

880 8/21/12



MUSCOGEE (CREEK) NATIONAL COUNCIL
Creek Capital Complex - Hwy 75 at Loop 56
P.O. Box 158
(918) 758-1410 Fax (918) 756-6812

Speaker: Sam Alexander

Second Speaker: Robert Hufft

August 21, 2012

Shirlene Ade, Chairperson
Business, Finance & Justice Committee
Muscogee (Creek) National Council

Dear Chairperson:

TR 12-120 (attached) is being assigned to your Committee for review and consideration.

TR 12-120 A TRIBAL RESOLUTION OF THE MUSCOGEE (CREEK) NATION AUTHORIZING THE PRINCIPAL CHIEF TO EXECUTE A TOBACCO TAX COMPACT BETWEEN THE MUSCOGEE (CREEK) NATION AND THE STATE OF OKLAHOMA

If you have any questions regarding this legislation, please contact this office.

Sincerely,

Sam Alexander, Speaker
Muscogee (Creek) National Council

Attachments

cc: Office of the Principal Chief

Session - Palen-Kolvpohkaken (17th)
2012-2013

BILL NUMBER TR 12-120

TO BE INTRODUCED INTO THE MUSCOGEE (CREEK) NATIONAL COUNCIL

August 21, 2012
(DATE OF INTRODUCTION)

INTRODUCED BY: Office of the Principal Chief

SPONSOR(S): Adam Jones III

COMMITTEE ON: Business, Finance & Justice

CLASSIFICATION: 36-Taxation and Revenue

1 **A TRIBAL RESOLUTION OF THE MUSCOGEE (CREEK) NATION AUTHORIZING**
2 **THE PRINCIPAL CHIEF TO EXECUTE A TOBACCO TAX COMPACT BETWEEN**
3 **THE MUSCOGEE (CREEK) NATION AND THE STATE OF OKLAHOMA**
4

5 **Be it resolved by the National Council of the Muscogee (Creek) Nation:**
6

7 **WHEREAS**, Article VI, 7, of the Constitution of the Muscogee (Creek) Nation
8 states that the National Council has the power to legislate on matters involving
9 negotiations with other governments; and
10

11 **WHEREAS**, The State of Oklahoma contends it is authorized to collect taxes on
12 cigarettes and other tobacco; and
13

14 **WHEREAS**, Federal Indian law recognizes that tribal jurisdiction is extant in
15 Indian Country regarding the rights of Indian Nations to pass their own laws and be
16 governed by them, including the right to sell cigarettes and other tobacco products to
17 tribal citizens free from state taxation; and
18

19 **WHEREAS**, It benefits both parties to enter into a Tobacco Tax Compact that
20 govern payments in lieu of taxes for cigarette sales on Indian Country; and
21

22 **WHEREAS**, the Tobacco Tax Compact contains a settlement of the pending
23 litigation, *State of Oklahoma v. Larkin, et al.*, CJ-2009-868, Tulsa County District Court,
24 which will lead to a dismissal of all claims and actions; and
25

26 **WHEREAS**, The Principal Chief and the Governor of the State of Oklahoma
27 have negotiated the attached agreement providing for the collection of taxes on tobacco
28 sales on Indian Country within the Nation's jurisdictional boundaries.
29

30 **NOW THEREFORE BE IT RESOLVED THAT**, the National Council of the
31 Muscogee (Creek) Nation hereby authorizes the Principal Chief to execute the attached

