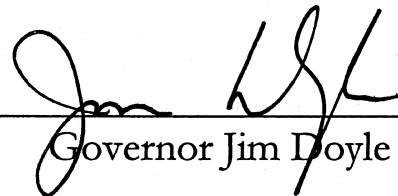


**STATE OF WISCONSIN
DEPARTMENT OF REVENUE**

**POLICY REGARDING
CONSULTATION
WITH
WISCONSIN'S INDIAN TRIBES**



Governor Jim Doyle



Secretary Michael Morgan

June 28, 2005

Table of Contents

<u>Section</u>	<u>Title</u>	<u>Page</u>
I.	Introduction	2
II.	Objectives	3
III.	Guiding Principles	3
IV.	Purpose and Methods	4
V.	Resolution of Issues	5
VI.	Outreach to Tribal Governments by Committees and Workgroups	6
VII.	Glossary	7
VIII.	Organizational Chart	8

I. Introduction

The Department of Revenue administers all major state tax laws. It also enforces the state's alcohol beverage and tobacco laws. As part of this effort, it also enforces the state's laws governing Class B facilities related to video gaming. It estimates state revenues, forecasts state economic activity, helps formulate tax policy, and administers the Wisconsin Lottery. It also determines equalized value of taxable property and assesses manufacturing property. It administers local financial assistance programs and assists local governments in their property assessments and financial management.

In December of 2004, the Department of Revenue released a Tax Incidence Study, the first thorough examination of who actually pays taxes in Wisconsin completed in over twenty years. The Tax Incidence Study found that Wisconsin's overall system of state and local taxation is slightly progressive to proportional. This means that lower income households tend to pay a slightly smaller share of their income in taxes than higher income households.

The mission of the Wisconsin Department of Revenue is to administer state and local taxes in a fair, equitable and efficient manner. Taxes should be collected in the fairest manner possible. This means that no single group, organization, industry or community should be required to shoulder a disproportionate share of the state's tax burden. Tax collection is designed to encourage a balanced tax system, particularly between personal income, sales and business income/corporation franchise taxes.

In Wisconsin, we have historically accomplished equity through a progressive tax system in which low-income Wisconsin families are not overly burdened. The progressive income tax and the exempting of key goods from the sales tax (example: food) help to achieve this objective.

We strive to be efficient both economically and administratively.

Economic efficiency: Because taxes can distort economic decisions, they bring about excess burden—a loss of welfare above and beyond the tax revenues collected. Excess burden should be minimized to the greatest degree possible so that the state's economy can grow and new jobs can be created.

Administrative efficiency: Like all state agencies, DOR should strive to go about its core mission of tax collection in the most administratively efficient manner possible.

In February 2004, Governor James Doyle issued Executive Order #39 relating to an affirmation of the government-to-government relationship between the State of Wisconsin and American Indian Tribal governments (Tribes) located within the State of Wisconsin. The Executive Order states: "Whereas State and Tribal governments play key roles in serving all of the citizens of the State of Wisconsin and collaboration between Tribes and State agencies will ensure that services are efficiently provided to all citizens, minimize service overlap, preserve natural resources and encourage sustainable economic development ..." A cooperative approach to resolving differences on issues of state taxation presents an opportunity for the state of Wisconsin and Tribal governments to improve the understanding of state tax law. Greater tax compliance benefits all levels of government; state, local and tribal, leading to administrative efficiencies in the collection of state taxes. Working together also presents tribes with the opportunity for improved administrative assistance for self-government and self-determination.

The purpose of this consultation policy is to lay out the structure for cooperation between the Department of Revenue and Tribal governments, and detailing the nature of such a government-to-government relationship.

II. Objectives

The objectives of this policy are:

- A. To create a collaborative effort to improve the administration and enforcement of state tax laws.
- B. To formalize the process for the Department of Revenue to implement a government-to-government relationship and to seek discussion with and participation of representatives of Tribal governments in policy development and tax law enforcement.
- C. To promote and develop methods of obtaining consultation on issues from Tribal governments and to involve their representatives in the DOR decision-making process.

