

CIGARETTE TAX COMPACT

between

THE KALISPEL TRIBE OF INDIANS

and

THE STATE OF WASHINGTON

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

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

WHEREAS, the body of Federal law that defines 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;

WHEREAS, the State has committed, through the Compact, 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;

WHEREAS, a long-standing disagreement has existed between the tribe and the State over certain jurisdictional issues, and the taxation of, the sale and distribution of cigarettes;

WHEREAS, there are benefits from resolution of that disagreement by the change in focus from enforcement and litigation to a focus on the administration of the Cigarette Tax Compact;

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

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;

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

WHEREAS, the mutual interests of the Tribe and the State brought these two governments together to pursue their common interest in avoiding a tax disagreement; and

WHEREAS, this Compact is authorized, on the part of the State by legislation, including House Bill 2575 enacted by the 2001 Regular Session of the State Legislature and signed by the Governor, effective July 1, 2001, and House Bill 2573, enacted by the 2002 Regular Session of the Legislature and signed by the Governor, effective June 15, 2002, as codified in Revised Code of Washington (RCW) 43.06.450, RCW 43.06.451, RCW 43.06.460, and RCW 43.06.461.

PREAMBLE

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

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

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;

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;

WHEREAS, a long-standing disagreement has existed between the tribes and the State over questions regarding jurisdiction over, and the taxation of, the sale and distribution of cigarettes;

WHEREAS, there are benefits 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;

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;

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;

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

WHEREAS, the mutual interests of the Tribe and the State brought these two governments together to pursue their common interest in avoiding a 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 Revised Code of Washington (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 the Kalispel 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. to wit:

PART I – DEFINITIONS

1. "Auditor" means an independent third party auditor selected pursuant to Part VIII of this Compact.
2. "Allocation" means the number of cigarettes available to be sold to Indians free of all state cigarette and sales taxes. It 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 agreement 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.
8. "Indian country," consistent with the meaning given in 18 United States Code (U.S.C.) section 1151, includes:
 - (a) All land within the limits of the Kalispel Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation.
 - (b) All lands placed in trust or restricted status for individual member Indians or for the Tribe, and such other lands as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.
 - (c) All Indian allotments or other lands held in trust for a tribal member or the Tribe, the Indian titles to which have not been extinguished, including rights of way running through the same.

9. "Kalispel Reservation" or "Reservation" means the area recognized as the Kalispel Reservation by the United States Department of the Interior.
10. "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.
11. "Local retail sales tax" means the combined Washington local retail sales and use taxes applicable in the area.
12. "Non-Indian" means an individual who is neither a Kalispel tribal member nor a nonmember Indian.
13. "Nonmember Indian" means an enrolled member of a federally recognized Indian tribe other than the Kalispel Tribe.
14. "Parties to the agreement" or "parties" means the Tribe and the State.
15. "Retail selling price" means the 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.
17. "Self-certified wholesaler" means an out-of-state wholesaler who is not a self-certified tribal wholesaler.
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" does not include cigarettes.

23. "Tribal member" means an enrolled member of the Kalispel Tribe.
24. "Tribal retailer" means a cigarette retailer wholly owned by the Kalispel Tribe and located in Indian country.
25. "Tribal Cigarette Tax" means the tax or taxes enacted as a provision of tribal law on the units of cigarettes sold, expressed in cents per cigarettes.
26. "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.
27. "Tribe" or "tribal" means or refers to the Kalispel Tribe, a federally recognized tribe.
28. "Wholesaler" means every person who purchases, sells, or distributes cigarettes for the purpose of resale.

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 upon the imposition of the tribal cigarette tax pursuant to a tribal law 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 non-Indians or (b) tobacco products as that term is 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 inform the Department regarding the startup 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 Tribe is subject to this Compact. At the time of the execution of this Compact, the Tribe makes sales of cigarettes at its casino, located at Airway Heights.

