

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

The Honorable **Ronald B. Leighton**

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

CONFEDERATED TRIBES OF THE)	Case No.: C-04-5607
CHEHALIS RESERVATION,)	
)	MOTION, STIPULATION, AGREED
Plaintiff,)	ORDER AND CONSENT DECREE
)	
vs.)	
)	
FRED STEPHENS, Director, Washington)	
Department of Licensing, and CHRISTINE)	
GREGOIRE, Governor, State of Washington,)	
)	
Defendants.)	
)	

MOTION

COMES NOW the Plaintiff, by and through its attorneys Harold Chesnin and James Weber of the Chehalis Office of Tribal Attorneys, and the Defendants, by and through their

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

- 3. The Consent Decree has been reviewed by the Plaintiff and the Defendants independently and each party has relied upon its own counsel with respect to the terms thereof.
- 4. The Consent Decree has been approved and authorized by Tribal Resolution by the Business Committee of the Plaintiff, the governing body of the Confederated Tribes of the Chehalis Reservation.
- 5. The parties and their counsel have signed the Consent Decree which shall become effective upon the entry of the Order in this matter.
- 6. The parties stipulate that the Consent Decree completely resolves, as between them, all issues raised in the lawsuit filed by the Tribe against the State under Case No. C-04-5607 in the U.S. District Court for the Western District of Washington at Tacoma, related to claims concerning motor vehicle fuel taxes and special fuel taxes within the Chehalis Reservation and Tribal trust lands over which the Tribe exercises jurisdiction.
- 7. With the approval of the Consent Decree and the entry of this Order, the Plaintiff voluntarily dismisses the Amended Complaint in this action No. C-04-5607, with prejudice.
- 8. Each party shall pay its own attorneys fees and costs in this matter.

Dated this 23rd day of January, 2006.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Tel. (360) 273-9941
Fax. (360) 273-3018
General Counsel to the Chehalis Tribe

_____/s/_____
James W. Weber, WSBA # 31197
Office of Tribal Attorney
Confederated Tribes of the Chehalis Reservation
P.O. Box 536
Oakville, WA 98568
Tel. (360) 273-9941
Fax. (360) 273-3018
Attorney for the Chehalis Tribe

State of Washington
By: ____/s/_____
Mary Tennyson, WSBA # 11197
Senior Assistant Attorney General
Office of the Attorney General
PO Box 40110
Olympia, WA 98504-0110
Tel. (360) 753-0225
Fax. (360) 586-0174
Attorney for Defendants

_____/s/_____
Robert Kosin, WSBA # 28623
Office of the Attorney General
Assistant Attorney General
900 4th Avenue, Ste. 2000
Seattle, WA 98164
Tel. (206) 389-2031
Fax. (206) 389-2800
Attorney for Defendants

**CONSENT DECREE
CONCERNING TAXATION OF MOTOR VEHICLE FUEL AND SPECIAL FUEL
BETWEEN THE CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION
AND THE STATE OF WASHINGTON**

I. RECITALS

1.1. The Confederated Tribes of the Chehalis Reservation, a federally recognized tribe (Tribe) and the State of Washington (State) (collectively “the parties”) have conferred and engaged in government-to-government negotiations in a mutual, good faith effort to resolve the lawsuit filed by the Tribe against the State under Case No. C04 5607 in the U.S. District Court for the Western District of Washington at Tacoma and to reach an arrangement in regard to state fuel taxes on the distribution, sale, transfer, use, or possession of motor vehicle fuel and special fuel within the Chehalis Indian Reservation. The parties consent to entry of this Consent Decree in full settlement of all issues arising in the case.

1.2 It is not the intent of the parties that this Consent Decree will preclude further actions or negotiations between the parties with respect to fuel sales free from state taxation from the Tribe’s trust land, based on changes to statutes or common law which occur after the date of this Consent Decree. The parties hereby agree that if, as and when the State either:

- a) Enters into a fuel compact with another tribe;
- b) Receives a final ruling of a court of competent jurisdiction which changes the status of any state taxation of fuel or diesel as it relates to tribes or tribal members; and/or
- c) Enacts legislation affecting the status of fuel or diesel taxation;

and, if such compact, court ruling, or legislation is more favorable to the Tribe’s interest than this Consent Decree; then, subject to the mutual agreement of the parties, the terms of the compact, court ruling and/or legislation shall be incorporated into the terms of this Consent Decree. This provision shall be and be deemed to be a “most favored nation” provision.

