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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY
DEPUTY

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ROBERT REGINALD COMENOUT, SR.
EDWARD A. COMENOUT, SR., AND
ROBERT REGINALD COMENOUT, JR.,

Petitioner.

NO. 39741-2-II

RESPONSE TO MOTION FOR
DISCRETIONARY REVIEW

I. IDENTITY OF PARTY:

Respondent, State of Washington, as represented by the Pierce County
Prosecutor's Office, requests the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT:

The State of Washington asks this Court to deny the motion for discretionary
review seeking review of the decision denying the defendant's motion to
dismiss/suppress, entered in Pierce County Superior Court Case Nos. 08-1-04682-8

1 (Robert Reginald Comenout, Sr.), 08-1-04681-0 (Edward A. Comenout Sr.), and 08-1-
2 04680-1 (Robert Reginald Comenout Jr). Appendix 1 (Findings of fact and conclusions
3 of law on motion).¹ The superior court case is currently set for trial on January 20, 2010.
4

5 III. FACTS RELEVANT TO MOTION:

6 Petitioners, Robert Reginald Comenout, Sr., Edward A. Comenout, Sr., and
7 Robert Reginald Comenout, Jr., hereinafter “defendants,” seek discretionary review of an
8 order denying their motion to dismiss. The State of Washington filed an information on
9 9/26/08 charging each of the defendants with (1) engaging in the business of cigarette
10 purchase, sale, consignment, or distribution without a license; (2) unlawful possession or
11 transportation of unstamped cigarettes; and (3) theft in the first degree. (Appendix 2).
12

13 The defendants subsequently filed a motion to dismiss/suppress claiming that: (1) the
14 State of Washington did not have subject matter jurisdiction; and (2) a cigarette compact
15 between the State of Washington and the Quinault Indian Tribe prevented the State from
16 prosecuting violations of RCW 82.24 et seq.

17 In September of 2006, the Washington State Liquor Control Board began
18 receiving complaints about the sale of untaxed cigarettes by the Indian Country Store,
19 908/920 River Road, Puyallup, Washington. The Indian Country Store is owned by
20 Edward A. Comenout, Sr., a registered Quinault Tribal member. The land occupied by the
21 Indian Country Store is held in trust by the United States Government for the benefit of
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¹ Identical findings were entered in each cause number. The trial court has not entered a separate order denying the defendants’ motion.

1 Edward A. Comenout, Sr. and others. Robert Reginald Comenout, Sr. and Robert
2 Reginald Comenout, Jr. are engaged in the daily business of running the store. Neither the
3 Indian Country Store nor any of the individuals involved with the Store are licensed by an
4 Indian Tribe or the State of Washington to sell cigarettes.

5 The land has been the focus of multiple state and federal legal decisions. These
6 decisions date from 1975 through 1997, and, in each decision it has been clear that (1) the
7 land is outside of the boundaries of any formal reservation, and (2) the land is not exempt
8 from the State of Washington's excise tax on cigarettes.

9
10 After a lengthy investigation by WSLCB, on 7/25/08 officers served a search
11 warrant on the Indian Country Store. The WSLCB officers seized 37,000 cartons of
12 cigarettes because the authorized tax stamps were not attached. Some of the cartons did
13 have Idaho Tribal stamps attached, but those are not authorized in the State of
14 Washington. The Washington State cigarette excise tax is \$20.25 per carton of cigarettes.
15 The tax on 37,000 cartons is \$750,000.

16 After a hearing on August 27, 2009, the Honorable Katherine M. Stolz denied the
17 defendants' motion. While no order denying the motion has been entered, the court did
18 enter Findings of Fact and Conclusions of Law setting forth its reasons for denying the
19 motion. (Appendix 1).
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1 IV. LAW AND ARGUMENT:

2 A. AS THE STATE OF WASHINGTON HAS CRIMINAL JURISDICTION
3 OVER INDIAN TRUST LANDS THAT ARE NOT WITHIN THE
4 TRIAL COURT PROPERLY FOUND THE STATE HAS
5 JURISDICTION OVER THE CRIMES THAT OCCURRED ON
6 DEFENDANTS' PROPERTY.

7 In 1963, the State of Washington amended RCW 37.12.010 following Congress's
8 enactment of Public Law 280, to assert civil and criminal jurisdiction over all Indian
9 lands outside of established Indian reservations. RCW 37.12.010; *State v. Cooper*, 130
10 Wn.2d 770, 775-776, 928 P.2d 406 (1996). "Allotted or trust lands are not excluded from
11 full nonconsensual state jurisdiction unless they are within an established Indian
12 reservation." *Cooper* at 776 (internal quotations omitted); RCW 37.12.010.

13 The Washington State Supreme Court in *Cooper* controls the instant case as it
14 decided the same issue presented here. In *Cooper*, the defendant committed a crime on
15 property that was held in trust by the United States, but which was outside the boundaries
16 of an Indian reservation. *Cooper* at 772. In analyzing whether the State courts had
17 jurisdiction over this offense, the Court reviewed the history of jurisdiction in Washington
18 over Indians and Indian country. In this instance, "Indian Country" means tribal or
19 allotted lands within the confines of an established Indian reservation.

20 Prior to the enactment by Congress of Public Law 280 in 1953, criminal offenses
21 committed by Indians in Indian Country were subject to either federal jurisdiction or
22 tribal jurisdiction. *Cooper* at 772-773. Public Law 280 gave five States criminal
23 jurisdiction over all Indian land within their borders, with the exception of three
24 reservations. Several other States were given consent by Congress to assume jurisdiction,
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1 if they wished, by passage of statute or amendment to their state constitution. *Cooper* at
2 773. Washington was one of the States that was given consent to assume jurisdiction.
3 *Cooper*, at 773.

4 Pursuant to this congressional authorization, the Washington Legislature amended
5 RCW 37.12.010 to assert nonconsensual civil and criminal jurisdiction over all Indian
6 country with certain exceptions. The exceptions are for trust and allotted lands within a
7 reservation, where the tribe has not requested state jurisdiction; jurisdiction over crimes
8 committed by Indians on trust land within a reservation is still shared by the tribe and the
9 federal government. *Cooper* at 775-776, 780-781; *State v. Pink*, 144 Wn. App. 945, 185
10 P.3d 634 (2008). In 1968, Congress narrowed the States' powers under Public Law 280
11 by enacting the Indian Civil Rights Act of 1968, 25 U.S.C. § 1321. Under the act, a State
12 may not assume criminal jurisdiction without the consent of the tribe. This jurisdictional
13 limitation was not retroactive; jurisdiction a State assumed before the 1968 act was not
14 displaced. *State v. Hoffman*, 116 Wn.2d 51, 68-69, 804 P.2d 577 (1991).

15
16 The United States Supreme Court has reviewed RCW 37.12 010, finding that it
17 complies with Public Law 280 and is constitutional. *State of Washington v.*
18 *Confederated Bands and Tribes of the Yakima Indian Nation*, 439 U.S. 463, 473-474,
19 99 S. Ct. 740, 58 L.Ed.2d 740 (1979). One of the issues in *Confederated Bands and*
20 *Tribes* was whether Public Law 280 required Washington to amend its disclaimer of
21 authority over Indian country in the State constitution. The Court found that Public Law
22 280 does not require “disclaimer” States to amend their constitution in order to claim
23 jurisdiction. *Confederated Bands and Tribes*, at 493. The Court found that, under Public
24 Law 280, the State must take some positive action for effective jurisdiction. The Court
25

1 noted that the Washington State Supreme Court had already decided this issue in *State v.*
2 *Paul*, 53 Wn.2d 789, 337 P.2d 35 (1959), when it found that the legislative action was
3 sufficient to remove the constitutional barrier. *Confederated Bands and Tribes* at 493;
4 *Paul* at 794;

5 The court in *Cooper*, after reviewing the history, case law, and statutes made
6 several determinations that are relevant to this matter. First, Washington has assumed
7 civil and criminal jurisdiction over all Indian lands outside of an established Indian
8 reservation. *Cooper*, at 775-776. Second, Indian trust or allotted lands are not excluded
9 from jurisdiction unless they are within an established Indian reservation. *Cooper* at 775-
10 776. Third, the term “reservation” in RCW 37.12.010 does not include Indian lands
11 outside of the formal boundaries of established reservations. *Cooper* at 778. Fourth, there
12 is no preemption by federal law since the State of Washington was given consent by the
13 United States to assume jurisdiction. *Cooper* at 773.

