

CIGARETTE TAX COMPACT
Between
THE SQUAXIN ISLAND TRIBE
and
THE STATE OF WASHINGTON

PREAMBLE

WHEREAS, the Squaxin Island Tribe is a federally recognized Indian Tribe, possessed of the full inherent sovereign powers of a government; and

WHEREAS, the state of Washington is a state within the United States of America, possessed of full powers of state government; and

WHEREAS, the body of Federal Indian law and policy recognizes the right and the importance of self-determination for Indian Tribes, the authority of a Tribe to tax certain activities, and the need for economic development in Indian country by Indian Tribes; and

WHEREAS, the state of Washington has committed, through the Centennial Accord and Millennium Agreement, to the political integrity of the federally recognized Indian Tribes within the state of Washington and has formally recognized that the sovereignty of each Tribe provides paramount authority for the Tribe to exist and to govern; and

WHEREAS, in 2001 the Tribe and State resolved a long-standing disagreement regarding jurisdiction over and the taxation of the sale and distribution of cigarettes by entering into a cigarette tax compact; and

WHEREAS, the State and Tribe have benefited from resolution of that disagreement by the change in focus from enforcement and litigation to a focus on the administration of that cigarette tax compact; and

WHEREAS, the Tribe and State have benefited from resolution of that disagreement by the tax base that compact enables, taxation being an essential attribute of sovereignty and a tool of self-sufficiency; and

WHEREAS, the State and Tribe have also benefited by the exercise of the attributes of Tribal sovereignty and from the improved well-being of members of the Tribe that result from economic development by the Tribe and its members; and

WHEREAS, the Tribe and State expect to enjoy these benefits in the future through the continued implementation of the compact; and

WHEREAS, the State and Tribe, having gained experience by working together under the compact and having found areas for improvement, now wish to update the terms of their agreement to make such improvements in the compact and its implementation; and

WHEREAS, this Compact is authorized, on the part of the State, by legislation, including Senate Bill 5372, enacted by the 2001 Regular Session of the 57th Legislature and signed by the Governor, effective July 22nd, 2001, as codified in Revised Code of Washington (RCW) 43.06.450, RCW 43.06.455, RCW 43.06.460, and RCW 82.24.295; and on the part of the Tribe, by Resolution of the Squaxin Island Tribal Council and signed by the Tribal Chairman.

NOW THEREFORE, the Tribe by and through its Tribal Council, and the state of Washington by and through its Governor, do hereby enter into this revised Compact for the mutual benefit of the Tribe and the State to wit:

PART I **Definitions**

- (1) “Auditor” means an independent third party auditor selected pursuant to Part VIII section 1 of this Compact.
- (2) “Allocation” means the number of cigarettes available to be sold to Indians free of all state cigarette and sales taxes, based on a formula that includes consumption data and Tribal service area population.
- (3) “Carton” or “carton of cigarettes” means, unless otherwise indicated, a carton of two hundred (200) cigarettes.
- (4) “Cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.
- (5) “Compact” means this compact entered into by the state of Washington and the Squaxin Island Tribe.
- (6) “Department” means the Washington State Department of Revenue.
- (7) “Essential government services” means services such as Tribal administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development.
- (8) “Indian country,” consistent with the meaning given in 18 U.S.C. 1151 means:
 - (a) All land within the limits of the Squaxin Island Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation; and
 - (b) All Indian allotments or other lands held in trust for a Squaxin Island Tribal member or the Tribe, or otherwise subject to a restriction against alienation imposed by the United States, the Indian titles to which have not been extinguished, including rights of way running through the same.

- (9) “Local retail sales tax” means the combined Washington local retail sales taxes applicable in the area.
- (10) “NonIndian” means an individual who is neither a Tribal member nor a nonmember Indian.
- (11) “Nonmember Indian” means an enrolled member of a federally recognized Indian Tribe other than the Squaxin Island Tribe.
- (12) “Parties to the agreement” or “parties” means the Squaxin Island Tribe and the state of Washington.
- (13) “Retail selling price” means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, which price includes the Tribal cigarette tax.
- (14) “Self-certified tribal wholesaler” means a wholesaler who is a federally recognized Indian Tribe or a member of such a Tribe.
- (15) “Self-certified wholesaler” means an out-of-state wholesaler who is not a self-certified tribal wholesaler.
- (16) “Squaxin Island Indian Reservation” or “reservation” means the area recognized as the Squaxin Island Indian Reservation by the United States Department of the Interior.
- (17) “State” means the state of Washington.
- (18) “State taxes”, in this Compact only, means a combination of the “State cigarette tax”, and the “State and local retail sales and use taxes”.
- (19) “Tobacco products” means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. “Tobacco product” does not include cigarettes.
- (20) “Tribal cigarette tax” means the tax or taxes enacted as a provision of Tribal law on the units of cigarettes sold and on the purchase of cigarettes by retail buyers.
- (21) “Tribal member” means an enrolled member of the Squaxin Island Tribe. For purposes of this Compact, a member of another federally recognized Tribe who is the spouse of an enrolled Squaxin Island Tribe member shall be treated the same as an enrolled member of the Squaxin Island Tribe.
- (22) “Tribal retailer” means a cigarette retailer wholly owned by the Squaxin Island Tribe and located in Indian country.

