

OFFICE OF THE GOVERNOR
BUDGET AND PROGRAM PLANNING
STATE OF MONTANA

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Date: September 30, 2005

TO: Revenue and Transportation Interim Committee

From: *[Handwritten signature]* David Ewer, Chair of Governor's American Indian Nations Council (GAIN)
Anna Whiting-Sorrell, Co-Chair of GAIN
Jim Lynch, Director of Montana Department of Transportation

Subject: State and Blackfeet Nation Gasoline Tax Revenue Sharing Agreement

BACKGROUND

Under 18-11-103 and 15-70-234, MCA, the State is authorized to enter into agreements with tribal governments to collect gasoline license taxes that are lawfully imposed by the State and Tribal government and to share those gasoline revenues collected on reservations. The purpose of revenue sharing agreements is to promote cooperation between the State or a public agency and a sovereign Tribal government in mutually beneficial activities and services. It is the goal of the legislature to prevent the possibility of dual taxation by governments while promoting State, local, and Tribal economic development.

The State and the Blackfeet Nation have had a gasoline tax revenue sharing agreement since 1995. Recently, the Blackfeet Nation asked the State to renegotiate the agreement. The Governor's American Indian Nations (GAIN) Council, in cooperation with the Department of Transportation, renegotiated the revenue sharing agreement.

Section 18-11-103(4)(a), MCA states: "Prior to entering into an agreement on taxation with a tribal government, a public agency shall provide public notice and hold a public meeting on the reservation whose governments is a party to the proposed agreement for the purpose of receiving comments from and providing written and other information to interested persons with respect to the proposed agreement." As required under 18-11-103, MCA, a public hearing on the agreement was held in Browning, Montana on July 28, 2005. The next step in the process is to present the agreement to the Committee for review and comment.

Revenue & Transportation Committee
September 30, 2005

Exhibit #14

PURPOSE OF THIS REPORT

Section 15-70-234, MCA states in part: "...The department of transportation shall report the status of cooperative agreement negotiations to the revenue and transportation interim committee. After negotiations are complete and if the legislature is not in session, the agreement must be presented to the committee for review and comment before the final agreement is submitted to the attorney general for approval pursuant to 18-11-105, MCA." This report presents a summary of the major points of the gasoline agreement to facilitate your review and comments in compliance with the law.

SUMMARY OF THE NEW AGREEMENT

Gasoline Tax

The Tribal and State gasoline tax rate and application are the same. The consumer only pays one tax and sees no distinction between the Tribal and the State tax. Nothing changes for the consumer under this agreement.

Collection of Tax

The State agrees to collect both the Tribal and the State gasoline tax.

Tax Remitted To Tribe

For fiscal year 2006, the Blackfeet Tribe will receive approximately \$1,102,407. This amount is the statewide fiscal year 2005 average gasoline tax collected per capita after refunds, local government distributions, and a one percent administration fee times the enrolled Blackfeet Nation tribal members residing on the reservation. The Blackfeet Tribe gasoline tax revenue is remitted to the Tribe no later than 30 days after the end of each calendar quarter.

Term

The agreement's term is through June 30, 2015 with a ten-year renewal clause.

Effective Date

Section 18-11-105, MCA, states: "**Submission of agreement to attorney general.**

(1) As a condition precedent to an agreement made under this chapter becoming effective, it must have the approval of the attorney general of Montana.

(2) The attorney general shall approve an agreement submitted to him under this chapter unless he finds it is not in proper form or does not meet the requirements set

forth in this chapter or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written statement to the governing bodies of the public agency and tribal government concerned, specifying the reasons for his disapproval

(3) If the attorney general does not disapprove the agreement within 30 days after its submission to him, it shall be considered approved by him.”

Upon consideration of the review and comment by the Revenue and Transportation Interim Committee, the agreement will be submitted to the Attorney General’s Office. If the agreement is acceptable to the Attorney General’s Office, the goal is to have the agreement effective October 1, 2005.

Termination

There are two ways this agreement can be canceled: 1) for cause, with a 30-day written notice by either the Tribe or the State; or 2) without cause, upon 5-years’ written notice by either the Tribe or the State.

Attachment – Comparison of the current Agreement to the Proposed Agreement

Attached is a summary that compares the current agreement to the proposed agreement.

**Differences between the Current and the Proposed
State of Montana and Blackfeet Gasoline Revenue Sharing Agreement**

| ITEMS | TERMS | | DIFFERENCE |
|--|--|---|--|
| | PRESENT | PROPOSED | |
| TERM & RENEWAL | 5 years with 5 year renewal | 9 years 9 months with 10 year renewal | 5 Year Longer Term |
| EFFECTIVE DATE | 7/1/2001 | 1-Oct-05 | None |
| EXPIRATION DATE | 6/30/2006 | 6/30/2015 | Extended Nine years |
| TERMINATION | Either party could terminate agreement w/o cause by a 30 day written notice | W/O cause - 5 year written notice - with cause - upon 30 day written notice | Five year notice to terminate the agreement without cause |
| MUTUAL LIMITED WAIVER OF SOVEREIGNTY IMMUNITY | None | The State & Tribe waive their sovereign immunity from actions arising out of this Agreement | The Agreement provides for a mutual limited waiver of sovereign immunity |
| JURISDICTION & VENUE | None | Jurisdiction for enforcement lies in the US District Court in Great Falls | Jurisdiction Specified |
| ENROLLMENT | Applies to enrolled Tribal members residing on the reservation | Applies to enrolled Tribal members residing on the reservation | Same |
| \$ PER ENROLLED MEMBER FORMULA | Historical net gasoline tax collected per capita adjusted by miles traveled on and off reservation | Prior fiscal year per capita net gasoline tax collected per capita | Based on prior year per capita gasoline tax collections and not adjusted for on and off reservation travel |
| \$ PER YEAR | Fiscal Year 2005 \$1,039,861 | Fiscal Year 2005 \$1,061,272 | Increase in revenue sharing for the Tribe of \$21,411 for fiscal year 2005 |