

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1489

By: Wilson

AS INTRODUCED

An Act relating to revenue and taxation; creating the State-Tribal Tax Compact Act; providing short title; defining terms; making legislative findings regarding Indian tribes and taxation; making offer to enter into certain contract; providing terms of contract, including agreeing not to challenge constitutionality; providing for apportionment of certain state revenues; providing timetable for apportionment; providing for tribes to impose and remit certain enumerated taxes; providing apportionment formula; limiting uses of apportioned funds; providing for withholding of apportionment in certain circumstances; providing for evidence of tribal membership and limitations of liability attached thereto; providing for term and procedure for acceptance of contract; providing for limited waiver of immunity; providing for recognition of sovereignty; providing hold harmless provision; providing restriction on certain licensing activity; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 271 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "State-Tribal Tax Compact Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 272 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in the State-Tribal Tax Compact Act:

1. "Act" or "this act" means the State-Tribal Tax Compact Act;

2. "In this state" means the area within the borders of this state, including all land within the borders of this state owned by the United States of America;

3. "Indian country" means:

- a. land held in trust by the United States of America for the benefit of a federally recognized Indian tribe or nation,
- b. all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation,
- c. all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
- d. all Indian allotments, the Indian titles to which have not been extinguished, including individual allotments held in trust by the United States or allotments owned in fee by individual Indians subject to federal law restrictions regarding disposition of said allotments and including rights-of-way running through the same.

The term shall also include the definition of Indian country as found in 18 U.S.C., Section 1151;

4. "Indian tribe", "tribes", or "federally recognized Indian tribe or nation" means an Indian tribal entity which is recognized by the United States Bureau of Indian Affairs as having a special relationship with the United States. The term shall also include the definition of a tribe as defined in 25 U.S.C., Section 479a;

5. "Person" means natural persons, individuals, partnerships, firms, associations, corporations, estates, trustees, business trusts, syndicates, this state, any county, city, municipality,

school district or other political subdivision of the state, federally recognized Indian tribe, or any corporation or combination acting as a unit or any receiver appointed by any state or federal court;

6. "Retailer" means a person that engages in the business of selling or distributing to the consumer within this state; and

7. "Tax Commission" or "Commission" means the Oklahoma Tax Commission.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 273 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Legislature hereby finds:

1. Indian tribes within the State of Oklahoma are engaged in many forms of commerce including retail sales at locations within and without their sovereign territories;

2. Both Indian tribes and the government of the State of Oklahoma impose a variety of fees and taxes;

3. The State of Oklahoma does not now collect state fees or taxes in connection with most types of commerce engaged in by Indian tribes. The Legislature hereby acknowledges that, as a matter of federal law, legal barriers exist which prevent the imposition or enforcement of most types of taxation on transactions engaged in by Indian tribes in Indian country; and

4. It is mutually beneficial to the State of Oklahoma and the federally recognized Indian tribes of this state, exercising their sovereign powers, to enter into contracts as set forth in subsection B of this section, for the purpose of limiting litigation on the issue of state government taxation of transactions involving Indian tribes. It is in the interest of this state to resolve disputes between the state and federally recognized Indian tribes on this issue by entering into contracts under which the Indian tribes are in part compensated for tribal tax revenues the Indian tribes might

lose by reason of the adoption and enforcement of this act. Such mutually beneficial agreements allow both the State of Oklahoma and the Indian tribes to benefit from tax revenues from transactions involving tribes in Indian country.

B. The State of Oklahoma hereby makes the following offer to all federally recognized Indian tribes within this state which, if accepted, will constitute a contract between this state and the accepting tribe or tribes:

1. The accepting tribe shall agree that it will not challenge the constitutionality of this act or the application of this act to the provisions of state law set out in paragraph 3 of this subsection in any court or tribunal and shall impose and remit all state taxes and assessments required by this agreement. The accepting tribe shall agree as a material term of its agreement to abide with all parts of this act and shall agree not to attempt to evade the obligations set forth in this agreement;

2. In consideration of this agreement by the tribe or tribes, the State of Oklahoma, through the Oklahoma Tax Commission, shall withhold a percentage of certain state revenues, as specified in paragraph 3 of this subsection, which shall be apportioned quarterly to the accepting Indian tribes. The funds apportioned as provided in paragraph 3 of this subsection are deemed to be in lieu of tribal tax revenues that the tribes would otherwise have collected in connection with transactions in Indian country. The first such apportionment shall be made no later than February 1, 2007, which shall be for state revenues received by the Tax Commission during the last calendar quarter of 2006, and subsequent apportionments shall be made no later than thirty (30) days after the end of each calendar quarter thereafter. The first such apportionment shall be made to all tribes which have elected and accepted the terms of the contract specified in this subsection before October 1, 2006. Any tribe electing and accepting the terms of the contract specified in

this subsection on or after October 1, 2006, shall be eligible to receive quarterly apportionments beginning with the calendar quarter following such election;

