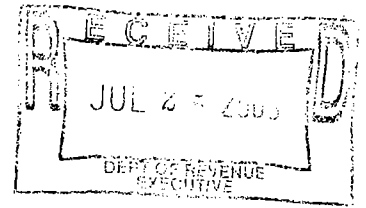


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REVENUE DIVISION



CIGARETTE TAX COMPACT

RECEIVED

MAY 11 2005

ATTORNEY GENERAL'S OFFICE
PLUM STREET

Between

CONFEDERATED TRIBES OF THE CHEHALIS

RESERVATION

And

THE STATE OF WASHINGTON

PREAMBLE

WHEREAS, the Chehalis Tribe ("Tribe") is a federally recognized Indian Tribe, possessed of the full inherent sovereign powers of a government; and

WHEREAS, the State of Washington ("State") is a state within the United States of America, possessed of full powers of state government; and

WHEREAS, the body of Federal Indian law and policy recognizes the right and the importance of self-determination for Indian Tribes, the authority of a Tribe to tax certain activities, and the need for economic development in Indian country by Indian Tribes; and

WHEREAS, the State has committed, through the Centennial Accord and Millennium Agreement, to the political integrity of the federally recognized Indian Tribes within the state of Washington and has formally recognized that the sovereignty of each Tribe provides paramount authority for the Tribe to exist and to govern; and

WHEREAS, a long-standing disagreement exists between the Tribe and the state of Washington over questions regarding jurisdiction over and the taxation of the sale and distribution of cigarettes; and

WHEREAS, the mutual interests of the Tribe and the state of Washington brought these two governments together to pursue their common interest in resolving this tax disagreement; and

WHEREAS, the State and Tribe have been engaged in discussions regarding this disagreement for a number of years; and

WHEREAS, both the Tribe and the State desire a positive working relationship in matters of mutual interest and seek to resolve disputes and disagreements by conducting discussions on a government-to-government basis; and

WHEREAS, the State and Tribe will benefit from resolution of that disagreement by the change in focus from enforcement and litigation to a focus on the administration of this cigarette tax Compact; and

WHEREAS, the Tribe and State will benefit from resolution of that disagreement by the tax base this Compact will enable, taxation being an essential attribute of sovereignty and a tool of self-sufficiency; and

WHEREAS, the State and Tribe will also benefit by the exercise of the attributes of Tribal sovereignty and from the improved well-being of members of the Tribe that will result from economic development by the Tribe and its members; and

WHEREAS, Engrossed Substitute Senate Bill 5372 was enacted by the 57th Legislature and signed by the Governor, authorizing the signing of compacts such as this, such authority effective July 22, 2001; and

NOW THEREFORE, the Tribe by and through its Business Committee, and the State by and through its Governor, do hereby enter into this Compact for the mutual benefit of the Tribe and the State to wit:

PART I
Definitions

1. "Auditor" means an independent third party auditor.
2. "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state. "Cigarette" does not include tobacco products. "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.
3. "Compact" means this agreement entered into by the State and the Tribe.
4. "Chehalis Reservation" or "Reservation" means the area recognized as the Chehalis Reservation by the United States Department of the Interior.
5. "Department" means the Washington State Department of Revenue.
6. "Essential government services" means services such as Tribal administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development.
7. "Indian Country" means the Chehalis Reservation and any trust lands owned by the United States in trust for the Chehalis Tribe outside the Chehalis Reservation.
8. "Local retail sales tax" means the combined Washington local retail sales taxes applicable in the area.
9. "NonIndian" means an individual who is neither a Tribal member nor a nonmember Indian.
10. "Nonmember Indian" means an enrolled member of a federally recognized Indian Tribe other than the Confederated Tribes of the Chehalis Reservation.
11. "Parties to the agreement" or "parties" means the Tribe and the State.

