

CIGARETTE TAX COMPACT

between

THE SAUK-SUIATLE TRIBE

and

THE STATE OF WASHINGTON

PREAMBLE

WHEREAS, the Sauk-Suiattle Tribe is a federally recognized Indian Tribe, possessed of the full inherent sovereign powers of a government; and

WHEREAS, the state of Washington 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 of Washington 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, the imposition of the State cigarette taxes on Sauk-Suiattle Tribe sales of cigarettes from Tribal retailers to nonmember purchasers has the practical effect of limiting the Tribe's ability to impose cigarette taxes on such sales for essential Tribal governmental purposes; 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 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 disagreements by conducting discussions on a government-to-government basis; and

WHEREAS, the mutual interests of the Sauk-Suiattle Tribe and the state of Washington brought these two governments together to pursue their common interest; 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 Sauk-Suiattle Indian Tribe, by a Tribal Ordinance duly adopted by the Sauk-Suiattle Tribal Council and signed by the Tribal Chair.

NOW THEREFORE, the Tribe by and through its 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 the auditor selected pursuant to Part VII 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 Compact entered into by the state of Washington and the Sauk-Suiattle Tribe.
- (6) "Department" means the Washington State Department of Revenue.
- (7) "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.

- (8) "Indian country," pursuant to 18 U.S.C. 1151 means:
- (a) all land within the limits of any Indian 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 dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
 - (c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
- (9) "Liquor control board" means the agency of the state responsible for enforcement of chapter 82.24 RCW pursuant to RCW 82.24.550.
- (10) "Local retail sales tax" means the combined Washington local retail sales 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 Sauk-Suiattle Tribe.
- (13) "Parties to the agreement" or "parties" means the Sauk-Suiattle Indian Tribe and the state of Washington.
- (14) "Retail selling price" means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, which price includes the Tribal cigarette tax.
- (15) "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.
- (16) "Self-certified wholesaler" means an out-of-state wholesaler who is not a self-certified tribal wholesaler.
- (17) "State Cigarette Tax" means the state tax imposed on each cigarette, which is expressed in cents per cigarette.
- (18) "State and Local Retail Sales and Use Taxes" means taxes levied by the State or local units of government and expressed as a percentage of the sales price (which includes the State Cigarette Tax) of a unit of cigarettes.
- (19) "State" means the state of Washington.
- (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) "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 product" does not include cigarettes.
- (22) "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.
- (23) "Tribal member" or "member" means an enrolled member of the Sauk-Suiattle Tribe.
- (24) "Tribal retailer" means a cigarette retailer wholly owned by the Sauk-Suiattle Tribe and located in Indian country.
- (25) "Tribal tax stamp" means the stamp or stamps that indicate the Sauk-Suiattle Tribal cigarette tax imposed under this Compact is paid or that identify those cigarettes with respect to which no tax is imposed.
- (26) "Tribe" or "Tribal" means or refers to the Sauk-Suiattle Tribe, a federally recognized Tribe.
- (27) "Sauk-Suiattle Indian Reservation" or "reservation" means the area recognized as the Sauk-Suiattle Indian Reservation by the United States Department of the Interior.
- (28) "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 the Sauk-Suiattle Tribal Council, signed by the authorized signatory for the Tribe and signed by the Governor of the state of Washington. 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. "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.

(3) Scope Limited

This Compact does not apply to:

- (a) cigarettes sold at retail by non Indians or nonmember Indians; or
- (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 to notify the Department regarding the startup of cigarette sales by any tribal retailer who begins selling cigarettes after the effective date of this Compact.
- (b) The Tribe agrees that any cigarette retailer wholly owned by the Sauk-Suiattle Tribe is subject to this Compact.

(2) Tax Imposed on Sales by Tribal Retailers

- (a) The Tribe shall impose by ordinance taxes pursuant to the requirements of this Part on all sales by Tribal retailers of cigarettes within Indian country. Such ordinance may provide for compensation for wholesalers for their services in affixing the Tribal tax stamp and an exemption from tax as provided under Part V of this Compact. The Tribe may allow for an exemption from such taxes for Tribal members, under Part V section 1 of this Compact.
- (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 tax on cigarettes, the Tribe shall impose and maintain in effect a tax on the retail sale of cigarettes equaling no less than 80 percent of the state taxes.
- (c) No later than 36 months after the initial imposition of a tax under this Compact and subject to the phase-in reduction under section 3 of this part, the Tribe shall impose and maintain in effect a tax on the retail sale of cigarettes equal to 100 percent of the state taxes.
- (d) During the term of this Compact and upon any future increase in the state taxes, 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 80 percent of the increased amount.

