



Pokagon Band of Potawatomi Indians

OVERVIEW OF THE TAX AGREEMENT BETWEEN THE STATE OF MICHIGAN AND THE POKAGON BAND OF POTAWATOMI INDIANS

Introduction

In December of 2002, the Pokagon Band of Potawatomi Indians and the State of Michigan voluntarily entered into a comprehensive agreement to resolve issues regarding the application of State taxes to the Pokagon Band, Tribal Members, and Tribal Businesses, including our eligibility for immunity and exemptions from various State taxes. The final Tax Agreement was the culmination of over 18 months of arms-length negotiations by the State, the Band, and the other federally-recognized Indian tribes in Michigan acting in the interests of their respective citizens and members. The negotiations proceeded in good faith and a spirit of cooperation with mutual recognition of each other's sovereign rights.

The primary purpose of the Tax Agreement is to set forth a fair and workable understanding regarding the application and administration of Michigan taxes in Indian country, eligibility for exemptions from State taxes and to resolve any issues that may arise between the Tribe and the State pertaining to Michigan taxes. In order to achieve a mutually beneficial resolution of all outstanding issues relating to State taxes, both the Tribe and the State had to make compromises and concessions. This process resulted in a Tax Agreement that provides numerous tax exemptions and other meaningful benefits to the Pokagon Band and to the greatest possible number of Tribal Members and Tribal businesses that could reasonably be included through the Band's best efforts.

What State Taxes are Included in the Tax Agreement?

The taxes that are the subject of the Tax Agreement are as follows:

1. Sales Tax (6% of the retail price);
2. Use Tax (6% of the purchase price);
3. Motor Fuel Tax (19 cents per gallon of gasoline and 15 cents per gallon of diesel);

4. Income Tax (4% of adjusted gross income);
5. Tobacco Products Tax (\$1.25 per pack of cigarettes); and
6. The Single Business Tax (1.9 % of the applicable tax base).

The Tax Agreement does not provide an exemption for real property taxes.

What Geographic Area Does the Tax Agreement Cover?

Generally, under federal law, Band and Tribal Member immunities from State taxes apply within the territorial limitations of the Band's "Indian country", e.g., "reservation" or "tribal trust" lands. See 25 U.S.C. § 1501. The residency of a Tribal Member and the location of a transaction or other taxable event is important for determining whether State taxes may apply and whether the Tribal Member may be eligible for an exemption from a particular State tax under the Tax Agreement. Thus, an important aspect of the negotiations between the Band and the State involved the effort to define the Band's Indian country—the geographic areas within which exemptions from State taxes would apply. The Tax Agreement refers to these areas as the "Agreement Area" and the "Tribal and Trust Lands".

Through the negotiations, the Band and the State reached an agreement identifying an Agreement Area, which includes areas in three counties (Berrien, Cass, and Van Buren) where the highest concentration of Tribal Members reside. The Agreement Area includes portions of the following municipalities and townships:

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| <p>1. <u>BERRIEN COUNTY</u></p> <ul style="list-style-type: none"> a. Niles b. Niles Twp c. City of New Buffalo d. New Buffalo Twp e. St. Joseph f. St. Joseph Twp g. Watervliet h. Watervliet Twp i. Coloma j. Coloma Twp k. Benton Harbor l. Benton Twp m. Buchanan n. Buchanan Twp o. Bertrand Twp | <p>2. <u>CASS COUNTY</u></p> <ul style="list-style-type: none"> a. Dowagiac b. Edwardsburg c. Silver Creek Twp d. Wayne Twp e. Pokagon Twp f. LaGrange Twp g. Howard Twp h. Ontwa Twp | <p>3. <u>VAN BUREN COUNTY</u></p> <ul style="list-style-type: none"> a. Hartford b. Hartford Twp c. Keeler d. Keeler Twp e. Decatur f. Decatur Twp g. Hamilton Twp h. Bangor Twp |
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The Tribal and Trust Lands includes lands that the Band owns or has rights to possess and use in the following locations:

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|--------------------------|--|----------------------------------|
| 1. <u>BERRIEN COUNTY</u> | 2. <u>CASS COUNTY</u> | 3. <u>VAN BUREN COUNTY</u> |
| a. New Buffalo Twp | a. Wayne Twp
b. Pokagon Twp
c. LaGrange Twp
d. Silver Creek | a. Bangor Twp
b. Hartford Twp |

A map depicting the Agreement Area and Tribal and Trust Lands is attached to this Overview.

