THIRD AMENDMENT TO THE TAX AGREEMENT BETWEEN THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI AND THE STATE OF MICHIGAN

This Third Amendment to the Tax Agreement between the Nottawaseppi Huron band of the Potawatomi and the State of Michigan is executed on the date(s) indicated below and shall be effective as of January 1, 2012.

Recitals:

On the 20th day of December, 2002, the Nottawaseppi Huron Band of the Potawatomi and the State of Michigan entered into a Tax Agreement which was implemented on the 1st day of July, 2007.

§ 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.

On the 20th day of August, 2007, the Nottawaseppi Huron Band of the Potawatomi and the State of Michigan, in accordance with § XVIII, entered into a First Amendment to the Tax Agreement which was effective as of the 1st day of September, 2007.

On the 31st day of March, 2008, the Nottawaseppi Huron Band of the Potawatomi and the State of Michigan, in accordance with § XVIII, entered into a Second Amendment to the Tax Agreement which was effective as of the 1st day of April, 2008.

Now, 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. With regards to **§ iii(a)(2)(c)** only, a Resident Tribal Member minor, licensed to drive a motor vehicle in the state of Michigan, shall qualify for a 50 percent exemption on purchases that are at least 50 percent made by the Resident Tribal Member and exclusively titled in the Resident Tribal Member's and the Resident Tribal Member's non-Resident Tribal Member parent's name. 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. **§IV** is amended to read as follows:

IV. Income Tax

A. Part 1 (person other than a corporation as defined under part 1 Section 51(8)(A) of Act No. 38 of the public acts of 2011)

1. Non Business Income

Resident Tribal Members are exempt from State income tax on all Non Business income including but not limited to:

a. All income derived from wages are exempt whether the wages are earned within the Agreement Area or outside of the Agreement Area;

b. All interest and passive dividends are exempt;

c. All rents and royalties derived from real property located within the Agreement Area are exempt;

d. All rents and royalties derived from tangible personal property, to the extent the personal property is utilized within the Agreement Area, are exempt;

e. Capital gains from the sale or exchange of real property located within the Agreement Area are exempt;

f. Capital gains from the sale or exchange of tangible personal property which is located within the Agreement Area at the time of sale are exempt;

g. Capital gains from the sale or exchange of intangible personal property are exempt;

h. All pension income and benefits including, but not limited to, 401(k), IRA, defined contribution plan, and defined benefit plan payments are exempt;

i. All per capita payments by the Tribe to Resident Tribal Members are exempt without regard to the source of payment; and

j. All gaming winnings are exempt.

2. Business Income

Resident Tribal Members are exempt from the State income tax on business income as follows:

Business income shall be apportioned in the manner provided in the State Income Tax Act and, with the exception of transportation services, shall be by application of the sales factors. In arriving at the portion to be taxed, the numerators provided in that sections shall include sales in the State and shall exclude sales which are outside of the State or within the Tribal and Trust Lands. The denominator shall consist of all sales everywhere. Business income includes income derived from a flow through entity. Transportation services shall be based on revenue miles as described under Section 132 of Act No. 38 of the public acts of 2011 except that revenue miles in Michigan shall exclude those within tribal and trust lands.

3. Treaty Fishing

All income derived from Treaty Fishing is exempt from the State income tax to the extent excluded from federal income.

4. Spouses

Spouses who are not Resident Tribal Members are subject to the State income tax.

B. Part 2 (Corporations)

1. For purposes of application of the tax enacted under part 2 of Act No. 38 of the public acts of 2011 (Corporate Income Tax or CIT) only, the following definitions shall apply:

A. "Tribe (CIT)" means any Tribe that has entered into a tax agreement with the State that is substantially similar to this Agreement.

B. "Expanded Tribal Agreement Area" means the lands within the combined Agreement Areas of each Tribe (CIT).

C. "Tribal Member (CIT)" means an individual who is an enrolled member of a Tribe (CIT).

D. "Resident Tribal Member (CIT)" means a Tribal Member (CIT) whose principal place of residence is located within his or her Tribe's Agreement Area.

E. "Tribal Entity (CIT)" means an entity other than a single Tribe (CIT) acting alone or single Resident Tribal Member (CIT) acting alone, that is wholly comprised of any combination of the Tribe (CIT) and Resident Tribal Members (CIT), or is wholly owned by Resident Tribal Members (CIT).

2. The Corporate Income Tax (CIT) exemptions provided by this Agreement will be applied without regard to the law under which an entity is organized. Publicly traded entities shall be subject to the CIT without regard to Tribe (CIT) or Tribal Member (CIT) ownership and without regard to the Expanded Tribal Agreement Area.

3. Entities taxable under the CIT in which the ownership interests are entirely comprised of one or more Tribes (CIT), Tribal Members (CIT) or Tribal Entities (CIT) that engage in business activity within the State will apportion their tax base by application of the statutory sales factor to determine the portion of the tax base attributable, if any, to the State but outside the Expanded Tribal Agreement Area. The portion of the tax base attributable to the Expanded Tribal Agreement Area will be exempt from the CIT.

