



**RESOLUTION OF THE GOVERNING BODY
OF THE THREE AFFILIATED TRIBES
OF THE FORT BERTHOLD INDIAN RESERVATION**

A Resolution entitled, "Tax ordinance Amendments and Tax Collection Agreement between State of North Dakota and the Three Affiliated Tribes."

WHEREAS, the Three Affiliated Tribes having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and Bylaws under said Act; and

WHEREAS, § 1 of Article III of the Constitution and Bylaws of the Three Affiliated Tribes identifies the Tribal Business Council as the governing body of the Tribes; and

WHEREAS, § 5 (l) of Article VI of the Constitution and Bylaws of the Three Affiliated Tribes authorizes the Tribal Business Council to adopt resolutions regulating the procedures of the Tribal Business Council and other Tribal agencies and Tribal officials on the Fort Berthold Indian Reservation; and

WHEREAS, § 5 (a) of Article VI of the Constitution and Bylaws of the Three Affiliated Tribes authorizes the Tribal Business Council to manage all economic affairs and enterprises of the Three Affiliated Tribes; and

WHEREAS, the Three Affiliated Tribes retains inherent authority to exercise governmental powers, including the power to tax; and

WHEREAS, Article I of the Constitution and Bylaws of the Three Affiliated Tribes establishes that jurisdiction of the Three Affiliated Tribes of the Fort Berthold Indian Reservation shall extend to all persons and all lands, including lands held in fee, within the exterior boundaries of the Fort Berthold Indian Reservation as defined by the Act of March 3, 1891, (26 Stat. 1032) to all lands added to the Fort Berthold Indian Reservation by Executive Order of June 17, 1892; and to such other persons and lands as may hereafter come within the jurisdiction of the Three Affiliated Tribes, except as otherwise provided by law; and

WHEREAS, the Tribal Business Council of the Three Affiliated Tribes enacted a Motor Fuels Excise Tax through Resolution No. 04-28-RP as part of the Tax Code of the Three Affiliated Tribes; and

WHEREAS, the State of North Dakota has conducted negotiations with the Three Affiliated Tribes to collect motor vehicle fuel taxes and special fuels taxes for the Three Affiliated Tribes on the Fort Berthold Indian Reservation; and



RESOLUTION NO. 07-54-VJB

NOW, THEREFORE BE IT RESOLVED that the Three Affiliated Tribes formally amend Resolution N0. 04-28-RP of the Three Affiliated Tribes by changing the title of the Motor Fuels Excise Tax to be Motor Vehicle Fuel Tax and adjusting the rate of twenty-two and one-half cents to twenty-three cents, and incorporate Resolution No. 04-28-RP under Chapter 9 of the Tax Code of the Three Affiliated Tribes.

BE IT FURTHER RESOLVED that the Three Affiliated Tribes formally authorize, as part of this resolution, a Special Fuels Tax, and incorporate the Special Fuels Tax under Chapter 10 of the Tax Code of the Three Affiliated Tribes.

BE IT FURTHER RESOLVED that the Three Affiliated Tribes formally authorize the Tribal Chairman of the Three Affiliated Tribes to execute tribal consent to a TAX COLLECTION AGREEMENT BETWEEN THE THREE AFFILIATED TRIBES AND THE STATE OF NORTH DAKOTA that permits the Three Affiliated Tribes to collect the Motor Vehicle Fuel Tax and Special Fuels Tax of the Three Affiliated Tribes.


CERTIFICATION

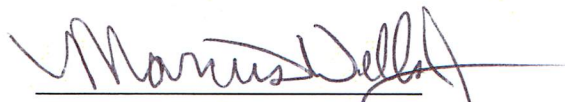
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Forth Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the March 9, 2007; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [] Voting. [] Not voting.

Dated this 9 day of March, 2007.