12. "Retail selling price" means the ordinary, customary, or usual price paid by the consumer for each package or carton of cigarettes, which price includes the Tribal cigarette tax.
13. "Self-certified tribal wholesaler" means a wholesaler who is a federally recognized Indian Tribe or a member of such a Tribe, who is not required to be licensed under any state law, and who has by letter certified to the Department that it will abide by the terms of this Compact and who has signed a letter with the Tribe requiring it to abide by the terms of this Compact.
14. "Self-certified wholesaler" means an out-of-state wholesaler who is not a self-certified tribal wholesaler and who has by letter certified to the Department that it will abide by the terms of this Compact and who has signed a letter with the Tribe requiring it to abide by the terms of this Compact.
15. "State Cigarette Tax" means the state tax imposed on each cigarette, which is expressed in cents per cigarette.
16. "State" means the state of Washington.
17. "Tribal cigarette tax" means the tax or taxes enacted as a provision of Tribal law on the units of cigarettes sold and on the purchase of cigarettes by retail buyers.
18. "Tribal member" means an enrolled member of the Confederated Tribes of the Chehalis Reservation.
19. "Tribal retailer" means a cigarette retailer wholly owned by the Confederated Tribes of the Chehalis Reservation, and located in Indian country.
20. "Tribal tax stamp" means the stamp or stamps that indicate the taxes imposed under this Compact have been paid or that identify those cigarettes with respect to which no tax or another Tribal tax is imposed.
21. "Tribe" or "Tribal" means or refers to the Confederated Tribes of the Chehalis Reservation, a federally recognized Tribe.
22. "Wholesaler" means every person who purchases, sells, or distributes cigarettes for the purpose of resale only.

PART II

Applicability of the Compact

Application

From its execution, and contingent on the imposition of the Tribal Cigarette Tax pursuant to a Tribal ordinance meeting the terms of Part III of this Compact, this Compact shall apply to the retail sale of cigarettes by Tribal retailers. Sales subject to the Tribal Cigarette Tax imposed

pursuant to this Compact are those in which delivery and physical transfer of possession of the cigarettes from the retail seller to the buyer occurs within Indian country. "Delivery and physical transfer of possession" within Indian country does not include mail order type sales, including Internet, catalog, and telephone sales, unless the cigarettes are delivered to the buyer within Indian country.

The parties agree this long-term compact is a continuation of the interim compact, insofar as access to records during the interim period, imposition of the tax, restrictions on use of funds, and other such protections for and limitations on the two parties during the interim period.

Scope Limited

This Compact does not apply to:

- a. Cigarettes sold at retail by nonIndians or nonmember Indians;
- b. Tobacco products as that term is defined in Part I of this Compact; or
- c. Cigarettes manufactured by the Tribe or its enterprises within Indian country.

PART III Imposition of Tribal Cigarette Taxes

1. Tribal Retailers

- a) The Tribe agrees that any cigarette retailer wholly owned by the Tribe is subject to this Compact. The Tribe agrees that, for the purposes of this Compact, only cigarette retailers wholly owned by the Chehalis Tribe are authorized to make sales of cigarettes. In the event that a cigarette retailer owned by a Chehalis Tribal member makes sales at retail in Indian Country, the Tribe agrees to attempt to act promptly to bring the retailer into compliance with the terms of this Compact.
- b) The Tribe agrees to notify the Department 30 days prior to the start up of cigarette sales by any Tribal retailer who begins selling cigarettes after the effective date of this Compact.

2. Tax Imposed on Sales by Tribal Retailers

- a) The Tribe shall impose taxes (both a unit tax and a sales tax) on all sales by Tribal retailers of cigarettes to nonIndian and nonmember Indian purchasers within Indian country.
- b) During the term of this Compact, upon any future increase in the state cigarette tax, state retail sales and use tax or local retail sales and use tax, the Tribal tax on cigarettes shall increase by no less than 100 percent of the increase in the combined state and local tax rates. Notwithstanding the foregoing, so long as the Tribe is entitled to apply the 80 percent formula set forth above to its cigarette sales, the increase in state cigarette tax and state and local sales and use taxes shall trigger an increase in the corresponding tax of 100 percent of the 80 percent of the increased amount.
- c) Upon any future decrease in the state cigarette tax, state retail sales and use tax or local retail sales and use tax, the Tribal tax on cigarettes may decrease to a minimum of no less than 100 percent of the combined state and local tax rates.

