

TAX COLLECTION AGREEMENT
Between
THE CHEYENNE RIVER SIOUX TRIBE
And
THE SOUTH DAKOTA DEPARTMENT OF REVENUE AND REGULATION
And
THE STATE OF SOUTH DAKOTA

This Tax Collection Agreement is made and entered into this twenty-ninth day of September, 2003, by and between the Cheyenne River Sioux Tribe and the South Dakota Department of Revenue and Regulation and the State of South Dakota.

PARTIES

The Parties to this Tax Collection Agreement are the Cheyenne River Sioux Tribe, hereinafter referred to as "Tribe," and the South Dakota Department of Revenue and Regulation and the State of South Dakota, hereinafter referred to as "Department" or "State."

The Cheyenne River Sioux Tribe is a federally recognized Indian Tribe located within the State of South Dakota. The South Dakota Department of Revenue and Regulation is an agency of the State of South Dakota authorized by law to administer and collect certain state taxes. The State of South Dakota is a state of the United States of America.

PURPOSE

The purpose of this Tax Collection Agreement, hereinafter referred to as "Agreement," is to provide a cooperative mechanism for the Tribe and the State to administer their respective tax jurisdictions and enforce their respective tax laws, and to derive therefrom revenues to be expended for public purposes. It is in the public interest

for the Tribe and the State to develop a fair and efficient system for administering certain tribal taxes and state taxes. The Tribe and the State have engaged in good faith negotiations and have voluntarily reached this Agreement.

AUTHORITY

The Tribe has authority to enter into this Agreement pursuant to Cheyenne River Sioux Tribe Constitution Article IV, Section 1, (a) and (i). The Department and the State have authority to enter into this Agreement pursuant to SDCL ch. 10-12A. The signatories to this Agreement represent that they have the authority to execute this Agreement and to bind the Tribe, the Department, and the State, to the terms of this Agreement.

TAXES INCLUDED IN THIS AGREEMENT

The Parties agree that the following taxes shall be part of this Agreement:

1. The retail sales and service tax imposed by Cheyenne River Sioux Tribal Ordinance 25 and SDCL ch. 10-45, as currently enacted or as hereafter amended;
2. The use tax imposed by Cheyenne River Sioux Tribal Ordinance 25 and SDCL ch. 10-46, as currently enacted or as hereafter amended;
3. The contractors' excise tax imposed by Cheyenne River Sioux Tribal Ordinance 40 and SDCL ch. 10-46A, as currently enacted or as hereafter amended;
4. The alternate contractors' excise tax imposed by Cheyenne River Sioux Tribal Ordinance 40 and SDCL ch. 10-46B, as currently enacted or as hereafter amended;
5. The cigarette tax imposed by Cheyenne River Sioux Tribal Ordinance 26 and SDCL ch. 10-50, as currently enacted or as hereafter amended; and

6. The fuel excise tax imposed by Cheyenne River Sioux Tribal Ordinance 61 and SDCL ch. 10-47B, as currently enacted or as hereafter amended.

All Cheyenne River Sioux Tribal Tax Ordinances described above shall be collectively referred to as "Cheyenne River Sioux Tribal Tax Ordinances" in this Agreement. All State of South Dakota tax laws described above shall be collectively referred to as "South Dakota Tax Laws" in this Agreement.

AGREEMENT AREA

The Agreement Area for this Agreement is defined as follows:

All land described in Section 4 of the Act of March 2, 1889, 25 Stat. 888 (otherwise known as Dewey County, South Dakota, and Ziebach County, South Dakota, except that portion of the Standing Rock Sioux Tribe Indian Reservation that lies in the northernmost portion of Dewey County, South Dakota, and Ziebach County, South Dakota. This area may be described as a strip of land approximately 300 feet in depth from north to south, and approximately 80 miles in width from east to west, that is located in Dewey County, South Dakota, and Ziebach County, South Dakota, immediately south of Corson County, South Dakota.).

The Parties agree that there are other lands that are Indian country that is controlled by the Tribe that is not included in the Agreement Area as described above. The Parties agree that at any time in the future that businesses are located on such lands or are planned to be located on such lands, upon the written request of either Party, the

Parties shall meet within thirty days of the receipt of the written request to negotiate the extension of this Agreement to such lands.

