

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

**BETWEEN THE LUMMI NATION  
AND THE STATE OF WASHINGTON**

**I. RECITALS**

1.1. The Lummi Nation and the State of Washington (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 taxes on the distribution, sale, transfer, use, or possession of motor vehicle fuel and special fuel within the Lummi 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 parties additionally acknowledge that 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' mutual interests. 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. The parties additionally agree that this Agreement shall supercede all preceding Agreements between the parties regarding all issues relating to motor vehicle fuel taxes and special fuel taxes.

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. The amount of fuel annually supplied to the tribe under the formula detailed in §4.3.a.

### 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. "Essential Governmental Function" has the meaning given in 26 C.F.R. § 305.7871-1(d) (2000).

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, and 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(20), as it now exists or as it may hereafter be amended.

3.7. "Reservation" means the Lummi Indian Reservation together with Tribal trust lands located outside the boundaries of the Reservation over which the Lummi Nation exercises governmental authority.

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

3.9. "State" means the State of Washington.

3.10. "Tribe" means the Lummi Nation.

3.11. "Tribal Business" means a business that is owned and operated by the Lummi Nation.

3.12. "Tribal Enrollment" means the number of enrolled members of the Lummi Nation as reported by the Lummi Nation Enrollment Office.

3.13. "Tribal Filling Station" means a filling station that is 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 Lummi Nation.

3.15. "Tribal Member Business" has the meaning governed by the following standards:

a. "Tribal Member Business" means a business that is:

(1) incorporated under the laws of the Lummi Nation or possesses a Tribal Business License or a federal Indian trader's license allowing the business to operate within the Lummi Indian Reservation; and

(2) owned and operated by an enrolled member or members of the Lummi Nation.

b. Owners of a Tribal Member Business may include non-Tribal-member spouses, forbears, siblings, children, and grandchildren of Tribal member owners, so long as the collective owner-ship share of the non-

Tribal members does not exceed 50%.

c. A person or entity shall not be deemed an owner of the Tribal Member Business if that person or entity, together with any officer, director, owner, employee, agent, or other representative of that entity, meets all of the following criteria:

- (1) The person or entity takes no part in the management or operation of the Tribal Member Business except as an employee whose compensation or salary does not exceed that which is commensurate with the responsibilities of the position in comparable non-Indian businesses; and
- (2) The person or entity does not share in the operating profits or losses of the Tribal Member Business, except that reasonable commissions on sales that are comparable to industry standards shall not be considered a share in the operating profits or losses; and
- (3) The person or entity does not share in the increase or decrease in the value of the Tribal Member Business.

3.16. "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 Lummi Nation 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 Member Businesses that sell or deliver motor vehicle or special fuel within the lands where the Lummi Nation exercises it's governmental authority;
- 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 chapters 82.36 and 82.38 RCW, as they now exist or as they may hereafter be amended. The Tribe, Tribally licensed filling stations and Tribal Businesses shall purchase motor fuel and special 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. This Agreement shall be renegotiated if untaxed motor vehicle fuel or special fuel enters the Lummi Indian Reservation.

4.3. Upon compliance with the procedures described in ¶4.8, the Tribe shall be entitled to a refund from the State of Washington Motor Vehicle Fund of:

a. The amount of the state fuel tax multiplied by the number of gallons of motor vehicle and special fuel annually consumed per person in Washington state as reported by the most recently "Forecast of Fuel, Vehicles and Related Data" as published by the Washington State Department of Transportation, further multiplied by the number the Enrolled members of the Lummi Nation residing in the Whatcom County, Washington. These gallons are then multiplied by the state fuel tax rate in effect to arrive at the dollar amount to be refunded.

b. The number of gallons claimed for refund for tribal governmental vehicles for Federal fuel tax purposes on Internal Revenue Service (IRS) form 4136 multiplied by the amount of the state fuel tax. 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 Tribe, 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 , 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, 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.

#### Reports and Records

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

a. The Tribe shall maintain records indicating the amount of motor vehicle and special fuel consumed by governmental entities of the Lummi Nation as reported on IRS form 4136.

b. Population data (including tribal enrollment statistics)

4.7. The Tribe shall permit the State or its officers, agents, or designees to review the records described in ¶4.6 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.

#### Tribal Laws

4.8. The Tribe shall establish and implement a procedure for regulation of fuel within the Reservation, including licensure by the Tribe of Tribal Member Businesses that operate filling stations within the Reservation. The Tribe's requirements shall be, at minimum:

- a. That Tribal licensure, and compliance with the Tribe's laws in connection therewith, shall be made conditions for the operation of a filling station by a Tribal Member Business within the Reservation;
- b. That, pursuant to this Agreement, the records identified in this section be made available at any reasonable time for inspection or audit by the State or its employees or agents.
- c. The Tribe shall require that all Tribally licensed filling stations shall purchase fuel only from persons who are properly licensed in Washington State to distribute fuel or act as a distributor or supplier in accordance with RCW 82.36 and RCW 82.38.

#### Dispute Resolution

4.9. 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 ¶4.10 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.

4.10. Should a dispute arise between the Lummi Nation 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 ¶4.10.a. The representatives of each government shall come to the meeting with the authority to settle the dispute.

4.11. Either party may terminate this Agreement without cause upon provision of 30 days written notice to the other party.

a. If this Agreement is terminated, the parties shall

continue to be liable for all obligations incurred in accordance with the terms of this Agreement prior to the effective date of termination.

#### Implementation

4.12. 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.

4.13. The Tribe shall ensure that all Tribal Members, non-Tribal members and Tribal Member Businesses comply with all of the Tribal laws implementing this Agreement.

4.14. Should any third party, in an action brought against the State or against any of its agencies, officials, employees, or agents, allege that the Tribe lacks authority to enter into this Agreement or to adopt or enforce the laws described in ¶ 4.8, the Tribe shall appear in the action and defend its authority.


4.15. 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 22 day of January, 2002.


LUMMI NATION

WASHINGTON STATE DEPARTMENT  
OF LICENSING

  
\_\_\_\_\_  
William E. Jones, Chairman

  
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Fred Stephens, Director

Approved as to Form Only:

  
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JAMES T. SCHMID  
Assistant Attorney General