

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

PREAMBLE

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

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

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

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

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

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

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

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

WHEREAS, the Tribe believes that it has the exclusive right to tax transactions that occur on the Tribe's reservation involving sales of fuel to Indians;

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

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

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

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

NOW THEREFORE, the State of Nebraska (hereafter sometimes referred to as "State") through Dave Heineman, Governor, and Mary J. Egr Edson, Nebraska Tax Commissioner, and the Tribe, through Orville Cayou, its Tribal Chair, properly authorized by a resolution of the Omaha Tribal Council hereto attached as Exhibit A, do hereby enter into this Agreement for the mutual benefit of, and to avoid litigation between, the State of Nebraska and the Omaha Tribe of Nebraska, to-wit:

#### Part I. INTRODUCTION

1. The State hereby recognizes that the Tribe enjoys, under United States federal law, as a federally recognized Indian tribe situated on a federally recognized reservation, exemptions from the assessment of certain state taxes.

#### Part II. TERM

2. This Agreement shall commence on October 1, 2005. Its term shall be perpetual, subject to the provision for early termination set forth in Part V below.

PART III. MOTOR FUELS

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

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

5. All proceeds derived from the taxes imposed pursuant to the ordinance referenced in Section 4 of this Agreement, except that portion retained by the State of Nebraska pursuant to Section 8 of this Agreement, shall be used for general governmental purposes including but not limited to road construction and maintenance, economic development, and general health and welfare programs and services for tribal members.

6. This exemption shall only apply to receipt of motor fuel that occurs at retail outlets located on the Reservation in Nebraska and within the boundaries of the Reservation in Nebraska as are set forth in the Preamble of this Agreement. This exemption shall not apply to transactions involving motor fuel that occur at any retail

outlets outside the boundaries of the Reservation in Nebraska nor to any activity by the Tribe as a motor fuel supplier, distributor, wholesaler, importer, or exporter.

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

8. In no event shall any motor fuel tax refunds be allowed to individual tribal members for any motor fuel purchased on the Reservation while this Agreement is in effect.

#### PART IV. REVENUE SHARING

9. The Omaha Tribe of Nebraska shall remit the fuel tax on sales at tribally operated enterprises within Nebraska to their supplier. Not later than the 25<sup>th</sup> day of the second month following the close of the tax period, the State of Nebraska Department of Revenue shall determine the gallons of motor fuel received by all retailers on the Reservation in the preceding month and issue to the Tribe a warrant representing 75 percent of the taxes imposed on motor vehicle fuels, and 60 percent of the taxes imposed on diesel fuel pursuant to the ordinance set forth in Section 4 of this Agreement. These percentage amounts have been determined based upon good faith negotiations between the parties based upon the following formula: approximately one-half of the estimated percentage of residents living within the exterior boundaries of the Reservation are tribal members (both the State and the Tribe agree that the State has no arguable claim to levy its motor fuels excise taxes on tribal members on the Reservation); the State and Tribe

will share the remaining percentage as each believes it has the exclusive right to tax those transactions. For diesel the formula is based upon the assumption that most diesel is sold to large trucks, and an indeterminate amount of those trucks are involved in IFTA, so that they receive full credit for tax paid to the State. Upon written request by either party, but not more than once every five years, these amounts may be reviewed and adjusted under the same formula as set forth above.

10. The amount to be remitted to the Tribe monthly shall be determined by calculating the total gross gallons of motor vehicle fuel received by all retailers on the Reservation less any sales exported, sold to another wholesaler, or sold to the U.S. Government. The resulting gallons are multiplied by the appropriate tax rate in effect at the time, and then 75 percent of the motor vehicle fuel tax is remitted to the Tribe. Additionally, the amount for diesel fuel shall be determined by calculating the total gross gallons of diesel fuel received by all retailers on the reservation less any sales exported, sold to another wholesaler, or sold to the U.S. Government. The resulting gallons are multiplied by the appropriate tax rate in effect at the time, and then 60 percent of the diesel fuel tax is remitted to the Tribe.