- (23) “Tribal tax stamp” means the stamp or stamps that indicate the Squaxin Island Tribal cigarette tax imposed under this Compact is paid or that identify those cigarettes with respect to which no tax or another Tribal tax is imposed.
- (24) “Tribe” or “Tribal” means or refers to the Squaxin Island Tribe, a federally recognized Tribe.
- (25) “Wholesaler” means every person who purchases, sells, or distributes cigarettes for the purpose of resale only.

PART II

Applicability of the Compact

(1) Execution of Compact

This Compact shall become effective when approved by the Squaxin Island Tribal Council and signed by the authorized signatory for the Tribe, and signed by the Governor of the state of Washington. This Compact shall be executed in duplicate originals, with each party retaining one fully-executed duplicate original of the Compact. This Compact supercedes the Compact executed by the Governor and the Tribe on December 10, 2001.

(2) Application

From its execution this Compact shall apply to the retail sale of cigarettes by Tribal retailers. Sales subject to the Tribal cigarette tax imposed pursuant to this Compact are those in which delivery and physical transfer of possession of the cigarettes from the retail seller to the buyer occurs within Indian country. “Delivery and physical transfer of possession” within Indian country does not include mail order type sales, including internet, catalog, and telephone sales, unless the cigarettes are delivered to the buyer within Indian country.

(3) Scope Limited

This Compact does not apply to:

- (a) Cigarettes sold at retail by nonIndians or nonmember Indians;
- (b) Tobacco products as that term is defined in Part I of this Compact; and
- (c) Cigarettes manufactured by the Tribe or its enterprises within Indian country.

(4) Mail Order Type Sales

During the term of this Compact the Tribe agrees to not engage in mail order type sales, such as internet, catalog, and telephone sales, to Washington residents outside of Indian country, unless and until the State and the Tribe have entered into a memorandum of agreement in regard to the taxability of such sales.

PART III

Imposition of Tribal Cigarette Taxes

(1) Tribal Retailers

Tribal retailer refers to the Kamilche Trading Post, the Little Creek Casino-Hotel, and the store at 6233 Steamboat Island Road. The Tribe agrees to notify the Department thirty days

prior to the start up of cigarette sales by any other Tribal retailer. The Tribe agrees that any Tribal retailer is subject to this Compact.

(2) Tax Imposed on Sales by Tribal Retailers

- (a) The Tribe shall impose by ordinance taxes pursuant to the requirements of this Part on all sales by Tribal retailers of cigarettes to retail purchasers within Indian country. Such ordinance may provide for compensation for wholesalers for their services in affixing the Tribal tax stamp. The Tribe may allow for an exemption from such taxes for Tribal members, under Part V of this Compact.
- (b) During the term of this Compact, upon any future increase in the state cigarette tax, state retail sales tax or local retail sales tax, the Tribal tax on cigarettes shall increase by no less than 100 percent of the increase in the combined state and local tax rates.
- (c) Upon any future decrease in the state cigarette tax, state retail sales tax or local retail sales tax, the Tribal tax on cigarettes may decrease to a minimum of no less than 100 percent of the combined state and local tax rates.
- (d) The State will notify the Tribe, in writing at least thirty (30) days prior to the effective date of any increases or decreases in the State cigarette tax or the combined State sales and use tax.

(3) State Retrocedes from Its Tax. Pursuant to RCW 43.06.455, the state retrocedes from its tax during the time this Compact is in effect.

(4) Tax Rate

The Tribe shall impose and maintain in effect a tax on the retail sale of cigarettes equaling no less than an amount equal to 100 percent of the State taxes.

PART IV

Purchase of Cigarettes by Tribal Retailers

(1) Wholesale Purchases – Requirements

The Tribe agrees to maintain in effect in Tribal law a requirement that the Tribal retailers purchase cigarettes only from:

- (a) Wholesalers or manufacturers licensed to do business in the state of Washington;
- (b) Self-certified wholesalers who meet the requirements of Part VI section 2 of this Compact;
- (c) Self-certified tribal wholesalers who meet the requirements of Part VI section 3 of this Compact;
- (d) The Tribe or its enterprises as a Tribal manufacturer or wholesaler.

(2) Delivery of Cigarettes to the Tribal Retailer Outside of Indian Country

Cigarettes bearing the Squaxin Island Tribe Tribal tax stamp required by this Compact or cigarettes purchased by the Tribe for stamping in Indian country may be delivered or transferred within or outside Indian country by a wholesaler to the Tribe or a Tribal retailer, subject to meeting any notification requirements of this Compact. Commercial carriers may

make deliveries. Such cigarettes must be accompanied by invoices identifying the cigarettes as Squaxin Island Tribe cigarettes.