Who is Subject to the Tax Agreement?

The Tax Agreement applies to the Pokagon Band of Potawatomi Indians (the Band) and Tribal Members (enrolled members of the Band). The Tax Agreement refers to Tribal Members that reside within the Agreement Area or on Tribal and Trust Lands as “Resident Tribal Members”. The Tax Agreement also applies to tribal businesses, referred to in the Tax Agreement as “Tribal Entities”. The Tax Agreement defines the term Tribal Entity as an entity, (other than a single Resident Tribal Member or an entity wholly owned by the Band) that is wholly owned by any combination of the Band and its Resident Tribal Members, or is wholly owned by Resident Tribal Members.

What are the Benefits to Tribal Members?

Tribal Members who are not also Resident Tribal Members are entitled to the following exemptions from State taxes under the Tax Agreement:

1. Motor Fuel Tax. Tribal Members will not have to pay 19 cents per gallon tax on gasoline and 15 cents per gallon tax on diesel fuel from cooperating retailers designated by the Band to receive all or a portion of the Band’s quota of tax-free motor fuels.
2. Tobacco Tax. Tribal Members will not have to pay Tobacco Products tax, including \$1.25 per pack of cigarettes, from cooperating retailers designated by the Band to receive all or a portion of the Band’s quota of tax-free tobacco products.

What are the Benefits to Resident Tribal Members?

Most of the exemptions from State taxes and other benefits under the Tax Agreement are limited to Resident Tribal Members under the Tax Agreement is provided below. A brief description of some of the tax exemptions and other benefits for Resident Tribal Members is provided below:

3. Sales Tax and Use Tax. Resident Tribal Members may not have to pay the 6% State Sales Tax or Use Tax on:
 - a. passenger vehicles, including pick-up trucks, recreational vehicles and motorcycles, recreational watercraft, snowmobiles, and off road vehicles that will not be used for commercial purposes and will be principally garaged within the Agreement Area;

- b. modular homes and mobile homes used as a Resident Tribal Member's principal residence;
 - c. materials for the construction, renovation or improvement of the principal residence of a Resident Tribal Member;
 - d. Tangible personal property (which includes all goods and merchandise, other than motor vehicles, that are subject to Michigan Sales Tax or Use Tax) purchased by a Resident Tribal Member for his or her use if the transaction takes place in Tribal and Trust Lands and the property is used exclusively within that area or if the transaction takes place in the Agreement Area and the property is used exclusively within that area;
 - e. natural gas or artificial gas, home heating fuels, and telecommunications and internet services that are supplied to a Resident Tribal Member's principal residence located within the Agreement Area;
 - f. restaurant food and beverage sales at casino operations located within Tribal and Trust Lands; and
 - g. rental rooms owned by the Band that are within Tribal and Trust Lands (and within a one-quarter mile radius of a Tribal gaming facility).
4. Refunds of Sales Tax and Use Tax. All Resident Tribal Members are entitled to an annual refund from the State in an amount representing State Sales Tax and Use tax paid on tangible personal property (except for materials for construction, renovation, or improvement of the Resident Tribal Member's principal residence within the Agreement Area). The refund will be determined by use of the following table:

Resident Tribal Member's federal Adjusted Gross Income modified to include Social Security benefits, Social Security disability benefits, Railroad Retirement benefits, unemployment benefits, fishing income under section 7873 of the Internal Revenue Code, and disability income to the extent they are specifically exempt from or excluded from the computation of federal Adjusted Gross Income (but not to exceed \$80,000) x 15% x 6%.

