

POKAGON BAND OF POTAWATOMI INDIANS

TRIBAL TAX REVENUE AND ADMINISTRATION CODE

Pursuant to its authority to provide for the health, safety, and welfare of the Band and its members, the Tribal Council (the “Council”) of the Pokagon Band of Potawatomi Indians (the “Band”) hereby enacts and adopts the following Tribal Tax Revenue and Administration Code (the “Tax Code”).

CHAPTER I DECLARATION OF NEED AND PURPOSE

The Tribal Council finds that:

The Band wishes to exercise its sovereignty to obtain revenue to fund governmental services of the Band through the imposition of taxes on hotel occupancy and retail sales on lands of the Band.

Pursuant to its authority and responsibility to provide for the general welfare of the Band and its members, the Council, pursuant to an extensive negotiating process conducted with other Michigan Bands and the State of Michigan (the “State”), has negotiated a Tax Agreement, including the Appendices thereto (together, the “Tax Agreement”), concerning various state and tribal tax issues.

The Council determined that execution of the Tax Agreement would benefit the Band; result in tax benefits for a substantial number of members of the Band, and entities owned by the Band and members of the Band; settle outstanding issues regarding the applicability of certain Michigan state taxes on terms favorable to the Band and its members; and further the Band’s goals of economic development and sovereignty, and entered into the Tax Agreement on December 20, 2002.

To administer the Tax Agreement and to ensure that the Band, tribal members and tribal entities comply with the provisions of the Tax Agreement and obtain the benefits of the Tax Agreement, the Council has determined that it is in the best interest of the Band to enact various laws and regulations to implement the Tax Agreement, ensure compliance with the Tax Agreement, and obtain the benefits of the Tax Agreement.

CHAPTER II DEFINITIONS

Unless a word or phrase is expressly defined elsewhere in this Tax Code, the following words and phrases shall have the indicated meanings:

1. “Agreement Area” means the geographic area designated as such in Appendix A, Sec. I of the Tax Agreement.
2. “Band” means the Pokagon Band of Potawatomi Indians and its political subdivisions, including the Gaming Enterprise and all other entities wholly owned by the Band.
3. “Collection Agent” means any Person responsible for collecting taxes under this Tax Code.
4. “Complimentary” means any provision of goods or services at or in connection with the Gaming Enterprise without cash payment, including rooms and beverages, whether provided through a “Players Club” or through a similar credit system.
5. “Department of Treasury” means the Michigan Department of Treasury.
6. “Finance Director” means the Director of the Finance Department of the Band.
7. “Fuel Quota” means the annual quantity of motor fuel, including gasoline and diesel fuel, that the Band may acquire without the imposition of the State motor fuel tax and the State Sales Tax.
8. “GAAP” means generally accepted accounting principles, consistently applied.
9. “Gaming Enterprise” means the enterprise established by the Band to conduct Class II or Class III gaming, as defined in the Indian Gaming Regulatory Act, on trust lands of the Band in New Buffalo, Michigan.
10. “Gross Receipts” means the total amount for which goods or services is sold or the total amount received for any service rendered, whether paid in money or otherwise, but excluding Gross Hotel Receipts. Such total amounts include all of the following: (a) any services that are a part of the sale, (b) any amount for which credit is given to the purchaser by the seller, (c) the value of any Complimentary goods or services given to the purchaser in connection with the provision of such goods and services, and (d) all receipts, cash, credits and property of any kind received in connection with, or on account of, such goods or services. No deduction shall be made for interest or other financing charges, the cost of goods sold or services furnished, or any other expense.
11. “Gross Hotel Receipts” means the total amount charged for Hotel Rooms and any Occupancy-related services. Gross Hotel Receipts are deemed to have been received on a daily basis as rooms are rented or services are provided.
12. “Hotel” means any building or facility regularly used for the lodging of guests

for a fee, and includes a recreational vehicle (RV) park and campground services provided by and related to a hotel for the purpose of providing overnight accommodations to guests for a fee.

13. “Implementation Date” means the date specified in accordance with Article XIX (B) of the Tax Agreement.

14. “Indian Country” means those lands considered “Indian Country” under federal law.

15. “Non-Resident Tribal Member” means a Tribal member who is not a resident Tribal Member.

16. “Non-Tribal Member” means an individual who is not an enrolled member of the Band.

17. “Occupancy” means the use or possession, or the right to the use or possession, of any room or rooms in a hotel or lodging house, the right to the use or possession of the furnishings or the services and accommodations accompanying the use and possession of such room or rooms, including laundry services; and the use or possession, or the right to the use or possession, of spaces, hook-ups and other facilities at a recreational vehicle park or campground.

18. “Person” means any individual, sole proprietorship, firm, partnership, corporation, or association.

19. “Resident Tribal Member” means a Tribal Member whose principal place of residence is located within the Agreement Area.

20. “Retailer” means a Person operating a hotel, bar, restaurant, shop or other retail establishment selling or furnishing goods or services on or within Tribal and Trust Lands, including the Gaming Enterprise.

21. “Room” means any room or rooms of any kind in any part or portion of a hotel or lodging house let out for use or possession for lodging purposes.

22. “Sale at Retail” means the term as defined in the State Sales Tax Act.

23. “State” means the State of Michigan.

24. “State Lodging Tax” means the use tax on rental rooms imposed by the State pursuant to the Use Tax Act as amended, MCL 205.91 et seq.

