

**AGREEMENT  
FOR THE COLLECTION AND DISSEMINATION OF MOTOR FUEL TAXES  
BETWEEN THE STATE OF NEBRASKA  
AND THE SANTEE SIOUX TRIBE OF NEBRASKA**

**PREAMBLE**

WHEREAS, the Santee Sioux Tribe of Nebraska (hereinafter sometimes referred to as the "Tribe") is a federally recognized Indian Tribe with a governmental structure recognized by the Bureau of Indian Affairs, United States Department of Interior;

WHEREAS, the federal law of the United States of America provides that recognized Indian Tribes have certain governmental authority;

WHEREAS, the Tribe is situated on and occupies a federally established Indian Reservation situated in the northeastern part of the State of Nebraska (hereinafter sometimes referred to as the "Reservation");

WHEREAS, the Tribe has established and currently maintains a tribal government, which government provides certain services to the Tribe and to Indians residing on the Reservation and within the Tribe's Service Area;

WHEREAS, the provision of said services by the Tribe's government to the Tribe and to Indians residing on the Reservation and within the Tribe's Service Area, is in keeping with the policies and laws of the United States Federal Government regarding Indian tribal self-government and self-sufficiency;

WHEREAS, federal Indian law and federal Indian policy generally preempt state law and state policy as to activities by the Tribe and the enrolled members of the Tribe on the Reservation;

WHEREAS, the retail facilities on the reservation are provided for the convenience of the tribal members;

WHEREAS, the State believes that its excise taxes are applicable to transactions that occur on reservations involving sales of motor fuels to non-tribal members and not to transactions that occur on reservations involving such sales to tribal members;

WHEREAS, the Tribe believes that it has the exclusive right to tax transactions that occur on the Tribe's reservation involving sales of blended fuel to non-tribal members where the fuel blends are manufactured on a reservation, the blending and retail sales processes employ tribal members, and the tribe has substantial interests in the retail sales of blended fuels;

WHEREAS, the State is of the view that cooperation and negotiation between the State's governmental agencies and political subdivisions, and the governments of federally recognized Indian Tribes is more productive and beneficial to the interests of the State and the citizens of the State, including citizens of the State who are enrolled members of federally recognized Indian Tribes, and better serves those interests than engaging in costly and extensive litigation;

WHEREAS, the Tribe is of the view that cooperation and negotiation between the Tribe and the State is more productive and beneficial to the interests of the Tribe and its members, and better serves those interests than engaging in litigation;

WHEREAS, the State and the Tribe agree that it will serve the interests of both the State and the Tribe for the Tribe to be able to generate revenue for governmental purposes, through the collection of certain tribal taxes in accordance with this Agreement;

WHEREAS, NEB. REV. STAT. 66-741 authorizes the Governor or his designee to enter into Agreement(s) with the governing body of a federally recognized Indian tribe within the State of Nebraska concerning the collection and dissemination of any motor fuel tax on sales of motor fuel made on a federally recognized Indian reservation;

NOW THEREFORE, the State of Nebraska (hereafter sometimes referred to as "State") through Mike Johanns, Governor, and Mary Jane Egr, Nebraska Tax Commissioner, and the Tribe, through Roger Trudell, its Tribal Chairman, properly authorized by a resolution of the Santee Sioux Tribal Council hereto attached as Exhibit A, do hereby enter into this Agreement for the mutual benefit of, and to avoid litigation between, the State of Nebraska and the Santee Sioux Tribe of Nebraska, to-wit:

## **PART I. INTRODUCTION**

1. The State hereby recognizes that the Tribe enjoys, under United States federal law, as a federally recognized Indian Tribe situated on a federally recognized reservation, exemptions from the assessment of certain state taxes. For purposes of this Agreement, "Tribe" refers both to the Santee Sioux Tribe of Nebraska and to any tribally-chartered corporations or entities wholly owned by the Santee Sioux Tribe of Nebraska.

