MOTOR VEHICLE REGISTRATION AND LICENSE TAG COMPACT BETWEEN THE STATE OF OKLAHOMA AND THE CHICKASAW NATION

FILED
OCT 23 2014
OKLAHOMA SECRETARY OF STATE

ARTICLE I

PURPOSE AND INTENT OF THE PARTIES

WHEREAS, the Chickasaw Nation (hereinafter referred to as "Nation"), is a federally recognized Indian tribe[1] with inherent sovereign powers of self-government, as secured by and under federal law;

WHEREAS, the State of Oklahoma (hereinafter referred to as "State") is an independent, sovereign state within the United States of America possessed of full powers of state government;

WHEREAS, both the State and the Nation recognize the financial, cultural, educational, and economic contributions of each sovereign;

WHEREAS, both the State and the Nation recognize the need to maintain good Tribal/State governmental relations;

WHEREAS, Article 6, Section 8 of the Oklahoma Constitution vests the power and authority to conduct the business of the State with other sovereign states and with the United States in the Governor of the State of Oklahoma; and,

WHEREAS, for the purposes of federal law, the Oklahoma Constitution, and this Compact, the Nation does hereby constitute a sovereign state.

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[1] *"Federally recognized" tribe means any Indian tribe which has met the requirements established by the terms of the Indian Reorganization Act, 48. Stat. 984, as amended; the Oklahoma Indian Welfare Act, 49 Stat. 1967, as amended; or is one of those tribes listed in the Federal Register pursuant to 25 CFR Part 83 as recognized by and receiving services from the Bureau of Indian Affairs, as provided for in Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs, 58 Federal Register 54364 (October 21, 1993).*

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ARTICLE II

TERMS OF LICENSING, REGISTRATION, RENEWAL OF REGISTRATION, AND PAYMENT OF EXCISE TAXES

NOW, THEREFORE, the Chickasaw Nation, by and through its Governor, Bill Anoatubby, and the State of Oklahoma, by and through its Governor, Mary Fallin, do hereby enter into this Compact for the mutual benefit of the Nation and the State, to-wit

1. The provisions of this Compact shall establish and govern the procedures, including remittances to the Nation, relating to the licensing, registration, renewal of registration, and payment of excise taxes simultaneous with the purchase of a Nation license plate (hereinafter referred to as "License Plate"), for noncommercial motor vehicles[2] owned by citizens of the Nation, and for motor vehicles owned and operated by the Nation for governmental purposes for which the Nation has obtained a proper Oklahoma certificate of title.

2. The License Plate shall be designed by the Nation. Any proposed design shall be reviewed by the appropriate State agency or agencies (hereinafter referred to as "Agency")[3] in a timely manner and in conformity with current practices governing the design and manufacture of Oklahoma license plates. Said Agency may disapprove a proposed design only if the design poses a risk to public safety, could impede toll collections, or would otherwise violate any State or federal law or regulation, as determined exclusively by the Agency. Written confirmation of Agency approval shall be provided to the Nation prior to the manufacture of any License Plate.

3. Should the Nation decide to change the design of the License Plates after manufacture has begun, it must provide written notice to the Oklahoma Tax Commission (hereinafter referred to as "OTC") at least sixty (60) days prior to the estimated first date of sale of the newly designed plates, comply with the requirements of paragraph ¶ 2, and reimburse OTC the purchase price of any unsold outdated License Plates remaining in inventory as of the first date of sale of the newly designed plates.

4. The State, by and through its Agency, shall be the exclusive manufacturer of Nation License Plates under this Compact, which manufacture shall be timely done. OTC will determine the quantity of License Plates to be manufactured and the consignment of the License Plates with such State tag agents as, in its discretion, is warranted by information furnished by the Nation and OTC records regarding demand for the License Plates.

