

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

**August 2008**

WHEREAS, the CHEROKEE Nation (hereinafter referred to as the "Nation"), is a federally recognized Indian Tribe with inherent sovereign powers of self-government predating the formation of the United States;

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

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 cigarettes and other tobacco products to tribal members free from State taxation; and

WHEREAS, the State recognizes the financial, cultural, educational and economic contributions of the Nation to the State and its members, and the Nation recognizes the need to develop and maintain good Tribal/State governmental relations.

NOW, THEREFORE, the Cherokee 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. Regardless of any subsequent enactment by the State of any laws or administrative rules regarding the rate of taxation on the sale of cigarettes and other tobacco products, only the provisions of this Compact shall govern the minimum Tribal rate of taxation and payment to the State on the retail sales of cigarettes and other tobacco products in the Nation's Indian Country as defined by federal law, including 18 U.S.C. § 1151, hereinafter referred to as "Compact Jurisdiction", when said retail sales are made by (a) businesses owned by the Nation, (b) licensees who are members of the Nation, or (c) businesses licensed by the Nation in which the majority interest is owned by the Nation or members of the Nation, provided that nothing herein shall prohibit the Nation from enacting any laws and/or regulations regarding the retail sale, use or possession of cigarettes and other tobacco products in the Nation's Jurisdiction that would not be in conflict with the provisions set forth herein. The entities or groups described in clauses (a), (b), and (c) of this paragraph shall be collectively referred to as

the "Retailers" or individually as a "Retailer." Nothing contained herein shall impair the ability of the Oklahoma Tax Commission to regulate cigarette manufacturers, importers, wholesalers, distributors, distributing agents, jobbers, or warehousemen ("Wholesalers"), provided such regulation shall not interfere with the rights of the Nation or its Retailers under this Compact.

2. (a). The Nation agrees to require as a condition to licensing and continuation of licensing that all Retailers comply with the provisions of this Compact.

(b). The Nation shall furnish to the State the following information with respect to each of the Retailers unless unavailable to the Nation:

1. The owner's name(s) and address(es);
2. A list of any tax-related permits held;
3. For any Tobacco business of the Nation not in operation on July 1, 2008, documentation or certification that business premises are located within the Compact Jurisdiction.
4. The location of offices and business records; and
5. A copy of any reports by any Wholesalers or Retailers to the Nation documenting all sales of cigarettes and other tobacco products within the Compact Jurisdiction;
6. The current list of all Wholesalers providing Retailers within the Compact Jurisdiction with cigarettes or tobacco products; and
7. Any complaints, audit reports or concluded investigation findings related to the wholesale or retail sale of cigarettes or tobacco products within the Compact Jurisdiction.

(c). The State agrees to provide the following information from the Oklahoma Tax Commission to the Nation's Tax Commission unless unavailable to the Oklahoma Tax Commission:

1. The name and address of Wholesalers licensed by the State;
2. The number and dollar amount of Compact stamps purchased by Wholesalers for sale to Retailers;
3. A copy of any reports by Wholesalers or Retailers to the State documenting wholesale or retail sales within the Compact Jurisdiction;
4. A current list of all Wholesalers providing the Retailers with cigarettes or tobacco products;
5. Any complaints, audit reports or concluded investigation findings related to the wholesale or retail sale of cigarettes or tobacco products within the Compact Jurisdiction; and

The State and Nation stipulate and agree, for the sole purposes of the provisions of paragraph 2(c) hereof, the Nation is and shall be considered by the State as a "foreign country" for purposes of permissible disclosures to the Nation pursuant to 68 O.S. § 205 C.7. and the Nation is and shall be considered by the State as an "international authority" for purposes of 68 O.S. § 312 .J..

The State and Nation further stipulate and agree, for the sole purposes of the provisions of paragraph 2(c) hereof, this Compact shall constitute a "contract" between the Nation and the Oklahoma Tax Commission for purposes of permissible disclosures to the Nation pursuant to 68 O.S. § 205.C.16.