2. Tax Imposed on Sales by Tribal Retailers

The Tribe, by law and in accord with the requirements of this Part, shall impose taxes on all sales by tribal retailers of cigarettes to non-Indian purchasers within Indian country.

Beginning no sooner than the date this compact is signed by both parties, and subject to enactment or revision of a tribal law authorizing the imposition of a tax on cigarettes, the Tribe shall impose and maintain in effect a tax on retail sales of cigarettes equal to 80% of the state taxes.

No later than 36 months after the initial imposition of a tax under this 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 equal to 100% of the state taxes.

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 twelve month period, as specified in this section 2, the 36 month period noted above shall be reduced by three months. The Auditor shall determine the quarterly average sales baseline. The baseline shall be calculated using sales at the casino for the six months immediately preceding the imposition of tax. The Auditor shall notify the Tribe and the Department when the retail sales for any quarter exceed the baseline by at least ten percent. These reductions will be cumulative. For 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 first month the Tribal cigarette tax is imposed, if the imposition of the tax is on or before the 15th of the month, or begins the first day of the second month the Tribal cigarette tax is imposed, if the imposition of the tax is after the 15th of the month; and
- (b) The "quarterly average sales" means the sum of the retail sales made during the two quarters divided by two.

During the term of this Compact and upon any future increase in the state cigarette tax, the tribal tax on cigarettes 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 cigarette sales, the increase in State taxes shall trigger an increase in the corresponding Tribal cigarette tax of 100 percent of the 80 percent of the increased amount.

Upon any future decrease in the state cigarette tax, the tribal tax on cigarettes may decrease to a minimum of no less than 100 percent of the combined State taxes.

The State will notify the Tribe at least thirty (30) days prior to the effective date, in writing, of any increases or decreases in the cigarette tax or the combined state sales and use tax.

Pursuant to RCW 43.06.455(3) and RCW 82.24.295, the State retrocedes from its tax during the time this Compact is in effect, subject to the imposition of a Tribal tax. In addition, the State agrees that enforcement of this Compact shall be done in accordance with the conditions set forth in this Compact.

PART IV – PURCHASE OF CIGARETTES BY TRIBAL RETAILERS

1. Wholesale Purchases- Requirements

The Tribe agrees to add to tribal law, and maintain in effect, a 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;
- (c) Self-certified tribal wholesalers who meet the requirements of Part VI section 3 of this Compact; or
- (d) The Tribe or its enterprises as a tribal manufacturer or wholesaler.

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

Cigarettes bearing the tax stamp required by this Compact or cigarettes purchased by the Tribe for stamping 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. Commercial carriers may make deliveries. Invoices identifying the delivery as cigarettes for the Kalispel Tribe must accompany such cigarettes.

PART V – TAX STAMPS

1. Tax Stamp Required

All cigarettes sold by tribal retailers shall bear either a Washington State Tribal Compact Stamp or a Kalispel Tribe tax stamp. The Tribe may allow for an exemption from this tax for enrolled members of a federally recognized Indian tribe who are over the age of 18 years, in which case the cigarette allocation allowance under WAC 458-20-192 shall apply during the term of this Compact in addition to the other provisions 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. If the Tribe chooses to exempt its members from all tax, the Tribe agrees to keep exact records of such sales.

