

# **TAX COLLECTION AGREEMENT BETWEEN THE TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS AND THE STATE OF NORTH DAKOTA**

This Agreement is between the State of North Dakota, by and through its Office of State Tax Commissioner (the "State") and the Turtle Mountain Band of Chippewa Indians (the "Tribe"). The State and Tribe, through the Turtle Mountain Band of Chippewa Indians Tribal Council (the "Tribal Council"), the duly formed governing body of the Tribe, hereby agree to the following:

## **1. Statements of Authority**

### **A. Tribal Authority**

1. The Tribe has jurisdiction to impose taxes on certain transactions occurring within the exterior boundaries of the Turtle Mountain Reservation.
2. The Tribal Council may, under Article IX, Section (a)(1) of the Turtle Mountain Constitution, represent the Band and negotiate with the State.
3. The Tribal Council may, under Article IX, Section (b)(14) of the Turtle Mountain Constitution, enter into this Tax Collection Agreement with the State.
4. Specific to this Agreement, the parties acknowledge that the Tribe has jurisdiction to impose its Motor Vehicle Fuel tax and Special Fuel tax on fuel purchases made by members of the Tribe occurring within the exterior boundaries of the Turtle Mountain Reservation.

### **B. State Authority**

1. The State has concurrent jurisdiction to tax certain transactions involving non-members of the Tribe occurring on the Turtle Mountain Reservation.
2. The State may, under North Dakota Century Code Chapter 54-40.2, enter into agreements with Native American Tribes.
3. Specific to this Agreement, the parties agree that the State has concurrent jurisdiction with the Tribe to impose its Motor Vehicle Fuel tax and Special Fuel tax on fuel purchases made by non-members of the Tribe occurring within the exterior boundaries of the Turtle Mountain Reservation.

## **2. Taxes Included in This Agreement**

### **A. Motor Vehicle Fuel and Special Fuel**

1. The parties agree that for purposes of this Agreement, the State will collect its Motor Vehicle Fuel tax and Special Fuel tax on each transaction made by non-members of the Tribe occurring within the exterior boundaries of the Turtle Mountain Reservation and retain and distribute the revenue collected from those taxes as provided by state law.

2. The parties further agree that for purposes of this Agreement, the State will collect the Tribal Motor Vehicle Fuel tax and Special Fuel tax on each transaction made by members of the Tribe occurring within the exterior boundaries of the Turtle Mountain Reservation and distribute the revenue collected from those taxes as provided below.

3. The State agrees that it will collect and administer as a contractor the above-referenced Tribal taxes provided they remain substantially similar to the corresponding state taxes.

4. The State is responsible only for the administration and collection of these Tribal taxes. The Tribe retains exclusive jurisdiction and authority to file and prosecute civil and criminal enforcement actions as needed with respect to the Tribal taxes, according to Tribal and Federal laws, and engage in any collection or enforcement action necessary to implement the requirements of this Agreement.

5. The amount of the Tribal taxes will be the amount imposed by state tax generally in North Dakota for such products, as amended from time to time.

6. Upon request of the State, the Tribe will assist the State in the assessment and collection of any taxes subject to this Agreement.

**B. Other Taxes**

1. Nothing in this Agreement is meant to preclude the Tribe from imposing other taxes within the Tribe's jurisdiction.

2. Nothing in this Agreement is meant to preclude the State from imposing other taxes within the State's jurisdiction.

**3. Remittance of Tax Proceeds and Retention of Administrative Fee**

**A. Tax Proceeds**

1. The State agrees to remit to the Tribe, as a tribal share of revenues collected, an amount equal to ninety-six percent (96%) of the total proceeds collected from the Tribal taxes subject to this Agreement and the corresponding state taxes.

2. The amount to be distributed to the Tribe shall be based upon the population demographics of the 2000 United States Census. The revenue share shall be changed at the request of either party to reflect any change in the proportion of Tribal members to non-Tribal members residing on the Reservation, as reported in any subsequent United States Census.

3. The payment specified in Paragraph 3(A)(1), less the administrative fee specified in Paragraph 3(B), below, shall be remitted by the State to the Tribe on a monthly basis within thirty (30) days from the end of the calendar month during which the collection occurs. Unless otherwise requested in writing by the Tribe, the remittance shall be by state warrant issued by the State Treasurer, payable to the order of the "Turtle Mountain Band of Chippewa Tribe."

4. The State shall furnish the Tribe with an itemized list of the source of the revenue payment specified in Paragraph 3(A)(1) on a monthly basis within thirty (30) days from the end of the calendar month during which the collection occurred.

**B. Administrative Fee**

The State shall retain, as a service fee for the collection and administration of the Tribal fees subject to this Agreement, one percent (1%) of the payment specified in Paragraph 3(A)(1) of this Agreement.

**4. Implementation and Administration of the Agreement**

**A. Tribal Implementation and Administration**

1. The Tribe will cause to be adopted, maintained, and enforce such Tribal laws as are necessary to implement the requirements of this Agreement which shall include, without limitation, assessment, collection, enforcement, and administration provisions.

