

**FIRST AMENDMENT TO THE TAX AGREEMENT BETWEEN THE
POKAGON BAND OF POTAWATOMI INDIANS AND THE STATE OF
MICHIGAN**

This First Amendment to the Tax Agreement between the Pokagon Band of Potawatomi Indians and the State of Michigan is executed on the date(s) indicated below and shall be effective as of the first day of the month following the date of execution of this First Amendment by the State Treasurer or his designee.

Recitals:

On the 20th day of December, 2002, the Pokagon Band of Potawatomi Indians and the State of Michigan entered into a Tax Agreement which was implemented on the 1st day of March, 2004.

§ XVIII of the Tax Agreement provides that the Agreement may be amended upon the mutual, written agreement executed by an authorized representative of each party.

In accordance with § XVIII of the Tax Agreement the parties make the following amendments to the Tax Agreement:

1. § III(A)(2) is amended to read as follows:
 2. Resident Tribal Member
 - a. Tangible personal property, other than motor vehicles, purchased or acquired by a Resident Tribal Member for his or her commercial use is exempt from both sales tax and use tax if the transaction takes place in the Tribal and Trust Lands and the property is used exclusively within the Tribal and Trust Lands.
 - b. Purchases by a Resident Tribal Member of tangible personal property for personal use are exempt from both the sales tax and use tax if the transaction takes place in the Agreement Area and the property is used exclusively within the Agreement Area.
 - c. Resident Tribal Members are exempt from both the sales tax and use tax on the following items regardless of where purchased or used provided they are purchased for non-commercial use, used primarily by the Resident Tribal Member and principally garaged, berthed, or stored within the Agreement Area:
 - i. Passenger vehicles including automobiles, pick-up trucks, recreational vehicles and motorcycles;

- ii. Recreational watercraft;
- iii. Snowmobiles; and
- iv. Off road vehicles.

Where an item is purchased under this subsection and subsequently transferred to a non-Resident Tribal Member relative and the transfer would be exempt under MCL 205.93(3)(a), the Resident Tribal Member shall reimburse the State an amount equal to the current sales or use tax rate times the retail dollar value of the item at the time of the transfer. The reimbursement shall be paid to the Department within 30 days of the date of transfer. Such reimbursement will not be required where the retail dollar value at the time of transfer is below \$2,000 for a passenger vehicle or is below \$1,000 for other enumerated items.

- d. Resident Tribal Members are exempt from both the sales tax and use tax on modular homes and mobile homes used as their principal residence. Where a mobile home purchased under this subsection is subsequently transferred to a non-Resident Tribal Member relative and the transfer would be exempt under MCL 205.93(3)(a), the Resident Tribal Member shall reimburse the State an amount equal to the current sales or use tax rate times the retail dollar value of the mobile home at the time of the transfer. The reimbursement shall be paid to the Department within 30 days of the date of transfer. Such reimbursement shall not be required where the retail dollar value of the mobile home at the time of transfer is below \$2,000.
- e. The exemptions in § **III(A)(2)(c)**, § **III(A)(2)(d)**, and § **III(A)(3)(b)** shall apply in full to 1) purchases made solely by a Resident Tribal Member where the items are solely titled in the name of the Resident Tribal Member, 2) purchases made jointly by a Resident Tribal Member and his or her Resident Tribal Member spouse where the item is titled exclusively in one or both names, or 3) purchases made exclusively by multiple Resident Tribal Members where the item is titled exclusively in one or more of the Resident Tribal Member purchasers' names. With regards to § **III(A)(2)(b)** (only for purchase and affixation of materials for construction, renovation, or improvement of the Resident Tribal Member's principal residence), § **III(A)(2)(c)**, § **III(A)(2)(d)**, and § **III(A)(3)(b)**, the Resident Tribal Member shall qualify for a 50 percent exemption on purchases that are made by the Resident Tribal Member, or their non-Resident Tribal Member spouse, and exclusively titled in both their names. This subsection does not otherwise alter any of the other requirements identified in § **III(A)(2)(b)**, § **III(A)(2)(c)**, § **III(A)(2)(d)**, and § **III(A)(3)(b)**.

- 2. § **III(A)(3)** is amended to read as follows:

3. Affixation to Real Estate

- a. Materials that are purchased, used or acquired in the performance of a contract entered into by the Resident Tribal Member, Tribe, or Tribal Entity for construction, renovation or improvement of real property owned by the Tribe or the federal government in trust for the Tribe are exempt from both sales tax and use tax if the real property is located within the Tribal and Trust Lands and there is no contractual entitlement for a non-Resident Tribal Member or non-Tribal Entity to remove the improvement.
- b. Materials that are purchased, used or acquired in the performance of a contract for construction, renovation or improvement to the principal residence of a Resident Tribal Member are exempt from both the sales tax and use tax.

