

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

Article I: Preamble

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

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

WHEREAS, the body of Federal Indian Law and policy recognizes the right to, and the importance of, self-determination for Indian Tribes, the taxation authority of Tribes, and the need for economic development in Indian Country by Indian Tribes; and

WHEREAS, the state of Washington has committed, through Chapter 43.376 RCW, the Centennial Accord and Millennium Agreement, to the political integrity of the federally recognized Indian Tribes located within the state of Washington, and has formally recognized that the sovereignty of each Tribe provides paramount authority for the Tribe to exist and govern; and

WHEREAS, a long-standing disagreement exists between the Tribes and the State regarding jurisdiction over, and the taxation of, certain nonmember to nonmember retail sales transactions sourced to Indian Country; and

WHEREAS, the State and the Squaxin Island Tribe will benefit from resolution of that disagreement by a change in focus from enforcement and litigation to a government to government compromise and cooperation; and

WHEREAS, the Squaxin Island Tribe and State will benefit from resolution of that disagreement by the tax base this Compact will enable, taxation being an essential attribute of sovereignty and a tool of self-sufficiency; and

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

WHEREAS, both the Squaxin Island Tribe and the State desire a positive working relationship in matters of mutual interest and seek to resolve disputes and disagreements by conducting discussions on a government-to-government basis; and

WHEREAS, the mutual interests of the State and Squaxin Island Tribe brought these two governments together to pursue their common interest in resolving the tax disagreement and minimizing the risk of double taxation; and

WHEREAS, Substitute House Bill 2803 was enacted by the 66th Legislature and signed into law by the Governor, authorizing the State to enter into this new Compact, effective June 11, 2020; and

WHEREAS, this Compact is authorized by lawful action of the Squaxin Island Tribal Council;

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

Article II: Parties

THIS COMPACT (the “Compact”) is effective, as of July 1, 2021 (the “Effective Date” or “Implementation Date”), by and between the SQUAXIN ISLAND TRIBE (the “Compacting Tribe”), a federally recognized Indian Tribe with its principal seat of government at Kamilche, Washington, and the STATE OF WASHINGTON (the “State”), singularly or collectively referred to as a Party or the Parties, respectively.

Article III: Purpose and Intent

1. The State and the Compacting Tribe intend to further the government-to-government relationship that exists between them by entering into this Compact concerning the state retail sales tax, state use tax, and certain state business and occupation taxes collected in connection with certain qualified transactions sourced within the “Compact Covered Area” as authorized under RCW 43.06.523.
2. The State and the Tribes have a long-standing history of working together in the development of cooperative agreements addressing the taxation of cigarettes, fuel, timber, and marijuana, and, given the positive experiences derived of nearly two decades of cooperation in these and other areas, the Parties intend to build on these successes by compacting to provide for the sharing of state retail sales, state use, and certain state business and occupation taxes collected by the State in connection with certain qualified transactions sourced within the Compacting Tribe’s Indian Country.
3. The State and the Compacting Tribe intend and agree that this Compact will have no impact on the taxation of any transaction that is the subject of other compacts, or agreements authorized elsewhere in Chapter 43.06 RCW.

Article IV: Definitions

As used in this Compact:

1. “**Certain state business and occupation tax**” means the tax imposed under chapter 82.04 RCW with respect to any qualified transaction, as defined below.
2. “**Compact**” means this Compact, a contract between the Parties.
3. (a) “**Compact Covered Area**” means: (A) Trust land, regardless whether located within or outside of the boundaries of the Compacting Tribe’s reservation; and (B) fee land within the boundaries of the Compacting Tribe’s reservation and under Tribal or Tribal member ownership.

(b) For purposes of this Compact, “Tribal or Tribal member ownership” means fee land with a greater than fifty (50) percent ownership interest being held by any combination of the Compacting Tribe or Tribal members.

