

**F I L E D**

FEB 10 2004

OKLAHOMA SECRETARY  
OF STATE

**MOTOR FUELS CONTRACT**  
**BETWEEN THE STATE OF OKLAHOMA**  
**AND**  
**THE SENECA-CAYUGA TRIBE OF OKLAHOMA**

The state of Oklahoma, hereinafter referred to as STATE, and the Federally recognized Seneca-Cayuga Tribe of Oklahoma, hereinafter referred to as TRIBE, hereby enter into this contract for apportionment of motor fuel tax revenues.

**ARTICLE I**  
**PURPOSE AND INTENT OF PARTIES**

The STATE and TRIBE, have entered into this contract for the purposes of providing acceptance by the TRIBE of the offer of the STATE, in order to comply with the provisions of Section 500.63 of Title 68 of the Oklahoma Statutes as contained in HB 2208 of the 2nd Session of the 45th Legislature, hereinafter referred to as HB 2208, for the purpose of limiting litigation on the issue of state government taxation of motor fuel sales made by Indian tribes.

The State of Oklahoma has made an offer to all federally recognized Indian tribes within the State of Oklahoma to establish a mutually beneficial method of collecting motor fuel taxes through enactment of Section 500.63 of Title 68 of the Oklahoma Statutes.

The terms and conditions of said contract are fully set forth in Section 500.63 of Title 68 of the Oklahoma Statutes and are incorporated by reference as though fully set forth in this paragraph. If there is any conflict between the language of this contract and the statute, the language of the statute shall be controlling.

There is mutual benefit to be gained by reducing litigation over taxation authority, insuring that the taxes are properly collected and providing tax revenues to carry out governmental functions.

Both the State of Oklahoma and the TRIBE recognize that pursuant to applicable law each is a sovereign with dominion over their respective territories and governments. Entry into this contract is not intended nor shall it be construed to cause the sovereignty of either the STATE or the TRIBE to be diminished.

**ARTICLE II**  
**DEFINITIONS OF TERMS**

1. "Certified audit" means the document prepared by a person who qualifies as a Certified Public Accountant pursuant to the laws of Oklahoma.

2. "Commission" means the Oklahoma Tax Commission and its departments and divisions.

3. "Federally recognized" tribe means any Indian tribe which has met the requirements established by the terms of the Indian Reorganization Act, 48 Stat. 984, as amended; the Oklahoma Indian Welfare Act, 49 Stat. 1967, as amended; or is one of those tribes listed in the Federal Register pursuant to 25 CFR Part 83 as recognized by and receiving services from the Bureau of Indian Affairs, as provided for in Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs, 58 Federal Register 54364 (October 21, 1993).

4. "Motor fuel" means gasoline, diesel fuel, and blended fuel.

5. "Precollected" means the collecting and remitting of the motor fuel tax by the supplier or bonded importer from the motor fuel purchaser as provided in Section 500.22 of the Title 68 of the Oklahoma Statutes, although incidence of the tax is on the retail consumer, as provided in Section 500.2 of Title 68 of the Oklahoma Statutes.

6. "Tribal member" means an individual who meets the membership requirements of the TRIBE as set forth in its governing document or is listed on the tribal roll of the TRIBE as a member, see 25 CFR § 81.1(I) (1996) and 25 CFR § 83.1 (1996).

**ARTICLE III**  
**TERM OF CONTRACT**

1. The term of the contract shall begin on the date that all parties consent through the execution of the signature of the Governor of the State of Oklahoma and the chief executive officer of the tribal government.

2. The term of the contract shall end on July 1, 2017.

3. On and after July 1, 2017, this contract shall be renewed for successive ten-year terms unless either the STATE or the TRIBE notifies the other of its intent not to participate further in the terms of the contract.

a. Notification by the TRIBE shall be made in the same manner as acceptance of the offer authorized in Section 500.63 of Title 68 of the Oklahoma Statutes.

b. Notification by the STATE shall be made by the Governor in writing to the TRIBE. Notification by the STATE shall also be filed with the Office of the Secretary of State.