25. “State Sales Tax” means the sales tax imposed by the State pursuant to the State Sales Tax Act.

26. “State Sales Tax Act” means the State’s General Sales Tax Act, as amended, MCL 205.51 et seq.

27. “State Use Tax” means the use tax imposed by the State pursuant to the State Use Tax Act.

28. “State Use Tax Act” means the State’s Use Tax Act as amended, MCL 205.91 et seq.

29. “Taxable Sale” means a sale that is not exempt under the State Sales Tax Act, as modified by the Tax Agreement.

30. “Taxpayer” means a Person liable for taxes, penalties or interest imposed under this Tax Code.

31. “Tax Agreement” means the Tax Agreement between the Band and the State, as executed by the Band and the State on December 22, 2002, including all Appendices thereto, and including any amendments subsequently agreed to by the Band and the State.

32. “Tax Table” means the Sales Tax Table described in § 12(C)(3) of the Tax Agreement.

33. “Tobacco Quota” means the annual quantity of tobacco products that the Band may acquire without the imposition of the State tobacco products tax.

34. “Tribal and Trust Lands” means:

(a) all lands held in trust by the federal government for the benefit of the Band which are listed on Appendix A (K-1) to the Tax Agreement and designated as Tribal and Trust Lands at the time the Tax Agreement was executed;

(b) all fee lands owned by the Band which are listed on Appendix A (K-2) to the Tax Agreement and designated as Tribal and Trust Lands at the time the Tax Agreement was executed;

(c) all Tribal lands acquired after execution of the Tax Agreement within the area identified for automatic Tribal and Trust Land status on Appendix A (K-3) to the Tax Agreement, so long as they are used for a Governmental Function;

(d) all Tribal lands accepted into federal trust after execution of this Tax Agreement which are located within the area identified in Appendix A (K-4), regardless of the use of such Tribal lands, and

(e) all other lands acquired after execution of the Tax Agreement by the Band that are mutually agreed upon in writing as Tribal and Trust Lands by the Band and the

State.

35. “Tribal Court” means the Tribal Court of the Band.

36. “Tribal Entity” means 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 its Resident Tribal Members.

37. “Tribal Member” means an individual who is an enrolled member of the Band.

38. “Tribal Hotel Tax” means the tax imposed by the Band pursuant to Chapter V of this Tax Code.

39. “Tribal Sales Tax” means the tax imposed by the Band pursuant to Chapter III of this Tax Code.

CHAPTER III TRIBAL SALES TAX

1. For the privilege of conducting Sales at Retail on Tribal and Trust Land for a consideration, a Tribal Sales Tax is hereby imposed on every Tribal, Tribal Member and Tribal Entity business that makes Sales at Retail within Tribal and Trust Lands at a rate of 6 % of Gross Receipts, plus interest and penalty, if applicable, and less deductions allowed in this Tax Code.

2. In computing the amount of sales tax levied under this Tax Code, a taxpayer shall exclude from the amount of Gross Receipts and shall not collect sales tax on the following:

(a) Sales of tangible personal property that is provided on a Complimentary basis, provided the Tribal, Tribal Member or Tribal Entity business pays to the Band the percentage of the Tribal Sales Tax owed under the tax sharing provisions of the Tax Agreement, if the Sale at Retail is a Taxable Sale;

(b) Sale at Retail of gasoline, diesel fuel, cigarettes and other tobacco products to a Tribal Member, to the extent such sales are of product that has been purchased tax-free pursuant to Chapter VII or Chapter VIII of this Tax Code and are sold pursuant to the provisions of this Tax Code;

(c) Sale at Retail of tangible personal property, other than gasoline, diesel, cigarettes and other tobacco products, to a Resident Tribal Member for his business use exclusively within Tribal and Trust Lands, provided that the Resident Tribal Member certifies in writing that the property purchased will be used or consumed entirely within

Tribal and Trust Lands for his or her business purposes;

(d) Sale at Retail of tangible personal property, other than gasoline, diesel, cigarettes and other tobacco products, to a Resident Tribal Member for his personal use exclusively within the Tax Agreement Area, provided that the Resident Tribal Member certifies in writing that the property purchased will be used or consumed entirely within the Tax Agreement Area for his or her personal use;

(e) Sale at Retail of passenger vehicles, including automobiles, pick-up trucks, recreational vehicles, motorcycles, recreational watercraft, snowmobiles and off-road vehicles; modular and mobile homes; construction materials; equipment, supplies and gear for recreational, subsistence or commercial treaty fishing to a Resident Tribal Member, provided the sale satisfies the exemption requirements of the Tax Agreement;

(f) Sale at Retail of equipment, supplies and gear for commercial treaty fishing to a Tribal Member, provided the sale satisfies the exemption requirements of the Tax Agreement;

(g) Sale at Retail of tangible personal property to a Tribal Entity for its use exclusively within Tribal and Trust Lands;

(h) Sale at Retail of construction materials and gear for commercial treaty fishing to a Tribal Entity, provided the sale satisfies the exemption requirements of the Tax Agreement;

(i) Sale at Retail of gasoline and diesel fuel to the Band;

(j) Sale at Retail of tangible personal property, other than gasoline and diesel fuel, to the Band for its use exclusively within Tribal and Trust Lands, as long as it provides a tribal exemption certificate and letter of authorization;

(k) Sale at Retail of tangible personal property, other than gasoline and diesel fuel, to the Band that it will primarily use (95% or more) in performing a Governmental Function, as long as it provides a tribal exemption certificate and letter of authorization;

(l) Sales at Retail which are deductible from gross proceeds under the State Sales Tax Act, as amended, provided that the Person making the purchase provides the Taxpayer with a copy of the form used by those claiming exemption under the provisions of the State Sales Tax Act; and

(m) The amount received or billed by the Retailer for remittance to an employee as a gratuity or tip, if the gratuity or tip is separately identified and itemized on the guest check or billed to the customer.