Where a Resident Tribal Member seeks exemption claimed under either § **III(A)(2)(b)**, § **III(A)(2)(d)** or § **III(A)(3)(b)**, for the purchase, construction, renovation, or improvement of a new principal residence, the Resident Tribal Member shall repay to the Department any previously received exemption claimed under § **III(A)(2)(b)**, § **III(A)(2)(d)** or § **III(A)(3)(b)**, for the purchase, construction, renovation, or improvement of his or her previous principal residence(s) for a period of two years immediately preceding the purchase of the item(s) on which the exemption is to be claimed. Repayment will not be required where the cumulative cost of the previously purchased items for which exemption was received does not exceed \$2,000 for the two-year period.

A Resident Tribal Member cannot have more than one principal residence at a time. For purposes of § **III(A)(3)(b)**, where the Resident Tribal Member has not yet relocated into the new residence, a Resident Tribal Member's Principal Residence changes from the old residence to the new residence as of the date of the purchase for which exemption is sought regarding the new residence.

3. § **VIII(B)(1)** is amended to read as follows:

1. Resident Tribal Members with their addresses and Tribal identification number, and social security number;

4. § **VIII(B)(2)** is amended to read as follows:

2. Tribal, Tribal Member, and Tribal Entity businesses operating within the Agreement Area. The list shall state the business name, the business address, the business(es)' federal tax identification number, and the name(s) of the business owners. The list shall also identify:

- a. Businesses that are engaged in the sale or storage of motor fuel with a statement as to the location of the storage tanks;
- b. Businesses that are engaged in the sale or storage of tobacco products identifying the facilities operated by the Tribe. Provided, however, that in identifying a facility owned, leased, or operated by the Tribe, the Tribe may designate the specific rooms in the facility where tobacco products are authorized to be stored or offered for sale under this Agreement. If such a designation is made, the State's authority to conduct inspections referenced at § XIII(C)(4)(a) without a Tribal Court order shall be limited to the whole of the rooms designated and all rooms which are directly accessible from those rooms as well as all areas through which tobacco products are transported. In the absence of a designation of rooms, the State shall be permitted to inspect the entire facility designated;
- c. Businesses that are authorized by the Tribe to sell tax exempt motor fuel; and
- d. Businesses that are authorized by the Tribe to sell tax exempt tobacco products.

5. § XII(C)(1)(a) is amended to read as follows:

- a. Resident Tribal Member purchases where a *Tribal Certificate of Exemption* must be used:
 - i. § III(A)(2)(a) (only for the purchase and affixation by the Resident Tribal Member of materials for construction, renovation, or improvement of real property owned by the Tribe or the federal government in trust for the Tribe which is located within Tribal and Trust Lands);
 - ii. § III(A)(2)(b) (only for the purchase and affixation by the Resident Tribal Member of materials for construction, renovation, or improvement of his or her principal residence within the Agreement Area);
 - iii. § III(A)(2)(c) and § III(A)(2)(d);
 - iv. § III(A)(2)(e);
 - v. § III(A)(3); and
 - vi. § III(A)(4).

6. § XII(C)(1)(f) is amended to read as follows:

f. Use of Tribal Certificate of Exemption

If a *Tribal Certificate of Exemption* is issued to a Resident Tribal Member or Tribal Entity, the Resident Tribal Member or Tribal Entity shall present the Certificate (together with the *Letter of Authorization*) to the vendor or contractor at the point of purchase. In those instances where the claim is made for purchase of material affixed to real property by a contractor under § **III(A)(3)**, the Resident Tribal Member or Tribal Entity shall obtain a *Tribal Certificate of Exemption* from the Tribe indicating the Resident Tribal Member or Tribal Entity as the purchaser and the contractor as the seller. The contractor shall complete a *Michigan Sales and Use Tax Certificate of Exemption* (Form 3372) and present the form together with the *Tribal Certificate of Exemption* and the *Letter of Authorization* to the vendor/supplier of the tangible personal property that will be affixed to the real estate. Where a contractor is used for affixation or construction under § **III(A)(3)**, when obtaining the *Tribal Certificate of Exemption* from the Tribe the Resident Tribal Member shall also submit (in addition to any other required documentation) a signed statement from the contractor stating the location at which materials will be affixed to real property, the date that the work is to be done, and an estimate as to the amount to be paid for materials.