14 It has been firmly established that the defendants’ property at 908/920 River Road
15 in Puyallup is not within the confines of an Indian reservation as this has been litigated
16 before. See, *Matheson v. Kinnear*, 393 F. Supp. 1025, 1025-1026 (W.D. Wash. 1975).
17 Therefore, defendants’ status as enrolled members of the Quinalt tribe has no meaning
18 as to the enforcement of Washington’s excise tax on cigarettes. See *Matheson v.*
19 *Washington State Liquor Control Board*, 132 Wn. App. 280, 285, 130 P3d 897 (2006)
20 (off reservation activities are subject to taxation under RCW 82.24.900 and 82.24.040).
21 Washington law treats Indians doing business on tribal trust lands that are not within the
22 confines of a reservation the same as any other citizen of the State. *Matheson*, at 285-286.
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1 (“Mr. Matheson’s Indian status does not prevent the State from imposing an excise tax on
2 his activities off-reservation.”)

3 The recent decision of the Court of Appeals, Division II, in *State v. Pink*, 144 Wn.
4 App. 945, 185 P.3d 634 (2008), is in accord with the Supreme Court’s decision in
5 *Cooper* (1996). In *Pink* the defendant, an enrolled Quinault, was a passenger in a vehicle
6 stopped for a traffic infraction on a State highway that crossed the Quinault Indian
7 Reservation. *Pink* at 948. The defendant was arrested on an outstanding warrant and
8 found to be in possession of a firearm. The defendant had a prior felony conviction and
9 was charged with being a felon in possession of a firearm in the second degree. *Pink* at
10 948-949. At issue in *Pink*, was whether or not the State highway where the defendant
11 had been stopped was: 1) within the boundaries of the Quinault Indian Reservation; 2)
12 part of the allotted or trust lands; or, 3) State property. *Pink* 950-956. The court held that
13 because the Quinault Indian Tribe had granted the State only an easement to build a road,
14 that it had not ceded any interest in the land over which the highway passed so it
15 remained part of the reservation. *Pink*, at 954-955. As the State charged Pink with an
16 offense other than one involving the operation of a motor vehicle, the jurisdictional
17 provisions of RCW 37.12.010 did not apply. *Id.* The court found that the State lacked the
18 jurisdiction to prosecute Pink for the weapons offense as he was an enrolled member of
19 the Quinault Tribe who committed his offense on the Quinault Reservation.
20

21 In the instant matter, there is no question that the defendants’ land where the
22 offense occurred is not within the boundaries of any federally recognized Indian
23 reservation. The Quinault Reservation is at least fifty miles to the west on the coast of
24 Washington. Previous court decisions regarding this property have noted that the
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1 property is trust land, not reservation land, and therefore cigarette sales conducted on this
2 property are not exempt from state excise tax. *Matheson v. Kinnear*. 393 F.Supp. at
3 1026-1029. Consequently, the trial court properly found that the State of Washington has
4 jurisdiction over the defendants' trust lands and may enforce its cigarette excise taxes on
5 their off-reservation business.

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8 B. THE TRIAL COURT PROPERLY FOUND THAT THE STATE OF
9 WASHINGTON DOES NOT HAVE AN AGREEMENT WITH THE
10 QUINAULT INDIAN TRIBE WHICH WOULD PREVENT THE
11 STATE FROM ENFORCEMENT ACTION AGAINST THE
12 DEFENDANTS.

13 The State of Washington and the Quinault Indian Tribe entered into a cigarette
14 excise tax compact ("Compact") on January 3rd, 2005. (Appendix 3). The Compact
15 defines "Tribal retailer" as a "member owned smoke shop located in Indian country and
16 licensed by the Tribe." Compact page #5.

17 Indian country is defined on page 3, subsection 8, of the Compact as being
18 consistent with the meaning given in 18 United States Code section 1151. To include:

- 19 a. All land within the limits of the Quinault Reservation.....
20 b. All lands placed in trust or restricted status for individual member
21 Indians or for the Tribe, and such other lands as may hereafter be
22 added thereto under any law of the United States, except as
23 provided by law.
24 c. All Indian allotments or other lands held in trust for a tribal
25 member or the Tribe, the Indian titles to which have not been
extinguished, including rights of way running through the same.

There are requirements with licensing: (1) access of the department to observe
sales (Compact page #6); (2) taxes on all retail sales (Compact page #6); and (3)
cigarettes sold by retailers shall bear either a Washington State Tribal Compact Stamp or
a Quinault Nation Tax Stamp (Compact at page #8).

1 The defendants are tribal members; however, as discussed above their property
2 and place of business is outside of the Quinault Reservation. The State of Washington has
3 assumed jurisdiction over all Indian lands outside of an established reservation, *Cooper at*
4 *775-776*. Although, the Compact is between the Quinault Tribe and the State, the
5 defendants, who are Quinault tribal members, have rejected the Compact. Additionally,
6 the defendants have never been licensed by the Quinault tribe so as to bring them within
7 the terms of the Compact for a "tribal retailer."

8
9 In the case now before the court, none of the 37,000 cartons of cigarettes seized
10 from defendants' property on 7/25/08 bore cigarette tax stamps that were either
11 Washington State Tribal Compact Stamps or Quinault Nation Tax Stamps. The cigarettes
12 purchased between April of 2007 and July 25th, 2007, by officers of the Liquor Control
13 Board did not have stamps or, in two instances, had Couer d'Alene Tribal stamps. The
14 defendants are not within the definition, and do not qualify as "Tribal retailers" under the
15 Compact, so they cannot rely on its provisions.

16 Under the terms of the Compact, retail sales of unstamped cigarettes would be
17 cause for termination of the Compact. Compact at p. 14- 15. Even if the defendants were
18 party to the Compact, their actions would have terminated the Compact and its provisions
19 as to who may seek enforcement. The Quinault tribe is given the authority to enforce the
20 Compact against persons who have been part of the Compact. The Compact gives the
21 enforcement authority to the Washington State Liquor Control Board over persons who
22 have never been part of the Compact. Compact at p. 11 ("...therefore the Liquor Control
23 Board is responsible for the enforcement activities that come under the terms of Chapter
24 82.24 RCW.")
25

1 In the instant matter, the Washington State Liquor Control Board is enforcing the
2 provisions of Chapter 82.24 RCW. Specifically, the State alleges that defendants are in
3 violation of RCW 82.24.500 for engaging in selling cigarettes without a license, and
4 RCW 82.24 250 for possessing in excess of 10,000 cigarettes without the proper stamps
5 being affixed to the packages. Under the terms of the Compact, these offenses may be
6 pursued in State court. The defendants may not invoke the terms of a compact to which
7 they are not a party. See, *Matheson v. The Washington State Liquor Control Board*,
8 132 Wn. App. 280, 130 P.3d 897 (2006). The trial court did not err in concluding that the
9 Compact did not bar the state prosecution.

10
11 C. FEDERAL LAW DOES NOT PREEMPT WASHINGTON
12 STATE'S EXCISE TAX ON CIGARETTES AS IT APPLIES TO
13 INDIANS.

14 The fact that the defendants' property is designated as Indian trust land and is exempt
15 from property taxes does not mean that the business on the property is exempt from
16 paying the State excise tax on the sale of cigarettes. *Matheson v Kinnear*, 393 F. Supp. at
17 1029; *Matheson v. The Washington State Liquor Control Board*, 132 Wn. App. 280,
18 285, 130 P.3d 897 (2006).

19 The defendants' rely on many federal cases that at first glance seem to imply that
20 there is federal law that would preempt Washington's cigarette excise tax as it applies to
21 Indians. A closer look at these cases, however, indicates that federal law only preempts
22 the State of Washington's when the sales or events occur on an Indian Reservation. See
23 *United States v. Bruce*, 394 F.3d 1215 (9th Cir. 2005); *Confederated Tribes of the*
24 *Colville Reservation v. State of Washington*, 938 F.2d 146 (9th Cir. 1991); *Washington v.*
25 *Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 100 S. Ct. 2069, 65

1 L.Ed.2d 10 (1980). Federal law does not preempt the State of Washington from
2 regulating the transport of cigarettes and enforcing its excise tax on Indian transportation
3 and sales of cigarettes that occur outside of recognized Indian reservations.

4 The State agrees that Washington cannot enforce the cigarette excise tax on sales
5 to enrolled tribal members within the confines of their reservation. *See Bercier v. Kiga*,
6 127 Wn. App.809, 103 P.3d 232 (2004). But here, the trial court properly found that the
7 defendants' property in this matter, and the site of their business, is not within the
8 confines of a reservation. As such, the trial court correctly found under controlling
9 precedent that the State has jurisdiction to enforce its cigarette excise tax on off
10 reservation sales. *See Findings of Fact (Appendix 1); Matheson v. The Washington State*
11 *Liquor Control Board*, 132 Wn. App. 280; 130 P.3d 897 (2006); *State v. Cooper*, 130
12 Wn.2d 770, 928 P.2d 406 (1996).

14
15 D. THIS COURT SHOULD DENY REVIEW BECAUSE DEFENDANT
HAS NOT MET THE CRITERIA OF RAP 2.3(b).