PART V

Tribal Tax Stamps

(1) Tribal Tax Stamp Required

All cigarettes sold by the Tribal retailer shall bear a Tribal tax stamp. The Tribe may by ordinance allow for an exemption from this tax for Tribal members. The expectation of both Parties is that if the Tribe chooses to tax its members, that the allocation allowance described in WAC 458-20-192 will be used as an approximation of sales to members and the Tribe will not be required to keep exact records of such sales. This allocation figure will be used to distinguish funds subject to the requirements in Part XIII section 8, from funds that are not. If the Tribe chooses to exempt its members from tax, the Tribe agrees to keep exact records of such sales.

(2) Creation and Supply of Tribal Tax Stamps

- (a) The Tribe shall arrange for the creation and supply of a Tribal tax stamp by an appropriate manufacturer. Tribal tax stamps will have a serial number or some other discrete identification so that stamps may be traced to the wholesaler.
- (b) The Tribe agrees to purchase stamps from a nationally recognized stamp manufacturer unless it decides to manufacture its own stamps. If the Tribe decides to manufacture its own stamps, it agrees to meet with the Department to discuss the stamp product, and to institute practices that address counterfeiting and security. The Tribe agrees to provide the Department of Revenue samples of the Tribally manufactured stamps.

(3) Stamp Vendor Contract

The Tribe may contract with a bank or other stamp vendor to distribute tax stamps. The stamp vendor shall distribute stamps to wholesalers, upon payment of the applicable Tribal cigarette tax by the wholesaler or Tribal retailer, and remit the collected taxes to the Tribe. The contract shall provide that the stamp vendor shall purchase a supply of Tribal tax stamps from the manufacturer and make them available for purchase. The Tribe may, at its option, select as the stamp vendor the bank with which the Department contracts for that service, or some other third party stamp vendor satisfactory to both the Tribe and the Department. The Tribe shall require the stamp vendor to remit to the Tribe all revenue collected from the Tribal cigarette tax. The Tribe shall require that the stamp vendor provide to the Tribe and to the Department timely reports detailing the number of Tribal tax stamps sold, and make its records available for auditing by the Tribe and the Department. The Tribe's contract with the stamp vendor shall specify a process by which the Tribe is assured that all wholesalers who sell cigarettes to Tribal retailers are paying the applicable Tribal taxes, unless the tax has been prepaid to the stamp vendor by the Tribal retailer. This process may include a requirement that wholesalers agree to provide documentation such as invoices of sales to verify to the Tribe that the Tribal taxes were paid.

(4) Requirements for Affixation of Stamps by Wholesalers

- (a) Wholesalers or the Tribe shall be responsible for affixing the Tribal tax stamps to the smallest container of cigarettes that will be sold or distributed by the Tribal retailer. Stamps shall be affixed so that the stamps may not be removed from the package without destroying the stamp. Stamps shall be affixed so that they may be readily viewed by inspection.
- (b) Wholesalers may only possess unstamped cigarettes for as long as is reasonably necessary to affix Tribal tax stamps to the packages for sale. It is presumed that any such possession in excess of 72 hours (excluding Saturdays, Sundays, and holidays) is in contravention of this Compact.
- (c) The Tribe, as part of its tax administration function, may maintain and distribute tax stamps and be deemed the “stamp vendor” for purposes of this Compact. The Tribe, as a government, shall also be responsible for affixing the tax stamps to the smallest container of cigarettes that will be sold or distributed by the Tribal retailer, except where the Tribe contracts with another wholesaler to provide these services in compliance with this Compact. The State and the Tribe agree that the affixation of stamps, as set forth in this Compact, is a governmental function. The Tribe agrees to maintain a separation between its enterprise activity of retailing cigarettes and its tax administration functions of holding stamps, storing wholesale cigarette inventory, affixing stamps, and releasing stamped inventory to the retailer. To that end, the Tribe will maintain its unstamped cigarette inventory in a secure location apart from the Tribal retailer store(s) and subject to camera surveillance.

Stamps shall be affixed so that the stamps may not be removed from the package without destroying the stamp. Stamps shall be affixed so that they may be readily viewed by inspection.

Prior to affixation, such stamps shall be maintained in a secure area subject to 24-hour surveillance. The Tribe shall invite the Department to view its secure stamp storage area and walk the Department through its protocols and protections. The Department and the Tribe agree to share technical assistance and advice in the area of tax administration.