5. Individual Income Tax. Resident Tribal Members may not have to pay 4% of adjusted gross income as State Individual Income tax on non-business income, regardless of where the income is earned.
6. Motor Fuel Tax. Resident Tribal Members will not have to pay 19 cents per gallon tax on gasoline and 15 cents per gallon tax on diesel fuel from cooperating retailers designated by the Band to receive all or a portion of the Band's quota of tax-free motor fuels.
7. Tobacco Tax. Resident Tribal Members will not have to pay Tobacco Products tax, including \$1.25 per pack of cigarettes, from cooperating retailers designated by the Band to receive all or a portion of the Band's quota of tax-free tobacco products.
8. Single Business Tax. Businesses may not be required to pay 1.9 % of the applicable tax base under the Single Business Tax to the extent that the business is owned by a Tribal Member and the tax base was generated in the Agreement Area.

What are the Benefits to Tribal Entities?

Tribal Entities may be entitled to the following benefits under the Tax Agreement:

1. Sales Tax and Use Tax. A Tribal Entity may be entitled to Sales Tax and Use Tax exemptions from purchases of tangible personal property for its use if the transaction takes place and the property is used exclusively within Tribal and Trust Lands. In addition, Tribal Entities may be able to sell items to the Band or Resident Tribal Members without charging for State Sales Tax and Use Taxes.
2. Single Business Tax. Tribal Entities are entitled to an exemption from the State Single Business Tax to the extent of Band or Tribal Member ownership.
3. Motor Fuels and Tobacco Products Taxes. Tribal Entities may be able to sell items to the Band or Resident Tribal Members without charging for Motor Fuels Tax or Tobacco Products Tax if the transaction would be exempt under the Tax Agreement. However, Tribal Entity retailers must comply with all applicable State law regarding the sale of motor fuels and tobacco products, including purchasing motor fuel and tobacco products only from State licensed wholesalers and prepaying all taxes except for quota exempt purchases authorized from the Band.
4. Individual Income Tax. Tribal Entity employers located within the Agreement Area do not have to withhold State Individual Income Tax from the income of employees who are Resident Tribal Members.

What are the Benefits to the Band?

The Band is entitled to the following benefits under the Tax Agreement:

1. State Sales Tax and Use Tax. The Band may not have to pay the 6% State Sales Tax or Use Tax on:
 - a. tangible personal property purchased by the Band for its use if the transaction takes place and the property is used exclusively within Tribal and Trust Lands.
 - b. tangible personal property purchased by the Band that is primarily used in performing tribal governmental functions if the transaction takes place within the Agreement Area, regardless of where the property is used.
 - c. materials purchased by the Band for the construction, renovation or improvement of real property owned by the Band if the real property is located within Tribal and Trust Lands.
2. Sales Tax and Use Tax Sharing. The Band, Tribal Member and Tribal Entity retailers shall collect and remit to the State applicable State Sales Tax on all sales to Non-Tribal Members and Non-Resident Tribal Members on Tribal and Trust Lands. If the Band enacts a sales tax

on transactions occurring within its Tribal and Trust Lands on sales made by the Band, Tribal Members, or Tribal Entities which utilizes the State tax base and tax rate, the State Use Tax will not apply. The tax collected by the Band from Band, Tribal Members, and Tribal Entity retailers engaging in taxable sales within Tribal and Trust Lands will be shared between the Band and the State in the following proportions:

- a. up to \$5 million in tax revenue, $\frac{2}{3}$ to the Band and $\frac{1}{3}$ to the State; and
 - b. over \$5 million, $\frac{1}{2}$ to the Band and $\frac{1}{2}$ to the State.
3. Motor Fuels Tax. The Band is eligible for an exemption from State Motor Fuels Tax for purchases up to an amount to be jointly determined by the Band and the State.
 4. Single Business Tax. The Band is entitled to an exemption from the State Single Business Tax to the extent of Band ownership in a Tribal Entity owned by the Band and one or more Resident Tribal Members.