3. The tax shall be imposed upon the Person purchasing the goods and shall be collected by the Person selling or otherwise providing the goods.

4. The Tribal Sales Tax collected on Taxable Sales by Tribal, Tribal Member and Tribal Entity Retailers within Tribal and Trust Lands shall be subject to the tax sharing provisions of Chapter VII of this Tax Code.

5. Returns. Any Retailer subject to the tax imposed by this Tax Code shall, on or before the twentieth (20th) day following the end of each calendar quarter, complete a return for the preceding quarter on a form prescribed by the Finance Director showing the entire amount of Gross Receipts for her business, the allowable deductions, and the amount of tax for which she is liable.

6. Payment. The Retailer shall transmit the return, together with a remittance for the amount of tax, to the Finance Director on or before the twentieth (20th) day of the month following each calendar quarter. The quarterly return shall be signed by the Retailer or her duly authorized agent and, if applicable, the person and/or firm preparing the return.

7. Consolidated Returns. Any Person operating two (2) or more businesses located on Tribal and Trust Lands making Sales at Retail shall file a consolidated return covering all such business activities.

CHAPTER IV HOTEL TAX

1. For the privilege of use and Occupancy of a room in a Hotel located on Tribal and Trust Land for a consideration, a Tribal Hotel Tax is hereby imposed on the use and occupancy of Hotel room or rooms (and any Occupancy-related services), or the use and Occupancy of any related recreational vehicle park, on Tribal and Trust Land which are owned by the Band and located within a one-quarter mile radius of a Tribal gaming facility, at a rate of 6% of the Gross Hotel Receipts for such services.

2. In computing the amount of use tax levied under this Tax Code, a taxpayer shall exclude from the amount of Gross Hotel Receipts and shall not collect use tax on use and occupancy of Hotel room or rooms or recreational vehicle facilities (and any Occupancy-related services) provided on a Complimentary basis.

3. The tax shall be imposed upon the Person for whom the room, goods or services are provided and shall be collected by the Person providing the room, goods or services.

4. The Tribal Hotel Tax shall not be subject to the tax sharing provisions of Chapter VII of this Tax Code.

5. Returns. Any Person operating a Hotel on Tribal or Trust Lands that is subject to the tax imposed under this Tax Code shall, on or before the twentieth (20th) day following the end of each calendar quarter, complete a return for the preceding quarter on a form prescribed by the Finance Director showing the entire amount of Gross Receipts from such occupancy and related services, the allowable deductions, and the amount of tax for which she is liable.

6. Payment. The Person operating the Hotel shall transmit the return, together with a remittance for the amount of tax, to the Finance Director on or before the twentieth (20th) day of the month following each calendar quarter. The quarterly return shall be signed by the Person who operates the Hotel or her duly authorized agent and, if applicable, the person and/or firm preparing the return.

7. Consolidated Returns. Any Person operating two (2) or more Hotels located on Tribal and Trust Lands that are subject to the tax imposed under this Tax Code shall file a consolidated return covering all such business activities.

CHAPTER V EXCLUSIONS

Notwithstanding any other provision of this Tax Code, the following shall be exempt from taxation under this Tax Code:

1. All gaming revenue or gaming earnings received by the Gaming Enterprise.
2. Any other transaction specified as exempt under regulations issued by the Finance Director, provided that such regulations shall not have the effect of making the base for taxable sales subject to the Tribal Sales Tax less inclusive than that provided by State Law pursuant to the State Sales Tax Act or the State Use Tax Act.

CHAPTER VI TAX SHARING

The Band shall share with the State the Tribal Sales Tax collected on Taxable Sales by Tribal, Tribal Member and Tribal Entity Retailers on Tribal and Trust Land pursuant to the tax sharing formula provisions of Sec. III(B)(3) of the Tax Agreement.

CHAPTER VII MOTOR FUEL

1. The Band shall purchase tax-free motor fuel utilizing the quota method, as described in § 5(C) of the Tax Agreement.
2. The Band shall purchase its Fuel Quota from a single State licensed

wholesaler.

3. All motor fuel acquired by the Band for resale in excess of the Fuel Quota shall be purchased in accordance with State law from any State licensed wholesaler with State motor fuel taxes prepaid. All retail sales of such motor fuel shall include the tax in the retail price.

4. All sales of motor fuel by the Band, Tribal Members, or Tribal Entities to Non-Tribal Members shall be with all state motor fuel and sales taxes paid and included in the price.

5. The Band, Tribal Members, and Tribal Entities shall not act as importers, wholesalers, or suppliers of motor fuel unless licensed by the State.

6. The Band, Tribal Members, and Tribal Entities engaging in activity that is covered by the State's Motor Carrier Fuel Tax Act or the International Fuel Tax Agreement shall fully comply with all of the provisions of that Act and that Tax Agreement.