(c) “**Compact Covered Area**” does not include any land that, as of June 11, 2020, was fee land in which one or more nonmembers held a majority ownership, but only with respect to:
 - (i) A business that was in operation on that land on June 11, 2020 and continues to be in operation on that same land; or
 - (ii) A substantially similar successor business to a business described in subsection (3)(c)(i), above, that is in operation on that same land.
4. “**Compacting Tribe**” means the Squaxin Island Tribe.
5. “**Days**” means calendar days, excluding the day of the event that triggers the period and including the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday under Washington law, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
6. “**Department**” means the Washington State Department of Revenue.
7. “**Indian Country**” has the same meaning as provided in 18 U.S.C. Sec. 1151, as existing on June 11, 2020.
8. “**Indian reservation**” or “**reservation**” means all lands, notwithstanding the issuance of any patent, within the boundaries of areas set aside by the United States for the use and occupancy of Indian Tribes by treaty, law, or executive order, or otherwise designated or described "reservation" by any federal act. The term applies to all land within the boundaries of the Indian reservation, regardless of whether the land is owned by nonmembers, Tribal Members, or an Indian Tribe.

9. “**Indian Tribe**” means a federally recognized Indian nation or tribe located at least partially within the geographic boundaries of the state of Washington and includes its enterprises, subsidiaries, and constituent parts.
10. “**Local sales tax**” means any sales tax that a local taxing authority is authorized to impose under chapter 82.14 RCW, RCW 81.104.170, or any other provision of state law.
11. “**Local use tax**” means any use tax that a local taxing authority is authorized to impose under chapter 82.14 RCW, RCW 81.104.170, or any other provision of state law.
12. “**New Development**,” with respect to this Compact and the Compact Covered Area associated with this Compact, refers to a person that:
- (a) Is subject to state sales tax or state use tax collection or payment obligations as a result of business activity within the Compact Covered Area; and,
 - (b) Conducts its selling business operations in a structure within the Compact Covered Area, and construction of that structure began on or after the date the Compact is signed by the Parties, but not including any such construction involving the renovation of or addition to a structure existing before the date the Compact is signed by the Parties; and,
 - (c) Has not previously been subject to state sales tax or state use tax collection or payment obligations as a result of that same business activity operated within a different structure located elsewhere within the Compact Covered Area; and
 - (d) Has been identified by the Compacting Tribe, with notice provided to the Department.
13. “**Nonmember**” means, with respect to this Compact:
- (a) A natural person who is not a Tribal Member;
 - (b) A Tribe that is not the Compacting Tribe; or
 - (c) Any entity of which not more than fifty percent of the ownership interests are held by any combination of the Compacting Tribe or Tribal Members.
14. “**Nonmember business**” means a business operating within the Compact Covered Area that is a Nonmember, and all businesses operating outside of the Compacting Tribe’s Indian Country, regardless of ownership.

15. **“Partnership Portal”** means a secure web portal created and maintained by the Department through which authorized representatives of the Compacting Tribe may access information regarding tax distributions and business-specific confidential taxpayer information respecting the businesses operating within the Compact Covered Area.
16. **“Qualified capital investment”** means a contribution to the development and construction of a project agreed to by the Governor and the Compacting Tribe.
17. **“Qualified transaction”** means:
 - (a) A retail sale subject to state sales tax involving a seller and purchaser who are both nonmembers, and that is sourced to a location within the Compact Covered Area pursuant to RCW 82.32.730; or
 - (b) Any use by a nonmember upon which the state use tax is imposed and sourced to a location within the compact covered area pursuant to RCW 82.32.730.
18. **“State”** means the state of Washington.
19. **“State sales tax”** means the tax imposed in RCW 82.08.020(1).
20. **“State use tax”** means the tax imposed in RCW 82.12.020 at the rate set forth in RCW 82.08.020(1).
21. **“State-shared taxes”** means certain local sales and use taxes that are “deducted” from or “credited” against the state sales and use tax.
22. **“Tribal Member”** or **“Member”** means an enrolled member of the Compacting Tribe, or, in the context of a marital community, the spouse of an enrolled member of the Compacting Tribe.
23. **“Trust land”** means land that is held in trust by the United States government for the benefit and use of the Compacting Tribe, or for the benefit and use of an individual member(s) of the Compacting Tribe.

Article V: Taxes Included in the Compact

1. Tax Types

This Compact concerns revenue collected by the State from the state retail sales tax, state use tax, and certain state business and occupation taxes, to the extent these taxes are imposed on qualified transactions sourced to a location within the Compact Covered Area.

Nothing in this Compact limits, restricts, reduces, or affects local taxes authorized under chapter 82.14 RCW, RCW 81.104.170, Title 35 RCW, Title 36 RCW, or Title 84 RCW, or any other provision of state law authorizing a local tax.