The Tribe may only possess unstamped cigarettes for as long as is reasonably necessary to affix tax stamps to the packages for sale. It is presumed that any such possession in excess of seventy-two (72) hours (excluding Saturdays, Sundays, and holidays) is in contravention of this Compact. Cigarettes that are damaged or were not ordered, and that are to be returned to the vendor, are not subject to the 72-hour standard. Such cigarettes must be set aside and kept in the secure location until the vendor picks them up. It is expected by both Parties that the vendor will pick up these cigarettes within a reasonable period of time. The State and the Tribe have agreed to this weekend and holiday exclusion in recognition of the governmental function being carried out and the burden that a strict 72-hour rule would place on government staff on weekends and holidays. The Tribe has agreed that “holiday” for the purposes of this section is limited to the following holidays: New Years Day; Martin Luther King Day; President’s Day; Veterans Day; Spring Holiday (Friday before Easter); American Indian Day (May 13); Memorial Day; Fourth of July; Labor Day; Thanksgiving and day following

Thanksgiving; Christmas (normally December 24 and 25); and Tribal funeral closures as determined by the Tribal government. If a holiday falls on a Saturday, the preceding Friday is considered a holiday; if a holiday falls on a Sunday, the following Monday is considered a holiday.

(5) Wholesaler Obligation Under State Law

Collection of the Tribal cigarette tax (unless prepaid to the stamp vendor by the Tribal retailer), affixing of the Tribal tax stamps, retention and production of records required by state law (in the case of state licensed wholesalers) and by this Compact (in the case of self-certified out-of-state or self-certified Tribal wholesalers), and compliance with other requirements in this Compact, shall be deemed to satisfy the state cigarette excise tax obligation of a wholesaler.

(6) State Agreement Regarding Compliance with State and Federal Law

As to all transactions that conform with the requirements of this Compact, such transaction does not violate state law, and the State agrees that it will not assert that any such transaction violates state law for the purpose of 18 U.S.C. § 2342 or other federal law based on violation of state cigarette laws.

**PART VI
Wholesalers**

(1) Wholesalers Licensed by the State

Wholesalers licensed by the State are subject to the requirements as set forth in Title 82 RCW and any rules adopted thereunder, and therefore must maintain adequate records detailing which cigarettes are subject to state tax and which cigarettes are subject to the Tribal cigarette tax.

(2) Self-Certified Out-of-State Wholesalers

- (a) Wholesalers who are not licensed to do business within the state of Washington, and who are not required by state law to be licensed, but who have agreed to comply with the provisions of this Compact, must certify by letter to the Tribe that they will and can meet the terms of this Compact. The Tribe will provide a copy of the letter to the State prior to any purchase by a Tribal retailer from the wholesaler.
- (b) The out-of-state wholesaler must be licensed to do business as a cigarette wholesaler with the state in which they reside.
- (c) The Tribe shall require compliance with this Compact in its contracts with any such out-of-state wholesalers and shall provide copies of such contracts to the Auditor for its review. The contract between the Tribe and the out-of-state wholesaler will also include a requirement that:
 - (i) The cigarettes transported in the state of Washington will be accompanied by invoices detailing the quantity and brand of cigarettes destined for the Squaxin Island Tribe. Such invoices shall provide an order number that matches the order number provided under Part VII section 2 of this Compact and shall identify the seller of the cigarettes as well as the buyer of the cigarettes; and

- (ii) The wholesaler will allow the Auditor access to its records for the purpose of determining whether the Tribal cigarette tax has been paid and whether Tribal tax stamps are properly affixed to the cigarette containers.
- (d) An out-of-state wholesaler who has provided a letter of certification to the Tribe and who has a contract with the Tribe, in which contract the wholesaler agrees to abide by the terms of this Compact, shall be referred to as a “self-certified wholesaler.”

(3) Self-certified Tribal Wholesalers

- (a) Tribal wholesalers who are not licensed to do business within the state of Washington or any other state, and who are not required by state law to be licensed, but who have agreed to comply with the terms of this Compact, must certify by letter to the Tribe that they will and can meet the terms of this Compact. The Tribe will provide a copy of the letter to the State prior to any purchase by a Tribal retailer from the wholesaler.
- (b) The Tribe shall require compliance with this Compact in its contracts with any such Tribal wholesalers and shall provide copies of such contracts to the Auditor for its review. The contract between the Tribe and the Tribal wholesaler will also include a requirement that:
 - (i) The cigarettes transported in the state of Washington will be accompanied by invoices detailing the quantity and brand of cigarettes destined for the Squaxin Island Tribe. Such invoices shall provide an order number that matches the order number provided under Part VII section 2 of this Compact and shall identify the seller of the cigarettes as well as the buyer of the cigarettes; and
 - (ii) The wholesaler will allow the Auditor access to its records for the purpose of determining whether the Tribal cigarette tax has been paid and whether Tribal tax stamps are properly affixed to the cigarette containers.
- (c) A Tribal wholesaler who has provided a letter of certification to the Tribe and who has a contract with the Tribe, in which contract the wholesaler agrees to abide by the terms of this Compact, shall be referred to as a “self-certified tribal wholesaler.”

