

Approved: 1-25-93  
Date

## MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Clyde Graeber at 1:30 p.m. on January 20, 1993 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Mary Galligan, Legislative Research Department  
Lynne Holt, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes  
June Evans, Committee Secretary

Conferees appearing before the committee: Jim Ebrhardt, Commander, Disabled American Veterans  
Jim Coder, Assistant Attorney General  
Mark A. Burghart, General Counsel, Kansas Department of Revenue  
Robert L. Pirtle, Washington State  
Lance Burr, Attorney General, Kickapoo Nation

Others attending: See attached list

The Chairman called the meeting to order and distributed the Committee Rules to the House Federal and State Affairs Committee.

Jim Ebrhardt, Commander, Disabled American Veterans, requested a bill be introduced to bring Kansas law in regard disabled preference into compliance with federal law.

Representative Smith moved and Representative Gilbert seconded to accept the request as a committee bill. The motion carried.

Jim Coder, Assistant Attorney General, representing the Fire Marshall, requested three committee bills as passed by the Senate during the last session.

Representative Empson moved and Representative Cornfield seconded to accept the requests for committee bills. The motion carried.

The Chairman opened the hearing on HB 2002. This bill deals with Indian Tax Compacts.

Lynne Holt, Legislative Research Department, gave a staff briefing stating that a Special Committee on Assessment and Taxation was directed to study and recommend appropriate codification of tax compacts negotiated by the Indian nations and the Department of Revenue. (See Attachment #1)

Mark A. Burghart, General Counsel, Kansas Department of Revenue, appeared in support of HB 2002 stating the bill is a recommendation of the 1992 Special Committee on Assessment and Taxation. It authorizes the Department of Revenue to negotiate and enter into tax compact with the Indian Nations of Kansas. It also sets forth a procedure whereby the Kansas Legislature may disapprove such compacts. (See Attachment #2)

Mr. Burghart further stated that on July 12, 1991, the Attorney General filed an action for mandamus, declaratory judgment and injunctive relief against the Governor and the Department of Revenue to require the Department to enforce the state's sales, cigarette and motor fuel tax provisions on the Indian Reservations (Stephan v. Finney et al., 91 CV 954).

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 526-S  
Statehouse, at 1:30 p.m. on January 20, 1993.

It was questioned if diesel fuel could be purchased on the reservation by a non Indian and tax paid to the tribe and no tax paid to the state?

Mr. Burghart stated that was correct.

Robert L. Pirtle, Attorney, State of Washington, representing the Indian Tribes stated he had been working with Indian Tribes in Washington state for the past 29 years. He further stated the tribes are legitimate sovereign power and have the power to tax on their reservation. There is 80% unemployment, health problems, high teen-age suicide rate and these taxes are used by the tribe to help their people and adoption of this legislation is urged to help the economy of these tribes. (See Attachment #3)

Section 2 of the bill was questioned as to its necessity and abolishment of Section 2 suggested. Mr. Burghart was asked what do you think of this suggestion?

Mr. Burghart replied, there was a bill last year that was basically identical to this bill without Section 2. Section 2 was added by the summer interim committee.

The Chairman stated, the way this is worded it takes action of the legislature to disapprove if all parties are operating very honorably the legislature would have no reason to act and simply a safeguard that it is in there. HB 2737 was introduced last year which was brought forth by the Revenue Department. What is the rationale behind the change? Is it the tax committee that inserted Section 2?

Mr. Burghart replied that the Interim Committee added Section 2.

The Chairman asked Mr. Burghart if he would be comfortable without Section 2?

Mr. Burghart replied that he would be.

A member asked what the criteria was for arriving at a tax rate on tribal land?

The tribes set the proposed tax rates.

A member asked if it siphoned off a lot of tax?

Mr. Burghart stated it was an economic development package for the Indian Tribes.

The Chairman asked if there has been a projection of how much revenue this would bring in for the Tribes?

Mr. Burghart stated he was not aware of any. The Tribes do fund their own people and they need the resources for roads, health programs, etc., just as the state of Kansas needs taxes.

Lance Burr, Attorney General for the Indian Nations, stated the tribes needs funds to run their operations. In the 1980s Kansas was charging taxes on Indian land and it was not legal and therefore the tribes started to fight it. The tribes are only exercising their sovereign right. The tribes are highly regulated.

Mr. Burr stated the tribal counsel prefers HB 2735 from last year as it is a cleaner bill.

A member asked what Mr. Burr's position was on HB 2202, do you support the bill without Section 2 which is the same as HB 2735?

Mr. Burr stated, yes.

The hearing was closed on HB 2202 and final action will be taken on Tuesday, January 26.

The Chairman stated that last year the bill was introduced that dealt with the National Collegiate Athletic Association and their sanctions and rules. At that time by agreement the NCAA was to meet, review the alleged problems, develop solutions and get back to the legislature by January 15 and report as to the progress being made on the matters that had been set out against them. They wrote the Chairman and asked that we grant them an extension and the Chairman announced he would like to appoint a sub-committee to look at that and report back to the whole committee. Two members of our committee served last year and the Chairman would like for them to act again. They are: Representatives Don Smith and Robert Krehbiel and will add Representative Lisa Benlon. The sub-committee should meet, review the information and report back to this committee.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 526-S  
Statehouse, at 1:30 p.m. on January 20, 1993.

The meeting adjourned at 3:00 PM.

Date:

## FEDERAL and STATE AFFAIRS COMMITTEE

[illegible]

---

## PROPOSAL NO. 3 -- INDIAN TAX COMPACTS

---

Proposal No. 3 directed the Special Committee on Assessment and Taxation to study and recommend appropriate codification of tax compacts negotiated by the Indian nations and the Department of Revenue.

### BACKGROUND

---

On February 26, 1991, the U.S. Supreme Court issued its decision in *Oklahoma Tax Commission v. Citizen Band of Potawatomie Indian Tribe of Oklahoma*. In that case, the Court held that under the Oklahoma allotment system, tribal smokeshops were required to collect and remit the state cigarette sales tax on sales to nontribal members.

On July 12, 1991, the Attorney General of Kansas, Bob Stephan, filed in Shawnee County District Court an action for mandamus, declaratory judgment, and injunctive relief against the Governor and the Kansas Department of Revenue to enforce the state's sales, cigarette, and motor fuel tax provisions on Indian reservations. Subsequently, six bills were referred to the 1992 Legislature concerning Indian tax collection.

H.B. 2735 would have relinquished any jurisdiction the state may have to levy and collect taxes from merchants on Indian reservations if the merchants are authorized by the tribe to do business on the reservation and if the merchants are paying tribal taxes in accordance with a compact between the tribe and the State of Kansas. This bill was referred to the House Taxation Committee, where it died.

S.B. 560 would have directed the Secretary of Revenue to collect state taxes on products that are sold to nontribal members on Indian reservations in Kansas. The Secretary would have been subject to penalties for noncompliance and the Attorney General would have been authorized to enforce collection of taxes. This bill was referred to the Senate Assessment and Taxation Committee, where it died.

The remaining four bills -- S.B. 784, S.B. 785, S.B. 786, and S.B. 787 -- would have codified compacts between the Governor and each of four tribes (Sac and Fox, Kickapoo, Prairie Band of Potawatomie Indians, and the Iowa Tribe). Annual taxes on motor fuels, tobacco products, and general sales of cigarettes were projected to total over \$1.7 million in aggregate for the four tribes. These bills were referred to the Senate Assessment and Taxation Committee, which decided to recommend the issue of Indian tax compacts to an interim study.

### COMMITTEE ACTIVITIES

In July, 1992, the Committee commenced its review of Proposal No. 3 with presentations from: the General Counsel, Department of Revenue; the Attorney General, Kickapoo Nation; and the Tribal Chairman of the Iowa Tribe. The Chairperson of the Sac and Fox Nation and the Chairperson of the Prairie Band Potawatomie Nation furnished written testimony.