How Will the Tax Agreement Be Implemented?

1. Tribal Tax Revenue and Administration Code. A draft of a Tribal Tax Revenue and Administration Code has been developed. The Code involves a number of policy decisions that require further evaluation and consideration. As presently drafted, this Code will establish a tribal tax on sales of goods, beverages, and general retail items, and on hotel occupancy that occurs on Tribal and Trust Lands. The draft Code also creates an administrative and regulatory framework for implementation of the Tax Agreement. Upon completion of the review process and after drafting appropriate revisions as needed, the draft Code will be introduced at a Tribal Council meeting for enactment into law.
2. Administrative Requirements. The Tax Agreement imposes a substantial administrative burden on the Band. Implementation of the Tax Agreement by the Band will require research, planning, the provision of services, record keeping, reporting and enforcement activities. The Pokagon Band is responsible for making determinations regarding eligibility for tax exemptions under standards identified in the Tax Agreement and under State law. The Band is also responsible for issuing documents required to verify eligibility for tax exemptions, such as Certificates of Exemption. In order for the Band to fulfill these and other responsibilities adequate staff, space and resources must be allocated to Tax Agreement administrative activities.
3. Reporting and Confidentiality of Information. The Tax Agreement is a public document. Information received by the State from the Band in the administration of a tax under the Tax Agreement is subject to the confidentiality provisions of Michigan law. Although the State is authorized under State law to make certain disclosures, the Agreement provides that the State shall not disclose tax information set forth in a tax return or a report received from the Band or as a result of any investigation or audit of the Band authorized by the Agreement. Finally, the State may make certain taxpayer information relating to Tribal Members or Tribal Entities available to the Band. However, the Agreement requires the Band to retain

all such information in the strictest confidence with the exception that such information shall only be revealed to persons other than the taxpayer as required for the proper administration and enforcement of the Tax Agreement.

4. **Economic Development.** The Tax Agreement presents significant economic and other opportunities to the Band, Tribal Members and Tribal Entities. In order to take full advantage of these opportunities, the Band will need to consider and explore new economic development projects, particularly as they relate to gasoline and tobacco sales. The process of exploring and considering possible economic development initiatives related to the Tax Agreement is already underway. Several months ago, the Tribal Council formed an ad hoc Tax Agreement Task Force to pursue the effort of identifying economic development opportunities and gathering other valuable information that may be helpful to the Band's effort to implement the Tax Agreement.
5. **Certificates of Exemption/Refunds.** The Tax Agreement allows the Band to elect whether to require the Band, Tribal Members and Tribal Entities to apply to the State for a refund for taxes paid on certain tax exempt transactions or to use a "Certificate of Exemption" issued by the Band to avoid payment of taxes at the point of sale. The Pokagon Band has elected to issue Certificates of Exemption to the Band and to Resident Tribal Members in order to relieve those Tribal Members of the burden of prepaying State taxes on purchases that are exempt under the Tax Agreement and then applying for a tax refund from the State. Tribal Certificates of Exemption must be used for certain transactions that are exempt under the Tax Agreement and the refund method may be used for other exempt transactions.
6. **Quotas/Refunds for Motor Fuels and Tobacco Products.** Under the Sections of the Tax Agreement related to the administration process for the State Motor Fuels Tax and the Tobacco Products Tax, the Band has the option to use a refund method or a quota method for obtaining tax exemptions. Under the refund method, applicable Motor Fuels Taxes and Tobacco Products Taxes would be paid at the time of purchase by the retailer and the cost would be passed on to the consumer at the point of sale. The Band would be entitled to apply for a refund of Motor Fuels and Tobacco Products taxes paid on a regular basis subject to an annual ceiling on the amount of the refund. The quota method involves the purchase of fixed quotas of tax free gasoline, diesel fuel, cigarettes and other tobacco products from designated wholesalers by retailers designated by the Band. The amount of the ceilings under the refund method and the amount of the quotas under the quota method will be jointly determined by the Band and the State. In order to pass the full benefit of the exemptions from State Motor Fuels Tax and Tobacco Products Tax onto Tribal Members, the Band has elected to use the quota method.
7. **State Licensing of Businesses Operating Wholly Within Indian Country.** In recognition of the State's need for basic information concerning tribal businesses that are subject to the Tax Agreement, Tribal Members and Tribal Entities who operate to any extent outside of the Band's Indian country (i.e., lands held in trust by the United States for the Band) are required under the Tax Agreement to comply with all State licensure provisions for the State taxes covered by the Tax Agreement. In addition, Tribal Members and Tribal Entities operating entirely within Indian country must register with the State and obtain such licenses

