

PREAMBLE

WHEREAS, the Suquamish 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, an agent 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;

CIGARETTE TAX COMPACT

WHEREAS, the State has committed the Central Account and Millennium Account to the political authority of the federally recognized Indian tribes within the State of Washington and has formally recognized each tribe's sovereign authority for the tribe to exist and to govern;

THE SUQUAMISH TRIBE

and

WHEREAS, a long-standing disagreement exists between the Tribe and the State over questions regarding jurisdiction over, and the State's revenue from, the Port of Everett within the exterior boundaries of the Port of Everett;

THE STATE OF WASHINGTON

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 the Cigarette Tax Compact;

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

WHEREAS, the State and Tribe will also benefit by the exercise of the authority 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 resolve disputes and disagreements by conducting discussions on a government-to-government basis;

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

WHEREAS, this Compact is authorized, on the part of the State, by legislation, including House Bill 1575, enacted by the 2001 Regular Session of the 37th Legislature and signed by the Governor, effective July 23rd, 2001, and House Bill 1577, enacted by the 2002 Regular Session of the 37th Legislature and signed by the Governor, effective June 11, 2002, as certified in

PREAMBLE

WHEREAS, the Suquamish 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 exists between the Tribe and the State over questions regarding jurisdiction over, and the taxation of, the sale and distribution of cigarettes within the exterior boundaries of the Port Madison Indian Reservation;

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;

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 resolve 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 resolving this tax disagreement; and

WHEREAS, this Compact is authorized, on the part of the State, by legislation, including House Bill 5372, enacted by the 2001 Regular Session of the 57th Legislature and signed by the Governor, effective July 22nd, 2001, and House Bill 2553, enacted by the 2002 Regular Session of the 57th Legislature and signed by the Governor, effective June 13, 2002, as codified in

Cigarette Tax Compact between The Suquamish Tribe
and the State of Washington

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 Suquamish Tribal Resolution No. _____, dated January ___, 2005, signed by the Tribal Chairman and attested to by the Tribal Secretary.

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 or an internal Tribal 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 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. "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;
8. "Essential government services" means services provided by the Tribe including, but not limited to, administration, public facilities, fire, police, health, education, elder care, social services, sewer, water, environmental and land use, transportation, utility services, community development and economic development.

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9. "Indian country," consistent with the meaning given in 18 United States Code (U.S.C.) section 1151, includes:
 - (a) All land within the exterior boundaries of the Port Madison 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; and
 - (b) All Indian allotments or other lands held in trust for a Suquamish Tribal member or the Tribe, or otherwise subject to a restriction against alienation imposed by the United States, the Indian titles to which have not been extinguished, including rights of way running through the same.
10. "Port Madison Indian Reservation" or "Reservation" means the geographic area recognized as the Port Madison Indian Reservation by the United States Department of the Interior.
11. "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.
12. "Local retail sales tax" means the combined Washington local retail sales and use taxes applicable in the area.
13. "Non-Indian" means an individual who is neither a Suquamish tribal member nor a nonmember Indian.
14. "Nonmember Indian" means an enrolled member of a federally recognized Indian tribe other than the Suquamish Tribe.
15. "Parties to the Agreement" or "parties" mean the Tribe and the State.
16. "Retail selling price" means the price paid by the consumer for each cigarette or package or carton of cigarettes, which price includes the tribal cigarette tax.
17. "Self-certified tribal wholesaler" means a wholesaler who is a federally recognized Indian tribe or a member of such a tribe.
18. "Self-certified wholesaler" means an out-of-state wholesaler who is not a self-certified tribal wholesaler.
19. "State Cigarette Tax" means the state tax imposed on each cigarette, which is expressed in cents per cigarette.
20. "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.

21. "State Taxes" in this Compact only, means a combination of the "State Cigarette Tax," and the "state and local retail sales and use taxes."
22. "State" means the State of Washington.
23. "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.
24. "Tribal member" means an enrolled member of the Suquamish Tribe. For purposes of this Agreement, a member of another federally recognized Tribe who is the spouse of an enrolled Suquamish Tribal member shall be treated the same as an enrolled member of the Suquamish Tribe.
25. "Tribal retailer" means a cigarette retailer wholly owned by the Suquamish Tribe or owned and/or operated by one of its branch or agencies and located in Indian country.
26. "Tribal Cigarette Tax" means the tax or taxes enacted as a provision of Tribal ordinance on the units of cigarettes sold, expressed in cents per cigarette, and on the sales of cigarettes to retail buyers, expressed in terms of a percentage of the sales price of the unit of cigarettes.
27. "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.
28. "Tribe" or "tribal" means or refers to the Suquamish Tribe, a federally recognized tribe.
29. "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 and signed by the authorized signatories of the Tribe, 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 telephone or internet sales of Cigarettes, the Tribe and State will negotiate in good faith mutually acceptable terms and conditions of a memorandum of understanding concerning the taxation, if any, of such sales.