## **PART II. TERM**

2. This Agreement shall commence on October 1, 2002. Its term shall be perpetual, subject to the provision for early termination set forth in Part V below.

## **PART III. MOTOR FUELS**

3. Any motor fuel sold by the Tribe within the boundaries of the Reservation shall be exempt from the imposition of the tax on these products as levied under the laws of the State of Nebraska.

4. The Tribal Council of the Tribe has enacted a resolution codified in the Santee Sioux Tribal Code imposing a tax on motor fuel, as defined under the laws of the State of Nebraska, sold by the Tribe within the boundaries of their Reservation, which is and shall remain at the same rate and base of transaction as provided under the laws of the State of Nebraska. This resolution shall remain in effect as long as this Agreement is in effect, as a condition for the State granting an exemption on motor fuel taxes. A copy of said resolution is attached hereto as Exhibit B.

5. All proceeds derived from the taxes imposed pursuant to the resolution referenced in Section 4 of this Agreement, except that portion remitted to the State of Nebraska pursuant to Section 9 of this Agreement shall be used for general governmental purposes including but not limited to road construction and maintenance, economic development, and general health and welfare programs and services for tribal members.

6. This exemption shall only apply to sales of motor fuel that occur at retail outlets owned and operated by the Tribe located on the Reservation and within the boundaries of the

Reservation as are set forth in the Preamble of this Agreement. This exemption shall not apply to:

- A. Transactions involving motor fuel that occur at the Tribe's retail outlets outside the boundaries of the Reservation,
- B. Any activity by the Tribe as a motor fuel supplier, distributor, wholesaler, importer, or exporter,
- C. Tankwagon sales, or
- D. Sales by retail outlets not controlled by the Tribe. This provision shall not restrict or affect the Tribe's ability to hire or retain a non-tribal person or entity to operate the retail outlet on a day-to-day basis on behalf of the Tribe.

7. The Santee Sioux Tribe of Nebraska agrees not to license or otherwise authorize an individual tribal member or other person or entity to sell motor fuel in violation of the terms of this agreement.

8. In no event shall any refunds be allowed under Neb. Rev. Stat. 66-726(2) for any motor fuel purchased on the Reservation while this Agreement is in effect.

#### **PART IV. REVENUE SHARING**

9. The Santee Sioux Tribe of Nebraska shall remit on a quarterly basis no later than 25 days after the end of each quarter 20% of the taxes imposed on motor vehicle fuel (gasoline and ethanol) and 25% of the taxes imposed on diesel pursuant to the resolution set forth in Section 4 of this Agreement to the State of Nebraska Department of Revenue. This percentage amount has been determined based upon good faith negotiations between the parties based upon the following formula for motor vehicle fuels: approximately three-fifths of the estimated percentage of residents living within the boundaries of the reservation are tribal members (both the State and Tribe agree that the State has no arguable claim to levy its motor fuels excise taxes on tribal members on the reservation); The State and Tribe will share the remaining two-fifths as each believe it has the exclusive right to tax those transactions. For diesel the formula is based upon the assumption that seventy-five percent of the diesel is sold to large trucks, and one-third of those trucks are involved in IFTA. The parties shall review the formula which determined the

revenue sharing percentages every five (5) years following the execution of this agreement unless either party makes a written request to do so at an earlier date. If the parties determine that an adjustment to the formula and the attendant revenue sharing percentages is warranted, such adjustment shall take effect at such time as is mutually agreed by the parties.

10. The amount to be remitted quarterly shall be determined by calculating the total gross gallons of motor vehicle fuel received by the Tribe's retail locations on the reservation, less any sales to the U.S. Government. The resulting gallons are multiplied by the state tax rate in effect at the time, and then 20% of the total tax is remitted to the State. Diesel is calculated by the same formula with the resulting gallons multiplied by 25%.

