



HO-CHUNK NATION LEGISLATURE

Governing Body of the Ho-Chunk Nation

**HO-CHUNK NATION LEGISLATURE
RECOGNITION OF AGREEMENT BETWEEN
THE HO-CHUNK NATION AND STATE OF WISCONSIN
RELATING TO THE REFUND OF PRECOLLECTED EXCISE TAXES
ON CIGARETTES**

RESOLUTION 12-03-13H

- WHEREAS,** on November 1, 1994, the United States Secretary of the Interior approved a new Constitution for the Ho-Chunk Nation, formerly known as the Wisconsin Winnebago Tribe; and
- WHEREAS,** the Ho-Chunk Nation ("Nation") is a federally recognized Indian Tribe, pursuant to the Indian Reorganization Act of 1934; and
- WHEREAS,** Article V, Section 2(a) of the Ho-Chunk Nation Constitution ("Constitution") gives the Ho-Chunk Nation Legislature ("Legislature") the power to make laws, including codes, ordinances, resolutions, and statutes; and
- WHEREAS,** Article V, Section 2(e) of the Constitution grants the Legislature the power to raise revenue, including the power to levy and collect taxes and license fees; and
- WHEREAS,** Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation; and
- WHEREAS,** Article V, Section 2(i) of the Constitution grants the Legislature the power to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals; and
- WHEREAS,** Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation; and
- WHEREAS,** Article V, Section 2(x) of the Constitution grants the Legislature the power to enact any other laws, ordinances, resolutions, and statutes necessary to exercise its legislative powers delegated by the General Council pursuant to Article III including but not limited to the foregoing list of powers; and
- WHEREAS,** the Legislature, as the governing body of the Nation, is authorized under the Nation's Constitution to enter into agreements with other sovereign governments, including the State of Wisconsin; and

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WHEREAS, in August of 1988, the Wisconsin Winnebago tribe (now known as the Ho-Chunk Nation) entered into an Agreement Relating to the Refund of Precollected Excise Taxes on Cigarettes (“Agreement”) with the State of Wisconsin (Department of Revenue), which was signed by Wisconsin Winnebago Tribal Council Chairperson Gordon Thunder on August 10, 1988; and

WHEREAS, the Agreement provided that the State was required to reimburse and pay the tribe seventy percent (70%) of the amount of excise taxes on cigarettes sold on the tribal reservation lands of the Wisconsin Winnebago, upon the tribe making and filing a claim with the Department of Revenue on all cigarettes purchased by the tribe; and

WHEREAS, the Agreement referenced Wisconsin Statutes 139.323 and 139.325 in reference to the commitments made by the parties thereto; and

WHEREAS, the Wisconsin Winnebago tribe became known as the Ho-Chunk Nation with the adoption of a new Constitution in 1994, and the Wisconsin Winnebago tribal council or Business Committee became what is now known as the Nation’s Legislature; and

WHEREAS, under Article XIV of the Constitution (Savings Clause), all actions of the Nation, formerly known as the Wisconsin Winnebago Tribe, taken before the effective date of the Constitution shall remain in effect to the extent that they are consistent with the Nation’s Constitution; and

WHEREAS, the Nation has continued to abide by the 1988 Agreement as it purchases and sells cigarettes subject to the Agreement, and has continued to file and receive the 70% refund of taxes from the State of Wisconsin; and

WHEREAS, the State and Nation have recently, however, reached a disagreement over the interpretation and application of the 1988 Agreement and the extent to which sovereign tribal governments may sell cigarettes that may not be covered by the 1988 Agreement; and

WHEREAS, the State has refused to reimburse the Nation for its 70% tax refund claims for the last several quarters, such that the State and Tribe have had recent discussions as to resolve this matter; and

WHEREAS, at a recent meeting of the Wisconsin Department of Revenue, Wisconsin Department of Administration and Wisconsin Tribes on November 3, 2013, representatives for the State stated that a recognition and acknowledgment of Tribes’ 1988 Agreements would be sufficient to process tribal cigarette tax reimbursement requests.

NOW THEREFORE, BE IT RESOLVED that the Legislature, pursuant to its Constitutional authority, and as the governing body of the Nation, hereby recognizes and acknowledges the Agreement the Nation entered into with the State Department of Revenue in August 1988, Relating to the Refund of Precollected Excise Taxes on Cigarettes.