- d) The 90-day interim period that the tribal tax was in effect shall be counted as part of the three-year phase in and rate reduction calculation with respect to this Compact.
- e) Pursuant to RCW 43.06.455(3), the State retrocedes from its tax during the time this Compact is in effect.

3. Phase-in Tax Rate

Beginning on the date hereof the Tribe shall continue to impose and maintain in effect a tax on the retail sale of cigarettes equaling no less than the sum of an amount equal to 80 percent of the state cigarette tax, which is expressed in cents per cigarette, plus an amount equal to 80 percent of the state and local retail sales taxes.

4. Final Tax Rate

No later than 36 months after the initial imposition of tax under the interim Compact and subject to the phase-in reduction under this Part, the Tribe shall impose and maintain in effect a tax on the retail sale of cigarettes equaling no less than the sum of: an amount equal to 100 percent of the state cigarette tax, which is expressed in cents per cigarette, plus an amount equal to 100 percent of the state and local retail sales taxes.

5. Reduction in Three-Year Phase-in – How to Determine

If during any quarter, the number of cartons of cigarettes, excluding those manufactured by the Tribe or its enterprises, that are sold at retail exceeds by at least 10 percent the quarterly average sales of the six months preceding the imposition of the Tribal cigarette tax, the 36-month period noted above shall be reduced by three months. The quarterly average sales baseline shall be determined by the Auditor. The Auditor shall notify the Tribe and the Department when the retail sales for any one quarter exceed the baseline by at least 10 percent. These reductions will be cumulative. For the purposes of this provision:

- a. "Quarter" means a three-month period, each quarter immediately succeeding the next. The first quarter begins May 1, 2003; and
- b. The "quarterly average sales" means the sum of the retail sales made during the two quarters divided by two.

6. Phase-in Audit requirements – Benchmark

The Auditor will be responsible for reviewing the records of each Tribal retailer to establish the quarterly average sales baseline for the six-month period preceding the first imposition of the Tribal cigarette tax. Once this baseline has been established, the Auditor is not required to recalculate this information.

During the phase-in period, the Auditor will be responsible for reviewing the records of each Tribal retailer to determine the retail sales volume for each quarter. This review must take place on no less than a semi-annual basis, except for the first year of imposition of the Tribal cigarette tax, which shall be reviewed at the end of the Tribe's fiscal year in the report due December 31, 2003. The Auditor will notify the Tribe and the Department when the retail sales for any one quarter exceed the quarterly average sales baseline by at least 10 percent. Based on the findings from the Auditor, the phase-in period will be adjusted according to the provisions in this Part.

PART IV
Purchase of Cigarettes by Tribal Retailers

1. Wholesale Purchases – Requirements

The Tribe agrees to the requirement that the Tribal retailers purchase cigarettes only from:

- a. Wholesalers or manufacturers licensed to do business in the State;
- b. Self-certified wholesalers who meet the requirements of Part VI section 2 of this Compact; or
- c. Self-certified tribal wholesalers who meet the requirements of Part VI section 3 of this Compact.

2. Delivery of Cigarettes to the Tribal Retailer Outside of Indian Country

Cigarettes shall be delivered or transferred to the Tribe exclusively within Indian country by a wholesaler to the Tribe or a Tribal retailer, subject to meeting any notification requirements of this Compact. Deliveries may be made by commercial carriers. Such cigarettes must be accompanied by invoices identifying the cigarettes as Chehalis Tribe cigarettes.