#### PART V. GENERAL PROVISIONS

11. The Tribe agrees to keep accurate records setting forth information in sufficient detail to allow for verification that the Tribe and tribal-owned entities are remitting the correct amount of tax due pursuant to this Agreement. Upon reasonable request of the State, and subject to the confidentiality provisions of the State, the State may conduct an

examination of the records of the Tribe and tribal-owned entities for the sole purpose of verifying compliance with the requirements of this Agreement. Such examination shall be strictly limited to those enterprise activities of the Tribe or tribal-owned entities which engage in motor fuels sales and may include examination of summary reports, exemption certificates, ledgers, cash register tapes and similar records. Nothing in this section authorizes any examination of the records of any part of the Tribe or tribal-owned entity which does not engage in motor fuels sales and nothing in this section authorizes any examination of any records that goes beyond what is needed to verify compliance with the requirements of this Agreement.

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

13. Upon reasonable request of the Tribe, and subject to the confidentiality provisions of the State, the Tribe may conduct an examination of the State's records of fuel tax returns of retailers located upon the Reservation used to calculate the remittance to the Tribe for the sole purpose of verifying compliance with the requirements of this Agreement.

Nothing in this section authorizes any examination of the records of any part of the

retailers' activities that goes beyond what is needed to verify compliance with the requirements of this Agreement.

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

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

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

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

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

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

- A. If the United States Federal Government, or its appropriate department or agency, rescinds or otherwise terminates the recognition of the Tribe as a federally recognized Indian tribe; or
- B. If the Tribe 1) abandons or otherwise acts in a manner evidencing the fact that it has given up or terminated its status as a federally recognized Indian tribe; or if a court of competent jurisdiction renders a judgment, and that judgment becomes final, declaring that the Tribe is not a federally recognized Indian tribe, 2) has abandoned or otherwise terminated such status, 3) that such status has been rescinded or terminated or 4) has abandoned or given up or terminated its entitlement to the tax exemptions, or any of them, that are the subject of this Agreement.

20. In the event that one of the parties to this agreement, or any employee, representative, or official of such a party fails to comply with any term, condition, covenant or requirement of this Agreement, or is otherwise in breach of this Agreement,

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

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

22. The State declares that in addition to the considerations herein above expressed, it has negotiated and entered into this Agreement, and has agreed to the terms and conditions contained herein, based substantially on the factual situation and circumstances of the Omaha Tribe of Nebraska, including but not limited to such matters

as: location of the Tribe's lands in trust, the proximity of those lands in trust to highways, towns, and non-tribal populations, the size of the Tribe's Service Area, the Tribe's reservation population, economic development in the area of the reservation, the prospects for the Tribe's further economic development on its lands in trust, and the anticipated volume of sales of the items subject to the taxes for which exemptions are herein and hereby granted. Accordingly, no provision of this Agreement shall in any manner be binding upon, or set a precedence upon any other Agreement with any other Tribe.

**Omaha Tribe of Nebraska**

  
Signed this 15 day of September, 2005.  
Orville Cayou  
Chairman

**State of Nebraska**

  
Signed this 20<sup>th</sup> day of September, 2005  
Dave Heineman  
Governor

  
Signed this 13<sup>th</sup> day of September, 2005.  
Mary Jane Egr Edson  
State Tax Commissioner

# OMAHA TRIBE OF NEBRASKA

P. O. Box 368  
Macy, Nebraska 68039

## EXECUTIVE OFFICER

Orville Cayou, Chairman  
Eleanor Barker, Vice-Chair  
Crystal Appleton, Treasurer  
Ben Walker, Secretary