2. The Tribe agrees that, subject to the provisions of this Agreement, the taxes provided for by Tribal law under this Agreement shall be imposed and collected in connection with all affected transactions occurring within the exterior boundaries of the Turtle Mountain Reservation. The Tribal taxes covered by this Agreement shall be the same as the corresponding state taxes, and all subsequent amendments thereto, and shall be collected and remitted in the same manner as required under the North Dakota Century Code.

3. The Tribe will notify the State in writing of any enacted changes to the Tribal taxes covered by this Agreement. If requested to do so by the Tribe, the State will review any proposed change to a Tribal tax covered by this Agreement in advance and advise the Tribe whether the change, if enacted, would, in the view of the State, result in the Tribal tax ceasing to be substantially similar to the corresponding State tax.

**B. State Implementation and Administration**

1. The State agrees to provide the Tribe written notice of any pending changes to the state taxes corresponding to the Tribal taxes covered by this Agreement which may result in the Tribal taxes ceasing to be substantially similar to the corresponding State tax.

2. The State will give written notice to the Tribe of any enacted changes to State taxes and in the notice will specify which changes would, in the view of the State, result in the affected Tribal tax ceasing to be substantially similar to the corresponding State tax if the Tribal tax is not amended.

**C. Administration and Maintenance of Records**

1. The Tribe agrees to keep accurate records setting forth information in sufficient detail to allow for verification that the Tribe and Tribally-owned entities are collecting and remitting the correct amount of taxes due under this Agreement.

2. Upon reasonable request of the Tribe, the State shall make available to the Tribe all records of filings that relate to the taxes covered by this Agreement.

3. If the State receives a request for information pertaining to this Agreement that it is required to furnish under the State's Open Records laws, the State will inform the Tribe of the request and information released.

**5. Effective Date, Duration, and Termination of the Agreement**

**A. Effective Date**

The parties agree that the effective date for collection and administration of motor vehicle fuel taxes and special fuel taxes in the manner provided by this Agreement shall be September 1, 2010.

**B. Duration**

Upon the effective date, this Agreement shall remain in effect indefinitely, unless terminated under the provisions of Paragraph 5(C).

**C. Termination**

1. Either party may terminate this Agreement without cause and without liability, except as to any amounts collected and due to either party, upon thirty (30) days written notice to the other party.

2. Before the Agreement is terminated under this provision, the parties will meet and make a good faith effort to resolve the differences leading to the notice of termination. A Notice of Intent to terminate on behalf of the Tribe must be executed by the Tribal Council. A Notice of Intent to terminate on behalf of the State must be executed by the State Tax Commissioner.

3. This Agreement shall terminate immediately as to any Tribal tax upon the repeal of that tax by the Tribe.

4. In the event of termination of this Agreement, and as necessary, the State shall notify each known person or entity affected by termination, by first class mail, on or before the date the next payment is due, that it will no longer collect the taxes covered by this Agreement, and that the person or entity should no longer remit to it the affected Tribal tax or taxes.

**6. Amendments and Waiver**

This Agreement may not be modified or amended, nor may compliance with any provision of it be waived except by an instrument or instruments in writing signed by the party against whom enforcement of any modification, amendment, or waiver is sought.

**7. Exemption from Tax and Refunds**

Motor vehicle fuel and special fuel used in a vehicle owned or leased by the Tribe and used for governmental purposes shall be exempt from state motor vehicle fuel taxes and special

fuel taxes and corresponding Tribal taxes. Any tax paid on motor vehicle fuel or special fuel for such vehicle shall be refunded to the Tribe by the State.

**8. Notices and Payment**

**A. Notice**

Notice required to be sent to the Tribe under this Agreement shall be sent to:

Chairperson  
Turtle Mountain Band of Chippewa Tribe  
PO Box 900  
Belcourt, ND 58316

Notice required to be sent to the State under this Agreement shall be sent to:

North Dakota Office of State Tax Commissioner  
Motor Vehicle Fuels Tax and Special Fuels Tax Section  
600 East Boulevard Avenue  
Bismarck, ND 58505-0599

**B. Payment**

Payment required to be sent to the Tribe under this Agreement shall be sent to:

Office of Tribal Tax Director  
Turtle Mountain Band of Chippewa Tribal Tax Department  
PO Box 900  
Belcourt, ND 58316

Either party may change its Notice address by giving written notice of the change to the other party.

IN WITNESS WHEREOF, the Tribe and State have caused this Agreement to be executed and delivered by their respective officers, duly authorized.

6/4/10  
Date

Richard Marcellais  
Richard Marcellais, Chairman  
Turtle Mountain Band of Chippewa Tribe

5/28/2010  
Date

Cory Fong  
Cory Fong, Tax Commissioner  
State of North Dakota

This Agreement is approved under N.D.C.C. § 54-40.2-04.

8/16/2010  
Date

John Hoeven  
John Hoeven, Governor  
State of North Dakota