

APRIL 2005 CROW TRIBAL LEGISLATURE

JOINT ACTION RESOLUTION NO. JAR05-01

**INTRODUCED BY CARL E. VENNE, CHAIRMAN
CROW TRIBAL EXECUTIVE BRANCH**

**JOINT ACTION RESOLUTION OF THE CROW TRIBAL LEGISLATURE AND
THE CROW TRIBAL EXECUTIVE BRANCH ENTITLED:**

**“APPROVAL OF CROW TRIBE- MONTANA
2005 TOBACCO TAX AGREEMENT.”**

WHEREAS, the Crow Tribal Legislature is authorized by Article V, Sections 2 and 3 of the Crow Tribal Constitution and Bylaws, to promulgate and adopt laws, resolutions, ordinances, codes, regulations and guidelines for the governance of the Crow Tribe of Indians at regular quarterly sessions each year; and

WHEREAS, in January 2005 the Legislature enacted and the Chairman approved CLB05-07 amending the Crow Law and Order Code, Title 13, Taxation, to provide for a tax on tobacco products; and

WHEREAS, the Chairman has negotiated an agreement with the State of Montana under which the State will collect and distribute revenues from the tribal tobacco tax to the Crow Tribe; and

WHEREAS, CLB05-07 requires and the State of Montana has requested formal approval by the Crow Legislature of the proposed 2005 Crow Tribe- Montana Tobacco Tax Agreement; and

WHEREAS, approval and implementation of the proposed agreement will result in the distribution to the Crow Tribe of substantial revenues which would otherwise not be available to the Crow Tribe; and


WHEREAS, these revenues will greatly benefit the people of the Crow Tribe;

NOW, THEREFORE, BE IT RESOLVED BY THE CROW TRIBAL LEGISLATURE:

“That the Crow Tribal Legislature acting jointly with the Crow Tribal Executive Branch hereby approves the Crow Tribe- Montana Tobacco Tax Agreement negotiated by the Chairman of the Executive Branch, attached and incorporated by this reference.”

CERTIFICATION

I hereby certify that this Joint Action Resolution was duly approved by the Crow Tribal Legislature with a vote of 11 in favor, 4 opposed, and 0 abstained, and that a quorum was present on this 15 day of April, 2005.


Speaker of the House
Crow Tribal Legislature

ATTEST:


Secretary, Crow Tribal Legislature

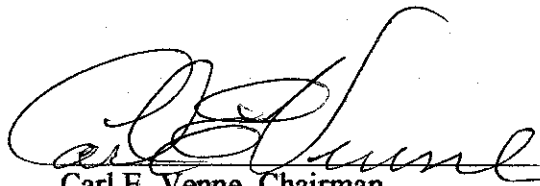
EXECUTIVE ACTION

I hereby

approve

veto

this Joint Action Resolution pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 of the Constitution and Bylaws of the Crow Tribe of Indians, on this 19 day of April, 2005.


Carl E. Venne, Chairman
Crow Tribal Executive Branch

Bill or Resolution Number SAROS-01 Introduced by Executive Date of Vote 4.15.05
 Representative

	Yes	No	Abstain
B. Cloud	_____	<input checked="" type="checkbox"/>	_____
C. Goes Ahead	_____	<input checked="" type="checkbox"/>	_____
O. Costa	_____	_____	_____
V. Crooked Arm	<input checked="" type="checkbox"/>	_____	_____
R. Iron	<input checked="" type="checkbox"/>	_____	_____
J. Stewart	<input checked="" type="checkbox"/>	_____	_____
E. Fighter	<input checked="" type="checkbox"/>	_____	_____
L. Costa	<input checked="" type="checkbox"/>	_____	_____
L. Hogan	_____	<input checked="" type="checkbox"/>	_____
D. Old Elk	_____	_____	_____
K. Real Bird	<input checked="" type="checkbox"/>	_____	_____
E. Pease	<input checked="" type="checkbox"/>	_____	_____
S. Medicine Horse	<input checked="" type="checkbox"/>	_____	_____
L. Not Afraid	_____	<input checked="" type="checkbox"/>	_____
P. Real Bird	<input checked="" type="checkbox"/>	_____	_____
D. Wilson	_____	_____	_____
J. Stone	<input checked="" type="checkbox"/>	_____	_____
<i>Secretary of the House</i>			
W. Plain Feather	<input checked="" type="checkbox"/>	_____	_____
<i>Speaker of the House</i>			
Totals:	<u>11</u>	<u>4</u>	<u>0</u>

Results of Vote:

Passed

Not Passed

Tabled

Veto Override

Signature of Officer: W. Plain Feather Date: 4.15.05

CROW TRIBE- MONTANA
TOBACCO TAX AGREEMENT

The Crow Tribe-Montana Tobacco Tax Agreement ("Agreement") is entered into this ____ day of _____, 2005, by and between the State of Montana, Department of Revenue ("State" or "Department of Revenue"), and the Crow Tribe ("Tribe").