ADMINISTRATION OF TAXES
COVERED UNDER THIS AGREEMENT

A. Authority to impose taxes covered under this Agreement.

The legal incidence of the retail sales and service tax imposed by Cheyenne River Sioux Tribal Ordinance 25 and SDCL ch. 10-45 is on the retailer. The Tribe has the authority to impose its retail sales and service tax on certain retailers in the Agreement Area, and the State has the authority to impose its retail sales and service tax on certain retailers in the Agreement Area. All retailers within the Agreement Area are subject to the retail sales and service tax imposed by either the Tribe or the State.

The legal incidence of the use tax imposed by Cheyenne River Sioux Tribal Ordinance 25 and SDCL ch. 10-46 is on the user of the property or the service. The Tribe has the authority to impose its use tax on certain users in the Agreement Area, and the State has the authority to impose its use tax on certain users in the Agreement Area. All users within the Agreement Area are subject to the use tax imposed by either the Tribe or the State.

The legal incidence of the contractors' excise tax imposed by Cheyenne River Sioux Tribal Ordinance 40 and SDCL ch. 10-46A is on the contractor. The Tribe has the authority to impose its contractors' excise tax on certain contractors in the Agreement Area, and the State has the authority to impose its contractors' excise tax on certain contractors in the Agreement Area. All contractors within the Agreement Area are subject to the contractors' excise tax imposed by either the Tribe or the State.

The legal incidence of the alternate contractors' excise tax imposed by Cheyenne River Sioux Tribal Ordinance 40 and SDCL ch. 10-46B is on the contractor. The Tribe has the authority to impose its alternate contractors' excise tax on certain contractors in the Agreement Area, and the State has the authority to impose its alternate contractors' excise tax on certain contractors in the Agreement Area. All contractors within the Agreement Area are subject to the alternate contractors' excise tax imposed by either the Tribe or the State.

The legal incidence of the cigarette tax imposed by Cheyenne River Sioux Tribal Ordinance 26 and SDCL ch. 10-50 is on the consumer of the cigarettes. The Tribe has the authority to impose its cigarette tax on certain consumers in the Agreement Area, and the State has the authority to impose its cigarette tax on certain consumers in the Agreement Area. All consumers within the Agreement Area are subject to the cigarette tax imposed by either the Tribe or the State. The total cigarette tax collected pursuant to Cheyenne River Sioux Tribal Ordinance 26 and SDCL ch. 10-50 in the Agreement Area shall be determined by the Department. The Department shall require all cigarette distributors to report to the Department all sales of cigarettes sold to retailers in the Agreement Area on a monthly basis. The Department shall use this information to determine the total cigarette tax collected pursuant to Cheyenne River Sioux Tribal Ordinance 26 and SDCL ch. 10-50 in the Agreement Area.

The legal incidence of the fuel excise tax imposed by Cheyenne River Sioux Tribal Ordinance 61 and SDCL ch. 10-47B is on the consumer of the fuel. The Tribe has the authority to impose its fuel excise tax on certain consumers in the Agreement Area, and the State has the authority to impose its fuel excise tax on certain consumers in the

Agreement Area. All consumers within the Agreement Area are subject to the fuel excise tax imposed by either the Tribe or the State. The total fuel excise tax collected pursuant to Cheyenne River Sioux Tribal Ordinance 61 and SDCL ch. 10-47B in the Agreement Area shall be determined by the Department. The Department shall require all motor fuel retailers to report to the Department all sales of motor fuels sold to consumers in the Agreement Area on a monthly basis. The Department shall use this information to determine the total fuel excise tax collected pursuant to Cheyenne River Sioux Tribal Ordinance 61 and SDCL ch. 10-47B in the Agreement Area. The fuel excise tax portion of this Agreement shall be void pursuant to SDCL 10-12A-9 if the United States Supreme Court or the South Dakota Supreme Court rules that the Hayden-Cartwright Act, 4 U.S.C. § 104, authorizes the State to impose state fuel excise taxes on enrolled tribal members on Indian Country controlled by the member's tribe.

B. Administration of tax collection system.

The Tribe hereby authorizes the Department to administer and collect on behalf of the Tribe the taxes imposed by the Cheyenne River Sioux Tribal Tax Ordinances. The Department is only responsible for the administration and collection of the taxes imposed by the Cheyenne River Sioux Tribal Tax Ordinances. The Tribe retains its jurisdiction to impose the taxes represented by the Cheyenne River Sioux Tribal Tax Ordinances. The Tribe retains its jurisdiction to prosecute civil and criminal enforcement actions, as needed, with respect to the taxes represented by this Agreement. The State retains its jurisdiction to impose the taxes represented by the South Dakota Tax Laws. The State retains its jurisdiction to prosecute civil and criminal enforcement actions, as needed, with respect to the taxes represented by this Agreement. The Tribe shall keep the

Department informed as to the result of any civil or criminal enforcement action undertaken by the Tribe. The Department shall keep the Tribe informed as to the result of any civil or criminal enforcement action undertaken by the Department.