2. **Tax Revenue Sharing**

Beginning on July 1, 2021, the Compacting Tribe shall receive the following amounts of tax collected in connection with qualified transactions and received by the State:

- (a) **B&O taxes.** One hundred percent (100%) of certain state business and occupation tax revenues;
- (b) **The Cap.** The first five hundred thousand dollars (\$500,000) of the total amount of state sales tax and state use tax collected during each calendar year from taxpayers, regardless whether one or more taxpayers is a New Development. If this five hundred thousand dollar “cap” is reached during a calendar year, any amounts collected from taxpayers that are not new developments will be deemed to have been collected and applied to the cap first, but only in the calendar month in which the cap is reached.
- (c) **New Development.** The following amounts of state sales tax collected and remitted to the Department during each calendar year by, and state use tax collected during each calendar year from, taxpayers that are new developments, provided that the Compacting Tribe has provided notice to the Department of a New Development’s status as such:
 - (1) Twenty-five percent (25%) of any amount over the cap described in subsection (b) of this section 2; or
 - (2) Sixty percent (60%) of any amount over the cap described in subsection (b) of this section 2, if the Compacting Tribe has made the qualified capital investment, as described in Article VI; and
- (d) **Taxpayers Other than New Development.** Beginning January 1, 2024, the following amounts of state sales tax collected and remitted to the Department during each calendar year by, and state use tax collected during each calendar year from, taxpayers that are not new developments:
 - (1) Twenty-five percent (25%) of any amount over the cap described in subsection (b) of this section 2; or
 - (2) Fifty percent (50%) of any amount over the cap described in subsection (b) of this section 2, if the Compacting Tribe has made the qualified capital investment, as described in Article VI section 6.

3. **Parties' Roles and Responsibilities in the Administration of the Compact.**

(a) The Department agrees to perform all functions related to the administration and collection of the taxes due on Qualified Transactions, consistent with the provisions contained in Title 82 RCW and Title 458 WAC, and insofar as they are applicable to the taxes addressed in this Compact, in the same manner and to the same extent as elsewhere applicable throughout the State. The Department may not impose any charge upon the Compacting Tribe for these services.

(b) Prior to the effective date, and upon the Department's timely request thereafter, the Compacting Tribe agrees to promptly provide all such information the Department reasonably determines is necessary to fulfill the Department's tax administration obligations under this Compact. To the extent that the Compacting Tribe fails to timely provide such information to the Department, associated revenues will not be shared under the provisions of Article V section 2.

Necessary information includes, but is not limited to, the following information related to parcel ownership and nonmember businesses operating within the Compact Covered Area:

(1) A geographic information system (GIS) layer containing GIS information and coordinates of the Compacting Tribe's desired Compact Covered Area, identifying the following areas:

(i) Trust lands, both located within and outside the boundaries of the Compacting Tribe's reservation; and

(ii) Fee land within the boundaries of the Compacting Tribe's reservation and under Tribal or Tribal Member ownership.

(2) The following information respecting each nonmember business located within the Compact Covered Area:

(i) Business Name;

(ii) Street and Mailing Address(es);

(iii) City;

(iv) Zip Code; and,

(v) If available to the Compacting Tribe:

[1] Zip+4; and

[2] Washington State Uniform Business Identifier (UBI) number or tax identification number.

(c) The Compacting Tribe acknowledges and agrees that any business located in the Compact Covered Area that qualifies as a New Development under the terms of this Compact must be identified by the Compacting Tribe as a New Development, and notice provided to the Department.

(d) The Compacting Tribe acknowledges and agrees that any nonmember business located in the Compact Covered Area that does not qualify as a New Development must be identified by the Compacting Tribe, and notice provided to the Department.

(e) The Compacting Tribe agrees to notify the Department of any changes affecting nonmember businesses within the Compact Covered Area that bear upon the administration of this Compact, including, but not limited to, new business start-ups, business closures, and business turnover to the extent necessary to allow the Department to fulfil its administrative responsibilities under this Compact.

(f) The Parties acknowledge and agree that the notification envisioned by, and required under, Article V section 3, subsections (c) - (e), inclusive, shall be provided by the fifth (5th) day of each month. Notification received by the Department after the fifth day of any month shall be considered received the following month.