7. § **XII(C)(2)(a)** is amended to read as follows:

- a. A Resident Tribal Member may seek a refund of sales tax and use tax paid on transactions exempted under § **III(A)(2)(a)**, § **III(A)(2)(b)** (only for the purchase and affixation by the Resident Tribal Member of materials for construction, renovation, or improvement of his or her principal residence within the Agreement Area), § **III(A)(2)(c)**, § **III(A)(2)(d)**, § **III(A)(2)(e)**, § **III(A)(3)** and § **III(A)(4)** of this Agreement.

8. § **XII(C)(3)** is amended to read as follows:

3. Refund Table – Resident Tribal Members

A Resident Tribal Member shall be entitled to an annual refund representing sales tax and use tax paid on tangible personal property acquired under § **III(A)(2)(b)** (except for the purchase and affixation by the Resident Tribal Member of materials for construction, renovation, or improvement of his or her principal residence within the Agreement Area). This refund shall apply under both the *Tribal Certificate of Exemption* method described in § **XII(C)(1)**, above and Refund Method described in § **XII(C)(2)** above. This refund shall be determined by use of the following table:

Resident Tribal Member's federal Adjusted Gross Income modified to include Social Security benefits, Social Security disability benefits, Railroad Retirement benefits, Veteran Disability Pay, 50% of the Combat Zone Compensation for Enlisted Members of the Armed Forces, fishing

income under section 7873 of the Internal Revenue Code, and disability income to the extent they are specifically exempt from or excluded from the computation of federal Adjusted Gross Income (but not to exceed \$80,000) x 15% x 6%.

The Table shall be reviewed upon the written request of either party with notice to all other tribes that have agreements that are substantially similar to this Agreement but not more frequently than once every three years. It is the intent of the parties that any revision to the Table shall be uniformly applied to all tribes that have agreements that are substantially similar to this Agreement.

9. § **XII(D)(2)(b)** is amended to read as follows:

- b. In those instances where the Tribe has enacted its sales tax on transactions occurring within Tribal and Trust Lands which is subject to sharing under the terms of the Agreement, the Tribe shall collect the taxes due and shall not later than 45 days after the close of each quarter compile the information received during the quarter and send a check to the State together with a schedule showing the calculation of the amount paid to the State pursuant to § **III(B)(3)** of this Agreement. The Tribe shall pay interest at the statutory rate provided under State law for refunds not paid as of the 45th day following the end of the calendar quarter.

10. § **XVII(B)** is amended to read as follows:

B. Specific Notices

All notices and communication between the State and the Tribe with respect to the following matters shall be sent to:

For the Tribe:

Chairman
Pokagon Band of Potawatomi Indians
58620 Sink Road
Dowagiac, MI 49047

with copy to Tribal General Counsel
Pokagon Band of Potawatomi Indians
P.O. Box 180, 58155 Hwy M-51 South
Dowagiac, MI 49047

For the State:

State Treasurer
Michigan Department of Treasury
Attention: Tribal Liaison
430 West Allegan Street
Lansing, MI 48922

§ I(C) – State Law Amendments. Notices provided for under § I(C) may be delivered electronically.

§ I(E)(4)– Protocol for exchange, retention, and destruction of taxpayer information.

§ I(F) – Annual Summit.

§ I(G) – Sovereign Immunity, all matters. All notices provided for under § I(G) shall be by registered or certified mail with return receipt.

§ II(K) – Relating to status of lands as TTL.

§ VIII – General Administration; all lists to be sent to State by December 15 of each year.

§X – Administration: Motor Fuel; all matters except refund requests.

§ XI –Administration: Tobacco Products; all matters except refund requests.

§ XII –Administration: Sales Tax and Use Tax; all matters except refund requests.

§ XIII – Enforcement; all matters except notice to Tribal police or public safety, written statements under § XIII(C)(4)(b)(ii), and notice of audit to Tribal Members or Tribal Entities.

§ XIV –Dispute Resolution, all matters. All notices provided for under § XIV shall be by registered or certified mail with return receipt.

§ XV – Termination, all matters. All notices provided for under § XV shall be by registered or certified mail with return receipt.

Except as amended by this First Amendment to the Tax Agreement, the terms of the Tax Agreement remain in full force and effect.

STATE OF MICHIGAN

**POKAGON BAND OF POTAWATOMI
INDIANS**

By: _____
Robert J. Kleine
Michigan State Treasurer
First Floor Treasury Building
Lansing, MI 48922
Date: _____

By: _____
John Miller, Chairman
58620 Sink Road
Dowagiac, MI 49047
Date: _____

By: _____
Judy Winchester
Tribal Council Secretary
Pokagon Band of Potawatomi Indians
Date: _____