**ARTICLE IV**  
**STATEMENTS OF AGREEMENT BY STATE**

1. The Legislature of the State of Oklahoma recognizes that pursuant to the opinion of the United States Supreme Court in *Oklahoma Tax Commission v. Chickasaw Nation*, 115 S. Ct. 2214 (1995), federal law controls the imposition of motor fuel taxes in Indian Country.

2. The State, acting through the Oklahoma Tax Commission, shall withhold a specified percentage of gross motor fuel revenues which will be apportioned to the accepting tribes on a quarterly basis, as follows:

a. Three percent (3%) for the portion of the fiscal year beginning July 1, 1996.

b. Four percent (4%) for the fiscal year beginning July 1, 1997.

c. Four and one-half percent (4 ½%) for the fiscal year beginning July 1, 1998, and for each fiscal year thereafter.

3. The Commission shall make apportionments not later than February 1, 1997, for the FOURTH CALENDAR QUARTER OF 1996. All subsequent apportionments shall be made not later than thirty days (30) after the end of each calendar quarter.

4. The formula for the quarterly apportionment to the TRIBE shall consist of the following:

a. A base sum of Six Thousand Two Hundred and Fifty Dollars (\$6,250), if the gross state motor fuel revenues exceed One Hundred Million Dollars (\$100,000,000).

b. A payment based on the number of gallons sold by the TRIBE as provided in Section 63 of HB 2208.

5. Copies of audits and reports submitted for the purposes of implementing this contract shall be made available to any tribe which has a similar contract with the STATE and shall not be subject to the confidential restrictions provided for in Section 205 of Title 68 of the Oklahoma Statutes.

6. The STATE shall notify the TRIBE in writing when an apportionment is to be withheld pursuant to the provisions of paragraph 5 of Article V of this contract. The amount withheld shall not be apportioned and shall be withheld from all tribes until the expiration of the six-month limitation period and during the pendency of any legal action filed.

7. The STATE waives its immunities from suit granted by the Eleventh Amendment to the Constitution of the United States for the sole purposes of resolving disputes arising out of this contract.

**ARTICLE V**  
**STATEMENTS OF AGREEMENT BY TRIBE**

1. The TRIBE agrees to abide by all parts of HB 2208 and shall not procure, or attempt to procure, motor fuel for sale in Indian country on which the tax imposed by HB 2208 has not been precollected.

2. The TRIBE agrees to include all state motor fuel taxes and assessments in the price of its motor fuel sales including sales to tribal members on tribal lands.

3. The TRIBE agrees not to challenge the constitutionality or application of HB 2208 of motor fuel sales on Indian country in any court or tribunal.

4. The TRIBE agrees to apportion the funds received pursuant to this contract exclusively for tribal government programs consisting of highway and bridge construction, health, education, corrections, and law enforcement.

5. If the TRIBE fails to procure motor fuel on which the tax has been precollected or fails to include all state motor fuel taxes and assessments in the price of motor fuel sold, the TRIBE shall be ineligible to receive an apportionment for that calendar quarter. The TRIBE shall have six months from the date of issuance of notice from the Commission to file legal action contesting the decision of the STATE to withhold the apportionment.

6. The TRIBE is providing the Commission with a certified audit of tribal membership or citizenship rolls as an attachment to this Contract. In subsequent years membership rolls shall be the basis from which the Commission shall calculate the distribution of the funds withheld pursuant to this contract.

a. The certified audit shall provide the correct number of its respective tribal members by blood, excluding members of band, tribal towns, and other tribes or affiliates which may be included on its rolls but who are ineligible for tribal services and benefits.

b. Only tribal members who reside within the State shall be included in the audit.

c. Any tribal member who is also a member of another tribe may be counted only once for the purposes of determining tribal membership.

7. The STATE shall be absolved of any liability if the information submitted on tribal population or quantity of motor fuel sold is not correct.

8. The TRIBE shall provide an audited report of the quantity of their motor fuel sales during the fourth calendar quarter of 2003, on or before March 1, 2004.