1.3. Each party to this Agreement respects the sovereignty of the other and desires to work within the framework of a government-to-government relationship.

1.4. The parties acknowledge that, pursuant to chapters 82.36 and 82.38 RCW, the State imposes state fuel taxes upon the distribution, sale, transfer, use or possession of motor vehicle fuel and special fuels within the State, the revenue from which is used exclusively for highway purposes. The Tribe expends Tribal funds each year for public highways and traffic law enforcement within the Reservation, as well as for other essential governmental purposes.

II. PURPOSES OF THIS AGREEMENT

2.1. The parties intend that this Agreement completely resolve, as between them, all issues raised in the lawsuit filed by the Tribe against the State under Case No. C04 5607 in the U.S. District Court for the Western District of Washington at Tacoma, related to claims concerning motor vehicle fuel taxes and special fuel taxes within the Chehalis Reservation and Tribal trust lands over which the Tribe exercises jurisdiction. The parties intend that this Consent Decree be binding upon the parties and upon persons subject to regulation by the parties.

2.2. This Consent Decree addresses the establishment of a cooperative framework for taxation and regulation, by the Tribe and by the State, with regard to the distribution, sale, transfer, use or possession of motor vehicle fuel and special fuel when such fuel is distributed, sold, used, or possessed within the Reservation, and trust lands over which the Tribe exercises jurisdiction.

2.3. Subject to the limitations set forth in paragraph 1.1, the parties intend that the State of Washington's statutory and regulatory law for taxation with respect to such fuel remain in full force and effect under this Agreement except with respect to:

- a. fuel distributed or sold to the Tribe that the Tribe uses for its governmental functions and to Chehalis Tribal businesses (subject to the condition concerning percentage ownership set forth below) , and
- b. fuel distributed or sold to the Tribe that the Tribe sells from Tribal filling stations to enrolled Chehalis Tribal members.

III. DEFINITIONS

3.1. "Department" means the Washington State Department of Licensing, or any successor agency, and its officials, employees, and agents acting in their official capacity.

3.2. "Distributor" has the meaning given in RCW 82.36.010(15) and RCW 82.38.020(24), as it now exists or as it may hereafter be amended.

3.3. "Filling station" means a place of business operated for the purpose of delivering to the general public motor vehicle fuel or special fuel into the fuel tanks of motor vehicles.

3.4. "Motor vehicle" means every self-propelled vehicle designed for operation upon land and utilizing motor vehicle fuel or special fuel as the means of propulsion.

3.5. "Motor vehicle fuel" has the meaning given in RCW 82.36.010(20), as it now exists or as it may hereafter be amended.

3.6. "Reservation" means the Confederated Tribes of the Chehalis Reservation together with Tribal trust lands located outside the boundaries of the Reservation over which the Chehalis Tribe exercises jurisdiction.

3.7. "Special fuel" has the meaning given in RCW 82.38.020 (23), as it now exists or as it may hereafter be amended.

3.8. "State" means the State of Washington.

3.9. "Tribe" means the Confederated Tribes of the Chehalis Reservation.

3.10. "Tribal business" means a business that is owned, in whole or in part, by the Tribe or wholly owned by an enrolled Chehalis Tribal member.

3.11. "Tribal filling station" means a filling station that is owned and operated by the Tribe or by a Tribal business within the boundaries of the Chehalis Reservation or Tribal trust property over which the Tribe exercises jurisdiction.

3.12. "Tribal member" means a person who is an enrolled member of the Chehalis Tribe.

