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CIGARETTE TAX COMPACT

Between

THE PORT GAMBLE S'KLALLAM TRIBE

And

THE STATE OF WASHINGTON

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PREAMBLE

WHEREAS, the Port Gamble S'Klallam 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 over questions regarding jurisdiction over and the taxation of the sale and distribution of Cigarettes; 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 Tribal 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, 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 mutual interests of the Tribe and the State brought these two governments together to pursue their common interest in resolving this tax disagreement; and

WHEREAS, this compact is authorized, on the part of the State, by legislation, including House Bill 5372, enacted by the 2001 Regular Session of the 57th Legislature and signed by the Governor, effective July 22nd, 2001, and House Bill 2553, enacted by the 2002 Regular Session of the 57th Legislature and signed by the Governor, effective June 13, 2002, as codified in RCW 43.06.450, RCW 43.06.455, RCW 43.06.460, and RCW 82.24.295; and on the part of the Tribe, by a Tribal Ordinance duly adopted by the Port Gamble S'Klallam Tribal Council and signed by the Tribal Chairman.

NOW THEREFORE, the Tribe by and through its Tribal Council, and the State by and through its Governor, do hereby enter into this Compact for the mutual benefit of the Tribe and the State.

PART I

Definitions

1. "Auditor" means an independent third party auditor selected pursuant to Part VIII, Section 2 of this Compact.
2. "Allocation" means the number of Cigarettes available to be sold to Tribal Members free of all State Cigarette and sales taxes. The Allocation is based on a formula that includes consumption data and Tribal service area population.
3. "Carton" or "Carton of Cigarettes" means, unless otherwise indicated, a carton of two hundred (200) Cigarettes.
4. "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.
5. "Compact" means this Compact entered into by the State and the Tribe.
6. "Department" means the Washington State Department of Revenue.
7. "Essential Government Services" means services provided by the Tribe, including, but not limited to, administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development, and as more fully defined in Part XIII, Section 8.
8. "Indian Country," consistent with the meaning given in 18 U.S.C. 1151, means:
 - All land within the limits of the Port Gamble S'Klallam Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the Reservation; and
 - All Indian allotments or other lands held in trust for a Port Gamble S'Klallam Tribal Member or the Tribe, the Indian titles to which have not been extinguished, including rights of way running through the same.
9. "Liquor Control Board" is an agency of the State with a mission to prevent the misuse of alcohol and tobacco through education, enforcement, and controlled distribution.
10. "Local Retail Sales Tax" means the combined Washington local retail sales and use taxes applicable in the area.

11. "NonIndian" means an individual who is neither a Tribal Member nor a Nonmember Indian.
12. "Nonmember Indian" means an enrolled member of a federally recognized Indian Tribe other than the Port Gamble S'Klallam Tribe.
13. "Parties to the Compact" or "Parties" means the Tribe and the State.
14. "Port Gamble S'Klallam Reservation" or "Reservation" means the area recognized as the Port Gamble S'Klallam Reservation by the United States Department of the Interior.
15. "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.
16. "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 an agreement with the Tribe requiring it to abide by the terms of this Compact.
17. "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 contract with the Tribe requiring it to abide by the terms of this Compact.
18. "State Cigarette Tax" means the State tax imposed on each Cigarette, which is expressed in cents per Cigarette.
19. "State and Local Retail Sales and Use Taxes" means taxes levied by the State or by local units of government and expressed as a percentage of the sales price (which includes the State Cigarette Tax) of a unit of Cigarettes.
20. "State Taxes," in this Compact only, means a combination of the "State Cigarette Tax," and the "State and Local Retail Sales and Use Taxes."
21. "State" means the State of Washington.
22. "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. "Tobacco products" do not fall within the definition of "Cigarettes."
23. "Tribal Member" means an enrolled member of the Port Gamble S'Klallam Tribe.

24. "Tribal Retailer" means a Cigarette retailer wholly owned by the Tribe or any other enterprise controlled by the Tribe either of which is located in Indian Country, specifically including the Port Gamble Development Authority, a wholly owned subsidiary of the Tribe.