1 Tobacco Tax Compact between the State of Oklahoma and the Muscogee (Creek)
2 Nation.

3
4 **BE IT FURTHER RESOLVED THAT**, the National Council irrevocably and
5 expressly grants a limited waiver of the Muscogee (Creek) Nation's sovereign immunity
6 from suit with respect to specific enforcement of this Tobacco Tax Compact; provided
7 that such waiver shall not extend to disputes between the Muscogee (Creek) Nation and
8 any person or entity other than the State of Oklahoma and State of Oklahoma Tax
9 Commission; and, provided that such waiver of sovereign immunity shall constitute the
10 Muscogee (Creek) Nation's consent to suit by the State of Oklahoma for the limited
11 purpose of enforcement of the Muscogee (Creek) Nation's obligations to the State of
12 Oklahoma established under the terms of this Compact, and shall not be construed as
13 granting a waiver for the purpose of obtaining a court judgment or order requiring
14 payment from, delivery of, or otherwise affecting any other fund or assets of the
15 Muscogee (Creek) Nation, or any real property, personal property or chattels of the
16 Muscogee (Creek) Nation or any entities, agencies or political sub-divisions of the
17 Muscogee (Creek) Nation, or any funds belonging to, or owed to, owned by, held in trust
18 for, administered by or under the control of the Muscogee (Creek) Nation; and, provided
19 further, that nothing in this limited waiver of sovereign immunity shall be construed as
20 allowing any award of punitive damages or exemplary damages against the Muscogee
21 (Creek) Nation.

22
23 **BE IT FURTHER RESOLVED THAT**, the National Council irrevocable and
24 expressly grants a limited waiver of the Muscogee (Creek) Nation's sovereign immunity
25 from suit with respect to specific enforcement of the settlement of the *State of*
26 *Oklahoma v. Larkin, et al.* lawsuit (*Settlement of Historical Dispute*); provided that such
27 waiver shall not extend to disputes between the Muscogee (Creek) Nation and any
28 person or entity other than the State of Oklahoma; and, provided that such waiver of
29 sovereign immunity shall constitute the Muscogee (Creek) Nation's consent to suit by
30 the State of Oklahoma for the limited purpose of enforcement of the Muscogee (Creek)
31 Nation's obligations to the State of Oklahoma established under the terms of the
32 *Settlement of Historical Dispute*, set forth in the Tobacco Tax Compact, and shall not be
33 construed as granting a waiver for the purpose of obtaining a court judgment or order
34 requiring payment from, delivery of, or otherwise affecting any other fund or assets of
35 the Muscogee (Creek) Nation, or any real property, personal property or chattels of the
36 Muscogee (Creek) Nation or any entities, agencies or political sub-divisions of the
37 Muscogee (Creek) Nation, or any funds belonging to, or owed to, owned by, held in trust
38 for, administered by or under the control of the Muscogee (Creek) Nation; and, provided
39 further, that nothing in this limited waiver of sovereign immunity shall be construed as
40 allowing any award of punitive damages or exemplary damages against the Muscogee
41 (Creek) Nation.

42
43 **BE IT FURTHER RESOVLED THAT**, pursuant to MCNCA Title 27, § 1-102, the
44 National Council hereby authorizes the application of the laws of the United States and
45 the State of Oklahoma to the Tobacco Tax Compact.

TOBACCO TAX COMPACT BETWEEN THE STATE OF OKLAHOMA AND THE MUSCOGEE (CREEK) NATION OF OKLAHOMA

August 2012

ARTICLE I

PURPOSE AND INTENT OF PARTIES

WHEREAS, the MUSCOGEE (CREEK) NATION of Oklahoma (hereinafter referred to as the Nation), is a federally recognized Indian Tribe ¹ with inherent sovereign powers of self-government;

WHEREAS, the State of Oklahoma (hereinafter referred to as "State") is an independent sovereign state within the United States of America possessed of full powers of state government;

WHEREAS, both the State of Oklahoma and the MUSCOGEE (CREEK) NATION recognize that pursuant to applicable law each is a sovereign with dominion over their respective territories and governments. Entry into this contract is not intended nor shall it be construed to cause the sovereignty of either to be diminished;

WHEREAS, the Nation and its members ² are in possession of various tracts of land in its jurisdiction within the state, known and commonly referred to as "Indian Country";

WHEREAS, the State, by and through the United States Supreme Court decision *Oklahoma Tax Commission vs. Citizen Band Potawatomi Indian Tribe of Oklahoma*, is authorized to collect

¹ "Federally recognized" tribe means any Indian tribe which has met the requirements established by the terms of the Indian Reorganization Act, 48. Stat. 984, as amended; the Oklahoma Indian Welfare Act, 49 Stat. 1967, as amended; or is one of those tribes listed in the Federal Register pursuant to 25 CFR Part 83 as recognized by and receiving services from the Bureau of Indian Affairs, as provided for in Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs, 58 Federal Register 54364 (October 21, 1993).