PART V
Tax Stamps

1. Tax Stamp Required

All cigarettes sold by Tribal retailers shall bear a Chehalis Tribal tax stamp. The Tribe may, by ordinance, allow for an exemption from this tax for enrolled Chehalis Tribal members 18 years old or older, in which case the cigarette allocation allowance under WAC 458-20-192 shall apply during the term of this Compact. The expectation of both Parties is that if the Tribe chooses to tax its members that the allocation allowance will be used as an approximation of sales to members and the Tribe will not be required to keep exact records of such sales.

2. Creation and Supply of Tax Stamps

The Tribe shall arrange for the creation and supply of a Tribal tax stamp by an appropriate manufacturer. Tribal tax stamps will have a serial number or some other discrete identification so that stamps may be traced to the wholesaler. The Tribe agrees to purchase stamps from a nationally recognized stamp manufacturer.

3. Requirements for Affixation of Stamps

The Tribe, as part of its tax administration function, shall maintain and distribute tax stamps, and is deemed the “stamp vendor” for purposes of this Compact. The Tribe, as a government, shall also be responsible for affixing the tax stamps to the smallest container of cigarettes that will be sold or distributed by the Tribal retailer. The State and the Tribe agree that the affixation of stamps, as set forth in this Compact, is a government function. The Tribe agrees to maintain a separation between its enterprise activity of retailing cigarettes and its tax administration functions of holding stamps, storing cigarette inventory, affixing stamps, and releasing stamped inventory to the retailer. To that end the Tribe will maintain its unstamped cigarette inventory in a secure location apart from the store and subject to

camera surveillance. Additionally, the Tribe agrees to allow the Department access to its stamping area and its inventory area for purposes of observation.

Stamps shall be affixed so that the stamps may not be removed from the package without destroying the stamp. Stamps shall be affixed so that they may be readily viewed by inspection.

Prior to affixation such stamps shall be maintained in a secure area subject to 24-hour surveillance. The Tribe shall invite the State to view its secure stamp storage area and walk the state through its protocols and protections. The Department and the Tribe agree to share technical assistance and advice in the area of tax administration.

In addition, the Tribe agrees to allow the Department entry into the retail store, the purpose of such entry being limited to (a) visual observation of the retail sales taking place at the store and (b) the purchase of cigarettes by the Department.

The Tribe may only possess unstamped cigarettes for as long as is reasonably necessary to affix tax stamps to the packages for sale. It is presumed that any such possession in excess of seventy-two (72) hours (excluding Saturdays, Sundays, and Holidays) is in contravention of this Compact. Cigarettes that are damaged and that are to be returned to the vendor and cigarettes that were not ordered and that are to be returned to the vendor are not subject to the 72-hour standard. Such cigarettes must be set aside and kept in the secure location until the vendor picks them up. It is expected by both Parties that the vendor will pick up these cigarettes within a reasonable period of time. The State and the Tribe have agreed to this weekend and holiday exclusion in recognition of the governmental function being carried out and the burden a strict 72-hour rule would place on government staff on weekends and holidays. The Tribe has agreed that "holiday" is limited to the following holidays: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, Christmas, and one Indian holiday. The Indian holiday is designated by the Tribe on an annual basis. The Tribe agrees to notify the Department of the designation at least 60 days in advance of such date.

4. State Agreement Regarding Compliance with State and Federal Law

As to all transactions that conform with the requirements of this Compact, such transactions do not violate state law, and the State agrees that it will not assert that any such transaction violates state law for the purpose of 18 U.S.C. § 2342 or other federal law specifically based on violation of state cigarette laws.

PART VI Wholesalers

1. Wholesalers Licensed by the State

Wholesalers licensed by the State are subject to the requirements as set forth in Title 82 RCW and any rules adopted thereunder, and therefore must maintain adequate records detailing which cigarettes are subject to state tax and which cigarettes are subject to the Tribal cigarette tax.