16 As defendant is seeking review of an order not subject to direct review under RAP
17 2.2, he must meet the criteria set forth in RAP 2.3(b). That rule provides, in part:

18 Considerations governing acceptance of review. Except as provided in
19 section (d), discretionary review may be accepted only in the following
20 circumstances:

21 (1) The superior court has committed an obvious error which would render
further proceedings useless; or

22 (2) The superior court has committed probable error and the decision of
23 the superior court substantially alters the status quo or substantially limits
24 the freedom of a party to act;

1 (3) The superior court has so far departed from the accepted and usual
2 course of judicial proceedings, or so far sanctioned such a departure by an
3 appellate court;

4 (4) The superior court has certified, or that all parties to the litigation have
5 stipulated, that the order involves a controlling question of law as to which
6 there is a substantial ground for a difference of opinion and that
immediate review of the order may materially advance the ultimate
termination of the litigation.

7 RAP 2.3(b).

8 The defendants' claim to seek discretionary review under RAP 2.3(b)(4), which
9 would require superior court certification that there is a controlling question of law for
10 which there is a substantial grounds for difference of opinion. The defendants filed a
11 motion seeking such certification from the trial court, but there has been no such
12 certification issued. The State asserts that there are no substantial grounds for a difference
13 of opinion for the reasons set forth above. The defendants also claim under RAP 2.3
14 (b)(1) that the superior court has committed an obvious error by concluding that the State
15 courts have criminal jurisdiction over Indian trust lands outside of the boundaries of a
16 federally recognized Indian Reservation. As argued above, the trial court correctly
17 applied controlling precedent in finding that the State had jurisdiction.

18 This Court should deny the motion for discretionary review.
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2 V. CONCLUSION:

3 For the foregoing reasons, the State asks this court to deny the motion for
4 discretionary review.

5 DATED: December 1, 2009.

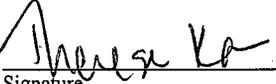
6 MARK E. LINDQUIST
7 Pierce County
8 Prosecuting Attorney

9 
10 Tom Moore
11 Deputy Prosecuting Attorney
12 WSB # 17542

12 Certificate of Service:

13 The undersigned certifies that on this day she delivered by U.S. mail or
14 ABC-LMI delivery to the attorney of record for the appellant/respondent
15 a true and correct copy/copies of the document to which this certificate
16 is attached. This statement is certified to be true and correct under penalty
17 of perjury of the laws of the State of Washington. Signed at Tacoma,
18 Washington, on the date below.

15 12-1-09
16 Date

15 
16 Signature

17 FILED
18 COURT OF APPEALS
19 DIVISION II
20 09 DEC -1 PM 3:03
21 BY STATE OF WASHINGTON
22 DEPUTY

APPENDIX "1"

Findings of Fact and Conclusions of Law

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-04680-1

vs.

ROBERT REGINALD COMENOUT,

Defendant.

FINDINGS AND CONCLUSIONS ON
MOTION TO DISMISS/SUPPRESS

THIS MATTER having come on before the Honorable Katherine M. Stolz on the 9th day of June, 2009, and the court having rendered an oral ruling thereon, the court herewith makes the following Findings and Conclusions.

THE UNDISPUTED FACTS

1) On 7/25/08 officers from the Washington State Liquor Control Board pursuant to a search warrant entered the premises of the Comenout's, The Indian Country Store, 908/920 River Road, Puyallup, Washington, and seized 37,000 cartons of unstamped cigarettes.

2) Washington law, RCW 82.24.030, requires that all cigarette packages have a tax stamp affixed prior to handling or distributing to enforce the collection of the State Cigarette Excise Tax.

3) Between April of 2007 and 7/25/09 officers of the Washington State Liquor Control Board made numerous purchases of cigarettes, both cartons and single packs, from the Indian

1 Country Store that did not bear a Washington tax stamp or any stamp from a recognized Indian
2 Tribe in the State of Washington.

3 4) On 9/26/08 the State of Washington filed charges on EDWARD A. COMENOUT,
4 ROBERT R. COMENOUT, Sr., and ROBERT R. COMENOUT, Jr.. All three men were charged
5 as accomplices with Engaging In Business of Cigarette Purchase, Sale, Consignment, or
6 Distribution Without a License; Unlawful Possession or Transportation of Unstamped Cigarettes;
7 and Theft in the First Degree.

8 5) The Comenout's property at 908/920 River Road Puyallup is Indian Trust Land,
9 however, the land is not within the borders of any established Indian reservation.

10 6) EDWARD A. COMENOUT is an enrolled member of the Quinault Indian Tribe. The
11 Quinault Reservation is located 60 miles to the West on the Coast of Washington.

12 7) The Quinault Tribe and the State of Washington entered into a Cigarette Compact on
13 1/3/05 that is still in effect. The Compact requires "tribal retailers" to be licensed by the tribe.
14 The Compact requires that all cigarettes sold by "tribal retailers" shall bear either a Washington
15 State Tribal Compact Stamp or a Quinault Nation Stamp.

16 8) The defendants filed a Motion to Suppress or Dismiss for three reasons:

- 17 1) The State lacks jurisdiction on Indian Trust Lands.
18 2) The Compact prevents the State from taxing "tribal retailers".
19 3) Federal law preempts Washington law regarding cigarette taxes.
20

21 THE DISPUTED FACTS

22 1) The Comenouts assert that under the terms of the Cigarette Compact they qualify as a
23 "tribal retailer" and therefore, jurisdiction is properly with the Quinault Indian Tribe or the
24 Federal Government.
25

1 2) The State asserts that the Comenouts have rejected the Compact. The Comenouts are
2 not licensed by the Quinault Tribe as required by the Compact. The Comenouts have not paid the
3 taxes that are required by the Compact, as evidenced by the lack of stamps on the 37,000 cartons
4 of cigarettes seized. The Compact gives enforcement authority for violations of RCW 82.24 to
5 the Washington State Liquor Control Board

6 7 FINDINGS AS TO DISPUTED FACTS

8 1) The Court finds that the Cigarette Compact between the State of Washington and the
9 Quinault Indian Tribe is an agreement between two sovereign entities.

10 2) The Court finds that the Quinault Indian Tribe has concurrent jurisdiction with the
11 State of Washington over the Comenouts possession and sale of cigarettes.

12 3) The Court finds that the Quinault Indian Tribe has given the power to enforce
13 violations of RCW 82.24 to the State of Washington.

14 15 CONCLUSIONS OF LAW

16 1) The Court concludes that the State of Washington per RCW 32.12.010 has jurisdiction
17 over the Comenout's property at 908/920 River Road Puyallup Washington.

18 2) The Court concludes that the State of Washington and the Quinault Indian Tribe have
19 concurrent jurisdiction over the Comenout's possession and sale of cigarettes.

20 3) The Court concludes that the Comenouts owe the taxes on the 37,000 cartons of
21 cigarettes to either the State of Washington or the Quinault Indian Tribe.

22 4) The Court concludes that the Quinault Indian Tribe has deferred enforcement authority
23 in this matter to the State of Washington.
24
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5) The court denies the defendant's Motion to Dismiss/Suppress.

DONE IN OPEN COURT this ____ day of November, 2009.

Katherine M. Stolz, Judge

Presented by:

TOM L. MOORE
Deputy Prosecuting Attorney
WSB # 17542

Approved as to Form:

Randal B. Brown
Attorney for Defendant
WSB # 24181

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APPENDIX "2"

Information

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-04681-0

vs.

EDWARD A COMENOUT,

INFORMATION

Defendant.

DOB: 8/16/1928

SEX : MALE

RACE: AMER INDIAN/ALASKAN

PCN#:

SID#: UNKNOWN

DOL#: UNKNOWN

CO-DEF: ROBERT REGINALD COMENOUT 08-1-04680-1

CO-DEF: ROBERT REGINALD COMENOUT, SR 08-1-04682-8

COUNT IV

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse EDWARD A COMENOUT of the crime of ENGAGING IN BUSINESS OF CIGARETTE PURCHASE, SALE, CONSIGNMENT OR DISTRIBUTION WITHOUT LICENSE, committed as follows:

That EDWARD A COMENOUT, acting as a principal or an accomplice, in the State of Washington, on or about the 25th day of July, 2008, engage in the business of purchasing, selling, consigning, or distributing cigarettes in this state without a license issued pursuant to RCW 82.24, contrary to RCW 82.24.500, and against the peace and dignity of the State of Washington.