(g) The Department agrees to take into account all such notifications received pursuant to Article V section 3 subsections (c) – (f), inclusive, and, within no more than thirty (30) days of receipt of such notification, update its infrastructure, business processes, and supporting technologies as necessary to fulfill the Department's tax administration obligations under this Compact, including its tax revenue sharing obligations, as described in Article V section 2.

(h) The Department acknowledges that, in the ordinary course of business, nonmember retail businesses are obligated to register business locations, update and maintain said registrations, and correctly source and report sales taxes to the location of sale.

(i) The Compacting Tribe agrees to notify the Department of any alterations affecting the external or internal boundaries of the Compact Covered Area, including, but not limited to, boundary changes and the acquisition or divestment by the Compacting Tribe, or its members, of trust lands, as necessary to allow the Department to fulfill the Department's tax administration obligations under this Compact.

(1) The Department shall take into account such revisions and update its infrastructure, business processes, and supporting technologies as necessary to fulfill the Department's tax administration obligations under this Compact.

(i) The Parties acknowledge and agree that such revisions shall take effect:

[1] No sooner than seventy-five (75) days after the Department receives notice;
and,

[2] Only on the first day of January, April, or July, whichever comes first.

(2) The Parties acknowledge and agree that the delineation and demarcation by the Compacting Tribe of its Compact Covered Area are effective for purposes of this Compact alone, and in no way restrict, limit, or otherwise affect the ownership, use, or regulation of lands within the Compact Covered Area.

(j) The Department agrees to develop and maintain a secure web-based platform that will allow the Compacting Tribe to provide the notifications described in Article V section 3, and facilitate the sharing of Compact-related information, electronically.

(k) Verification of the Compacting Tribe's qualified capital investment, as described in Article VI, shall be effective no sooner than seventy-five (75) days after the date on which the Department receives from the Compacting Tribe proof satisfactory to the Governor's Office that the capital investment has been made, and on the first day of January, April, or July, whichever comes first.

(l) The Department agrees to develop and maintain on its public website a secure web Partnership Portal through which authorized representatives of the Compacting Tribe may access information concerning tax revenues distributed to the Compacting Tribe under this Compact.

(1) Each authorized representative must execute and submit to the Department a Retail Taxes Compact Confidentiality Agreement (attached hereto as Exhibit 1), or successor affidavit agreed to by the Parties, prior to gaining access to any information generated by the portal.

(m) The Compacting Tribe may, upon seven (7) days' notice, examine Department records related to the payment of tax amounts to the Tribe. Each authorized representative receiving such access must execute and submit to the Department a Retail Taxes Compact Confidentiality Agreement, or successor affidavit agreed to by the Parties, prior to gaining access to any records.

4. **Administration and Compliance.**

(a) The Department is responsible for the administration and enforcement of the taxes imposed on qualified transactions. As part of its authority under this section 4, the Department shall apply the provisions contained in Title 82 RCW and Title 458 WAC, insofar as they are applicable to the taxes at issue in this Compact.

5. **Disbursements.**

(a) The amounts described in Article V section 2 must be paid to the Tribe on a monthly basis within sixty (60) days after the Department receives the tax amounts.

(b) The Tribe's distributive share of state sales and use tax amounts shall not be reduced by any state-shared tax amounts sourced to within the Compact Covered Area.

(c) The Department shall notify the State Treasurer of the availability for distribution to the Compacting Tribe of the proportional state share of sales, use, and certain business and occupation tax amounts corresponding to unidentifiable local sales and use tax collections (pool funds) allocated among the various local taxing jurisdictions within thirty (30) days after the due date of the taxable period for which sales, use, and certain business and occupation taxes are imposed.

(d) If the Department becomes aware that a taxpayer has improperly sourced a retail sale or use to the Compact Covered Area after the tax revenue associated with that sale or use has been collected and distributed to the Compacting Tribe, or the Department becomes aware that a taxpayer has failed to properly source a retail sale or use to the Compact Covered Area after the tax revenue associated with that sale or use has been collected and distributed to another location, as the case may be (improper distribution), the Department shall require redistribution upon ten (10) days' notice to the Compacting Tribe of any tax so improperly distributed, but such redistribution shall not be made as to amounts originally distributed earlier than six monthly periods prior to the monthly period in which the Department obtains knowledge of the improper distribution.

(e) All refunds and credits the Department issues to taxpayers of amounts previously paid to the Tribe under the terms of this Compact will, upon notice to the Compacting Tribe, be charged against future tax revenue sharing payments to the Tribe in the same manner as local tax payments pursuant to Title 82 RCW.