- (e) 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.
- (f) The State will notify the Tribe at least 30 days prior to the effective date, in writing, of any increases or decreases in the state cigarette tax or the combined state sales and use taxes.
- (g) 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.
- (h) The Tribe shall provide advance notice to the state regarding the date the tribal tax goes into effect.

(3) Reduction in Three Year Phase-In – How to Determine

Commencing eighteen months from the date the tax is first imposed, 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 first year after the imposition of the Tribal 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 ten 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; and
- (b) The "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

The Tribe agrees to add to Tribal law, and maintain in effect, a requirement that Tribal retailers purchase cigarettes only from sources authorized pursuant to 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. Such cigarettes must be accompanied by invoices identifying the cigarettes as Sauk-Suiattle Tribe cigarettes.

(3) Transportation of Unstamped Product.

The Tribe or its designee shall notify the Department seventy-two (72) hours in advance of all shipments of unstamped cigarettes to the Tribe 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. Nonetheless, despite the foregoing, if all other requisite criteria are in order, such lack

of notice does not subject the tribal cigarettes to seizure unless the immediately previous order of tribal cigarettes also lacked the requisite notice.

PART V

Tribal Tax Stamps

(1) Tribal Tax Stamp Required

(a) All cigarettes sold by the Tribal retailer shall bear either a Washington State Tribal Compact Stamp or a Sauk-Suiattle Tribal tax stamp. The Tribe may allow for an exemption from this tax for enrolled members who are over the age of 18 years. If the Tribe chooses to exempt its members from tax, the Tribe agrees to keep exact records of such sales, under (b) of this section. The expectation of both Parties is that if the Tribe chooses to tax its members that the allocation allowance described in WAC 458-20-192 will be used as an approximation of sales to members and the Tribe will not be required to keep exact records of such sales. This allocation figure will be used to distinguish funds subject to the requirements of Part XIII section 8, from funds that are not.

(b) The Tribe may by ordinance allow for an exemption from the tax imposed under Part III of this Compact for Tribal members who are over the age of 18 years. If the Tribe provides for such tax exemption, the following shall apply:

The Tribe agrees that members will be exempted from all or a specified portion of the cigarette tax and sales tax at the point of sale. Such cigarettes shall bear the Tribal tax stamp; however, the non-applicable tax value of the stamp shall be deducted from the selling price at the time of sale. The books and records of the Tribal retailer must indicate the sales made to members. The Tribe agrees that it will enact an ordinance requiring that eligibility for the exemption is conditioned on members providing documentation substantiating enrolled status. The Tribe agrees that the ordinance will establish a reasonable limit on purchases by Tribal members and shall provide a penalty for violation of the ordinance, the objective being to preclude resales of untaxed cigarettes by members. The State and the Tribe agree that the Tribe may reimburse the Tribal retailer for tax stamps on cigarettes purchased by the retailer, but not subject to tax due to the exempt nature of a sale.

(2) Creation and Supply of Tribal 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 cigarettes. The State and the Tribe may agree to an alternative method of obtaining the state tribal compact stamps and

accounting for tax revenue, such method to be agreed to by both parties and memorialized in writing.

- (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 unless it decides to manufacture its own stamps. If the Tribe decides to manufacture its own stamps, it agrees to meet with the Department to discuss the stamp product, and to institute practices that address counterfeiting and security.
- (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 compact 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 compact 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. The State and the Tribe may agree to an alternative method of obtaining the Tribal tax stamps and accounting for tax revenue, such method to be agreed to by both parties and memorialized in writing.

(3) Tribe as Stamp Vendor

The Tribe may, at a later date, and as part of its tax administration function, choose to maintain and distribute tax stamps and be deemed the "stamp vendor" for purposes of this Compact. The Tribe and the State agree that should the Tribe choose to be its own stamp vendor that this shall be addressed in a memorandum of agreement between the Tribe and the Department of Revenue. The Department agrees to not unreasonably refuse entry into said memorandum of agreement. The memorandum of agreement shall at a minimum address the following:

- (a) Verifiable procedures for ordering, receiving, and inventorying tax stamp, including holding stamps in a secure location.
- (b) Distribution of stamps by the Tribe.
- (c) Recordkeeping by the Tribe and its wholesalers.
- (d) Audit protocols and access of the Auditor to stamping records of the Tribe and its wholesalers.
- (e) Reporting by the stamp manufacturer.

(4) Requirements for Affixation of Stamps by Wholesalers

Wholesalers, or the Tribe, shall be responsible for affixing the Tribal 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 it may be readily ascertained by inspection that the tax has been paid.

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

(5) Wholesaler Obligation Under State Law

Collection of the Tribal cigarette tax as required by this compact, affixing of the Tribal tax stamps, retention and production of records required by state law (in the case of state licensed wholesalers) and by this Compact and any memorandum of agreement (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.