25. "Tribal Cigarette Tax" means the tax or taxes enacted as a provision of Tribal ordinance on the units of Cigarettes sold, expressed in cents per Cigarette, and on the sales of Cigarettes to retail buyers, expressed in terms of a percentage of the sales price of the unit of Cigarettes.

26. "Tribe" or "Tribal" means or refers to the Port Gamble S'Klallam Tribe, a federally recognized Tribe.

27. "Wholesaler" means every person who purchases, sells, or distributes Cigarettes for the purpose of resale only.

PART II

Applicability of the Compact

1. Execution of Compact

This Compact shall become effective when approved by both the Tribal Council as indicated by the signature of the Tribal Chairman, and by the State when signed by the Governor. This Compact shall be executed in duplicate originals, with each Party retaining one fully-executed duplicate original of the Compact.

2. 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. If the Tribe desires to pursue mail order and/or internet sales of Cigarettes, the Tribe and State agree to negotiate in good faith mutually acceptable terms and conditions of a memorandum of understanding concerning the taxation of such sales.

3. Scope Limited

This Compact does not apply to:

- a. Cigarettes sold at retail by NonIndians or Nonmember Indians;
- b. Tobacco Products as defined in Part I of this Compact; and
- c. Cigarettes manufactured by the Tribe or its enterprises within Indian Country.

PART III

Imposition of Tribal Cigarette Taxes

1. Tribal Retailers

The Tribe agrees to notify the Department thirty (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. 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 owned by the Tribe are authorized to make sales of Cigarettes.

2. Tax Imposed on Sales by Tribal Retailers

a. Subject to Part V. Section 1, concerning retail sales to Tribal Members, the Tribe, by ordinance and in accord with the requirements of this Part, shall impose Tribal Cigarette Taxes on all sales by Tribal Retailers of Cigarettes to retail purchasers within Indian Country.

b. Beginning no sooner than the date this Compact is signed by both parties, and subject to enactment of a Tribal ordinance authorizing the imposition of a Tribal Cigarette Tax, 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 80 percent of the State Taxes.

c. During the term of this Compact, upon any future increase in the State Cigarette Tax or State and Local Retail Sales and Use Taxes, the Tribal Cigarette Tax shall increase by no less than 100 percent of the increase in the combined State Taxes. Notwithstanding the foregoing sentence, so long as the Tribe is entitled to apply the 80 percent formula set forth above to its Cigarette sales, the increase in State Taxes shall trigger an increase in the corresponding Tribal Cigarette Tax of 80 percent of the increased amount.

d. Upon any future decrease in the State Cigarette Tax or State and Local Retail Sales and Use Taxes, the Tribal Cigarette Tax may decrease to a minimum of no less than 100 percent of the combined State Taxes.

e. The State will give written notice to the Tribe at least thirty (30) days prior to the effective date of any increases or decreases in State Taxes.

f. Pursuant to RCW 43.06.455(3) and RCW 82.23.295, during the term of this Compact the State waives its right to collect the State Taxes against the Tribe, its Wholesalers or retail buyers. In addition, the State agrees that enforcement of this Compact shall be done in accordance with the conditions set forth in this Compact.

3. Phase-In Tax Rate

The Tribe shall impose and maintain in effect a Tribal Cigarette Tax equaling no less than the sum of an amount equal to 80 percent of the State Taxes. The Tribe shall provide the State with written notice as to the date of imposition.

4. Final Tax Rate

No later than 36 months after the initial imposition of Tribal Cigarette Tax under this Compact and subject to the phase-in reduction under this Part, the Tribe shall impose and maintain in effect a Tribal Cigarette Tax equaling no less than the sum of: an amount equal to 100 percent of the State Taxes.

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

If during any Quarter, the number of Cartons of Cigarettes 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 Quarterly Average 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 the first day of the month immediately following the month the Tribal Cigarette Tax is imposed; and
- b. "Quarterly Average Sales" means the sum of the retail sales made during the two Quarters divided by two.