Article VI: Qualified Capital Investment

1. The Parties agree that early childhood education represents a fundamental need and acts as a stepping stone to long term wellbeing for low income children. The Compacting Tribe presently operates a licensed child development center that provides subsidized child care to tribal and community members as well as employees. The Tribe now plans to construct and operate an early head start facility to prepare low income children for success in school. The facility will serve both Native Americans and non-Natives.

2. The Compacting Tribe agrees to invest one thousand dollars (\$1,000) toward the construction of the early head start facility (the Facility) to be located at 3851 SE Old Olympic Highway in Shelton, Washington, or another suitable location.

3. The Compacting Tribe shall own and operate the Facility.
4. The Compacting Tribe shall be responsible for the siting, design, and construction of the Facility.
5. The Compacting Tribe shall be responsible for the operation and ongoing maintenance of the Facility, and for any associated liabilities.
6. Subject to the verification provisions of Article V section 3(k), above, and for purposes of the higher tax sharing percentages described in Article V section 2, the Compacting Tribe shall be deemed to have made this capital investment upon receipt by the Governor's Office of reasonable documentation, made in a form or manner acceptable to the Governor, that the Compacting Tribe has made its contribution to the construction of the Facility; provided, however, that in the event the Tribe has not completed the construction of the Facility by December 31, 2024, the State and the Compacting Tribe shall re-engage, during calendar year 2025, and seek agreement regarding whether (i) to continue pursuing construction of the Facility at that location, or (ii) to pursue an alternative, mutually agreeable project that provides public infrastructure or services. The agreement shall include the steps necessary for the Compacting Tribe to receive the applicable higher tax-sharing percentage described in Article V section 2.

Article VII: Dispute Resolution

The Parties wish to prevent disagreements and violations whenever possible, and to quickly and effectively resolve disagreements and violations whenever they may arise. Accordingly, the Parties agree that, to the extent possible, informal dispute resolution methods shall be used before engaging in the formal processes provided by this Article.

1. **Notification of Violation.** If either Party believes a violation of the Compact has occurred, it shall notify the other Party in writing, unless the Parties agree to notice by electronic means pursuant to Article VII section 10. The notice shall state the nature of the alleged violation and any proposed corrective action or remedy. The Parties agree to meet within fourteen (14) days of receipt of such notice, unless a different date is agreed upon by the Parties. The purpose of the meeting will be to attempt to resolve, between themselves, the issues raised by the notice of possible violation, and provide an opportunity to agree upon corrective action.

2. **Mediation.**

(a) If the Parties are unable to resolve disputed issue(s) related to the administration of this Compact through joint discussions under Article VII section 1, either party may request mediation by tendering a written mediation demand to the other party. Mediation shall be a condition precedent to dispute resolution by arbitration. The Parties shall first attempt to agree on a neutral mediator. However, if the Parties cannot agree on a mediator within thirty

(30) days of written demand, a three-person mediation panel shall be selected as follows: Each Party shall select a mediator and the two mediators selected by the Parties shall jointly select a third mediator.

(b) Each party shall be responsible for its own costs of mediation, including legal fees. All other costs of mediation, including, but not limited to, the fees and charges of the mediator(s), if any, shall be shared equally by the Parties.

3. **Arbitration.**

(a) If mediation does not resolve the disputed issue(s) within ninety (90) days of the mediation demand, either Party may request that any unresolved issues related to the administration of this Compact be submitted to binding arbitration by submitting to the other party a written arbitration demand. Upon receipt of such an arbitration demand, the Parties shall select an arbitrator(s) by the same method in which mediators are selected. The arbitrator or the three-arbitrator panel shall establish a timeline to ensure an arbitration decision is reached no later than four months from the date of the arbitration demand, or such longer time period upon which the Parties may agree. Any corrective action ordered by the arbitrator(s) must be taken no later than ninety (90) days after issuance of the arbitration decision, unless a different time for compliance is specified in the arbitration decision.

(b) Each party shall be responsible for its own costs of arbitration, including legal fees. All other costs of arbitration, including, but not limited to, the fees and charges of the arbitrator(s), if any, shall be shared equally by the Parties.

