

INTERGOVERNMENTAL AGREEMENT
between
STATE TAX COMMISSION OF UTAH
and
OFFICE OF THE NAVAJO TAX COMMISSION

WHEREAS,

1. The State Tax Commission is an agency of the State of Utah ("UT") and has been granted the authority to enter into this Intergovernmental Agreement, pursuant to the Interlocal Cooperation Act (Utah Code Ann. § 11-13-1 et seq.).
2. The Office of the Navajo Tax Commission ("ONTC") is an agency of the Navajo Nation, established as a part of the Executive Branch of the Navajo Nation government under 2 NNC § 3351 (1995), and has been granted the authority to enter into this Intergovernmental Agreement, pursuant to section 127 of the Uniform Tax Administration Statute.
3. The Navajo Nation ("Nation") is a recognized federal Indian Tribe possessing governmental authority within Navajo Indian country in Arizona, New Mexico, and Utah.
4. Utah motor and special fuel taxes presently total 24.5 cents per gallon. The Utah motor fuel tax is generally imposed on motor fuel distributors. The Utah special fuel tax is generally imposed at the refinery.
5. On August 26, 1999, the Navajo Nation Council by Resolution No. CAU-85-99 approved the Navajo Nation Fuel Excise Tax. The Navajo Nation Fuel Excise Tax imposes on fuel distributors an 18 cents per gallon tax on gasoline and diesel.
6. The Nation has determined that a serious physical infrastructure deficit exists within Navajo Indian country as compared with comparable non-Indian rural areas. The lack of adequate roads is a significant component of the Nation's infrastructure deficit and is one factor which impedes economic development within Navajo Indian country. The Nation enters into this Intergovernmental Agreement to build its own tax program and to ameliorate or remedy this component of its infrastructure deficit. The President of the Navajo Nation and the Governor of Utah will communicate annually regarding the Navajo Nation's plans for addressing the infrastructure deficit within the Utah portion of the Navajo Nation.

7. Because the Nation straddles the Utah, New Mexico, and Arizona state lines and because of legal or practical limitations on the ability of Utah to enforce its laws within Navajo Indian country, the possibility exists that persons or entities seeking to evade the lawful collection of taxes by Utah and the Navajo Nation may transport fuel untaxed by Utah and/or the Navajo Nation into and through Navajo Indian country for the purposes of unlawful use or sale of such fuel to others without payment of lawful Utah and Navajo Nation taxes. Utah and the Nation have a shared interest in preventing and detecting such unlawful evasion of taxes, and if such activity is detected, in cooperating to the extent practicable so that such persons or entities are appropriately assessed, enjoined, punished, or otherwise dealt with in accordance with applicable law.
8. UT and ONTC seek to establish a mechanism to administer in an effective and efficient manner the collection of applicable taxes, the collection of taxes by the appropriate entity, and a cooperative audit, enforcement and investigation arrangement to ensure such collection and payment of taxes, to prevent tax evasion, and to detect and punish those who unlawfully evade collection, payment or reporting obligations under applicable law.
9. UT and ONTC intend this Intergovernmental Agreement to provide the basis for building a long-term and cooperative relationship to resolve on a local level issues of common concern for the two governmental agencies relating to the taxation of fuels within their respective jurisdictions.

THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS EXPRESSED HEREIN, IT IS MUTUALLY AGREED AS FOLLOWS:

1. When the Navajo Nation imposes a tax on the distribution of gasoline or undyed diesel fuels, the State fuel taxes shall be reduced by the amount of fuel tax paid to the Navajo Nation. This reduction in the state fuel taxes shall be limited to tax only and shall not include any interest or penalties a taxpayer may be required to pay to the ONTC as a result of untimely filing or payment.
2. Procedures for Reduction.
 - 2.1 The reduction in State fuel taxes shall be reflected on the State tax return as a deduction or as a refund for fuel tax paid to the Navajo Nation.

2.2 Because the imposition of the Navajo Nation Fuel Excise Tax and the Utah motor and special fuel taxes may, under certain circumstances, be collected at different levels, the manner of providing the reduction in state fuel taxes shall be established in rules promulgated by UT.

3. The current rate of the Navajo Fuel Excise Tax is 18 cents per gallon. State taxes for Utah total 24.5 cents per gallon on both gasoline and undyed diesel fuel. Therefore, assuming no change in either tax rate, for such fuel sold within the Utah portion of the Navajo Nation, the Navajo Nation shall be entitled to 18 cents per gallon, and Utah shall be entitled to 6.5 cents per gallon.
4. If the rate of the Navajo Nation Fuel Excise Tax is changed, the reduction provided in Paragraph 1 will not be modified until the first day of the calendar quarter after a 60-day period beginning on the date UT receives written notice of the change in the Navajo tax rate from ONTC.
5. If the Navajo Fuel Excise Tax rate ever exceeds the state fuel tax burden in Utah, the additional Navajo tax may not be used to offset any past, present, or future Utah motor or special fuel taxes. The reduction in Utah motor and special fuel taxes may only be applied to the gallons of gasoline or diesel that are subject to taxation by both the State and the Navajo Nation.
6. The reduction in Utah motor and special fuel taxes discussed in Paragraph 1 above shall be available for tax due on gasoline and undyed diesel fuel distributed after the effective date of the State legislation approving that reduction.
7. Record Keeping and Audit Procedures.
 - 7.1 To aid in the determination of the amount of gasoline and undyed diesel fuel imported into the Utah portion of the Navajo Nation, both parties shall maintain records of gasoline and undyed diesel fuel delivered to retail locations in the Utah portion of the Navajo Nation.
 - 7.2 To the extent permitted by applicable law, both parties shall be entitled to examine all records required to be kept by this agreement. Both parties agree to make records available for the examination at a mutually agreeable time; provided however that each party shall be allowed to examine the records within 30 days of when such request is made unless the party voluntarily agrees to a longer period.