2. Self-Certified Out-of-State Non-Tribal Wholesalers

Wholesalers who are not licensed to do business within the State, and who are not required by state law to be licensed, but who have agreed to comply with the provisions of this Compact, must certify by letter to the Department that they will and can meet the terms of this Compact.

The out-of-state self-certified wholesaler must be licensed to do business as a cigarette wholesaler within the state in which they reside.

The Tribe shall require compliance with this Compact in its agreements with any such out-of-state self-certified wholesalers and shall provide copies of such agreements to the Auditor for review. The contract between the Tribe and the out-of-state self-certified wholesaler will also include a requirement that the cigarettes transported in the State will be accompanied by invoices detailing the quantity and brand of cigarettes destined for the Tribe. Such invoices shall provide an order number that matches the order number provided under Part VII section 2 of this Compact and shall identify the seller of the cigarettes as well as the buyer of the cigarettes.

An out-of-state self-certified wholesaler who has provided a letter of certification to the State and who has an agreement with the Tribe, in which agreement the wholesaler agrees to abide by the terms of this Compact, shall be referred to as a "self-certified wholesaler."

3. Self-Certified Tribal Wholesalers

Tribal wholesalers who are not licensed to do business within the State or any other state, and who are not required by state law to be licensed, but who have agreed to comply with the terms of this Compact, must certify by letter to the Department that they will and can meet the terms of this Compact.

The Tribe shall require compliance with this Compact in its agreements with any such Tribal wholesalers and shall provide copies of such agreements to the Auditor for review. The agreement between the Tribe and the Tribal wholesaler will also include a requirement that the cigarettes transported in the State will be accompanied by invoices detailing the quantity and brand of cigarettes destined for the Tribe. Such invoices shall provide an order number that matches the order number provided under Part VII section 2 of this Compact and shall identify the seller of the cigarettes as well as the buyer of the cigarettes.

A Tribal wholesaler who has provided a letter of certification to the State and who has an agreement with the Tribe, in which agreement the wholesaler agrees to abide by the terms of this Compact, shall be referred to as a "self-certified tribal wholesaler."

4. The Tribe as a Wholesaler

- a) The Tribe and the Department may enter into a memorandum of agreement that addresses the Tribe acting as its own wholesaler. Such agreement may also address the Tribe acting as a wholesaler to other Tribes with whom the state has compacted regarding cigarettes. The memorandum of agreement must include at a minimum the conditions set forth in (b) of this section.

b) (i) If the Tribe acts as its own wholesaler and is also acting as its own stamp vendor and as its own stamping agent, in addition to the notice provisions required of self-certified tribal wholesalers in section 3 of this Part, the Tribe must agree to permit inspection of shipments destined to the Tribe as required in Part VII of this Compact.

(ii) If the Tribe acts as a self-certified Tribal wholesaler to other tribes with whom the State has compacted regarding cigarettes, the memorandum of agreement shall address the state tax implications of doing business outside of Indian Country. The State agrees that if ownership and title pass to the buyer in Indian Country that the Tribe as seller has not incurred any state business and occupation tax liability.

PART VII

Enforcement Authority and Responsibility of Liquor Control Board

Notification

The Tribe or its designee shall notify the Department seventy-two (72) hours in advance of all shipments of cigarettes by the self-certified wholesaler or self-certified tribal wholesaler to the Tribe or Tribal retailers, or all shipments of cigarettes to the Tribe acting as a wholesaler. Such notice shall include who is making the shipment (meaning who is the wholesaler), detail regarding both quantity and brand, and the invoice order number. Transportation of the cigarettes without the notice required by this section subjects the cigarettes to seizure. The Tribe agrees that the Department, the Liquor Control Board, and the Washington State Patrol, have the Tribe's permission to inspect any such shipments, and the Tribe agrees to inform its vendors and carriers of this inspection authority.