III. Guiding Principles

The Department of Revenue is committed to improving and maintaining effective government-to-government relations with American Indian tribes in Wisconsin. The development of mutual understanding, with cultural awareness and sensitivity, is necessary for an effective consultation on policy and collaboration on tax issues. Toward achieving this goal, the DOR shall utilize the following principles in consulting on tax policy. Integration of these principles into management activities and the development of the DOR business plan will facilitate the administration of state and local taxes in a fair, equitable and efficient manner. Tax equity and tax efficiency will produce positive and desired outcomes in the delivery of public services for Tribal community members.

- A. The State of Wisconsin recognizes the eleven tribal nations as unique, independent sovereign nations.
- B. It is important to recognize the uniqueness of each Tribe's culture, governmental structure and processes, business enterprises, where Tribal members are located, and other factors.
- C. Consultation requires accurate and timely communication with Tribal governments in a cooperative process that strives to achieve consensus before a decision is made or an action is taken.
- D. Working directly with American Indian tribes in a government-to-government manner will result in an effective, efficient, and sustainable consultation process.
- E. Consultation with Tribal governments when developing and implementing policies and programs, legislative initiatives, regulations, and other activities that are anticipated to directly affect American Indian Tribes or their members is necessary and respectful. This includes issues presented by the Tribes on which they would like consultation. For example, some Tribes have indicated an interest in funding Tribal government services by imposing a tax or sharing in state tax revenue.

- F. Promotion of cooperation among affected parties is the best way to resolve issues of mutual concern.

IV. Purpose and Methods

The State of Wisconsin, represented for purposes of this policy by its Department of Revenue, with the concurrence of the Tribes as sovereign nations will diligently seek to maintain an ongoing and meaningful process for communicating general concerns, program and funding priorities, respective roles in the provision of services to Tribal community members, tax enforcement, and other high-level matters of mutual concern.

The Wisconsin Department of Revenue, together with the Wisconsin federally recognized Tribal governments, establishes this policy requiring consultation by and between these governments on DOR policies and activities.

A. Annual Meetings

The Secretary of the Department of Revenue shall assume the responsibility for scheduling, in consultation with Tribal leadership, an annual consultation session at which the Secretary will be present, which must include invitations to, at a minimum, the following individuals (who may designate another individual with appropriate authority to attend):

- Chair, Bad River Band of Lake Superior Tribe of Chippewa Indians
- President, Ho-Chunk Nation
- Chair, Lac Courte Oreilles Band of Lake Superior Chippewa Indians
- President, Lac du Flambeau Band of Lake Superior Chippewa Indians
- Chair, Menominee Tribe of Wisconsin
- Chair, Oneida Tribe of Indians of Wisconsin
- Chair, Forest County Potawatomi Community
- Chair, Red Cliff Band of Lake Superior Chippewa Indians
- Chair, Sokaogon Chippewa Community
- Chair, St. Croix Chippewa Indians of Wisconsin
- President, Stockbridge-Munsee Band of Mohican Indians
- Tribal Administrators and program staff as determined by the Tribal Leadership
- The Secretary of the Wisconsin Department of Revenue
- DOR administrators and other staff as determined by the Secretary

The agenda, date, and location of the consultation session shall be determined jointly by the DOR Secretary and Tribal chairs and presidents. The schedule will take into account the desirability of allowing adequate time during even numbered years, but no later than June, for development of DOR Tribal biennial budget initiatives.

It shall be part of the consultation agenda for at least one meeting to review and evaluate the performance measures of the DOR business plan.

B. Other Meetings

The Secretary of the Department of Revenue shall assume the responsibility for scheduling, in consultation with Tribal leadership, additional consultation sessions at his or her discretion. In

addition, any Tribal Chairperson or President may request meetings or other consultation with the Secretary or other DOR representatives.

