

RESOLUTION

WHEREAS, it is the recommendation of the Management & Budget Committee to approve the attached Memorandum of Agreement between Colville Tribes and the State Department of Licensing to return to the terms of the 2004 Fuel Tax Compact effective immediately. Chairman or designee is authorized to sign all documents.

THEREFORE, BE IT RESOLVED, that we, the Colville Business Council, meeting in a **SPECIAL SESSION** this **18th day of February, 2010** acting for and in behalf of the Colville Confederated Tribes, Nespelem Washington, do hereby approve the above recommendation of the Management & Budget Committee.

The foregoing was duly enacted by the Colville Business Council by a vote of **7 FOR 1 AGAINST 0 ABSTAINED**, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:

Quanita Warren for

**Michael O. Finley, Chairperson
Colville Business Council**

cc: Harvey Moses Jr., Committee Chair
Lawrence Waters, CBC Recording Secretary
BIA Superintendent
Reservation Attorney
Dept. or Program: Melissa Campobasso - ORA

Office of the
FEB 25 2010
Reservation Attorney



MEMORANDUM OF AGREEMENT

On February 4, 2004, the Confederated Tribes of the Colville Reservation ("Tribes") and the Department of Licensing (Department) entered into a fuel tax agreement ("February 4, 2004 Agreement") providing for monthly payments to the Tribes, in substitution for the Consent Decree entered by the US District Court for the Eastern District of Washington in Case No. CY-92-248-JLQ, entered on August 23, 1994. The February 4, 2004 Agreement provide for the amount of the payments to be calculated by a formula set out in that Agreement.

In June, 2009, an attorney for the Tribes approached the Department about entering into the new form of fuel tax agreement whose terms are governed by RCW 82.36.410 and 82.38.350. After an exchange of drafts, the new form of agreement was signed in October, 2009.

Since signing the new agreement, the Tribes has reviewed its operations and has determined that its interests are best served by returning to the form and terms of the February 4, 2004 Agreement. By their signatures below, the Department and the Tribes demonstrate their agreement to returning to the terms of the February 4, 2004 Agreement, a copy of which is attached to this memorandum, and incorporated herein by this reference.

DATED this 2 day of March, 2010.

COLVILLE TRIBE

Quanita Warren for
(NAME)
Chair, Colville Tribe

Walter Cay Do
Tribal Attorney

DEPARTMENT OF LICENSING

Elizabeth A. Luce
Elizabeth A. Luce, Director

Mary M. Tennyson
Mary M. Tennyson
Sr. Assistant Attorney General

**AGREEMENT
CONCERNING TAXATION OF MOTOR VEHICLE FUEL AND SPECIAL FUEL
BETWEEN THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION AND THE
STATE OF WASHINGTON**

I. RECITALS

1.1. The Colville Tribe and the State of Washington (collectively "the parties") have conferred and engaged in government-to-government negotiations in a mutual, good faith effort 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 Colville Indian Reservation.

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

1.3. 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.

1.4. The parties mutually acknowledge the need to maintain the integrity and quality of public roads within the Reservation.

II. PURPOSES OF THIS AGREEMENT

2.1. The parties agree that this Agreement constitutes a fair resolution and compromise of the parties' mutual interests. The parties intend that this Agreement completely resolve, as between them, all issues related to motor vehicle fuel taxes and special fuel taxes within the Reservation, and that this Agreement be binding upon the parties and upon persons subject to regulation by the parties.

2.2. This Agreement primarily addresses the establishment of a cooperative framework for taxation and regulation, by the Tribe and by the State, respecting 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.

2.3. In general, 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 essential governmental functions and Tribal businesses, and
- b. the amount of fuel annually supplied to the Tribe under the formula detailed in §4.3.

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), as it now exists or as it may hereafter be amended.
- 3.3. "Essential governmental function" has the meaning given in 26 C.F.R. § 305.7871-1(d) (2000).
- 3.4. "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.
- 3.5. "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.
- 3.6. "Motor vehicle fuel" has the meaning given in RCW 82.36.010(20), as it now exists or as it may hereafter be amended.
- 3.7. "Reservation" means the Confederated Tribes of the Colville Reservation together with Tribal trust lands located outside the boundaries of the Reservation over which the Colville Tribe exercises governmental authority.
- 3.8. "Special fuel" has the meaning given in RCW 82.38.020 (23), as it now exists or as it may hereafter be amended.
- 3.9. "State" means the State of Washington.
- 3.10. "Tribe" means the Confederated Tribes of the Colville Reservation.
- 3.11. "Tribal business" means a business that is owned and operated by the Tribe or by an enrolled Tribal member.
- 3.12. "Tribal filling station" means a filling station that is owned and operated by the Tribe or by a Tribal business.
- 3.13. "Tribal member" means a person who is an enrolled member of the Colville Tribe.

3.14. "Tribal enrollment" means the number of enrolled members of the Colville Tribe as reported by the Colville Tribal Enrollment Office.

