



# SQUAXIN ISLAND TRIBE

**RESOLUTION NO. 05-92**  
**Of the**  
**SQUAXIN ISLAND TRIBAL COUNCIL**

**WHEREAS**, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises, and its agencies by authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

**WHEREAS**, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

**WHEREAS**, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and with protecting and managing the lands and treaty resources and rights of the Tribe; and

**WHEREAS**, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

**WHEREAS**, in 2003 the Squaxin Island Tribal Council directed staff to pursue a Memorandum of Agreement (MOA) under which the Squaxin Island Tribe would be treated as the equivalent of a state-licensed cigarette wholesaler without either waiving the Tribe's sovereign immunity or exposing the Tribe to increased state jurisdiction; and

**WHEREAS**, upon completion of negotiation with the state Department of Revenue of a cigarette wholesaling MOA, the Tribal Council has agreed that the Tribe should enter into the cigarette wholesaling MOA negotiated by the Tribe and the state; and

**WHEREAS**, that cigarette wholesaling MOA will expire on September 30, 2005; and

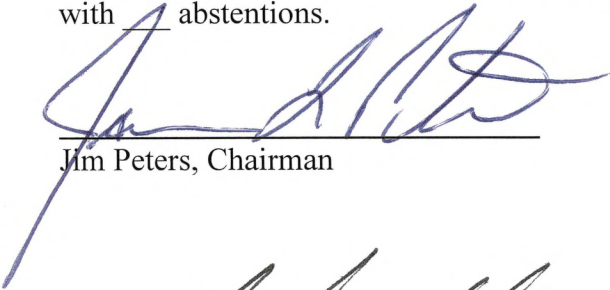
**WHEREAS**, staff has negotiated an amendment to the cigarette wholesaling MOA that will cause the agreement to automatically renew for additional two year terms unless terminated by either party;

**NOW THEREFORE BE IT RESOLVED**, that the Squaxin Island Tribal Council hereby agrees to sign the amended Memorandum of Agreement Between the Squaxin Island Tribe and the Washington State Department of Revenue Concerning Authority to Affix Stamps to Cigarettes for the Purpose of Entry of Such Cigarettes into the State of Washington (hereafter, the "MOA") (copy in draft form attached hereto); and



**NOW THEREFORE BE IT FINALLY RESOLVED**, that the Squaxin Island Tribal Council hereby authorizes Jim Peters to sign the MOA on behalf of the Tribe.

**CERTIFICATION**

The Squaxin Island Tribal Council does hereby certify that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 29<sup>th</sup> day of September, 2005 at which time a quorum was present and was passed by a vote of \_\_\_ for and \_\_\_ against with \_\_\_ abstentions.



Jim Peters, Chairman

Attested by:    
Vince Henry, Sr., Secretary

  
Andy Whitener, Vice Chairman

**MEMORANDUM OF AGREEMENT**  
**Between**  
**THE SQUAXIN ISLAND TRIBE**  
**And**  
**THE WASHINGTON STATE DEPARTMENT OF REVENUE**  
**CONCERNING AUTHORITY TO AFFIX STAMPS TO CIGARETTES FOR THE**  
**PURPOSE OF ENTRY OF SUCH CIGARETTES INTO THE STATE OF**  
**WASHINGTON**

**I. Parties**

The Parties to this Memorandum of Agreement (MOA) are the Squaxin Island Tribe (“the Tribe”) and the Washington State Department of Revenue (“the Department”) (collectively “the Parties”).

The Squaxin Island Tribe is a federally recognized Indian Tribe, possessed of the full sovereign powers of a government.

The Washington State Department of Revenue is an executive department of Washington State government operating under the authority of the Governor, with statutory authority with respect to cigarettes taxes and licensure under chapter 82.24 RCW.

**II. Purpose**

This MOA is intended to provide a general framework for the government-to-government cooperation and coordination regarding cigarette wholesaling by the Tribe. More specifically this MOA addresses the voluntary licensure of the Tribe and the limitations on the Parties in regards to such voluntary act, and the conditions upon which the Tribe has agreed to be subject in regards to its acting as a licensed Washington State cigarette wholesaler. Pursuant to the direction of the State-Squaxin Island Cigarette Contract between the Tribal Chair and the Governor, this MOA addresses the Tribe’s responsibilities and duties as a stamp vendor.

