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6 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON

7 HARRIS TEO, JR.; COUGAR
8 DEN, INC.; and the YAKAMA
NATION,

9 Plaintiffs,

10 v.

11 MERLE STEFFENSON; and the
STATE OF WASHINGTON,
12 DEPARTMENT OF LICENSING,

13 Defendants.

NO. CV-04-3079-CI

SETTLEMENT
AGREEMENT, AGREED
CHANGES TO CONSENT
DECREE, AND ORDER

14 RECITALS

15 In July, 2004, the Yakama Nation filed a petition to invoke the
16 continuing jurisdiction of the court to enforce the terms of the Consent Decree
17 entered by the Court on November 2, 1994, and effective January 1, 1995. The
18 parties have engaged in negotiations and agreed upon terms to resolve the
19 petition as set forth herein, in full and final settlement of all matters raised, or
20 that could have been raised, in the petition. The parties also agree that the
21 Consent Decree shall be modified as set out below, and that the Court should
22 dismiss plaintiffs' petition contemporaneously with the entry of this Order.

TERMS OF SETTLEMENT

In full resolution of all claims that were brought in this action or that could have been brought in the course of this action, the parties agree as follows:

A. The Department’s liability to the tribe for additional refunds for taxes on sales of motor vehicle fuel sold pursuant to ¶4.9 of the Consent Decree is set at is \$238,208.11 for the period calendar years 1998 through 2001, inclusive, and at \$170,618.03 for the period calendar years 2002 through 2005, inclusive.

B. The Tribe’s liability to the Department for tax on special fuel sales for calendar years 1998 through 2001, inclusive, is set at \$84,599.12.

C. The Tribe’s liability to the Department for tax on special fuel sales for calendar years 2002 through 2005, inclusive, is set at \$252,415.20.

D. Netting the above amounts results in a payment from the Department to the Tribe in the amount of \$71,811.82. Upon payment of this amount to the Tribe, the Tribe agrees this is a full and final settlement of all claims for refund of fuel taxes paid or collected between January 1, 1998 through December 31, 2005, inclusive, and the Department agrees it will make no further demand or claim against the Tribe or its licensed retailers for additional state fuel taxes for this time period.

1 E. The Department will pay to the Tribe the amount of \$11,463.18 for
2 one half the costs of the audits performed by LeMaster & Daniels, and the
3 amount of \$29,834.08 for one half the costs of the audits performed by Joseph
4 Eve in this case, for a total payment of audit costs of \$41,298.26.

5 F. Plaintiffs' petition is dismissed, with prejudice, contemporaneous
6 with entry of this Consent Decree.

7 AGREED MODIFICATION OF CONSENT DECREE

8 G. The terms of the 1994 Consent Decree are reaffirmed and agreed
9 to, except as stated herein. The parties agree to modify the terms of the 1994
10 Consent Decree, as set out below:

11 H. The parties agree that the provisions of ¶ 4.1 and ¶ 4.2 for
12 maintaining the continuing jurisdiction of the court should be deleted. The
13 parties agree to resolve further disputes exercising mutual good faith on a
14 government to government basis and, to the extent they are unable to resolve
15 such disputes, the dispute resolution process in ¶ 4.7 shall apply.

16 I. Paragraph 4.7.d. is amended by adding a new sentence at the end
17 to read: If the dispute is not resolved by mediation, the parties may agree to
18 have a neutral third party or arbitrator make a final binding decision resolving
19 the dispute or, if a dispute is unresolved for more than 180 days, either party
20 may give notice of intent to terminate this agreement as provided for *infra*.

