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Tobacco Compact: Creek Nation: State prepared to make deal

By OMER GILLHAM World Staff Writer
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The governor's office appears to be eager to sign a new tobacco compact in hopes of ending a year-long tax dispute that has soured relations with Indian tribes while torpedoing a new cigarette tax.

Gov. Brad Henry is hoping to sign a new compact with the Muscogee (Creek) Nation, one of three tribes disputing the state's new cigarette tax and its effect on tribal smoke shops, said State Treasurer Scott Meacham.

Meacham said a new compact would honor the historical tax advantage that Indian smoke shops have had over nontribal stores.

Henry's office is hoping the Creeks will accept a 66-cent compact rate that would give the Creeks a \$3.70 per carton tax advantage over nontribal stores. Nontribal stores pay a tax of \$1.03 per pack of cigarettes in connection with a new cigarette tax put in place in January 2005.

The state's willingness to sign a new compact appears to be a concession that it cannot enforce a higher compact rate agreed to by the various Indian tribes.

The higher compact amount would have reduced the tax advantage to \$1.70 a carton and appeased nontribal retailers.

Meacham said the governor wants to settle the matter so the state can begin to collect its intended revenues from the new cigarette tax.

"Since January 2005 we have had no compact with the Creeks and in the meantime they have been getting 6-cent cigarettes along with other tribes that is causing a substantial loss of tax revenues," Meacham said. "It only makes sense that we get to an agreement that can work for both of us."

The tobacco tax increase approved by voters in State Question 713, which took effect last year, was expected to generate \$265.6 million during its inaugural year. The new tax fell short by \$82.5 million in connection with a tax dispute between the state and Indian tribes.

Meacham said a new compact with the Creek Nation could literally erase the \$82.5 million tobacco tax deficit caused primarily by Tulsa-area smoke shops buying low-tax cigarettes from border stores and reselling them in Tulsa, a high-tax zone.

Tribal smoke shop owners ignored their tribe's compacts associated with the new tax, claiming that the state reduced their tax advantage in an unfair manner.

Henry's office is negotiating with Creek Chief A.D. Ellis.

An agreement, if reached, must still face the scrutiny of the Creek Nation council, said Creek House Speaker George Tiger.

The state must also work out disagreements with the Osage Nation and Cherokee Nation over the tax dispute. Currently, both tribes or their smoke shop owners have sued the state for attempting to implement a new emergency rule to curtail the sale of low-tax cigarettes by tribal smoke shops.

Meanwhile, the governor's apparent shift toward a lower compact tax rate brought a swift response from one of Tulsa's largest convenience store companies.

"When the governor said there would be a loser in solving this mess, he meant nontribal business," QuikTrip spokesman Mike Thornbrugh said, referring to a speech Henry made in April at the Tulsa Press Club. "We are the losers today but it could be your business tomorrow, so watch out.

"We have no faith in this administration for any type of enforcement of any compact," Thornbrugh said. "If they get a new compact, they can't enforce that either."

The Oklahoma Grocers Association and the Oklahoma Petroleum Marketers and Convenience Stores Association issued a press release urging Henry to "not turn his back on the state's nontribal retailers."

Danny Boyle, chairman of the Oklahoma Grocers Association, reminded Henry that Oklahoma voters approved a cigarette tax that in effect decreased the tax advantage that tribal smoke shops held over nontribal stores.

"Now we have learned that the governor wants to lower the tax on tribal cigarettes to 66 cents per pack by signing a new compact with the Creek Nation, giving them an even greater price advantage over nontribal retailers," Boyle said. "We believe this will go directly against the clear wishes of the citizens of Oklahoma."

Cherokee Nation spokesman Mike Miller said the Cherokees have been seeking a simple solution that the state now seems willing to hear.

"We have been saying from the beginning almost two years ago that we wanted to keep our historical margin, and if the state is now coming around to that then there could be more meaningful talk but the details are always something to be considered," Miller said.

Soon after the new cigarette tax took effect, smoke shop owners from the Creek, Osage and Cherokee nations fashioned a route around the new tax and claimed more of the cigarette market by buying and selling low-tax cigarettes behind a shield of sovereignty.

Without a compact, several Creek smoke shops in the Tulsa area have survived by buying low-tax cigarettes from Cherokee border stores and reselling them, according to an investigation by the Tulsa World.

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