7. The Band shall not engage in commercial intrastate transportation activities utilizing untaxed fuel, other than those associated with the Gaming Enterprise as permitted in § III(A)(I)(d) of the Tax Agreement.

8. Any Person selling tax-free motor fuel purchased from the Band must be located within the Agreement Area and must be registered with the Band.

9. The Band shall determine the quantities of tax-free motor fuel that each licensed Retailer within the Agreement Area may acquire, and shall pre-approve, and clearly designate, all purchases of tax-free motor fuel by each registered Retailer prior to submission to a wholesaler.

10. The Finance Director shall propose regulations for adoption by the Tribal Council for the administration and certification of Tribal Member purchases of tax-exempt motor fuel, including setting individual monthly quota amounts if deemed necessary.

CHAPTER VIII TOBACCO PRODUCTS

1. The Band shall purchase tax-free tobacco products utilizing the quota method, as described in § 6(C) of the Tax Agreement.

2. The Band shall purchase its Tobacco Quota from a single State licensed wholesaler.

3. All tobacco products acquired by the Band for resale in excess of the Tobacco Quota shall be purchased in accordance with State law from any State licensed wholesaler with State tobacco products taxes prepaid. All retail sales of such tobacco products shall include the tax in the retail price.

4. All tobacco products purchased by the Band shall bear the State tribal stamp.

5. All sales of tobacco products by the Band, Tribal Members, or Tribal Entities to Non-Tribal Members shall be with all state tobacco products taxes paid and included in the price.

6. The Band, Tribal Members, and Tribal Entities shall not act as wholesalers, secondary wholesalers, or unclassified acquirers of tobacco products unless licensed by the State.

7. Any Person selling tax-free tobacco products purchased from the Band must be located within the Agreement Area and must be registered with the Band.

8. The Band shall determine the quantities of tax-exempt tobacco products that each licensed Retailer may acquire, and shall pre-approve, and clearly designate, all purchases of tax free tobacco products by each licensed Retailer prior to submission to a wholesaler.

9. The Finance Director shall propose regulations for adoption by the Tribal Council for the administration and certification of Tribal Member purchases of tax-free tobacco products, including setting individual monthly quota amounts if deemed necessary.

CHAPTER IX

LICENSES AND REGISTRATION REQUIRED; COLLECTION AND REMITTANCE

1. Sales and Use Tax License. Commencing as of the Implementation Date determined pursuant to Section XIX (B) of the Tax Agreement, Tribal Member and Tribal Entities shall not engage in business on Tribal and Trust Lands as a Retailer, unless that Person obtains and maintains such State licenses and registrations under State law which are applicable to the taxes that are the subject of the Tax Agreement.

2. The Band shall obtain such license(s), permit(s) or registration(s) that would be required under applicable provisions of State law for taxes that are the subject of the Tax Agreement; provided that, as to activities solely within Tribal and Trust Lands, by obtaining a State license or registration the Band shall serve only to identify Tribal operations that are subject to the Tax Agreement and any related disputes shall be resolved as provided in § XIII(E)(1) of the Tax Agreement.

3. Any Person who fails to obtain a license, permit or registration required under this Tax Code may be restrained and enjoined by proper proceedings instituted in the Tribal Court, brought by the Band at the request of the Finance Director, from engaging and/or conducting in a business until the required license, permit and/or registration is secured.

4. Collection and Remittance

(a) Collection Agents. All Retailers located on Tribal and Trust Lands and Persons operating Hotels on Tribal and Trust Lands who are subject to the taxes levied in this Tax Code are Collection Agents and are responsible for collecting and remitting taxes imposed under this Tax Code.

(b) Each Collection Agent is responsible for uncollected taxes and any related interest and penalties, and is therefore a taxpayer.

(c) Each Collection Agent must file periodic returns as provided in this Tax Code and in regulations issued by the Finance Director.

CHAPTER X
COMPLIANCE WITH TAX AGREEMENT

1. Requirement for Filing State Income Tax Returns. Resident Tribal Members shall be required to file a State income tax return in the following circumstances:

(a) If the Resident Tribal Member owes a Michigan income tax;

(b) If the Resident Tribal Member is owed a refund;

(c) If the Resident Tribal Member's federal adjusted gross income exceeds her exemption allowance; or

(d) If the Resident Tribal Member is required to file a federal income tax return.

2. Requirement for Filing State Single Business Tax Returns.

(a) Resident Tribal Members shall be required to file a State Single Business Tax return, but may claim exemptions as provided in the Tax Agreement.

3. Income Tax Withholding by Employers.

(a) Tribal, Tribal Member, and Tribal Entity employers located within the Agreement Area shall withhold and remit to the State income tax from all employees who are not Resident Tribal Members.

(b) The Band will report to the State gaming winnings in the same manner as reported to the federal government.

(c) The Gaming Enterprise will report gross receipts and contact information regarding each professional performer in a manner consistent with reporting practices required by the State for non-Tribal casino operators and/or entertainment facilities.