2. Creation and Supply of Tax Stamps

- (a) The Tribe will use either Washington State Tribal Compact tax stamps, which are provided by the State through its stamp vendor, or tribal tax stamps. If the Tribe elects to institute its own 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.
- (b) If the Tribe elects to use the state tribal compact tax stamps it will purchase cigarettes with the 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. If the Tribe makes this election, the wholesaler shall obtain the stamps from the State's stamp vendor. The wholesaler shall affix the stamps to the cigarettes, sell the cigarettes to the Tribe without tax included in the price, and the Tribe in turn shall institute an accounting and pricing protocol that assures the cigarette tax is included in the price of the cigarettes.
- (c) If the Tribe elects to use the tribal tax stamps, the stamps will have a serial number or some other discrete identification. The Tribe agrees to purchase stamps from a nationally recognized stamp manufacturer.
- (d) The Tribe may contract with a bank or other stamp vendor to distribute tribal tax stamps. The stamp vendor shall distribute stamps to wholesalers, upon payment of the applicable Tribal cigarette tax by the wholesaler or Tribal retailer, and remit the collected taxes to the Tribe. The contract shall provide that the stamp vendor shall purchase a supply of Tribal tax stamps from the manufacturer and make them available for purchase. The Tribe may, at its option, select as the stamp vendor the bank with which the Department contracts for that service, or some other third-party stamp vendor satisfactory to both parties. The Tribe shall require the stamp vendor to remit to the Tribe all revenue collected from the Tribal cigarette tax. The Tribe shall require that the stamp vendor provide to the Tribe and to the Department timely reports detailing the number of Tribal tax stamps sold, and make its records available for auditing by the Tribe and the Department. The Tribe's contract with the stamp vendor shall specify a process by which the Tribe is assured that all wholesalers who sell cigarettes to Tribal retailers are paying the applicable Tribal taxes, unless the Tribal retailer has prepaid the tax to the stamp vendor. This process may include a requirement that wholesalers agree to provide documentation such as invoices of sales to verify to the Tribe that the Tribal taxes were paid. In the alternative, the Tribe may elect to act as its own stamp vendor. Should it so desire, it must enter into a memorandum of agreement with the Department, setting forth protocols regarding security and audit. The Department agrees to not unreasonably refuse entry into said memorandum of agreement.

3. Requirements for Affixation of Stamps by Wholesalers

Wholesalers or the Tribe shall be responsible for affixing 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. Stamps shall be affixed so that they may be readily viewed by inspection.

Wholesalers may only possess unstamped cigarettes for as long as is reasonably necessary to affix tax stamps to the packages for sale or to ship to the Tribe: 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**
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 out-of-state 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**
As to all transactions that conform to 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 jurisdiction 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 its review. The contract between the Tribe and the out-of-state self-certified wholesaler will also include a requirement that:

- (a) Invoices detailing the quantity and brand of cigarettes destined for the Tribe will accompany the cigarettes transported in the State. 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; and

- (b) The wholesaler will allow the Auditor access to its records for the purpose of determining whether the required tax stamps are properly affixed to the cigarette containers.

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 its review. The contract between the Tribe and the tribal wholesaler will also include a requirement that:

- (a) Invoices detailing the quantity and brand of cigarettes destined for the Tribe will accompany the cigarettes transported in the State. 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; and
- (b) The wholesaler will allow the Auditor access to its records for the purpose of determining whether the tax stamps for the Tribe's cigarettes are properly affixed to the cigarette containers.

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. Tribe as Wholesaler

This Compact contemplates that the Tribe may, at some future date, act as its own wholesaler. In the event that the Kalispel Tribe decides to act as its own wholesaler in regards to sales to the tribal retailers, it agrees to first enter into a memorandum of agreement with the Department regarding this activity. The Department agrees to not unreasonably refuse entry into said memorandum of agreement. The memorandum of agreement shall reference any applicable requirements of this Compact. 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 subsection.

**PART VII – ENFORCEMENT AUTHORITY AND
RESPONSIBILITY OF THE 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. **Notification**
The Tribe or its designee shall notify the Department seventy-two (72) hours in advance of all shipments of unstamped cigarettes by the self-certified wholesaler or self-certified tribal wholesaler to the Tribe or tribal retailers if such shipments will occur outside the reservation boundaries. 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.
3. **Commercial Carriers**
The State recognizes that shipments of cigarettes both from in state and from out-of-state wholesalers, who meet the requirements of this Compact, may be made by commercial carrier. Such shipments must be accompanied by documents as required under this Compact and 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 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 regular 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 Tribe will retain the Auditor 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, consistent with the Tribe's fiscal year, to verify the requirements of this Part unless otherwise specified.