9. In addition to this written unconditional acceptance of the contract signed by the chief executive office of the TRIBE, the TRIBE shall provide a tribal ordinance or resolution from its governing body certifying tribal acceptance of the contract or delegating appropriate authority to the

tribe's chief executive officer to approve said contract.

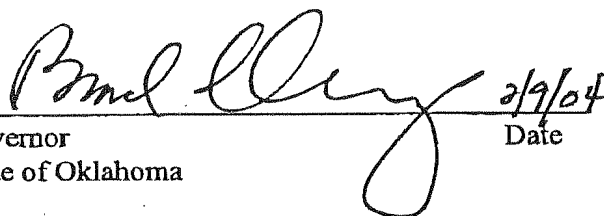
10. When the TRIBE accepts this contract individual tribal members shall not be eligible for exemptions or tax refunds from the STATE arising out of motor fuel sales to Indians in Indian Country. Payments to the TRIBE take the place of refunds to individual tribal members.

11. The TRIBE agrees not to license or authorize individual tribal members to make motor fuel sales in violation of this contract.

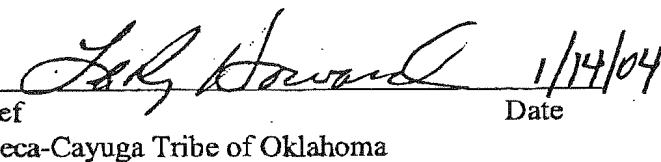
12. The TRIBE shall hold the State harmless from suit by individual tribal members and the tribe shall reimburse the state for any adverse judgments paid and any cost incurred by the state pursuant to such suit.

13. The TRIBE waives its immunity from suit and liability in state and federal court for the sole purpose of resolving disputes arising out of this contract.

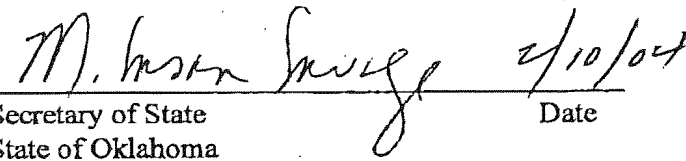
Consistent with the terms of HB 2208, the undersigned, acting on behalf of the State of Oklahoma and the Seneca-Cayuga Tribe of Oklahoma by their signature hereby approve this agreement for apportionment of motor fuel tax revenues.

  
\_\_\_\_\_  
Governor  
State of Oklahoma

2/9/04  
Date

  
\_\_\_\_\_  
Chief  
Seneca-Cayuga Tribe of Oklahoma

1/14/04  
Date

  
\_\_\_\_\_  
Secretary of State  
State of Oklahoma

2/10/04  
Date

SENECA-CAYUGA TRIBE  
OF OKLAHOMA

R2301 E. Steve Owens Blvd.  
Box 1283

Miami, Oklahoma 74355  
(918) 542-6609

FAX: (918) 542-3684

RESOLUTION # 25-010604

**"Approving a Motor Fuels Contract Between the State of Oklahoma and the Seneca-Cayuga Tribe of Oklahoma"**

- WHEREAS: the Seneca-Cayuga Tribe of Oklahoma is a Federally recognized Indian Tribe organized under the Oklahoma Indian Welfare Act of 1936 with a Constitution and By-Laws approved by the Secretary of Interior, April 26, 1937, and
- WHEREAS: the Seneca-Cayuga Tribal Business Committee is empowered under Article VI of the Constitution and By-Laws to transact business and otherwise speak or act on behalf of the Tribe in all matters on which the Tribe is empowered to act, and
- WHEREAS: the State of Oklahoma has made an offer to all federally recognized Indian tribes within the State of Oklahoma to establish a mutually beneficial method of collecting motor fuel taxes through enactment of Section 500.63 of Title 68 of the Oklahoma Statutes, and
- WHEREAS: the Seneca-Cayuga Tribal Business Committee has determined there is mutual benefit to be gained by reducing litigation over taxation authority, insuring that the taxes are properly collected and providing tax revenues to carry out governmental functions, and
- WHEREAS: Both the Tribe and the State of Oklahoma recognize that pursuant to applicable law each is a sovereign with dominion over their respective territories and governments. Entry into a Motor Fuels Contract is not intended nor shall it be construed to cause the sovereignty of either the Tribe or the State to be diminished, and
- WHEREAS: the Seneca-Cayuga Tribal Business Committee considers the approval of a Motor Fuels Contract as being of utmost importance in bringing in much needed revenue for the purposes of funding Tribal government programs, consisting of highway and bridge construction, health, education, corrections, and law enforcement, NOW