4. State Sales, Use and Lodging Taxes.

(a) During the term of the Tax Agreement, neither the Band nor any Tribal Member or Tribal Entity shall be entitled to seek or claim an exemption from any State tax that is covered by the Tax Agreement except as follows:

(i) In accordance with the terms and conditions prescribed in Sections IX-XII of the Tax Agreement and this Tax Code;

(ii) To obtain the benefit of any statutory exemptions available to any taxpayer in the State, the Band, Tribal Member or Tribal Entity shall use the standard procedures and forms used by all taxpayers claiming exemption under a provision of State law. See Department of Treasury, Revenue Administrative Bulletin 2002-15; and

(iii) In no event shall Resident Tribal Members apply for a refund using the Tax Table if, during the calendar year for which they seek that refund, they have sought or obtained a specific refund of State Sales Taxes paid on purchases of tangible personal property for personal use which are exempt under § III(A)(2)(b) of the Tax Agreement.

(b) The Band, Tribal Members and Tribal Entities operating as retailers anywhere in the State outside of Tribal and Trust Lands shall collect and remit State Sales Tax and State Use Tax to the State in accordance with State procedures generally applicable to retail sellers, except that no State Sales Tax or Use Tax need be collected or remitted on sales to the Band, a Resident Tribal Member or Tribal Entity within the Agreement Area.

(c) Except for Hotels subject to the Tribal Hotel Tax imposed under this Tax Code, the Tribe, Resident Tribal Members and Tribal Entities shall remit, in accordance with regular State law procedures, use tax and State Lodging Tax on rooms subject to tax under State law.

(d) Certificates of Exemption

(i)

The Band shall use Tribal Certificates of Exemption under § XII (B)(2) of the Tax Agreement. All such certificates shall be issued in accordance with the procedures provided in § XII(c)(1)(E) of the Tax Agreement, and shall only be used by the Band, Resident Tribal Members and Tribal Entities in accordance with the Tax Agreement.

And:

(ii) The Band authorizes Resident Tribal Members and Tribal Entities to use Tribal Certificates of Exemption under § XII(C)(2) of the Tax Agreement. Resident Tribal Members and Tribal Entities shall not seek refunds of sales and use taxes paid for purchases described in § XII(C)(1)(a) or § XII(C)(1)(c) of the Tax Agreement.

5. Reporting

(a) The Finance Director shall provide the State, on or before December 15 of each year, with the information described in § VIII(B) of the Tax Agreement.

(b) The Finance Director shall notify the State in writing of all land in the State which is acquired by the Band, or by the United States in trust for the Band, as provided in § VIII(C) of the Tax Agreement.

(c) The Finance Director shall provide the State with information relating to Tribal activities occurring solely within Tribal and Trust Lands to the extent required in accordance with § XIII(E)(1) of the Tax Agreement.

(d) The Finance Director shall provide the State with any other information required under the Tax Agreement.

6. The Band and the State shall jointly enforce the Tax Agreement and applicable State law within Indian Country in accordance with the terms of the Tax Agreement. The State shall have the enforcement authority as described in the Tax Agreement within Indian Country, including the authority to commence tax enforcement actions, conduct audits and inspections in accordance with the terms of the Tax Agreement. The Band hereby consents to entry on Indian Country by representatives of the State for the sole purpose of exercising the enforcement authority in accordance with the terms of the Tax Agreement.

(a) Tribal Assistance. Tribal police and other employees of the Band shall assist the State, State police and other State officers and agents, as provided in the Tax Agreement.

(b) Tribal Court. The Tribal Court shall rule on matters arising under or relating to the Tax Agreement within the time periods set out in, and in accordance with, the provisions of the Tax Agreement, including without limitation:

- (i) § XIII(C)(4)(b)(i) search warrants;
- (ii) § XIII(D)(4) state court orders and judgments;
- (iii) § XIII(D)(6) compel production, testimony, etc.;
- (iv) § XIII(D)(7), (9) state enforcement actions;
- (v) § XIII(D)(10)(b) state enforcement actions; and
- (vi) § XIII(D)(11), (12) state assessments.

7. If the State notifies the Band that one of the offenses listed below has occurred within the Band's jurisdiction, the Band shall, within 10 business days after notice by the State of the violation, take the following action: for a first offense, give a written warning to the offending party that further noncompliance will result in termination of any Tribally issued license or authorization to operate; and for any subsequent offense, commence proceedings to terminate any Tribally issued license or authorization to operate. The offenses that may trigger the above actions are:

(a) Possession or sale by a Tribal Member or Tribal Entity (other than those in which the Band has an ownership interest) of cigarettes or other tobacco products which do not bear the appropriate State stamp;

(b) Sale by a Tribal Member or Tribal Entity (other than those in which the Band has an ownership interest) of cigarettes or other tobacco products to Non-Tribal Members where all taxes are not fully included in the price; or

(c) Possession or sale by a Tribal Member or Tribal Entity (other than those in which the Band has an ownership interest) of motor fuel not acquired or possessed as provided in this Agreement.

8. The Band shall take independent steps to enforce the Tax Agreement, including seizure of tobacco products and motor fuel not acquired or possessed in accordance with the terms of the Tax Agreement.