21 J. Paragraph 4.7.e of the 1994 Consent Decree is deleted.
22

1 K. Paragraph 4.9 of the 1994 Consent Decree is modified to read as
2 follows:

3 4.9 Except as provided in ¶ 4.10.3 below, when a motor vehicle fuel
4 distributor or supplier, a special fuel distributor or supplier, importer, or refiner
5 of such fuels sells or distributes fuel to the Yakama Nation, the State of
6 Washington shall refrain from collecting its motor vehicle fuel or special fuel
7 taxes as to seventy-five (75) percent of the gallons of gasoline (motor vehicle
8 fuel) and diesel (special fuel) involved in each such transaction, so long as the
9 Tribe causes all of the fuel to be delivered into the Tribe's bulk fuel storage
10 facilities on the Reservation, to tribally-licensed Yakama businesses operating
11 filling stations on the Reservation, or to the bulk fuel tank of a Tribal member
12 or Yakama business Tribally-licensed to purchase bulk fuel. This percentage is
13 the parties' best current estimate, based upon current experience, of the
14 percentage of such fuel sold to the Yakama Nation that will be (a) used directly
15 by the Tribe for its essential governmental functions, (b) distributed by the
16 Tribe to Yakama businesses operating Tribally-licensed filling stations on the
17 Reservation, to be resold at the pump to Tribal members or Tribal businesses,
18 and used exclusively by those Tribal members or Yakama businesses and
19 transferred to no other person or entity, or (c) distributed by the Tribe to Tribal
20 members or Yakama businesses Tribally-licensed to purchase bulk fuel, and
21 used exclusively by those Tribal members or Yakama businesses and
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1 transferred to no other person or entity. All gallons of fuel sold or distributed to
2 the Tribe and not used in the manner described in this ¶ 4.9 shall be considered
3 subject to the State's taxes under this Consent Decree.

4 L. Paragraph 4.10 of the 1994 Consent Decree is modified to read as
5 follows:

6 4.10.1 The State shall continue to collect its motor vehicle fuel and
7 special fuel taxes from the seller or distributor of fuel to the Yakama Nation
8 with respect to twenty-five (25) percent of the gallons of gasoline (motor
9 vehicle fuel) and diesel (special fuel) sold or distributed in any such transaction.
10 This percentage is the parties' best current estimate of the percentage of such
11 fuel sold or distributed to the Yakama Nation that will not be used as
12 contemplated in ¶ 4.9. All gallons of fuel sold or distributed to the Tribe and
13 not used in the manner described in ¶ 4.9 shall be considered subject to the
14 State's taxes under the Consent Decree.

15 4.10.2 The Tribe shall require each retail station on the reservation
16 to keep records of each exempt sale, by number of gallons sold, with detail of
17 the person's name, (business name, if to an exempt entity), signature, and
18 enrollment number or tribal license number, for entities.

19 4.10.3 If the Tribe establishes a secure fuel depository for delivery
20 of motor vehicle fuel and special fuel for exclusive use in the tanks of Tribal
21 government vehicles providing essential government services and not for resale,
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1 such fuel may be delivered 100% exempt from state motor vehicle and special
2 fuel taxes. The Tribe shall notify the State if such secure fuel depository is
3 established, and shall allow the State to inspect such facility and review security
4 procedures established for the facility, before this paragraph will be
5 implemented.

6 4.10.4 Persons or entities possessing Yakama Nation bulk fuel
7 users permits referred to in ¶¶ 4.4(2), 4.8(b), and 4.9(c) of the Consent Decree
8 shall purchase such fuel exclusively from (a) the Yakama Nation depository
9 referred to in 4.9(c) above, or (b) from state licensed distributors who are also
10 licensed by the Yakama Nation and who sign an agreement to abide by the
11 terms of any orders or decrees in this cause. Bulk fuel for exempt use in
12 quantities exceeding 100 gallons may not be purchased from a retail filling
13 station. The holder of a Yakama Nation bulk fuel permit who obtains bulk fuel
14 from the Yakama Nation or from a tribally licensed fuel provider is not eligible
15 to also apply for a refund from the Department on such fuel.

16 M. Paragraph 4.11 of the 1994 Consent Decree is modified to add the
17 following sentence:

18 Upon written agreement of the parties, the audit cycle may be adjusted so
19 that audits are performed no less frequently than every three years. If either
20 party fails to complete the required audits or does not object to the failure to
21 complete a required audit within three months after it was to have been
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1 completed according to the terms of the Consent Decree or the written
2 agreement of the parties, that party waives the right to claim that liability is
3 owed by the other party.