ATTEST:


Tribal Secretary, V. Judy Brugh
Tribal Business Council
Three Affiliated Tribes


Tribal Chairman, Marcus Wells Jr.
Tribal Business Council
Three Affiliated Tribes



RESOLUTION NO. 04-28-RP

**RESOLUTION OF THE GOVERNING BODY
OF THE
THREE AFFILIATED TRIBES
OF THE
FORT BERTHOLD INDIAN RESERVATION**

A Resolution entitled, "Adoption of Motor Fuels Excise Tax".

WHEREAS, The Three Affiliated Tribes Tribal Business Council is the governing body of the Three Affiliated Tribes, pursuant to Article III of the Constitution and By-laws of the Three Affiliated Tribes; and

WHEREAS, The Three Affiliated Tribes retains inherent sovereign authority to exercise its governmental powers, including the power to tax, unless the United States Congress has explicitly and specifically limited or removed a particular authority, and the Congress has not done so with respect to Motor Fuel Taxation; and

WHEREAS, Article I of the Constitution and By-laws defines the territorial jurisdiction of the Three Affiliated Tribes; and

WHEREAS, Article IV of the Constitution and By-laws of the Three Affiliated Tribes provides for certain enumerated powers of the Three Affiliated Tribes' Tribal Council; and

WHEREAS, Article IV, Section 1 (h) provides that the Three Affiliated Tribes' Tribal Business Council is empowered to levy taxes upon members of the Tribe, and to levy taxes or license fees upon non-members doing business within the Fort Berthold Indian Reservation under certain conditions; and

WHEREAS, Article IV, Section 1 (k) provides that the Three Affiliated Tribes' has the authority to promulgate and enforce Ordinances governing the conduct of persons on the Fort Berthold Indian Reservation; and

WHEREAS, Article IV, Section 1 (g) of the Constitution and By-laws, provides that the Three Affiliated Tribes' Tribal Business Council has the authority to appropriate for public purposes any available Tribal Council funds; and

WHEREAS, In order to carry out its Constitutional and Governmental functions, the Three Affiliated Tribes' Tribal Business Council requires revenues sufficient to finance the discharge of its responsibilities; and

WHEREAS, The financial burdens of tribal government should fairly fall upon those who use and benefit from the facilities and economy of the Fort Berthold Indian Reservation; now

THEREFORE BE IT RESOLVED, that a "Motor Fuels Excise Tax" is hereby imposed upon all motor fuel imported onto the Fort Berthold Indian Reservation. For purposes of imposing this

**RESOLUTION NO. 04-28-RP**

Resolution, the following definitions and provisions shall apply:

Section 1. Definition of terms:

- a. **Business license:** means a license issued pursuant to the Three Affiliated Tribes' Tribal Licenses Code.
- b. **Exterior Boundaries of the Fort Berthold Indian Reservation:** means all areas encompassing the exterior bounds of the Three Affiliated Tribes (the geographic extent of which is defined in the Constitution of the Three Affiliated Tribes) as well as such areas which hereafter may be acquired by or for the Three Affiliated Tribes or its members.
- c. **Import:** means the delivery by any means of motor fuel into the exterior boundaries of the Fort Berthold Indian Reservation for sale or distribution thereof.
- d. **Importer:** means any person who purchases motor fuel from outside the exterior boundaries of the Fort Berthold Indian Reservation for wholesale purposes within the exterior boundaries of the Fort Berthold Indian Reservation.
- e. **Motor fuel:** means gasoline, blended gasoline, diesel, jet fuel, propane, or any equivalent thereof, used to power vehicles, boats or implements.
- g. **Permit:** means a wholesaler, importer or retailer permit issued pursuant to Section 5 of this Ordinance.
- h. **Person:** means a natural person, a partnership, a limited partnership, a joint venture, a firm, an association, a corporation, a cooperative, or any other entity.
- i. **Retailer:** means any person who sells or distributes motor fuel to the end user within the exterior boundaries of the Fort Berthold Indian Reservation.
- j. **Transporter:** means any person who engages in the activity of movement of fuel within the exterior boundaries of the Fort Berthold Indian Reservation by transport truck or by any other means in quantities in excess of fifteen hundred gallons.
- k. **Transport truck:** means a vehicle or combination of vehicles designed to transport motor fuel in bulk, in lots greater than fifteen hundred gallons.