3. The State of Oklahoma agrees that four and one-half percent (4 1/2%) of revenues from the following state taxes and fees collected shall be withheld monthly and apportioned quarterly to accepting Indian tribes, and accepting Indian tribes agree to collect and remit the following state taxes and fees on all sales made by the tribe or other transactions which would cause such taxes or fees to be imposed and to require all licensees of the tribe to impose and remit such taxes and fees to the state:

- a. the alcoholic beverage excise tax levied by Section 553 of Title 37 of the Oklahoma Statutes,
- b. the tax on low-point beer levied by Section 163.3 of Title 37 of the Oklahoma Statutes,
- c. the cigarette taxes levied by Sections 302, 302-1, 302-2, 302-3, 302-4 and 302-5 of Title 68 of the Oklahoma Statutes; provided, a tribe which accepts the provisions of this agreement shall also agree to terminate any existing compact with regard to cigarette taxes at the time of acceptance of this agreement and the state hereby agrees to such termination,
- d. the coin-operated device fee in lieu of sales tax imposed by Section 1503 of Title 68 of the Oklahoma Statutes,
- e. the distributor of coin-operated devices permit fee imposed by Section 1509.3 of Title 68 of the Oklahoma Statutes,
- f. the documentary stamp tax imposed by Section 3201 of Title 68 of the Oklahoma Statutes,

- g. the estate tax imposed by Section 802 of Title 68 of the Oklahoma Statutes,
- h. the franchise tax imposed by Sections 1203 and 1204 of Title 68 of the Oklahoma Statutes,
- i. the gross production tax imposed by Section 1001 of Title 68 of the Oklahoma Statutes,
- j. the income tax levied by Section 2355 of Title 68 of the Oklahoma Statutes,
- k. the mixed beverage gross receipts tax imposed by Section 576 of Title 37 of the Oklahoma Statutes,
- l. the driver license fees imposed by Sections 6-101 and 6-114 of Title 47 of the Oklahoma Statutes,
- m. the permit fees imposed by Section 14-116 of Title 47 of the Oklahoma Statutes,
- n. fees imposed by the Oklahoma Vehicle License and Registration Act; provided, a tribe which accepts the provisions of this agreement shall also agree to refrain from issuing any tribal vehicle license plates after the effective date of the agreement and shall also agree to terminate any existing compact with regard to tribal license plates at the time of acceptance of this agreement and the state hereby agrees to such termination,
- o. the vehicle and manufactured home excise taxes levied by Sections 2103 and 2104.3 of Title 68 of the Oklahoma Statutes,
- p. the rental tax on motor vehicles levied by Section 2110 of Title 68 of the Oklahoma Statutes,
- q. the excise taxes on oil and natural gas levied by Sections 1101 and 1102 of Title 68 of the Oklahoma Statutes,

- r. the sales tax levied by Section 1354 of Title 68 of the Oklahoma Statutes; provided, a tribe which accepts the provisions of this agreement shall also agree to collect and remit all applicable municipal and county sales taxes,
- s. the tobacco products taxes levied by Sections 402, 402-1, 402-2, and 402-3 of Title 68 of the Oklahoma Statutes; provided, a tribe which accepts the provisions of this agreement shall also agree to terminate any existing compact with regard to tobacco products taxes at the time of acceptance of this agreement and the state hereby agrees to such termination,
- t. the use tax levied by Section 1402 of Title 68 of the Oklahoma Statutes, and
- u. the workers compensation insurance premium tax levied by Section 177 of Title 85 of the Oklahoma Statutes;

4. The funds withheld by the Tax Commission pursuant to paragraph 3 of this subsection shall be apportioned quarterly to each accepting Indian tribe as follows:

- a. each accepting Indian tribe shall receive a base quarterly sum of ???????????? Dollars (\$??????.00), and
- b. the remainder shall be apportioned according to the proportion the accepting Indian tribe's total Oklahoma resident membership bears to the total Oklahoma tribal resident membership of all accepting Indian tribes;