(4) The Tribe as a Wholesaler

The Squaxin Island Tribe may act as its own wholesaler in compliance with Part V, Section (4)(c) of this Compact. When the Tribe, by itself or through a Tribal enterprise, manufactures and wholesales to the Tribal retailers, that wholesale activity does not require a memorandum of agreement under this subsection (4).

**PART VII
Enforcement Authority and Responsibility of Liquor Control Board**

(1) Intent

Engrossed Substitute Senate Bill (ESSB) 5372 states that it is the intent of the Legislature that the Liquor Control Board and the Department continue the division of duties and shared authority under chapter 82.24 RCW and therefore the Liquor Control Board is responsible for enforcement activities that come under the terms of chapter 82.24 RCW.

(2) Notification

The Tribe or its designee shall notify the Department seventy-two (72) hours in advance of all shipments of unstamped cigarettes by the self-certified wholesaler or self-certified tribal wholesaler to the Tribe or Tribal retailers, and all shipments of unstamped cigarettes to the Tribe acting as a wholesaler to compact tribes. Such notice shall include who is making the shipment (meaning who is the wholesaler), detail regarding both quantity and brand, and the invoice order number. Transportation of the cigarettes without the notice required by this section subjects the cigarettes to seizure. If all other requisite criteria are in order, such lack of notice does not subject the Tribal cigarettes to seizure unless the immediately previous order of Tribal cigarettes also lacked the requisite notice.

(3) Commercial Carriers

Shipments of cigarettes both from in-state and out-of-state wholesalers, who meet the requirements of this Compact, may be made by commercial carrier. Such shipments must be accompanied by documents as required under this Compact and are subject to advance notice requirements.

**PART VIII
Audit Process**

The Tribe wishes to provide assurance that all parties to this Compact and persons named in this Compact are in compliance with the spirit and terms of this Compact. The purpose of this Part is to provide a process for regular verification of the requirements in this Compact. The verification process is intended to reconcile data from all sources that make up the stamping, selling, and taxing activities under this Compact.

(1) Tribe to Contract with Third Party Auditor

The Tribe and the State agree that, for the purposes of verifying compliance with this Compact, the Tribe will contract with an independent third party auditor. The Auditor will be retained by the Tribe and the Tribe shall bear the costs of the auditing services. The Tribe shall be entitled to freely communicate with the Auditor. The Auditor must be a certified public accountant either licensed by the state of Washington or approved for A133 Tribal audits. The Auditor will review records on an annual basis, consistent with the Tribe's fiscal year, to verify the requirements of this Part unless otherwise specified.

(2) Audit Protocol

To ensure compliance with this Compact, the Auditor must adhere to the following protocol:

- (a) Period under review: To verify the requirements of this Compact, the Auditor must review records for all years during the current appropriate audit cycle, and may review records for earlier years only as necessary for an internal reconciliation of the person's books. However, records relating to the period before the effective date of the Tribal cigarette tax are not open to review. In situations where the Auditor is responsible for verifying records on less than an annual basis, the period under review shall not include years previously reviewed by the Auditor, except when a violation is alleged to have occurred during the period previously reviewed.

- (b) Records examined: To verify the requirements of this Compact, the Auditor must review at a minimum the records specified below. In all situations, the Auditor is not responsible for examining records that do not relate to the stamping, selling, or taxing activities of the Squaxin Island Tribe, unless a review of the records is necessary for an internal reconciliation of the person's books.
- (i) Self-certified wholesaler and self-certified tribal wholesaler: records and invoices of stamp purchases, records and invoices of sales of stamped cigarettes, stamp inventory, and the stamping process.
 - (ii) Tribal retailers: records and invoices of cigarettes purchased from licensed wholesalers, self-certified wholesalers, self-certified tribal wholesalers and manufacturers, records and invoices of cigarettes sold, cigarette inventory, and additional records necessary to verify whether Tribal cigarette tax revenue was used in accordance with the requirements of Part XIII section 8 and records to verify that the retail selling price included the applicable tribal taxes.
 - (iii) Tribe: records necessary to verify that all Tribal cigarette tax revenue was used to fund essential government services of the Tribe and records regarding Tribal stamps.
 - (iv) Tribe as wholesaler: records and invoices of cigarettes purchased from any source; records and invoices of cigarettes provided to the Tribal retailer; records and invoices of cigarettes sold to other Tribes; cigarette inventory; and additional records necessary to verify that stamps were affixed and that tax revenue was accounted for and transmitted to the proper funds and accounts.

(3) Audit Report Format

The Auditor shall provide the Department with a certified statement that, after each audit, the Auditor finds the Tribe to be in compliance with the terms of this Compact. The Department may review the audit report at the Tribal Offices, but may not copy the same.

(4) Audit Schedule

Reviews shall take place on the regular audit period, which follows the Tribe's fiscal year, with an audit report submitted within four months of each audit. The Tribe and the Department may by prior joint agreement select or vary the audit cycle depending on the on-going audit activity of the Tribe, in order to be efficient and effective in the use of auditor resources.