IV. AGREEMENT

GOVERNMENT-TO-GOVERNMENT COOPERATION

- 4.1. Subject to the limitations set forth in paragraph 1.1, the State of Washington and the Chehalis Tribe shall cooperate to the extent legally permitted to ensure the enforcement of:
- a. the Tribe's laws with respect to the taxation and regulation of Tribal members, non-Tribal filling stations, Tribal filling stations and businesses that sell or deliver motor vehicle or special fuel within the Chehalis Tribal Reservation, and Tribal trust lands where the Chehalis Tribe exercises jurisdiction;
 - b. the State's laws and rules respecting the imposition and collection of its fuel taxes from all persons except as provided under this Agreement; and
 - c. the terms of this Agreement.

FRAMEWORK FOR TAXATION AND REGULATION

4.2. The Department shall collect Washington State motor vehicle and special fuel taxes in accordance with chapters 82.36 and 82.38 RCW, as they now exist or as they may hereafter be amended. The Tribe shall by ordinance require any Tribally owned filling stations, to purchase fuel subject to this Agreement only from persons who are properly licensed in Washington State to distribute fuel or act as a distributor in accordance with RCW 82.36 and RCW 82.38. Such ordinances shall become effective within 6 months of the execution of this agreement, or unless otherwise agreed.

4.3. Upon compliance with the procedures described in this Agreement, the Tribe shall be entitled to a payment from the State of Washington Motor Vehicle Fund of an amount of the state fuel tax paid on motor vehicle fuel and special fuel sold from tribally owned filling stations to, enrolled members of the Chehalis tribe for their individual use, to Chehalis Tribal businesses to an extent equivalent to the ownership interest of the Tribe in said business, and to the Chehalis tribe for use in Chehalis Tribal government vehicles.

- a. Payments shall be made monthly by the State of Washington upon application by the Tribe, in substantially the form attached as Appendix A. The Tribe shall

submit its application for payments on a monthly basis, and the State shall make the payment to the Tribe within thirty (30) days of receipt of each application, unless the State requests a review of the application for a particular month prior to payment.

- b. The Tribe, or the Department, may request an audit at any time. The Tribe shall make its books and records, as described in Section 4.4 available to an independent auditor.

AUDIT

4.4. The purpose of this Section is to provide a process for the verification of the refundable gallons in this Consent Decree.

- a. The verification process will determine with a reasonable degree of accuracy that the quantity of fuel sold to enrolled members of the Chehalis Tribe for individual use, for use in Chehalis Tribal government vehicles, and to Chehalis Tribal businesses, is accurately reflected in the refund claim. The Auditor shall prepare an audit report containing essentially the same information as provided in Section 4.4.c.
- b. The Department and the Tribe agree, for the purposes of verifying compliance with this Consent Decree, to mutually contract with an independent third party auditor on an annual, or as requested basis. The Department may waive the audit requirement for any particular year by written notification from the Department to the Tribe. The Auditor will be retained by both parties and the costs of auditing services shall be equally divided. The Tribe and the State shall be entitled to freely communicate with the Auditor. The Auditor shall be a Certified Public Accountant, in good standing and licensed by the state of Washington.

c. The Auditor shall:

1. Examine all fuel purchase invoices to ensure that the fuel is being purchased from person(s) that are properly licensed by the State to distribute fuel and that the state fuel tax is reflected on all fuel purchase invoices. The audit report will reflect a statement concerning this requirement.
2. Examine and test the policy, procedures, and controls relating to the issuance and use of tax-exempt cards. This examination is to provide a reasonable degree of assurance that only enrolled Chehalis Tribal members, Chehalis Tribal government vehicles, and Chehalis Tribal businesses are issued tax-exempt cards and use such cards. Such examination will include, but not be limited to, examining the propriety of issuing multiple cards to the same person and ensuring that tax-exempt cards are issued to person(s) that are 16 years of age or older. The audit report shall reflect a statement regarding the policy, procedures and controls in effect concerning the issuance and use of tax-exempt cards.
3. Reconcile the refund claim gallonage quantity claimed for refund to tribal summary records reflecting sales to enrolled Chehalis Tribal members, Chehalis Tribal businesses and used in Chehalis Tribal government vehicles. The audit report shall reflect a statement relating to this reconciliation.
4. Reflect any adjustments made to the refund claim. Refund claims reflecting undocumented tax-exempt fuel sales, tax-exempt fuel sales without a card, and fuel sales to persons not specifically authorized to purchase tax-exempt fuel shall be deducted from the gallonage claimed for refund.