(c) Absent an interim order from the Arbitrator(s) specifying otherwise, the Parties shall continue to fulfil their obligations under this Agreement in good faith during the course of the proceeding, including the distribution of tax revenue by the state to the Tribe.

4. **Tax Disputes.** The Parties acknowledge and agree that tax dispute(s) arising under Washington law and regulations thereunder, including, but not limited to, RCW 82.32.160 and WAC 458-20-100, may not be mediated, arbitrated, or litigated under this Compact.

5. **Remedies.** Whenever an issue is submitted to mediation or arbitration under this Article, the mediators may recommend, or the arbitrators may direct, corrective action to remedy any violation that has occurred. In no case shall a mediator or arbitrator render an independent recommendation or decision on any issue on which the Parties reach agreement. 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.

6. **Termination of Compact.** If, after nine (9) months from the initial Notice of Violation, or ninety (90) days from the date of the arbitration decision, whichever is later, 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 Compact term after the completion of the arbitration process authorized in this section,

this Compact may be terminated pursuant to Article VII section 7, below. The Parties may, after no less than six (6) months following any such termination, enter into a new Compact.

7. **Notification of For Cause Termination.**

(a) Upon forty-five (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, as described above:

(1) Failure to submit to mediation or arbitration as required by Article VII;

(2) Failure to take action as required by an arbitrator's decision reached in compliance with Article VII;

(b) In the event a disagreement exists regarding whether a Party has failed to submit to mediation or arbitration, or to take action as required by an arbitrator's decision, as required under Article VII, the Party seeking the termination for cause shall notify the other Party and, together, the Parties shall select a mediator pursuant to Article VII section 2, above, to review the facts upon which the for cause termination notice is based. The Party bringing the allegation must provide a written recitation of the facts supporting the allegation with the notice of termination. The responding Party has ten (10) days to provide a written response and facts to the mediator. If the mediator determines that termination for cause is warranted, the mediator may terminate the Compact, however the Party making the allegation may choose to go through the regular dispute resolution process, as delineated in Article VII, in regard to the issue.

(c) The Parties shall use their best efforts to resolve the dispute within the 45-day notice period. If the Parties reach agreement, or the for cause violation is corrected, or otherwise satisfactorily addressed during the notice period, the Compact shall not be terminated.

8. **Breach of Confidentiality.** Notwithstanding the provisions of Article VII sections 6 and 7, above, upon written notice, either Party may immediately terminate the Compact for a breach, by the other Party, of the confidentiality provisions of Article XI. The Parties shall use their best efforts to cure, correct or otherwise satisfactorily resolve the breach of confidentiality. If the Parties reach agreement in this regard, the Compact may be reinstated.

9. **Effect of Termination.**

(a) **Winding Up.** Upon termination of this Compact, or upon expiration of the Compact, the Parties shall jointly be responsible for winding up all affairs that are the subject of this Compact. The Parties' obligations under this subsection shall survive the term of this Compact. The dispute resolution provisions of Article VII shall likewise survive the term of this Compact for the duration of the statutory period.

10. **Notice Requirements.** For the purposes of Article VII, notice shall be by certified mail, return receipt requested, unless both Parties agree in writing to accept notice electronically or by facsimile. Notice shall be deemed to be given on the date of delivery. Notice shall be given as follows:

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

To the Tribe: Chair
 Squaxin Island Tribe
 10 SE Squaxin Ln
 Kamilche, WA 98584

With a copy to: Squaxin Island Legal Dep't
 3711 SE Old Olympic Hwy
 Kamilche, WA 98584

Article VIII: Duty to Notify; Duty to Defend

1. **Duty to Notify.**

(a) **Claims or Proceedings.** The State shall provide the Compacting Tribe with prompt notice of any third-party claim, or any suit or proceeding, arising out of the provisions or terms of this Compact.

(b) **Breach of Confidentiality.** In the event that a Party discovers, or should reasonably have discovered, that a breach of confidentiality has occurred with respect to confidential information within its possession or control, the discovering Party shall promptly notify the other Party in writing.

(c) **Change in Applicable Law.** The State shall provide the Compacting Tribe with notice of any change in state tax law materially affecting the provisions or terms of this Compact.

(d) **Form of Notice.** The State shall provide notice for purposes of this section in the same manner as described in Article VII section 9.