COUNT V

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse EDWARD A COMENOUT of the crime of UNLAWFUL POSSESSION OR TRANSPORTATION OF UNSTAMPED CIGARETTES, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time,

INFORMATION- 1

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

1 place and occasion that it would be difficult to separate proof of one charge from proof of the others,
2 committed as follows:

3 That EDWARD A COMENOUT, acting as a principal or an accomplice, in the State of
4 Washington, on or about the 25th day of July, 2008, did unlawfully, feloniously, and knowingly or
5 intentionally possess or transport in the State of Washington a quantity in excess of ten thousand
6 cigarettes without the proper stamps affixed as required by RCW Chapter 82.24 and (i) where defendant
7 did fail to give proper notice as required by RCW 82.24.250 prior to transporting the stamps; and (ii)
8 where defendant during the transport of such cigarettes did not actually possess invoices or delivery
9 tickets showing the true name and address of the consignor or the seller, the true name and address of the
10 consignee or purchaser, and the quantity and brand of the cigarettes so transported; and (iii) where the
11 cigarettes were not consigned to or purchased by any person authorized by RCW Chapter 82.24 to
12 possess unstamped cigarettes in this State, contrary to RCW 82.24.110(2), and against the peace and
13 dignity of the State of Washington.

14 COUNT VI

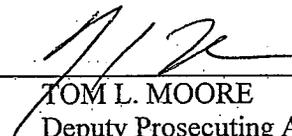
15 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
16 authority of the State of Washington, do accuse EDWARD A COMENOUT of the crime of THEFT IN
17 THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same
18 conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or
19 so closely connected in respect to time, place and occasion that it would be difficult to separate proof of
20 one charge from proof of the others, committed as follows:

21 That EDWARD A COMENOUT, acting as a principal or an accomplice in the State of
22 Washington, on or about the 25th day of July, 2008, did unlawfully and feloniously obtain control over
23 property and/or services other than a firearm or a motor vehicle, belonging to another, of a value
24 exceeding \$1,500, by color or aid of deception with intent to deprive said owner of such property and/or
services, contrary to RCW 9A.56.020(1)(b) and 9A.56.030(1)(a), and against the peace and dignity of the
State of Washington.

DATED this 26th day of September, 2008.

WA ST LIQ CNTRL BOARD
WA0WSLC

GERALD A. HORNE
Pierce County Prosecuting Attorney

By: 

TOM L. MOORE
Deputy Prosecuting Attorney
WSB#: 17542

1 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

2 STATE OF WASHINGTON,

3 Plaintiff,

CAUSE NO. 08-1-04681-0

4 vs.

5 EDWARD A COMENOUT,

DECLARATION FOR DETERMINATION OF
PROBABLE CAUSE

6 Defendant.

7 TOM L. MOORE, declares under penalty of perjury:

8 That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police
9 report and/or investigation conducted by the WA ST LIQ CNTRL BOARD, incident number 5E7107A;

10 That the police report and/or investigation provided me the following information;

11 That in Pierce County, Washington, , the defendants, ROBERT REGINALD COMENOUT, Jr.
12 EDWARD A. COMENOUT, and ROBERT REGINALD COMENOUT, Sr. did commit the crimes of
13 ENGAGING IN THE BUSINESS OF PURCHASING; SELLING, CONSIGNING, OR DISTRIBUTING
14 CIGARETTES WITHOUT A LICENSE; POSSESSING OR TRANSPORTING IN EXCESS OF 10,000
15 CIGARETTES WITHOUT THE REQUIRED TAX STAMPS; and THEFT IN THE FIRST DEGREE.

16 EDWARD A. COMENOUT is the owner of the Indian Country Store located at 908/920 River
17 Road, Puyallup, Washington. The Indian Country Store sells cigarettes, other tobacco products, and
18 miscellaneous gifts. ROBERT REGINALD COMENOUT, Sr. and ROBERT REGINALD COMENOUT,
19 Jr. are engaged in the daily business of running the store. Neither the Indian Country Store nor any of the
20 individuals named in this affidavit are licensed by an Indian Tribe or the State of Washington to sell
21 cigarettes. RCW 82.24.500 requires that any business in the State of Washington that sells cigarettes be
22 licensed under chapter 82.24. COUNTS I, IV, and VII.

23 The land occupied by the Indian Country Store is held in trust for EDWARD A. COMENOUT by
24 the United States government for the benefit of EDWARD A. COMENOUT. The land is not within the
confines of any recognized reservation of any federally recognized Indian Tribe (specifically the Puyallup
or Quinault Tribes). The Puyallup Reservation is the closest reservation but the land is not within the
confines of the Puyallup Reservation. EDWARD COMENOUT is a registered member of the Quinault
Tribe but the Quinault Reservation is approximately 250 miles to the West. The land is categorized as
"purchased land" not "allotted land" and therefore, bears no attributes of tribal government.

The land has been the focus of multiple state and federal legal decisions. These decisions date
from 1975 through 1997, and, in each of the decisions it has been clear that (1) the land is outside of the
boundaries of any formal reservation and (2) the state has jurisdiction over trust land outside of the
boundaries of any formal reservation. The land is not exempt from the State of Washington's excise tax
on cigarettes.

RCW 82.24.110(2) provides that is unlawful (a felony) for any person to knowingly or
intentionally to possess or transport within the state a quantity in excess of 10,000 cigarettes unless the
proper stamps are affixed to the cigarettes. In other words, it is illegal to possess in excess of 10,000
cigarettes unless the taxes have been paid on those cigarettes.

In September of 2006 the Washington State Liquor Control Board began receiving complaints
about the sale of untaxed cigarettes from The Indian Country Store. The WSLCB began to investigate and

DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -1

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

1 determined that in the last ten years to the present date no taxes were paid or stamps purchased by The
2 Indian Country Store or any of the COMENOUTS. Between April of 2007 and the present, WSLCB
3 officers have made numerous purchases of cigarettes, both cartons and single packs of cigarettes. The
4 cigarettes purchased in each instance did not have the proper stamps attached. Two of the packs of
5 cigarettes did have Couer d' Alene Tribal stamps attached, not the proper Washington State stamps. The
6 WSLCB officers also observed cases of unstamped cigarettes being delivered to The Indian Country
7 Store. It is easy to spot unstamped cigarettes because a case must be split in half in order to stamp the
8 cigarettes. If the case has not been split then the cigarettes have not been stamped.

9 On 7/25/08 the WSLCB officers in an effort to enforce the Washington State cigarette tax served
10 a search warrant on The Indian Country Store. The agents contacted ROBERT R. COMENOUT, Sr.
11 inside the business. ROBERT R. COMENOUT, Sr. appeared to be in charge of the business. ROBERT R.
12 COMENOUT Sr. opened the safe and then closed it for the agents and was generally the person who
13 answered the agent's questions about the business. ROBERT R. COMENOUT, Jr. was contacted in the
14 back of a pickup truck located in front of the business. ROBERT R. COMENOUT, Jr. refused to
15 cooperate with the tax agents. Several employees of the business were contacted in and around the
16 premises. At least two of the employees indicated that they worked at the store for "BOB" COMENOUT.

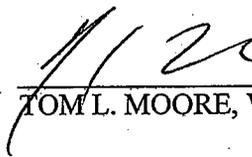
17 The WSLCB tax agents seized 37, 000 cartons of cigarettes from the grounds of The Indian
18 Country Store. The cigarettes were seized because the authorized tax stamps were not attached. The
19 cigarettes must have attached to each pack either a tax stamp or a tax exempt stamp. Some of the seized
20 cigarettes did have Idaho Tribal stamps attached. Idaho Tribal stamps are not authorized in the State of
21 Washington.

22 The number of cigarettes in 37,000 cartons is approximately 7.4 million cigarettes. This is well in
23 excess of the 10,000 cigarettes that it is felony to possess unless the required tax stamps are attached.
24 COUNTS II, V, AND VIII.