4. Entities taxable under the CIT which are not wholly owned by any combination of Tribes (CIT), Tribal Members (CIT) or Tribal Entities (CIT) will apportion their tax base by application of the statutory sales factor to determine the portion of the tax base attributable to the State and to the Expanded Tribal Agreement Area. The portion of the tax base attributable to the Expanded Tribal Agreement Area which is equal to the percentage of ownership interests held in combination of Tribes (CIT), Tribal Members (CIT) or Tribal Entities (CIT) will be exempt. The portion of the tax base attributable to non Tribes (CIT), Non Tribal Members (CIT) or Non Tribal Entities (CIT) is subject to the CIT for activity within the State both within and outside of the Expanded Tribal Agreement Area. In calculating the State sales factor of the apportionment formula the numerator shall only exclude sales that are destined to:

A. The Tribe (CIT);

B. Resident Tribal Members (CIT); and
C. Sales shipped to destinations outside of the State.

C. Withholding and Reporting

1. Tribal, Tribal Member, and Tribal Entity employers located within the Agreement Area will withhold and remit to the State income tax described under subsection A of this section, from all employees who are not Resident Tribal Members.

2. Where the tribe, tribal members, and tribal entities disburse pension or annuity payments for those who are not resident tribal members they will withhold on the taxable part of the payments as described under Section 703(1) of Act No. 38 of the public acts of 2011.

3. Flow through entities wholly or partially owned by the tribe, tribal members, or tribal entities, will withhold a tax on the distributive share of taxable income of each nonresident member of the flow through entity who is an individual as described under Section 703(3) of Act No. 38 of the Public Acts of 2011.

4. Flow through entities wholly or partially owned by the tribe, tribal members, or tribal entities, with more than $200,000 of allocated or apportioned business income will withhold on the distributive share of the business income of each member as described under Section 703(4) and (5) of Act No. 38 of the Public Acts of 2011.

5. Eligible production companies wholly or partially owned by the tribe, tribal members, or tribal entities shall withhold as described under Section 703(9) of Act No. 38 of the Public Acts of 2011.

6. The Tribe will report to the State gaming winnings in the same manner as reported to the federal government.

7. The Tribe's casino operators and/or entertainment facility operators will report gross receipts and contact information regarding each professional performer in a manner consistent with reporting practices required by the State for non-Tribal casino operators and/or entertainment facilities.

3. **§ IX** is amended to read as follows:

IX. ADMINISTRATION: INCOME TAX, SINGLE BUSINESS TAX, AND MICHIGAN BUSINESS TAX

A. Income Tax

1. Part 1 – Individual (§IV(A))

All Resident Tribal Members shall file a State individual income tax return if they owe a Michigan individual income tax, are due a refund, or their federal adjusted gross income exceeds their exemption allowance. (See MCL 206.30 (2) and (3)). In addition a Resident Tribal Member shall file a return in all instances where a federal return is required in order to eliminate unnecessary correspondence with the Department. A taxpayer who is entitled to exemption based on this Agreement shall complete a Schedule in accordance with its instructions whereat the subtractions will be taken. These subtractions shall then be carried over to the MI 1040.

2. Part 2 – Corporate (§IV(B))

A taxpayer claiming entitlement to exemptions provided in this agreement shall prepare and file the Michigan Corporate Income Tax (CIT) annual return form 4891. A taxpayer claiming CIT exemption under this Agreement shall complete a separate schedule which will guide the taxpayer through the special apportionment calculations to arrive at the non-exempt sales numbers which will then be carried over to Form 4891 for use in completing the return.

B. Withholding

Withholding is to be done in accordance with regulations/instructions applicable to all persons required to withhold.

C. Single Business Tax

A taxpayer claiming entitlement to exemptions provided in this Agreement shall prepare and file the SBT annual return form C-8000. The C-8000 shall have a box on its face indicating that the taxpayer is claiming exemptions under this Agreement. A taxpayer who checks that box will be directed to complete a separate schedule which will guide the taxpayer through the special apportionment calculations to arrive at the non-exempt property, payroll and sales numbers which will then be carried over to the C-8000H for use in completing the return.

D. Michigan Business Tax

A taxpayer claiming entitlement to exemptions provided in this Agreement shall prepare and file the MBT annual return form 4567. A taxpayer claiming MBT exemption under this Agreement shall complete a separate schedule which will guide the taxpayer through the special apportionment calculations to arrive at the non-exempt sales numbers which will then be carried over to form 4567 for use in completing the return.

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

STATE OF MICHIGAN

By: _____
Andy Dillon
Michigan State Treasurer
First Floor Treasury Building
Lansing, MI 48922
Date: 1/14/13

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI

By: _____
Homer A. Mandoka, Chairperson
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Date: December 6, 2012