(6) 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 transactions violate 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 Sauk-Suiattle Tribe Tribal cigarette tax.

(2) Self-Certified Out-of-State Wholesalers – Memorandum of Agreement

The Tribe agrees that it will adopt a policy requiring that it, the Tribe, and any member retailers, will purchase cigarettes for resale only from wholesalers licensed with the state of Washington or from Tribes within the state of Washington. If the Tribe chooses to change this policy to allow purchase from out of state wholesalers not licensed with the state of Washington, the Tribe agrees that it will enter into a memorandum of agreement that addresses the following concerns:

- (a) An assurance that the out-of-state wholesaler can and will meet the terms of this Compact;

- (b) A means to determine if the out-of-state wholesaler is licensed to do business with the state in which they reside;
- (c) A requirement that cigarettes transported in the state of Washington be accompanied by invoices; and
- (d) An agreement by the out-of-state wholesaler that the Auditor have access to its records

(3) Self-Certified Tribal Wholesalers

- (a) Tribal wholesalers located in the state of Washington who are not licensed to do business within the state of Washington, 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 Tribe that they will and can meet the terms of this Compact. The Tribe will provide a copy of the letter to the State prior to any purchase by a Tribal retailer from the wholesaler.
- (b) 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 agreement between the Tribe and the Tribal wholesaler 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 as well as the buyer of the cigarettes; and
 - ii) The wholesaler will allow the Auditor 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.
- (c) A Tribal wholesaler who has provided a letter of certification to the Tribe and who has a 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 Own Wholesaler – Memorandum of Agreement

This Compact contemplates that the Tribe will, at some future date, act as its own wholesaler. In the event that the 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 and contain audit standards that at a minimum meet those set forth in this Compact.

PART VII

Audit Process

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 of 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.

(1) Selection of Auditor

The Tribe and the State agree that, for the purposes of verifying compliance with this Compact, the Tribe may choose to Compact with an independent third party auditor or may choose to use the auditing services of the Department for all, or part, of the verification requirements of this Part. The Tribe agrees that the third party auditor will be a certified public accountant in good standing.

- (a) Independent third party auditor: If the Tribe Compacts with an independent third party auditor, the Auditor will be retained by the Tribe and the Tribe shall bear the cost of the auditing services. The Tribe shall be allowed to freely communicate with the Auditor.
- (b) Department auditor: If the Tribe uses the Department's auditing services, the Tribe agrees to allow the Department access to its books and records for the sole purpose of verifying compliance with this Compact. Department access to records shall be coordinated in advance with the Tribes. The Department of Revenue shall bear all the costs of the auditing services. The Tribe shall be allowed to freely communicate with the Auditor.

(2) Audit Protocol

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

- (a) Review of records: To verify the requirements of this Compact, the auditor must review at a minimum the records specified below:
 - (i) Tribal retailers: financial statements or purchase invoices relating to purchases of cigarettes from licensed wholesalers or other wholesalers noted under a memorandum of agreement under Part VI, financial statements or sales invoices relating to sales of stamped cigarettes, sales of exempt cigarettes, cigarette inventory, records to verify whether Tribal cigarette and sales taxes were remitted to the Tribe for deposit into Tribal accounts and records to verify that the retail selling price included the applicable tribal taxes.
 - (ii) Tribe: records such as account records and Compact invoices necessary to verify that all Tribal cigarette tax revenue was used to fund essential government services described in Part XII, section 8 of this Compact.
 - (iii) Self-certified out-of-state wholesaler, self-certified Tribal wholesaler, or Tribe as own wholesaler: records noted as subject to audit in a memorandum of agreement under Part VI of this Compact, such audit to be conducted by a third party auditor on behalf of the Tribe.
- (b) Period under review: To verify the requirements of this Compact, the auditor may review records for all years during the current appropriate audit cycle. Records relating to the period before the effective date of the Tribal cigarette tax are not open to review under this Part.
- (c) Audit cycle: The audit cycle shall be no more frequently than once every four years, unless otherwise specified below.
 - (i) Initial review: The first required review must cover the period starting on the effective date of the tax and ending December 31, 2005. The Auditor must provide its findings by March 31, 2006.

(ii) Use of Tribal cigarette tax revenue: The auditor will review records of the Tribe on an annual basis, to verify that all Tribal cigarette tax revenue was used to fund essential government services. The Tribe's fiscal year is on a calendar year basis.

(3) Format of Auditor Report

The Auditor must submit its findings in final written reports to the Tribe, with a copy to the Department. The report must indicate what types of records were examined for each party audited, what periods were reviewed, and must include a statement regarding verification of the specific requirement listed in sections 4 and 5 of this Part. In addition, if a statistical sampling process was used, the report must indicate the sampling method used.

