agreement and upon application by the Tribe.

4.5. The Tribes, tribal filling stations, tribal businesses, tribal members, or tribal member businesses 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 82.38.180, and similar state fuel tax exemption statutes that may be later adopted, but only (1) to the extent such statutes apply to the Tribes, the tribal filling station, the tribal business, the tribal member, or the tribal member business, 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 amount of fuel calculated as sold under ¶ 4.3 of this Agreement.

4.6. No refund of motor vehicle or special fuel taxes need be made by the State except as specifically set out in this Agreement.

Reports and Records

4.7. The Tribe shall maintain records as set forth in these paragraphs.

- a. The Tribe shall maintain records indicating population data (including total tribal enrollment) for the enrolled Makah tribal members residing in the tribal service area defined in ¶ 3.15.
- b. Internal Revenue Service (IRS) form 4136 and detail schedules reflecting the number of gallons claimed for refund for federal fuel tax purposes.

4.8. The Tribe shall permit the State or its officers, agents, or designees to review the records described in ¶ 4.7 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 three years.

Dispute Resolution

4.9. The Tribe agrees not to bring an action against the State to enforce this Agreement or to resolve any issue of compliance with this Agreement unless (a) the dispute resolution process described in ¶ 4.9.a. and ¶ 4.9.b. has been followed in good faith to completion without successful resolution, or unless (b) the State fails to enter into the dispute resolution process or terminates the process before its completion. Should a dispute arise between the 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 ¶ 4.9.a. The representatives of each government shall come to the meeting with the authority to settle the dispute.

- c. After completion of the process in ¶ 4.9.a. and ¶ 4.9.b., either party may terminate this Agreement with sixty (60) days written notice served upon the other party's designated representative.
- d. For purposes of all notices required by this Agreement, the Chairman of the Makah Indian Tribe and the Director of the Washington Department of Licensing are the designated representatives of their respective party.

Implementation

4.10. 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.

4.11 In any action filed by a third party challenging either the Tribe's or the State's authority to enter into or enforce this Agreement, the Tribe and the State each agree to support the Agreement and defend their authority to enter into and implement this Agreement.

4.12 The Tribe and the State shall confer regarding regulation of filling stations operating within the jurisdiction of the Tribe to ensure such regulation is consistent with the intent and spirit of this Agreement.

4.13 This Agreement addresses only the taxation and regulation of motor vehicle fuel and special fuel and shall not apply to or affect any other area of tribal or State taxation, jurisdiction, or regulation.

4.14 The representative of each party, whose signature appears below, has been duly authorized under applicable law to execute this Agreement and bind the party.

DATED this 25 day of September, 2002. ²⁵

Makah Tribe

Washington State Department of Licensing

for Nathan Tyler
Gordon Smith, Chairman
Makah Tribal Council

[Signature]
Director, Department of Licensing

Approved as to form:

[Signature]
Tribal Attorney

[Signature]
Assistant Attorney General
James T. Schmidt WSBA # 21145