(5) Self-Certified Wholesalers and Self-Certified Tribal Wholesalers

- (a) The Auditor will be responsible for reviewing the records, identified in subsection (2)(b)(i) of this Part, of all self-certified wholesalers and self-certified tribal wholesalers that sell cigarettes to a Tribal retailer to verify that the Tribal cigarette tax was paid by the wholesaler, unless prepaid to the stamp vendor by the Tribal retailer, and that the stamps were correctly affixed to containers of cigarettes.
- (b) The Auditor must review the records, identified in subsection (2)(b)(i) of this Part, of all self-certified wholesalers and self-certified tribal wholesalers that sell cigarettes to a Tribal retailer no less than once every four years. If a wholesaler that previously sold cigarettes to a Tribal retailer stops making such sales, the Auditor must review the records of that wholesaler during the next regularly scheduled annual audit.

(6) Tribal Retailer

The Auditor must review the records, identified in subsection (2)(b)(ii) of this Part, of the Tribal Retailers to certify that the tribal taxes were collected, that all cigarettes were obtained from wholesalers authorized under this Compact, and that any exemptions from tax are documented.

(7) Essential government Services and Stamping Function

- (a) The Auditor will be responsible for reviewing the records of the Tribe and the Tribal retailer to certify that Tribal cigarette tax revenue is used for essential government services. The Auditor will also be responsible for certifying that the Tribal cigarette tax revenues are used in accordance with the requirements of Part XIII section 8 of this Compact. The Auditor shall review the stamping process and records in regard to that process to assure that stamping inventory is accounted for and secure and to assure that all cigarettes are stamped in accordance with this Compact. The review under this section shall take place on an annual basis.
- (b) The Tribe and the State agree that machine error is a source of stamp wastage and therefore that reconciliation of stamps acquired by the Tribe with stamps affixed by the Tribe is not a meaningful procedure because of the difficulty in physically counting wasted stamps. The Tribe agrees that as part of its records it will keep the used stamp rolls in a secure location for a reasonable time so that wastage samples can be taken, if deemed necessary by the Parties. It is agreed that it is in the interests of both Parties that cigarettes affixed with the Tribe's stamps be sold only by Squaxin Island Tribal retailers, and not by other sellers. If cigarettes bearing Tribal stamps are discovered in nonIndian or nonmember wholesale or retail locations, the Tribe and Department agree to meet and resolve the issue. If other issues arise in regard to stamping, the Department and the Tribe shall jointly discuss a change in protocols and procedures to address such issues. Any changes shall be memorialized in a government-to-government agreement between the Department and the Tribe.

(8) Joint Audit Implementation and Review

The Tribe and the State may meet jointly with the Auditor prior to the beginning of an audit cycle as necessary. The purpose of such meeting is to discuss the objectives of the upcoming audit, the expectations of both the Tribe and the State, the audit standards to be used in such audit, and any issues regarding detail of the audit, records pertinent to the review, or substance of the Auditor's report. The Tribe and the State may meet jointly with the Auditor to review the report and discuss any issues of concern. For the purposes of this section 9, "audit cycle" refers to the reoccurring scheduled audit of an entity. For example the audit cycle of a self-certified wholesaler is four years.

(9) Dispute Resolution

In the event that either the Tribe or the Department disagrees with an audit finding or report, either party may notify the other of the disagreement and follow the procedures for resolution of the disagreement in Part IX of this Compact.

PART IX Dispute Resolution

(1) General

The Tribe and the State wish to prevent disagreements and violations whenever possible, and to quickly and effectively resolve disagreements and violations when they arise. The Parties agree that, to the extent possible, informal dispute resolution methods shall be exhausted before engaging in the formal processes provided by this Part. Should a dispute arise, the Parties agree to meet at the earliest possible time to discuss resolution. The Parties shall attempt to reach each other by telephone or e-mail and, should that fail, shall use written notice as set forth in Section 9 of this Part. As used in this Part “days” means calendar days, unless otherwise specified.

The provisions of this section 1 shall not apply to violations of sales to minors provisions, which shall be governed by section 7 of this Part.

(2) Mediation

If the Parties are unable to resolve the disputed issues through joint discussions under Section 1 of this Part, either Party may request mediation by giving a written demand (“Mediation Demand”) to the other Party. The Parties shall first attempt to agree on a mediator through Thurston County Dispute Resolution Center (TCDRC), or other similar organization, but if they cannot agree within 30 days of the Mediation Demand, then TCDRC shall select a mediator. The parties shall have an opportunity to submit both written materials and argument to the mediator, with timelines for such submissions to be set by the mediator. The Parties will work with the mediator to resolve their differences and shall share equally the costs of mediation, except that the Parties shall bear their own attorney fees.