3. **Scope Limited**

This Compact does not apply to: (a) cigarettes sold at retail by non-Indians or non-member, non-spousal Indians or (b) tobacco products as that term is defined in Part I of this compact; and (c) cigarettes manufactured by the Tribe or by its branches or agencies within Indian country.

PART III – IMPOSITION OF TRIBAL CIGARETTE TAXES

1. **Tribal Retailers**

The Tribe will inform the Department regarding the startup of cigarette sales by any tribal retailer who begins selling cigarettes after the effective date of this Compact. Any cigarette retailer wholly owned by Tribe is subject to this Compact. At the time of the execution of this Compact, the Tribe sells cigarettes, by and through its independent branch and agency, Port Madison Enterprises ("PME"), at its casino and two gas station/convenience stores.

The Tribe will enact and enforce a Tribal ordinance which requires Tribal Members who seeks to sell cigarettes in Indian Country to obtain a Tribal Tobacco Seller's License from the Tribe. As a condition of such seller's license the tribal member must consent to comply with those terms of this Agreement which are applicable to tribal retailers, consent to providing access to the Department, in coordination with the Tribe, to observe sales pursuant to Part X, Paragraph 1 of this Agreement and consent to access by the Tribe's retained third party Auditor or internal auditor to review records of its cigarette sales in Indian country.

2. **Tax Imposed on Sales by Tribal Retailers**

The Tribe, by Tribal ordinance 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 branches or agencies, 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 and convenience stores 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, enforcement of this Compact by the parties 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 shall enact and maintain in effect a Tribal ordinance which requires tribal retailers to 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 branches or agencies 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 Suquamish Tribe cigarettes 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 Suquamish 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. If the Tribe chooses to exempt its members from all tax, the Tribe agrees to keep exact records of such sales. The expectation of both Parties is that if the Tribe chooses to tax its members the allocation allowance under 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.
- Creation and Supply of Tax Stamps
2. 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 shall arrange for the creation and supply of a Tribal tax stamp by a nationally recognized stamp manufacturer. Tribal tax stamps will have a serial number or some other discrete identification so that stamps may be traced to the wholesaler.
- (a) 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.
- (b) 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 in which case the parties shall enter into a memorandum of agreement setting forth protocols regarding security and audit. The Department shall 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.

Transition Period

Beginning on the effective date of the Tribal cigarette tax, the Tribe or its branches or agencies will affix stamps to the unstamped floor inventory in its possession. After this transition period, the Tribe will not possess unstamped inventory, subject to entering into an agreement with the Department to act as its own wholesaler. In the alternative, the Tribe may arrange for a licensed wholesaler to stamp such inventory.

4. Wholesaler Obligation Under State Law

Affixing of the tax stamps, retention and production of records required by state law (in the case of state licensed wholesalers) and by this Compact (in the case of self-certified 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 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 where it has its main business office.

The Tribe shall require compliance with this Compact in its agreements with any out-of-state self-certified wholesaler and shall provide copies of such agreements to the Auditor for its record. 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 into 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 record. 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 and/or Manufacturer

This Compact contemplates that the Tribe may, at some future date, act as its own wholesaler. In the event that the Suquamish Tribe decides to act as its own wholesaler in regards to sales to the tribal retailers, it will first enter into a memorandum of agreement with the Department regarding this activity. The Department shall 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 its branches or agencies, 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 their 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 a 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 identifying the wholesaler making the shipment, the quantity and brand of cigarettes, and the invoice order number. Transportation of cigarettes without the notice required by this section subjects the cigarettes to detention and/or seizure by the State.

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 parties desire that all parties to this Compact and all persons named in this Compact who engage in cigarette wholesaling or retailing comply 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 will retain, at its own expense, an independent third party auditor or, alternatively, may use its own internal auditor to verify its compliance with this Compact. 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.

If the Tribe uses an internal auditor, such person must be duly qualified as an auditor under the definitions of this Agreement and must complete the audits using the standards and procedures set forth in this Part VIII (including the certification under Section 4). The method used by the internal auditor and/or his results must be available upon request of the Department for inspection by an independent third party auditor to be provided by the Tribe. During the first audit cycle in which an internal auditor is used, the Department and the Tribe will develop standards and procedures acceptable to both parties.