and registrations as would be required under State law as if the Tribal Members or Tribal Entities were operating outside of Indian country.

8. Enforcement Activities Regarding Tribal Members and Tribal Entities. Tribal Members and Tribal Entities, and not merely the Band, are required to comply with the Tax Agreement. The Tax Agreement will be enforced by both the Band and the State. The enforcement duties and authority of the Band and the State are summarized below.
 - a. Enforcement by the Band. The Band is required under the Tax Agreement to assist the State in determining whether Tribal Members and Tribal Entities are in compliance with the Tax Agreement and with the assessment and collection of any taxes that may be owed. If Tribal Members or Tribal Entities violate the terms of the Tax Agreement, the Band, independent of the State will take appropriate action, which may include civil and criminal penalties under Band law.
 - b. Enforcement by the State. The State may conduct audits of Tribal Members who reside within Indian Country and Tribal Entities located within Indian country upon at least 30 days advance written notice. State audits of Tribal Members who reside outside of Indian country and Tribal Entities located outside of Indian country will be conducted under State law. The State may seek civil remedies and penalties against Tribal Members and Tribal Entities for violations of the Tax Agreement that occur within Indian country, which may involve the use of the Pokagon Band Tribal Court and the Pokagon Police Department. The State can exercise its full range of tax enforcement authority for activities occurring outside of Indian country, including civil and criminal penalties.