**III. General Terms of Agreement**

1. The Parties agree that it is in the mutual interests of the Tribe and the State that the Tribe be treated as a licensed Washington State cigarette wholesaler.
2. The Department agrees for the purposes of chapter 82.24 RCW, and related provisions of State law, that under the authority granted the Department that the Tribe is deemed a licensed wholesaler as that term is used in chapter 82.24 RCW.
3. The Parties agree that offering a license is a voluntary act of the Department and not compelled, and that the Tribe is similarly not compelled to come forward to seek such a



license, and they agree that operating under a license is a voluntary act of the Tribe. Further, the State agrees the Tribe is not subject to the regulatory authority of the state in Indian Country and the Tribe agrees the state has a legitimate interest in the collection of its taxes.

4. The Parties agree that the Revised Code of Washington limits access to Washington State cigarette stamps to licensed wholesalers and that the Department, by deeming the Tribe a “licensed wholesaler,” has authorized the Tribe to obtain, possess, and affix state cigarette stamps.
5. The Parties agree that the Revised Code of Washington does not require the possession of a Washington State cigarette license for the possession and affixing of Tribal cigarette stamps under cigarette contracts entered into pursuant to RCW 43.06.460.
6. The Parties agree that the framework of RCW 43.06.455 authorizes the Tribe and the Department to enter into agreements regarding the wholesale sale of cigarettes to Tribes who have entered into cigarette contracts pursuant to RCW 43.06.460, and additionally, that chapter 82.24 RCW grants the Department the authority to administer cigarette licenses.
7. The Department and the Tribe agree to the following conditions and limitations:
  - a. The Tribe agrees to fulfill the terms of chapter 82.24 RCW and that it will provide a third party auditor (as that phrase is used in the State-Squaxin Island Cigarette Contract between the Tribal Chair and the Governor) to audit and monitor the activities of the Tribe as a wholesaler. The goal and objective of any audits and monitoring is to measure the Tribe’s activities in terms of the principles and conditions of chapter 82.24 RCW. Such audits and monitoring includes but are not limited to regular review of records and invoicing in regards to cigarette purchases and sales, and regular review of records in regards to stamps. The Parties agree to meet regularly, and on an “as needed” basis, with the third party auditor to discuss the audit function, its scope, and the reports and review required to meet the terms of chapters 82.24 and 70.157 RCW. It is the expectation of the Parties that the Auditor will provide assurances to the Department in the form of certification letters, or a comparable method agreed upon by the Parties.
  - b. The state agrees that the option in RCW 82.24.040(1)(b) regarding surety bonds is available to the Tribe as a means of doing business and obtaining state cigarette stamps. The specific mention of this statutory provision does not preclude the Tribe’s obligations to conform with other sections of law as required under (a) of this section 7.
  - c. The Tribe agrees that with respect to wholesale operations to nonIndian wholesalers and nonIndian retailers in the state, it is subject to the spirit and intent of RCW 19.91.300 and that it will make sales in compliance with the terms of that law. Such law requires “No person licensed to sell cigarettes under chapter 82.24 RCW may sell cigarettes below the actual price paid.”
  - d. The Tribe agrees to permit the Department to review its wholesaling operation, subject to reasonable notice by the state. Such requests for review shall not be unreasonably withheld. The Tribe agrees to invite the state to view its secure stamp storage area and walk the state through its protocols and protections regarding access to cigarette stamps. The Department and the Tribe agree to share technical assistance and advice in the area of tax administration. The Tribe agrees that 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 all stamps shall be maintained in a secure area.
- e. If the Tribe acts as a wholesaler to Tribes who have not contracted with the state regarding cigarettes, the Tribe agrees that it will only sell cigarettes affixed with Washington State tax stamps, including allocation tax stamps, and that it will use the reports and verifications of a third party auditor to substantiate that the Tribe has complied with these conditions.
  - f. The Tribe agrees to provide on a monthly report to the Department detailing the number of cigarettes sold to nonIndians, by brand family.
  - g. 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. The Tribe has agreed that "holiday" is limited to the following holidays: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, Christmas, and one Indian holiday. The Indian holiday is designated by the Tribe on an annual basis. The Tribe agrees to notify the Department of the designation at least 60 days in advance of such date. Cigarettes that are damaged and that are to be returned to the vendor and cigarettes that 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.
8. The Department and the Tribe agree that violation of (a) through (g) of section (7) of this Part III may result in a termination of this MOA. The Parties agree to abide by the following dispute resolution procedures should a violation arise:
    - a. If the Department discovers that a violation has occurred it shall notify the Tribe in writing and by phone within five calendar days of such violation;
    - b. The Tribe agrees that upon receipt of such notice that it will work diligently with the Department to correct the violation, and shall provide a written response to the Department detailing its response.
  9. The Tribe agrees that upon notice from the Department that this MOA is terminated that it will return this MOA to the Department within five working days and will discontinue making wholesale sales for which a State license is required under this MOA. The Parties agree that if the MOA is terminated, that a dispute is deemed to have occurred, and that the Parties will meet within 20 working days to discuss resolution of the matter. If one Party is unsatisfied with the outcome of this meeting, that Party can request mediation.
  10. The Department and Tribe agree that if ownership and title pass to the buyer in Indian Country that the Tribe as wholesaler has not incurred any State business and occupation tax liability. Any selling by the Tribe that takes place off of trust land or outside Indian Country is subject to state business and occupation tax. In making determinations regarding taxability, the Department and Tribe agree to use the standards applicable to making sales in interstate commerce, as established in WAC 458-20-193. Application of those standards



