

An Act

Sponsor: Meredith Frailey/Chief Smith
Author: Julian Fite/Todd Hembree

Legislative Act 7-04

AN ACT RELATING TO AND APPROVING A CERTAIN COMPACT WITH THE STATE OF OKLAHOMA TO BE KNOWN AS THE "CHEROKEE NATION/STATE TOBACCO TAX COMPACT ACT OF 2003"

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title

This Act shall be known as "CHEROKEE NATION/ STATE TOBACCO TAX COMPACT ACT of 2003."

Section 2. Purpose

The Nation and the State agree to enter into a compact for the mutual benefit of both sovereign governments. In recognition of the sovereign authority of the Cherokee Nation to exercise the powers of self government and the sovereign authority of the State of Oklahoma to act as an independent sovereign state, this law authorizes the Principal Chief to approve a compact and to take the necessary action to implement the requirements of its provisions as authorized and approved by the Council of the Cherokee Nation.

Section 3. Approval of Compact; Authority to Execute, Effective Date

The Compact that has been negotiated by the Principal Chief and the Governor of the State of Oklahoma, a copy of which is attached hereto and incorporated herein by reference, is hereby approved and becomes effective as agreed to under the terms of the compact.

Section 4. Provisions as cumulative

The provisions of this act shall be cumulative to existing law except as the terms of this compact shall supercede provisions of the previous Tobacco Tax Compact approved by LA 3-92, effective May 11, 1992 and by LA 44-2003, effective December 30, 2003.

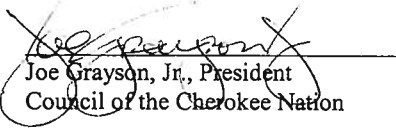
Section 5. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

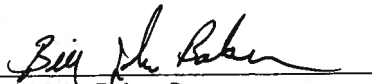
Section 6. Emergency declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

Enacted by the Council of the Cherokee Nation on the 15th day of March, 2004.

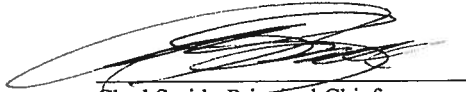

Joe Grayson, Jr., President
Council of the Cherokee Nation

ATTEST:



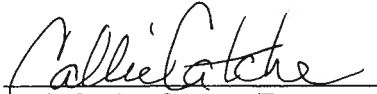
Bill John Baker, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 22nd day of MARCH, 2004.



Chad Smith, Principal Chief
Cherokee Nation

ATTEST:



Callie Catcher, Secretary/Treasurer
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Audra Smoke-Connor	<u>YEA</u>	Melvina Shotpouch	<u>YEA</u>
Bill John Baker	<u>YEA</u>	Meredith A. Frailey	<u>YEA</u>
Joe Crittenden	<u>ABSENT</u>	John F. Keener	<u>YEA</u>
Jackie Bob Martin	<u>YEA</u>	Cara Cowan	<u>YEA</u>
Phyllis Yargee	<u>YEA</u>	Buel Anglen	<u>YEA</u>
David W. Thornton, Sr.	<u>YEA</u>	William G. Johnson	<u>YEA</u>
Don Garvin	<u>YEA</u>	Charles "Chuck" Hoskin	<u>YEA</u>
Linda Hughes-O'Leary	<u>ABSENT</u>		

Cherokee Nation Act/Resolution Proposal Form

ADMINISTRATIVE CLEARANCE:

Program/Project Manager:
N/A
Signature _____ Date _____

Department Director:
N/A
Signature _____ Date _____

Executive Director:
[Signature] 11.04
Signature _____ Date _____

Controller (if needed):
N/A
Signature _____ Date _____

Government Resources Group:
[Signature] 2/11/04
Signature _____ Date _____

Administration Approval:
[Signature] 2/11/04
Signature _____ Date _____

Act Resolution

TITLE: Act Relating to and Approving a Certain Compact with the State of Oklahoma to be Known as the "Cherokee Nation/State Tobacco Tax Compact Act of 2003"

Department Contact: Julian K. Fite

Resolution Presenter: Chad Smith

Sponsor:

NARRATIVE:
(See Attached Outline for Information Needed)

The purpose of this act is to approve the proposed tobacco tax compact which has been negotiated between Cherokee Nation Principal Chief Chad Smith and State of Oklahoma Governor Brad Henry and which is attached hereto. This act supercedes LA 44-03.