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[2] *"Noncommercial Motor Vehicles" shall mean only those vehicles that are eligible for a standard noncommercial Oklahoma license plate, and shall not encompass any other vehicle type, including, but not limited to, commercial vehicles, farm trucks, unconventional vehicles, boats, and manufactured homes.*

[3] *"Agency" shall mean those constitutionally or statutorily created State entities that have been charged with regulation of any of the subject matters encompassed by this Compact, and shall include, but not be limited to, the Oklahoma Tax Commission, the Oklahoma Department of Public Safety, the Oklahoma Turnpike Authority, and Oklahoma Correctional Industries.*

5. The License Plate may be made available to every citizen of the Nation who is otherwise eligible to receive an Oklahoma license plate and to register his or her vehicle(s) within the State of Oklahoma, *provided*, that the applicant pays all applicable fees, taxes, penalties, and fines; is listed on the Oklahoma vehicle title as the owner or co-owner of the vehicle to which the Nation license plate will be affixed; presents a Nation Citizenship Card to the State tag agent verifying his or her Nation citizenship status; and provides any other information requested by the State tag agent for purposes of confirming identity or as is otherwise reasonably related to the administrative processing of the application.

6. The OTC shall provide the Nation with a list of all individuals who submitted a Nation Citizenship Card to a State tag agent during the past month in order to obtain a License Plate, in accordance with ¶ 9 below. The Nation hereby agrees to review the list in a timely manner and to notify the OTC of any applicants who are not, in fact, citizens of the Nation. Nothing in this Compact shall prohibit the State from requiring motor vehicle registration and renewal thereof and the payment of fees and taxes by any resident of this State who is not a citizen of the Nation. Applicants who are determined not to be citizens of the Nation shall not be eligible for a License Plate and, if one has already been issued, shall have any such issued License Plate(s) recalled and replaced with State license plate(s); in the event of a recall and reissuance, the applicant shall bear the cost of replacement.

7. License Plates may be purchased and vehicles registered exclusively at licensed State tag agents.

8. The amount of fees, taxes, penalties, and fines required to be paid by any citizen of the Nation pursuant to this Compact shall be identical to the contemporaneous fees, taxes, penalties, and fines charged to any non-citizen who applied for a State-issued license, registration, or registration renewal, or who paid excise taxes on an identically valued noncommercial vehicle simultaneous with the purchase of a State-issued license plate.

9. Upon receipt of monies collected within the scope of this Compact, as specified at ¶ 1, which monies shall include all basic fees, taxes (including excise taxes paid simultaneously with the purchase of a License Plate), penalties, and fines, (hereinafter referred to as "Received Funds"), the OTC will distribute the Received Funds as required by 47 Okl. St. § 1104 and 68 Okl. St. § 2102; *provided*, that eighty-five percent (85%) of the funds to be distributed to the General Revenue Fund after apportionment (47 Okl. St. § 1104) and hold harmless deductions (47 Okl. St. § 1104(C)(2) and (N)) have been made shall be remitted to the Nation (hereinafter referred to as "Nation's Remittance").

   With each remittance to the Nation, the OTC shall provide the Nation with a brief report that includes all available information that is reasonably necessary to reconcile the Received Funds to the Nation's Remittance, and to funds distributed to the General Revenue Fund. Such report shall include, but not be limited to, the following information with respect to the calendar month immediately preceding the remittance: the name, address, Citizenship Card identification number, and the amount paid for registration

and/or excise tax for each License Plate issued/renewed; and an itemization of Received Funds that summarizes how those funds were allocated between the State and the Nation, on an aggregate basis.

10. The Nation hereby agrees to provide the OTC all information that is reasonably necessary to implement the remittance required at ¶ 9, including, but not limited to, direct deposit information, and to timely update such information as necessary. OTC's remittance of funds to the Nation, as required by ¶ 9, will occur no later than the fifteenth (15th) day of each month for collections received during the prior calendar month.

11. The Nation shall use any monies remitted to it pursuant to ¶ 9 at its exclusive discretion. The parties hereby expressly agree and stipulate that the Nation may use any such remittance to issue rebates to citizens; *provided*, that rebated funds are expended solely from Nation resources and are not deducted from amounts due and owing to the State.