PART IV

Purchase of Cigarettes by Tribal Retailers

1. Wholesale Purchases – Requirements

By Tribal ordinance, the Tribe agrees to maintain in effect a requirement that the Tribal Retailers purchase Cigarettes only from:

- a. Wholesalers or manufacturers licensed to do business in the State; or
- b. The Tribe or its enterprises as a Tribal manufacturer or Wholesaler, such wholesale activity being subject to a memorandum of agreement under Part VI, Section 2 of this Compact.

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

Cigarettes bearing the tax stamp required by this Compact may be delivered or transferred within or outside 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. Invoices identifying the Cigarettes as Tribe Cigarettes must accompany such Cigarettes.

PART V

Tax Stamps

1. Tax Stamp Required

a. All Cigarettes sold by Tribal Retailers shall bear a Washington State tax stamp. The Tribe agrees to post a notice at the applicable Tribal store(s) advising that its Cigarettes may not be purchased for resale.

b. The Tribe, may, by ordinance, allow for an exemption from the Tribal Cigarette Tax for enrolled Tribal Members over the age of 18 years old, in which case the Cigarette Allocation allowance under WAC 458-20-192 shall apply during the term of this Compact.

c. If the Tribe elects to institute its own stamp or if the State develops a generic tribal stamp to be used in lieu of the current State Cigarette stamp, the Tribe and State agree to negotiate in good faith mutually acceptable terms and conditions of a memorandum of understanding concerning the use of such stamps.

2. Creation and Supply of Tax Stamps

The Tribe will use Washington State tax stamps, which are provided by the State through its stamp vendor. The State agrees that the Tribe will purchase Cigarettes with the State stamp affixed after the effective date of the Tribal Cigarette Tax, until such time as the Tribe arranges for the use of a Tribal stamp. The State will refund to the Tribe on a minimum of a monthly basis the tax attributable to such Cigarettes, provided that the invoices from the Wholesaler to the Tribal Retailer indicate that the Tribal Cigarette Tax was passed on to the Tribal Retailer.

3. Requirements for Affixation of Stamps by Wholesalers

a. Wholesalers shall affix the tax stamps to the smallest container of Cigarettes that will be sold or distributed by the Tribal Retailer. Stamps shall be affixed so that the stamps may not be removed from the package without destroying the stamp.

b. Wholesalers 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. The term "holiday" is limited to the following holidays: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas.

4. Wholesaler Obligation Under State Law

Affixing of the tax stamps, retention and production of records required by State law (in the case of state licensed Wholesalers) and by this Compact (in the case of Self-certified Wholesalers or Self-certified Tribal Wholesalers), and compliance with other requirements in this Compact, shall be deemed to satisfy the State Cigarette excise tax obligation of a Wholesaler.

5. State Agreement Regarding Compliance with State and Federal Law

The State agrees that all transactions that conform with the requirements of this Compact do not violate State law and 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. If the Tribe desires to purchase Cigarettes from Self-certified Wholesalers or Self-Certified Tribal Wholesalers, the Tribe and State agree to negotiate in good faith mutually acceptable terms and conditions of a memorandum of understanding concerning among other things, the record keeping of such sales.

2. Tribe as Wholesaler

This Compact contemplates that the Tribe may, at some future date, act as its own Wholesaler. If the Tribe decides to act as its own Wholesaler in regards to sales to the Tribal Retailers, the Tribe and State agree to negotiate in good faith mutually acceptable terms and conditions of a memorandum of understanding concerning among other things, such Wholesale activity. If the Tribe, by itself or through a Tribal enterprise, manufactures and wholesales to the Tribal Retailers, that wholesale activity does not require a memorandum of agreement under this section.

PART VII

Enforcement Authority and Responsibility of Liquor Control Board

1. Intent

The State authorizing legislation for this Compact states that it is the intent of the Legislature that the Liquor Control Board and the Department continue the division of duties and

shared authority under Chapter 82.24 RCW and therefore the Liquor Control Board is responsible for enforcement activities that come under the terms of Chapter 82.24 RCW.

