



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

- WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and
- WHEREAS,** The Constitution of the Three Affiliated Tribes, generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and
- WHEREAS,** The Constitution of the Three Affiliated Tribes in Article I states that the jurisdiction of the Tribe “shall extend to all persons and all lands, including lands held in fee, within the exterior boundaries of the Fort Berthold Reservation...”
- WHEREAS,** The Enabling Act that created North Dakota as a state, (Act of U.S. Congress, February 22, 1889, Ch. 180, Statutes at Large 676), states in Section 4m in pertinent part, “That the people inhabiting proposed states do agree and declare that they forever disclaim all right and title ... to all lands lying within said limits owned or held by any Indian or Indian tribes; and... said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; [and] ... , that no taxes shall be imposed by the states on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. “
- WHEREA,** The express terms of the Enabling Act as stated above were incorporated into the Constitution of the state of North Dakota, in Article XIII, Section 3, in which North Dakota “accepts” the grants of land given to form the state from the United states, “under the conditions and limitations therein mentioned....”
- WHEREAS,** The Tribe understands that since the Enabling Act was passed by Congress, Congress has passed legislation and the United States Supreme Court has issued various opinions on taxation within Indian Reservations but that in relation to state sales tax being imposed on goods and services produced by Indians living and working within reservations on trust lands, the principle of non-taxation of Indians as expressed by the Enabling Act and in federal law, has not changed; and
- WHEREAS,** The State of North Dakota never accepted jurisdiction over the Indian reservations within North Dakota as authorized by Act of Congress known as P.L. 83-280 passed in 1953 and amended thereafter to require permission from any



Indian tribe before the state could accept jurisdiction over the Tribe, except for certain states, not including North Dakota; and

**WHEREAS,** The State of North Dakota, as of 2015, and acting through its Tax Commissioner, is asserting a right to collect, and is attempting to collect, sales taxes imposed on goods and services produced by certain Limited Liability Companies that are wholly owned by members of the Three Affiliated Tribes but which are organized under state law, and which have produced goods and services on lands that are provided solely within the Fort Berthold Reservation; and

**WHEREAS,** The individuals who are members of the Three Affiliated Tribes and who exclusively own Limited Liability Companies (LLCs) organized under state law that do business exclusively on the Fort Berthold Reservation are not subject to the jurisdiction of the state, other than as expressly provided in federal law or judicial decisions, or under state laws that directly relate to the formation and continuance of said organization, in accordance with the Constitution of the state of North Dakota and federal law and judicial decisions; and

**WHEREAS,** The character of the services and products produced by Tribal members from their lands within the reservation, and who exclusively own LLCs organized under the laws of the state of North Dakota with no non-Indian members of said LLCs, does not change because of the existence of the state charter of the LLC, which means those products or services are not subject to sales tax by the state of North Dakota; and

**WHEREAS,** There is no basis under the North Dakota Constitution, state law, federal law, or decisions of the United States Supreme Court or any other inferior federal court decision, or under any tribal law, for the state Tax Commissioner of North Dakota to apply the state sales tax on services or products produced by Tribal members from activities occurring on, or goods produced from, trust lands within the Fort Berthold Reservation; and

**WHEREAS,** The effort by the North Dakota State Tax Commissioner to collect sales tax from tribal member owned LLCs is a violation of the sovereignty of the Three Affiliated Tribes, a violation of the rights of Tribal members, and is harmful to the economic well-being of the Three Affiliated Tribes and should be stopped as quickly as possible.

**NOW THEREFORE BE IT RESOLVED,** that the Business Council of the Three Affiliated Tribes opposes any effort by the state of North Dakota to collect state sales tax on goods and services produced by LLCs that are owned by Tribal members organized under North Dakota law, and whose goods and services are provided



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exclusively for use within the Fort Berthold Reservation, and further authorizes the Chairman of the Tribal Business Council to write letters on behalf of such individual tribal members protesting such sales tax collection efforts and to take such other action as may be necessary to prevent the effort by the state to collect sales tax from these activities and products produced by LLCs and which are used or provided exclusively within the Fort Berthold Indian reservation; and;



**CERTIFICATION**

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 6 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 11<sup>th</sup> day of June, 2015; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 1 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman  Voting.  Not Voting.

Dated this 11<sup>th</sup> day of June, 2015.

Secretary, L. Kenneth Hall  
Tribal Business Council

**ATTEST:**

Chairman, Mark N. Fox  
Tribal Business Council