LEGISLATIVE CLEARANCE

Legislative Aide:
sfb 2-12-04 8:30 am
Signature/Initial _____ Date _____

Standing Committee:

Next Meeting Date

Chairperson:

Signature/Initial _____ Date _____

Returned to Presenter: _____
Date _____

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GOVERNMENT RESOURCES

TOBACCO TAX COMPACT
BETWEEN THE STATE OF OKLAHOMA
AND
THE CHEROKEE NATION
2004

WHEREAS, the Cherokee Nation, the compacting Indian Nation (herein referred to as the "Nation") is a federally recognized Nation with sovereign powers of self-government.

WHEREAS, the State of Oklahoma (hereinafter referred to as "State") is an independent sovereign state within the United States of America possessed of full powers of state government;

WHEREAS, the Nation and its citizens are in possession of various tracts of land in its jurisdiction within the state, known and commonly referred to as "Indian Country";

WHEREAS, the State by and through the United States Supreme Court decision in Oklahoma Tax Commission vs. Citizen Band Potawatomi Indian Tribe of Oklahoma contends it is authorized to collect state taxes on cigarettes and tobacco products sold by tribal businesses to non-tribal citizens;

WHEREAS, federal Indian law recognizes that tribal jurisdiction is extant in Indian Country regarding the rights of Indian Nations to pass their own laws and be governed by them, including the right to sell cigarette and tobacco products to tribal citizens free from state taxation; and

WHEREAS, the State recognizes the financial, cultural, educational and economic contributions of the Nation to the State and its citizens and the Nation in turn recognizes the need to develop and maintain good tribal/state relations in this period of cooperation.

NOW, THEREFORE, The Cherokee Nation (Nation) by and through its Principal Chief, Chad Smith, and the State of Oklahoma by and through its Governor, Brad Henry, do hereby enter into this compact for the mutual benefit of the Nation and the State, to-wit;

1. Notwithstanding the subsequent enactment of any applicable law, all sales of cigarettes and tobacco products in Indian Country as defined by federal law shall be governed by the provisions of this compact, when said sales

are made (a) by businesses owned by the Nation, (b) by licensees who are citizens of the Nation, or (c) by businesses licensed by the Nation in which the majority interest is owned by the Nation or citizens of the Nation. The entities or groups described in a, b, and c shall be collectively referred to as Tribal Retailers.

2. The Nation agrees to require as a condition to licensing that all Nation's retail licensees who are citizens of the Nation, all the Nation's retail licensees, which are businesses in which the majority interest is owned by the Nation or by citizens of the Nation, and wholesale licensees will comply with the provisions of this compact.

3. The Nation or its licensees agree to pay the following excise tax in lieu of the sales and excise tax generally imposed upon cigarettes and tobacco products by Title 68 of the Oklahoma Statutes. Such payment shall be in the amount of twenty-five percent (25%) of all applicable excise taxes, which taxes were effective as of January 1, 2003, and, except as hereinafter provided, one hundred percent (100%) of all applicable excise tax increases as may be enacted by the State after January 1, 2004, on all cigarettes and tobacco products purchased by the Nation or Nation's licensees for resale in Indian Country of the Nation, without reference to the citizenship or non-citizenship status of the purchasing public. Provided, however, the Nation shall not pay increases in said taxes imposed on cigarettes and other tobacco products after January 1, 2004, which are purchased and sold at any of its retail businesses located within Twenty (20) miles of the state lines between Texas and Oklahoma or Arkansas and Oklahoma until such time as the States of Texas and/or Arkansas increase their respective taxes on tobacco products. When one of said adjacent states enacts such increase, the Nation shall pay to State on all sales made within Twenty (20) miles of said states line the lesser of increases enacted by Oklahoma after January 1, 2004 or a sum equal to the increase in tobacco taxes by the adjacent state. Similarly, the Nation shall not pay increases in said taxes imposed on cigarettes and other tobacco products after January 1, 2004, which are purchased and sold at any of its retail businesses located within Twenty (20) miles of the state line between Missouri and Oklahoma until such time as the state of Missouri increases its taxes on tobacco products. When such increase becomes effective, the Nation shall pay to State on all sales made within Twenty (20) miles of said state's line the lesser of increases enacted by Oklahoma after January 1, 2004 or a sum equal to the increase in tobacco taxes by the state of Missouri which are applicable to all non-tribal sales in said state. Furthermore, the Nation shall not pay increases in said taxes imposed on cigarettes and other tobacco products after January 1, 2004, which are purchased and sold at any of its retail businesses located within ten (10) miles of a retail facility selling tobacco products that was in operation on January 1, 2003, owned or licensed by a tribe party to a tobacco tax