4 N. Paragraph 4.15(1) is modified to replace the heading and the first
5 two sentences of the paragraph with the following, and the remainder of the
6 paragraph to remain as in the 1994 Consent Decree:

7 1. Examination by a certified public accounting firm

8 The Tribe and the State shall mutually agree upon the selection of a
9 certified public accounting (CPA) firm to conduct the audit and, prior to the
10 Tribe entering into a contract to conduct the audit, the parties shall agree upon
11 (a) the scope of services to be performed by the auditing firm, (b) the records to
12 be reviewed which shall form the basis for audit conclusions, and (c) the
13 maximum allowable cost or “not to exceed” (NTE) amount of the contract. The
14 contract amount may not be modified or amended to exceed the maximum
15 agreed cost without the mutual consent of the State and the Tribe.

16 O. The parties reaffirm the record-keeping requirements of ¶ 4.16 and
17 ¶ 4.17 of the 1994 Consent Decree, and agree to add the following language to
18 ¶ 4.17:

19 These records shall be the exclusive basis for any refund of additional
20 state fuel taxes to the tribe. If the records are not kept, and not made available
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1 to the auditors, there shall be no adjustment in the amount of tax paid, and the
2 State shall not be required to pay one half of the audit costs.

3 P. A new paragraph 4.26 is added to the Consent Decree, as follows:

4 4.26 The parties shall implement this agreement immediately. The
5 Tribe represents that since April 15, 2006, it has required tribally licensed fuel
6 retailers to maintain the records required under ¶¶ 4.16 and 4.17 of this Consent
7 Decree.

8 Q. A new paragraph 4.27 is added to the Consent Decree, as follows:

9 4.27 Amendments to the Consent Decree shall be considered upon the
10 written request of either party. Disputes regarding requests for amendment of
11 this Consent Decree shall be subject to the dispute resolution process in
12 paragraph 4.7 of this Consent Decree. The agreement and processes embodied
13 in this Consent Decree shall remain in effect unless and until such time as: (a)
14 the parties mutually agree in writing that the decree should be vacated or
15 terminated and superseded by a new agreement between the parties; or (b) if a
16 party objects to continued participation in the processes and framework
17 provided for in this decree and desires to withdraw and terminate the
18 agreement, it may do so only upon not less than one hundred eighty (180) days
19 written notice to the other party and a government to government meeting or
20 consultation between them occurs to discuss their proposed reasons for doing
21 so.

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1 R. Each party shall bear its respective costs and attorneys' fees in this
2 case.

3 IT IS SO ORDERED this 21st day of August 2006.

4
5 S/ CYNTHIA IMBROGNO
6 CYNTHIA IMBROGNO
7 UNITED STATES MAGISTRATE JUDGE

8 Stipulated to and approved for entry:

9 ROB MCKENNA
10 Attorney General

11 s/Mary M. Tennyson
12 MARY M. TENNYSON, WSBA # 11197
13 Senior Assistant Attorney General

14 s/Robert W. Kosin
15 ROBERT W. KOSIN, WSBA #28623
16 Assistant Attorney General
17 Attorneys for Defendants

18 YAKAMA NATION

19 s/Jack W. Fiander
20 Jack W. Fiander, WSBA #13116
21 Townuk Law Offices, Ltd.

22 s/Elmer J. Ward
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CERTIFICATE OF SERVICE

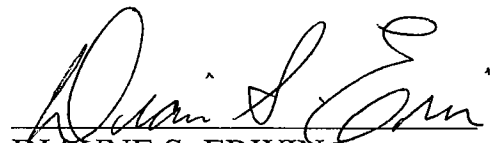
I, Dianne S. Erwin, certify that on August 18, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following, and I hereby certify that I have mailed by United States Postal Service the document to the same parties as listed below to:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 18th day of August, 2006, at Olympia, Washington.


DIANNE S. ERWIN
Legal Assistant