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## CITIZEN POTAWATOMI NATION

October 24, 2014

Preston L. Doerflinger, Director  
Secretary of Finance, Administration  
& Information Technology  
2100 N. Lincoln Blvd., Room 122  
Oklahoma City, OK 73105

**Re: Notice of Noncompliance with, and Dispute over the Proper Interpretation of, the Terms and Conditions of the Tribal Gaming Compact Between the Citizen Potawatomi Nation and the State of Oklahoma**

Dear Secretary Doerflinger:

I serve as Tribal Chairman of the Citizen Potawatomi Nation, a sovereign nation and federally recognized American Indian tribe located within the geographic boundaries of the State of Oklahoma. On November 23, 2004, the Nation and the State of Oklahoma entered into the *Tribal Gaming Compact Between the Citizen Potawatomi Nation and the State of Oklahoma*, an agreement subsequently approved by the Secretary of the Interior. See Notice of Class III Gaming Compacts Taking Effect, 70 Fed. Reg. 6903 (Feb. 9, 2005). Although the Compact immediately allowed gaming on the Nation's lands, its overarching goal was to create revenue that would foster the Nation's continued economic and governmental development. The Compact expressly recognizes that these benefits "will extend beyond the tribe's lands to the tribe's neighbors and surrounding communities and will generally benefit all of Oklahoma." Compact, pt. 2, § 6. For the past ten years, both the Compact and the Nation have delivered on that promise.

But Commissions within Oklahoma have taken actions that threaten this foundational tenet of the Compact—tribal economic self-sufficiency and its attendant benefits to the Nation's neighbors. The Oklahoma Tax Commission has sought to revoke the sales-tax permits, mixed-beverage permits, and low-point-beer licenses of the Nation's FireLake Grand Casino and related entities.

On May 28, 2014, the OTC filed a complaint in its Administrative Proceedings Division against the Nation in the matter styled *In re Revocation of Licenses/Permits of Citizen Potawatomi Nation*, Case No. JM-14-005-K. Invoking its alleged authority under scattered statutes and administrative regulations,<sup>1</sup> the OTC now seeks to undercut the longstanding terms of the Compact—an agreement afforded full recognition and dignity under Oklahoma law. See 3A Okla. Stat. § 281 (codifying the provisions of the Model Tribal Gaming Act within the Oklahoma Statutes). In its complaint, the OTC repeatedly intones that the Nation has "fail[ed]"

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<sup>1</sup> The OTC grounds its asserted authority to revoke the Nation's valid licenses and permits in the provisions of 68 Okla. Stat. § 212(A)(2), 37 Okla. Stat. § 577(F), and Oklahoma Administrative Code 710:20-2-13(b)(4).

and “refus[ed]” to remit sales taxes from its gaming operations and other enterprises. *See, e.g.*, OTC Complaint, ¶ 9. But no such tax was ever contemplated—much less required—under the Compact.

The question thus becomes whether the OTC may compel the Nation, as the revenue-collecting arm of the State of Oklahoma, to start paying large sums of money at a bureaucratic whim, lest the OTC abruptly strip the Nation of its ability to operate its own businesses on its own lands. The answer is within the Compact. It maps out the legal landscape in which the Nation and the State of Oklahoma have mutually agreed to deal fairly with each other, sovereign to sovereign.

The Compact makes arbitration the vehicle for resolving disputes between the Nation and the State of Oklahoma, stating that “[t]he goal of the parties shall be to resolve all disputes amicably and voluntarily whenever possible.” Compact, pt. 12, § 1. It provides that the “party asserting noncompliance or seeking an interpretation of this Compact first shall serve written notice on the other party.” *Id.* The written notice must “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.” *Id.* In the spirit of prompt and amicable resolution, “[r]epresentatives of the tribe and state shall meet within thirty (30) days of receipt of notice in an effort to resolve the dispute.” *Id.* Under the Compact, the Office of Management and Enterprise Services is the state agency in Oklahoma tasked with “the authority to carry out the state’s oversight responsibilities” arising under the agreement.<sup>2</sup> *Id.* pt. 3, § 25; *see also id.* (clarifying that the OTC “shall have no role in regulating or oversight of any gaming conducted by a tribe”).

In accordance with the procedures for dispute resolution set forth in Part 12 of the Compact, the Nation hereby serves written notice of (1) its claim that the State of Oklahoma, acting through the OTC, has violated the terms of Part 11, section D of the Compact by assessing a tax in excess of the comprehensive fee schedule established under that Part; (2) its request for a definitive and binding interpretation of the scope of Part 11, section D of the Compact; (3) its claim that the OTC has acted in excess of the authority granted to state regulatory agencies under Part 3, section 25 of the Compact; and (4) its request for a definitive and binding interpretation of Part 5, section I of the Compact, which comprehensively deals with the sale of alcoholic beverages by the Nation in its tribal gaming enterprises.