(4) Tribal Retailers

The Auditor will be responsible for reviewing the records of the Tribal retailer to verify that only stamped cigarettes are sold, that cigarettes are only purchased from licensed wholesalers or from wholesalers specified in agreements under Part VI of this Compact, that exempt sales are not made to nonmembers, that the retail selling price included the applicable Tribal taxes and that the cigarette and sales taxes are remitted to the Tribe for deposit into Tribal accounts.

(5) Essential Government Services

The Auditor will be responsible for reviewing the relevant records of the Tribe to verify that Tribal cigarette tax revenue was used for essential government services in accordance with the requirements of Part XII section 8 of this Compact.

(6) Communication between Auditors – Confidentiality

In the event that the Tribe chooses to Compact with an independent third party auditor to verify only part of the requirements of this Compact, the Department shall verify the remaining requirements as described above. The independent third party auditor and the Department shall share information as necessary to jointly verify the requirements of this Compact. Information and/or records shared between the auditors are confidential under the provisions of Part XI of this Compact.

(7) 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 VIII of this Compact.

(8) Joint Audit Implementation and Review

The Tribe and the State shall confer prior to the beginning of the initial audit cycle. The purpose of such meeting is 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. If warranted by the findings in the initial report, the Tribe and the State shall meet jointly with the Auditor to review the report and discuss any issues of concern. Subsequent meetings will be held as required. For the purposes of this section 8, "audit cycle" refers to the reoccurring scheduled audit of an entity.

PART VIII

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.

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, within thirty (30) days of the alleged violation. 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 a different date is agreed to by the parties. The purpose of the meeting will be to attempt to resolve between themselves 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, the parties are unable to resolve a disagreement regarding an 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 VII 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.

6. Notification of For Cause Termination

Upon one hundred and eighty (180) 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 sales of unstamped cigarettes during the effective period of a Tribal cigarette tax;
- b. Failure to submit to mediation as required by this Part VIII;
- c. A breach of the confidentiality provisions of Part XI 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 mediation organization, who shall select a mediator to 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.

The parties shall use their best efforts to resolve the dispute within the one-hundred and eighty (180) day notice period. 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 ordinance. 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. Notice shall be deemed to be given on the date of actual receipt. Notice shall be given as follows:

To the Department: Director
Department of Revenue
P.O. Box 47454
Olympia, WA 98504-7454

To the Tribe: The Honorable Jason L. Joseph
5318 Chief Brown Lane
Darrington, WA 98241

With a copy to: Tribal Counsel, Sauk-Suiattle Tribe
5318 Chief Brown Lane
Darrington, WA 98241

(1) Sovereign Immunity

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

PART IX

**Responsibilities of the Sauk-Suiattle Tribe, the Department of Revenue,
and the
Liquor Control Board**

(1) Sauk-Suiattle Tribe

The Sauk-Suiattle 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 Sauk-Suiattle 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 enforcement and 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 X

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 VIII 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 VIII of this Compact.

PART XI

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, review by the mediator or certified public accountant, or review by the arbitrator is confidential and shall not be disclosed to anyone, in any forum, for any purpose.

PART XII

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 regarding the status of land upon which any Tribal retailer is located at least 30 days prior to the startup of any new cigarette sales by such retailer.
- (5) **Tobacco Master Settlement Agreement**
 - (a) 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.
 - (b) 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.
 - (c) 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 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 18 years. The Tribe is responsible for the enforcement of this provision. The Tribe agrees to maintain an ordinance prohibiting sales of cigarettes to persons under the age of 18 years.

(8) Essential Government Services

(a) Tribal cigarette tax revenue shall be used for essential government services. The Auditors shall certify the use of such 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 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 the direct business activities of that business.

(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 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, Compacting for health benefits, economic development, natural resources, and the provision of job services; distribution of moneys related to trust funds, education, general assistance; such activities as land and building acquisitions, and building development and construction; activities such as child care, youth care, and elder care, the provision of recreation opportunities and services; the provision of spiritual care and cultural programs.

(9) Other Retail Sales within Indian Country by Tribal Members

Under Sauk-Suiattle Tribal law, 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 Sauk-Suiattle 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.

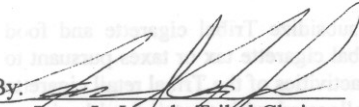
(13) Severability

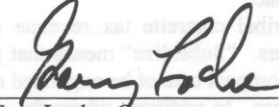
If any provision of this Compact or its application to any person or circumstance is held invalid, the remainder of the Compact is not affected.

THUS AGREED THIS 26 day of October, 2004.

SAUK-SUIATLE TRIBE OF INDIANS

STATE OF WASHINGTON

By: 
Jason L. Joseph, Tribal Chair

By: 
Gary Locke, Governor *Nov 4, 2004*