The Tribal Chairman is authorized to enter into this agreement on behalf of the Crow Tribe by the Tribe's Constitution, Article IV, Section 3, paragraphs (a), (c), and (k), and by Tribal Bill No. CLB 05-07.

The State is authorized pursuant to the State-Tribal Cooperative Agreements Act, Title 18, chapter 11, MCA, to enter into an agreement in writing with any one or more tribal governments with respect to taxes.

The State and the Tribe agree as follows:

1. General purposes of Agreement. The purposes of this agreement are to minimize legal controversy and possible litigation over the taxation of tobacco within the exterior boundaries of the Crow Reservation ("Reservation"), to mitigate the effects of dual taxation of tobacco by both the Tribe and the State, and to provide an effective means by which revenues generated by the state and tribal taxes on tobacco products may be shared and distributed. In order to accomplish these purposes, the State and the Tribe agree that the same level of taxation shall be imposed on tobacco sales both within and outside the boundaries of the Reservation. For purposes of this agreement, the term "tobacco" shall mean tobacco and tobacco products. This section shall be interpreted consistently with the terms and conditions set forth in section 13 of this agreement.

2. Recitals. This agreement is made by and between the Crow Tribe of the Crow Reservation and the State of Montana, acting through its Department of Revenue. The parties hereto, having conferred together, desire to collect the tobacco tax on all tobacco or tobacco products sold or consumed on the Crow Reservation for the mutual benefit of

all the people of Montana including members of the Tribe. The parties enter into this agreement to allow the Department of Revenue the authority to enforce state and Tribal law in relation to taxation of sales of tobacco on the reservation and subject to the terms and conditions herein.

3. Tribal law. While this agreement is in effect, the Tribe shall adopt and keep in force an ordinance imposing taxes equal to the Montana taxes on tobacco, which taxes shall apply to tobacco sold to all persons within the Tribe's jurisdiction on the Reservation in a manner similar to the Montana taxes. The Tribe shall supply the State with a current copy of the ordinance as it may be amended from time to time within sixty (60) days of the enactment or amendment of the ordinance.

4. State law. The State imposes a tax on tobacco distributed within the State's jurisdiction under Title 16, chapter 11, MCA. The State shall notify the Tribe in writing of any changes or amendments to state law, which the State believes necessitates an amendment to tribal law under this agreement within sixty (60) days of any amendment to applicable state law.

5. Collection and administration of taxes. The State and Tribe agree that tobacco sold on the Reservation shall not be subject to both the state and the tribal tax, but shall be subject to one tax. The State agrees to assist the Tribe by pre-collecting tobacco taxes for sales on the Reservation from the tobacco wholesalers distributing tobacco products on the Reservation and to remit to the Tribe the tribal tobacco tax collected as determined by the formulas described below. All cigarettes sold on the reservation shall have the state tax insignia affixed (and the Tribe shall not be required to affix a tribal tax insignia) and all other tobacco products shall be taxed.

a. For each calendar quarter, the Tribe shall receive an amount of tobacco taxes pre-collected for tobacco sales on the Reservation, which approximates the sales to enrolled Crow tribal members living on the Reservation. The amount of

tobacco taxes that the Tribe receives shall be determined by multiplying 150 percent of the Montana per capita tobacco tax collected for the calendar quarter, times the total number of enrolled Crow tribal members living on the Reservation.

b. The total number of enrolled Crow tribal members will be determined by using the Crow tribal enrollment population as last determined by the Bureau of Indian Affairs, Rocky Mountain Regional Office, on March 31st of the same full calendar year the Department uses to determine the Montana per capita tobacco tax herein. The Department shall determine the per capita tobacco tax by using the most recent census taken under the direction of Congress, or the most recent population estimates published by the bureau of the census, United States Department of Commerce, provided that all quarterly payments within a calendar year will be based on census information for a single census year. The Montana per capita tobacco tax is based on the net sum of tobacco taxes in all funds into which cigarette and tobacco taxes are deposited, subsequent to the deduction or addition of statutory payments, refunds, transfers, and corrections.

c. The State shall distribute the monies due to the Tribe under this agreement no later than thirty (30) days from the end of each calendar quarter. The State will include with each distribution a statement showing how the distribution was determined for that quarter. Distribution will be made by state warrant delivered to the Chairman of the Executive Branch of the Tribe.

d. Distributions will begin within thirty (30) days from the end of the first whole calendar quarter after the effective date of this agreement and continue until the expiration or the termination of this agreement as provided below or required by law. In the event this agreement is entered into after the beginning of a calendar quarter, the first distribution will begin after the first whole calendar quarter and will include a pro-rated distribution for the partial quarter in which the Agreement became effective.

For the purposes of this agreement, a calendar quarter begins on January 1, April 1, July 1, and October 1 of each year.

e. In the event of termination by either party prior to the end of the term, the State shall remit the full amount payable to the Tribe provided for in this agreement for that period of time up to and including the effective date of the termination. This obligation of the State shall survive any termination of this agreement.