(3) Remedies

Whenever an issue is submitted to mediation under this section, the mediator shall render an opinion as to whether a violation has occurred and may recommend corrective action to remedy such violation. In no case shall a mediator render an independent recommendation or decision on any issue on which the Parties reach agreement. Remedies may include: interpretation of Compact terms; changes in reporting, record keeping, enforcement practices, business practices, and/or similar changes. Remedies shall not include an award of monetary damages or costs of any kind, or the disclosure of any records not specifically subject to disclosure under this Compact.

(4) Termination of Compact

If, after no more than eight months from the initial Notice of Violation, the parties are unable to resolve a disagreement regarding an alleged violation and/or the appropriate corrective action using the dispute resolution methods authorized in this section, or if a party continues to violate a Contract term after the completion of mediation, this Contract may be terminated. The parties may, after no less than six months following any such termination enter into a new Compact. The termination provisions of this subsection shall not apply in the case of a Notice of Disagreement that does not involve a violation.

(5) Disagreements Regarding Reports of the Auditor

Should either party have a concern about a report from the Auditor, which cannot be resolved through the joint audit review process described in Part VIII of this Compact, that party may choose to resolve the concern through the use of a mediator. Failure of either party to grant the mediator access to any records necessary to review the report is a violation under this Compact. Records of the State or the Tribe reviewed by the mediator or its agent(s) under this section 5, and the information contained in such records, are not are not disclosable to anyone, in any forum, for any purpose. The mediator may use the services of an independent third-party certified public accountant in undertaking such review.

(6) Notification of For Cause Termination

- (a) Upon 45 days written notice, either Party may terminate the Compact for cause. For the purposes of this section, “for cause” shall mean only the following violations:
- (i) Retail sales of unstamped cigarettes during the effective period of a Tribal cigarette tax;
 - (ii) Wholesale sales of unstamped cigarettes to purchasers not authorized to hold such cigarettes during the effective period of a Tribal cigarette tax;
 - (iii) Failure to submit to mediation as required by this Part IX;
 - (iv) A breach of the confidentiality provisions of Part XII of this Compact;
 - (v) Use of tax proceeds in violation of the terms of this Compact;
 - (vi) Failure to account for stamps that are the responsibility of the Tribe as stamp vendor or stamping agent; or
 - (vii) The State’s violation of Part III, Section 3 or Part V, Section 6 of this Compact.
- (b) The Party seeking the termination for cause shall notify the other Party and the mediation organization, who shall select a mediator to review the facts upon which the for-cause Termination Notice is based. The Party making the allegation must provide a written recitation of the facts with the Termination Notice. The responding party has 10 days to provide its facts to the mediator. If the mediator determines that the alleged violation has not occurred, the Termination Notice shall be deemed withdrawn. If the mediator determines that the alleged event has occurred, the Compact shall be deemed terminated; provided that the Party sending the Termination Notice may choose to go through the regular dispute resolution process in regard to the issue. If the parties fail to reach agreement, or the for-cause violation is not corrected, within one-hundred-eighty (180) days from the date of the Termination Notice, the Compact shall be terminated. If the Parties reach agreement, or the for-cause violation is corrected during the notice period, the Compact shall not be terminated.

(7) Notification of Sales to Minors Violation

The Department shall immediately notify the Tribe if an allegation is made that the Tribe has made sales to minors in violation of this Compact. Upon such notification, the Tribe shall take enforcement action according to the provisions of Tribal ordinance.

(8) Continuity

The parties agree that to the greatest extent possible the individual selected as mediator shall be used for future dispute resolutions. The parties may agree to select such a person in advance.

(9) Notice Requirements

For the purposes of this Compact, notice shall be by certified mail, return receipt requested, unless both parties agree in writing to accept notice by facsimile. Notice shall be deemed to be given on the date of actual receipt. Notice shall be given as follows:

To the Department: Director
Department of Revenue
P.O. Box 47454
Olympia, WA 98504-7454

To the Tribe: Honorable David Lopeman
Chairman
Squaxin Island Tribe
SE 10 Squaxin Lane
Shelton, WA 98584

With a copy to:

Squaxin Island Legal Department
SE 3711 Old Olympic Highway
Shelton, WA 98584

(10) Sovereign Immunity

Nothing in this Compact shall be construed as a waiver, in whole or in part, of either Party's sovereign immunity.

PART X

Responsibilities of the Squaxin Island Tribe, the Department of Revenue, and the Liquor Control Board

(1) Squaxin Island Tribe

The Squaxin Island Tribe is responsible for both enforcement of the terms of this Compact and administration of the Compact, audit procedures and record keeping, and dispute resolution. The Squaxin Island Tribe agrees to allow the Department entry into the retail store, the purpose of such entry being limited to (a) visual observation of the retail sales taking place at the store and (b) the purchase of cigarettes by the Department.

(2) Liquor Control Board

The Liquor Control Board is responsible for enforcement of chapter 82.24 RCW.