2. Commercial Carriers

The State recognizes that Wholesalers who meet the requirements of this Compact may make shipments of Cigarettes by commercial carrier. Such shipments must be accompanied by documents required under this Compact and are subject to advance notice requirements.

PART VIII

Independent Third Party Auditor

1. General

The Tribe wishes to provide assurance that all Parties to this Compact are in compliance with its terms. This Part will provide a process for regular verification of the requirements in this Compact. The verification process is intended to reconcile data from all sources that make up the Cigarette 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 must be a certified public accountant licensed by the State and in good standing as confirmed by the licensing board through which the Auditor is licensed. The Auditor will review records on an annual basis, consistent with the Tribe's fiscal year, to verify the requirements of this Part unless otherwise specified. The Tribe will retain the Auditor and bear the costs of the auditing services. The Tribe shall be entitled to communicate freely with the Auditor.

3. Audit Protocol

To ensure compliance with this Compact, the Auditor must adhere to the following protocol:

a. **Period under Review:** To verify the requirements of this Compact, the Auditor shall review records for all years 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 Tribe's books.

b. **Records Examined:** To verify the requirements of this Compact, the Auditor shall 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 Tribe's Cigarette stamping, selling, or taxing activities, unless a review of the records is reasonably necessary for an internal reconciliation of the books:

1. **Tribal Retailers:** records and invoices of Cigarettes purchased from licensed 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 of this Compact and records to verify that the Retail Selling Price included the applicable Tribal Cigarette Tax; and

2. **Tribe:** records necessary to verify that the Tribes used all Tribal Cigarette Tax revenue for Essential Government Services.

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. Tribal Retailer

The Auditor will be responsible for reviewing the records, identified in subsection 3(b) of this Part, of the Tribal Retailer to certify that the Tribal taxes were collected, that all Cigarettes are properly stamped, that Cigarettes were obtained from Wholesalers authorized under this Compact, that any exemptions from tax are documented, and that the Tribe used the Tribal Cigarette Tax revenues for Essential Government Services.

6. Essential Government Services

The Auditor shall annually review the records of the Tribe and the Tribal Retailer to certify that Tribe used the Tribal Cigarette Tax revenues for Essential Government Services in accordance with the requirements of Part XIII section 8 of this Compact.

PART IX

Dispute Resolution

1. General

a. 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.

b. As used in this Part “days” means business days, unless otherwise specified.

2. Notification of Violation

Any Party that believes a violation of the Compact has occurred shall notify the other Party in writing, stating the nature of the alleged violation and any proposed corrective action or remedy (“Notice of Violation”). The Parties shall meet within 14 days of sending of the Notice of Violation, unless the Parties agree on a different date, to attempt to resolve between themselves the issues raised by the Notice of Violation, and provide an opportunity to implement any agreed corrective action.

3. Mediation

If the Parties are unable to resolve the disputed issues through joint discussions under Section 1 of this Part, either Party may request mediation by giving the other Party a written mediation demand ("Mediation Demand"). The Parties shall attempt to agree on a mediator. If they cannot agree on a mediator within 30 days of the Mediation Demand, each Party shall select a mediator and the two mediators selected by the Parties shall jointly select a third mediator. Mediation shall occur within a reasonable time of selection of the mediator(s). The Parties shall bear their own attorneys fees but shall share equally the other costs of conducting the mediation, including the fees of the mediator.

4. Remedies

Whenever an issue is submitted to mediation pursuant to a Mediation Demand, the mediator(s) shall render an opinion as to whether a violation has occurred and may recommend corrective action to remedy such violation. The mediator(s) shall not render an independent recommendation on any issue on which the Parties reach agreement. Recommended remedies may include: audit of relevant Tribal records, interpretation of Compact terms, changes in reporting, record keeping, enforcement practices, business practices, or similar actions. Recommended remedies shall not include an award of monetary damages or costs of any kind, or the disclosure of any records not specifically subject to disclosure under this Compact.