**RESOLUTION NO. 04-28-RP**

- I. Wholesaler: means any person who purchases motor fuel from an importer, another wholesaler or from a terminal rack for sale to another wholesaler or retailer.

Section 2. The Motor Fuel Excise Tax shall be levied at the rate of twenty-two and one-half (22.5) cents per gallon or at whatever greater rate is charged by the State of North Dakota;

Section 3. No Wholesaler or Importer of Motor Fuel within the exterior boundaries of the Fort Berthold Indian Reservation shall conduct business on the Fort Berthold Indian Reservation without first applying for and obtaining a Motor Fuel Wholesaler Permit or Motor Fuel Importer Permit from the Three Affiliated Tribes' Tax Commission Office.

No retailer within the exterior boundaries of the Fort Berthold Indian Reservation shall conduct business on the Fort Berthold Indian Reservation without first applying for and obtaining a Motor Fuel Retailers Permit from the Three Affiliated Tribes' Revenue Office.

Section 4. The Tax Commission of the Three Affiliated Tribes shall prescribe such Motor Fuel Wholesaler and Importer Permit Forms, which may include electronic filing and such other forms as may be necessary to carry out the purposes for this Ordinance, but each such Motor Fuel Wholesaler and Importer Permit Form shall provide that:

- a. The Motor Fuel wholesaler or importer, by his signature upon said permit, agrees that a consensual business relationship is established with the Three Affiliated Tribes and thereby consents to the jurisdiction of the Fort Berthold Tribal Court over his activities on the Fort Berthold Indian Reservation.
- b. The Motor Fuel wholesaler or importer, by his signature upon said permit, expressly agrees that the Motor Fuel Wholesaler or Importer permit remains valid only for such periods that he complies with the provisions of this Ordinance and any other applicable tribal law;
- c. The Motor Fuel wholesaler or importer, by his signature upon said permit, expressly agrees that failure to comply with applicable provisions of Tribal Law, including this Ordinance, may subject the Wholesaler or Importer to sanctions provided under tribal law, including this Ordinance, by the Three Affiliated Tribes, the Three Affiliated Tribes' Tax Commission, or the Fort Berthold Tribal Court, and that said Wholesaler or Importer consents and submits to such jurisdiction.

RESOLUTION NO. 04-28-RP



- Section 5. Any wholesaler or importer of Motor Fuel on the Fort Berthold Indian Reservation shall file an electronic monthly report to the Three Affiliated Tribes' Tax Commission with specified soft ware that shall be required to be utilized by said wholesaler or importer. The reports shall contain schedules of receipts and disbursements with detail as designated on said schedules. The owner or agent in case of corporations, and the owner or agent of non-corporate entities, shall swear to all motor fuel reports.
- Section 6. Monthly reports shall be filed electronically on or before the 20th of each calendar month with the Tax Commission or the designated administrator and shall contain information as set forth in Sections 7 and 9 herein.
- Section 7. Any wholesaler or importer of motor fuel shall, on or before the 20th day of each calendar month, render to the Tax Commission a statement under oath setting forth the number of gallons of motor fuel sold to motor fuel retailers on the Fort Berthold Indian Reservation as prescribed on the schedules submitted or such other information that shall be requested from time to time by the Three Affiliated Tribes.
- Section 8. The Motor Fuel Excise Tax shall be due and payable on the 25th day of the calendar month and shall be remitted in full via electronic funds transfer to the Three Affiliated Tribes.
- Section 9. Sections 3-8 shall not apply if the Three Affiliated Tribes enters into a tax agreement with the State of North Dakota for the collection and distribution of this tax.