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 or remove 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 calendar year basis.
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 who 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 have not been 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 desire to prevent disagreements and violations whenever possible, and to quickly and effectively resolve disagreements and violations when they arise. To the extent possible, the parties will use informal methods of dispute resolution before engaging in the formal processes provided by this Part.

As used in this Part "days" means calendar days, unless otherwise specified. The parties may, by mutual agreement, extend any of the time deadlines stated in this Part.

1. **Notification of Violation**

If either party believes a violation of the agreement has occurred or has concerns about an auditor's report which the parties have been unable to resolve through the joint audit review process, 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 will meet within 14 days of receipt of the notice, unless the parties mutually select a different date. The purpose of the meeting will be to attempt to resolve between them the issues raised by the notice of violation, and provide an opportunity to implement any agreed corrective action.

The parties recognize that disagreements and violations of the terms of the agreement involving Tribal member retailers may take longer to resolve. With respect to any disagreement or dispute involving a member retailer, the parties must wait at least 45 days after the sending of the notice of violation before delivering a mediation demand with the intent to reach a mutually agreeable solution during this time.

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 mutually select a mediator. If the parties cannot agree on a mediator within 30 days of written demand, the parties shall use a mediator selected by the Judicial Arbitration and Mediation Service's ("J.A.M.S.") Seattle office.

Each party shall bear its own attorney's costs and expenses but shall share equally in the costs of mediation, including the costs of the mediator.

3. Termination of Compact

If, after no more than twelve (12) 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 termination of this Compact under this paragraph shall not prevent the parties from negotiating or entering into a new Compact, on similar or different terms, after six (6) months following such termination.

4. 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) Significant and/or continued violation of this Compact by either party;
- (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;
- (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 in writing providing therein the facts upon which the notice is based. The responding party shall within ten days of receiving such notice either agree to terminate this Compact or initiate mediation pursuant to Section IX, paragraph 2 above.

If the parties fail to reach resolution of issues arising under this Part through mediation or corrective action within one hundred eighty (180) days from the date of a party's receipt of the Termination Notice, the Compact shall be terminated. If the parties resolve their dispute or the for-cause violation is corrected during this period, the Compact shall not terminate.

5. 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. If the Tribe is found to be at fault for ineffective enforcement of its Tribal laws 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.

6. Notice Requirements

For the purposes of this Compact, notice shall be by certified mail, return receipt requested, A party may consent in writing to accept notice by facsimile or e-mail. Upon execution of this Compact, the parties shall identify the party's representative authorized to receive notice by facsimile or e-mail and provide the appropriate facsimile number and e-mail addresses. Notice by certified mail 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:

Chairman
Suquamish Tribe
P.O. Box 498
Suquamish, WA 98392

With a copy to:

Tribal Attorney
Suquamish Tribe Office of Tribal Attorney
P.O. Box 498
Suquamish, WA 98392

7. 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 SUQUAMISH
TRIBE, THE DEPARTMENT OF REVENUE, AND THE
LIQUOR CONTROL BOARD**

1. Suquamish Tribe

The Suquamish 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. Provided the Department gives at least 8 hours written notice to the Suquamish Tribal Police Chief, the Suquamish Tribe will allow the Department entry into any retail store in Indian Country under the Tribe's jurisdiction, 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. A Tribal official may accompany Department personnel during such entry.

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. Upon the Tribe's written request, the parties shall initiate discussions to amend this Compact to incorporate the more favorable terms. The State shall not unreasonably withhold amendment of any requested change to this Compact requested under this paragraph.

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 an Auditor, 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.
9. **Rule 192 - Application**
This Compact is a "cooperative agreement" as that term is used in WAC 458-20-192 (Rule 192).

10. 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 include such terms.
11. Jurisdiction
This Compact does not expand or limit the jurisdiction of either the Tribe or the State.
12. Severability
If any provision of this Compact or its application to any person or circumstance is held invalid, the remainder of the Compact is not affected.

Dated: January 7th, 2005

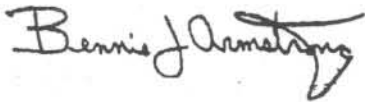
Dated: January 10th, 2005

SUQUAMISH TRIBE

STATE OF WASHINGTON

By:

By:



Bennie J. Armstrong,
Tribal Chairman

Gary Locke,
Governor

Attested to by:



Roger Contraro,
Tribal Secretary