The Washington State cigarette excise tax is \$20.25 per carton of cigarettes. The tax on 37,000
cartons is \$750,000. These are taxes that must be paid at the time the cigarettes are purchased by a retail
or a wholesale business. This is lost revenue to the State of Washington. COUNTS III, VI, and IX.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: September 26, 2008
PLACE: TACOMA, WA



TOM L. MOORE, WSB# 17542

APPENDIX “3”

Compact

CIGARETTE TAX COMPACT

between

THE QUINAUT NATION

and

THE STATE OF WASHINGTON

PREAMBLE

WHEREAS, the Quinault Nation ("Tribe") is a federally recognized Indian tribe, possessed of the full inherent sovereign powers of a government;

WHEREAS, the State of Washington ("State") is a state within the United States of America, possessed of full powers of state government;

WHEREAS, the body of Federal Indian law and policy recognizes the right and the importance of self-determination for Indian tribes, the authority of a tribe to tax certain activities, and the need for economic development in Indian country by Indian tribes;

WHEREAS, the State has committed, through the Centennial Accord and Millennium Agreement, to the political integrity of the federally recognized Indian tribes within the State of Washington and has formally recognized that the sovereignty of each tribe provides paramount authority for the tribe to exist and to govern;

WHEREAS, a long-standing disagreement exists between the Tribe and the State over questions regarding jurisdiction over, and the taxation of, the sale and distribution of cigarettes;

WHEREAS, the State and Tribe will benefit from resolution of that disagreement by the change in focus from enforcement and litigation to a focus on the administration of this Cigarette Tax Compact;

WHEREAS, the Tribe and State will benefit from resolution of that disagreement by the tax base this Compact will enable, taxation being an essential attribute of sovereignty and a tool of self-sufficiency;

WHEREAS, the State and Tribe will also benefit by the exercise of the attributes of tribal sovereignty and from the improved well-being of members of the Tribe that will result from economic development by the Tribe and its members;

WHEREAS, both the Tribe and the State desire a positive working relationship in matters of mutual interest and seek to resolve disputes and disagreements by conducting discussions on a government-to-government basis;

WHEREAS, the mutual interests of the Tribe and the State brought these two governments together to pursue their common interest in resolving this tax disagreement; and

WHEREAS, this Compact is authorized, on the part of the State, by legislation, including House Bill 5372, enacted by the 2001 Regular Session of the 57th Legislature and signed by the Governor, effective July 22nd, 2001, and House Bill 2553, enacted by the 2002 Regular Session of the 57th Legislature and signed by the Governor, effective June 13, 2002, as codified in

Revised Code of Washington (RCW) 43.06.450, RCW 43.06.455, RCW 43.06.460, and RCW 82.24.295; and on the part of the Tribe, by the Tribal Council and signed by the Tribal Chairman.

NOW THEREFORE, the Tribe by and through its Tribal Council, and the State by and through its Governor, do hereby enter into this Compact for the mutual benefit of the Tribe and the State.
To wit:

PART I - DEFINITIONS

1. "Auditor" means an independent third party auditor selected pursuant to Part VIII of this Compact.

2. "Allocation" means the number of cigarettes available to be sold to Indians free of all state cigarette and sales taxes. It is based on a formula that includes consumption data and tribal service area population.

3. "Carton" or "carton of cigarettes" means, unless otherwise indicated, a carton of two hundred (200) cigarettes.

4. "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

5. "Compact" means this agreement entered into by the State and the Tribe.

6. "Department" means the Washington State Department of Revenue.

7. "Essential government services" means services provided by the Tribe including, but not limited to, administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development.

8. "Indian country," consistent with the meaning given in 18 United States Code (U.S.C.) section 1151, includes:

(a) All land within the limits of the Quinault Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights of way running through the reservation.

(b) All lands placed in trust or restricted status for individual member Indians or for the Tribe, and such other lands as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

(c) All Indian allotments or other lands held in trust for a tribal member or the Tribe, the Indian titles to which have not been extinguished, including rights of way running through the same.

9. "Quinault Reservation" or "Reservation" means the area recognized as the Quinault Reservation by the United States Department of the Interior.
10. "Liquor Control Board" is an agency of the State with a mission to prevent the misuse of alcohol and tobacco through education, enforcement, and controlled distribution.
11. "Local retail sales tax" means the combined Washington local retail sales and use taxes applicable in the area.
12. "Non-Indian" means an individual who is neither a Quinault tribal member nor a nonmember Indian.
13. "Nonmember Indian" means an enrolled member of a federally recognized Indian tribe other than the Quinault Nation.
14. "Parties to the agreement" or "parties" means the Tribe and the State.
15. "Retail selling price" means the price paid by the consumer for each package or carton of cigarettes, which price includes the tribal cigarette tax.
16. "Self-certified tribal wholesaler" means a wholesaler who is a federally recognized Indian tribe or a member of such a tribe.
17. "State Cigarette Tax" means the state tax imposed on each cigarette, which is expressed in cents per cigarette.
18. "State and Local Retail Sales and Use Taxes" means taxes levied by the State or by local units of government and expressed as a percentage of the sales price (which includes the State Cigarette Tax) of a unit of cigarettes.
19. "State Taxes" in this compact only, means a combination of the "State Cigarette Tax," and the "state and local retail sales and use taxes."
20. "State" means the State of Washington.
21. "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. "Tobacco products" does not include cigarettes.

22. "Tribal member" means an enrolled member of the Quinault Nation.

23. "Tribal retailer" means a cigarette retailer wholly owned by the Quinault Nation and located in Indian country or a member-owned smokeshop located in Indian country and licensed by the Tribe.

24. "Tribal cigarette tax" means the tax or taxes enacted as a provision of Tribal law on the units of cigarettes sold and on the purchase of cigarettes by retail buyers.

25. "Tribal tax stamp" means the stamp or stamps that indicate the taxes imposed under this Compact have been paid or that identify those cigarettes with respect to which no tax or another tribal tax is imposed.

26. "Tribe" or "tribal" means or refers to the Quinault Nation, a federally recognized tribe.

27. "Wholesaler" means every person who purchases, sells, or distributes cigarettes for the purpose of resale.

PART II - APPLICABILITY OF THE COMPACT

1. Execution of Compact

This Compact shall become effective when approved by both the Tribal Council as indicated by the signature of the tribal Chairman, and by the State when signed by the Governor. This Compact shall be executed in duplicate originals, with each party retaining one fully executed duplicate original of the Compact.

2. Application

From its execution, and contingent upon the imposition of the tribal cigarette tax pursuant to a tribal law meeting the terms of Part III of this Compact, this Compact shall apply to the retail sale of cigarettes by tribal retailers. Sales subject to the tribal Cigarette Tax imposed pursuant to this Compact are those in which delivery and physical transfer of possession of the cigarettes from the retail seller to the buyer occurs within Indian country. If the Tribe desires to pursue mail order and/or internet sales of Cigarettes, the Tribe and State agree to negotiate in good faith mutually acceptable terms and conditions of a memorandum of understanding concerning the taxation of such sales.

3. Scope Limited

This Compact does not apply to: (a) cigarettes sold at retail by non-Indians or nonmember Indians; (b) tobacco products as that term is defined in Part I of this compact; or (c) cigarettes manufactured by the Tribe or its enterprises within Indian country.

PART III - IMPOSITION OF TRIBAL CIGARETTE TAXES

1. Tribal Retailers

- a. The Tribe agrees to inform the Department regarding the startup of cigarette sales by any tribal retailer who begins selling cigarettes after the effective date of this Compact. At the time of the execution of this Compact, the Tribe makes sales of cigarettes at its Taholah Store, its Queets Store, and at the Quinault Beach Resort and Casino.
- b. The Tribe agrees that any cigarette retailer wholly owned by the Tribe is subject to this Compact.
- c. The Tribe agrees that it will require any member-owned smokeshop located in Indian country to be in compliance with the terms of this Compact. In addition, the Tribe agrees that it will maintain and enforce a requirement that any such member-owned smokeshop obtain a license from the Tribe and that a condition of such license is access of the Department to observe sales pursuant to section 1 of Part X of this Compact. The State agrees that it is entirely within the discretion of the Tribe as to whether it allows retail sales of cigarettes by its members.
- d. The Tribe agrees to enact ordinances regarding Auditor access to records of tribal members selling cigarettes in Indian Country, should the Tribe elect to allow retail sales of cigarettes by its members.

2. Tax Imposed on Sales by Tribal Retailers

The Tribe, by law and in accord with the requirements of this Part, shall impose taxes on all sales by tribal retailers of cigarettes to purchasers within Indian country. The Tribe may allow for an exemption from such taxes for Tribal members under Part V section 1 of this Compact.

Beginning no sooner than the date this compact is signed by both parties, and subject to enactment or revision of a tribal law authorizing the imposition of a tax on cigarettes, the Tribe shall impose and maintain in effect a tax on retail sales of cigarettes equal to 80% of the state taxes.

No later than 36 months after the initial imposition of a tax under this Compact and subject to the phase-in reduction under this part, the Tribe shall impose and maintain in effect a tax on the retail sale of cigarettes equal to 100% of the state taxes.

If during any quarter, the number of cartons of cigarettes, excluding those manufactured by the Tribe or its enterprises, that are sold at retail exceeds by at least 10 percent the quarterly average sales of the twelve month period, as specified in this section 2, the 36 month period noted above shall be reduced by three months. The Auditor shall determine the quarterly average sales baseline. The baseline shall be calculated using sales for the six months immediately preceding the imposition of tax. The Auditor shall notify the Tribe and the Department when the retail sales for any quarter exceed the baseline by at least ten percent. These reductions will be cumulative. For purposes of this provision:

- (a) "Quarter" means a three-month period, each quarter immediately succeeding the next. The first quarter begins the first day of the first month the Tribal cigarette tax is imposed, if the imposition of the tax is on or before the 15th of the month, or begins

the first day of the second month the Tribal cigarette tax is imposed, if the imposition of the tax is after the 15th of the month; and

- (b) The "quarterly average sales" means the sum of the retail sales made during the two quarters divided by two.