THEREFORE, BE IT RESOLVED, that the Seneca-Cayuga Tribe of Oklahoma does hereby approve and accept the Motor Fuels Contract titled "Motor Fuels Contract Between The State of Oklahoma And The Seneca-Cayuga Tribe of Oklahoma" and authorizes the Chief to approve said contract.

BE IT FURTHER RESOLVED, that the tax revenues realized from the Motor Fuels Contract approved herein, will be utilized for the purpose of providing funding for the operations of the Seneca-Cayuga Tribe of Oklahoma Day Care Center.

BE IT FURTHER RESOLVED, that the Tribe waives its immunity from suit and liability in state and federal court for the sole purpose of resolving disputes arising out of the Motor Fuels Contract approved herein.

BE IT FINALLY RESOLVED, that this resolution hereby rescinds any and all previous resolutions or motions passed by the Seneca-Cayuga Tribe of Oklahoma Business Committee regarding the entry into a Motor Fuels Contract with the State of Oklahoma.

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Resolution # 25-010604

CERTIFICATION

The foregoing resolution was passed at a monthly meeting of the Business Committee of the Seneca-Cayuga Tribe of Oklahoma on January 6, 2004 by a vote of 7 For, 0 Against, and 0 Abstaining.

ATTEST:



Deborah Dick, Secretary Treasurer

  
LeRoy Howard, Chief



# United States Department of the Interior

## BUREAU OF INDIAN AFFAIRS

Miami Field Station

P.O. Box 391

Miami, Oklahoma 74355

Phone: 918-542-2108 Fax: 918-542-7202

Reply to:  
Field Representative

January 14, 2004

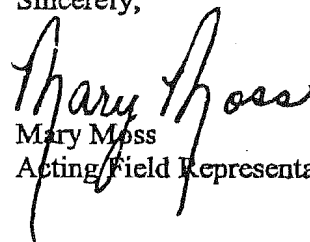
To whom it may Concern:

Ms. April Henderson, Enrollment Officer for the Seneca-Cayuga Tribe of Oklahoma, by letter requested the Bureau of Indian Affairs, Miami Field Station, to provide information concerning the number of Seneca-Cayuga members residing within the State of Oklahoma.

At the time, Ms. Henderson made the written request she stated that 2,045 Seneca-Cayuga Tribal members were residing within the State of Oklahoma. The Seneca-Cayuga Tribe determines Tribal membership and maintains all records at their Tribal Office. When information is needed concerning Tribal membership, the Miami Field Station contacts the Tribe.

I hereby certify, based on information provided by the Tribal Enrollment Officer, April Henderson, that the Seneca-Cayuga Tribe of Oklahoma has 2,045 members residing within the State of Oklahoma.

Sincerely,

  
Mary Moss  
Acting Field Representative





SENECA-CAYUGA TRIBE  
OF OKLAHOMA

R2301 E. Steve Owens Blvd.  
Box 1283  
Miami, Oklahoma 74355  
(918) 542-6609  
FAX: (918) 542-3684

January 5, 2004

To Whom It May Concern:

According to the Seneca-Cayuga Enrollment Department the total number of Seneca-Cayuga tribal members living within the State of Oklahoma is 2,045.

If you have any questions please feel free to contact me at the above address or phone number.

Sincerely,

April Henderson, Enrollment Officer  
Seneca-Cayuga Tribe of Oklahoma

Concur:

Date: \_\_\_\_\_

\_\_\_\_\_  
Field Representative  
Bureau of Indian Affairs  
Field Office  
Miami, Oklahoma