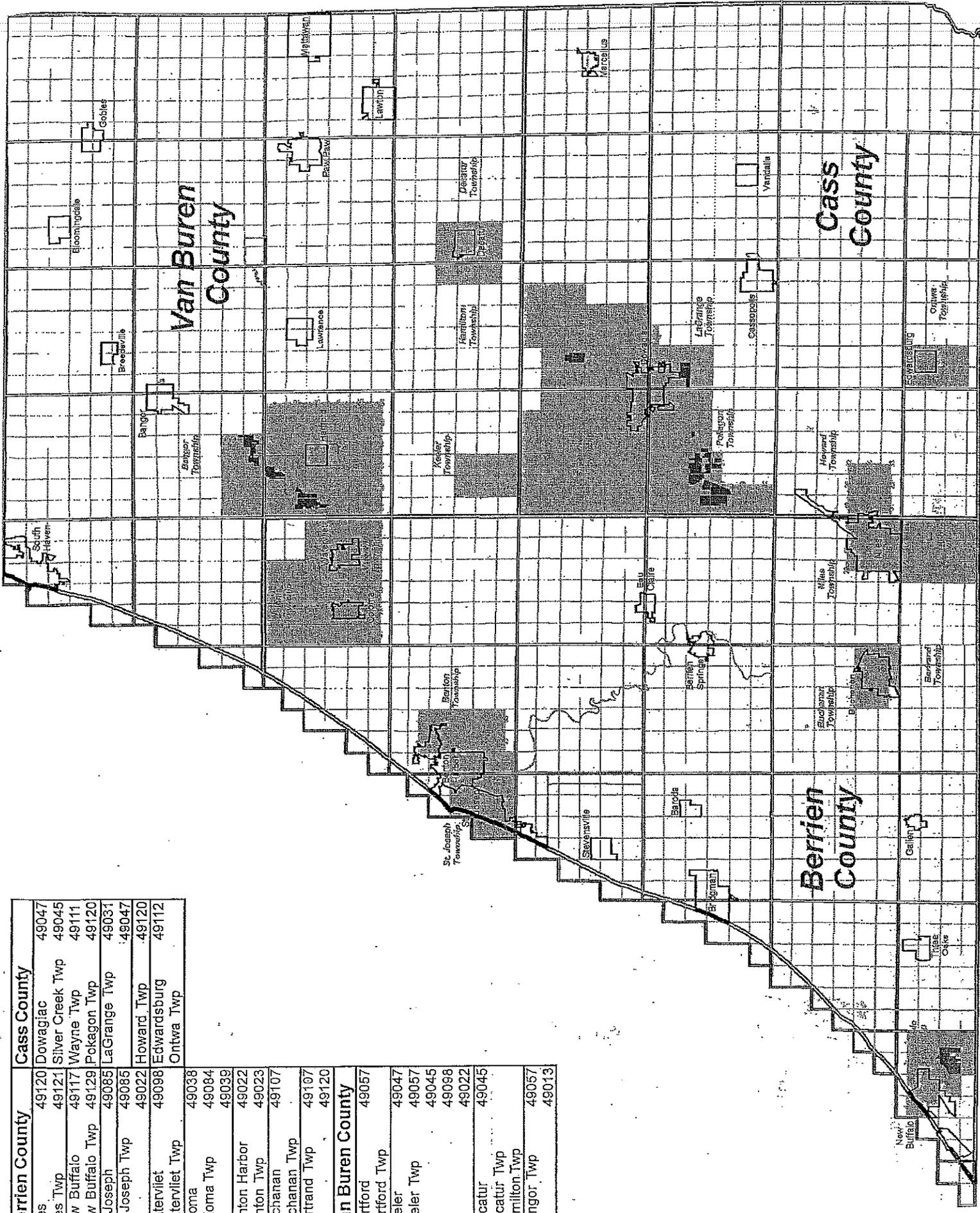
How Long will the Tax Agreement be in Effect?

The Tax Agreement will continue until terminated by either the Band or the State. Termination without cause cannot happen sooner than two years after the effective date of the Tax Agreement. As a result, Tribal Members can expect to benefit from the Tax Agreement for at least two years.

Conclusion

Tribal Council members and other Band representatives worked diligently in negotiations with the State to secure the benefits of the Tax Agreement for Tribal Members, Tribal businesses and the Band. The Tribal Council believes that the Tax Agreement presents the Band with a substantial means of improving the welfare of Tribal Members and the economic independence of the Pokagon Band. The Tax Agreement also provides the Band with a valuable opportunity to further develop a positive and productive relationship with the State of Michigan. The Tribal Council asks for the support, cooperation, and assistance of Pokagon Band Tribal Members in its effort to implement the Tax Agreement. Miigwetch.

Berrien County		Cass County	
Niles	49120	Dowagiac	49047
Niles Twp	49121	Silver Creek Twp	49045
New Buffalo	49117	Wayne Twp	49111
New Buffalo Twp	49129	Pokagon Twp	49120
St. Joseph	49085	LaGrange Twp	49031
St. Joseph Twp	49085		49047
	49022	Howard Twp	49120
Watervliet	49098	Edwardsburg	49112
Watervliet Twp		Ontwa Twp	
Coloma	49038		
Coloma Twp	49084		
	49039		
Benton Harbor	49022		
Benton Twp	49023		
Buchanan	49107		
Buchanan Twp	49107		
Bertrand Twp	49107		
	49120		
Van Buren County			
Hartford	49057		
Hartford Twp			
Keeler	49047		
Keeler Twp	49057		
	49045		
	49098		
	49022		
Decatur	49045		
Decatur Twp			
Hamilton Twp			
Bangor Twp	49057		
	49013		



Shaded areas represent the Tax Agreement area. If you live within these boundaries, please fill out the Tax Agreement information form