At the July meeting, the General Counsel, Department of Revenue, explained the underlying issues of the *Potawatomie* case decided by the U.S. Supreme Court. (At the time of this meeting, the Kansas court had not yet determined a course of action for the imposition of sales taxes on Indian reservations in Kansas.) The General Counsel noted that one of the alternatives identified by the Supreme Court to address the Indian tax issue was the negotiation of tribal tax compacts. Consequently, the Governor began negotiation of such compacts with the four tribes immediately after the Supreme Court issued its 1991 ruling. The General Counsel informed the Committee that legislation on authorization for the compacts (in accordance with H.B. 2735) was considered

FLSA  
1-20-93  
Atch #1

necessary because the power to tax is a legislative function. According to the General Counsel, each of the compacts proposed by the Governor would impose and collect a certain level of tribal taxes. The particular rates for each compact were determined in part by the geographical location of the reservations. The compact provisions are comparable to those used in other states, such as Nevada and Mississippi. The compacts contain a procedure for verification of tax collection; they would also remain in effect for at least five years. The Committee was informed that all the compacts were signed and awaiting legislative action.

Testimony from the Attorney General, Kickapoo Nation, supported the language in H.B. 2735 (described above). The Tribal Chairman of the Iowa Tribe testified in support of the compact (provisions of S.B. 787) negotiated between the Tribe and the Governor.

At a subsequent meeting (September, 1992) addressing Proposal No. 3, the General Counsel, Department of Revenue, summarized the order of the Shawnee County District Court, which was issued on August 21, 1992. In that order, Judge Fred S. Jackson ruled that the Governor was authorized to negotiate tax compacts with the Indian Nations. The Kansas Supreme Court decision on Indian gaming (July 10, 1992) was cited as authority for the Governor to negotiate compacts with the Indians. Further proceedings were stayed in the litigation until the 1993 Legislature adjourns *sine die*. The order notes that the Legislature's approval of the tax compacts would settle the issue of state taxation of Indian reservation transactions.

The Committee revisited Proposal No. 3 in October. Attorney General Stephan recommended for Committee consideration five cigarette compacts that the State of Oklahoma entered into with the Cherokee, Chickasaw, Seminole, Choctaw, and Quapaw tribes. With the exception of the compact with the Quapaw Tribe concluded in August, 1992, all the other compacts were signed in June, 1992. Each compact requires the tribe or its licensees to make a payment to the State of Oklahoma in lieu of state tobacco and excise sales taxes in the amount of 25 percent of all applicable excise taxes and all cigarette and tobacco products purchased by the tribe or its licensees for resale on the reservation, without reference to membership or nonmembership status of the purchasers. Each agreement has a duration of ten years.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends a bill authorizing the Department of Revenue on behalf of the State of Kansas to negotiate and enter into compacts with the various Indian tribes of Kansas concerning the collection of excise taxes, subject to disapproval by the Legislature. The bill also would relinquish taxing jurisdiction over the tribes with respect to those excise taxes. The Committee notes that the opportunity for public hearings would be part of the legislative process.

Respectfully submitted,

November 10, 1992

Sen. Dan Thiessen, Chairperson  
Special Committee on Assessment  
and Taxation

Rep. Joan Wagnon, Vice-Chairperson  
Rep. Betty Jo Charlton  
Rep. Wanda Fuller  
Rep. Robert Krehbiel  
Rep. Bruce Larkin  
Rep. Keith Roe  
Rep. Eugene Shore  
Rep. Vincent Snowbarger  
Rep. Steve Wiard

Sen. Norma Daniels  
Sen. Sheila Frahm  
Sen. Leroy Hayden  
Sen. Audrey Langworthy  
Sen. Phil Martin  
Sen. Don Sallee

STATE OF KANSAS

Mark A. Burghart, General Counsel  
Robert B. Docking State Office Building  
915 S.W. Harrison St.  
Topeka, Kansas 66612-1588



(913) 296-2381  
FAX (913) 296-7928

Department of Revenue  
*Legal Services Bureau*

**MEMORANDUM**

To: The Honorable Clyde Graeber, Chairman  
House Committee on Federal and State Affairs

From: Mark A. Burghart, General Counsel  
Kansas Department of Revenue

Date: January 20, 1993

Subject: 1993 H.B. 2002 - Negotiation of Indian Tax Compacts

---

Thank you for the opportunity to appear in support of H.B. 2002. The bill is a recommendation of the 1992 Special Committee on Assessment and Taxation. It authorizes the Department of Revenue to negotiate and enter into tax compacts with the four Indian Nations in Kansas. It also sets forth a procedure whereby the Kansas Legislature may disapprove such compacts.

The issues associated with the authority of the state to tax transactions occurring on federally-recognized Indian reservations are complex and longstanding. On February 26, 1991, the United States Supreme Court issued its decision in Oklahoma Tax Commission v. Citizen Band of Potawatomi Indian Tribe of Oklahoma, 498 U.S. \_\_\_ (1991). From that date forward the issue of state taxation on federally recognized reservations has been a topic of considerable public interest insofar as Northeast Kansas is concerned. In the Potawatomi case, the Supreme Court held that under the Oklahoma allotment system tribal smokeshops were subject to the collect and remit requirements of the Oklahoma cigarette tax provisions on sales to non-tribal members. Notwithstanding this holding, the Court recognized that states would have considerable difficulty enforcing state tax provisions in Indian Country.

On July 12, 1991, the Attorney General filed an action for mandamus, declaratory judgment and injunctive relief against the Governor and the Department of Revenue to require the Department to enforce the state's sales, cigarette and motor fuel tax provisions on the Indian Reservations ( Stephan v. Finney et al., 91 CV 954 ). It has always been Governor Finney's position that the Indian tax issue should be resolved through compact negotiation rather than litigation. On August 21, 1992, Shawnee Court District Court Judge Fred S. Jackson ruled that the Governor was authorized to negotiate tax compacts with the Indian Nations.

Ex 5A  
1-20-93  
Atch #2

Judge Jackson cited the recent Kansas Supreme Court decision on Indian gaming as authority for the Governor to negotiate tax compacts with the tribes. Further proceedings in the litigation were stayed until the 1993 Legislature adjourns *sine die*. The stay was necessary to provide the Legislature the opportunity to consider and approve the compacts previously negotiated with the Kansas Nations.

No specific determination has ever been made by a Kansas court whether the rationale underlying the Potawatomi decision also would apply to the particular reservations in Kansas. Since the treaties with the Kansas Nations are unique, there is some question whether the Organic Act ( Sec. 19 ) and the Kansas Act for Admission ( Sec. 1 ) except reservation land from the state's taxing jurisdiction. The Kansas Board of Tax Appeals has recently determined that the state's ad valorem property tax provisions do not apply on the Potawatomi Reservation. ( See In The Matter of the Application of Roger Kaul for Exemption from Ad Valorem Taxes in Jackson County, Docket No. 91-6432 TX, October 5, 1992 )

One of the alternatives identified by the United States Supreme Court to address the Indian tax issue is the negotiation of tribal tax compacts. The Office of the Governor commenced the negotiation of such compacts with the Kansas Nations immediately after the Supreme Court issued its ruling in the Potawatomi case. Legislation was subsequently requested to authorize the tax compacts. (1992 H.B. 2735). Legislation was considered necessary because it is clear that the power to tax is a legislative function. Union Pacific Railroad Co. v. State Tax Comm., 145 Kan. 715, 728, 68 P.2d 1 (1937). The Indian tax issue was subsequently referred to the 1992 Special Committee on Assessment and Taxation for summer study. The Special Committee then recommended the introduction of H.B. 2002.

### **RATIONALE FOR COMPACTS**

The federal government is pressuring tribes to become more self-sufficient and less reliant on federal assistance. Self-sufficiency requires the ability to raise revenue through the form of tribal taxes. Although tribes have the authority to impose taxes upon activities that occur on their reservation, the ability to raise revenue is severely limited because of the lack of economic activity on the reservations. This problem is further compounded if reservation taxpayers are faced with paying more taxes than taxpayers off the reservation - a tax to the state and a tax to the tribe. Under the proposed compacts the state forgoes its share under certain conditions.