5. Termination of Compact

If, after no more than twenty-four (24) months from the Notice of Violation, (a) the Parties are unable to resolve a disagreement using the dispute resolution methods authorized in this Part, either Party may terminate this Compact or (b) if a Party continues to violate a Compact term after completion of mediation, the other Party may terminate this Compact. The parties may, after no less than six (6) months following any such termination, enter into a new Compact.

6. Disagreements Regarding Reports of the Auditor

If either Party has a concern about a report from the Auditor, such Party may choose to resolve the concern through the use of a mediator under the procedures set forth in Part IX, Section 2 through 5 of this Compact. Failure of either Party to grant the mediator access to relevant records the mediator deems reasonably necessary to review the report is a violation of this Compact. The mediator may use the services of an independent third-party certified public accountant in undertaking such review.

7. Termination For Cause

a. Either Party may terminate the Compact for cause. For the purposes of this section, "cause" shall mean only the following violations ("For Cause Violations"):

1. Retail sales of unstamped Cigarettes during the term of this Compact;
2. Failure to submit to mediation as required by this Part IX;

3. A breach of the confidentiality provisions of Part XII of this Compact;
4. Use of Tribal Cigarette Tax proceeds in violation of the terms of this Compact.
5. The State's violation of Part III, Section 2(f) or Part V, Section 5 of this Compact; or

b. The Party seeking the termination for cause shall notify the other Party in writing stating the facts constituting the alleged For Cause Violation ("Termination Notice"). The Parties shall, within ten (10) days of giving the Termination Notice, use the procedures of Part IX, Section 2 of this Compact to select a mediator(s) to review the facts upon which the Termination Notice is based. The responding Party has ten (10) days to provide its facts to the mediator(s).

c. If the mediator issues an opinion that the alleged For Cause Violation has not occurred, the Termination Notice shall be deemed withdrawn. If the mediator issues an opinion that the alleged For Cause Violation has occurred, the Compact shall be deemed terminated; provided that the Party that gave the Termination Notice may elect to maintain the Compact pending discussion of a remedy within the time limit of Part IX, Section 7(d) below. The Parties shall use their best efforts to resolve the dispute. If the Parties reach agreement, or the For Cause Violation is corrected within such time limit, the Compact shall not be terminated.

d. If the Parties fail to reach agreement, or the For Cause Violation is not corrected, within one hundred eighty (180) days from the date of giving the Termination Notice, the Compact shall be terminated.

8. 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 Part XIII, Section 7 of this Compact. Upon such notification, the Tribe shall take enforcement action according to the provisions of Tribal ordinance. Upon the third or subsequent violation within any rolling one-year period of Part XIII, Section 7 of this Compact, the provisions of Section 2 through 5 of this Part shall apply.

9. 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 three (3) working days after the date written notice is sent. 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:

Ronald G. Charles
Tribal Chairman/Executive Director
31912 Little Boston Road N.E.
Kingston, WA 98346

With a copy to:

James M. Hushagen and
Clemencia Castro
Eisenhower & Carlson, PLLC
1201 Pacific Avenue
Tacoma, WA 98402

10. 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 Tribe, the Department, and the Liquor Control Board

1. Tribe

The Tribe is responsible for both enforcement of the terms of this Compact and administration of the Compact, audit procedures and record keeping, and dispute resolution. Upon the proper disclosure and identification to the Tribe by Department personnel, such Department personnel may enter the Tribal Retail store(s) during regular business hours to observe the purchase and sale of Cigarettes pursuant to this Compact and may also purchase Cigarettes.

2. Liquor Control Board

This agreement does not alter the Liquor Control Board's responsibility under chapter 82.24 RCW and the Agreement Between the Washington State Liquor Control Board and the Port Gamble Band of S'Klallam Indians for Purchase and Resale of Liquor in Indian Country made between the Tribe and the Liquor Control Board in 1994.

3. Department of Revenue

The Department is responsible for the administration of the Compact, audit procedures and record keeping, and dispute resolution, as well as negotiation of its terms, on behalf of the Governor of the State.

