

**FORT PECK – MONTANA
ALCOHOLIC BEVERAGES TAX
AGREEMENT**

THIS AGREEMENT is entered into this 16th day of October, 2002, by and between the State of Montana, Department of Revenue, hereinafter referred to as "State" and Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, hereinafter referred to as "Tribes."

The Tribal Executive Board is the governing body of the Tribes and is authorized to enter into this Agreement by Article VII, Section 1, of the Tribes' Constitution.

The State is authorized to enter into this Agreement by the State-Tribal Cooperative Agreements Act, Mont. Code Ann. § 18-11-101-111 (2001).

The State and the Tribes agree as follows:

1. General purposes of agreement. In furtherance of the government to government relationship between the State and the Tribes, the State and the Tribes agree to jointly tax the sale of alcoholic beverages on the Fort Peck Indian Reservation. The purposes of this agreement are to avoid legal controversy and possible litigation over the taxation on the sale of alcoholic beverages within the exterior boundaries of the Fort Peck Indian Reservation (hereinafter referred to as "Reservation"), to avoid dual taxation of such sales of alcoholic beverages by both the Tribes and the State, and to ensure that the same level of taxation is imposed on the sale of alcoholic beverages both within and outside the boundaries of the Reservation.

2. State law. The State imposes taxes on sales of alcoholic beverages by all persons within the State's jurisdiction under Part 4, Chapter 1, Title 16, Montana Code Annotated, including the liquor excise tax, §§ 16-1-401 through 405, MCA, and the beer and wine taxes, §§ 16-1-406 through 411, MCA. The State shall notify the Tribes in writing of any changes or amendments to these provisions which the State believes necessitate an amendment to tribal law under this agreement within sixty (60) days of the enactment of such changes or amendments.

3. Tribal law. The Tribes shall keep in force an ordinance imposing taxes in an amount equal to the Montana liquor excise tax and beer and wine taxes, which taxes shall apply to liquor, beer and wine sold to all persons within the Tribes' jurisdiction on the Reservation in a manner similar to the Montana taxes. The Tribes shall supply the State with a current copy of this ordinance as it may be amended from time to time substantially conform to state law within sixty (60) days of enactment or amendment of the ordinance.

4. Collection and administration of taxes. The State and the Tribes agree that alcoholic beverages sold on the Reservation shall not be subject to both the state tax and tribal tax, but shall be subject to one tax. The State agrees to collect both taxes on the Reservation and to remit to the Tribes the tribal liquor and beer and wine tax collected on liquor and beer and wine sold on the Reservation as determined by the formulas described below.

(a) The total amount of remittance distributed to the Tribes shall be:

(i) Liquor: The Tribes will receive fifty percent (50%) of the total taxes collected on the sale of liquor on the Reservation determined by sales of liquor from retail liquor distributors on the Reservation for each calendar quarter; and

(ii) Beer and Wine: The Tribes will receive fifty percent (50%) of the total taxes collected on beer and wine consumed on the Reservation. The amount so consumed will be determined by multiplying the total population of the Reservation as determined by 2000 census by the tax on the per capita consumption per quarter of beer and wine in Montana as determined by the State for the preceding calendar year, and then multiplying the resulting sum by .50.

(b) The State shall distribute the moneys due to the Tribes under this Agreement no later than thirty 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.

(c) Distributions will start within thirty days from the end of the first whole calendar quarter after the effective date of this Agreement and continue until the expiration or the termination of this Agreement as provided Paragraph 5 or required by law. For the purpose of this Agreement a calendar quarter begins on January 1, April 1, July 1 or October 1 of each year.

(d) The amount payable to the Tribes shall be in the form of a warrant issued by the State of Montana payable to the Tribes and sent to the Chairman of the Tribes.

5. Term. This Agreement shall be for a term of ten years from the effective date, subject to the renewal provision of paragraph 8 unless terminated in writing by either party upon written notice to the other. This Agreement shall automatically remain in effect for each successive calendar quarter beyond its term if neither party terminates the Agreement as provided above or if the parties fail to renew the Agreement as provided in paragraph 8 of this Agreement. Remittance of funds by the State to the Tribes in the event of termination of the Agreement shall be as follows:

(a) If written notice of termination is given by the State or the Tribes more than thirty days prior to the end of the calendar quarter, the State shall be obligated to remit the full amount payable to the Tribes for the calendar quarter in which the notice of termination is given.

(b) If written notice of termination is given by the Tribes less than thirty days prior to the end of the calendar quarter, the State shall be obligated to remit the full amount payable to the Tribes for the calendar quarter in which the notice of termination is given.

(c) If the written notice of termination is given by the State less than thirty days prior to the end of the calendar quarter, the State shall be obligated to remit the full amount payable to the Tribes for the next calendar quarter following notice.

The obligation stated in subparagraphs (a) through (c) shall survive any termination of this Agreement.

6. Audits. Either party may examine or audit the records of the other party to determine the accuracy of the statement or representations called for in this Agreement. The

right of examination or audit shall exist during the term of the Agreement and for a period one year after the date of any termination or expiration of this Agreement.

7. Effective date. This Agreement shall be effective on the 1st day of October, 2002.

8. Amendments, renegotiation and renewal.

(a) This Agreement may be amended only by written instrument signed by both parties.

(b) Six months prior to expiration of the initial ten year term provided in paragraph 5 of this Agreement, the parties shall meet to negotiate in good faith a renewal of the Agreement.

(c) The Tribes and the State agree to negotiate in good faith any amendments requested by the other party upon receipt of a request to renegotiate. The parties agree to come together to negotiate within sixty (60) days of any such request by the other party.

9. Reservation of rights and negative declaration. The State and Tribes have entered into this Agreement in part to resolved a legal dispute and avoid litigation. The parties agree that by entering into this Agreement, neither the State not the Tribes shall 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 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 conducts in the negotiations or renegotiation 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. By entering into this Agreement, neither the State nor the Tribes are 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 liquor and beer and wine as provided in §§ 16-1-401 through all, MCA, 1991. It does not apply to any other taxes or fees of any nature collected by the State. This Agreement does not apply to any other tax collected by any other agency or subdivision of the State of Montana.

10. Notices. All notices an other communications required to be given under this Agreement by the Tribes 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:

(a) If to the Tribes:

Chairman, Fort Peck Tribal Executive Board
Assiniboine & Sioux Tribes of the Fort Peck Reservation
Post Office Box 1027
Poplar, Montana 59255

(b) If to the State:

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

And to: (insert the name of the official administering the agreement) Notice shall be considered given on the date of mailing.

DATED this __ day of _____, 2002.

Montana Department of Revenue

/S/ KURT ALME
Kurt Alme, Director

DATED this 16th day of October, 2002.

ASSINIBOINE AND SIOUX TRIBES
OF THE FORT PECK RESERVATION

/S/ ARLYN HEADDRESS
Arlyn Headdress
Chairman, Fort Peck Tribal Executive Board