² "Member" means an individual who meets the membership requirements of the Nation as set forth in its governing document or is listed on the tribal roll of the Nation as a member, see 25 CFR § 81.1(i) (1996) and 25 C.F.R. § 83.11 (1996).

state taxes on cigarettes and other tobacco products sold by tribal businesses to non-tribal members;

WHEREAS, federal Indian law recognizes that tribal jurisdiction is extant in Indian Country regarding the rights of Indian Tribes to pass their own laws and be governed by them, including the right to sell cigarettes and other tobacco products to tribal members free from State taxation;

WHEREAS, both the State and the Nation recognize the financial, cultural, educational and economic contributions of each sovereign; and,

WHEREAS, both the State and the Nation recognize the need to develop and maintain good Tribal/ State governmental relations.

ARTICLE II

TERMS OF TAXATION ON SALE OF TOBACCO PRODUCTS

NOW, THEREFORE, the MUSCOGEE (CREEK) NATION of Oklahoma, by and through its government, and the State of Oklahoma, by and through its Governor do hereby enter into this Compact for the mutual benefit of the Nation and the State, to-wit:

1. The provisions of this Compact shall govern the minimum Tribal rate of taxation and payment of taxes to the State on the retail sales of cigarettes and other tobacco products in the Nation's Indian Country as defined by federal law, including 18 U.S.C. § 1151, hereinafter referred to as "Compact Jurisdiction", when said retail sales are made by (a) businesses owned by the Nation, (b) licensees who are members of the Nation, or (c) businesses licensed by the Nation in which the majority interest is owned by the Nation or members of the Nation, provided that nothing herein shall prohibit the Nation from enacting any laws and/or regulations regarding the retail sale, use or possession of cigarettes and other tobacco products in the Nation's Jurisdiction that would not be in conflict with the laws of the State of Oklahoma or the provisions set forth herein. The entities or groups described in clauses (a), (b), and (c) of this paragraph shall be collectively referred to as the "Retailers" or individually as a "Retailer." Nothing contained herein shall impair the ability of the Oklahoma Tax Commission to regulate cigarette manufacturers, importers, wholesalers, distributors, distributing agents, jobbers, or warehousemen ("Wholesalers"), provided such regulation shall not interfere with the rights of the Nation or its Retailers under this Compact.

2. The Nation agrees to:

(a) require as a condition to licensing and continuation of licensing that all Retailers comply with the provisions of this Compact; and,

(b) furnish to the State the following information with respect to each of the Retailers:

1. The owner's name(s) and address(es);
2. A list of any tax-related permits held;
3. Documentation or certification that its business premises are located within the Compact Jurisdiction, such as trust land documentation;
4. The location of offices and business records; and
5. A copy of any reports by any Wholesalers or Retailers to the Nation documenting all sales of cigarettes and other tobacco products within the Compact Jurisdiction;
6. The current list of all Wholesalers providing Retailers within the Compact Jurisdiction with cigarettes or tobacco products; and
7. If available, any complaints, audit reports or concluded investigation findings related to the wholesale or retail sale of cigarettes or tobacco products within the Tribal Jurisdiction.

(c) The State agrees to provide the following information from the Oklahoma Tax Commission to the Nation's Tax Commission unless unavailable to the Oklahoma Tax Commission:

1. The name and address of Wholesalers licensed by the State;
2. The number and dollar amount of Compact stamps purchased by Wholesalers for sale to Retailers;
3. A copy of any reports by Wholesalers or Retailers to the State documenting wholesale or retail sales within the Compact Jurisdiction;
4. A current list of all Wholesalers providing the Retailers with cigarettes or tobacco products; and
5. Any complaints, audit reports or concluded investigation findings related to the wholesale or retail sale of cigarettes or tobacco products within the Compact Jurisdiction.