During the term of this Compact and upon any future increase in the state cigarette tax, the tribal tax on cigarettes shall increase by no less than 100 percent of the increase in the combined state taxes. Notwithstanding the foregoing sentence, so long as the Tribe is entitled to apply the 80 percent formula set forth above to cigarette sales, the increase in State taxes shall trigger an increase in the corresponding Tribal cigarette tax of 80 percent of the increased amount.

Upon any future decrease in the state cigarette tax, the tribal tax on cigarettes may decrease to a minimum of no less than 100 percent of the combined State taxes.

The State will notify the Tribe at least thirty (30) days prior to the effective date, in writing, of any increases or decreases in the cigarette tax or the combined state sales and use tax.

Pursuant to RCW 43.06.455(3) and RCW 82.24.295, the State retrocedes from its tax during the time this Compact is in effect, subject to the imposition of a Tribal tax. In addition, the State agrees that enforcement of this Compact shall be done in accordance with the conditions set forth in this Compact.

PART IV - PURCHASE OF CIGARETTES BY TRIBAL RETAILERS

1. Wholesale Purchases - Requirements

The Tribe agrees to add to tribal law, and maintain in effect, a requirement that the tribal retailers purchase cigarettes only from:

- (a) Wholesalers or manufacturers licensed to do business in the State;
- (b) Self-certified tribal wholesalers who meet the requirements of Part VI section 3 of this Compact; or
- (c) The Tribe or its enterprises as a tribal manufacturer or wholesaler.

2. Delivery of Cigarettes to the Tribal Retailer Outside of Indian Country

Cigarettes bearing the tax stamp required by this Compact or cigarettes purchased by the Tribe for stamping may be delivered or transferred within or outside Indian country by a wholesaler to the Tribe or a tribal retailer, subject to meeting any notification requirements of this Compact. Commercial carriers may make deliveries. Invoices identifying the delivery as cigarettes for the Quinault Nation must accompany such cigarettes.

PART V - TAX STAMPS

1. Tax Stamp Required

- (a) All cigarettes sold by tribal retailers shall bear either a Washington State Tribal Compact Stamp or a Quinault Nation tax stamp.
- (b) The Tribe may allow for an exemption from this tax for enrolled members who are over the age of 18 years. If the Tribe chooses to exempt its members from tax, the Tribe agrees to keep exact records of such sales, under section (2) of this part. The expectation of both Parties is that if the Tribe chooses to tax its members that the allocation allowance described in WAC 458-20-192 will be used as an approximation of sales to members and the Tribe will not be required to keep exact records of such sales. This allocation figure will be used to distinguish funds subject to the requirements of Part XIII section 8, from funds that are not.

2. Creation and Supply of Tax Stamps

- (a) The Tribe will use either Washington State Tribal Compact tax stamps, which are provided by the State through its stamp vendor, or tribal tax stamps. If the Tribe elects to institute its own stamp, the Tribe and State agree to negotiate in good faith mutually acceptable terms and conditions of a memorandum of understanding concerning the use of such stamps.
- (b) If the Tribe elects to use the state tribal compact tax stamps it will purchase cigarettes with the stamp affixed after the effective date of the tribal cigarette tax, until such time as the Tribe arranges for the use of a tribal stamp. If the Tribe makes this election, the wholesaler shall obtain the stamps from the State's stamp vendor. The wholesaler shall affix the stamps to the cigarettes, sell the cigarettes to the Tribe without tax included in the price, and the Tribe in turn shall institute an accounting and pricing protocol that assures the cigarette tax is included in the price of the cigarettes. The State and the Tribe may agree to an alternative method of obtaining the stamps and accounting for tax revenue, such method to be agreed to by both parties and memorialized in writing.
- (c) If the Tribe elects to use the tribal tax stamps, the stamps will have a serial number or some other discrete identification. The Tribe agrees to purchase stamps from a nationally recognized stamp manufacturer.
- (d) The Tribe may contract with a bank or other stamp vendor to distribute tribal tax stamps. The stamp vendor shall distribute stamps to wholesalers, upon payment of the applicable Tribal cigarette tax by the wholesaler or Tribal retailer, and remit the collected taxes to the Tribe. The contract shall provide that the stamp vendor shall purchase a supply of Tribal tax stamps from the manufacturer and make them available for purchase. The Tribe may, at its option, select as the stamp vendor the bank with which the Department contracts for that service or some other third-party stamp vendor satisfactory to both parties. The Tribe shall require the stamp vendor to remit to the Tribe all revenue collected from the Tribal cigarette tax. The Tribe shall require that the stamp vendor provide to the Tribe and to the Department timely reports detailing the number of Tribal tax stamps sold, and make its records available for auditing by the Tribe and the Department. The Tribe's contract with the stamp

vendor shall specify a process by which the Tribe is assured that all wholesalers who sell cigarettes to Tribal retailers are paying the applicable Tribal taxes, unless the Tribal retailer has prepaid the tax to the stamp vendor. This process may include a requirement that wholesalers agree to provide documentation such as invoices of sales to verify to the Tribe that the Tribal taxes were paid. In the alternative, the Tribe may elect to act as its own stamp vendor. Should it so desire, it must enter into a memorandum of agreement with the Department, setting forth protocols regarding security and audit. The Department agrees to not unreasonably refuse entry into said memorandum of agreement.

3. Requirements for Affixation of Stamps by Wholesalers

Wholesalers on the Tribe shall be responsible for affixing the tax stamps to the smallest container of cigarettes that will be sold or distributed by the tribal retailer. Stamps shall be affixed so that the stamps may not be removed from the package without destroying the stamp. Stamps shall be affixed so that they may be readily viewed by inspection.

Wholesalers may only possess unstamped cigarettes for as long as is reasonably necessary to affix tax stamps to the packages for sale or to ship to the Tribe. It is presumed that any such possession in excess of seventy-two (72) hours (excluding Saturdays, Sundays, and Holidays) is in contravention of this Compact. The term "holiday" is limited to the following holidays: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas.

4. Wholesaler Obligation Under State Law

Affixing of the tax stamps, retention and production of records required by state law (in the case of state licensed wholesalers) and by this Compact (in the case of self-certified tribal wholesalers), and compliance with other requirements in this Compact, shall be deemed to satisfy the state cigarette excise tax obligation of a wholesaler.

5. State Agreement Regarding Compliance with State and Federal Law

As to all transactions that conform to the requirements of this Compact, such transactions do not violate state law, and the State agrees that it will not assert that any such transaction violates state law for the purpose of 18 U.S.C. § 2342 or other federal law specifically based on violation of state cigarette laws.

PART VI—WHOLESALEERS

1. Wholesalers Licensed by the State

Wholesalers licensed by the State are subject to the requirements as set forth in Title 82 RCW and any rules adopted thereunder, and therefore must maintain adequate records detailing which cigarettes are subject to state tax and which cigarettes are subject to the tribal cigarette tax.

2. Self-Certified Tribal Wholesalers

Tribal wholesalers who are not licensed to do business within the State or any other state, and who are not required by state law to be licensed, must, prior to doing business with the

Tribe, have entered into a memorandum of agreement with the Department regarding their activities as a wholesaler in regard to (a) meeting the terms of cigarette compacts and (b) the interests of the state of Washington regarding the cigarette trade in general.

The Tribe shall require compliance with this Compact in its agreements with any such tribal wholesalers and shall provide copies of such agreements to the Auditor for its review. The contract between the Tribe and the tribal wholesaler will also include a requirement that:

- (a) Invoices detailing the quantity and brand of cigarettes destined for the Tribe will accompany the cigarettes transported in the State. Such invoices shall provide an order number that matches the order number provided under Part VII section 2 of this Compact and shall identify the seller of the cigarettes as well as the buyer of the cigarettes; and
- (b) The wholesaler will allow the Auditor access to its records for the purpose of determining whether the tax stamps for the Tribe's cigarettes are properly affixed to the cigarette containers.

A tribal wholesaler who has a memorandum of agreement with the State and who has an agreement with the Tribe, in which agreement the wholesaler agrees to abide by the terms of this Compact, shall be referred to as a "self-certified tribal wholesaler."

3. Tribe as Wholesaler

This Compact contemplates that the Tribe may, at some future date, act as its own wholesaler. In the event that the Quinault Nation decides to act as its own wholesaler in regards to sales to the tribal retailers, it agrees to first enter into a memorandum of agreement with the Department regarding this activity. The Department agrees to not unreasonably refuse entry into said memorandum of agreement. The memorandum of agreement shall reference any applicable requirements of this Compact. If the Tribe, by itself or through a tribal enterprise, manufactures and wholesales to the tribal retailers, that wholesale activity does not require a memorandum of agreement under this subsection.

