

FUEL TAX AGREEMENT BETWEEN THE ELY SHOSHONE TRIBE AND THE STATE OF NEVADA

THIS AGREEMENT is made and entered into on this 14th day of November, 2003 by and between the Ely Shoshone Tribe of Nevada, hereinafter referred to as the "Tribe" and the State of Nevada, Department of Motor Vehicles, hereinafter referred to as "Department".

The Tribe is recognized by the Federal Government as having a government-to-government relationship to the United States.

The Ely Shoshone Tribal Council is the duly authorized governing body and is empowered to enter into this Agreement by Article VI, Section 1(a), of the Constitution of the Ely Shoshone Tribe.

The State of Nevada is authorized pursuant to NRS 365.110, NRS 366.110, NAC 365 and NAC 366 to enter into agreements with Tribal Governments with respect to taxes on motor fuels, special fuels, aviation fuels or fuel for jet or turbine powered aircraft. The Department is charged with collecting the tax and shall notify the Tribe of any changes or amendments to these statutes, that the Department believes, may impact this Agreement.

THE TRIBE AND THE DEPARTMENT AGREE AS FOLLOWS:

Purpose:

The purpose of this Agreement is to insure the collection of fuel taxes in a fair and equitable manner.

Government-to-Government Cooperation:

The State of Nevada and the Tribe shall cooperate within:

1. The Tribe's laws with respect to the taxation and regulation of Tribal Members and businesses that sell or deliver motor fuel, special fuel, aviation fuel or fuel for jet or turbine powered aircraft on lands where the Tribe exercises governmental jurisdiction;
2. The State's laws, rules and regulations respecting the imposition and collection of its fuel taxes from all persons, except as provided under this Agreement, and the terms of this Agreement.

Taxable Sales:

The Tribe and the Department agree that the motor fuels, special fuels, aviation fuels or fuel for jet or turbine-powered aircraft, sold at a retail outlet operating under Tribal jurisdiction, to Non-Members, shall be subject to the appropriate taxes as provided under the authority of Nevada Revised Statutes Chapters 365, 366, 373 and the regulations issued thereunder. The definitions contained in NAC 365 and NAC 366 is incorporated herein by reference.

Administration and Collection of Taxes:

1. ON RESERVATION SALES

The Department and the Tribe agree that no State fuel taxes shall be collected by any fuel vendor delivering motor fuels, special fuels, aviation fuels, and fuel for jet or turbine powered aircraft delivered to any retail outlet within the Tribe's jurisdiction. The Department agrees to issue a Certificate of Exemption permitting the motor fuel vendors to deliver fuel without requiring the motor fuel vendors to collect the fuel taxes from the retail outlets. The retail outlets within the Tribe's jurisdiction shall collect the applicable State fuel taxes on all sales to Non-Members. Within 30 days of the end of each calendar quarter, the Tribe shall pay to the State the taxes collected by the retail outlets on all types of fuel sales to Non-Members, minus a dollar amount calculated as 2% of the total number of gallons of all fuel sold during the quarter by the retail outlets with the Tribe's jurisdiction.

The Tribe shall send to the State within twenty (20) days after the end of each month a report of all fuel delivered to each retail outlet within the Tribe's jurisdiction during the previous month. This monthly report shall state the date of each delivery, the number of gallons of each type of fuel delivered and the name of the fuel wholesaler making each delivery.

The Tribe agrees to maintain a record of all sales to Non-Members from the retail outlets within the Tribe's jurisdiction for a period of no less than three years. The State shall have the right to conduct an audit of these records provided that it gives at least fifteen (15) days prior written notice to the Tribe of its intent to conduct an audit.

2. OFF RESERVATION PURCHASES

The Tribe shall keep a log of all diesel and other special fuels purchased for its governmental functions and purposes from any source in Nevada not located within the Tribe's jurisdiction. This log shall contain backup documentation of all such fuel purchased including, but not by way of limitation, purchase invoices, store receipts, open account purchases, credit card invoices, and records of reimbursement to tribal employees for cash purchases for Tribal use of vehicles. Within thirty (30) days of the conclusion of each calendar quarter, the Tribe shall provide to the State the Tribe's fuel consumption log for the previous quarter. Upon request, the Tribe shall provide the State copies of any requested backup documentation for the log for the quarter (and supporting documentation if requested by the Department of Motor Vehicles), the State shall issue a refund to the Tribe for all taxes paid by the Tribe for such fuels. The Tribe shall maintain such logs, records and documentation for a period of three (3) years. The State shall have the right to conduct an audit of these records provided that it gives at least fifteen (15) days prior written notice to the Tribe of its intent to conduct an audit.

Term and Termination:

The Agreement shall have perpetual existence but may be voluntarily terminated, with or without cause, by either party upon providing the other party ninety (90) days prior notice in writing by certified mail addressed to the following:

Chairperson
Ely Shoshone Tribe
16 Shoshone Circle
Ely, Nevada 89301

Department of Motor Vehicles
555 Wright Way
Carson City, Nevada 89711

Any notices issued by either party to the other under this Agreement shall be issued in the same manner as set forth above.

Should any third party, in an action brought against the Tribe, or the State or their respective agencies, officials, employees, or agents, and alleging that either the State or the Tribe lacks authority to enter into this Agreement or to adopt or enforce the laws described in this Agreement, the State or the Tribe, as the case may be, shall appear in the action and defend its authority.

This Agreement addresses only the taxation and regulation of motor vehicle fuel, special fuel, aviation fuel, or fuel used in jet or turbine powered aircraft and shall not be construed as affecting any other area of Tribal or State taxation or regulation.

Severability:

If a court of competent jurisdiction holds any provision of this Agreement, or its application to any person or factual circumstance, invalid, the invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application and to this end, the provisions of this Agreement are severable.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed on the day and in the year first written above.

ELY SHOSHONE TRIBE

STATE OF NEVADA
Department of Motor Vehicles

Diana Buckner
Tribal Council Chairperson

[Signature]
Administrator, Compliance Enforcement Division

APPROVED AS TO FORM:

Bryan Sandoval
Attorney General

BY: [Signature] 11/18/2003
Deputy Attorney General

STATE OF NEVADA
DEPARTMENT OF MOTOR VEHICLES

[Signature] 12-1-03
Chief, Administrative Services Division

[Signature]
BOARD OF EXAMINERS

APPROVED ON:

12-8-03
DATE



CERTIFICATE OF EXEMPTION

This certificate acknowledges that the **ELY SHOSHONE TRIBE** has entered into an agreement with the State of Nevada for the collection of taxes on both motor fuels and special fuels.

Dealers who deliver fuel to the tribe will collect State of Nevada Fuel taxes on 0% of the motor fuel delivered to:

Ely Shoshone Tribe, Ely, NV

This certificate shall be valid for one year from the date it is signed. A copy of this certificate, certified by the Tribal Chairman, shall be provided to each supplier of motor fuel or special fuel.

Signed this 16th day of December 2003


Tribal Chairman
Ely Shoshone Tribe
Department of Motor Vehicles

Signed this 22 day of December 2003


Authorized Employee
Ely Shoshone Tribe

TO SUPPLIERS:
Supplier of motor fuel and/or special fuel must maintain the certified copy of this certificate and make it available for review by any authorized employee of the Department, as provided in NRS Chapter 365 and 366.