9. The Band shall notify the State of any violations of the Tax Agreement which the Band may discover.

CHAPTER XI ADMINISTRATION AND ENFORCEMENT

1. Powers and Duties of Finance Director

(a) The Finance Director shall have the powers and duties granted or imposed by this Tax Code, which shall include the following:

(i) To administer the application and enforcement of this Tax Code;

(ii) To make recommendations to the Tribal Council regarding amendments to this Tax Code;

(iii) To demand access to and inspect, examine and audit all papers, books and records of all Persons and entities subject to taxation under this Tax Code, and require verification of any matter affecting the taxation of such Person or entity or the enforcement of this Tax Code;

(iv) To conduct hearings authorized by this Tax Code and to issue subpoenas and compel the attendance of witnesses, to administer oaths and to require testimony under oath at any such hearing. Any Person making false oath in any matter before the Finance Director is guilty of perjury. Any process or notice may be served in the manner provided for service of process and notices in a civil action in Tribal Court. The Finance Director may pay transportation and other expenses of witnesses as it may deem reasonable and proper;

(v) To propose regulations, forms and procedures as authorized by or required to implement this Tax Code and the Tax Agreement, provided that any such regulations shall be consistent with the Tax Agreement and subject to the approval of the Tribal Council;

(vi) To receive and investigate complaints of violations of this Tax Code or of regulations promulgated under it, and to refer for prosecution the results of any such investigation;

(vii) To keep and maintain such files and records as are required by this Tax Code and the Tax Agreement, or as he otherwise deems necessary, and to provide to the State such information as is required by this Tax Code and the Tax Agreement; and

(viii) To take other action necessary and incidental to the enumerated powers and duties.

(b) The Finance Director shall make an annual report to the Tribal Council by April 15 of the each year for the preceding year, with the first report due on April 15, 2004. The report shall include a summary of all tax revenues collected as provided in

this Tax Code and all investigative actions completed during the year.

2. Deposit of Funds.

(a) The proceeds of each tax imposed by this Tax Code shall be deposited in the general fund or account of the Band.

3. Record Keeping; Financial Standards

(a) All Collection Agents shall maintain financial records in accordance with GAAP, unless otherwise permitted under regulations promulgated by the Finance Director.

(b) All taxes shall be computed in accordance with GAAP, unless otherwise permitted under regulations promulgated by the Finance Director.

(c) Every Collection Agent shall maintain financial records relating to such taxes for a period of at least three years from the date that a return is filed. All such records shall be subject to audit by the Finance Director and his agents.

(d) Records shall be separately maintained for items that are claimed exempt on the basis that the transaction occurred in, and the use is exclusively in, Tribal and Trust Lands.

(e) Tribal, Tribal Member and Tribal Entity Retailers shall maintain records regarding sales that are not Taxable Sales under the Tax Agreement.

(f) With respect to sales (other than sales of motor fuels) on which no tax was collected as provided in § XII(A)(1) of the Tax Agreement, Tribal, Tribal Member and Tribal Entity Retailers shall maintain a record of such sales including the date, the name and Tribal identification number of the purchaser, the amount, and for any item of more than \$50.00 or sales of more than \$200.00 in the aggregate, the identification of the items purchased and any other data sufficient to document the exemption.

(g) For each item claimed by the Band as exempt from State Sales Tax under § III(A)(1)(b) of the Tax Agreement that is not used exclusively for a Governmental Function, the Band shall maintain a log setting forth all uses of the item and the amount of each use. In establishing the percentage of each type of use, the Band shall consistently use the same measure for each class of item.

(h) If the Band is authorized under the Tax Agreement to use a Tribal Certificate of Exemption, the Band shall separately maintain a copy of all exemption certificates used.

(i) If the Band authorizes a Resident Tribal Member or Tribal Entity to use a Tribal Certificate of Exemption, the Resident Tribal Member or Tribal Entity shall maintain a copy of all certificates used. For items not covered by the Tax Table, information and documentation must also be retained to substantiate where the transaction took place. This information shall include shipping documents showing the manner and means by which the item was delivered, e.g., common carrier, seller's truck, purchaser's truck, postal service, etc.

(j) In addition to maintaining the books and records required by State law, all authorized Retailers and other Persons selling tax-free motor fuel or tobacco products, including the Band, shall:

(i) As to tax-free tobacco products, maintain a log of their purchases of tax free tobacco products showing the date, type (cigarettes, cigar, chew, etc.), quantity, and brand of tobacco products purchased; and

(ii) As to motor fuel, maintain a log of their purchases of tax-free motor fuel showing the delivery date, type (gasoline or diesel) and quantity of fuel purchased.

(k) The Band shall maintain a record of its use of tax free motor fuel acquired under the Fuel Quota. This record shall indicate the vehicle(s) in which motor fuel is used, the number of gallons used by each vehicle (or each category of vehicles), and a general description of the use of the vehicles.

(l) The Finance Director may issue regulations imposing additional record keeping and reporting requirements on Persons subject to this Tax Code to implement the purpose and intent of this Tax Code, and shall do so to the extent necessary to comply with the Tax Agreement.

4. Tax Deficiencies or Overpayments.

(a) If it appears, either from examination of the tax return or from the examination authorized by this Tax Code that any Taxpayer for any tax under this Tax Code has not satisfied its liability under this Tax Code, the tax shall be determined by the Finance Director and such Person shall be notified of the determination. If the amount paid exceeds the correct amount of the tax, the excess shall be credited against a subsequent tax unless a refund is requested by the Taxpayer.

(b) If the amount paid is less than the amount which should have been paid, the deficiency, together with interest at the rate of 1% per month from the time when the tax was due, shall become due and payable after notice as provided in this Chapter.

(c) If any part of the deficiency is due to negligence or intentional disregard of

this Tax Code or the regulations promulgated by the Finance Director, but without intent to defraud, there shall be added as a penalty 10% of the total amount of the deficiency, together with interest on the penalty as provided in subsection (b).