The Nation and the State, in consideration hereof, stipulate and agree that any information received from the records and files of the Oklahoma Tax Commission or the Cherokee Nation Tax Commission will be treated and considered as confidential and privileged, to be used for the Nation's or the State's purposes in the administration and collection of the Tobacco Payment and the Tribal Tax provided herein which are the subject of this Compact, and not be disclosed to any third party, including, but not limited to the Nation's Retailers and any and all manufacturers, distributors and wholesalers of cigarettes and other tobacco products. A disclosure to a governmental agency for regulatory or enforcement purposes, in a court proceeding or arbitration to enforce the provisions of this Compact or to a court in response to a subpoena or other court order, shall not constitute a breach of this paragraph.

3. In exchange for the Nation's imposition of the Tribal Tax described in Paragraph 4 below and for the other obligations agreed to by the Nation herein, the State agrees to accept a reduced excise tax payment in lieu of the excise and all other taxes generally imposed upon cigarettes and tobacco products by Title 68 of the Oklahoma Statutes ("Tobacco Payment") for all sales of cigarettes and tobacco products by Retailers within the Compact jurisdiction, without reference to the Tribal membership or non-membership status of the ultimate purchasing consumer, in the amount of fifty percent (50%) of all applicable State taxes on cigarettes and other tobacco products. Provided, however, for any Retailer located within twenty (20) miles of the state line between Oklahoma and Kansas, Oklahoma and Arkansas or Oklahoma and Missouri, in existence and doing business as of January 1, 2009, ("Border Retailer"), the Tobacco Payment shall be in the amount of twenty-five percent (25%) of all applicable State taxes on cigarettes and other tobacco products ("Border Rate") until such time as the State of Kansas, the State of Arkansas or the State of Missouri increases its tax on tobacco products to a rate at or above the rate currently in effect within the State. When such increase becomes effective in any such state, the Border rate provided herein shall no longer apply to the Border Retailers within twenty (20) miles of such state and the Border Retailer shall pay the Tobacco Payment provided for Retailers that are not Border Retailers. The State agrees that an amount equal to \$2.00 per carton of cigarettes of the Tobacco Payment will be used by the State for the purpose of health care including but not limited to cancer and diabetes treatment and prevention in the Tulsa and Northeast Oklahoma area. The parties agree that the Tobacco Payment is, for purposes of the Master Settlement Agreement, a reduction in State excise taxes and all other taxes generally applicable to the sale of cigarettes and tobacco products.

The Nation agrees that the State may collect the Tobacco Payment directly from the Wholesaler, and that the Wholesaler must collect the Tobacco Payment directly from the Retailers. The Nation agrees to require the Retailers to: (A) pay the Tobacco Payment, (B) pass both the Tobacco Payment and the Tribal Tax on to the ultimate consumer in the retail price of the cigarettes or tobacco products and (C) refrain from selling, distributing, transporting, soliciting sales of or in any matter dealing with cigarette brands and products of manufacturers who do not fully comply with the requirements of 37 O.S. §§ 600.21-600.23 and only deal in

tobacco products of complying manufacturers, as evidenced by their names and list of brands as maintained on the Oklahoma Attorney General's website. If any Retailer purchases cigarettes or tobacco products from an unlicensed Wholesaler or fails to comply with any of its obligations under this paragraph, the Nation shall take necessary enforcement measures to ensure compliance with this paragraph by the Retailer, provided that if the Retailer continues to violate any obligations of this paragraph ninety (90) days following notification to the Nation and Retailer from the State of such violation the State may remove such Retailer from the list of Retailers entitled to benefits under this Compact until such time as the Retailer is in compliance with its obligations hereunder, when the Retailer shall automatically be returned to the list.