compact with the State under which such tribe is only obligated to pay the State 25% of all applicable excise taxes until such time as such tobacco tax compact terminates or is renewed by mutual agreement of the parties.

This ten (10) mile limit shall be extended to thirty-five (35) miles for the following facilities listed below:

Addresses Border – Muscogee Creek Nation:

- 208W. Allen Road, Tahlequah, OK 74464;
- 412 W. Allen Road, Tahlequah, OK 74464;
- 3.5 miles S. Hwy 62, Tahlequah, OK 74464;
- 2 ½ miles N. of Peggs on Hwy 82, Peggs, OK 74452;
- 821 ½ W. Choctaw, Hwy 51, Tahlequah OK 74464;
- 23957 Hwy 51, Tahlequah, OK 74464;
- 1600 South Brooke St., Pryor, OK 74361;
- 405 N. Mayes, Adair, OK 74330;
- 11301 N. Garnett Road, Owasso, OK 74055;
- 4th & Oak, Salina, OK 74346;
- 912 N. Dorothy Avenue, Claremore, Ok 74017;
- Hwy 10, Box 86, ¼ miles east of Green Leaf Lake, Braggs 74948;
- 501 N. Main, Gore, OK 74434;
- HCR-60 Box 125, Spavinaw, OK 74366;
- 4 ½ miles east on 412, Locust Grove, OK 74352;
- 203 No Name Street, Sallisaw, OK, 74955;
- Rt 2 Box 190, Vian, OK 74962;
- 443501 East 380 Rd, Vinita, OK, 74301;
- 1 ½ miles North of Ramona, Hwy 75, Ramona, OK 74056;
- 12042 US 75 North, Dewey, OK 74029;
- 2810 South Hwy 169, Talala, OK, 74080
- 401261 US Hwy 60 East, Bartlesville, OK, 74006

Addresses Border - Tribes located in the Northeast corner in Oklahoma:

- 126 W. Clyde, Vinita, OK 74301;
- 433661 E. Hwy 66, Vinita, OK 74301;
- Rt. 1, Box 108-A, I-44 and State Hwy 69, Big Cabin, OK 74332;
- Monroe Street, Creek More Addition, Jay, OK 74346
- 15280 Street, Grove, OK, 74345
- 2.1 South Hwy 59, Grove, OK, 74345

4. From the payments to the State by the Nation or its licensees of tobacco tax increases after January 1, 2004, as provided in the preceding paragraph, fifty percent (50%) of all such payments shall be held in an interest bearing trust account for the Nation by the State. These trust funds shall be and remain property of the Nation and shall be remitted quarterly by the State to the Nation.

5. Any store, not a Tribal Retailer owned or licensed, operating within the Nation's jurisdiction or Indian Country and engaging in the sale of cigarettes and tobacco products shall not be subject to the provisions of this compact.

6. All payments in lieu of State taxes shall be collected by all wholesalers, distributors, jobbers, or warehousemen selling cigarettes and tobacco products to the Nation and to the Nation's licensees for resale in Indian Country and shall be collected at the time of the wholesale transaction and included in the wholesale purchase price for remission to the state.