TRIBAL ADMINISTRATION

(402) 837-5391  
FAX (402) 837-5308

## MEMBERS

Rodney Morris  
Antonie Provost  
Barry D. Webster

## RESOLUTION NO. 05-169 OF THE OMAHA TRIBE OF NEBRASKA

### Authorizing Execution of Agreement for Collection and Dissemination of Motor Fuel Taxes with State of Nebraska

WHEREAS, the Omaha Tribe of Nebraska is a federally recognized Indian tribe organized under its Constitution and Bylaws approved by the Secretary of Interior on April 30, 1936, pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934, and,

WHEREAS, pursuant to Article III, Section 1 of the Constitution of the Omaha Tribe of Nebraska, the governing body of the Omaha Tribe shall be known as the Tribal Council; and,

WHEREAS, Article IV, Section 1(j) of the Constitution of the Omaha Tribe of Nebraska provides the Omaha Tribal Council with the power to safeguard and promote the economy and general welfare of the Omaha Tribe; and,

WHEREAS, Article IV, Section 1 (a) of the Constitution of the Omaha Tribe of Nebraska provides the Omaha Tribal Council with the power to negotiate with Federal, state and local governments on behalf of the Omaha Tribe; and,

WHEREAS, the Omaha Tribe has the exclusive right to tax transactions that occur on the Omaha Indian Reservation involving sales of blended fuel to non-tribal members where the fuel blends are manufactured on an American Indian reservation, the blending and retail process employs tribal members, and the tribe has substantial interest in the retail sales of blended fuels; and,

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

WHEREAS, the State of Nebraska and the Omaha Tribe of Nebraska share the belief that cooperation and negotiation between the Tribe and State is more productive and beneficial to the interests of the State, and the citizens of the State, including citizens of the State who are enrolled members of federally recognized Indian tribes, and better serves those interests than engaging in costly and extensive litigation; and,

WHEREAS, the State and Tribe agree that it will serve the interests of both parties for the Tribe to be able to generate revenue for governmental purposes, through the collection of certain tribal taxes in accordance with the terms of the attached Agreement for the Collection and Dissemination of Motor Fuel Taxes Between the State of Nebraska and the Omaha Tribe of Nebraska.

**NOW THEREFORE BE IT RESOLVED,**

the Omaha Tribal Council hereby approves and enters into the attached Agreement for the Collection and Dissemination of Motor Fuel Taxes Between the Omaha Tribe of Nebraska and the State of Nebraska in accordance with the terms therein.

**BE IT FURTHER RESOLVED,**

the Chairman of the Omaha Tribe of Nebraska is authorized to execute and sign the Agreement on behalf of the Omaha Tribal Council.

**BE IT FINALLY RESOLVED,**

the execution and continuing effect of an ordinance imposing an motor fuel excise tax equivalent to the rate and base of transaction provided for by the laws of the State of Nebraska shall be a continuing condition of this resolution.

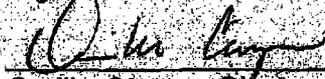
**CERTIFICATION**

This will certify that the foregoing resolution was considered at a meeting of the Omaha Tribal Council of the Omaha Tribe of Nebraska, duly called and held on the 25 day of August, 2005, and was adopted by a vote of 4 FOR, 0 AGAINST and 3 NOT VOTING OR ABSENT with the Chairman not voting. A quorum of 3 was present.

Motion:  
Second:

Dated this 25 day of August, 2005.

Signed:

  
Orville Cayou, Chairman  
Omaha Tribal Council

  
Bert Walker, Secretary  
Omaha Tribal Council

Reviewed:

BIA Superintendent, Winnebago Agency

# OMAHA TRIBE OF NEBRASKA

P. O. Box 368  
Macy, Nebraska 68039

## EXECUTIVE OFFICER

Orville Cayou, Chairman  
Eleanor Baxter, Vice-Chair  
Crystal Appleton, Treasurer  
Bert Walker, Secretary