The Tribe, the state and local government and the taxpayer all lose because of the lack of a coordinated tax policy on Indian reservations. Each tribe is unique and the compacts reflect this fact: three of the four Kansas Nations are located such that direct competition with off-reservation retailers is limited. The tax compacts are designed to encourage economic activity on the reservations much in the same manner that enterprise zone benefits encourage economic activity in particular geographic areas of the state off the reservation. This compact approach is similar to that utilized in the states of Florida, Mississippi and Louisiana.

Ex 5A  
1-20-93  
22



### GENERAL COMPACT PROVISIONS

Each of the compacts requires the respective tribes to impose and collect a certain level of tribal taxes. The particular rates were determined in part by the geographic location of the reservations. For example, because the Potawatomi Reservation is relatively close to certain metropolitan areas, that particular compact requires the tribe to impose a tax which is at least 60% of the comparable state tax. Finally, the compacts also provide a procedure for verifying that a tribal tax is in fact being collected. The compacts generally are limited to a term of five years, although they may be extended by agreement of the parties.

### POTAWATOMI

<u>TAX TYPE</u>	<u>TRIBAL RATE</u>	<u>STATE RATE</u>
Motor Fuel	.11/gal	.18/gal
Special Fuel(Diesel)	.120/gal.	.20/gal
Cigarette	.144/pkg.	.24/pkg.
Sales	2.94%	4.9%
Tobacco Products	6%	10%

\*Tribe would also make a \$16,000 annual contribution to Banner Creek Reservoir Project.

### IOWA

<u>TAX TYPE</u>	<u>TRIBAL RATE</u>	<u>STATE RATE</u>
Motor Fuel	.05/gal	.18/gal
Special Fuel(Diesel)	.05/gal.	.20/gal
Cigarette	.04/pkg.	.24/pkg.
Sales	2%	4.9%
New Construction Materials	4%	4.9%

### KICKAPOO

<u>TAX TYPE</u>	<u>TRIBAL RATE</u>	<u>STATE RATE</u>
Motor Fuel	.06/gal	.18/gal
Special Fuel(Diesel)	.06/gal.	.20/gal
Cigarette	.10/pkg.	.24/pkg.
Sales	2%	4.9%

The Honorable Clyde Craeber  
January 20, 1993  
Page 4

**SAC AND FOX**

<u>TAX TYPE</u>	<u>TRIBAL RATE</u>	<u>STATE RATE</u>
Motor Fuel	.04/gal	.18/gal
Special Fuel(Diesel)	.04/gal.	.20/gal
Cigarette	.07/pkg.	.24/pkg.
Sales	2%	4.9%
Construction Projects	3.5%	4.9%

**RECOMMENDATION**

On behalf of the Department I urge you to favorably consider H.B. 2002 or comparable legislation which would authorize the Department to negotiate and enter into tax compacts with the four Indian Nations in Kansas.

I would be happy to respond to any questions you might have.

F45A  
1-20-93  
2-4

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF KANSAS

AUG 26 3 05 PM '92

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION TWO

STATE OF KANSAS, ex rel., )  
ROBERT T. STEPHAN, Attorney )  
General, State of Kansas, Plaintiff, )  
vs. )  
THE HONORABLE JOAN FINNEY, )  
Governor of the )  
State of Kansas, et al., Defendants. )

Case No. 91 CV 954

ORDER

NOW on this 21st day of August, 1992, comes on for consideration the pretrial hearing in the above matter. The Plaintiff appears by Terry D. Hamblin. The Defendants appear by David Prager, III.

THE COURT after reviewing the file, hearing the arguments of counsel, and being fully and duly advised in the premises finds and orders as follows:

1. The Governor has negotiated tax compacts with the Potawatomi, the Kickapoo, the Iowa, and the Sac and Fox Indian nations (the "Indian Nations"). These compacts and the related tax issues have been referred for study to a Legislative Interim Committee during the summer of 1992. It is anticipated that approval of the compacts by the Kansas Legislature will be considered during the 1993 Legislative Session.

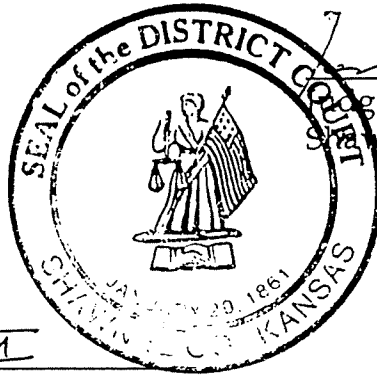
2. The Governor has the authority and discretion to negotiate compacts with the Indian Nations and to seek the Kansas Legislature's approval of them. See State ex re. Stephan v. Finney, Kansas Supreme Court decision dated July 10, 1992, Case No. 67,622, 251 Kan. 559, \_\_\_\_ P.2d \_\_\_\_.

3. The Legislature's approval of the tax compacts in the 1993 session would settle the issue of state taxation of Indian reservation transactions.

F4 5A  
1-20-93  
2

4. Because the legislative approval of the compacts would likely render this matter moot, these proceedings are hereby stayed pending the action of the 1993 Kansas Legislature and its final (sine die) adjournment. After this date of adjournment, the proceedings in this matter shall then cease to be stayed.

IT IS SO ORDERED.



APPROVED BY:

David Prager, III

David Prager, III, Attorney for Defendants  
Kansas Department of Revenue  
Legal Services Bureau  
915 SW Harrison Street  
Docking State Office Building  
Topeka, Kansas 66612-1588  
(913) 296-2381

STATE OF KANSAS, COUNTY OF SHAWNEE, SS.  
I hereby certify the above and foregoing to be  
a true and correct copy, the original of which  
is filed and entered of record in the court

Dated August 26 1992  
By Rosie McGinnis  
CLERK of the DISTRICT COURT  
DEPUTY

Terry D. Hamblin

Terry D. Hamblin, Attorney for Plaintiff  
Assistant Attorney General  
Kansas Judicial Center, 2nd Floor  
Topeka, Kansas 66612  
(913) 296-2215

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE APPLICATION OF  
KAUL, ROGER FOR EXEMPTION FROM  
AD VALOREM TAXES IN JACKSON COUNTY,  
KANSAS.

Docket No. 91-6432-TX

ORDER ON RECONSIDERATION

Now, on this 5th day of October, 1992, the above captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

The Board, being duly advised in the premises, finds and concludes as follows:

1. The Board has jurisdiction of the subject matter and the parties hereto, an application for exemption having been filed pursuant to K.S.A. 79-213 and a timely Motion for Reconsideration having been filed pursuant to K.S.A. 74-2426.
2. The subject matter of this tax exemption is described as follows:

See Attached Exhibit "A".

3. The subject property is land located in Jackson County, Kansas. In the Board's original Order, certified September 2, 1992, the Board denied the Applicant's request to remove the above described property from the Jackson County tax rolls. The Applicant contended that the above described real estate was not amenable to ad valorem assessment by the State of Kansas or its taxing subdivisions on the grounds that it is part of a reservation set aside to a tribe of American Indians and owned by an enrolled member of a Federally recognized Indian Nation.
4. In the original Order, evidence presented by the Applicant indicated that the subject property is owned in fee simple title by the Applicant. The Board found that the United States Supreme Court decision of County of Yakima et. al. v. Confederated Tribes and Bands of the Yakima Indian Nation, 52 C.C.H. S. Ct. Bull. B565, (January 14, 1992) was controlling. Specifically, the Board found that this decision distinguished between lands held in trust by the United States and lands patented or deeded to tribal members. Finding that the subject property had been patented to individuals, the Board concluded that the Application for exemption should be denied pursuant to the Court's decision in Yakima.

Fx 5A  
1-20-92  
27

5. In Yakima, the United States Supreme Court determined that Yakima County was permitted to impose ad valorem taxation on reservation land patented in fee pursuant to the Indian General Allotment Act, 25 U.S.C.A. § 349. Specifically, the Court stated:

" . . . we have traditionally followed 'a per se rule' in the special area of state taxation on Indian tribes and tribal members. Though the rule has been most often applied to produce categorical prohibition of state taxation when there has been no 'cessation of jurisdiction or other federal legislative permissions', . . . we think it also applies to produce categorical allowance of state taxation when it has been authorized by Congress." Id. at 693.