The Department agrees to remit to the Tribe 76 % of all taxes collected as a result of the imposition of the taxes represented by the Cheyenne River Sioux Tribal Tax Ordinances and the South Dakota Tax Laws in the Agreement Area, which represents the amount of taxes collected as a result of the imposition of the taxes represented by the Cheyenne River Sioux Tribe Tax Ordinances. The Tribe agrees to remit to the Department or allow the Department to retain 24 % of all taxes collected as a result of the imposition of the taxes represented by the Cheyenne River Sioux Tribal Tax Ordinances and the South Dakota Tax Laws in the Agreement Area, which represents the amount of taxes collected as a result of the imposition of the taxes represented by the South Dakota Tax Laws.

The Department may retain, as a fee for administering and collecting all taxes imposed by the Cheyenne River Sioux Tribe Tax Ordinances except for the fuel excise tax imposed by Cheyenne River Sioux Tribal Ordinance 61, an amount equal to one percent of the payment to the Tribe as specified above.

C. Sharing information between the Tribe and the Department.

To implement this Agreement, the Parties acknowledge that certain information controlled by the Department must be shared with the Tribe, and certain information controlled by the Tribe must be shared with the Department. The Parties further acknowledge that taxpayer information held by the Department is confidential pursuant to SDCL 10-1-28.1, SDCL 10-1-28.2, SDCL 10-1-28.3, SDCL 10-1-28.4, and SDCL 10-

1-28.5, referred to as the "confidentiality statutes," and the "confidentially rules" as described below, and information held by the Tribe is confidential pursuant to applicable Tribal law.

The Parties agree that all returns, defined as all tax returns, tax reports or claims for refund which are filed pursuant to this Agreement, and all return information, defined as any information collected, prepared or received pursuant to this Agreement which relates to a return, including the nature or amount of a taxpayer's income, receipts, deductions, net worth, tax liability, or deficiencies, or any part of any written determination or background file documents relating to such information, are confidential. Return information does not include data in a form which cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer. All lists of taxpayers, licensees or applicants compiled pursuant to this Agreement are confidential. Returns and return information may only be disclosed by the Parties as follows:

- (1) To the taxpayer who is required to submit the information to the Parties, or his/her designee appointed in writing; or
- (2) To other states, in accordance with agreements executed under applicable laws; or
- (3) To any agency, body, commission, or legal representative of the United States charged with the administration of the United States tax laws for the purpose of, any only to the extent necessary in, the administration of such laws; or
- (4) To officers, employees or legal representatives of the Department or the Tribe's Revenue Department, but only to the extent necessary to carry out their official duties; or
- (5) To officers, employees, or employees of any other state or tribal agency or department or political subdivision for a civil or criminal law enforcement activity, if the head of the agency, department, or political subdivision desiring such information has made a written request to the Department and the Tribe specifying the particular information desired and the law enforcement activity for which the information is sought; or

- (6) To officers, employees or legal representatives of the commission on gaming and the lottery commission for the purpose of, and only to the extent necessary for, the administration of SDCL 42-7A and 42-7B; or
- (7) In the course of a judicial or administrative proceeding if the information is directly related to the resolution of an issue in the proceeding, or to the extent required by a proper judicial or administrative order.

This provision shall be referred to as the "confidentiality rules."

The Tribe agrees that any information held by the Department, and shared with the Tribe, shall be subject to the confidentiality rules. The Department agrees that any information held by the Tribe, and shared with the Department, shall be subject to the confidentiality rules. The Department shall provide to the Tribe all information necessary for the Tribe to undertake its civil and criminal enforcement actions pursuant to this Agreement.

COLLECTED

The term "collected," as used in this Agreement, means the receipt of actual United States government funds by the Department. The term "collected," as used in this Agreement, does not include the following:

1. Those instances where a tax return has been received by the Department but no United States government funds were paid by the taxpayer filing the tax return or the taxpayer attempted payment with an insufficient funds check;
2. Those instances where a certificate of assessment is made by the Tribe or the Department but no United States government funds are paid by the taxpayer assessed tax by the certificate of assessment; or

3. Any other instance where the Tribe or the Department determines that a taxpayer owes the Tribe or the Department tax which has not been paid by the taxpayer.