3. **Audit Protocol**

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

Period under review: To verify the requirements of this Compact, the Auditor must 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 entity's books. In situations where the Auditor is responsible for verifying records on less than an annual basis, the period under review shall not include years previously reviewed by the Auditor, except when a violation is alleged to have occurred during the period previously reviewed.

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 stamp purchases, records and invoices of sales of stamped cigarettes, stamp inventory, and the stamping process;
- (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; and
- (c) Tribe: records necessary to verify that all tribal cigarette tax revenue was used to fund essential government services of the Tribe.

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 and ending December 31, 2005, and the Auditor must report its findings to the Tribe by April 1, 2006. This initial review shall include all of the activities covered by the protocol.

Thereafter, reviews shall take place on the regular audit period, which follows the Tribe's

fiscal year, with an audit report submitted within three months of each audit. The Tribe and the Department may by prior joint agreement select or vary the audit cycle depending on the on-going audit activity of the Tribe, in order to be efficient and effective in the use of auditor resources. The Tribe fiscal year is on a Federal Fiscal Year, basis ending on September 30th.

6. Self-Certified Wholesalers and Self-Certified tribal Wholesalers

The Auditor will be responsible for reviewing the records, identified in subsection 3(a) of this Part, of all self-certified wholesalers and self-certified tribal wholesalers that sell cigarettes to a tribal retailer to verify that the tribal cigarette tax was paid by the wholesaler, unless paid to the stamp vendor by the tribal retailer, and that the stamps were correctly affixed to containers of cigarettes.

The Auditor must review the records, identified in subsection 3(a) of this Part, of all self-certified wholesalers and self-certified tribal wholesalers that sell cigarettes to a tribal retailer no less than once every four years. If a wholesaler that previously sold cigarettes to a tribal retailer stops making such sales, the Auditor must review the records of that wholesaler during the next regularly scheduled annual audit.

7. 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 revenue from the tribal tax under this Compact are not used to subsidize the tribal retailer.

8. Joint Audit Implementation and Review

The Tribe and the State shall confer prior to the beginning of the initial audit cycle. The purpose will be to discuss the objectives of the upcoming audit, the expectations of both the Tribe and the State, the audit standards to be used in such audit, and any issues regarding detail of the audit, records pertinent to the review, or substance of the Auditor's report. Subsequent audit meetings will be held as required.

If warranted by the findings in the report, the Tribe and the State shall meet jointly with the Auditor to review the report and discuss any issues of concern. For the purposes of this section, "audit cycle" refers to the reoccurring scheduled audit of an entity.

9. Dispute Resolution In the event that either the Tribe or the Department disagrees with the Auditor's final report, either party may notify the other of the disagreement and follow the procedures for resolution of the disagreement in Part IX section 5 of this Compact.

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.

As used in this Part "days" means calendar days, unless otherwise specified.

1. Notification of Violation

If either party believes a violation of the agreement has occurred, it shall notify the other party in writing. The notice shall state the nature of the alleged violation and any proposed corrective action or remedy. The parties agree to meet within 14 days of receipt of the notice, unless the parties agree to a different date. The purpose of the meeting will be to attempt to resolve between them the issues raised by the notice of possible violation, and provide an opportunity to implement any agreed corrective action.

2. 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 a written mediation demand to the other party. The parties shall first attempt to agree on a mediator. If the parties cannot agree on a mediator within 30 days of written demand, a three person mediation panel shall be used and shall be selected as follows: each party shall select a mediator and the two mediators selected by the parties shall jointly select a third mediator.

The parties shall share equally the costs of mediation.