6. Comes now the Applicant pursuant to a timely filed Motion for Reconsideration. The Applicant submitted that Yakima is improperly applied to the instant matter as the State of Kansas has not followed the proper procedures pursuant to federal law to obtain civil jurisdiction to tax fee land held by Indian persons nor has the Prairie Band of Potawatomi Indian Reservation signified their assent to be included within the territorial limits or jurisdiction of the State of Kansas. In support thereof, the Applicant distinguishes the provisions of the Constitution of the State of Kansas from the same for the State of Washington, the state from which Yakima arose.

7. The Board finds the Applicant's contentions persuasive. Upon further examination, the Board finds that County of Yakima et. al. v. Confederated Tribes and Bands of the Yakima Indian Nation, 52 C.C.H. S. Ct. Bull. B565, (January 14, 1992) applies to removing federal restrictions on taxation in private-owner cases; however, the Board finds that a State must still be able to tax by its own authority. Although such authority was present for the State of Washington, this Board can not find such authority in the laws of the State of Kansas. The Board finds that the enabling act for the State of Kansas specifically excepts Indian lands from being a part of the State. Such language is stated in "An Act for Admission of Kansas into the Union - Preamble, Section 1 entitled Admission; Boundaries; Indian title.":

. . . That nothing contained in the said Constitution respecting the boundary of said state shall be construed to impair the rights of person or property now pertaining to the Indians of said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with such Indian tribe, is not, without the consent of such tribe to be included within the territorial limits or jurisdiction

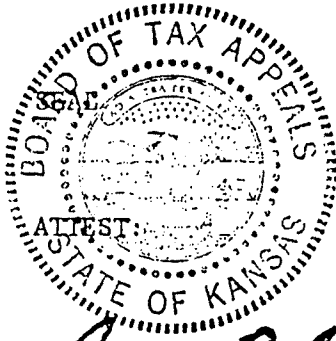
of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the state of Kansas, until said tribe shall signify their assent to the president of the United States to be included within said state . . ."

Based thereon, the Board finds that the Kansas taxing officials cannot exercise jurisdiction over land that specifically constitutes no part of the state of Kansas. K.S.A. 79-101 states that all property in the state shall be subject to taxation. Consequently, the Board concludes that Indian lands are not subject to taxation under the terms of K.S.A. 79-101. Moreover, the Board concludes that further action must be taken by the Kansas Legislature for the state to assert jurisdiction over these lands. Based on the foregoing, we find that our original decision was incorrect and is, hereby, vacated. The Board concludes that the subject property real estate is not subject to the jurisdiction of Kansas taxing authorities and as such may not be subject to the assessment of ad valorem tax.

IT IS THEREFORE, BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS, CONSIDERED AND ORDERED that the decision of the original Order is, hereby, vacated and the application for exemption is dismissed for lack of subject matter jurisdiction. IT IS FURTHER ORDERED that any assessment of this land be removed from the tax rolls.

F-5A  
1-20-93  
2-1

IT IS SO ORDERED.



James P. Davidson  
JAMES P. DAVIDSON,  
SECRETARY

Stephen Adnan Jones  
STEPHEN ADNAN JONES, ATTORNEY

DISAGREE

JACK SHRIVER, CHAIRMAN

Maybelle Mertz  
MAYBELLE MERTZ, MEMBER

MYRA B. GROSS, MEMBER

Fred J. Hirsch  
FRED J. HIRSCH, MEMBER

Lawrence L. Tenopir  
LAWRENCE L. TENOPIR, MEMBER

CERTIFICATION

I, James P. Davidson, Secretary of the Board of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of the order in Docket No. 91-6432-TX was placed in the United States Mail, on this 5th day of October, 1992, addressed to:

Lance W Burr, Attorney at Law  
16 E Thirteenth Street  
Lawrence, KS 66044 ✓

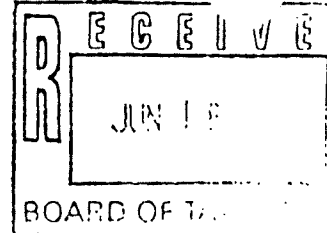
Jackson Co. Appraiser  
Jackson County Courthouse ✓

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.

James P. Davidson  
James P. Davidson, Secretary

F-5A  
1-20-93  
2-10



**Tract One:**

Beginning at a point 1139.40 feet East of the Southwest corner of the North Half of the Southeast Quarter (N1/2 SE1/4) of Section Thirty-three (33), Township Seven (7) South, Range Fifteen (15) East of the Sixth Principal Meridian, thence North, 280 feet, thence East to the West Right of Way Line of U.S. Highway #75, thence Southeasterly along said Highway Right of Way Line 287 feet, more or less, to the South line of the said North Half of the Southeast Quarter, thence West 542.40 feet to the point of beginning subject to an access easement over and across said tract of land.

**Tract Two:**

Beginning at a point on the West Right of Way of U.S. #75 Highway, 436.54 feet West of the Southeast corner of the Southeast Quarter of Section Thirty-three (33), Township Seven (7) South, Range Fifteen (15) East of the Sixth P.M., Jackson County, Kansas, Thence South 89 degrees 13'59" West 1142.60 feet, thence North 329.00 feet, thence East 1010.35 feet, thence South 21 degrees 43'16" East 361.00 feet to the point of beginning, containing 7.67 acres more or less in Jackson County, Kansas.

**EXEMPTION INFORMATION:**

3. Tract One has three buildings (gas station, mini-storage units and a repair shop).

Tract Two has a repair shop.

F & SA  
1-20-93  
2-11

PRAIRIE BAND OF POTAWATOMI INDIANS

PBP 92 - 1 -

TRIBAL COUNCIL

RESOLUTION

WHEREAS, The Tribe is a federally recognized Indian tribe, duly organized pursuant to the Constitution and By-Laws of the Prairie Band of Potawatomi Indians, approved by the Secretary of the Interior on February 19, 1976, as amended thereafter; and

WHEREAS, Both the Tribe and the State recognize the duty of each to negotiate with the other on a government-to-government basis pursuant to our national Indian policy of economic, social and political self-determination for Indian tribes; and

WHEREAS, The Supreme Court has repeatedly recognized the inherent sovereign power of Indian tribes to impose and collect taxes upon businesses operating within their reservation boundaries; and

WHEREAS, It is agreed between the Tribe and the State that it is to their mutual benefit to cooperate in matters relating to taxation; and

WHEREAS, The Legislature of the State of Kansas has authorized tax collection agreements between the State and Indian tribes to eliminate problems which result from tribal and state taxation and regulation of the same event or transaction, and to ensure a reasonable competitive balance of sales by vendors on reservations and those off reservations;

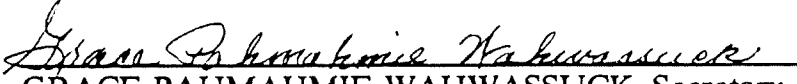
NOW, THEREFORE, BE IT RESOLVED that the Prairie Band Potawatomi Tribal Council hereby approves the Tax Compact Between the Prairie Band of Potawatomi Indians and the State of Kansas as attached hereto.

CERTIFICATION

The foregoing Resolution was duly adopted this date, January 10, 1992, in a special session of the Tribal Council, at which 6 members of the Council were present, constituting a quorum, by a vote of 5 for 0 against, the Chairman abstaining.