5. Prepare a financial report that reflects the following:

		AUDIT PERIOD _____		
		GAS	DIESEL	TOTAL
A)	Beginning Inventory:			
B)	Fuel Purchases:			
C)	Total Fuel Available:			
D)	Less Ending Inventory:			
E)	Total Fuel Distributed:			
F)	Less Documented Sales To:			
	Enrolled Chehalis Tribal Members:			
	Chehalis Tribal Businesses:			
	Chehalis Tribal Government Vehicles:			
G)	Less Non-Tribal Fuel Sales:			
H)	Total Fuel Distributed			
	{Sum of (F) & (G)}			
I)	Audited Tax Exempt Sales (F)			
J)	Refunded Tax Exempt Sales			
	Difference			

d. The Auditor will have complete access to all records required under Section 4.8 to determine compliance with this Consent Decree. Any scope limitations will be commented on in the audit report. Except for the audit report, the Department shall have the ability to review the detail records and work papers (no copying) of the Auditor during regular business hours.

4.5. The Tribe, tribal filling stations, tribal businesses, or tribal members may also be eligible for refunds under the provisions of RCW 82.36.280, RCW 82.36.285, RCW 82.36.290, RCW 82.36.300, RCW 82.36.305, RCW 82.38.080, RCW 82.38.180, and similar state fuel tax exemption statutes that may be later adopted, but only (1) to the extent that tax was paid on the purchase of fuel and that such statutes apply to the Tribe, the Tribal filling station, the Tribal business, the Tribal member, or the Chehalis Tribal business, and to the particular use by them of motor vehicle and special fuels and (2) to the extent a refund is not available to the Tribe with respect to the fuel sold under ¶ 4.3 of this Agreement.

4.6. The Department shall pay the Tribe the amount of \$113,620.80 as a refund of

motor vehicle fuel and special fuel taxes paid for the periods November 1, 2002 through November 30, 2005 together with interest at the rate of 7% per annum. The amount of \$11,796.03 shall be offset against amounts claimed by the Tribe to be owed for taxes paid, calculated from the amount of fuel delivered to the Tribe in February, 2004 without payment of state fuel tax.

4.7. No payment or refund of motor vehicle or special fuel taxes must be made by the State except as specifically set out in this Agreement.

REPORTS AND RECORDS

- 4.8. The Tribe shall maintain records as set forth in these paragraphs.
- a. For the purposes of balancing fuel purchases, sales, and inventory, the Tribe, or tribal businesses operating filling stations on the Reservation, shall main records of all of their purchases of motor vehicle fuel and special fuel showing, for each transaction, (1) the identity of the distributor from whom the fuel was purchased, (2) whether the fuel involved is motor vehicle fuel or special fuel; (3) the number of gallons involved; (4) the price paid to the distributor and ; (5) the amount of fuel taxes paid. Detail records of all fuel purchases and sales from the End of the Trail II or other filling stations operated by the Chehalis Tribe, or by a Chehalis Tribal business;
 - b. Detail records of each individual fuel sale transaction in which fuel is purchased using a card issued by the Tribe that provides the purchaser any form of tax exemption on the purchase. This record of individual fuel sales shall specifically identify the card used in the transaction; That the Tribe, or tribal businesses operating filling stations on the Reservation, shall maintain records of all of their sales of motor vehicle fuel and special fuel showing, for each transaction, (1) whether the fuel involved is motor vehicle fuel or special fuel; (2) the number of gallons involved; (3) the price, (4) the tax status of the purchaser, if applicable

(Tribal government vehicle, Chehalis Tribal business, or enrolled Chehalis Tribal member.)