3. Remedies

Whenever an issue is submitted to mediation under this section, the mediators may recommend corrective action to remedy any violation that has occurred. In no case shall a mediator render an independent recommendation or decision on any issue on which the parties reach agreement. Remedies may include: audit of relevant tribal records, interpretation of Compact terms, changes in reporting, record keeping, enforcement practices, business practices, or similar actions. 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.

4. Termination of Compact

If, after no more than eight months from the initial Notice of Violation or notice of other disagreement, the parties are unable to resolve the disagreement or alleged violation and/or the appropriate corrective action using the dispute resolution methods authorized in this section, or if a party continues to violate a Compact term after the completion of the mediation process authorized in this section, this Compact may be terminated. The parties may, after no less than six (6) months following any such termination, enter into a new Compact.

5. 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 chosen under the provisions of Part IX, paragraph 2. 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.

6. Notification of For Cause Termination

Either party may terminate the Compact for cause. For the purposes of this section, "for-cause" shall mean only the following violations:

- (a) Retail 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) A breach of the confidentiality provisions of Part XII of this Compact; or
- (d) Use of tax proceeds in violation of the terms of this Compact.

The party seeking the termination for cause shall notify the other party and the mediator selected under Part IX, Section 2 of this Compact, who shall review the facts upon which the for-cause termination notice is based. The party making the allegation must provide a written recitation of the facts with the notice of termination. The responding party has ten days to provide its facts to the mediator. If the mediator determines that the alleged event has occurred, the Compact is terminated, however the party making the allegation may choose to go through the regular dispute resolution process in regard to the issue.

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. If the parties reach agreement, or the for-cause violation is corrected during the notice period, the Compact shall not be terminated.

7. 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 law. Upon the third or subsequent violation within any rolling one-year period of the sales to minors provisions of this Compact the provisions of section 1 of this Part shall apply.

8. 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 or e-mail. Notice shall be deemed effective 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:
Glen Nenema, Chairman
Kalispel Tribe of Indians
P.O. Box 39
Usk, Wa 99180

9. 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 KALISPEL
TRIBE, THE DEPARTMENT OF REVENUE, AND THE
LIQUOR CONTROL BOARD**

1. Kalispel Tribe
The Kalispel 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. The Kalispel 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.
2. Liquor Control Board
This agreement does not alter the Liquor Control Board's responsibility under chapter 82.24 RCW.
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 of Washington.

PART XI – TERM OF THIS COMPACT - AMENDMENT

1. This Compact shall remain in effect no longer than eight (8) 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 thirty (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.

2. In the event that the State negotiates a contract, compact, or other agreement with another Tribe on terms more favorable than those included in this Compact, the State shall disclose to the Tribe the more favorable terms within thirty days of the Contract containing those terms becoming effective. Within thirty days of disclosing more favorable terms, the State shall initiate discussions with the Tribe to amend this Compact to incorporate more favorable terms if so desired by the Tribe.

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 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 to the Department regarding the status of land upon which any new tribal retailer is located.
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**
Appropriate representatives of the Tribe and of the Department shall hold periodic meetings to review the status of this Compact and any issues that have arisen under the Compact. Those meetings shall be held no less frequently than once every twelve (12) months, but may be held more frequently.

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 revenue under the process set forth in Part VIII of this Compact.
 - b. Tribal cigarette tax revenue may not be used 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. In addition, where the cigarette business is collocated with a retail food business, the proceeds cannot be expended on the direct business activities of the tribal retail cigarette business.
 - c. The following definitions shall apply to this Part:
 - i. "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;
 - ii. "Essential governmental services" include, 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

Should the Legislature enact 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.

THUS AGREED THIS _____ day of -----, 2004.

KALISPEL TRIBE

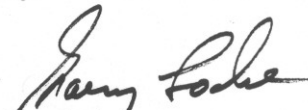
By:



Glen Nenema,
Tribal Chairman

STATE OF WASHINGTON

By:



Gary Locke,
Governor

Nov. 1, 2004