

FIRST AMENDMENT TO THE CROW TRIBE - MONTANA
TOBACCO TAX AGREEMENT

This FIRST AMENDMENT TO THE CROW TRIBE - MONTANA TOBACCO TAX AGREEMENT is entered into between the State of Montana, Department of Revenue ("State") and the Apsaalooke Nation of the Crow Reservation ("Tribe" or "Crow Tribe").

RECITALS

WHEREAS, the State and the Tribe entered into the CROW TRIBE-MONTANA TOBACCO TAX AGREEMENT ("Agreement") on May 13, 2005;

WHEREAS, the Agreement may be amended by the parties pursuant to Section 9 of the Agreement; and

WHEREAS, the parties desire to amend certain parts of the Agreement relating administration of the Agreement ;

THEREFORE, the State and the Tribe agree to amend the CROW TRIBE-MONTANA TOBACCO TAX AGREEMENT as follows:

Section 5, entitled "Collection and administration of taxes," is amended to read as follows:

5. Administration and collection of taxes. The State and Tribe agree that tobacco sold on the Reservation shall not be subject to both the State and the Tribal tax, but shall be subject to one tax. The State agrees to assist the Tribe by pre-collecting tobacco taxes for sales on the Reservation from the tobacco wholesalers distributing tobacco products on the Reservation and to remit to the Tribe the Tribal tobacco tax collected as determined by the formulas described below. All cigarettes sold on the reservation shall have the State tax insignia affixed (and the Tribe shall not be required to affix a Tribal tax insignia) and all other tobacco products shall be taxed.

a. For each calendar quarter, the Tribe shall receive an amount of tobacco taxes pre-collected for tobacco sales on the Reservation, which approximates the sales to enrolled Crow Tribal members living on the Reservation, as defined and determined under this Agreement. The amount of tobacco taxes that the Tribe receives shall be determined by multiplying 150 percent of the Montana per capita tobacco tax collected for the calendar quarter, times the total number of enrolled Crow Tribal members residing on the Reservation. The Montana per capita tobacco tax is based on the net sum of tobacco taxes in all funds into which cigarette and tobacco taxes are deposited, subsequent to the deduction or addition of refunds, credits, and corrections. The State population number to be utilized for all quarterly payments within a calendar year is the most recent updated annual estimate available for State population from the U.S. Bureau of the Census on June 30 of each calendar year.

b. The parties further agree that, for the calendar year beginning January 1, 2007, the total number of Crow Tribal members residing on the Reservation shall be 7,543 plus the number of Crow Tribal members who have a U.S. Post Office box address in Hardin that are determined by State-Tribal audit to be residing on the Crow reservation. The Crow Tribe shall certify the number of Tribal members with a U.S. Post Office box address in Hardin who reside on the reservation by March 15, 2007. For the calendar year beginning January 1, 2008, and annually thereafter for the duration of this agreement, the total number of Crow Tribal members residing on the reservation shall be determined as provided in subsection "c" of this Section.

c. Enrollment numbers are determined by using the Crow Tribal enrollment population as well as the members' place of residence as determined by a methodology

set out by the Crow Tribe and approved of in the State audit of the methodology. For the calendar year beginning on January 1, 2008, and for each calendar year remaining in the term of this Agreement, the Tribe shall certify to the State by March 31st of each year the number of enrolled Crow Tribal members residing on the Reservation as of January 1 of that calendar year. The State will use the certified number for distributions made during that calendar year subject to any audit adjustments. In the event the Tribe does not issue a recertification by March 31st, the State may use the previous year's certification or the enrollment numbers resulting from a State audit.

d. The State shall distribute the monies due to the Tribe under this Agreement no later than thirty (30) days from the end of each calendar quarter. The State will include with each distribution a Statement showing how the distribution was determined for that quarter. Distributions shall continue until the expiration or the termination of this Agreement as provided in Section 10 or as required by law. For the purposes of this Agreement a calendar quarter begins on January 1, April 1, July 1 and October 1 of each year. The remittance amount payable to the Tribe shall be remitted to the Tribal Executive Branch unless the Tribal Chairperson otherwise instructs the State. Said instruction shall be made at least 30 days in advance of the date the change should commence; shall be made in writing; and shall include the appropriate authorization from the Tribal Executive Branch and Tribal Legislature. The instruction shall also include the following information: (1) the name and address of the entity to receive the payment; (2) the date the change should commence; and (3) the routing and account numbers of the entity to receive the payment. Any change in payment

procedures requested by the Tribe in no way obligates the State to any party the Tribe has authorized to receive payment.

e. The Tribe and State agree to cooperatively enforce the tobacco tax as provided in Title 16, Chapter 1. 1, Montana Code Annotated and in Title 13, Chapter 1, Crow Law and Order Code. Enforcement procedures, if needed, will be established by mutual written agreement.