C. Annual Action Plan

The DOR shall establish an annual action plan by which this government-to-government consultation policy shall be implemented. The action plan shall include:

- Programs: A list of programs and services available to Tribes, including an overview of DOR program responsibilities and a DOR organizational chart.
- Policy and Program Development: Description of new or proposed initiatives, programs, and policies affecting Tribes.
- Priorities: Priority issues for resolution in conjunction with the Tribes.
- Consultation Process: The procedures to be used to consult with Tribes on existing and new policies and programs.
- Evaluation Process: The process to determine the effectiveness of the action plan with respect to the consultation process.

D. Training

It shall be part of consultation agendas to establish regular, ongoing training sessions for appropriate DOR employees and other individuals. The purpose of this training is to educate DOR employees regarding the requirements of a meaningful government-to-government relationship, including historical and cultural perspectives from the Tribes, and information about the importance of consensus building, Tribal sovereignty, Tribal government, and taxation matters affecting the Tribes. The Department of Administration's Division of Intergovernmental Relations will facilitate training and curriculum for appropriate department staff.

V. Resolution of Issues

Throughout any given year, specific issues affecting one or more Tribes and the Department of Revenue will arise. These issues may be raised by either a Tribe or the DOR and may occur at various levels within either party. The following process is to be used when such issues arise.

A. *Initial Discussion*

When an issue arises and an authorized and designated Tribal or DOR representative contacts a representative of the other entity, they will discuss the issue and attempt to resolve it. If higher level involvement is required, the process described in Section V-B will be followed.

If resolution or non-resolution of the issue would affect a Tribe or Tribes other than the Tribe involved, then further discussion must occur as described in Section V-C.

B. *Issues Requiring Higher Level Involvement*

If higher level involvement is needed, the issue will be raised to the appropriate level in the DOR and Tribe for resolution. Within the DOR, the Secretary's office will facilitate contact with the appropriate staff or management if required. Written communication between those parties shall occur as soon as reasonably possible to determine if the issue can be resolved. If the issue is resolved, no further action is required. If the issue cannot be resolved, the involved parties will determine if a process can be

established for resolving the issue. It is recognized that some issues may not be able to be resolved to the satisfaction of all parties.

C. Issues Affecting More Than One Tribe

If it is determined that resolution or non-resolution of the issue will affect more Tribes than just the Tribe presently involved in the discussion, the parties shall discuss and determine who else may be impacted. A DOR representative will make contact with representatives of all Tribes. When possible, communication involving all of the potentially affected parties will occur and will be facilitated by a DOR representative.

If the issue is resolved through agreement of the involved parties, no further action is required. If the issue cannot be resolved, then the issue shall be raised to higher level authorities as described in Section V-B.

VI. Outreach to Tribal Governments by Committees and Workgroups

The focus of this consultation policy is with individual Tribal governments. During the normal course of business, it is often necessary for the DNR to establish committees, councils, workgroups, or similar bodies to provide advice and recommendations to the DNR. Such committees, councils, workgroups or similar bodies, when dealing with policies or programs affecting tribal governments, shall inform tribal Chairs/Presidents, in writing, of the proposed policy or program in order to solicit tribal input.

Appendix A GLOSSARY

For purposes of this consultation policy, the following terms and definitions will apply:

“American Indian Tribal government” means a sovereign government of a Native American people, embracing and occupying lands and territory, and having jurisdiction over same, lying within the geographical boundaries of the State of Wisconsin, which sovereignty is recognized by the Government of the United States of America and subject to the Constitution, laws and treaties of the United States of America, which also may be known as a “federally recognized Indian Tribe”.

“Consultation” references a tool used to facilitate communication and interaction between the state government entity and all of the federally recognized Tribes in Wisconsin.

“Cultural awareness and sensitivity” means having due knowledge of and regard for the behavior patterns, civilization, customs, arts, beliefs, institutions and all other achievements and manifestations of human work and thought as expressed in a particular community.

“Government-to-government” means communication and dealings between sovereign governments, their agencies and other official entities.

“Sovereign” means a state in which supreme authority is vested.

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