If the State amends any applicable State tax on cigarettes or other tobacco products in effect as of January 1, 2008, the Nation shall have the right to cancel this Compact upon thirty days' prior written notice to the State or may elect to pay a Tobacco Payment of 50% of all State taxes generally applicable to cigarettes and tobacco products provided the Nation continues to require the Tribal Tax set forth in paragraph 4 below.

4. The State authorizes, and the Nation requires, all Wholesalers licensed by the State and selling cigarettes or tobacco products to any Retailer to: (a) collect a "Tribal Tax" on all cigarettes and tobacco products purchased by the Nation or a Retailer for resale in the Compact Jurisdiction, without reference to the membership or non-membership status of the purchasing consumer, in the amount of \$1.50 per carton of ten (10) packs of twenty (20) cigarettes, \$1.88 per carton of ten (10) packs of twenty-five (25) cigarettes, and its "Border Retailers" in the amount of \$4.07 per carton of ten (10) packs of twenty (20) cigarettes, \$5.10 per carton of ten (10) packs of twenty-five (25) cigarettes., and on other tobacco products in the amount of fourteen and six tenths percent (14.6%) of all applicable State taxes now in effect (b) remit the Tribal Tax to the Nation's Tax Commission on the same schedule as the payments described in Paragraph 3 above are made to the State; and (c) provide sufficient documentation to the State and to the Nation's Tax Commission to demonstrate that the appropriate Tribal Tax and Tobacco Payment have been remitted. The Nation may rebate to Border Retailers a payment reflecting lost profit from the Tribal Tax. If any Wholesaler selling cigarettes or tobacco products to a Retailer fails to properly collect and remit the Tribal Tax described in this paragraph, the State and Nation shall take necessary enforcement measures to ensure compliance with this paragraph by the Wholesaler.

The Nation may at its discretion, designate an additional tribal tax to be collected in the same manner, whose payment may be reflected by the use of either a single joint tax stamp or a second tax stamp supplied by the Nation. Should the Nation designate a higher Tribal Tax rate to be collected by the Wholesalers, the Nation must, thirty (30) days prior to its implementation, deliver written notice of its intent to implement such a tax, together with notice of its effective date to the Oklahoma Tax Commission. The Nation shall be required to bear the cost of producing any stamp that might be required should it elect a higher Tribal Tax. Nothing herein shall affect or impair the Nation's inherent authority to impose other taxes on the sale, purchase, or possession of cigarettes or tobacco products under Tribal law.

5. The Tribal Tax provided for in paragraph 4 above and the Tobacco Payment provided in Paragraph 3 above shall be collected, in advance, by the Wholesaler selling cigarettes and other tobacco products to the Retailers for resale to consumers in the Compact

Jurisdiction and shall be collected at the time of the wholesale transaction. The Nation agrees that the Tribal Tax and the Tobacco Payment shall be included in the retail price and passed on to consumers, and will require the Retailers to do so. Pursuant to the terms of purchase of stamps from the State, each month the Wholesaler shall remit the Tobacco Payment to the State of Oklahoma Tax Commission and the Tribal Tax to the Nation's Tax Commission.

6. Any business, not a Retailer operating within the Compact Jurisdiction and engaging in the sale of cigarettes and other tobacco products, shall not be subject to the Compact and its provisions and shall be governed by applicable Oklahoma and Tribal law. The State may charge such retailers the excise tax imposed on cigarettes and other tobacco products provided by Title 68 of the Oklahoma Statutes.

7. The Nation agrees that it will require the Retailers to purchase cigarettes and other tobacco products only from Wholesalers that are duly licensed by the State of Oklahoma. The Nation preserves its authority to license any Wholesaler located within the Compact Jurisdiction. The Nation agrees that the Tobacco Payment provided for in this Compact applies only to the Retailers' retail sales of cigarettes to the consumer, and the Nation agrees to require its Retailers not to sell or otherwise transfer cigarettes or tobacco products stamped with the tax stamp authorized under this Compact to anyone other than the consumer. Except for transfers between Retailers authorized to sell tobacco products at the Tobacco Payment rate under this Compact, the Nation agrees to prohibit its Retailers from selling or otherwise transferring cigarettes or other tobacco products stamped with reduced tax stamps to anyone other than the consumer at retail outlets located in the Nation's Compact Jurisdiction, including sales or transfers to other retailers outside the Compact Jurisdiction.