Section 6, entitled "Term," is amended to read as follows:

6. Term: This Agreement shall remain in effect until December 31, 2016, subject to the renewal provision of Section 9, unless terminated in writing by either party upon not less than sixty (60) days' written notice to the other. Upon notice, the Agreement shall terminate at the end of the calendar quarter following expiration of the sixty (60) day's written notice. In the event of a notice of termination by either party prior to the end of the term, the State shall be obligated to remit the full amount payable to the Tribe provided for in this Agreement for that period of time up to and including the effective date of termination. This obligation of the State shall survive any termination of this Agreement.

Section 9, entitled "Amendments and Renewal," is amended to read as follows:

9. Amendments, Renegotiation and Renewal: This agreement may be amended only by written instrument signed by both parties. This Agreement shall be automatically renewed for successive terms of ten years if no action is taken by either party. If either party wishes to renegotiate the terms of this Agreement at the end of a term, or otherwise, that party shall provide sixty (60) days' written notice to the other.

Section 10, entitled "Termination," is amended to read as follows:

10. Termination: See the provisions of Section 6.

Section 13, entitled "Reservation of rights and negative declaration," is amended to read as follows:

13. Reservation of Rights and Negative Declaration: The State and Tribe have entered into this Agreement in part to resolve any potential legal disputes and avoid litigation. The parties agree that by entering into this Agreement, neither the State nor the Tribe shall be deemed to have waived any rights, arguments, or defenses available in litigation on any subject. This Agreement is specifically not intended to reflect or be viewed as reflecting in this or any context either party's position with respect to the jurisdictional authority of the other. Nothing in this Agreement or in any conduct undertaken pursuant thereto shall be deemed as enlarging or diminishing the jurisdictional authority of either party except to the extent necessary to implement and effectuate the Agreement's terms. This Agreement, conduct pursuant thereto or conduct in the negotiations or renegotiations of this Agreement, shall not be offered as evidence, otherwise referred to in any present or future litigation, or used in any way to further either party's equitable or legal position in any litigation other than litigation claiming a breach of this Agreement . By entering into this Agreement, neither the State nor the Tribe is forfeiting any legal rights to apply their respective taxes except as specifically set forth in this Agreement. This Agreement does not apply to any State tax collected other than the tax on tobacco as provided in §§ 16-11-101, *et seq.*, MCA.

Section 14, entitled "Notices," is amended to read as follows:

14. Notices: Notice shall be considered given on the date of mailing. All notices and other communications required to be given under this Agreement by the Tribe and the State shall be deemed to have been duly given when delivered in person or posted by United States certified mail, return receipt requested, with postage prepaid, addressed as follows:

- (i) To the Tribe: Chairman, Executive
Branch Crow Tribe
PO Box 159
Crow Agency, MT 59022-0159

With Copies to:

Crow Legal Department
P.O. Box 340
Crow Agency, MT 59022-02340

- (ii) To the State: Governor's Office
P.O. Box 200801
State Capitol
Helena, MT 59620-0801

With Copies to:

Director of Revenue
Department of Revenue
Room, 455, Mitchell Building
Helena, Montana 59620

Attorney General
214 North Sanders
Helena, MT 59620-1401

THIS FIRST AMENDMENT BECOMES EFFECTIVE so long as the Montana Attorney General approves and signs the Amendment, as required by Section 18-11-105, Montana Code Annotated. This Amendment shall apply to distributions beginning January 1, 2007.

ALL OTHER terms and conditions of the Agreement remain in full force and effect and shall, with this amendment, govern the implementation of the CROW TRIBE - MONTANA TOBACCO TAX AGREEMENT.

This Contract amendment consists of seven (7) pages.

The State of Montana and the Tribe indicate their consent to be bound to this first amendment by the signatures set forth below.

APSAALOOKE NATION,

/s/ Carl Venne
Carl Venne
Chaiman, Executive Branch

Date: 3/9/07

STATE OF MONTANA

/s/ Brian Schweitzer
Brian Schweitzer
Governor

Date: 3/9/07

/s/ Dan Bucks
Dan Bucks
Director, Department of Revenue

Date: 3/9/07

Approved pursuant to Mont. Code Ann. § 18-11-105:

/s/ Mike McGrath
Mike McGrath
Attorney General

Date: 3/9/07