11. The Tribe shall file a Nebraska Motor Fuels Consumer's Use Tax Return, Form 74, for each quarter this Agreement is in effect. If either the form or payment are not provided by the 25<sup>th</sup> day of the month following the end of the quarter to which they relate, the Tribe shall be subject to the late payment and/or filing penalties provided in NEB. REV. STAT. 66-719 in addition to interest at the rate provided in NEB. REV. STAT. 45-104.02, as such rate may from time to time be adjusted, from the date the payment was due until the date it is actually received. The imposition of said penalties and interest by the State shall not waive any other remedies the State may have under this agreement with regard to late payments and/or late filings.

#### **PART V. GENERAL PROVISIONS**

12. The Tribe agrees to keep accurate records setting forth information in sufficient detail to allow for verification that the Tribe and Tribal-owned entities are collecting and distributing the correct amount of tax due pursuant to this Agreement. Upon reasonable request of the State, and subject to the confidentiality provisions of the State, the State may conduct an examination of the records of the Tribe and Tribal-owned entities for the sole purpose of verifying compliance with the requirements of this Agreement. Such examination shall be strictly limited to those enterprise activities of the Tribe or Tribal-owned entities which engage in motor fuels sales and may include examination of summary reports, exemption certificates, ledgers, cash register tapes and similar records. Nothing in this section authorizes any examination of the records of any

part of the Tribe or Tribal-owned entity which does not engage in motor fuels sales and nothing in this section authorizes any examination of any records that goes beyond what is needed to verify compliance with the requirements of this Agreement.

13. The right of examination or audit shall exist during the term of the Agreement and for a period of three years after the date of any termination or expiration of the Agreement.

14. Upon completion of an examination of records by the State pursuant to this Agreement, the State shall issue a report to the Tribe containing the results. If the report indicates a change in liability of the Tribe or a Tribal-owned entity, the Tribe may challenge that report by requesting a redetermination from the State. The request must be made in writing within 30 days following issuance of the report. If any dispute still exists between the parties, it shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association.

15. The execution of this Agreement by the Tribe shall not effect nor be a waiver of any other claim or right that the Tribe, or its enrolled members, has or may have to be exempt from the assessment from any other state sales tax for activities that occur on the Reservation.

16. The State certifies that this Agreement is entered into by the State voluntarily, and without coercion, and for the purposes of avoiding litigation as to the subject matter covered by this Agreement. Further, the execution of this Agreement by the State is not and shall not be a release, waiver or compromise of any defense, claim or right of the State as to any of the Tribe's claims referred to in the paragraph above or otherwise.

17. The parties hereto represent that this instrument contains all of the terms, provisions and conditions of this Agreement and the subject matter covered thereby, that there are no unwritten agreements or oral understandings existing as to the subject of this Agreement, and that any amendment and/or modification of this Agreement shall not be effective until reduced to writing and properly executed by all parties hereto.

18. Notwithstanding any other provision of this Agreement, this Agreement shall immediately cease and terminate, without notice or other action, as follows:

If the United States Federal Government, or its appropriate department or agency, rescinds or otherwise terminates the recognition of the Tribe as a federally recognized Indian Tribe; or


- A. If the Tribe 1) abandons or otherwise acts in a manner evidencing the fact that it has given up or terminated its status as a federally recognized Indian Tribe; or
- B. If a Court of Competent jurisdiction renders a judgment, and that judgment becomes final, declaring that the Tribe is not a federally recognized Indian Tribe, 2) has abandoned or otherwise terminated such status, 3) that such status has been rescinded or terminated or 4) has abandoned or given up or terminated its entitlement to the tax exemptions, or any of them, that are the subject of this Agreement.

19. In the event that one of the parties to this Agreement, or any employee, representative, or official of such a party fails to comply with any term, condition, covenant or requirement of this Agreement, or is otherwise in breach of this Agreement, the other party may declare this Agreement 1) suspended in whole or in part, or 2) terminated in whole or in part. Prior to suspending or terminating this Agreement, in whole or in part, a party hereto shall deliver a written-notice to the other party which identifies the conduct, action, and/or inaction that violates this Agreement. The party violating this Agreement shall have ninety (90) days from the date of receipt of such notice in which to cure the default or breach of this Agreement and to provide the other party hereto with written notice of such curing. At the end of such ninety (90) day period, if the default or breach complained of in said notice is not cured, then in that event this Agreement shall immediately be suspended or terminated accordingly to the terms of the said notice of default or breach.