  
GEORGE L. WAHQUAHBOSHKUK, Chairman  
Prairie Band Potawatomi Tribal Council

ATTEST:

  
GRACE PAHMAHMIE WAHWASSUCK, Secretary  
Prairie Band Potawatomi Tribal Council

F-5A  
1-20-93  
2-12

**TAX COMPACT BETWEEN  
THE PRAIRIE BAND OF POTAWATOMI INDIANS AND  
THE STATE OF KANSAS**

This Compact is made this 14<sup>th</sup> day of February, 1992, by and between the Prairie Band of Potawatomi Indians (hereinafter the "Tribe") and the State of Kansas (hereinafter the "State"):

Whereas, The Tribe is a federally recognized Indian tribe, duly-organized pursuant to the Constitution and By-Laws of the Prairie Band of Potawatomi Indians, approved by the Secretary of the Interior on February 19, 1976, as amended thereafter, and

Whereas, both the Tribe and the State recognize the duty of each to negotiate with the other on a government-to-government basis pursuant to our national Indian policy of economic, social and political self-determination for Indian tribes; and

Whereas, the Supreme Court has repeatedly recognized the inherent sovereign power of Indian tribes to impose and collect taxes upon businesses operating within their reservation boundaries; and

Whereas, it is agreed between the Tribe and the State that it is to their mutual benefit to cooperate in matters relating to taxation; and

Whereas, the Legislature of the State of Kansas has authorized tax collection agreements between the State and Indian tribes to eliminate problems which result from tribal and state taxation and regulation of the same event or transaction, and to ensure a reasonable competitive balance of sales by vendors on reservations and those off reservations;

Now therefore, the Tribe and the State agree as follows:

1. **Definition of Terms.** As used in this Compact each of the following terms shall have the following meaning, unless the context clearly indicates a different meaning:

(a) **"Reservation"** means all Indian country as defined by 18 U.S.C. § 1151 which is subject to the jurisdiction of the Tribe.

(b) **"Excise tax"** means, respectively, a tax on sales (K.S.A. 79-3601 *et seq.*); a tax on cigarettes (K.S.A. 79-3301 *et seq.*); a tax on motor fuels (K.S.A. 79-3401 *et seq.*); a tax on special fuels (K.S.A. 79-3474 *et seq.*); and a tax on tobacco products (K.S.A. 79-3370 *et seq.*); and any of the foregoing five taxes established by tribal law.

(c) **"Local option tax"** means any tax imposed by a Kansas county upon any transaction occurring on the Reservation or upon any other product or activity upon the Reservation.

F & SA  
1-20-93  
2-13

2. **State Taxes Not to be Imposed.** No state excise tax or local option tax shall be imposed upon any transaction with a non-Indian purchaser which occurs on the Reservation while the Tribe shall have in effect and shall actively impose, collect and enforce upon any such transaction, an excise tax of not less than sixty percent (60%) of the rate of such state excise tax for each such excise tax included within the definition of that term in subsection 1(b) of this Compact.

3. **Proof of Tribal Tax Ordinance.** Such tribal tax shall be deemed to be enacted only when a copy of the tribal tax ordinance, together with a fully executed copy of the enacting resolution of the Tribal Council, is filed with the Tribal Secretary; within ten (10) days thereafter, a copy of the tribal tax ordinance and an executed copy of the enacting resolution of the Tribal Council shall be filed with the Department of Revenue.

4. **Tribal Contribution to Banner Creek Reservoir Project.** The Tribe agrees to pay to Jackson County a tribal contribution to the Banner Reservoir Project in the sum of \$16,000.00 per annum.

5. **Violation of Tribal Tax Law; Enforcement of Penalties for Violations.**

(a) **Notice of Probable Violation to Tribal Council.** Whenever it shall come to the attention of the Director of Revenue that any person is probably conducting business on the Reservation without collecting and remitting tribal taxes as required by this Compact, the Director shall notify the Tribal Council of such violation and of the need for tribal enforcement of tribal penalties for such violation in Tribal Court of such offender either civilly or, in case such person is an enrolled member of any Indian tribe, civilly or criminally or both, as the Tribal Council may determine.

(b) **Enforcement of Penalties for Violations in Tribal Court.** At any time it deems a violation of tribal tax laws to have occurred, or within thirty (30) days of receipt of any such notice of violation from the State, the Tribal Council shall file an action in Tribal Court to enforce tribal penalties against such person either civilly or criminally or both, as the Tribal Council may determine.

(c) **State Inspection of Tribal Tax Records.** In such enforcement action in Tribal Court, all tribal tax records with respect to pertinent transactions on the Reservation involving the person against whom tribal penalties are being enforced shall be made evidence of the Tribal Court and as such shall be open to inspection by the State at any time.

6. **Terms of Relinquishment of State Jurisdiction.** The State hereby relinquishes whatever jurisdiction it may have to impose and collect excise taxes as herein defined from any merchant upon any transaction with a non-Indian purchaser which occurs on the Reservation, subject to the following conditions:

(a) Such merchant shall be authorized to do business on the Reservation pursuant to applicable tribal law;

F-5A  
1-20-93  
2

(b) Such merchant shall pay such corresponding excise taxes to the Tribe; and

(c) Such excise taxes imposed and collected by the Tribe shall be not less than sixty percent (60%) of corresponding excise taxes imposed by the State on any such transaction outside the Reservation.

**7. Term of Compact: Renewal.** The term of this Compact shall be for a term of five (5) years from the effective date hereof; provided, however, that this Compact shall be renewable for additional five (5) year terms by mutual consent of the Tribe and the State as follows:

(a) **Periodic Review.** The provisions of this Compact shall be subject to review at five (5) year intervals dating from the effective date of this Compact. One hundred eighty (180) days prior to the expiration of any such five (5) year term, either party to this Compact may notify the other of provisions which it believes require review or amendment. Such notice shall be in writing and shall be sent by certified mail to the Chairman of the Tribe, the Governor of the State or any other appropriate governmental official of either.

(b) **Notice of Need to Resolve Issues.** Upon receipt of such notice by either party, the parties shall engage in good faith efforts to resolve the issues identified in the notice. The parties shall have the balance of the 180-day period within which to negotiate. The Tribe and State may agree to extend the 180-day period without prejudice to the rights of either party.

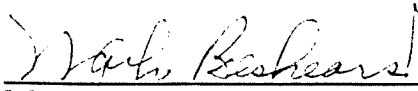
(c) **Termination for Failure to Resolve Issues.** In the event the parties are unable to resolve the issues identified in the notice within the balance of the 180-day period or any extension thereof, upon the expiration of such period, this Compact shall terminate.

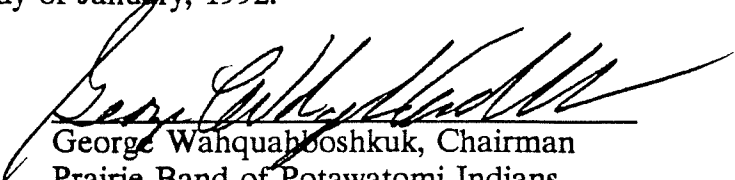
(d) **Termination for Substantial Breach.** Either party may terminate this Compact upon a substantial breach by the other party regardless of any other provision of this Compact. Upon identification of what either party believes to be a substantial breach of the terms of this Compact, such party shall notify the other party in writing, via certified mail, return receipt requested, as to the nature of the substantial breach. The party issuing such notice shall refrain from terminating this Compact until 30 days have elapsed from receipt of such notice by the other party.

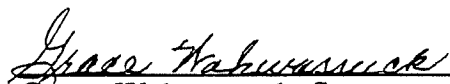
**8. Tribal Sovereign Immunity Not Waived.** Nothing contained in this Compact shall be deemed to waive the sovereign immunity of the Tribe to suit in any court, state or federal.

**9. Effective Date.** This Compact shall be binding and effective only after it has been approved by the Governor of Kansas, and the Tribe by written resolution of the Tribal Council; the last such date shall be the "effective date" hereof.


Witness our hand and seal this 10th day of January, 1992.

  
\_\_\_\_\_  
Mark Beshears, Director  
Department of Revenue

  
\_\_\_\_\_  
George Wahquahboshkuk, Chairman  
Prairie Band of Potawatomi Indians  
Tribal Council

  
\_\_\_\_\_  
Grace Wahwassuck, Secretary

Approved:

  
\_\_\_\_\_  
Joan Finney  
Governor of Kansas

**TAX COMPACT BETWEEN THE SAC AND FOX NATION OF  
MISSOURI IN KANSAS AND NEBRASKA AND THE KANSAS  
DEPARTMENT OF REVENUE**

This Agreement is made and entered into this 30<sup>th</sup> day of January, 1992, by and between the Sac and Fox Nation of Missouri in Kansas and Nebraska (hereinafter referred to as the Sac and Fox Nation) and Department of Revenue of the State of Kansas (hereinafter referred to as the "Department").