ARTICLE III

GENERAL PROVISIONS

12. In the event of any dispute over the interpretation or performance of this Compact, the following shall provide the parties' sole means of recourse and remedy as against each other:

    a. The goal of the parties shall be to resolve all disputes amicably and voluntarily whenever possible. A party asserting noncompliance or seeking an interpretation of this Compact first shall serve written notice on the other party. The notice shall identify the specific Compact provision alleged to have been violated or in dispute and shall specify in detail the asserting party's contention and any factual basis for the claim. Representatives of the Nation and State shall meet within thirty (30) days of receipt of notice in an effort to resolve the dispute.

    b. Subject to the limitation set forth in paragraph (c) of this ¶ 12, either party may seek arbitration of the dispute, which arbitration shall proceed in accord with rules that substantially comport with the rules of the American Arbitration Association. Such arbitration shall be conducted by a single arbitrator who will be selected by the parties; *provided*, that if the parties cannot agree on a single arbitrator, then each party will pick one (1) arbitrator, and those two (2) arbitrators shall select a third; the arbitration will then be conducted by these three (3) arbitrators. The remedies available through arbitration are limited to injunctive and/or declaratory relief for the enforcement of the provisions of this Compact. The parties consent to the jurisdiction of such arbitration forum for such limited purposes and no other, and each waives immunity solely and exclusively with respect thereto. The parties further agree that any arbitral award issued pursuant to proceedings initiated under this section will be enforceable in a court of proper jurisdiction, for which purposes both consent to suit in federal district court having proper venue; *provided*, that by entering or complying with this Compact, the State does not

consent to suit in tribal court, and the Nation does not consent to suit in state court. The expenses of arbitration shall be borne equally by the parties.

c. For purposes of this dispute resolution mechanism, each party hereto agrees that it shall not assert, directly or indirectly, any immunity to any action filed in accord with this ¶ 12 and agrees, furthermore, not to raise the Eleventh Amendment to the United States Constitution or comparable defense to the validity of such waiver; *provided*, that nothing herein shall be construed to authorize a money judgment, other than to fulfill a party's obligation hereunder, or for damages for a party's failure to comply with an arbitration decision requiring the payment of monies.

13. Either party may unilaterally terminate this Compact without cause by giving the other party one hundred eighty (180) days' written notice in accordance with ¶ 17 hereof. Such notice shall include a statement of basis for exercise of this right, and in the event of a party's invoking such right, the parties shall meet and confer at least twice within that one hundred and eighty (180) day period for purposes of exploring opportunities for avoiding such termination.

14. This agreement shall terminate December 31, 2024. Nothing in this Compact shall prevent the parties by mutual written agreement from establishing a later termination date or otherwise modifying this agreement, and nothing in this Compact shall prevent either party from unilaterally terminating it pursuant to ¶ 13; *provided*, that unilateral termination shall not effect rights to performance, including payment of remittances due hereunder and accruing prior to such termination.

15. Nothing in this Compact is intended, nor shall it be construed, to enlarge, diminish, or otherwise affect the sovereign powers or jurisdiction of either party over any persons or territory. By entering into this Compact, the Nation does not concede that the laws of the State of Oklahoma, including its tax and licensing laws, apply to the Nation or its citizens regarding activities and conduct within the Nation's Jurisdiction.

16. Neither party shall be deemed the drafter of this Compact in the event of any action to interpret its terms. Therefore, the rule of construction that in the case of ambiguity, the ambiguity is construed against the author is not applicable. Furthermore, any rule of construction of ambiguities either in favor of or against a State or Tribal government entity is not applicable to this Compact.

17. Notice shall be by United States mail, postage prepaid. Any notice required hereunder to the State shall be delivered to the Governor of the State of Oklahoma at 2300 N. Lincoln Blvd., Room 212, Oklahoma City, Oklahoma, 73105-4890. Notification by the State shall be made by the Governor of the State of Oklahoma, or his or her designee, in writing to the Governor of the Chickasaw Nation, Bill Anoatubby, at P.O. Box 1548, Ada, Oklahoma, 74821-1548. Notification by the State and Nation shall also be filed with the Office of the Oklahoma Secretary of State.

18. This Compact shall become effective upon complete execution by all parties. The executed document shall be accompanied by a letter from counsel for the Nation certifying that it has been executed in compliance with tribal law and was obtained in accordance with all necessary legal and procedural requirements. Performance pursuant hereto shall commence upon this Compact becoming effective and the requirements of ¶ 2 being met.