20. The parties hereto covenant and agree that any declarations contained herein by either party are for the purposes solely of this Agreement and are not and shall not be deemed admissions, concessions or a waiver of any claims or defenses that might be available to either party in any lawsuit or proceeding that may be commenced or filed by either party hereto or by some other person or entity not a party hereto, nor shall this Agreement be competent evidence in any judicial or administrative proceeding or suit other than a proceeding or suit involving the specific subject covered by this Agreement.

21. The State declares that in addition to the considerations herein above expressed, it has negotiated and entered into this Agreement, and has agreed to the terms and conditions contained herein, based substantially on the factual situation and circumstances of the Santee Sioux Tribe of Nebraska, including but not limited to such matters as: location of the Tribe's lands in Trust, the proximity of those Lands in Trust to highways, towns, and non-tribal populations, the size of the Tribe's Service Area, the Tribe's reservation population, economic development in the area of the reservation, the prospects for the Tribe's further economic development on its Lands in Trust, and the anticipated volume of sales of the items subject to the taxes for which exemptions are herein and hereby granted. Accordingly, no provision of this Agreement shall in any manner be binding upon, or set a precedence upon any other Agreement with any other Tribe.

**Santee Sioux Tribe of Nebraska**

 Signed this 25 day of September, 2002.  
Roger Trudell  
Chairman

**State of Nebraska**

 Signed this 7<sup>th</sup> day of October, 2002.  
Mike Johanns  
Governor

 Signed this 4<sup>th</sup> day of October, 2002.  
Mary Jane Egg  
State Tax Commissioner



# Santee Sioux Tribe of Nebraska

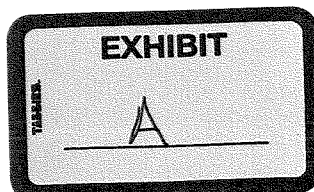
LAND MANAGEMENT OFFICE  
E.P.A. OFFICE  
CREDIT & FINANCE



52948 Hwy. 12  
Niobrara, NE 68760  
Phone: (402)857-3338  
Fax: (402)857-3339

RESOLUTION 02- 170  
OF THE  
SANTEE SIOUX TRIBE OF NEBRASKA  
(Tribal Motor Taxes Agreement)

- WHEREAS, the Santee Sioux Tribe of Nebraska (the "Tribe") is a federally recognized Indian Tribe organized pursuant to Section XVI of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), codified at 25 U.S.C. & 476, *e seq.* as amended by the Act of June 15, 1935, (49 Stat. 378); and
- WHEREAS, under Article III, Section 1 of the Tribal Constitution, the Tribal Council, is the governing body of the Santee Sioux Tribe of Nebraska; and
- WHEREAS, under Article IV, Section 1(f) of the Tribal Constitution, the Tribal Council of the Santee Sioux Tribe of Nebraska is authorized to manage all economic affairs of the Tribe and promote the general welfare of the Tribe, and
- WHEREAS, the Tribal Council of the Santee Sioux Tribe of Nebraska is empowered to protect and preserve the property of the Tribe; and
- WHEREAS, the Santee Sioux Tribe of Nebraska has the requisite power to own and operate its enterprises, governmental facilities, infrastructure and programs, and to carry out the business thereof as presently being conducted; and
- WHEREAS, the Tribal Council believes with respect to motor fuel taxes, cooperation between the Tribe and states it is in the best interests of the Tribe.



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WHEREAS, the attached Agreement for the Collection and Dissemination of Motor Fuels Taxes between the Santee Sioux Tribe of Nebraska has been negotiated between the State of Nebraska and the Santee Sioux Tribe of Nebraska and the Tribe believes this Agreement to be interest of the Tribe and its members.