(d) The State and Nation stipulate and agree, for the sole purposes of the provisions of paragraph 2(c) hereof, the Nation is and shall be considered by the State as a "foreign country" for purposes of permissible disclosures to the Nation pursuant to 68 O.S. § 205 C.7 and the Nation is and shall be considered by the State as an "international authority" for purposes of 68 O.S. § 312.1.J.

(e) The State and Nation further stipulate and agree, for the sole purposes of the provisions of paragraph 2(c) hereof, this Compact shall constitute a "contract" between the Nation and the Oklahoma Tax Commission for purposes of permissible disclosures to the Nation pursuant to 68 O.S. § 205.C.16. The Nation and the State, in consideration hereof, stipulate and agree that any information received from the records and files of the Oklahoma Tax Commission or the Muscogee (Creek) Nation's Tax Commission will be treated and considered as confidential and privileged, to be used for the Nation's or the State's purposes in the administration and collection of the Tobacco Payment, state tobacco taxes and collection of tobacco manufacturer escrow payments under 37 O.S. § 600.21 through 600.23, and enforcement under 68 O.S. § 360.1 through 360.9, and the Tribal Tax provided herein which are the subject of this Compact, and not be disclosed to any third party, including, but not limited to the Nation's Retailers and any and all manufacturers, distributors and wholesalers of cigarettes and other tobacco products. A disclosure to a governmental agency for regulatory or enforcement purposes, to a court in response to a subpoena or other court order, or to enforce the provisions of this Compact through arbitration or court action, shall not constitute a breach of this paragraph.

3. In exchange for the Nation's imposition of the Tribal Tax described herein and for the other obligations agreed to by the Nation, the State agrees to accept a reduced excise tax payment in lieu of the excise and all other taxes generally imposed upon cigarettes and other tobacco products by title 68 of the Oklahoma Statutes ("Tobacco Payment") for all sales of cigarettes and tobacco products by Retailers within the Compact Jurisdiction, without reference to the Tribal membership or non-membership status of the ultimate purchasing consumer, in the amount of fifty percent (50%) of all applicable State taxes on cigarettes and other tobacco products, in effect at the time of sale.

4. The Nation agrees that the State may collect the Tobacco Payment directly from the Wholesaler, and that the Wholesaler must collect the Tobacco Payment directly from the Retailers. The Nation agrees to require the Retailers to: (A) pay the Tobacco Payment, (B) pass both the Tobacco Payment and the Tribal Tax on to the ultimate consumer in the retail price of the cigarettes or tobacco products and (C) refrain from selling, distributing, transporting, soliciting sales of or in any matter dealing with cigarette brands and products of manufacturers who do not fully comply with the requirements of 37 O.S. §§ 600.21-600.23 and 68 O.S. §§ 360.1-360.9 and only deal in tobacco products of complying manufacturers and brands, as evidenced by their names and list of brands as maintained on the Oklahoma Attorney General's website. If any Retailer purchases cigarettes or tobacco products from an unlicensed Wholesaler, or directly from a manufacturer, or fails to comply with any of its obligations under this paragraph, the Nation shall take necessary enforcement measures to ensure compliance with this paragraph by the Retailer. If the Retailer continues to violate any obligations of this paragraph thirty (30) days following notification to the Nation and Retailer from the State, the

State may remove such Retailer from the list of Retailers entitled to benefits under this Compact, and/or take direct legal or equitable action in State Court against such Retailer, until such time as the Retailer is in compliance with its obligations hereunder, makes restitution and the Nation and State certifies the Retailer's compliance to the State. Upon such certification, the Retailer shall be returned to the list.

The second time that a Retailer purchases cigarettes or tobacco products from an unlicensed wholesaler, or directly from the manufacturer, or fails to comply with any of its obligations under this numbered paragraph, the State at its option, may require that the Nation permanently remove the Retailer from the list of Retailers entitled to the benefits under this Compact.