4. Self-Certified Wholesalers

Should the Tribe decide it wants the option of purchasing cigarettes from a self-certified wholesaler, as that term is used in RCW 43.06.455 (5)(b), it must first enter into a memorandum of agreement with the Department of Revenue governing this activity. The Department agrees to not unreasonably refuse entry into said memorandum of agreement.

**PART VII - ENFORCEMENT AUTHORITY AND
RESPONSIBILITY OF THE LIQUOR CONTROL BOARD**

1. Intent

The State authorizing legislation for this Compact states that it is the intent of the Legislature that the Liquor Control Board and the Department continue the division of duties and shared authority under Chapter 82.24 RCW and therefore the Liquor Control Board is responsible for enforcement activities that come under the terms of Chapter 82.24 RCW.

2. Notification

The Tribe or its designee shall notify the Department seventy-two (72) hours in advance of all shipments of unstamped cigarettes to the Tribe or tribal retailers if such shipments will occur outside the reservation boundaries. Such notice shall include who is making the shipment (meaning who is the wholesaler), detail regarding both quantity and brand, and the invoice order number. Transportation of the cigarettes without the notice required by this section subjects the cigarettes to seizure.

3. Commercial Carriers

The State recognizes that shipments of cigarettes both from in state and from out-of-state wholesalers who meet the requirements of this Compact may be made by commercial carrier. Such shipments must be accompanied by documents as required under this Compact and subject to advance notice requirements.

PART VIII - INDEPENDENT THIRD PARTY AUDITOR

1. General

The Tribe wishes to provide assurance that all parties to this Compact and persons named in this Compact are in compliance with the spirit and terms of this Compact. The purpose of this Part is to provide a process for regular verification of the requirements in this Compact. The verification process is intended to reconcile data from all sources that make up the stamping, selling, and taxing activities under this Compact.

2. Tribe to Contract with Third Party Auditor

The Tribe and the State agree that, for the purposes of verifying compliance with this Compact, the Tribe will contract with an independent third party auditor. The Tribe will retain the Auditor and the Tribe shall bear the costs of the auditing services. The Tribe shall be entitled to freely communicate with the Auditor. The Auditor must be a certified public accountant licensed by the State of Washington and in good standing, such good standing subject to confirmation by the licensing board through which the auditor is licensed. The Auditor will review records on an annual basis, consistent with the Tribe's fiscal year, to verify the requirements of this Part unless otherwise specified.

3. Audit Protocol

To ensure compliance with this Compact, the Auditor must adhere to the following protocol:

Period under review: To verify the requirements of this Compact, the Auditor must review records for all years during the current appropriate audit cycle, and may review records for earlier years after the date of the signing of the Compact only as necessary for an internal reconciliation of the entity's books. In situations where the Auditor is responsible for verifying records on less than an annual basis, the period under review shall not include years previously reviewed by the Auditor, except when a violation is alleged to have occurred during the period previously reviewed.

Records to be examined: To verify the requirements of this Compact, the Auditor must review at a minimum the records specified below. In all situations, the Auditor is not responsible for examining records that do not relate to the stamping, selling, or taxing activities of the Tribe, unless a review of the records is necessary for an internal reconciliation of the books:

- (a) Self-certified tribal wholesaler: records and invoices of stamp purchases, records and invoices of sales of stamped cigarettes, stamp inventory, and the stamping process;
- (b) Tribal retailers: financial statements or purchase invoices of cigarettes purchased from licensed wholesalers, self-certified tribal wholesalers and manufacturers, financial statements or sales invoices relating to sales of stamped cigarettes, sales of exempt cigarettes, cigarette inventory, records to verify whether Tribal cigarette and sales taxes were remitted to the Tribe for deposit into Tribal accounts, and records to verify that the retail selling price included the applicable tribal taxes;
- (c) Tribe: records such as account records and contract invoices necessary to verify that all Tribal cigarette tax revenue was used to fund essential government services described in Part XIII, section 8 of this Compact.

4. Audit Report Format

The Auditor shall provide the Department with a certified statement that, after each audit, the Auditor finds the Tribe to be in compliance with the terms of this Compact. The Department may view the audit report at the tribal Offices, but may not copy the same.

5. Initial Review

The first required review must cover the period starting on the effective date of the tax and ending December 31, 2005, and the Auditor must report its findings to the Tribe by April 1, 2006. This initial review shall include all of the activities covered by the protocol. Thereafter, reviews shall take place on the regular audit period with an audit report submitted within three months of each audit. The audit cycle for this compact is on a calendar year basis. The Tribe and the Department may by prior joint agreement select or vary the audit cycle depending on the on-going audit activity of the Tribe, in order to be efficient and effective in the use of auditor resources.

6. Self-Certified tribal Wholesalers

The Auditor will be responsible for reviewing the records, identified in subsection 3(a) of this Part, of all self-certified tribal wholesalers that sell cigarettes to a tribal retailer to verify that the tribal cigarette tax was paid by the wholesaler, unless paid to the stamp vendor by the tribal retailer, and that the stamps were correctly affixed to containers of cigarettes.

The Auditor must review the records, identified in subsection 3(a) of this Part, of all self-certified tribal wholesalers that sell cigarettes to a tribal retailer, no less than once every four years. If a wholesaler that previously sold cigarettes to a tribal retailer stops making such sales, the Auditor must review the records of that wholesaler during the next regularly scheduled annual audit.

7. Tribal Retailer

The Auditor will be responsible for reviewing the records, identified in subsection 3(b) of this Part, of the tribal retailer to certify that the tribal taxes were collected, that all cigarettes are properly stamped, that cigarettes were obtained from wholesalers authorized under this Compact, that any exemptions from tax are documented, and that revenue from the tribal tax under this Compact are not used to subsidize the tribal retailer.

8. Joint Audit Implementation and Review

The Tribe and the State shall confer prior to the beginning of the initial audit cycle. The purpose will be to discuss the objectives of the upcoming audit, the expectations of both the Tribe and the State, the audit standards to be used in such audit, and any issues regarding detail of the audit, records pertinent to the review, or substance of the Auditor's report. Subsequent audit meetings will be held as required.

If warranted by the findings in the report, the Tribe and the State shall meet jointly with the Auditor to review the report and discuss any issues of concern. For the purposes of this section, "audit cycle" refers to the reoccurring scheduled audit of an entity.

9. Dispute Resolution. In the event that either the Tribe or the Department disagrees with the Auditor's final report, either party may notify the other of the disagreement and follow the procedures for resolution of the disagreement in Part IX section 5 of this Compact.

PART IX - DISPUTE RESOLUTION

The Tribe and the State wish to prevent disagreements and violations whenever possible, and to quickly and effectively resolve disagreements and violations when they arise. The parties agree that, to the extent possible, informal methods shall be used before engaging in the formal processes provided by this Part.

As used in this Part "days" means calendar days, unless otherwise specified.

1. Notification of Violation

If either party believes a violation of the agreement has occurred, it shall notify the other party in writing. The notice shall state the nature of the alleged violation and any proposed corrective action or remedy. The parties agree to meet within 14 days of receipt of the notice, unless the parties agree to a different date. The purpose of the meeting will be to attempt to resolve between them the issues raised by the notice of possible violation, and provide an opportunity to implement any agreed corrective action.

2. **Mediation**

If the parties are unable to resolve the disputed issues through joint discussions under section 1 of this Part, either party may request mediation by giving a written mediation demand to the other party. The parties shall first attempt to agree on a mediator. If the parties cannot agree on a mediator within 30 days of written demand, a three person mediation panel shall be used and shall be selected as follows: each party shall select a mediator and the two mediators selected by the parties shall jointly select a third mediator.

The parties shall share equally the costs of mediation.

3. **Remedies**

Whenever an issue is submitted to mediation under this section, the mediators may recommend corrective action to remedy any violation that has occurred. In no case shall a mediator render an independent recommendation or decision on any issue on which the parties reach agreement. Remedies may include: audit of relevant tribal records, interpretation of Compact terms, changes in reporting, record keeping, enforcement practices, business practices, or similar actions. Remedies shall not include an award of monetary damages or costs of any kind, or the disclosure of any records not specifically subject to disclosure under this Compact.

4. **Termination of Compact**

If, after no more than eight months from the initial Notice of Violation or notice of other disagreement, the parties are unable to resolve the disagreement or alleged violation and/or the appropriate corrective action using the dispute resolution methods authorized in this section, or if a party continues to violate a Compact term after the completion of the mediation process authorized in this section, this Compact may be terminated. The parties may, after no less than six (6) months following any such termination, enter into a new Compact.