19. Nothing in this Compact shall be deemed to authorize the State to regulate the Nation's government or to interfere in any way with the Nation's election of its governmental officers. This Compact shall not alter tribal, federal, or state civil, adjudicatory, or criminal jurisdiction.

20. This Compact comprises the entirety of the agreement between the parties hereto on this subject matter. Any and all prior or contemporaneous representations, predictions, warranties, or other inducements, however denominated, are merged within the terms of this Compact, and shall not survive its execution. There are no representations, promises, predictions, warranties, inducements, or other agreements, however denominated, between the parties other than as set forth herein. This Compact may not be amended or modified except by written agreement, approved and executed by the parties hereto.

21. This Compact is intended to be between and for the benefit of the Nation and the State only. This Compact is not intended for the benefit of third-parties and creates no rights, remedies, or standing for third-parties.

22. The provisions of this Compact shall be deemed severable, and any invalidity or unenforceability of any one or more of its provisions shall not affect the validity or enforceability of the other provisions herein.

IN WITNESS WHEREOF, the parties have executed this Compact effective October 23, 2014.

STATE OF OKLAHOMA

Mary Fallin 10/23/2014

MARY FALLIN, GOVERNOR DATE

Attest:

Secretary of State

CHICKASAW NATION

Bill Anoatubby 10/23/2014

BILL ANOATUBBY, GOVERNOR DATE

the Chickasaw Nation
Division of Commerce

Bill Anoatubby, Governor
Jefferson Keel, Lt. Governor

RECEIVED
NOV 07 2014
OFFICE OF THE GOVERNOR

November 5, 2014

Maria Maule, Deputy General Counsel
Office of Governor Mary Fallin
State of Oklahoma
2300 No. Lincoln Boulevard, Room 212
Oklahoma City, Oklahoma 73105

Dear Ms. Maule:

Paragraph 18 of the Motor Vehicle Registration and License Tag Compact between the State of Oklahoma and the Chickasaw Nation (hereinafter, Compact) requires "a letter from counsel for the Nation certifying that it [the compact] has been executed in compliance with tribal law and was obtained in accordance with all necessary legal and procedural requirements."

As Executive Legal Officer and General Counsel to the Chickasaw Nation Department of Commerce and in fulfillment of the aforementioned Compact requirement, I offer the following:

1. The Chickasaw Nation is a federally recognized American Indian tribe that is possessed of those inherent and sovereign powers of self-government secured to it by and under federal law.

2. Allocation of Chickasaw Nation governmental powers, including any procedures applicable to exercise of same, are made in the Chickasaw Nation Constitution, as ratified and approved in 1983 and subsequently amended, and the Chickasaw Nation Code.

3. Article X, section 1 of said Chickasaw Nation Constitution provides that "the Supreme Executive power of this Nation shall be vested in a Chief Magistrate, who shall be styled 'The Governor of the Chickasaw Nation,'" which position is and has been held by Governor Bill Anoatubby for all times relevant to this opinion.

4. Article XI, section 1 of said Chickasaw Nation Constitution provides that "[t]he Governor shall perform all duties appertaining to the office of Chief Executive" and "shall sign official papers on behalf of the Nation."

5. Nothing in said Chickasaw Nation Code limits or otherwise conditions the Article XI, section 1 authority of the Governor of the Chickasaw Nation for purposes of his power to execute and enter the Compact on behalf of the Chickasaw Nation.

6. On October 23, 2014, at the offices of the Oklahoma State Governor and with Governor Mary Fallin present, Governor Bill Anoatubby executed the Compact on behalf of the Chickasaw Nation.

7. Based on the foregoing, it is my opinion and I hereby do certify that Governor Bill Anoatubby executed the Compact in compliance with Chickasaw Nation law and that said Compact was otherwise obtained in accordance with all necessary legal and procedural requirements.

At your convenience, please submit this letter to be included with the executed copy of the Compact now on file with the Oklahoma Secretary of State.

Sincerely,

Stephen Greetham,
Chief Legal Officer and General Counsel