WHEREAS, the Sac and Fox Nation exists in a treaty relationship with the United States of America; and

WHEREAS, President Bush on June 14, 1991, issued an American Indian policy statement which reaffirmed the government-to-government relationship between Indian Nation tribes and the Federal Government; and

WHEREAS, Sac and Fox Nation Self-Determination must be based on economic Self-Sufficiency; and

WHEREAS, it is agreed by and between the Sac and Fox Nation and Department that it is mutually beneficial to the parties to cooperate in matters relating to taxation; and

WHEREAS, the Legislature of the State of Kansas has authorized tax collection agreements between the Sac and Fox Nation and Department to eliminate problems which result from tribal and state taxation and regulation of the same event or transaction; and

WHEREAS, the Sac and Fox Nation has enacted tribal government tax laws and is currently collecting taxes on sales of the following: general merchandise cigarettes, tobacco products, motor fuels and special fuels; and

FLSA  
1-20-93  
21

WHEREAS, the Sac and Fox Nation provides programs and services which are funded in part from existing tribal taxes which programs and services include the following:

(1) Operation and maintenance of the "Trad-N-Post" smokeshop benefiting both tribal and non-tribal members.

(2) Operation of a Community and Heritage Center benefiting both tribal and non-tribal members.

(3) Construction and maintenance of roadways and bridges benefiting both tribal and non-tribal members.

(4) Maintenance of an independent and tribally-operated water plant and distribution system benefiting both tribal and non-tribal members.

(5) Operation of the Sac and Fox Nation Community Health Representative Transportation Program benefiting both tribal and non-tribal members.

(6) Operation of a Low Income Housing Program benefiting both tribal and non-tribal members.

(7) Operation of educational scholarship programs for tribal members.

(8) Operation of health care assistance programs for tribal members.

(9) Operation of the Sac and Fox Nation Alcohol and Substance Abuse Program benefiting both tribal and non-tribal members.

WHEREAS, if many of the above-mentioned programs and services were not provided by the Sac and Fox Nation, Kansas would very likely be called upon to fund and provide the programs and services; and

WHEREAS, the geographic location of the Sac and Fox Nation Reservation is such that it is believed that businesses operated on the Reservation do not compete



Tax Compact between Sac and Fox Nation  
and the Kansas Department of Revenue

---

directly with businesses operated by merchants in surrounding areas and communities.

NOW, THEREFORE, the parties agree as follows:

1. Definition of Terms. As used in this agreement, the following terms shall mean the following:

- a. "Sac and Fox Nation" means the Sac and Fox Nation of Missouri in Kansas and Nebraska, an Indian tribe recognized by the Congress of the United States of America.
- b. "Reservation" means those areas subject to tribal jurisdiction ("Indian Country") as defined by 18 U.S.C. Section 1151.
- c. "Excise Tax" means those taxes imposed by the state of Kansas on retail sales (K.S.A. 79-3601 et seq.); cigarettes (K.S.A. 79-3301 et seq.); motor fuels (K.S.A. 79-3401 et seq.); special fuels (K.S.A. 79-3474 et seq.) and tobacco products (K.S.A. 79-3370 et seq.).

2. No excise tax of Kansas or its governmental subdivisions shall be imposed on any transaction occurring on the Sac and Fox Nation Reservation so long as such transaction is subject to a Sac and Fox Nation tax (the "Tribal Tax" imposed thereon which is no less than the following tax amounts:

- a. Motor and Special Fuels \$.04/gal.
- b. Cigarette and Tobacco Products \$.07/pkg.
- c. General Sales 2%
- d. Construction Projects 3.5%

3. A fully executed copy of the enacting resolution of the governing body of the Sac and Fox Nation imposing any such "Tribal Tax" shall be filed with the Department of Revenue.

Tax Compact between Sac and Fox Nation  
and the Kansas Department of Revenue

---

4. The State of Kansas hereby relinquishes any jurisdiction it and its governmental subdivisions may have to levy and collect Excise Taxes on sales by the Nation or by merchants on the Sac and Fox Nation Reservation subject to the following conditions:

- a. Such merchants are authorized by the Sac and Fox Nation to do business on the Reservation;
- b. Such merchants are paying Tribal Taxes to the Sac and Fox Nation.
- c. Such excise taxes imposed by the Sac and Fox Nation shall not be less than those specified in Paragraph 2 of this Compact.

5. The Sac and Fox Nation agrees to diligently pursue collection of any Tribal Tax imposed on merchants transacting business on the Reservation.

6. The Sac and Fox Nation agrees to certify on forms provided by the Department that it is collecting the taxes set forth in Paragraph 2. Upon request by the Department, the Sac and Fox Nation shall provide supporting certification documentation at the Department's offices not more than twice a year.

7. In no event shall this Compact be construed to be a waiver of the sovereignty of the Sac and Fox Nation or a concession that the State of Kansas has any jurisdiction whatsoever on the Sac and Fox Nation Reservation.

9. This Compact shall be null and void and of no further force or effect if the Congress of the United States or the United States Supreme Court declares that states may not impose excise taxes on transactions involving non-Indians occurring on Indian reservations.

10. This Compact shall be for a term of five (5) years from the effective date hereof, and shall continue until either party seeks modification of the Compact. In that event, either party shall notify the other in writing of such modifications.

Tax Compact between Sac and Fox Nation  
and the Kansas Department of Revenue

---

and the parties shall have 180 days to arrive at a mutually agreeable modified compact.

11. This Compact shall be binding and effective only after it has been approved by the Sac and Fox Nation Tribal Council, the Governor, and the Kansas Secretary of Revenue.

Witness our hand and seal this 22 day of January, 1992.

SAC AND FOX NATION TRIBAL COUNCIL

By: Sandra Keo  
Sandra Keo, Chairperson

By: Mary Kay Hayes  
Mary Kay Hayes, Secretary

STATE OF KANSAS

By: Joan Finney  
Joan Finney, Governor

KANSAS DEPARTMENT OF REVENUE

By: Mark Beshears  
Mark Beshears, Secretary

APPROVED:

Lance W. Burr  
Lance W. Burr, Special Counsel  
for Sac and Fox Nation

**TAX COMPACT BETWEEN THE KICKAPOO NATION  
AND THE KANSAS DEPARTMENT OF REVENUE**

This Agreement is made and entered into this 19<sup>th</sup> day of SEPTEMBER, 1991, by and between the Kickapoo Nation and the Department of Revenue of the State of Kansas (hereinafter "Department").

WHEREAS, the Kickapoo Nation exists in a treaty relationship with the United States of America; and

WHEREAS, President Bush on June 14, 1991, issued an American Indian policy statement which reaffirmed the government-to-government relationship between Indian Nation tribes and the Federal Government; and

WHEREAS, Kickapoo Nation Self-Determination must be based on economic Self-Sufficiency; and

WHEREAS, it is agreed by and between the Kickapoo Nation and Department that it is mutually beneficial to the parties to cooperate in matters relating to taxation; and

WHEREAS, the Legislature of the State of Kansas has authorized tax collection agreements between the Kickapoo Nation and Department to eliminate problems which result from tribal and state taxation and regulation of the same event or transaction; and

WHEREAS, the Kickapoo Nation has enacted tribal government tax laws and is currently collecting taxes on sales of the following: general merchandise, cigarettes, tobacco products, motor fuels and special fuels; and

WHEREAS, the Kickapoo Nation provides programs and services which are funded in part from existing tribal taxes which programs and services include the following:

FLSA  
1-20-93  
2-20

Tax Compact between Kickapoo Nation  
and the Kansas Department of Revenue

- (1) Operation and maintenance of a Tribal Judicial Court system benefiting both tribal and non-tribal members.
- (2) Construction and maintenance of roadways and bridges benefiting both tribal and non-tribal members.
- (3) Maintenance of an independent tribally-operated water plant and distribution system benefiting tribal and non-tribal members.
- (4) Operation of a volunteer fire department benefiting tribal and non-tribal residents of the Reservation and surrounding local communities and areas.
- (5) Operation of low income housing benefiting tribal and non-tribal members.
- (6) Operation of the Kickapoo Nation School (K-12) for tribal and non-tribal members.
- (7) Operation of a drug and alcohol half-way house rehabilitation center benefiting tribal and non-tribal members.
- (8) Operation of the Kickapoo Nation Social Services Program benefiting tribal and non-tribal members.