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, _____ were present at a _____ Meeting thereof duly called, noticed, convened and held on the 16th day of February, 2004, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of _____ members, _____ members opposed, _____ members abstained, _____ members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman Voting. [] Not Voting.

Dated this 16th day of February, 2004.

Randy Phelan
Executive Secretary, Randy Phelan
Tribal Business Council

ATTEST:

Chairman, Tex G. Hall
Tribal Business Council

TAX COLLECTION AGREEMENT BETWEEN THE THREE AFFILIATED TRIBES AND THE STATE OF NORTH DAKOTA

This Motor Vehicle Fuel Tax and Special Fuel Tax Collection Agreement ("Agreement") is between the State of North Dakota, by and through its Office of State Tax Commissioner (the "State") and the Three Affiliated Tribes ("Tribes"). The State the Tribes through their Tribal Business Council ("TBC"), the duly established governing body of the Tribes, hereby agree to the following:

1. Statement of Intent

The intent of this Agreement is to:

A. Provide for the mutual recognition and respect by the State and the Tribes of one another's sovereignty;

B. Give recognition to the respective tax jurisdiction the State and the Tribes in a mutually satisfactory way that does not compromise either party's right to assert a position upon termination of the Agreement;

C. Provide for an efficient method of imposing and collecting taxes on motor vehicle fuels and special fuels sold to consumers on the Fort Berthold Indian Reservation;

D. Distribute the revenue from those taxes in a manner that reflects the proportion of tribal members to non-tribal members residing on the Fort Berthold Indian Reservation;

E. Avoid litigation; and

F. Provide for the application of uniform motor vehicle fuel taxes and special fuel taxes for tribal members and non-tribal members on the Fort Berthold Indian Reservation.

2. Sovereign Immunity

Nothing contained in this Agreement is or shall be construed to be a waiver of the sovereign immunity of the Tribes, their Tribal Business

Council, officials, or entities. The Tribes expressly retains its sovereign immunity. In the event of a conflict with any other provision of this Agreement, the terms of Paragraph 2 shall prevail and control.

3. Acknowledgement of Authority

The parties acknowledge the following as a basis for this Agreement:

A. Tribal Authority

1. The Tribes have jurisdiction to tax on the Fort Berthold Indian Reservation.
2. The Tribal Business Council may, under § 5 (d) of Article VI of the Constitution and Bylaws of the Three Affiliated Tribes, enter into tax agreement with the State of North Dakota.
3. Specific to this Agreement, the parties acknowledge that the Tribes have jurisdiction to impose their Motor Vehicle Fuel Tax and Special Fuel Tax on fuel purchasers made on the Fort Berthold Indian Reservation.

B. State Authority

1. The State, subject to inherent limitations on Indian reservations, is asserting concurrent jurisdiction to tax certain transactions involving non-Indians on the Fort Berthold Indian Reservation.
2. The State may, under North Dakota Century Code 54-40.2, enter into agreements with Native American tribes.
3. Specific to this Agreement, the parties agree that the State with inherent limitations is asserting concurrent jurisdiction with the Three Affiliated Tribes to impose its Motor Vehicle Fuel Tax and Special Fuel Tax on fuel purchases made by non-Indians on the Fort Berthold Indian Reservation.

4. 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 one motor vehicle fuel tax and special fuel tax per transaction made by both Indians and non-Indians on the Fort Berthold Indian Reservation and distribute the revenue collected from those taxes as provided for below in Paragraph 5.

2. The State agrees that it will collect and administer as a contractor the following tribal taxes provided they remain substantially similar to the corresponding state taxes:

Three Affiliated Tribes Tribal Tax Ordinance
Chapter 9 Motor Vehicle Fuel Tax &
Chapter 10 Special Fuel Tax

(a) The State is responsible only for the administration and collection of these taxes. The Tribe retain exclusive jurisdiction and tax 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.

(b) The amount of the tax will be the amount imposed generally in North Dakota for such products, as amended from time to time.

(c) The Tribes, upon request of the State, will assist the State in the assessment and collection of any tax subject to this Agreement.