(3) Department of Revenue

The Department is responsible for the administration of the Compact, audit procedures and record keeping, and dispute resolution, as well as negotiation of its terms, on behalf of the Governor of the state of Washington.

PART XI
Term of this Compact – Amendment

This Compact shall remain in effect no longer than eight years from its effective date, subject to the termination provisions under Part IX of this Compact. The Compact shall be automatically renewed for successive periods of eight years, unless either party objects in writing at least 30 days prior to the expiration date. Amendments to the Compact shall be considered upon the written request of either party. Disputes regarding requests for amendment of this Compact shall be subject to the dispute resolution process in Part IX of this Compact.

PART XII
Confidentiality

All information under the terms of this Compact received by the Department or open to Department review is “return or tax information” and is subject to the provisions of RCW 82.32.330, the tax information “secrecy clause.” All other information that is subject to review by the Auditor, review by the mediator or certified public accountant, or review by the arbitrator is confidential and shall not be disclosed to anyone, in any forum, for any purpose.

PART XIII
Miscellaneous Provisions

(1) Tribe Does Not Submit to State Jurisdiction

By entering into this Compact, the Tribe does not concede that the laws of the state of Washington, including its tax and tax collection provisions, apply to the Tribe, its members or agents regarding activities and conduct within or without Indian country.

(2) State Does Not Concede Tribal Immunity

By entering into this Compact, the State does not concede that the Tribe has any immunity from its tax and tax collection provisions.

(3) Compact Does Not Create any Third Party Beneficiaries

No third party shall have any rights or obligations under this Compact.

(4) Land Status

The Tribe shall provide information regarding the status of land upon which any Tribal retailer is located at least 30 days prior to the startup of any new cigarette sales by such retailer.

(5) Tobacco Master Settlement Agreement

- (a) This Compact is not intended to impact the State’s share of proceeds under the master settlement agreement entered into by the State on November 23, 1998.
- (b) The Tribe recognizes the State has an interest regarding nonparticipating manufacturers. The State recognizes the Tribe has an interest in the master settlement agreement. The Tribe agrees to not impede the State’s efforts to secure compliance of the nonparticipating manufacturers, and the Tribe reserves its rights regarding these matters.

(c) Nothing in this Compact supercedes or replaces chapter 70.157 RCW.

(6) Periodic Review of Compact Status

Appropriate representatives of the Tribe and of the Department agree to meet at mutually agreeable times and places upon the reasonable request of either Party to review the status of this Compact and any issues that have arisen under the Compact.

(7) Sales to Minors

The Tribe or a Tribal retailer shall not sell or give, or permit to be sold or given, cigarettes to any person under the age of 18 years.

(8) Essential Government Services

(a) Tribal cigarette tax revenue shall be used for essential government services. The Auditor shall certify the use of such revenue under the process set forth in Part VIII of this Compact.

(b) Tribal cigarette tax revenue may not be used to subsidize Tribal cigarette and food retailers. “Subsidize” means that proceeds from the Tribal cigarette tax or taxes pursuant to this Compact cannot be expended on the direct business activities of the Tribal retail cigarette business. In addition, where the cigarette business is collocated with a retail food business, the proceeds cannot be expended to support that business.

(i) “Direct business activities” include paying wages, benefits, bonuses, or expenses, related to the maintenance and operation of the retail facility or typically considered to be part of a business’ operating expenses and overhead.

(ii) “Essential government services” include, but are not limited to: government services to provide and maintain infrastructure such as sidewalks, roads, and utilities; services such as fire protection and law enforcement; the costs of administering the Tribal cigarette tax stamp program under this Compact, including all deductions and exemptions similar to those available to retailers, wholesalers and others under state law; Tribal administration activities such as tax functions, contracting for health benefits, economic development, natural resources, and the provision of job services; and distribution of moneys related to trust funds, education, general assistance, and such activities as land and building acquisitions and building development and construction. The Parties specifically agree that the per capita distribution of proceeds to Squaxin Island Tribal Members is an essential government service.

(9) Other Retail Sales within Indian Country by Tribal Members

Under Squaxin Island Tribal law, only Tribal retailers are permitted to make retail cigarette sales within Indian country.

(10) Rule 192 – Application

This Compact is a “cooperative agreement” as that term is used in WAC 458-20-192 (Rule 192).

(11) Subsequent State Legislative Enactments

Should the Legislature enact a law that provides more favorable terms for the Squaxin Island Tribe, the parties shall amend the Compact to reflect such terms.

(12) Jurisdiction

This Compact does not expand or limit the jurisdiction of either the Tribe or the State.

(13) Severability

If any provision of this Compact or its application to any person or circumstance is held invalid, the remainder of the Compact is not affected.

THUS AGREED THIS 28th day of October, 2004.

SQUAXIN ISLAND TRIBE

STATE OF WASHINGTON

By: _____
David Lopeman, Chairman

By: _____
Gary Locke, Governor