provide that the Tribe will not incur a business and occupation tax liability if the Tribe as wholesaler transfers the cigarettes to the buyer in Indian Country either actually or if the cigarettes are transported by a third party carrier and that carrier has authority on behalf of the buyer.

11. The Department agrees that the signing of this MOA by the Tribe does not imply a waiver of sovereignty by the Tribe and is not intended by the Tribe as a waiver of sovereignty and that any action by the Department in regards to the license shall be in accord with this MOA.
12. The Parties agree that the signing of this MOA and the resultant benefits and obligations shall not be construed as limiting any otherwise lawful activity of the Tribe nor subject the Tribe to any State jurisdiction not agreed to in this MOA.

#### **IV. Communication**

The Parties agree to maintain regular and open communication regarding the administration and implementation of this MOA. The Parties agree that the following individuals will be designated contacts regarding administration of this MOA:

- Kelly Croman, Squaxin Island Tribal Attorney
- Leslie Cushman, Tribal Liaison, Department of Revenue

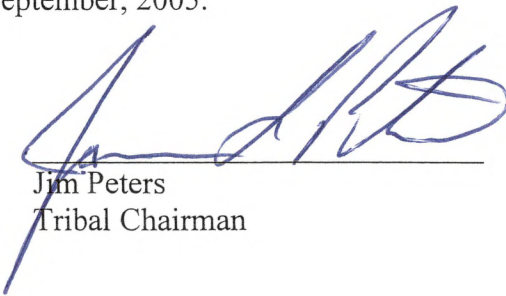
The Parties agree that if either believes that the goals and objectives of this MOA are not being met, that they should meet promptly to discuss any issues and concerns.

#### **V. Effect and Duration**

No amendment or alteration of this MOA shall arise by implication or course of conduct. This MOA may be altered only by a subsequent written document, signed by the parties, expressly stating the parties' intention to amend their agreement. The license issued under this MOA is valid for a period of two years. The license shall be automatically renewed for successive periods of two years, unless either party objects in writing at least thirty days prior its expiration date.

This Agreement is hereby made this 29th day of September, 2005.

\_\_\_\_\_  
Stuart Thronson, Assistant Director  
Department of Revenue

  
\_\_\_\_\_  
Jim Peters  
Tribal Chairman