5. The funds withheld by the Tax Commission and apportioned quarterly pursuant to the provisions of this section shall be used by the accepting tribe exclusively for tribal government programs limited to highway and bridge construction, health, education, corrections, and law enforcement;

6. If, at any time during a calendar quarter, an accepting tribe fails, for any reason, to impose and remit all state taxes and assessments required by this act, the tribe shall not be eligible to receive an apportionment under this section for that calendar quarter. In such instances, the Tax Commission shall notify the tribe that its apportionment shall be withheld and the reasons therefor. The tribe shall have six (6) months from the date of issuance of the notice under this paragraph to file a legal action contesting the decision of the state to withhold its apportionment. The amount withheld from the tribe pursuant to the provisions of this paragraph shall not be apportioned and shall be withheld from all tribes until the expiration of the six-month limitation period and during the pendency of any legal action filed pursuant to this paragraph;

7. Each accepting tribe shall provide to the Tax Commission an audit of its tribal membership or citizenship rolls certified by a certified public accountant showing the correct number of its respective tribal members by blood, excluding members of bands, tribal towns and other tribes or affiliates which may be included on its rolls but who are ineligible for tribal services and benefits. Only tribal members who reside within the State of Oklahoma shall be included in the audit. Citizens of tribal towns, bands and tribes who are also counted in the audits as members of another tribe participating in the contract provided for in this section and eligible to receive services from the tribe shall not be eligible to also participate under this section. Any tribal member who is also a member of another tribe may only be counted once for purposes of determining tribal membership. For all tribes electing to accept the terms of the contract specified in this subsection before October 1, 2006, the membership audit report shall be submitted on or before October 1, 2006, and not later than July 1 of each year thereafter. The information provided shall be the basis from which

the Tax Commission shall calculate the distribution of the funds withheld pursuant to the provisions of this section. The State of Oklahoma shall be absolved of any liability if the information submitted pursuant to the provisions of this section is incorrect. If such information is not submitted by an accepting or participating tribe by October 1, 2006, or in subsequent years by July 1, the Tax Commission shall calculate the distribution of the funds on the basis of the information previously submitted by that tribe. Notwithstanding the provisions of Section 205 of Title 68 of the Oklahoma Statutes, copies of the audits and reports shall be made available to any requesting participating tribes;

8. Acceptance of the offer contained in this section shall be made in writing to the Tax Commission, signed by the chief executive officer of the tribal government, stating that the tribe accepts, without condition, the terms of this section, and for the sole purpose of resolving disputes arising out of a contract entered into pursuant to the provisions of this section, the tribe waives its immunity from suit and liability in state and federal court. In addition, proof of adoption of an ordinance or resolution by the governing body of the tribe accepting without condition the terms of this section, and an effective waiver of its immunity, as specified herein, shall be required. Notwithstanding the enactment of any future legislation on this topic, the term of the contract created by the acceptance of this offer shall extend through and include fiscal year 2026 and shall be renewed for successive ten-year terms unless a tribe notifies the State of Oklahoma of its intention not to participate further or the State of Oklahoma notifies the tribe of its intent not to participate further. Notification by the tribe shall be made in the same manner as required by this paragraph for acceptance of the offer to participate in the contract.

Notification by the state shall be made by the Governor in writing

to the tribe, and such notification shall be filed with the Secretary of State;

9. The State of Oklahoma hereby waives its immunities from suit granted by the 11th Amendment to the Constitution of the United States for the sole purpose of resolving disputes arising out of a contract entered into pursuant to the provisions of this section;

10. Both the State of Oklahoma and the accepting Indian tribe recognize, respect and accept the fact that under applicable laws each is a sovereign with dominion over their respective territories and governments. By entering into this proposed intergovernmental contractual relationship, neither the state nor the tribe has, in any way, caused the other's sovereignty to be diminished;

11. A tribe accepting the offer contained in this section agrees to hold the state harmless from suit by its individual tribal members and further agrees that, if a final judgment is rendered against the state pursuant to such a suit, the tribe will reimburse the state for the amount of the judgment paid and any costs incurred by the state pursuant to such suit. If a tribe fails to make such reimbursement within ninety (90) days of demand by the Tax Commission, the state shall withhold such amount from the apportionment of funds to the tribe pursuant to the provisions of paragraph 4 of this subsection; and

12. A tribe accepting the offer contained in this section agrees not to license or otherwise authorize an individual tribal member or other person or entity to engage in commercial transactions in violation of the terms of the contract.

SECTION 4. This act shall become effective September 1, 2006.

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