(d) If any part of the deficiency is due to a fraudulent intent to evade the tax, then there shall be added as a penalty 100% of the deficiency, together with interest on the penalty as provided in subsection (b).

5. Failure or Refusal to File Return or Pay Tax.

(a) If a Person fails or refuses to file a return or pay the tax as required by this Tax Code, the Finance Director as soon as possible shall assess the tax against such Person and any other Persons liable therefore, and shall notify such Persons of the amount as provided in this Tax Code.

(b) In the case of failure or refusal to file a return or pay the tax required by this Tax Code, within the time prescribed by this Tax Code, there shall be added a penalty of 5% of the tax for each month or fraction of a month during which the failure continues, to a maximum of 100%. In addition to the penalty, there shall be added interest at the rate of 1% per month on the amount of tax from the time the tax was due until the date of payment.

(c) When a tax return is filed or remittance is paid after the time specified by this Tax Code and it is shown to the satisfaction of the Finance Director that the failure was due to reasonable cause and not to willful neglect, the penalty may be waived.

6. Assessment of Tax Upon Information Obtained by Finance Director.

(a) If a Person fails or refuses to make a return, either in whole or in part, or if the Finance Director has reason to believe that any return made does not supply sufficient information for an accurate determination of the tax due, the Finance Director may obtain information upon which to base an assessment of the tax. The Finance Director or an authorized agent may examine the books, records and papers and audit the accounts of any Taxpayer for the tax or any other records pertaining to the tax. As soon as possible after procuring the information as may be found to be available, the Finance Director shall assess the tax determined to be due and shall notify the Persons liable of the amount of the assessment and the specific reasons for it.

(b) The assessment by the Finance Director shall be final as to any Taxpayer under this Tax Code except as may otherwise be determined under the provisions of this Tax Code.

(c) If a Taxpayer for tax fails to file a return or to keep and maintain proper, accurate, and complete records as prescribed by this Tax Code, the Finance Director may

assess, upon the information as is available or may come into the possession of the Finance Director, the amount of the tax due from the Taxpayer. The assessment after notice and conference as provided in this Tax Code shall be deemed to be prima facie correct for the purpose of this Tax Code and the burden of proof of refuting it shall be upon the Taxpayer.

7. Limitation of Actions; Levy; Appeal

(a) A tax deficiency, interest or penalty shall not be assessed for any year after the expiration of three years after the date set for the filing of the annual return for each year or the date the return was filed, whichever is later. If a Person fraudulently conceals any liability for the tax or any part of the tax, the Finance Director within two years of the discovery of the fraud shall assess the tax with interest and penalties as provided in this Tax Code, computed from the date on which the tax liability originally accrued, and the tax, penalties and interest shall become due and payable after notice as provided in this Tax Code. The limitation period will be suspended during the pendency of any hearing or other legal proceedings concerning the deficiency, upon the consent in writing of the Taxpayer, and for any taxable year for which a return is not filed.

(b) Notice of Levy and Conference.

(i) In carrying out the provisions of this Tax Code, the Finance Director after determining the amount of tax due from a Taxpayer shall give written notice to such Person intent to levy the tax. The Taxpayer may request an informal conference with the Finance Director on the question of liability for the assessment if the request is made within 20 days of receipt of the notice. Upon receipt of a request for conference the Finance Director shall set a time and place for the conference and shall give the Taxpayer reasonable notice of the conference.

(ii) The Taxpayer may appear or be represented before the Finance Director and may present testimony and argument. After the conference the Finance Director shall render a decision in writing setting forth its conclusions and by order may levy any tax, interest and penalty found to be due and payable.

(c) Appeal to the Tribal Court.

(i) A Person aggrieved by any determination of tax liability made by the Finance Director may appeal to the Tribal Court. Such an appeal must be filed within 30 days of receipt of the notice of intent to levy tax or, if a conference with the Finance Director was requested, of receipt of the order following the conference.

(d) Tax Credit or Refund.

(i) The Finance Director shall credit or refund all overpayments of

taxes, all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that are found unjustly assessed or excessive in amount, or wrongfully collected.

(ii) A Person who claims to have paid a tax which was not due under this Tax Code may, on or before the expiration of four years after the date set for the filing of the annual or final return for the year or the date the tax was paid, whichever is later, petition the Finance Director in writing to refund the amount so paid. If the annual return reflects an overpayment or credit in excess of the tax, the declaration on the return constitutes a claim for refund. If the Finance Director agrees that the Person's claim is valid, the amount of the overpayment, at the request of the claimant, shall be refunded to the claimant or credited against any current or subsequent tax liability. If the Taxpayer disagrees with the Finance Director's conclusion on the matter, the Taxpayer may appeal the matter to the Tribal Court within 30 days after receipt of notice of the Finance Director's decision.

(iii) Interest at the rate of 1% per month shall be added to a refund 45 days after the due date or date the return is filed, whichever is later.

8. Violations.

It shall be unlawful and a violation of this Tax Code for any Person to:

(a) Fail or refuse to make a return required by the Tax Code, within the time specified in this Tax Code, or make, aid, abet, or assist another in making a false or fraudulent return or false statement in a return required by this Tax Code with intent to defraud the Band or to evade the payment of the tax, or any part of the tax, imposed by this Tax Code.