2. **Duty to Defend.** Each Party shall have the duty, at its expense, to defend any claim made, or any suit or proceeding brought by a third-party arising out of the provisions of this Compact, including, but not limited to, the tax sharing provisions of Article V. In any action filed by a third-party challenging either the Compacting Tribe's or the State's authority to enter into or

enforce this Compact, the Compacting Tribe and the State each agree to support the Compact and defend their respective authority to enter into and implement the Compact.

Each Party may, at its own expense and with its own counsel, join in the defense of any action brought against the other Party.

Article IX: Duration of Agreement

1. **Duration.** This Compact shall remain in effect for fifteen (15) years following its Effective Date, subject to the termination provisions of Article VII.
2. **Renewal.** The Compact shall automatically renew for successive periods of ten (10) years, unless both parties mutually agree otherwise.

Article X: Amendments

1. **Amendments to Applicable Law.** The Parties agree that in the event of a change in State's tax law that affects the negotiated terms of this Compact, or a change in the Department's interpretation regarding the property taxation of nonmember owned improvements on trust lands, the Parties will discuss in good faith any changes in the Compact or authorizing legislation that may be appropriate to preserve the intended benefits of the negotiated Compact. The Parties further agree that the Compacting Tribe may terminate the Compact if the good faith discussions do not result in a mutually satisfactory resolution.
2. **Amendments.** Except as otherwise provided in Article XI section 1, amendments to the Compact shall be considered upon the written request of either Party. The Parties agree to consider and, if necessary, negotiate in good faith any amendments so requested.
3. **Most Favorable Terms.** In the event that any similar retail tax sharing compact(s) negotiated and executed by the State and another compacting tribe(s) on or after the effective date of this Compact provides another compacting tribe(s) with a more favorable term(s), the Parties agree to amend this Compact as necessary to include the more favorable term(s) herein. If, after due consideration of all relevant differences between the Compacting Tribe and the other tribe(s), the Parties disagree as to whether a more favorable term(s) has been provided to another compacting tribe, or whether the inclusion of such a term(s) in another tax sharing compact necessitates an amendment to this Compact, the Parties agree to utilize the dispute resolution procedures delineated in Article VII of this Compact; provided, however, that in no event shall the Compact be terminated under those procedures, or any other provision of this Compact, as a result of a dispute resolution initiated under this provision. Without limitation, the Parties specifically acknowledge that the capital investment components of agreements with other tribes are not required to be identical to the capital investment components of this agreement and, accordingly, are not subject to this provision.

Article XI: Confidentiality

1. All information received by the Department under the terms of this Compact, or open to Department review, is “return or tax information” under, and is subject to the provisions of, RCW 82.32.330. All taxpayer information subject to review by the Compacting Tribe, review by a mediator or certified public accountant, or review by an arbitrator is confidential and shall not be disclosed to anyone, in any forum, for any purpose.
2. The Department may not, without prior written authorization from the Compacting Tribe, use any confidential data, GIS information, or other information provided by the Compacting Tribe under this Compact for any other purpose beyond the purpose provided for by the Compact.

Article XII: Miscellaneous Provisions

1. **Governing Law and Enforceability.** This Compact shall be construed and interpreted in accordance with the laws of the state of Washington.
2. **Limitation of Liability.** In no event will either party, or their agencies, officers, employees, or agents be responsible or liable for the acts or omissions of the other arising from this Compact.
3. **Compact Does Not Create any Third-Party Beneficiaries.** Neither the Compacting Tribe nor the State are creating, or intend to create, any rights in third-parties which would result in any claims of any nature whatsoever against the Compacting Tribe or the State as a result of this Compact.
4. **Periodic Review of Compact Status.** Appropriate representatives of the Compacting Tribe and of the State shall hold periodic meetings to review the status of this Compact and any issues that have arisen under the Compact.
5. **Resolution of Disputes.** The Parties agree that this Compact resolves all current and future tax disputes between the Compacting Tribe and state and local taxing authorities while this Compact is in effect to the extent such disputes relate to revenues from the following:
 - (a) Transactions between nonmembers, where such transactions are subject to the taxes in effect or authorized as of June 11, 2020, except for any business and occupation tax under Chapter 82.04 RCW other than certain state business and occupation taxes as defined in this Compact; and,
 - (b) State and local use tax imposed on nonmembers and sourced to a location within the Indian Country of the Compacting Tribe pursuant to RCW 82.32.730; and,

(c) Personal property taxes imposed on nonmembers.