PART XI

Term of this Compact – Amendment

This Compact shall remain in effect no longer than eight (8) years from its effective date, subject to the termination provisions of Part IX of this Compact. 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, including its tax and tax collection provisions, apply to the Tribe, its members or agents regarding activities and conduct within or without 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. Periodic Review of Compact Status

Representatives of the Tribe and the Department agree to meet at mutually agreeable times and places upon the reasonable request of either Party to review the status of this Compact and any issues that have arisen under the Compact.

7. 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.

8. Essential Government Services

a. 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.

b. The Tribe may not use Tribal Cigarette Tax revenue to subsidize Tribal Cigarette and food retailers. "Subsidize" means that proceeds from the Tribal Cigarette Tax cannot be expended on the Direct Business Activities of the Tribal retail Cigarette business. For the purposes of this Compact, it will be presumed that any maintenance and operation expenditures in regard to a Tribally-owned facility that has tenants in addition to the Tribal Cigarette retailer do not subsidize the Tribal Cigarette retailer.

c. The following definitions shall apply to this Part:

1. "Direct Business Activities" shall be limited to paying wages, benefits, bonuses, or expenses directly related to the maintenance and operation of the Tribal retail Cigarette business;

2. "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, further including transportation vehicles and related costs; 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, such activities as land and building acquisitions, and building development and construction.

9. Other Retail Sales within Indian Country by Tribal Members

Only Tribal Retailers are permitted to make retail Cigarette sales within Indian Country.

10. Rule 192 – Application

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

11. Subsequent State Legislative Enactments

If the State Legislature enacts a law that provides more favorable terms for the Tribe, the parties shall amend the Compact to reflect such terms.

12. Jurisdiction

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

13. 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.

DATED NOVEMBER 21, 2003.

**PORT GAMBLE
S'KLALLAM TRIBE**

STATE OF WASHINGTON

By: Ronald G. Charles
RONALD G. CHARLES
Tribal Chairman/Executive Director

By: Gary Locke
GARY LOCKE
Governor 11-05-03

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MEMORANDUM OF AGREEMENT
Between
THE PORT GAMBLE S'KLALLAM TRIBE
And
THE WASHINGTON STATE DEPARTMENT OF REVENUE
CONCERNING PURCHASE OF CIGARETTES FROM THE SQUAXIN ISLAND TRIBE

I. Parties

The Parties to this Memorandum of Agreement (MOA) are the Port Gamble S'Klallam Tribe ("the Tribe") and the Washington State Department of Revenue ("the Department") (collectively "the Parties").

The Port Gamble S'Klallam Tribe is a federally recognized Indian Tribe, possessed of the full sovereign powers of a government.

The Washington State Department of Revenue is an executive department of Washington State government operating under the authority of the Governor, with statutory authority with respect to cigarettes taxes and licensure under chapter 82.24 RCW.

II. Purpose

This MOA is intended to provide a framework for the government-to-government cooperation and coordination regarding purchases of cigarettes by the Tribe from the Squaxin Island Tribe acting as a wholesaler, and is intended to address the requirement of Part VI, section 1 of the State-Port Gamble S'Klallam Cigarette Compact between the Tribal Chair and the Governor ("the Compact").

III. General Terms of Agreement

1. The State agrees that, in addition to purchases from wholesalers licensed with the State, the Tribe may purchase cigarettes from the Squaxin Island Tribe, acting as a self-certified tribal wholesaler, as that phrase is defined in the Compact, subject to the following conditions and limitations:

- (a) The Parties agree cigarettes purchased from a self-certified tribal wholesaler will be stamped with a tax stamp as required by the Compact.
- (b) The Tribe agrees the Squaxin Island Tribe must by letter certify to the Department that it will abide by the terms of the Compact and must in addition sign an agreement with the Tribe requiring it to abide by the terms of the Compact.
- (c) The Tribe agrees it shall provide copies of such agreements to the Auditor (as that term is used in the Compact) for its review. The agreement between the Tribe and Squaxin Island Tribe will also include a requirement that:
 - (i) The cigarettes transported in the state of Washington will be accompanied by invoices detailing the quantity and brand of cigarettes destined for the Tribe. Such invoices shall provide an order number and shall identify the seller of the cigarettes; and
 - (ii) The wholesaler will allow a third party Auditor (as that phrase is used in the Compact) access to its records for the purpose of determining whether the tribal cigarette tax has been paid and whether tribal tax stamps are properly affixed to the cigarette containers.