7.3 At the request of either ONTC or UT, and consistent with their respective schedules, ONTC and UT may conduct joint audits of fuel distributors, carriers or retailers located or doing business within the Utah portion of the Navajo Nation to determine compliance with this Agreement and applicable tribal and state tax laws. For any audit conducted, ONTC and UT will issue separate final audit reports and assessments, as appropriate. If the audited entity has executed a waiver of confidentiality or applicable law otherwise allows, the ONTC and UT will share with each other information including audit workpapers and audit reports. A protest of a UT action or assessment will be addressed through the UT appeal process; and a protest of an ONTC action will be addressed through the ONTC appeal process.

7.4 If either ONTC or UT performs an audit of a distributor, carrier or retailer doing business within the Navajo Nation and the results of the audit could impact fuel taxes owed to ONTC or UT, the audit report and results will be shared with the other party, if a waiver of confidentiality or applicable law otherwise allows.

7.5 At the request of either ONTC or UT, joint compliance visits by UT staff and ONTC staff may be made to fuel distributors, carriers or retailers located or doing business within the Utah portion of the Navajo Nation to examine inventory and review accounting records as they may pertain to Utah or Navajo Nation fuel taxes. Each party will share information with the other relating to any separate compliance visits to the extent permitted by applicable law.

7.6 ONTC and UT may share information relating to tax administration and enforcement under this Agreement to the extent allowed by law. Such information will be utilized only for the enforcement of state and/or tribal tax law. Information developed by or in support of civil inspections and criminal investigations relating to administration and enforcement of taxes may be available to either party upon written requests, as applicable law allows.

8. Term of the Agreement.

This Agreement shall become effective after signature by the Chair of the State Tax Commission of Utah and the President of the Navajo Nation but no sooner than the effective date of the state legislation providing for the reduction in motor and special fuel taxes when the Navajo Nation Fuel Excise Tax is also imposed. This agreement shall remain in force and effect until either party gives notice that it intends to terminate the agreement. The party desiring to terminate the agreement will provide notice in writing at least 30 days before the effective date of the termination. This notice is intended to give the parties time to resolve any

matters pending between them, but the 30 day notice of termination may be waived by mutual consent. Contractual obligations with third parties shall not be affected by termination of this agreement.

9. **Amendments.**

If it becomes necessary to amend this agreement, amendments shall be in writing and signed by the original signatories to this agreement or their successors.

10. **Notices.**

Notices under this agreement, including notice of termination, shall be delivered to the Executive Director of the Office of the Navajo Tax Commission at:

Office of the Navajo Tax Commission
PO Box 1903
Window Rock, Navajo Nation (Arizona) 86515

and to the Chair of the State Tax Commission of Utah at:

State Tax Commission
210 North 1950 West
Salt Lake City, UT 84134

11. **Expenses.**

Each party shall bear its own costs and expenses incurred in connection with this agreement.

12. **Dispute Resolution.**

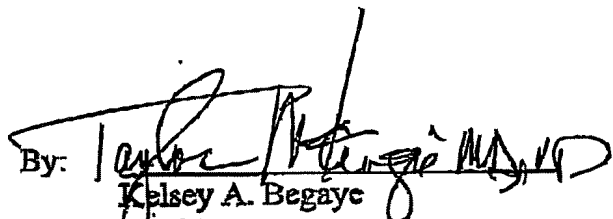
Applicable laws of the Federal, State and Navajo Nation government shall govern the rights of the parties with respect to the performance of this Agreement. The parties hereto shall select a process for the resolution of claims or disputes relating to this agreement, consistent with applicable laws and regulations of the Federal, State and Navajo Nation government, and acceptable to ONTC and Utah.

13. **Other Authorities, Rights, and Duties Unaffected.**

Nothing in this agreement shall be construed to expand or diminish the authorities, rights, duties or obligations granted to or imposed on either party by other applicable law. Nothing in this agreement shall be construed to create or extinguish any rights or obligations of third parties who are not signatories to this agreement.

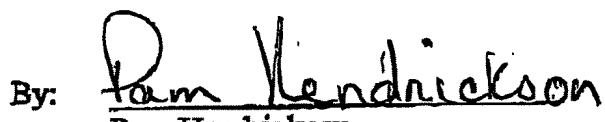
IN WITNESS THEREOF, the parties have caused this agreement to be executed.

THE NAVAJO NATION

By: 
Kelsey A. Begaye
President

9/25/00
Date

STATE TAX COMMISSION OF UTAH

By: 
Pam Hendrickson
Chair

10-16-00
Date