3.15. "Tribal service area" means the counties bordering the Colville Indian Reservation, which include Okanogan, Ferry, Douglas, Grant, Stevens, Lincoln, and Chelan Counties.

IV. AGREEMENT

Government-To-Government Cooperation

4.1. The State of Washington and the Colville 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 Reservation, and Tribal trust lands where the Colville Tribe exercises governmental authority;
- 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 non-tribal filling stations, tribal filling stations, tribal businesses, and tribal members 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 refund from the State of Washington Motor Vehicle Fund of:

- a. The average per capita number of gallons consumed within the State of Washington, as determined by the Washington State Department of Transportation, multiplied by the

number of enrolled Colville Tribal members residing within the Colville Tribal service area as defined in 3.15. The resultant figure is then multiplied by the state fuel tax rate in effect to arrive at an annual dollar amount to be refunded to the Colville Tribe.

- b. The number of gallons claimed for refund for Tribal government vehicles for Federal fuel tax purposes on Internal Revenue Service (IRS) claim form 4136. These gallons are then multiplied by the state fuel tax rate in effect to arrive at a dollar amount to be refunded to the Colville Tribe. A copy of the IRS form 4136 shall accompany the refund request.

4.4. For the amount computed in 4.3.a., refunds will be made in 1/12 increments (monthly), beginning the first day of the month following acceptance of this agreement. For the amount computed in 4.3.b., refunds will be made following acceptance of this agreement and upon application by the Tribe.

4.5. The Tribe, Tribal filling stations, Tribal businesses, Tribal members, or Colville Tribal businesses 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 such statutes apply to the Tribes, the Tribal filling station, the Tribal business, the Tribal member, or the Colville 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 amount of fuel calculated as sold under ¶ 4.3 of this Agreement.

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

Reports and Records

4.7. The Tribe shall maintain records as set forth in these paragraphs.

- a. The Tribe shall maintain records indicating population data (including total tribal enrollment) for the Colville Tribal members residing in the Tribal Service Area defined in 3.15.
- b. Internal Revenue Service (IRS) Form 4136 and detail schedules reflecting the number of gallons claimed for refund for Federal fuel tax purposes.

4.8. The Tribe shall permit the State or its officers, agents, or designees to review the records described in ¶ 4.7 at the Tribe's regular business offices within the Reservation during the Tribe's regular business hours. The Tribe shall maintain such records for a minimum of three years.

Dispute Resolution

4.9. Neither the Tribe, nor the State, nor officers acting on either government's behalf, may petition any court to enforce this Agreement unless (a) the dispute resolution process described in ¶ 4.9.a. and 4.9.b. has been followed in good faith to completion without successful resolution, or unless (b) the other party fails to enter into the dispute resolution process or terminates the process before its completion. Should a dispute arise between the Colville Tribe and the State upon an issue of compliance with 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 ¶ 4.9.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 ¶ 4.9.a. and ¶ 4.9.b., either party may terminate this Agreement with sixty (60) days written notice served upon the Chairman of the Colville Tribe and Director of the Department of Licensing.

Implementation

4.10. The State and the Tribe, not less than one year after execution of this Agreement, shall confer, 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.

4.11 In any action filed by a third party challenging either the Colville 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.

4.12 The Tribe and the State shall confer regarding regulation of filling stations operating within the jurisdiction of the Tribe to ensure such regulation is consistent with the intent and spirit of this

agreement.

4.13 This Agreement addresses only the taxation and regulation of motor vehicle fuel and special fuel and shall not be construed as affecting any other area of Tribal or State taxation or regulation.

4.14 If the State negotiates a State-Tribal Fuel Tax Agreement with any other Tribe that contains more favorable terms than this agreement, the existing State-Tribal Fuel Tax Agreement between the Colville Tribe and the State may be modified to include those terms.

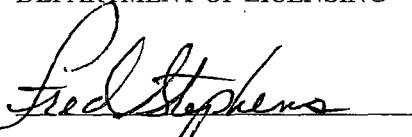
4.15 This fuel tax agreement supercedes the terms and conditions of the federal consent decree entered in the United States District Court for the Eastern District of Washington in cause Confederated Tribes of the Colville Reservation versus Washington Department of Licensing (NO. CY-92-248-JLQ) dated August 23, 1994.

DATED this 11 day of February, 2004.

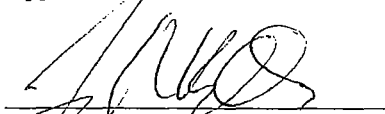
COLVILLE TRIBE

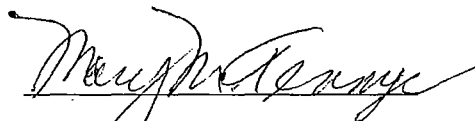
DEPARTMENT OF LICENSING


Chairman, Colville Tribe


Director, Department of Licensing

Approved as to Form


Tribal Attorney


State Assistant Attorney General