8. Except as otherwise provided herein with respect to any additional Tribal Tax the Nation may impose, all cigarettes sold by the Retailers shall bear a single stamp, verifying that the Tobacco Payment and the Tribal Tax have been paid to the Wholesaler at the time of purchase. Except as otherwise provided herein with respect to any additional Tribal Tax the Nation may impose, the State shall bear all costs relative to the affixing of the tax stamp, unless the parties mutually agree otherwise, and shall require the Wholesaler to affix the required stamp.

9. (a) The parties agree that unstamped cigarettes, counterfeited stamped cigarettes, mutilated stamped cigarettes and cigarettes and tobacco products on which the Tobacco Payment and the Tribal Tax required to be paid pursuant to this Compact have not been paid are contraband and that each party has the right to seize contraband within its respective jurisdiction: the Nation may seize all contraband located within the Compact Jurisdiction; and the State may seize all contraband in the State of Oklahoma, excepting the Compact Jurisdiction.

(b) The State shall exempt all sales of cigarettes and other tobacco products to and by the Nation's Retailers from sales and excise and all other taxes generally imposed by Title 68 of the Oklahoma Statutes in consideration of the agreement by the Nation to require the Retailers to make the aforementioned Tobacco Payment.

10. A. The goal of the parties shall be to resolve all disputes amicably and voluntarily whenever possible. A party asserting noncompliance or seeking an interpretation of this Compact first shall serve written notice on the other party. The notice shall identify the specific Compact provision alleged to have been violated or in dispute and shall specify in detail the asserting party's contention and any factual basis for the claim. Representatives of the Nation and state shall meet within thirty (30) days of receipt of notice in an effort to resolve the dispute. Any and all disputes arising, whether directly or indirectly, out of the interpretation, performance or enforcement of this Compact, which are not resolved by good faith negotiations within thirty (30) days, shall be determined by the US District Court for the Northern District of Oklahoma, which shall have the sole and exclusive jurisdiction of any and all such disputes. The parties hereto mutually waive any claim of sovereign immunity they might have, including but not limited to, exhaustion of tribal remedies or 11<sup>th</sup> Amendment immunity, to the extent, and only to the extent, necessary for a determination of rights and liabilities, if any, by the US District Court and the enforcement of that determination upon its becoming a final, non-appealable judgment. This waiver shall not be construed to allow any consequential, punitive, or exemplary damages against either party; neither does this waiver include the allowance of any attorney's fees or costs not specifically articulated elsewhere within this Compact. The parties agree that nothing herein is intended to create a direct right of action against the State of Oklahoma or the Nation by any person or entity not a party hereto through court action, arbitration or otherwise for any matter related to this Compact, its interpretation or performance or nonperformance of the parties hereto, except as otherwise set forth herein, and the limited waiver of sovereign immunity set forth herein shall not extend to any person entity or party other than the State of Oklahoma and the Nation.

B. In the event that the US District Court for the Northern District of Oklahoma declines to accept and exercise jurisdiction of any dispute, then, and only in that event, the following procedures may be invoked:

1. Subject to the limitation set forth in paragraph 2 of this Part, either party may refer a dispute arising under this Compact to arbitration under the rules of the American Arbitration Association (AAA), subject to enforcement or pursuant to review as provided by paragraph 2 of this Part by a federal district court. Notice of demand for arbitration shall be sent in writing to the other party. The remedies available through arbitration are limited to enforcement of the provisions of this Compact and a determination of any liabilities for a breach thereof. The parties consent to the jurisdiction of such arbitration forum and court for such limited purposes and no other, and each waives immunity with respect thereto. The expenses of arbitration shall be borne equally by the parties. The arbitrators must be licensed attorneys. One shall be appointed by the Nation and one by the State. A third shall be appointed by the other two previously selected arbitrators. Once the first arbitrator is selected by the party invoking arbitration, the other party shall have no more than twenty (20) days from receiving written notice of the first party's election to select its arbitrator. Within twenty (20) days of selection of the second arbitrator, the two arbitrators selected by the parties will select the third arbitrator. Neutrality is required of all arbitrators, and shall not be waived as to party selected arbitrators. The expenses of arbitration shall be borne equally by the parties. The arbitration shall be conducted pursuant to the Commercial Arbitration Rules ("CAR") of the American Arbitration Association ("AAA") except those rules relating to administration of the arbitration by AAA, provided that nothing in the CAR or any other rules of the AAA shall be deemed to give State courts jurisdiction over any disputes arising from

this Compact. The Arbitrators shall determine the applicable law to construe the relative rights and obligations of the parties. The panel of arbitrators may modify the aforesaid procedures and shall modify the procedures on joint motion of the parties, specify such substitute and/or additional procedures as they may deem necessary.

A party asserting noncompliance or seeking an interpretation of this Compact under this section shall be deemed to have certified that to the best of the party's knowledge, information, and belief, formed after reasonable inquiry, the claim of noncompliance or the request for interpretation of this Compact is warranted and made in good faith and not for any improper purpose, such as to harass or to cause unnecessary delay or the needless incurring of the cost of resolving the dispute. If the dispute is found to have been initiated in violation of this Part, the Arbitrator, upon request or upon his or her own initiative, may impose upon the violating party an appropriate sanction, which may include an award to the other party of its reasonable expenses incurred in having to participate in the arbitration; and

2. Notwithstanding any provision of law, either party to the Compact may bring an action against the other in the US District Court for the Northern District of Oklahoma for the review of any arbitration award under paragraph 1 of this Part pursuant to the Federal Arbitration Act. The decision of the court shall be subject to appeal. Each of the parties hereto waives immunity and consents to suit therein for such limited purposes, and agrees not to raise the Eleventh Amendment to the United States Constitution or comparable defense to the validity of such waiver. Nothing herein shall be construed to authorize a money judgment other than for damages for failure to comply with an arbitration decision requiring the payment of monies.

11. 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 five (5) years, 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 received at least six (6) months prior to said termination. Nothing in this Compact shall prevent the parties by mutual agreement from establishing an earlier or later termination date or otherwise modifying this agreement.

12. 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 members regarding activities and conduct within the Compact Jurisdiction.

13. Should another Indian Nation or Tribe become entitled to more favorable Tobacco Payment terms after the execution of this Compact by virtue of execution of a new compact, other than in specifically designated areas along the Kansas, Arkansas or Missouri borders, such more favorable Tobacco Payment terms and any conditions to such Indian Tribe becoming entitled to such more favorable Tobacco Tax Payment terms may be adopted by the Nation upon written notice to the State, and shall be incorporated into this Compact and shall supersede any inconsistent terms within this Compact.

14. Neither party shall be deemed the drafter of this Compact in the event of any action to interpret its terms. Therefore, the rule of construction that in the case of an ambiguity, the ambiguity is construed against the author is not applicable. Furthermore, any rule of

construction of ambiguities either in favor of or against a State or Tribal governmental entity is not applicable to this Compact.

15. The parties agree that if any provision in this Compact is found to be unenforceable, the parties shall agree in writing on a mutually acceptable substitute for such provision or agree in writing that no substitute is necessary. By entering into this Compact, the Nation further agrees that all funds received from the Tribal Tax, except for administrative expenses, shall be devoted to economic development, health, welfare, education 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 nor shall be remitted or rebated to tobacco retailers, with the exception that the Nation may use the Tribal Tax to provide rebates to Border Retailers negatively impacted by the Tribal Tax rates reflected in this Compact.