WHEREAS, if many of the above-described programs and services were not provided by the Kickapoo Nation, Kansas would very likely be called upon to fund and provide the services; and

WHEREAS, the geographic location of the Kickapoo Nation Reservation is such that it is believed that businesses operated on the Reservation do not compete directly with businesses operated by merchants in surrounding areas and communities.

NOW, THEREFORE, the parties agree as follows:

1. Definition of Terms. As used in this agreement, the following terms shall mean the following:

Tax Compact between Kickapoo Nation  
and the Kansas Department of Revenue

- a. "Kickapoo Nation" means the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas referred to as the Kickapoo Nation, an Indian Nation Tribe recognized by the Congress of the United States.
- b. "Reservation" means those areas subject to tribal jurisdiction ("Indian Country") as defined by 18 U.S.C. Section 1151.
- c. "Excise Tax" means those taxes imposed by the state of Kansas on retail sales (K.S.A. 79-3601 et seq.); cigarettes (K.S.A. 79-3301 et seq.); motor fuels (K.S.A. 79-3401 et seq.); special fuels (K.S.A. 79-3474 et seq.) and tobacco products (K.S.A. 79-3370 et seq.).

2. No excise tax of Kansas or its governmental subdivisions shall be imposed on any transaction occurring on the Kickapoo Nation Reservation so long as such transaction is subject to a Kickapoo Nation tax (the "Tribal Tax") imposed thereon which is no less than the following tax amounts:

- a. Motor and Special Fuels                      \$.06/gal.
- b. Tobacco Products                                \$.10/pkg.
- c. General Sales                                    2%

3. A fully executed copy of the enacting resolution of the governing body of the Kickapoo Nation imposing any such Tribal Tax shall be filed with the Department of Revenue.

4. The State of Kansas hereby relinquishes the jurisdiction it and its governmental subdivisions may have to levy and collect Excise Taxes on sales by merchants on the Kickapoo Nation Reservation subject to the following conditions:

- a. Such merchants are authorized by the Kickapoo Nation to do business on the Reservation;
- b. Such merchants are paying Tribal Taxes to the Kickapoo Nation;

Tax Compact between Kickapoo Nation  
and the Kansas Department of Revenue

c. Such excise taxes imposed by the Kickapoo Nation shall not be less than those specified in Paragraph 2 of this Compact.

5. The Kickapoo Nation agrees to diligently pursue collection of any Tribal Tax imposed on merchants transacting business on the Reservation.

6. The Kickapoo Nation agrees to certify on forms provided by the Department that it is collecting the taxes set forth in Paragraph 2. Upon request by the Department, the Kickapoo Nation shall provide supporting certification documentation at the Department's offices not more than twice a year.

7. In no event shall this Compact be construed to be a waiver of the sovereignty of the Kickapoo Nation or a concession that the State of Kansas has any jurisdiction whatsoever on the Kickapoo Reservation.

8. This Compact shall be null and void and of no further force or effect if the Congress of the United States or the United States Supreme Court declares that states may not impose excise taxes on transactions involving nonIndians occurring on Indian reservations.

9. This Compact shall be for a term of five (5) years from the effective date hereof; provided, however, this compact shall be renewable for an additional five (5) year term or a longer period of time by mutual consent of the parties.

10. This Compact shall be binding and effective only after it has been approved by the Kickapoo Nation Tribal Council, the Governor, and the Kansas Secretary of Revenue.

FLSA  
1-20-93  
2 25

Tax Compact between Kickapoo Nation  
and the Kansas Department of Revenue

Witness our hand and seal this 19<sup>th</sup> day of SEPTEMBER, 1991.

KICKAPOO NATION TRIBAL COUNCIL

By: [Signature]  
Steve Cadue, Chairman of the Kickapoo  
Nation

By: [Signature]  
Verna R. Simon, Secretary of the  
Kickapoo Nation

APPROVED:

[Signature]  
Joan Finney, Governor  
State of Kansas

[Signature]  
Mark Beshears, Secretary  
Kansas Department of Revenue



**TAX COMPACT BETWEEN THE IOWA TRIBE OF  
KANSAS AND NEBRASKA AND THE KANSAS  
DEPARTMENT OF REVENUE**

This Agreement is made and entered into this 17<sup>th</sup> day of SEPTEMBER, 1991, by and between the Iowa Tribe of Kansas and Nebraska (hereafter "Iowa Tribe") and the Department of Revenue of the State of Kansas (hereinafter "Department").

WHEREAS, it is agreed by and between the Iowa Tribe and Department that it is mutually beneficial to the parties to cooperate in matters relating to taxation; and

WHEREAS, the Legislature of the State of Kansas has authorized tax collection agreements between the Iowa Tribe and Department to eliminate problems which result from tribal and state taxation and regulation of the same event or transaction; and

WHEREAS, the Iowa Tribe reservation comprises approximately sixty (60) square miles surrounded by the states of Kansas, Nebraska and Missouri; and

WHEREAS, the Iowa Tribe has enacted tribal tax laws and is currently collecting taxes on sales of the following: general merchandise, cigarettes, tobacco products, motor fuels and special fuels; and

WHEREAS, the Iowa Tribe provides programs and services which are funded in part from existing tribal taxes which programs and services include the following:

(1) Construction and maintenance of roadways [approximately twenty six (26) miles] and bridges benefiting both tribal and non-tribal members at a cost of \$4.2 million since 1982.

(2) Maintenance of an independent water system benefiting tribal and non-tribal members.

F-5A  
1-20-93  
2

Tax Compact between Iowa Tribe of Kansas and Nebraska  
and the Kansas Department of Revenue

(3) Operation of a fire department benefiting tribal and non-tribal residents of the Reservation and surrounding local communities and areas.

(4) Operation of low income housing benefiting tribal and non-tribal members.

(5) Providing health insurance for employees of businesses operated by the Iowa Tribe.

(6) Providing college scholarships for tribal members graduating from high school [five (5) per year].

(7) Maintaining four (4) cemeteries and providing burial funds for tribal members.

(8) Operating a food distribution program (in lieu of food stamps) for tribal and non-tribal members.

WHEREAS, if many of the above-described programs and services were not provided by the Iowa Tribe, Kansas would very likely be called upon to fund and provide the services; and,

WHEREAS, the geographic location of the Iowa Tribe Reservation is such that it is believed that businesses operated on the Reservation do not compete directly with businesses operated by merchants in surrounding areas and communities.

NOW, THEREFORE, the parties agree as follows:

1. Definition of Terms. As used in this agreement, the following terms shall mean the following:

- a. "Iowa Tribe" means the Iowa Tribe of Kansas and Nebraska, an Indian tribe recognized by the Congress of the United States.
- b. "Reservation" means those areas subject to tribal jurisdiction ("Indian Country") as defined by 18 U.S.C. Section 1151.

F-5A  
1-20-93  
2-28

Tax Compact between Iowa Tribe of Kansas and Nebraska  
and the Kansas Department of Revenue

- c. "Excise Tax" means those taxes imposed by the state of Kansas on retail sales (K.S.A. 79-3601 et seq.); cigarettes (K.S.A. 79-3301 et seq.); motor fuels (K.S.A. 79-3401 et seq); special fuels (K.S.A. 79-3474 et seq) and tobacco products (K.S.A. 79-3370 et seq.).