TRIBAL ADMINISTRATION

(402) 837-5391  
FAX (402) 837-5308

## MEMBERS

Rodney Morris  
Antione Provoost  
Barry D. Webster

## ORDINANCE NO. 05-170 OF THE OMAHA TRIBE OF NEBRASKA

### Assessing Tax on Sales of Motor Vehicle and Diesel Fuels

WHEREAS, the Omaha Tribe of Nebraska is a federally recognized Indian tribe organized under its Constitution and Bylaws approved by the Secretary of Interior on April 30, 1935, pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934, and,

WHEREAS, pursuant to Article III, Section 1 of the Constitution of the Omaha Tribe of Nebraska, the governing body of the Omaha Tribe shall be known as the Tribal Council; and,

WHEREAS, Article IV, Section 1(j) of the Constitution of the Omaha Tribe of Nebraska provides the Omaha Tribal Council with the power to regulate trade and commerce; and,

WHEREAS, Article IV, Section 1(h) of the Constitution of the Omaha Tribe of Nebraska provides the Omaha Tribal Council with the power to levy and collect taxes and license fees upon persons located upon or doing business within the Omaha Indian Reservation, all taxes and fees thus collected to be deposited in a special bank account established for that purpose; and,

WHEREAS, the Omaha Tribal Council finds that as a necessary component of sovereignty and self-sufficiency, that revenue must be raised to fund tribal government; and,

WHEREAS, the Omaha Tribal Council has determined that taxation of sales of motor vehicle and diesel fuels within the Omaha Indian Reservation is a reasonable and lawful method of raising revenue.

NOW THEREFORE, BE IT ORDAINED that the Omaha Tribal Council does hereby impose on the retail or actual consumer of motor vehicle and diesel fuels sold within the Omaha Indian Reservation an

excise tax equivalent to the rate and base of transaction provided for by the laws of the state within which the enterprise is located, which excise tax shall be added to the sales price of such fuel and collected and remitted, for the convenience of the consumer, by the supplier, distributor, or wholesaler of such motor vehicle and diesel fuels to the Tribal Treasurer, provided that such tax may be alternatively remitted to the State Department of Revenue according to its rules and regulations pursuant to an agreement between the Tribe and the respective state for the sharing of such tax revenue;

BE IT FURTHER ORDAINED that the supplier, distributor, or wholesaler shall keep records of the gallonage of motor vehicle and diesel fuels sold within the Omaha Indian Reservation and submit such records with the taxes as they are due;

BE IT FURTHER ORDAINED that intentional or knowing failure to comply with the provisions of this ordinance shall result in a civil fine of \$5,000 on a supplier, distributor, or wholesaler of motor vehicle and diesel fuels sold within the Omaha Indian Reservation, and/or a civil fine of \$100 on a retail or actual consumer of motor vehicle and diesel fuels purchased at any retailer within the Omaha Indian Reservation; and

BE IT FURTHER ORDAINED that this ordinance shall remain in effect as long as any agreement with a state for the collection and dissemination of motor and diesel fuel taxes shall be in effect; and

BE IT FURTHER ORDAINED that all revenue raised by this tax shall be used for general governmental purposes, including, but not limited to, road construction and maintenance, economic development, and general health and welfare programs and services for tribal members.

BE IT FINALLY ORDAINED that this ordinance shall be codified in the Omaha Tribal Code.

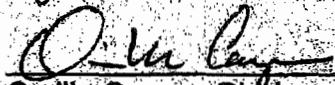
**CERTIFICATION**

This will certify that the foregoing resolution was considered at a meeting of the Omaha Tribal Council of the Omaha Tribe of Nebraska, duly called and held on the 25 day of August, 2005, and was adopted by a vote of 4 FOR, 0 AGAINST and 9 NOT VOTING OR ABSENT with the Chairman not voting. A quorum of 5 was present.

Motion:  
Second:

Dated this 25 day of August, 2005.

Signed:

  
Orville Cayou, Chairman  
Omaha Tribal Council

  
Bert Walker, Secretary  
Omaha Tribal Council

Reviewed:

\_\_\_\_\_  
BIA Superintendent, Winnebago Agency