5. The State requires, and the Nation authorizes, all Wholesalers licensed by the State and selling cigarettes or tobacco products to any Retailer to:

(a) collect a "Tribal Tax" on all cigarettes and tobacco products purchased by the Nation or a Retailer for resale in the Compact Jurisdiction, without reference to the membership or non-membership status of the purchasing consumer, in the current amount of \$1.50 per carton of ten (10) packs of twenty (20) cigarettes, \$1.88 per carton of ten (10) packs of twenty-five (25) cigarettes, and on other tobacco products in the amount of fourteen and six tenths percent (14.6%) of all applicable State taxes now in effect. It is acknowledged by the Tribe that these figures may proportionally change if the State tax rate changes. However, if the State tax rate changes subsequent to the effective date of this agreement, the tribe may elect to terminate this agreement pursuant to Article IV, Paragraph 1, within thirty (30) days of becoming aware of the new tax rate. Such termination shall be by notice to the State as provided herein. Notwithstanding this provision, it is specifically understood that termination of this Compact regarding collection of revenues after the effective date of this agreement, shall not result in the abrogation of rights and obligations as provided in Article III, herein;

(b) remit the Tribal Tax on the same schedule as the payments described in Paragraph 5(a) above directly to the Oklahoma Tax Commission; and

(c) provide sufficient documentation to the Nation and to the Oklahoma Tax Commission to demonstrate that the appropriate Tribal Tax and Tobacco Payment have been remitted. Such documentation shall be maintained by the Wholesalers for a period of at least five (5) years following distribution or sale of cigarettes or other tobacco products. If any Wholesaler selling cigarettes or tobacco products to a Retailer fails to properly collect and remit the Tribal Tax described in this paragraph, the State may take necessary enforcement measures to ensure compliance with this paragraph by the Wholesaler, including, but not limited to, entry and inspection of records.

(d) payment of the "Tobacco Payment" and the "Tribal Tax" on cigarettes shall be evidenced by use of a single joint stamp, sometimes known as the "unity rate" stamp, which Oklahoma licensed wholesalers shall purchase from the OTC and affix to packs of cigarettes sold to the Nation's licensed retailers. The Tobacco Payment shall be collected by the OTC, by the sale of the single joint/unity rate stamp to wholesalers. Wholesalers shall collect the Tribal Tax from retailers upon sale of cigarettes or other tobacco products, and remit the Tribal Tax as provided in this Compact.

6. The nation may, at its discretion, designate and "Additional Tribal Tax", the payment of which shall be evidenced by a second stamp, issued by the Nation, at its sole cost and expense, and affixed to packs of cigarettes sold to the Nation's licensed retailers. Should the Nation designate and Additional Tribal Tax to be collected by Wholesalers, the Nation, not less than 30 (30) days prior to the proposed date of implementation, shall deliver written notice of the Additional Tribal Tax and proposed effective date of said tax to the Administrator of the Oklahoma Tax Commission. Nothing herein shall affect or impair the Nation's inherent authority to impose other taxes on the sale, purchase or possession of cigarettes or other tobacco products under Tribal law. Wholesalers shall collect the Additional Tribal Tax from retailers upon sale of cigarettes or other tobacco products, and remit the Additional Tribal Tax as provided in this Compact.

7. The Additional Tribal Tax provided for in paragraph 6 above and the Tribal Tax provided in Paragraph 5 above shall be collected, in advance, by the Wholesaler selling cigarettes and other tobacco products to the Retailers for resale to consumers in the Compact Jurisdiction and shall be collected at the time of the wholesale transaction. The Nation agrees that the Tribal Tax and Additional Tribal Tax and the Tobacco Payment shall be included in the retail price and passed on to consumers, and will require the Retailers to do so. Pursuant to the terms of purchase of stamps from the State, each month the Wholesaler shall remit both the Tribal Tax and Additional Tribal taxes collected to the State of Oklahoma Tax Commission who shall have the duty to appropriately distribute the Tribal and Additional Tribal Tax receipts.

