

NORTH DAKOTA LEGISLATIVE MANAGEMENT

TRIBAL AND STATE RELATIONS COMMITTEE

Chairman D. Johnson

Testimony Provided By Mark N. Fox, Tax Director,
Mandan, Hidatsa, and Arickara Nation (TAT)

Chairman Johnson and respected members of the Committee, it is an honor to provide testimony to you on behalf of our tribal nation as Tax Director and Director of our Water Development Corporation. I wish to thank you for this opportunity to share important information and express our concerns regarding issues that impact both the tribe and the State of North Dakota.

I would like to address the need for cooperation and productive dialogue between our governments in the area of Tribal-State Tax Agreements, as well as other agreements that can serve as the basis for resolve of mutual and predominant concerns.

I would first like to acknowledge the positive impacts resulting from the amendments of the Tribal- State Oil and Gas Tax Agreement. The successful efforts between the State and our Tribe demonstrated how concerns and issues can be resolved in a productive manner, if dialogue and discussion are open and frequent. This Committee played a significant role in bringing about a more equitable change to the previous Oil and Gas Tax Agreement between our governments.

But despite this important achievement, more work lies ahead of us. I will discuss these areas more specifically herein and below.

Generally speaking, agreements between tribes and the State can serve a number of valuable purposes, including the lessening of expensive litigation, simplifying tax procedures and administrative burdens, and avoidance of duo-taxation, which can significantly impact shared economies and business operations. It is the position of our tribe to seek practical means to resolve tax issues thru the use of agreements. But it must also be clearly understood and recognized that our government can not fore-go the tax revenue legally obligated to us when agreements fail to develop or are^{not} achieved. Similar to the State and Federal governments, our Tribe and the tribes throughout the State have a dire need for tax revenue to provide essential government services, regulate economic activity, and to protect our lands and people.

Tribal-State Motor Fuels and Special Fuels Agreement: For nearly seven years, our tribal nation and the State have complied with this agreement for the purpose of sharing tax revenue in this area. Within the agreement and based on the U.S. Population Census, we currently operate under a 70%(Tribe)-30%(State) split of the tax realized on the Fort Berthold Reservation. But one severe limitation on our Tribe is the application of this tax to “retail” sales “at the pump”, and does NOT include what we refer to as “bulk” sales, including but not limited to, exchanges and sales made by railway. Each year, bulk sales have increased, which inherently means less retail sales held taxable by the terms of our Agreement. This results in less tax revenue for the Tribe and its ability to

meet essential government responsibilities, including road repair, law enforcement, and highway safety, to name a few. I would ask that this Committee urge the Executive Branch of the State government to either amend the existing Agreement or jointly formulate a new agreement that would include bulk or wholesale exchanges.

Areas of Potential Agreement:

- 1) **Alcohol Beverage Sales.** Currently there are NO agreements between the State and tribes in North Dakota. Our tribe has developed an Alcohol Tax but has not imposed that on sales occurring within our Reservation. Yet, alcohol sales activity within our boundaries is occurring at an alarming rate, and the State collects and retains 100% of the tax revenue. Our tribe receives no direct revenue from this taxation area. We have been attempting to negotiate with the State for nearly three years for a possible alcohol sales tax agreement, but have been met with unfortunate delay and failed effort. Meanwhile, our Reservation is devastated by the negative impacts associated with the sale and use of alcohol at rates recognized highest in the United States (e.g. Alcoholism, Domestic Violence, Health Disparity). Without tax revenue to address the prevalent problems we face as a tribal nation, it appears our only reasonable choice is to implement our own alcohol sales tax so that we can realize the revenue necessary to develop resources and effective programs.
- 2) **General Retail Sales (Excise) or Sales and Use Tax.** Although our tribal nation does not impose a tax of this nature, the State of North Dakota does impose a tax on sales and purchases made by vendors and business within our boundaries. Pursuant to federal law and applicable court decisions, purchases of goods by tribal members consummated on an Indian reservation are generally exempt from state taxation in this area. But a practical concern lies with the illegal taxation that occurs on our Reservation and is imposed on our membership, resulting in wrongful tax revenue gained by the State of North Dakota. This occurs as a direct result of the tax collection methodology imposed and utilized by the State and required of vendors and businesses on Fort Berthold. The situation is best described when a tribal member is required to provide proof of membership by the vendor at the time the sales activity is occurring. Yet, this is inherently unfair and unreasonable considering that the vast majority of customers purchasing goods on the Reservation are tribal. It is unconscionable and disturbing that tribal members are required to provide such proof within our own lands and jurisdiction. When our members can not give evidence as required by the vendor, the tax is imposed and the revenue is sent to the State, in direct violation of the requirements of the governing law. The annual amount of unlawful tax gained by the State remains an issue and needs to be addressed. Tax collection methods must be revised, or other options explored, including a possible agreement between the Tribe and State to govern this type of sales activity on Fort Berthold.
- 2) **Possessory Interest Tax.** This is an area of tax that is established in our tribal general tax code, and would include, but

not be limited to railway and transmission lines, and pipelines. Although there are no immediate areas of concern at this point, we would ask that this Committee urge the State Tax Department and applicable Executive Branch officials to work closely with our tribe to explore possible ways and means to address taxation scenarios and the potential impact of duo taxation on various business sectors active on Fort Berthold.

Other Areas For Possible Agreement, Cooperative Regulation, or Mutual Understanding:

- 1) Environmental, Industrial, and Water Regulation.
- 2) Department of Transportation and Highway Regulation.
- 3) Law Enforcement

As a result of the oil and gas industry boom on Fort Berthold, these represent some of the more significant areas of concern we have. Whether it is Rights of Way claimed and/or maintained by the State, or the imposition of regulations on fee lands on our Reservation, our tribe and its members, as well as the Reservation as a whole, are impacted by the decisions made by the State and its officials. We are greatly concerned with activities that directly impact our health and welfare as a tribal nation, including such items as the permitting of waste disposal pits and salt-water injection wells without tribal approval, as well as State-authorized activity that directly affects ground-water aquifers, ponds, streams, and wild life. It would behoove both the State and the Tribe to explore ways to address our concerns, whether it is the development of joint-regulatory structure, or an agreement to defer to our inherent authority and jurisdiction as a tribal nation to make primary determinations regarding lands within the boundaries of the Fort Berthold Reservation.

I greatly appreciate the time and opportunity provided by this Committee to present the information and concerns expressed herein, and I stand ready to address any questions or concerns you may have at this time.