- c. The Tribe shall maintain its current “card system” or a similar system that restricts the availability of the tax exemption or discount to fuel purchased specifically by enrolled members of the Confederated Tribes of the Chehalis Reservation, Chehalis Tribal businesses, or for use in Chehalis Tribal government owned vehicles or Federal General Services Administration (GSA) vehicles operated by the Tribe;
- d. Records of sales to enrolled Chehalis Tribal members, Chehalis Tribal businesses, and for fuel used in Chehalis Tribal governmental vehicles or Federal General Services Administration (GSA) vehicles operated by the Tribe; records of sales to enrolled Chehalis Tribal members and Chehalis Tribal businesses that have cards but did not present them at the time of fuel purchase. Non-Chehalis Tribal members or non-Tribal businesses are ineligible for the payment provisions of this Consent Decree.
- e. Records of cards issued by the Tribe, number of cards issued, and for each card issued to an individual for personal use, a record of to whom the card was issued, their resident address and Tribal enrollment number of the person to whom issued.

TRIBAL LAWS

4.9. The Tribe shall establish and implement a procedure for regulation of fuel on the Reservation, including:

- a. The Tribe shall adopt an ordinance incorporating the terms of this Consent Decree into the Tribe’s laws.
- b. Licensure by the Tribe of any non-Tribal or Tribal business that operates a filling station on the Reservation. Compliance with the Tribes’ laws in connection with such operations shall be made condition for continued operation of the business.

V. DISPUTE RESOLUTION

5.1. Neither the Tribe, nor the State, nor officers acting on either government's behalf, may petition any court to enforce this Agreement unless the dispute resolution process described in ¶ 5.1.a. and 5.1.b. has been followed in good faith to completion without successful resolution, or unless the other party fails to enter into the dispute resolution process or terminates the process before its completion. Should a dispute arise between the Tribe and the State upon an issue of compliance with or requested changes to the Agreement by either government, or by their officers, employees or agents, the Tribe and State shall attempt to resolve the dispute through the following dispute resolution process:

- a. Either party may invoke the dispute resolution process by notifying the other, in writing, of its intent to do so. The notice shall set out the issues in dispute and the notifying party's position on each issue.
- b. The first stage of the process shall include a face-to-face meeting between representatives of the two governments to attempt to resolve the dispute by negotiation. The meeting shall be convened within 30 days of the date of the written notice described in ¶5.1.a. The representatives of each government shall come to the meeting with the authority to settle the dispute.
- c. After completion of the process in ¶ 5.1.a. and ¶ 5.1.b., either party may terminate this Agreement with sixty (60) days written notice served upon the Chairman of the Chehalis Tribe and Director of the Department of Licensing.

VI. IMPLEMENTATION

6.1. The State and the Tribe shall confer annually, on a government-to-government basis, to evaluate the effectiveness of the Agreement and to attempt to mutually agree upon solutions to any problems that may have arisen.


6.2. In any action filed by a third party challenging either the Chehalis Tribe's or the State's authority to enter into or enforce this agreement, the Tribe and the State each agree to support the agreement and defend their authority to enter into and implement this agreement.

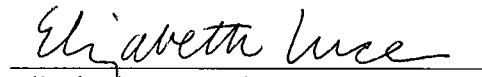
6.3. This Agreement addresses only the taxation and regulation of motor vehicle fuel and special fuel sold to enrolled Chehalis tribal members, Chehalis tribal businesses, and to Chehalis tribal government vehicles or GSA vehicles operated by the Tribe and shall not be construed as affecting any other area of Tribal or State taxation or regulation.

DATED this 23rd day of January, 2006.

CONFEDERATED TRIBES OF
THE CHEHALIS RESERVATION

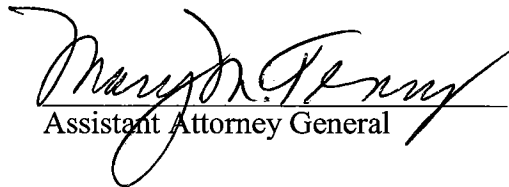
WASHINGTON DEPARTMENT
OF LICENSING


Chairman, Confederated Tribes of the
Chehalis Reservation


Elizabeth Luce, Director
Department of Licensing

Approved as to Form


Tribal Attorney


Assistant Attorney General