(d) The Parties agree that a third party auditor (as that phrase is used in the Compact) will review the records of the self-certified tribal wholesaler, and that for the purposes of Part VIII of the Compact, the records subject to review, at a minimum, are records and invoices of stamp purchases, records and invoices of sales of stamped cigarettes, stamp inventory, and the stamping process.

2. The Parties agree that a disagreement or violation under this MOA is subject to the dispute resolution procedures of Part IX of the Compact.

IV. Communication

The Parties agree to maintain regular and open communication regarding the administration and implementation of this MOA. The Parties agree that the following individuals will be designated contacts regarding administration of this MOA:

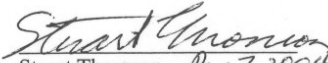
Philip Dorn, Port Gamble S'Klallam Tribe
Leslie Cushman, Tribal Liaison, Department of Revenue


The Parties agree that if either believes that the goals and objectives of this MOA are not being met, that they should meet promptly to discuss any issues and concerns.

V. Effect and Duration

No amendment or alteration of this agreement shall arise by implication or course of conduct. This agreement may be altered only by a subsequent written document, signed by the parties, expressly stating the parties' intention to amend their agreement. This MOA shall remain in effect for two years from its effective date, subject to the termination provisions under Part IX of the Compact. This MOA shall be automatically renewed for successive periods of two years (but the renewal term shall not extend beyond the term of the Compact), unless either party objects in writing at least 30 days prior to the expiration date.

This Agreement is hereby made this 23rd day of November 2004.


Stuart Thronson Dec 7, 2004
Cigarette Program Manager


Ron Charles
Tribal Chair

MEMORANDUM OF AGREEMENT
Between
THE PORT GAMBLE S'KLALLAM TRIBE
And
THE WASHINGTON STATE DEPARTMENT OF REVENUE
CONCERNING CIGARETTE STAMPS

I. Parties

The Parties to this Memorandum of Agreement (MOA) are the Port Gamble S'Klallam Tribe ("the Tribe") and the Washington State Department of Revenue ("the Department") (collectively "the Parties"). The Port Gamble S'Klallam Tribe is a federally recognized Indian Tribe, possessed of the full sovereign powers of a government. The Washington State Department of Revenue is an executive department of Washington State government operating under the authority of the Governor, with statutory authority with respect to cigarettes taxes and licensure under chapter 82.24 RCW.

II. Purpose

This MOA is intended to address the requirement of Part V, sections 1 and 2, of the State-Port Gamble S'Klallam Cigarette Compact between the Tribal Chair and the Governor ("the Compact").


III. General Terms of Agreement

1. The State has developed a generic tribal stamp, which it has offered for use to the Tribe, subject to the conditions of this agreement.
2. The Tribe agrees it will use such stamp in accord with the terms of the Compact, its wholesaler will affix the stamps prior to the Tribe acquiring the cigarettes, and the Tribe will institute an accounting method that indicates that the cigarette tax has been paid to the Tribal Government.

IV. Effect and Duration

No amendment or alteration of this agreement shall arise by implication or course of conduct. This agreement may be altered only by a subsequent written document, signed by the parties, expressly stating the parties' intention to amend their agreement. This MOA shall be automatically renewed for successive periods of two years (but the renewal term shall not extend beyond the term of the Compact), unless either party objects in writing at least 30 days prior to the expiration date.

This Agreement is hereby made this 6th day of Dec., 2004.


Leslie Cushman, Assistant Director
Special Programs Division

12/07/04


Phillip Dorn, Director
Port Gamble Development Authority