5. **Disagreements Regarding Reports of the Auditor**

Should either party have a concern about a report from the Auditor, which cannot be resolved through the joint audit review process described in Part VIII of this Compact, that party may choose to resolve the concern through the use of a mediator chosen under the provisions of Part IX, paragraph 2. Failure of either party to grant the mediator access to any records necessary to review the report is a violation under this Compact. The mediator may use the services of an independent third-party certified public accountant in undertaking such review.

6. **Notification of For Cause Termination**

Either party may terminate the Compact for cause. For the purposes of this section, "for-cause" shall mean only the following violations:

- (a) Retail sales of unstamped cigarettes during the effective period of a tribal cigarette tax;
- (b) Failure to submit to mediation as required by this Part IX;
- (c) A breach of the confidentiality provisions of Part XII of this Compact;
- (d) Failure of the Tribe to enforce the terms of this Compact in regards to member retailers; or
- (e) Use of tax proceeds in violation of the terms of this Compact.

The party seeking the termination for cause shall notify the other party and the mediator selected under Part IX, Section 2 of this Compact, who shall review the facts upon which the for-cause termination notice is based. The party making the allegation must provide a written recitation of the facts with the notice of termination. The responding party has ten days to provide its facts to the mediator. If the mediator determines that the alleged event has occurred, the Compact is terminated, however the party making the allegation may choose to go through the regular dispute resolution process in regard to the issue.

If the parties fail to reach agreement, or the For Cause Violation is not corrected, within one hundred eighty (180) days from the date of giving the Termination Notice, the Compact shall be terminated. If the parties reach agreement, or the for-cause violation is corrected during the notice period, the Compact shall not be terminated.

7. Notification of Sales to Minors Violation

The Department shall immediately notify the Tribe if an allegation is made that the Tribe has made sales to minors in violation of this Compact. Upon such notification, the Tribe shall take enforcement action according to the provisions of tribal law. Upon the third or subsequent violation within any rolling one-year period of the sales to minors provisions of this Compact the provisions of section 1 of this Part shall apply.

8. Notice Requirements

For the purposes of this Compact, notice shall be by certified mail, return receipt requested, unless both parties agree in writing to accept notice by facsimile or e-mail. Notice shall be deemed effective on the date of actual receipt. Notice shall be given as follows:

To the Department:

Director

Washington State Department of Revenue

P.O. Box 47454

Olympia, WA 98504-7454

To the Tribe:

Tribal Chair

P.O. Box 189

Taholah, WA 98587

9. **Sovereign Immunity**
Nothing in this Compact shall be construed as a waiver, in whole or in part, of either party's sovereign immunity.

PART X - RESPONSIBILITIES OF THE QUINAULT NATION, THE DEPARTMENT OF REVENUE, AND THE LIQUOR CONTROL BOARD

1. **Quinault Nation**
The Quinault Nation is responsible for both enforcement of the terms of this Compact and administration of the Compact, audit procedures and record keeping, and dispute resolution. The Quinault Nation agrees to allow the Department entry into retail stores, the purpose of such entry being limited to (a) visual observation of the retail sales taking place at the stores and (b) the purchase of cigarettes by the Department.
2. **Liquor Control Board**
This agreement does not alter the Liquor Control Board's responsibility under chapter 82.24 RCW.
3. **Department of Revenue**
The Department is responsible for the administration of the Compact, audit procedures and record keeping, and dispute resolution, as well as negotiation of its terms, on behalf of the Governor of the state of Washington.

PART XI - TERM OF THIS COMPACT - AMENDMENT

1. This Compact shall remain in effect no longer than eight (8) years from its effective date, subject to the termination provisions under Part IX of this Compact. The Compact shall be automatically renewed for successive periods of eight years, unless either party objects in writing at least thirty (30) days prior to the expiration date. Amendments to the Compact shall be considered upon the written request of either party. Disputes regarding requests for amendment of this Compact shall be subject to the dispute resolution process in Part IX of this Compact.
2. In the event that the State negotiates a contract, compact, or other agreement with another Tribe on terms more favorable than those included in this Compact, the State shall disclose to the Tribe the more favorable terms within thirty days of the Contract containing those terms becoming effective. The Tribe may initiate discussions with the State to amend this Compact to incorporate more favorable terms if so desired by the Tribe.

PART XII - CONFIDENTIALITY

All information under the terms of this Compact received by the Department or open to Department review is "return or tax information" and is subject to the provisions of RCW 82.32.330, the tax information "secrecy clause." All other information that is subject to review by the Auditor or review by the mediator or certified public accountant is confidential and shall not be disclosed to anyone, in any forum, for any purpose.

PART XIII - MISCELLANEOUS PROVISIONS

1. **Tribe Does Not Submit to State Jurisdiction**

By entering into this Compact, the Tribe does not concede that the laws of the state of Washington, including its tax and tax collection provisions, apply to the Tribe, its members or agents regarding activities and conduct within or without Indian country.

2. **State Does Not Concede Tribal Immunity**

By entering into this Compact, the State does not concede that the Tribe has any immunity from its tax and tax collection provisions.

3. **Compact Does Not Create any Third Party Beneficiaries**

No third party shall have any rights or obligations under this Compact.

4. **Land Status**

The Tribe shall provide information to the Department regarding the status of land upon which any new tribal retailer is located.

5. **Tobacco Master Settlement Agreement**

This Compact is not intended to impact the State's share of proceeds under the master settlement agreement entered into by the State on November 23, 1998.

The Tribe recognizes the State has an interest regarding nonparticipating manufacturers. The State recognizes the Tribe has an interest in the master settlement agreement. The Tribe agrees to not impede the State's efforts to secure compliance of the nonparticipating manufacturers, and the Tribe reserves its rights regarding these matters.

Nothing in this Compact supercedes or replaces chapter 70.157 RCW.

6. **Periodic Review of Compact Status**

Appropriate representatives of the Tribe and of the Department shall hold periodic meetings to review the status of this Compact and any issues that have arisen under the Compact. Those meetings shall be held no less frequently than once every twelve (12) months, but may be held more frequently.

7. **Sales to Minors**

The Tribe or a tribal retailer shall not sell or give, or permit to be sold or given, cigarettes to any person under the age of eighteen (18) years.

8. Essential Government Services

- a. Tribal cigarette tax revenue shall be used for essential government services. The Auditor shall certify the use of revenue under the process set forth in Part VIII of this Compact.
- b. Tribal cigarette tax revenue may not be used to subsidize tribal cigarette and food retailers. "Subsidize" means that proceeds from the tribal cigarette tax cannot be expended on the direct business activities of the Tribal retail cigarette business. In addition, where the cigarette business is collocated with a retail food business, the proceeds cannot be expended on the direct business activities of the tribal retail cigarette business.
- c. The following definitions shall apply to this Part:
 - i. "Direct business activities" include paying wages, benefits, bonuses, or expenses, related to the maintenance and operation of the retail facility or typically considered to be part of a business's operating expenses and overhead;
 - ii. "Essential governmental services" include, but is not limited to government services to provide and maintain infrastructure such as sidewalks, roads, and utilities; services such as fire protection and law enforcement; the costs of administering the Tribal cigarette tax stamp program under this Compact, including all deductions and exemptions similar to those available to retailers, wholesalers, and others under state law, further including transportation vehicles and related costs; Tribal administration activities such as tax functions, contracting for health benefits, economic development, natural resources, and the provision of job services; and distribution of moneys related to trust funds, education, general assistance, such activities as land and building acquisitions, and building development and construction.

9. Other Retail Sales within Indian Country by Tribal Members

Under Quinault Tribal law, only licensed Tribal retailers are permitted to make retail cigarette sales within Indian country. The Tribe agrees to provide through tribal ordinance for suspension or revocation of such license in those instances where after notice is given and opportunity to comply is provided, the retailer's sale of cigarettes remains out of compliance with the requirements of this Compact.

10. Rule 192 - Application

This Compact is a "cooperative agreement" as that term is used in WAC 458-20-192 (Rule 192).

11. Subsequent State Legislative Enactments

Should the Legislature enact a law that provides more favorable terms for the Tribe, the parties shall amend the Compact to reflect such terms.

12. Jurisdiction

This Compact does not expand or limit the jurisdiction of either the Tribe or the State.

13. Severability

If any provision of this Compact or its application to any person or circumstance is held invalid, the remainder of the Compact is not affected.

THUS AGREED THIS 3rd day of January, 2005

QUINAULT NATION

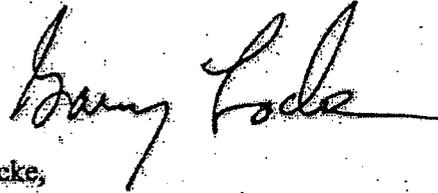
STATE OF WASHINGTON

By:



Pearl Capoceman-Baller
Tribal Chair

By:



Gary Locke,
Governor