8. The Commission shall distribute to the Nation the Tribal Tax and Additional Tribal Tax receipts not later than thirty days (30) after the end of each calendar quarter.

9. The State shall notify the Nation in writing when a distribution is to be withheld and/or reduced and must state the reasons for withholding and/or reducing the distribution. Justifications which may be asserted for withholding and/or reducing distribution of the Tribal Tax and Additional Tribal Tax include, but are not limited to:

(a) The notice and invocation of termination rights pursuant to Article IV of this agreement, including the right of setoff;

(b) Interference by the Nation in the collection of Tribal or State Tax receipts; and,

(c) Receipt of duly authorized Court or Arbitration orders to withhold or enjoin payment.

10. Any business not a Retailer operating within the Nation's Jurisdiction and engaging in the sale of cigarettes and other tobacco products, shall not be subject to the Compact and its provisions and shall be governed by applicable Oklahoma and/or Tribal law. The State may charge such retailers the excise tax imposed on cigarettes and other tobacco products provided by Title 68 of the Oklahoma Statutes.

11. The Nation agrees that it will require the Retailers to purchase cigarettes and other tobacco products only from Wholesalers that are duly licensed by the State of Oklahoma. The Nation agrees that both the Tribal Tax and Additional Tribal Tax, provided for in this Compact, applies only to the Retailers' retail sales of cigarettes to the consumer, and the Nation agrees to require its Retailers not to sell or otherwise transfer cigarettes or tobacco products stamped with the tax stamp authorized under this Compact to anyone other than the consumer. Except for transfers between Retailers authorized to sell tobacco products at the designated the Tribal Tax rate for each location under this Compact, the Nation agrees to prohibit its Retailers from selling or otherwise transferring cigarettes or other tobacco products stamped with reduced tax stamps to anyone other than the consumer at retail outlets located in the Nation's Jurisdiction, including sales or transfers to other retailers outside the Nation's Jurisdiction.

12. All cigarettes sold by the Retailers shall bear a single joint use/unity rate stamp, evidencing that the Tobacco Payment and Tribal Tax have been paid by the Retailer. Should the Nation elect to impose an Additional Tribal Tax, the provisions of §6 shall apply, and all cigarettes sold by the Retailers shall bear an additional stamp, evidencing that the Additional Tribal Tax has been paid by the Retailer.

13. The State and Nation further stipulate and agree, that:

(a) unstamped cigarettes, counterfeited stamped cigarettes, mutilated stamped cigarettes, tobacco products and brands not approved (as reflected by publication on the Oklahoma Attorney General Website), and cigarettes and tobacco products on which the Tribal Tax and Additional Tribal Tax are required to be paid pursuant to this Compact and which have not been paid, are contraband and each party has the right to seize such contraband within its respective jurisdiction.

(b) The State shall exempt all sales of cigarettes and other tobacco products to and by the Nation's Retailers from sales and excise taxes imposed by Title 68 of the Oklahoma Statutes in consideration of the agreement by the Nation to require the Retailers to make the aforementioned tax payments to the Oklahoma Tax Commission.

14. The Nation agrees that the Nation and the Nation Retailers will not sell, distribute, transport, solicit sales for, or in any manner deal with cigarette brands and tobacco products of a manufacturer who does not fully comply with the requirements of 37 Okla. Stat§§ 600.21

through 600.23 and 68 Okla. Stat §§ 360.1 through 360.9, and will only deal in tobacco products of complying manufacturers, as evidenced by the placement of the manufacturer's name and its product brands on the list of complying manufacturers and brands maintained on the Oklahoma Attorney General's website.