PART VIII

Independent Third Party Auditor

1. General

The Tribe and the State wish to provide assurance that all parties to this Compact and persons named in this Compact are in compliance with the spirit and terms of this Compact. The purpose of this Part is to provide a process for verification of the requirements in this Compact. The verification process is intended to reconcile data from all sources that make up the stamping, selling, and taxing activities under this Compact.

2. Tribe to Contract with Third Party Auditor

The Tribe and the State agree that, for the purposes of verifying compliance with this Compact, the Tribe will contract with an independent third party auditor. The Auditor will be retained by the Tribe and the Tribe shall bear the costs of the auditing services. The Tribe shall be entitled to freely communicate with the Auditor. The Auditor must be a certified public accountant licensed by the state of Washington and in good standing, such good standing subject to confirmation by the licensing board through which the auditor is licensed. The Auditor will review records on an annual basis to verify the requirements of this Part unless otherwise specified.

3. Audit Protocol

To verify the requirements of this Compact, the Auditor must review records during the current appropriate audit cycle, and may review records for earlier years after the date of the signing of the Compact only as necessary for an internal reconciliation of the entity's books.

Records to be examined: To verify the requirements of this Compact, the Auditor must review at a minimum the records specified below. In all situations, the Auditor is not responsible for examining records that do not relate to the stamping, selling, or taxing activities of the Tribe, unless a review of the records is necessary for an internal reconciliation of the books.

- a. Self-certified wholesaler and self-certified tribal wholesaler: records and invoices of cigarettes.
- b. Tribal retailers: records and invoices of cigarettes purchased from licensed wholesalers, self-certified wholesalers, self-certified tribal wholesalers and manufacturers, records and invoices of cigarettes sold, cigarette inventory, and additional records necessary to verify whether Tribal cigarette tax revenue was used in accordance with the requirements of Part XIII section 8 and records to verify that the retail selling price included the applicable tribal taxes.
- c. Tribe: records necessary to verify that all Tribal cigarette tax revenue was used to fund essential government services of the Tribe and records regarding tribal tax stamps.
- d. Tribe as wholesaler: records and invoices of cigarettes purchased from any source; records and invoices of cigarettes provided to the Tribal retailer; records and invoices of cigarettes sold to other Tribes; cigarette inventory and additional records necessary to verify that stamps were affixed and that tax revenue was accounted for and transmitted to the proper funds and accounts.

4. Audit Report Format

The Auditor shall provide the Department with a certified statement that, after each audit, the Auditor finds the Tribe to be in compliance with the terms of this Compact. The Department may view the audit report at the Tribal Offices, but may not copy the same.

5. Initial Review

The first required review must cover the period starting on the effective date of the tax under the interim Compact and ending December 31, 2003, and the Auditor must report its findings to the Tribe by May 1, 2004.

6. Self-Certified Wholesalers and Self-Certified Tribal Wholesalers

The Auditor will be responsible for reviewing the records, identified in section 3 of this Part, of all self-certified wholesalers and self-certified tribal wholesalers that sell cigarettes to a Tribal retailer to verify sales invoices and payments.

7. Tribal Retailer

The Auditor will be responsible for reviewing the records, identified in section 3 of this Part, of the Tribal retailer to certify that the tribal taxes were collected, that all cigarettes are property stamped, that cigarettes were obtained from wholesalers authorized under this

Compact, that any exemptions from tax are documented, and that revenue from the tribal tax under this Compact are not used to subsidize the Tribal retailer.