PAYMENT OF FUNDS

The Department shall pay to the Tribe 76 % of all monies collected from the imposition of the Cheyenne River Sioux Tribal Tax Ordinances and the South Dakota Tax Laws, less the administrative fee, to the Tribe within thirty days from the date of collection of the monies by the Department. The payment to the Tribe by the Department shall be by state warrant payable to the order of the Cheyenne River Sioux Tribe. The payment shall be accompanied by a breakdown of the amount of revenue collected by the Department by each tax included in this Agreement.

On an annual basis, the Tribe may review a more detailed breakdown of the amount of revenue collected at the Department's offices in Pierre, South Dakota. The Department shall permit the Tribe access to Department records to verify the accuracy of collections and remittances made pursuant to this Agreement on a reasonable basis during regular business hours, including access to any audited financial statements of the Department regarding the taxes covered under this Agreement. The Tribe shall permit the Department access to Tribal Revenue Department records to verify the accuracy of collections and remittances made pursuant to this Agreement on a reasonable basis during regular business hours, including access to any audited financial statements of the Tribe regarding the taxes covered under this Agreement.

PERFORMANCE INDICATORS

The Parties to this Agreement agree that they will take appropriate civil and criminal enforcement measures against delinquent taxpayers that remit the taxes that are included in this Agreement.

The Tribe has jurisdiction over certain taxpayers, and shall work to keep the delinquency rate for these taxpayers at a reasonable level. The State has jurisdiction over certain taxpayers, and shall work to keep the delinquency rate for these taxpayers at a reasonable level.

EFFECTIVE DATE OF AGREEMENT

The effective date of this Agreement shall be October 1, 2003.

DURATION, RENEWAL, AND TERMINATION OF AGREEMENT

This Agreement shall be for a term of five years commencing from the effective date of the Agreement. The Agreement is renewable by the mutual written consent of the parties. Either Party may terminate this Agreement by giving thirty days written notice to the other Party to the Agreement.

AMENDMENT OF AGREEMENT – WAIVER OF TERMS

This Agreement may not be amended, modified, or compliance with any provision waived, unless in writing and approved by the Parties to this Agreement in the same manner as approval of this original Agreement.

NOTIFICATION OF CHANGE OF TAX STATUTES

The Department shall notify the Tribe, each year before June 1, of new laws enacted by the South Dakota Legislature during the preceding legislative session. The

Department shall make available to the Tribe, if possible, all appropriate statutes and laws by electronic means.

NOTICES

Notices and payments required to be sent to the Tribe shall be sent to:

Chairman
Cheyenne River Sioux Tribe
PO Box 590
Eagle Butte, SD 57625-0590

Notices required to be sent to the Department and the State shall be sent to:


Secretary
South Dakota Department of Revenue and Regulation
445 E. Capitol
Pierre, SD 57501-3100

WHOLE AGREEMENT

This Agreement is the whole agreement between the Parties.

IN WITNESS WHEREOF, the Tribe and the Department have caused this Agreement to be duly executed, in duplicate, on the dates as found below.

CHEYENNE RIVER SIOUX TRIBE


Harold Frazier
Chairman
Cheyenne River Sioux Tribe

10-3-03
Date

SOUTH DAKOTA DEPARTMENT OF REVENUE AND REGULATION



Gary R. Viken
Secretary
South Dakota Department of Revenue and Regulation

October 3, 2003
Date

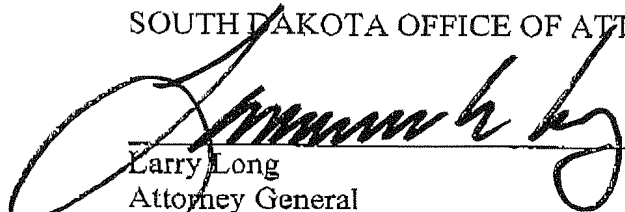
STATE OF SOUTH DAKOTA



M. Michael Rounds
Governor
State of South Dakota

10-3-03
Date

SOUTH DAKOTA OFFICE OF ATTORNEY GENERAL



Larry Long
Attorney General
South Dakota Office of Attorney General

October 3, 2003
Date