6. Term. This agreement shall be for a term of ten (10) years and shall be automatically renewed for successive terms of ten (10) years if no action is taken by either party.

7. Audits. Either party may examine or audit the records of the other party to determine the accuracy of the statements or representations called for in this agreement. In addition, either party may require an audit of the other party by an independent auditor, at its own expense. The right of examination or audit shall exist during the term of the agreement and for a period of one year after the date of termination or expiration of this agreement. To the extent permitted by applicable law, the parties agree to maintain the confidentiality of any confidential information obtained from the other party.

8. Effective date. This agreement is effective May 1, 2005, so long as the following conditions precedent are met: the Tribe has adopted and provided a copy to the State of an ordinance as required by Section 3 above; the Agreement has received the final approval of the Crow Tribal Legislature as provided in Tribal Bill No. CLB05-07; the agreement has been approved by the State Attorney General, as required by § 18-11-105, MCA; and a public hearing, as required by § 18-11-103, MCA, has been held and comments received and considered. If the referenced conditions precedent have not been met by May 1, 2005, this agreement is effective on the first day of the next whole calendar quarter after all conditions precedent have been met.

9. Amendments and Renewal.

a. This agreement may be amended only by written instrument signed by both parties.

b. Six months prior to expiration of the initial term provided in this Agreement, the parties should meet to negotiate in good faith a renewal of the Agreement.

10. Termination.

a. This Agreement may be terminated, for any reason, with or without cause, at the end of any quarter with thirty (30) days written notice of termination to the other party.

b. The Crow-Tribe Cigarette Agreement, dated January 1, 2001, terminates on the effective date of this Agreement. This Agreement supercedes all tobacco agreements entered into between these parties prior to the effective date of this agreement.

11. Jurisdiction and Venue. The parties agree and stipulate that venue and jurisdiction for enforcement of the terms hereof lie in the United States District Court, Billings Division, Billings, Montana, or, if the U.S. District Court lacks jurisdiction, a Montana state district court. In the event of a breach by either party of any of the terms hereof, upon written notice to the breaching party of the substance of the alleged breach and the remedies sought, the non-breaching party shall be entitled to suspend any of the non-breaching party's obligations hereunder to the extent of the breach and petition the court for the appropriate relief. Appropriate relief shall be limited to monetary judgment against the breaching party, including costs and attorneys' fees, arising from the breach, and such other relief as is necessary to put the non-breaching party in the same position they would have been in had the breaching party fully performed. The failure to pursue a remedy for one or more breaches is not a waiver of any right to enforce a subsequent breach of the same or a different term hereof.

12. Waiver of Sovereign Immunity. The State has waived its sovereign immunity from suit for contract actions arising under the Agreement. See, Title 18, chapter 1, part 4, MCA. The Tribe expressly grants a limited waiver of sovereign immunity from suit for contract actions arising under the Agreement, provided that the Tribe's waiver shall be no more extensive than the State's waiver pursuant to Title 18, chapter 1, part 4, MCA, and shall only extend to the State and no other parties. Neither party waives its sovereign immunity except as provided in this Agreement.

13. Reservation of rights and negative declaration. The State and Tribe have entered into this agreement in part to resolve any potential legal disputes and avoid litigation. The parties agree that by entering into this agreement, neither the State nor the Tribe shall be deemed to have waived any rights, arguments, or defenses available in litigation on any subject. This agreement is specifically not intended to reflect or be viewed as reflecting in this or any context either party's position with respect to the jurisdictional authority of the other. Nothing in this agreement or in any conduct undertaken pursuant thereto shall be deemed as enlarging or diminishing the jurisdictional authority of either party except to the extent necessary to implement and effectuate the agreement's terms. This agreement, conduct pursuant thereto or conduct in the negotiations or renegotiations of this agreement, shall not be offered as evidence, otherwise referred to in any present or future litigation, or used in any way to further either party's equitable or legal position in any litigation. By entering into this agreement, neither the State nor the Tribe are forfeiting any legal rights to apply their respective taxes except as specifically set forth in this agreement. This agreement does not apply to any state tax collected other than the tax on tobacco as provided in §§ 16-11-101 through 206, MCA.

14. Notices. All notices and other communications required to be given under this Agreement by the Tribe and the State shall be deemed to have been duly given

when delivered in person or posted by United States certified mail, return receipt requested, with postage prepaid, addressed as follows:

i. If to the Tribe:

Chairman of the Crow Tribe
Bacheeitché Avenue
PO Box 159
Crow Agency, Montana 59022

ii. If to the State:

Director of Revenue
Mitchell Building
Helena, Montana 59620

Notice shall be considered given on the date of mailing.

This Contract consists of seven (7) pages.

DATED this ____ day of _____, 2005.

STATE OF MONTANA

Dan Bucks
Director of Revenue

CROW TRIBE

Carl Venne, Chairman
Crow Tribal Executive Branch

Approved pursuant to § 18-11-105, MCA

Mike McGrath
Attorney General