7. The Nation agrees to purchase cigarettes and tobacco products only from wholesalers, distributors, jobbers, sub-jobbers or warehousemen who agree to allow verification of sales to state officials on a timely basis and are in compliance with applicable State law. The Nation shall at all times maintain and provide the state with a current list of all its tribally owned and licensed stores and the wholesalers, distributors, jobbers, sub-jobbers, or retailers. It shall be the responsibility of the wholesalers, jobbers, sub-jobbers, or warehousemen to forward copies of all invoices of wholesale tobacco product sales to the Nation's licensed wholesalers, jobbers, sub-jobbers and retail outlets to the State and the Nation.

8. All cigarettes sold shall bear Tribal and State stamps or a single stamp approved by both parties, verifying that all applicable tribal taxes and payments in lieu of state taxes have been paid to the wholesaler at the time of purchase. In the event that both tribal and state stamps are used, each party shall bear its respective cost of affixing its stamp. In the event a single stamp is used, the state shall bear all costs relative thereto, unless there is mutual agreement otherwise. At the option of the Nation, or someone on behalf of the State, the wholesaler, distributors, jobbers or warehousemen shall affix the required stamp or stamps.

9. Both parties agree that unstamped cigarettes are contraband, and that each party has the right to seize contraband. The Nation may seize all contraband located within its Indian Country. The state may seize all contraband located within the lawfully recognized boundaries of the State of Oklahoma, excluding Indian Country of the Nation.

10. The State shall exempt all sales of cigarettes and tobacco products to and by the Nation and its licensees from sales and excise taxes in consideration of the agreement by the Nation to make the aforementioned payment in lieu of state taxes. The State further agrees that it will not generally waive or forgive any otherwise applicable tobacco taxes, including sales tax, on sales by retailers not a party to this or a similar compact except in settlement of a doubtful or disputed claim as allowed by law, and shall make a good faith effort to the extent provided by federal and state law, to enforce state tobacco tax laws against third party retailers not complying therewith.

11. Any dispute arising in the interpretation or performance of this Compact, which is not resolved by good faith negotiations within thirty (30) days, shall be subject to binding arbitration. Arbitration may be invoked by either party following the negotiation period should the dispute remain unresolved. Arbitration shall be the exclusive means of resolving such disputes subject only to jurisdiction and venue. When arbitration is invoked, a panel of arbitrators consisting of three (3) members shall be appointed. One shall be appointed by the Nation and one by the State. A third shall be appointed by the other two members. The expenses of arbitration shall be born equally by the parties. The arbitrators shall adopt their own procedural rules regarding the arbitration process in conformity with the rules of the American Arbitration Association.

12. This agreement shall terminate on June 30, 2013. At the end of said term, this compact shall continue in full force and effect for consecutive terms of one (1) year, unless either party hereto gives to the other written notice that the compact shall terminate at the end of the present term provided that such notice is given at least six (6) months prior to said termination. Nothing in this Compact shall prevent the parties by mutual agreement from establishing an earlier termination date or otherwise modifying this agreement.

13. By entering into this compact, the Nation does not concede that the laws of the State of Oklahoma, including its tax laws, apply to the Nation or its citizens regarding activities and conduct on its Indian Country.

14. Each party shall hold the other, including its agents and licensees, harmless from any past taxes or payments in lieu of taxes on cigarettes and tobacco products.

15. By entering into this Compact, the Nation further agrees that all funds received from the trust funds set forth in paragraph 4 above, except administrative expenses, shall be devoted to health, welfare, educational and other governmental purposes of the Nation. It is further agreed that no such

funds shall be used by the Nation, directly or indirectly, to purchase tobacco or shall be remitted or rebated to tobacco retailers.

16. Should the State enter into a tobacco tax compact with another Indian tribe with terms more favorable to the other Indian tribe than those in this compact, such more favorable terms may, at the option of the Nation, automatically be incorporated herein.

17. This compact shall be effective when fully executed by all parties, and there is attached hereto the original, or a properly certified copy of the properly prepared and approved resolution of the legislative body of the Nation authorizing the Nation to enter into and execute this agreement.

It is agreed this the _____ day of _____, 2004.

Chad Smith,
Principal Chief of the Cherokee Nation

ATTEST

Secretary of State

Brad Henry, Governor
State of Oklahoma