

FORT PECK-MONTANA
GASOLINE TAX
AGREEMENT

THIS AGREEMENT is entered into this 26th day of March, 1992, by and between the State of Montana, Department of Transportation, 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 pursuant to ch. 772, Laws of 1991 and the State-Tribal Cooperative Agreements Act, § 18-11-101, MCA et seq. to enter into an agreement in writing with any one or more tribal governments with respect to taxes on gasoline motor fuels.

The State and the Tribes agree as follows:

1. General purposes of agreement. The purposes of this agreement are to avoid legal controversy and possible litigation over the taxation of gasoline within the exterior boundaries of the Fort Peck Indian Reservation (hereinafter referred to as "Reservation"), to avoid dual taxation of gasoline by both the Tribes and the State, and to ensure that the same level of taxation is imposed on distribution of gasoline both within and outside the boundaries of the Reservation.

2. State law. The State imposes a tax on gasoline distributed within the State's jurisdiction under Part 2, Chapter

70, Title 15, Montana Code Annotated. The State shall notify the Tribes in writing of any changes or amendments to these statutes which the State believes necessitate an amendment to tribal law under this agreement.

3. Tribal law. The Tribes shall adopt and keep in force an ordinance imposing taxes equal to the Montana gasoline license tax, which tax shall apply to gasoline 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 to substantially conform to state law.

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

(a) The total amount of remittance distributed to the Tribes in each calendar quarter shall be as follows:

(i) Until the Montana Legislature and Tribal Executive Board shall both enact legislation requiring all service stations on the Reservation to report all sales of gasoline to the Department of Transportation, the Tribes shall receive the following amount:

79 percent of the average per capita gasoline license taxes paid after the average per

capita agricultural refunds, both as last calculated by the Montana Department of Transportation on an annual basis, multiplied by the number of enrolled tribal members residing on the Fort Peck Reservation as last certified by the Billings Area Office of the Bureau of Indian Affairs.

(ii) The Tribes shall enact, and the Tribes and the State shall support enactment by the Montana legislature of, legislation to require all service stations on the Reservation to report all sales of gasoline to the Department of Transportation. Beginning with the first full calendar quarter after the effective date of that legislation, the Tribes shall receive forty percent (40%) of the gasoline taxes actually collected on the Reservation.

(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 or partial calendar quarter after the effective date of this Agreement and continue until the expiration or the termination of this Agreement as provided in Paragraph 5 or required by law. For the purposes of this Agreement a calendar quarter begins on January 1, April 1, July 1 or October 1 of each year.

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

5. Term. This Agreement shall be for a term of nine years, subject to the renewal provision of paragraph 8, unless terminated in writing by either party upon not less than thirty days' written notice to the other. In the event of termination by the State prior to the end of the term, the State shall be obligated to remit the full amount payable to the Tribes provided for in this Agreement for that period of time up to and including the effective date of termination. This obligation of the State 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 statements or representations called for it in this Agreement. The right of examination or audit shall exist during the term of the Agreement and for a period of one year after the date of any termination or expiration of this Agreement.

7. Effective date. Subject to approval by the Revenue Oversight Committee and the Attorney General this Agreement shall be effective on the 1st day of March, 1992, so long as the tribal ordinance described in Paragraph 3 is adopted by the Tribal Executive Board during March 1992. Otherwise, the Agreement shall become effective on the 1st day of April 1992.

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 nine year term of this Agreement, the parties shall meet to negotiate in good faith a renewal of the Agreement for an additional ten year term, and thereafter shall meet to negotiate successive ten year renewals of the Agreement. The parties in each negotiation of a renewal term shall seek to agree on a percentage for distributing tax revenues on substantially the same basis as the one provided in Paragraph 4(a)(ii), in light of the circumstances existing at that time, including: (i) the total population and Indian population of the Reservation as determined by the latest decennial census, (ii) the population of Indians residing on the Reservation who are enrolled in the Assiniboine and Sioux Tribes, (iii) the portion of state tax revenues distributed to local governments, and (iv) the administrative costs to the State of collecting both taxes and distributing the Tribes' share to the Tribes.

9. Reservation of rights and negative declaration. The State and Tribes have entered into this Agreement in part to resolve a legal dispute and avoid litigation. The parties agree that by entering into this Agreement, neither the State nor the Tribes shall be 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 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 conduct in the negotiations or renegotiations 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 gasoline license tax as provided in Sections 15-70-201 through 236, 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 and 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:

(i) If to the Tribes:

Chairman
Fort Peck Tribal Executive Board
Post Office Box 1027
Poplar, Montana 59255

(ii) If to the State:

Director of Transportation
2701 Prospect Avenue
Helena, MT 59620

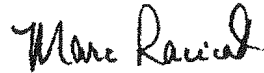
Attorney General of the State of Montana
215 North Sanders
Helena, MT 59601-1401

Notice shall be considered given on the date of mailing.

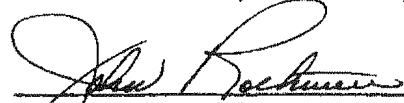
APPROVED PURSUANT to § 13-11-105, MCA (1991).

DATED this 26th day of March, 1992.

STATE OF MONTANA

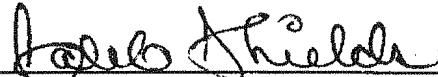


Marc Racicot, Attorney General



John Rothwell
Director of Transportation

ASSINIBOINE AND SIOUX TRIBES



Caleb Shields, Chairman
Tribal Executive Board

**FIRST RENEWAL OF MARCH 26, 1992
FORT PECK-MONTANA GASOLINE TAX AGREEMENT**

Pursuant to Paragraph 8(b) of the Fort Peck-Montana Gasoline Tax Agreement of March 26, 1992, the State and Tribes hereby renew the Agreement for an additional ten years commencing March 1, 2001 and ending February 28, 2011, on the same terms and conditions as set forth in the original Agreement.

**ASSINIBOINE AND SIOUX
TRIBES OF THE FORT PECK
RESERVATION**

By: *Arlyn Headdress*
Arlyn Headdress, Chairman
Tribal Executive Board

February 26, 2001
Date

STATE OF MONTANA

By: *Dave Galt for*
Dave Galt, Director
Department of Transportation

2/28/01
Date

By: *Mike McGrath*
Mike McGrath, Attorney General

2/28/01
Date