8. Essential Government Services and Stamping Function

- a) The Auditor will be responsible for reviewing the records of the Tribe and the Tribal retailer to certify that Tribal cigarette tax revenue is used for essential government services. The Auditor will also be responsible for certifying that the Tribal cigarette tax revenues are used in accordance with the requirements of Part XIII section 8 of this Compact. The Auditor shall review the stamping process and records in regard to that process to assure that stamping inventory is accounted for and secure and to assure that all cigarettes are stamped in accordance with this Compact.
- b) The Tribe and the State agree that machine error is a source of stamp wastage and therefore that reconciliation of stamps acquired by the Tribe with stamps affixed by the Tribe is not a meaningful procedure because of the difficulty in physically counting wasted stamps. The Tribe agrees that as part of its records it will keep the used stamp rolls in a secure location so that wastage samples can be taken, if deemed necessary by the Parties. It is agreed that it is in the interests of both Parties that cigarettes affixed with the Tribe's stamps not be resold by nonIndians. If cigarettes bearing Tribal stamps are discovered in nonIndian wholesale or retail locations, the Tribe and the State agree to meet and resolve the issue. Additionally, if other issues arise in regard to stamping the Department and the Tribe shall jointly discuss a change in protocols and procedures to address such issues. Any changes shall be memorialized in a government to government agreement between the Department and the Tribe.

**PART IX
Dispute Resolution**

The Tribe and the State wish to prevent disagreements and violations whenever possible, and to quickly and effectively resolve disagreements and violations when they arise. The parties agree that, to the extent possible, informal methods shall be used before engaging in the formal processes provided by this Part. The Tribe and the State agree to consult with each other and work together to address issues raised by persons not party to this agreement regarding the implementation of this Compact. Should a dispute arise, the parties agree to meet at the earliest possible time to discuss resolution. The parties shall attempt to reach each other by telephone or e-mail, and should that fail, shall use written notice as set forth in section 4 of this Part.

1. Disagreements Regarding Reports of the Auditor

Should either party have a concern about a report from the Auditor, which cannot be resolved through the joint audit review process described in Part VIII of this Compact, that party may choose to resolve the concern through the use of a mediator. Failure of either party to grant the mediator access to any records necessary to review the report is a violation under this Compact. The mediator may use the services of an independent third-party certified public accountant in undertaking such review.

2. Notification of For Cause Termination

Upon forty-five (45) days written notice, either party may terminate the Compact for cause. For the purposes of this section, “for-cause” shall mean only the following violations:

- a. Retail or wholesale sales of unstamped cigarettes during the effective period of a Tribal cigarette tax.
- b. Failure to submit to mediation as required by this Part IX.
- c. Failure to account for stamps that are the responsibility of the Tribe as stamp vendor and stamping agent.
- d. A breach of the confidentiality provisions of Part XII of this Compact.
- e. Use of tax proceeds in violation of the terms of this Compact.

3. Notification of Sales to Minors Violation

The Department shall immediately notify the Tribe if an allegation is made that the Tribe has made sales to minors in violation of this Compact. Upon such notification, the Tribe shall take enforcement action according to the provisions of Tribal ordinance.

4. Notice Requirements

For the purposes of this Compact, notice shall be by certified mail, return receipt requested, unless both parties agree in writing to accept notice by facsimile. Notice shall be deemed to be given on the date of actual receipt. Notice shall be given as follows:

To the Department:

Director
Washington State Department of Revenue
P.O. Box 47454
Olympia, WA 98504-7454

To the Tribe:

The Honorable David Burnett, Chair
Chehalis Business Council
P.O. Box 536
Oakville, WA 98568

5. Sovereign Immunity

Nothing in this Compact shall be construed as a waiver, in whole or in part, of either party’s sovereign immunity.

PART X
Responsibilities of the Liquor Control Board

Liquor Control Board

This agreement does not alter the Liquor Control Board’s responsibility under chapter 82.24 RCW.

PART XI
Term of this Compact – Amendment

This Compact shall remain in effect no longer than eight years from its effective date, subject to the termination provisions under Part IX of this Compact. The Compact shall be automatically renewed for successive periods of eight years, unless either party objects in writing at least 30 days prior to the expiration date. Amendments to the Compact shall be considered upon the written request of either party. Disputes regarding requests for amendment of this Compact shall be subject to the dispute resolution process in Part IX of this Compact.