NOW, THEREFORE, BE IT RESOLVED, that the Santee Sioux Tribe of Nebraska hereby approves the attached Agreement for the Collection and Dissemination of Motor Fuels Taxes between the State of Nebraska and the Santee Sioux Tribe of Nebraska and directs the Chairman to execute said Agreement on behalf of the Tribe.

CERTIFICATION


This will certify that the forgoing resolution was considered at a meeting of the Santee Sioux Tribal Council of the Santee Sioux Tribe of Nebraska, duly call and held on the 25th day of July, 2002, and was adopted by a vote of 8 FOR; 0 AGAINST; AND 2 NOT VOTING OR ABSENT. A quorum of 9 was present.

DATED THIS 25th DAY OF July, 2002



Roger Trudell, Chairman  
SANTEE SIOUX TRIBE OF NEBRASKA

ATTEST:

  
Jerry Denny, Secretary  
SANTEE SIOUX TRIBE OF NEBRASKA

# Santee Sioux Tribe of Nebraska

LAND MANAGEMENT OFFICE  
E.P.A. OFFICE  
CREDIT & FINANCE



52948 Hwy. 12  
Niobrara, NE 68760  
Phone: (402)857-3338  
Fax: (402)857-3339

RESOLUTION 02- 171  
OF THE  
SANTÉE SIOUX TRIBE OF NEBRASKA  
(Tribal Motor Fuels Tax)

WHEREAS, the Santee Sioux Tribe of Nebraska (the "Tribe") is a federally recognized Indian Tribe organized pursuant to Section XVI of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), codified at 25 U.S.C. & 476, *e seq.* as amended by the Act of June 15, 1935, (49 Stat. 378); and

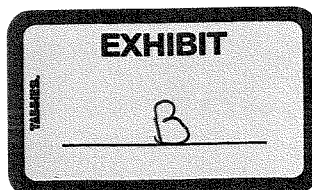
WHEREAS, under Article III, Section 1 of the Tribal Constitution, the Tribal Council, is the governing body of the Santee Sioux Tribe of Nebraska; and

WHEREAS, under Article IV, Section 1(f) of the Tribal Constitution, the Tribal Council of the Santee Sioux Tribe of Nebraska is authorized to manage all economic affairs of the Tribe and promote the general welfare of the Tribe, and

WHEREAS, the Tribal Council of the Santee Sioux Tribe of Nebraska is empowered to protect and preserve the property of the Tribe; and

WHEREAS, the Santee Sioux Tribe of Nebraska has the requisite power to own and operate its enterprises, governmental facilities, infrastructure and programs, and to carry out the business thereof as presently being conducted; and

WHEREAS, the Tribal Council believes with respect to motor fuel taxes, cooperation between the Tribe and states it is in the best interests of the Tribe.



**NOW, THEREFORE, BE IT RESOLVED**, that the Santee Sioux Tribe of Nebraska hereby imposes a tax on gasoline or motor fuels as defined under the laws of the State of Nebraska, sold by the Tribe within the boundaries of the Reservation, which is and shall remain at the same rate and base of transaction as provided under the laws of the State of Nebraska and said tax shall remain in effect only so long as the Agreement for the Collection and Dissemination of Motor Fuels Taxes between the State of Nebraska and the Santee Sioux Tribe of Nebraska in effect.


**CERTIFICATION**

This will certify that the forgoing resolution was considered at a meeting of the Santee Sioux Tribal Council of the Santee Sioux Tribe of Nebraska, duly call and held on the 25th day of July, 2002, and was adopted by a vote of 8 FOR; 0 AGAINST; AND 2 NOT VOTING OR ABSENT. A quorum of 9 was present.

DATED THIS 25th DAY OF July, 2002

  
 Roger Trudell, Chairman  
 SANTEE SIOUX TRIBE OF NEBRASKA

ATTEST:

  
 Jerry Denny, Secretary  
 SANTEE SIOUX TRIBE OF NEBRASKA