(b) Aid, abet, or assist another in an attempt to evade the payment of the tax, or any part of the tax, imposed by this Tax Code.

(c) Make or permit to be made for himself or for any business or association any false return or a false statement in a return, either in whole or in part, required by this Tax Code.

(d) Make, aid, abet, or assist another in making a false or fraudulent certification to the Finance Director that his principal place of residence is located within the Tribal and Trust Lands or within the Agreement Area, in either case with the intent to defraud the State or to evade the payment of a tax, or any part of a tax, covered by the Tax Agreement.

(e) Obtain, aid, abet, or assist another in obtaining a false or fraudulent sales tax exemption with the intent to defraud the Band or to evade the payment of a tax, or

any part of the tax, levied under this Tax Code.

(f) Obtain, aid, abet, or assist another in obtaining a false or fraudulent sales tax or use tax refund from the State to which he is not eligible for under the Tax Agreement with the intent to defraud the State or to evade the payment of the sales tax or use tax, or any part of the sales tax or use tax.

(g) Knowingly provide, or aid, abet, or assist another in providing to a Non-Tribal Member for consideration cigarettes, other tobacco products, diesel fuel, or gasoline purchased tax-exempt by, from or through the Band, unless all taxes are fully included in the price.

(h) Knowingly possess or sell, or aid, abet, or assist another in possessing or selling, cigarettes or other tobacco products which do not bear the appropriate State stamp.

(i) Knowingly possess or sell, or aid, abet, or assist another in possessing or selling, diesel fuel or gasoline purchased tax-exempt by, from or through the Band that was not acquired or possessed as provided in the Tax Agreement.

(j) Knowingly sell at any location outside the Agreement Area any motor fuel or tobacco products purchased tax-exempt from the Band.

(k) Violate any other provision of the Tax Agreement or this Tax Code or of regulations promulgated in accordance with this Tax Code.

9. Jurisdiction, Procedure and Penalties.

(a) Jurisdiction is hereby conferred upon the Tribal Court over criminal and civil enforcement actions for violations of this Tax Code.

(b) A violation committed by a Native American shall constitute a crime.

(c) A violation committed by a Person who is not a Native American shall constitute a civil infraction subject to a civil remedial money penalty, civil forfeiture of property, or both.

(d) Jurisdiction is hereby conferred upon the Tribal Court for enforcement actions brought by the State in accordance with the provisions of § XIII of the Tax Agreement. In any such action, the determination of the tax liability owed to the State by the Band, Tribal Members and Tribal Entities pursuant to the Tax Agreement and the enforcement of the payment of any such liability shall be made in accordance with State law, except as modified by the terms of the Tax Agreement. In addition, State law, including judicial decisions interpreting State law, prescribing the scope and entitlement

to exemptions or deductions other than those recognized in the Tax Agreement shall govern the determination of tax liability. To the extent that the provisions of the Tax Agreement differ from those of the otherwise applicable State law, the Tax Agreement shall control.

10. Enforcement.

(a) The provisions of this Tax Code shall be enforced by Tribal law enforcement officers, and by anyone authorized or deputized to enforce this Tax Code or Tribal law generally by Tax Code or resolution of the Tribal Council.

(b) The Finance Director shall have the authority to authorize special agents to perform services reasonably necessary to conduct investigations within the scope of the Finance Director's authority or to monitor and assure compliance with the provisions of this Tax Code. When acting as a special agent, a Person shall be accorded the privileges and protections of a Tribal law enforcement officer. The activities of special agents shall be under the supervision and the direction of the Finance Director. Nothing in this subsection shall limit the normal law enforcement functions of any special agent, nor of other Tribal law enforcement officers.

(c) Remedies.

(i) A violation of § 9(b) by a Native American shall be punishable by a fine of up to Five Thousand Dollars (\$5,000.00) or imprisonment for not more than one year, or both.

(ii) A violation of § 9(c) by a Person who is not a Native American shall be remedied by the imposition of a civil penalty of not more than Five Thousand Dollars (\$5,000.00).

(iii) In addition to the remedies in subsections (i) or (ii), any property used in the commission of any violation may be forfeited in an action brought by the Band in Tribal Court. Any vehicle used in transporting a violator to or from the location of the violation shall be deemed to have been used in the commission of such violation.

(iv) In addition to the remedies in subsections (i) or (ii), any tobacco product and motor fuel not acquired or possessed by a Tribal Member or Tribal Entity in accordance with the terms of the Tax Agreement may be seized and transferred to the State consistent with applicable provisions of State law.

(v) The remedies in this section are not intended to be exclusive, but shall be in addition to and independent of:

1. any applicable contractual remedy;
2. any disciplinary action taken against a violator as an employee; and
3. any prosecution or other enforcement action under federal or State law or under the provisions of any other Tribal law, including a prosecution for perjury for false statements on a tax return.

LEGISLATIVE HISTORY

THE "TAX REVENUE AND ADMINISTRATION CODE" WAS ENACTED ON DECEMBER 4, 2003 BY ADOPTION OF TRIBAL COUNCIL RESOLUTION No. 03-12-04-04; CHAPTER IV, CASINO FOOD AND BEVERAGE TAX, WAS REPEALED ON NOVEMBER 30, 2007 BY ADOPTION OF TRIBAL COUNCIL RESOLUTION No. 07-11-30-03.