B. Other taxes

1. Nothing in this Agreement is meant to preclude the Tribes from imposing other taxes within the jurisdiction of the Three Affiliated Tribes.

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

5. Remittance of Tax Proceeds

A. Tax Proceeds

1. The State agrees to remit to the Three Affiliated Tribes, as a tribal share of revenues collected, an amount equal to seventy-five percent (75%) 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 Three Affiliated Tribes 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 Indians to non-Indians residing on the Reservation, as reported in any subsequent United States Census.
3. The payment specified in Paragraph 5 (A) (1), less the administrative fee specified in Paragraph 5 (B), below, shall be remitted by the State to the Three Affiliated Tribes 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 Three Affiliated Tribes, the remittance shall be by state warrant issued by the State Treasurer, payable to the order of the Three Affiliated Tribes.
4. The State shall furnish the Three Affiliated Tribes with an itemized list of the source of the revenue payment specified in Paragraph 5 (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 taxes subject to this Agreement, one percent (1%) of the payment specified in Paragraph 5 (A) (1) of this Agreement.

6. Implementation and Administration of the Agreement

A. Tribal Implementation and Administration

1. The Three Affiliated Tribes will cause to be adopted 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 provision.

2. The Three Affiliated Tribes agree 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 on the Fort Berthold Indian 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 Three Affiliated Tribes 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 Three Affiliated Tribes, the State will review any proposed change to a tribal tax covered by this Agreement in advance and advise the Three Affiliated Tribes whether the changes, 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 Three Affiliated Tribes 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 Three Affiliated Tribes 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 Three Affiliated Tribes agree to keep accurate records setting forth information in sufficient detail to allow for verification that Tribally-owned entities are collecting and remitting the correct amount of tax due under this Agreement.

2. Upon reasonable request of the Three Affiliated Tribes, the State shall make available to the Three Affiliated Tribes all records of tax 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 Three Affiliated Tribes of the request and information released.

7. 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 October 1, 2007 (date of authorized signatures?).

B. Duration

Upon the effective date, this Agreement shall remain in effect indefinitely, unless terminated under the provisions of Paragraph 7 ©.

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 Three Affiliated Tribes must be executed by the Tribal Business 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 Three Affiliated Tribes.

4. In the event of termination of this Agreement, the State shall notify each known taxpayer affected by the termination, by first class mail, sent on or before the date the next payment is due, that it will no longer

CHAPTER 10 - SPECIAL FUELS TAXES

10-1001. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agriculture units of colleges and universities, custom combing, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Commissioner" means the Tribal Tax Commissioner.
3. "Consumer" means a user of special fuel including any person purchasing special fuel on the Fort Berthold Reservation for use in a licensed motor vehicle. It does not include a dealer or a retailer importing or purchasing special fuel for resale.
4. "Distributor" means a person, other than a retailer, who acquires special fuel from a supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
5. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of the jurisdiction of the Fort Berthold Reservation in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
6. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
7. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
8. "Heating fuel use" means use of special fuel to heat homes, private and public office building, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purpose.
9. "Importer" means a refiner, supplier, or distributor who imports special fuel into the jurisdiction of the Fort Berthold Reservation in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
10. "Industrial purpose" means:
 - a. A manufacturing, warehousing, or loading dock operating;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;

- e. Maintenance of business premises, golf courses, or cemeteries;
- f. A commercial or contract painting operation;
- g. Electrical services;
- h. A refrigeration unit on a truck;
- i. A power-take-off unit; and
- j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

- 11. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack or moving unit.
- 12. "Motor vehicle, means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
- 13. "Person" means every individual, partnership, firm association, joint venture, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit.
- 14. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted to travel due to construction, reconstruction, repair, or maintenance.
- 15. "Rack" means a mechanism used to dispense special fuel from a terminal.
- 16. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
- 17. "Refiner" means a person who produces, manufactures, or refines special fuel in the jurisdiction of the Fort Berthold Reservation.
- 18. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage tank into the supply tank of a motor vehicle.
- 19. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.

20. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means for a consideration.
21. "Supplier" means a refiner who distributes special fuel from a terminal in the jurisdiction of the Fort Berthold Reservation, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal.
22. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
23. "Reservation" means all lands within the Fort Berthold Indian Reservation.
24. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section NDCC 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section NDCC 19-10-10, except that it does not include either motor vehicle fuels as defined in section NDCC 57-43.1-01, aviation fuels as defined in section NDCC 57-43.3-01, or antifreeze as defined by section NDCC 19-16.1-02.
25. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the motor vehicle fuel may be removed from the rack.
26. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
27. "Tribe" means the Three Affiliated Tribes.
28. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

10-1002. Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty three cents per gallon is imposed on the sale or delivery of special fuel to any consumer except

special fuel used by the Tribe or Tribal entities and special fuel used for home heating purposes.

2. A supplier, distributor, or retailer shall remit the tax imposed by this section on all sales to consumers.
3. The tax imposed by this section does not apply on sales by a supplier to supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the consumer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday or legal holiday. When payment is made by mail the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.

10-1003. Exemptions.

1. The tax levied under this chapter does not apply to fuel purchased for use on the Fort Berthold Reservation by the government of the United States, or the Tribe or any of its agencies or political subdivisions.
2. The tax levied under this chapter does not apply to bulk sales to an Indian person if used in non licensed equipment and of an agricultural or industrial purpose. Bulk sales of motor fuel to a non-Indian for an agricultural or industrial purpose are taxable sales.

10-1004. Refund to Tribe or political subdivision.

The Tribe and any political subdivision which has paid the tax on special fuel purchased for use by the Tribe or any political subdivision is subject to a refund of the tax paid on the special fuel purchase. Said refund to be applied for in a similar manner as required in chapter 28-16-405.

10-1005. Tax collection allowance.

The person required to remit the tax imposed by this chapter, shall deduct one percent of the amount of tax due, up to a maximum of three hundred dollars per month, to cover the cost of collection the tax and remitting it.

10-1006. Refiner, supplier, distributor, importer, exporter, retailer, and terminal operator required to secure license – License fees.

1. A person may not engage in business in this jurisdiction as a refiner, supplier, distributor, importer, exporter retailer, or terminal operator of special fuel unless that person holds an unrevoked license issued by the commissioner.
2. The person shall file an application for a license with the commissioner providing such information as required by the commissioner, and on a form or in a format as required by the commissioner.
3. An applicant for a single or multiple license as a refiner, supplier, distributor, importer, exporter, or terminal operator shall pay to the commissioner a license fee of twenty dollars. The license fee must be must be paid at the time the application is made.

10-1007. Reports by refiner, supplier, distributor, retailer, importer or exporter required.

A refiner, supplier, distributor, retailer, importer, or exporter shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering special fuel sold and used during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is post marked by the United States postal service or other postal carrier service before midnight of the due date. Each report shall comply with all reporting requirements established by the commissioner.

10-1008. Retention of Records – subject to inspection.

A refiner, supplier, distributor, importer, exporter, terminal operator, and retailer shall maintain and retain, records of all special fuel refined, purchased, imported, or otherwise acquired; of all special fuel exported sold, distributed, and used; and of all inventory records, for a period of not less than three years. Inventory records include physical readings, metered readings of sales, delivery tickets, and delivery readings. The records are open to inspection by the commissioner or by any agent or employee authorized by the commissioner during business hours.

10-1009. Commissioner to audit returns and assess tax.

The commissioner, or an authorized representative, may audit the record, books and papers and examine fuel and any equipment used to store, transport, or dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal operator, retailer, or common or contract carrier. For a person required to file a report, the examination an audit must be done no later than three years after the due date of a report, or three years after the report was filed, whichever period expires later. The commissioner is authorized to make assessments of tax, plus

penalty and interest, or to issue credits or refunds as determined on the basis of the examination and audit.