2. No Kansas excise tax shall be imposed on any transaction occurring on the Iowa Tribe Reservation so long as such transaction is subject to an Iowa Tribe tax (the "Tribal Tax") imposed thereon which is no less than the following tax amounts:

- |                               |          |
|-------------------------------|----------|
| a. Motor and Special Fuels    | .05/gal. |
| b. Tobacco Products           | .04/pkg. |
| c. General Sales              | 2%       |
| d. New Construction Materials | 4%       |

3. A fully executed copy of the enacting resolution of the governing body of the Iowa Tribe imposing any such "Tribal Tax" shall be filed with the Department of Revenue.

4. This Compact does not affect or pertain to any local option tax on sales levied by a county on transactions occurring on the Reservation.

5. The Department of Revenue may review tax collection records of the Iowa Tribe at the Iowa Tribe general offices upon request in writing by the Secretary of the Department of Revenue mailed to the Iowa Tribe at least fourteen (14) days in advance.

6. The State of Kansas hereby relinquishes the jurisdiction it may have to levy and collect Excise Taxes on sales by merchants on the Iowa Tribe Reservation subject to the following conditions:

- a. Such merchants are authorized by the Iowa Tribe to do business on the Reservation;
- b. Such merchants are paying Tribal Taxes to the Iowa Tribe;

Tax Compact between Iowa Tribe of Kansas and Nebraska  
and the Kansas Department of Revenue

c. Such excise taxes imposed by the Iowa Tribe shall not be less than those specified in Paragraph 2 of this Compact.

7. The Iowa Tribe agrees to diligently pursue collection of any Tribal Tax imposed on merchants transacting business on the Reservation.

8. In the event the Department enters into a tax collection or similar compact with any other Indian tribe which agreement is more favorable to that tribe (in the view of the Iowa Tribe) than this Compact, Department will amend this Compact to adopt the "more favorable provisions" if requested to do so by the Iowa Tribe.

9. In no event shall this Compact be construed to be a waiver of the sovereignty of the Iowa Tribe or a concession that the State of Kansas has any jurisdiction whatsoever on the Iowa Reservation.

10. This Compact shall be null and void and of no further force or effect if the Congress of the United States or the United States Supreme Court declares that states may not impose excise taxes on transactions involving nonIndians occurring on Indian reservations.

11. This Compact shall be for a term of five (5) years from the effective date hereof; provided, however, this agreement shall be renewable for an additional five (5) year term by mutual consent of the parties.

12. This Compact shall be binding and effective only after it has been approved by the Iowa Tribe by its Executive Committee, the Governor, the Kansas Secretary of Revenue and the Kansas Legislature.

Witness our hand and seal this 11<sup>th</sup> day of SEPTEMBER, 1911.

Tax Compact between Iowa Tribe of Kansas and Nebraska  
and the Kansas Department of Revenue

"IOWA TRIBE"

IOWA TRIBE OF KANSAS AND NEBRASKA

By: Leon Campbell  
Leon Campbell, Chairman

By: Aquila Tilton  
Aquila Tilton, Secretary

APPROVED:

IOWA TRIBE OF KANSAS AND  
NEBRASKA EXECUTIVE COMMITTEE

By: Leon Campbell  
Leon Campbell

By: John Kreitzer  
John Kreitzer

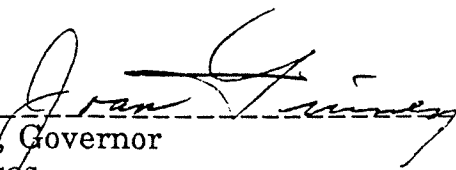
By: Aquila Tilton  
Aquila Tilton

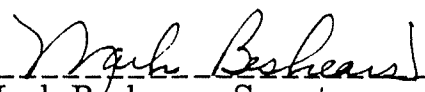
By: George W Ogden  
George Ogden

By: Harvey Frederick  
Harvey Frederick

Tax Compact between Iowa Tribe of Kansas and Nebraska  
and the Kansas Department of Revenue

APPROVED:

  
-----  
Joan Finney, Governor  
State of Kansas

  
-----  
Mark Beshears, Secretary  
Kansas Department of Revenue

## HOUSE BILL No. 2735

By Committee on Taxation

1-21

8 AN ACT relating to taxation; relinquishing state taxing jurisdiction  
9 on certain federally-recognized Indian reservations.

10

11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. The state of Kansas hereby relinquishes any jurisdic-  
13 tion it may have to levy and collect within any federally-recognized  
14 Indian reservation the taxes imposed under K.S.A. 79-3301 *et seq.*,  
15 K.S.A. 79-3370 *et seq.*, K.S.A. 79-3401 *et seq.*, K.S.A. 79-3474 *et*  
16 *seq.* and K.S.A. 79-3601 *et seq.* as such taxes apply to transactions  
17 occurring on the reservation if:

18 (a) The merchants on the reservation are authorized by the tribe  
19 to do business on the reservation;

20 (b) the merchants are paying tribal taxes to the tribe in an amount  
21 determined by the director of taxation and specified in a compact  
22 between the tribe and the state of Kansas.

23 For purposes of this section, reservation means land defined as  
24 Indian country under the provisions of 18 U.S.C. 1151.

25 Sec. 2. This act shall take effect and be in force from and after  
26 its publication in the statute book.

F4 5A  
1-20-93  
2-33

TESTIMONY OF ROBERT L. PIRTLE BEFORE  
THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE  
HOUSE BILL 2002  
JANUARY 20, 1993

I am Robert L. Pirtle of Pirtle, Morisset, Schlosser and Ayer, attorneys for the Prairie Band of Potawatomi Indians and offer this testimony on behalf of the Potawatomi tribe in support of House Bill 2002.

In a long line of decisions the United States Supreme Court has held that American Indian tribes are quasi-sovereign governments, possessing all powers of any sovereign government except those taken away by treaty or federal statute or inconsistent with their dependent status. Of particular relevance to House Bill 2002 are holdings of the Supreme Court that federally recognized Indian tribes have jurisdiction and authority to regulate and tax businesses on their reservations. Indian tribes also possess legal authority to exclude non-Indians from trust land within their reservations.

In *Merrion vs. Jicarilla Apache Tribe*, in 1981, the Supreme Court held that tribal exclusion power and tribal tax power are independent sovereign powers of federally recognized tribes which are consistent with their dependent status. In *Merrion* the Supreme Court held that the power of taxation is a necessary attribute of government and territorial management.

On the reservations of Kansas Indian tribes, like those of Indian tribes nationally, high unemployment rates, lack of business

F & SA  
1-20-93  
1/20/93



opportunities and resulting poverty, despair and hopelessness are endemic. Kansas tribes are attempting to remedy their economic and social problems through institution of tax programs. However, the tax base of Kansas tribes is small and the tribes need to be able to develop tribal tax programs free of any state efforts to tax businesses located on their reservations.

The Potawatomi Tribe would like to emphasize that dual taxation, that is, simultaneous taxation by the State and the Tribe, will destroy the tribal tax base altogether. During the last legislative session, the Potawatomi tribe offered a bill which would provide that the state would not attempt to tax businesses on the reservation, provided that they are regulated by the Tribe and pay tribal taxes instead. Such a provision would allow Kansas tribes essentially to offer "tribal business enterprise zones" to prospective businesses seeking to establish themselves in Kansas. The result would be a minimal diminishment of Kansas tax revenues but a major possibility of enhancement of reservation economies, provision of job opportunities for tribal members and increased economic self-sufficiency of Kansas Indian tribes. These results would necessarily reduce the number of tribal members on welfare as well. HB 2002 is designed to implement this concept in Kansas and is supported by the Potawatomi Tribe.

However, the Tribe urges the Legislature to delete Sec. 2 inasmuch as it discriminates against tribal governments. State

F-5A  
1-20-93  
3

statutes authorize tax compacts between Kansas and other states without any corresponding requirement of legislative approval. Thus Sec. 2 unfairly denigrates the sovereign status of Kansas tribes. Accordingly, the Tribe urges the Legislature to enact House Bill 2002 with the amendment proposed by the Potawatomi Tribe. Upon the effective date of the Act, the Tribe stands ready to enforce the compact it negotiated with the State during 1991 and looks forward to a long, cooperative, government-to-government working relationship both with the State Department of Revenue and the state government as a whole.

FL 5A  
1-20-93  
3-3