PART XII
Confidentiality

All information under the terms of this Compact received by the Department or open to Department review is “return or tax information” and is subject to the provisions of RCW 82.32.330, the tax information “secrecy clause.” All other information that is subject to review by the Auditor or review by the mediator or certified public accountant is confidential and shall not be disclosed to anyone, in any forum, for any purpose.

PART XIII
Miscellaneous Provisions

1. Tribe Does Not Submit to State Jurisdiction

By entering into this Compact, the Tribe does not concede that the laws of the state of Washington, including its tax and tax collection provisions, apply to the Tribe, its members or agents regarding activities and conduct within or outside of Indian country.

2. State Does Not Concede Tribal Immunity

By entering into this Compact, the State does not concede that the Tribe has any immunity from its tax and tax collection provisions.

3. Compact Does Not Create any Third Party Beneficiaries

No third party shall have any rights or obligations under this Compact.

4. Land Status

The Tribe shall provide information regarding the status of land upon which any Tribal retailer is located at least thirty (30) days prior to the startup of any new cigarette sales by such retailer.

5. Tobacco Master Settlement Agreement

This Compact is not intended to impact the State’s share of proceeds under the master settlement agreement entered into by the State on November 23, 1998.

The Tribe recognizes the State has an interest regarding nonparticipating manufacturers. The State recognizes the Tribe has an interest in the master settlement agreement. The Tribe agrees to not impede the State's efforts to secure compliance of the nonparticipating manufacturers, and the Tribe reserves its rights regarding these matters.

Nothing in this Compact supercedes or replaces chapter 70.157 RCW.

6. Sales to Minors

The Tribe or a Tribal retailer shall not sell or give, or permit to be sold or given, cigarettes to any person under the age of eighteen (18) years.

7. Essential Government Services

Tribal cigarette tax revenue shall be used for essential government services. The Auditor shall certify the use of such revenue under the process set forth in Part VIII of this Compact.

Tribal cigarette tax revenue may not be used to subsidize Tribal cigarette and food retailers. "Subsidize" means that proceeds from the Tribal cigarette tax or taxes pursuant to this Compact cannot be expended on the direct business activities of the Tribal retail cigarette business. In addition, where the cigarette business is collocated with a retail food business, the proceeds cannot be expended to support that business.

- a. "Direct business activities" include paying wages, benefits, bonuses, or expenses, related to the maintenance and operation of the retail facility or typically considered to be part of a business's operating expenses and overhead;
- b. "Essential government services" includes, but is not limited to: government services to provide and maintain infrastructure such as sidewalks, roads, and utilities; services such as fire protection and law enforcement; the costs of administering the Tribal cigarette tax stamp program under this Compact, including all deductions and exemptions similar to those available to retailers, wholesalers, and others under state law; Tribal administration activities such as tax functions, contracting for health benefits, economic development, natural resources, and the provision of job services; and distribution of moneys related to trust funds, education, general assistance, activities such as land and building acquisitions, and building development and construction. The parties specifically further agree that the per capita distribution of proceeds to Chehalis Tribal Members is an essential government service.

8. Other Retail Sales within Indian Country by Tribal Members

Only Tribal retailers are permitted to make retail cigarette sales within Indian country.

9. Rule 192 – Application

This Compact is a "cooperative agreement" as that term is used in WAC 458-20-192 (Rule 192).

10. Jurisdiction

This Compact does not expand or limit the jurisdiction of either the Tribe or the State.

11. Severability

If any provision of this Compact or its application to any person or circumstance is held invalid, the remainder of the Compact is not affected.

THUS AGREED THIS 18th day of July, 2003.

CHEHALIS TRIBE

STATE OF WASHINGTON

By: David Burnett
David Burnett,
Tribal Chair

By: Gary Locke
Gary Locke,
Governor