In support of its claims, the Nation states the following:

1. Part 11 of the Compact, entitled “Exclusivity and Fees,” recites that “the parties acknowledge and recognize that this Compact provides tribes with substantial exclusivity and . . . special opportunities for tribal economic opportunity through gaming.” *Id.* § A. The Nation, “[i]n consideration thereof,” agreed to pay to the

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<sup>2</sup> The Compact’s original language designated “the Office of State Finance or its successor agency” as the state agency with oversight authority. Compact, pt. 3, § 25. The Office of Management and Enterprise Services is the present successor agency to the Office of State Finance, which was consolidated into the Office of Management and Enterprise Services in 2012. *See* 2012 Okla. Sess. Laws ch. 304 (consolidating state agencies and amending Model Tribal Gaming Compact, 3A Okla. Stat. § 281).

State of Oklahoma a detailed set of fees derived from gaming revenue, along with various other assessments pertaining to continued oversight and initial startup costs. *Id.* §§ A–C. The Nation has kept its part of the bargain. Section D of Part 11 plainly states that “[n]othing in this Compact shall be deemed to authorize the state to impose any tax, fee, charge or assessment upon the tribe or enterprise except as expressly authorized pursuant to this Compact.” And that is where the State of Oklahoma has failed to hold up its end of the Compact. By demanding the payment of new and additional taxes from the Nation’s FireLake Grand Casino and other tribal enterprises, the OTC is wrongfully attempting to impose a “tax, fee, charge or assessment” in excess of those “expressly authorized” under the Compact. *Id.* § D. This is a violation of the terms of Part 11, section D. In accordance with Part 12 of the Compact, the Nation hereby alleges that the State of Oklahoma has violated and continues to violate Part 11, section D’s prohibition on the assessment of additional taxes on tribal revenue not contemplated under the Compact.

2. In a good-faith effort to resolve the foregoing dispute, the Nation also hereby seeks a definitive and binding interpretation of the scope of part 11, section D of the Compact.
3. Part 5, section I of the Compact governs the sale of alcoholic beverages by the Nation. This section states, in full, that “[t]he sale and service of alcoholic beverages in a facility shall be in compliance with state, federal or tribal law in regard to the licensing and sale of such beverages.” Through its complaint initiated in its Administrative Proceedings Division, the OTC has attempted to use improperly its unfounded claim of delinquent sales taxes as the legal justification for revoking the Nation’s mixed-beverage permits and low-point-beer licenses at its gaming facilities and elsewhere on tribal lands. The OTC lacks authority to take this action. To begin with, the Compact prevents the OTC from acting in a regulatory or oversight capacity with respect to any gaming or gaming-related activities conducted under the Compact. *See id.*, pt. 3, § 25. Because the sale of alcoholic beverages at the Nation’s gaming sites is itself a covered activity under the Compact, the OTC has no legal authority to proceed with its action to revoke the Nation’s beverage licenses and permits. At minimum, the proper forum for the resolution of any dispute or regulatory action that touches on the Nation’s gaming-related alcohol sales is arbitration, not an administrative proceeding at the OTC. In accordance with Part 12 of the Compact, the Nation hereby alleges that the OTC has acted in excess of its authority granted under the Compact and that the State of Oklahoma, by acquiescing in the unauthorized acts of one of its agencies, is in violation of the Compact.
4. In a good-faith effort to resolve the foregoing dispute, the Nation also seeks a definitive and binding interpretation of Part 5, section I of the Compact. Specifically, the Nation requests a determination that the express terms of the Compact preclude the OTC from taking any regulatory action related to the sale of alcohol (including, but not limited to, the revocation of mixed-beverage permits and low-point-beer licenses) at FireLake Grand Casino and any other

gaming-related tribal enterprise. As a final matter, the Nation reiterates its belief that the dispute-resolution procedures outlined in Part 12 of the Compact provide the only valid mechanism for resolving regulatory disputes about the sale of alcohol (or the licensing and permitting of those sales) at the tribe's gaming sites.

5. In accordance with Part 12, section 2 of the Compact, the Nation hereby certifies that "that to the best of the [Nation's] knowledge, information, and belief formed after reasonable inquiry, the [Nation's] claim of noncompliance [and] request for interpretation of [the] Compact is warranted and made in good faith and not [done] for any improper purpose".

The Compact enshrines the guiding principle that the Nation and the State of Oklahoma "maintain a government-to-government relationship." *Id.* pt. 2, § 3. Ten years ago, the Nation and the State of Oklahoma entered into the Compact with the awareness and continued hope that the Compact "will help to foster mutual respect and understanding among Indians and non-Indians" alike. *Id.* The OTC's aggressive, unwarranted, and unauthorized actions erode the mutual respect between our Nation and Oklahoma. A good-faith attempt to resolve this dispute will go a long way toward repairing that breach.

Accordingly, the Nation asks that representatives of the Office of Management and Enterprise Services, along with those of any other interested agency or office of the State of Oklahoma, meet with the Nation's representatives at a mutually agreeable location and time within thirty (30) days of your receipt of this written notice, as provided in the Compact's procedures for dispute resolution.

Respectfully,

**Citizen Potawatomi Nation**



John A. Barrett, Chairman