6. **Waiver.** The Parties agree that no assent, express or implied, to any breach by either party of any provision of this Compact shall constitute a waiver of any other breach. No term or condition of this Compact shall be held to be waived, modified, or deleted except by a written instrument signed by the Parties.

7. **No Employee or Agency Relationship.** Neither the Compacting Tribe nor its employees, agents, or contractors are employees or agents of the Department. The Director of the Washington State Department of Revenue and his or her employees, agents, or contractors are likewise not employees or agents of the Compacting Tribe. None of the provisions of this Compact will be construed to create a relationship of agency, representation, joint venture, ownership, or control of employment between the Parties other than that of independent parties compacting solely for the purpose of effectuating this Compact.

8. **Non-Assignment.** Neither Party to this Compact shall assign or attempt to assign any rights, benefits, or obligations accruing to the Party under this Compact, unless the other Party expressly agrees in writing to any such assignment.

9. **Entire Agreement.** This Compact constitutes the entire, complete, and exclusive statement of the terms of the agreement between the Parties with respect to the subject matter hereof, and supersedes and cancels any prior agreements. Neither this Compact nor any provision hereof may be amended, waived or modified except by written instrument signed after the date hereof by all Parties hereto and expressly stating that such instrument is intended as an amendment, modification or waiver hereof.

10. **Severability.** If any terms or provisions of this Compact are deemed invalid or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms and provisions of this Compact, unless the terms or provisions deemed invalid or unenforceable are necessary to preserve the intended benefits of the negotiated Compact, in which case a party may seek to amend the Compact or may terminate the Compact.

[Signature Page to Follow]

THUS AGREED THIS 10 day of February, 2021.

SQUAXIN ISLAND TRIBE

By: *Kristopher K. Peters*
Kristopher K. Peters (Feb 11, 2021 09:43 PST)
Chair Kristopher Peters

Feb 11, 2021
Date

STATE OF WASHINGTON

By: _____
Governor Jay Inslee

Date

Exhibit 1



Form 36 0005

Retail Taxes Compact Confidentiality Agreement

This form must be completed and signed by individuals with access to Confidential Information in the custody and control of the Department of Revenue, and approved by the appropriate designated authority of the Tribal Government identified below.

Identification

Name: [redacted] Title: [redacted]
Tribal Government name: [redacted] Phone: [redacted]
Address: [redacted] Email: [redacted]

Scope

Department of Revenue Confidential Information covered by this agreement includes:

- Personally identifying information (RCW 42.56.590).
- Tax information (RCW 82.32.330).
- Confidential organizational and other information exempt by law.

Acknowledgment of Confidentiality (initial in boxes below)

I have read and understand the following obligations and responsibilities:

- I may use and access Confidential Information for official purposes only as needed to conduct business and if applicable, as authorized by the retail taxes compact.
- I may not use, publish, transfer, sell or otherwise disclose any Confidential Information acquired for any unauthorized purpose.
- I must protect the information and maintain required security safeguards.
- I must maintain confidentiality after I no longer have access to the information.
- An individual who discloses confidential tax information to an unauthorized person is guilty of a misdemeanor. Additional penalties may apply under state or federal laws. See RCW 82.32.330(6).

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signature: [redacted] Date signed: [redacted]

Authorization (to be completed by Tribal Government):

As part of a retail taxes compact entered into under Laws of 2020, Ch. 132, §§ 1-3, the [redacted] (*tribal government name*) authorizes the individual above to have access to Department of Revenue Confidential Information.

Name: [redacted] Title: [redacted]

Signature: [redacted] Date signed: [redacted]

Authority: Tribal Council Chair Supervisor Other: [redacted]

What to do next

Save form and email to the Tribal Partnership Coordinator assigned by the Department of Revenue to your Tribal Government.

To ask about the availability of this publication in an alternate format for the visually impaired, please call 360-705-6705. Teletype (TTY) users may use the WA Relay Service by calling 711.






Squaxin Retail Taxes Compact (final)

Final Audit Report

2021-02-11

Created:	2021-02-11
By:	Melissa Puhn (mpuhn@squaxin.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAUpHV5t7xz7K4lp2rzdGXMqHz6GZAgZUJ

"Squaxin Retail Taxes Compact (final)" History

-  Document created by Melissa Puhn (mpuhn@squaxin.us)
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-  Agreement completed.
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