10-1010. Penalty and interest – Violations.

If a person fails to file the required report, or to pay the full amount of the tax as required by this chapter, there is imposed a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which the delinquency continues, excepting the month within which the tax became due. If a person files a false or fraudulent report with intent to evade the tax imposed by this chapter, there is imposed a penalty equal to ten percent of the deficiency, with interest at the rate of two percent per month on the deficiency, for each calendar month or fraction of a month during which the deficiency continues.

10-1011. Determination if no return is filed.

If a person fails, neglects, or refuses to file a special fuel tax report when due, the commissioner shall, on the basis of available information, determine the tax liability for the period during which no return was filed, and to the tax thus determined the commissioner shall add the penalty and interest as provided in section 28-16-1508. An assessment is presumed to be correct, and in any case where the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by fair preponderance of evidence that is erroneous or excessive, as the case may be.

10-1012. Corporate officer liability.

If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, any of its officers having control or supervision of, or charged with the responsibility for making such returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter for the assessment and collection of other liability.

10-1013. Governor and manager liability.

If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governors or managers, jointly or severally, charged with the responsibility of supervising the preparation of such returns and payment are personally liable for such failure. The dissolution of a limited company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

10-1014. Enforcement and administration

The Three Affiliated Tribes Tribal Tax Commission is charged with enforcement and administration of the provisions of this chapter.

10-1015. Civil Action for tax, penalties and interest.

In any case of the failure of a taxpayer to pay taxed imposed by this chapter, or penalties or interest due under this chapter, the amount due may be recovered in a civil action brought by the Tribal Tax Commission in Tribal Court, or any other Court of competent jurisdiction. In any such action, if the Tribe prevails in whole or in part, the Tribe shall be entitled to recover its reasonable costs of bring suit. Including attorney's fees.

10-1016. Criminal Sanctions.

- (a) Any person who sells fuel covered by this chapter without paying the tax imposed by this chapter shall be guilty of a class A misdemeanor. Any person subject to the Tribes criminal jurisdiction shall be charged with a Class I offense under the laws of the Three Affiliated Tribes.
- (b) Any person who fails to make reports or provide records as required by this chapter shall be guilty of a class B misdemeanor. Any person subject to the Tribes criminal jurisdiction shall be charged with a Class II offense under the laws of the Three Affiliated Tribes.

10-1017. Construction.

The provisions of this chapter shall be construed, where possible, to be consistent with the corresponding provisions of North Dakota's special fuels tax if an agreement is in effect between the Tribes and the State of North Dakota.

collect the taxes covered by this Agreement, and that the taxpayer should no longer remit to it the affected tribal tax or taxes.

8. 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.

9. Exemption from Tax and Refunds

Motor vehicle fuel and special fuel used in a vehicle owned or leased by the Three Affiliated Tribes and used for governmental purposes shall be exempt from motor vehicle fuel taxes and special fuel taxes. Any tax paid on motor vehicle fuel or special fuel for such vehicles shall be refunded to the Three Affiliated Tribes by the State.

10. Notices and Payment

A. Notice

Notice required to be sent to the Three Affiliated Tribes under this Agreement shall be sent to:

Tribal Chairperson
Three Affiliated Tribes
404 Frontage Road
New Town, North Dakota 58763-9402

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

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

B. Payment

Payment required to be sent to the Three Affiliated Tribes under this Agreement shall be sent to:

Three Affiliated Tribes
Tax Department
404 Frontage Road
New Town, North Dakota 58763-9402

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

IN WITNESS WHEREOF, the Three Affiliated Tribes and State of North Dakota have caused this Agreement to be executed and delivered by their respective officers, duly authorized.

Date

Marcus D. Wells, Jr, Tribal Chairman
Three Affiliated Tribes

Date

Corey Fong, Tax Commissioner
State of North Dakota

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

Date

John Hoeven, Governor
State of North Dakota