ARTICLE III

TERMS OF SETTLEMENT OF HISTORICAL DISPUTE

NOW, THEREFORE, the MUSCOGEE (CREEK) NATION of Oklahoma, by and through its government, and the State of Oklahoma, by and through its Governor do also hereby enter into this Compact to resolve certain historical and legal disputes for the mutual benefit of the Tribe and the State, to-wit:

1. The State of Oklahoma and the Muscogee (Creek) Nation have engaged in an historical dispute regarding appropriate taxing authority regarding cigarettes and other tobacco products during the period 2007 through 2010. This historical dispute has culminated in a pending litigation matters styled *State of Oklahoma v. Larkin et al*, in the Oklahoma District Court of Tulsa County with case number designation of CJ-2009-868. This litigation matter, and the facts and legal issues contained therein, shall be referred to herein as the "historical dispute."
2. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the historical dispute, and in consideration of the mutual promises and obligations of this Compact, the State and Tribe agree and covenant as follows:
 - (a) The Tribe shall pay to the State of Oklahoma, a total of Eleven Million Five Hundred Thousand Dollars (\$11,500,000.00) which shall be referred to herein as the Settlement Amount. Such payment shall be paid to the State through the Oklahoma Attorney General's office. One Million Five Hundred Thousand Dollars (\$1,500,000.00) of the Settlement Amount shall be paid to the State at the time of the execution of the Compact by the Tribe. Thereafter, payments of Two Million Dollars (\$2,000,000.00) shall be paid annually to the State, through the Oklahoma Attorney General's office on the anniversary of the execution of the Compact until the full Settlement Amount has been paid.
 - (b) In consideration of the obligations of the Tribe in this Compact, and conditioned upon the Nations initial payment of the Settlement Amount in the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00), the State of Oklahoma agrees to stay its pending action referred to herein as *State of Oklahoma v. Larkin et al*. Upon full payment of the Settlement Amount by the Nation, the State of Oklahoma agrees to dismiss all claims in *State of Oklahoma v. Larkin et al*, with prejudice, provided that all

parties of the litigation agree to a full dismissal of all claims and actions with each party bearing their own fees and costs.

3. Upon the Tribe's full payment of the Settlement Amount, the State of Oklahoma releases all named defendants in the *State of Oklahoma v. Larkin, et al.* lawsuit, the Tribe, together with its current and former officers, directors, employees, agents, servants, affiliates, predecessors, successors, transferees and assigns, individually and collectively, from any claims, suits, demands, or liability it asserted, or could have asserted, in the *State of Oklahoma v. Larkin, et al.* lawsuit.

4. Notwithstanding the release given in paragraph 3 of this section (Article III), or any other term of this Compact, the following claims of the State of Oklahoma are specifically reserved and are not released:

(a) Any personal and individual income tax liability arising under the laws of Oklahoma;

(b) Any criminal liability, however any payment of the settlement sum may appropriately be used to offset any restitution claim;

(c) Any liability to the State of Oklahoma (or its agencies) for any conduct other than that alleged in the litigation arising from the historical dispute; or,

(d) Any liability based upon obligations created by this Compact.

5. The Nation fully and finally releases the State of Oklahoma and its respective agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the Tribe has asserted, could have asserted related to the historical dispute or the State of Oklahoma's investigation and prosecution thereof.

6. This settlement of the historical dispute is made in compromise of disputed claims. This Agreement is neither an admission of facts or liability by the Tribe nor a concession by the State of Oklahoma that its claims are not well founded.

7. With respect to the settlement payments due the State under Article III, the Nation waives its sovereign immunity with respect to suit, liability, judgment and collection of the settlement amount in the Oklahoma District Court of Tulsa County, and agrees that any suit brought to enforce the settlement shall be governed by Oklahoma law.