16. This Compact comprises the entirety of the agreement between the parties hereto. Any and all prior or contemporaneous representations, predictions, warranties or other inducements, however denominated, are merged within the terms of this Compact, and shall not survive its execution. There are no representations, promises, predictions, warranties, inducements or other agreements, however denominated, between the parties other than as set forth herein. This Compact may not be amended or modified except by written agreement, approved and executed by the parties hereto.

17. In consideration for execution of this Compact, the parties hereby fully release each other from any and all claims that either party may have against the other or their agents, representatives, employees, attorneys, insurers, assigns and successors, tribally licensed Retailers to this date, for any actions associated with failure to collect the appropriate tax on the sale of cigarettes or tobacco products under the terms of any prior Compact between the Nation and the State or applicable State law, and/or any and all other claims that either party may have against the other based upon any prior Compact, including but not limited to, full satisfaction and release of all claims and issues involved in any pending arbitration. In accord with this agreement, the parties will file a joint motion for dismissal with prejudice in those arbitration proceedings.

18. Any notice required hereunder to the State shall be delivered to the Governor of the State of Oklahoma at 2300 N. Lincoln Blvd., Room 212, Oklahoma City, Oklahoma 73105-4890. Any notice to the Nation shall be delivered to the Nation's Principal Chief at P.O. Box 948, Tahlequah, OK 74465, and to the Nation's Tax Commission at P.O. Box 948, Tahlequah, OK 74465. Notice shall be by United States mail, postage prepaid.

19. The Nation agrees to require the Retailers to maintain complete records of all purchases and sales of cigarettes and other tobacco products by brand including information related to payment of both the Tobacco Payment and the Tribal Tax. Such records shall be maintained for a period of five (5) years from the date of any purchase or sale.

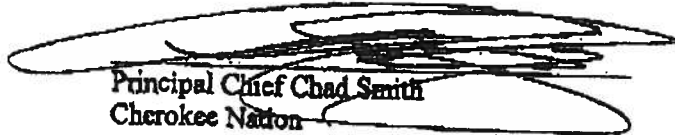
20. Nothing in this Compact shall be deemed to authorize the State to regulate the Nation's government, including the Cherokee Nation Tax Commission, or to interfere in any way with the Nation's selection of its governmental officers, including members of the Cherokee



Nation Tax Commission. This Compact shall not alter tribal, federal or state civil adjudicatory or criminal jurisdiction.

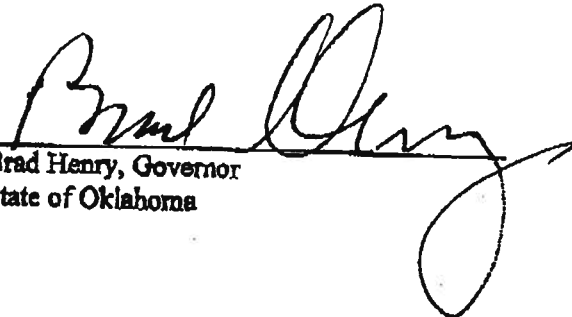
21. The Nation agrees that the Nation and the Nation Retailers will not sell, distribute, transport, solicit sales for, or in any manner deal with cigarette brands and tobacco products of a manufacturer who does not fully comply with the requirements of 37 Okla. Stat §§ 600.21 through 600.23, and will only deal in cigarettes and other tobacco products of complying manufacturers, as evidenced by the placement of the manufacturer's name and its product brands on the list of complying manufacturers and brands maintained on the Oklahoma Attorney General's website.

It is agreed this 3rd day of November, 2008

  
Principal Chief Chad Smith  
Cherokee Nation

ATTEST:

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Secretary of State

  
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Brad Henry, Governor  
State of Oklahoma