ARTICLE IV

GENERAL PROVISIONS

1. Any dispute arising in the interpretation or performance of this compact, which is not resolved by good faith negotiation within thirty (30) days, or such longer period as mutually agreed in writing by both parties, shall be subject to the remedy of voluntary unilateral termination of this agreement. Additionally, upon termination, with regard to any dispute over sums owed to either the State or Nation pursuant to the terms of this Compact, the State and Nation waive their sovereign immunity with respect to suit, liability, judgment and collection of the disputed sums. These mutual sovereign immunity waivers allow such enforcement actions to be brought in the Oklahoma District Court of Oklahoma County, and each party agrees that any suit brought to enforce the terms of the Compact regarding amounts due under this agreement shall be governed by Oklahoma law. Notwithstanding this provision, it is specifically understood that termination of this Compact regarding collection of revenues after the effective date of this agreement, shall not result in the abrogation of rights and obligations as provided in Article III, herein;
2. In the event that early termination of this agreement results in a determination by either party that the any breach of the terms hereof, which resulted in the early termination may have caused civil or administrative damage, the parties hereby agree to a limited waiver of their sovereign immunity from suit, liability, judgment, and collection in federal court for the limited purpose of determination of rights or damages caused by the early termination of this agreement. Should the federal court determine it lacks jurisdiction for such action, the Nation agrees to limited waiver of sovereign immunity from liability, judgment, collection and suit in Oklahoma District Court.
3. This agreement shall terminate on August 30, 2017. Nothing in this Compact shall prevent the parties by mutual agreement from establishing an earlier or later termination date or otherwise modifying this agreement.
4. By entering into this Compact, the Nation does not concede that the laws of the State of Oklahoma, including its tax and licensing laws, apply to the Nation or its members regarding activities and conduct within the Nation's Jurisdiction.
5. The Nation agrees to require the Retailers to maintain complete records of all purchases and sales of cigarettes and other tobacco products by brand, including information related to the payment of both the Tribal Tax and Additional Tribal Tax. Such records shall be maintained for

a period of five (5) years from the date of purchase or sale. The State and Nation may take necessary enforcement measures to ensure compliance with this paragraph by the Retailers, including, but not limited to, entry and inspection of records.

6. Neither party shall be deemed the drafter of this Compact in the event of any action to interpret its terms. Therefore, the rule of construction that in the case of an ambiguity, the ambiguity is construed against the author is not applicable. Furthermore, any rule of construction of ambiguities either in favor of or against a State or Tribal governmental entity is not applicable to this Compact.

7. Notice shall be by United States mail, postage prepaid. Any notice required hereunder to the State shall be delivered to the Governor of the State of Oklahoma at 2300 N. Lincoln Blvd., Room 212, Oklahoma City, Oklahoma 73105-4890. Notification by the State shall be made by the Governor or designee in writing to the Nation to the Office of the Principal Chief, Muscogee (Creek) Nation, P.O. Box 580, Okmulgee, Oklahoma 74447. Notification by the State and Nation shall also be filed with the Office of the Oklahoma Secretary of State.

8. This Compact shall be effective when fully executed by all parties, and there is attached hereto the original, or a properly certified copy, of the properly prepared and approved resolution of the legislative body, or similar document of the Nation authorizing the Nation to enter into and execute this agreement. The approved resolution, or similar document, shall be accompanied by a letter from counsel for the Nation certifying that such resolution, or other tribal action, fully and regularly complies with tribal law and was obtained in accordance with all necessary legal and procedural requirements.

9. Nothing in this Compact shall be deemed to authorize the State to regulate the Nation's government or to interfere in any way with the Nation's selection of its governmental officers. This Compact shall not alter tribal, federal or state civil adjudicatory or criminal jurisdiction.

10. This Compact comprises the entirety of the agreement between the parties hereto. Any and all prior or contemporaneous representations, predictions, warranties or other inducements, however denominated, are merged within the terms of this Compact, and shall not survive its execution. There are no representatives, promises, predictions, warranties, inducements or other agreements, however denominated, between the parties other than as set forth herein. This Compact may not be amended or modified except by written agreement, approved and executed by the parties hereto.

IT IS AGREED:

Each of the undersigned represents that they are duly authorized, and has the authority, to execute this agreement on behalf of the designated party.

Compact Signatories:

STATE OF OKLAHOMA

MARY FALLIN, GOVERNOR

DATE

MUSCOGEE (CREEK) NATION

GEORGE TIGER, PRINCIPAL CHIEF

DATE

Settlement Signatories:

STATE OF OKLAHOMA

E. SCOTT PRUITT, ATTORNEY GENERAL

DATE

MUSCOGEE (CREEK) NATION

GEORGE TIGER, PRINCIPAL CHIEF

DATE