

CHAPTER 9 – TRIBAL TAX CODE

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**CHAPTER 9
TRIBAL TAX CODE**

9.1 TRIBAL TAX CODE

9.1.1 General Provisions.

- A. Title: The following provisions shall be cited as the Tribal Tax Code of the Sokaogon Chippewa Community.
- B. Purpose: The Tribal Tax Code outlines the procedure for levying taxes pursuant to the retained sovereignty of Indian tribes. The Sokaogon Chippewa Community is a sovereign Indian Tribe organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 948, as amended, and governed by a Constitution adopted August 25th, 1938 and approved on November 9th, 1938.

It being necessary to strengthen the Sokaogon Chippewa Community's government by licensing and regulating certain conduct within the Community's jurisdiction, provide financing for the current expenses of Community's government especially in the critical area of health care for the Community's members as the State of Wisconsin has refused to share the tobacco settlement dollars with the Community to help defray the health care cost of the Community's members, and the expansion of Community's government operations and services, and in order for the Community to exercise its confirmed governmental responsibilities efficiently and effectively, the purpose of this Chapter is to provide straightforward, fair, and efficient procedures, to provide for the licensing and regulation of certain conduct, and the levy and collection of certain revenue and taxes for the benefit of the Sokaogon Chippewa Community.

- C. Interpretation and Relation to Other Laws:
 - (1) In its interpretation and application the provisions of this Code shall be held to be minimum requirements and shall be liberally construed in favor of the Tribe, and shall not be deemed a limitation or repeal of any other Tribal power or authority.
 - (2) Where this Code contains provisions that are in conflict with provisions of previously enacted provisions of Tribal law, the provisions of this Code shall govern.
- D. Severability and Non-Liability:
 - (1) If any section, provision or portion of this Code is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Code will remain unaffected.
 - (2) The Tribe declares that there is no liability on the part of the Tribe, its agencies, agents, or employees for any damages which may occur as a

result of reliance upon or conformity with the requirements of this Code. The Tribe by adoption of this Code does not waive its sovereign immunity in any way.

8/08/11 Amended section 9.1.1 (B).

9.1.2 Definitions. For purposes of the Tribal Tax Code, the following terms shall have the meaning ascribed below:

- A. “Consumer” is defined to mean and include any Person, regardless of the race of the Person, who consensually purchases, receives or comes into possession of a Tribal Tobacco product from a Sokaogon Retailer or Sokaogon Internet Retailer located within the exterior boundaries of the Sokaogon Reservation.
- B. “Community Tax Stamp” is defined as an officially approved tax stamp of the Sokaogon Chippewa Community that is applied to all tobacco packages intended for sale by a Sokaogon Retailer.
- C. “Gross Operational Revenues” means the total amount received by a tribal enterprise on Tribal or Trust Lands, whether paid in money or otherwise, excluding all gaming wins.
- D. “Gaming Enterprise” means any enterprise established by the Tribe to conduct Class II or Class III gaming, as defined in the Indian Gaming Regulatory Act, and related activities such as the operation of hotels and conference activities.
- E. “Gaming wins” means the value of all distributed prizes won through Class II or Class III gaming, whether paid in money or otherwise.
- F. “Gasoline and Diesel Fuel” means petroleum distillates products sold to Consumers for use as fuel in motor vehicles.
- G. “Gross Hotel Receipts” means the total amount charged for Hotel Rooms and Occupancy-related services. Gross Hotel Receipts are deemed to have been received on a daily basis as rooms are rented or services are provided.
- H. “Hotel” means a building or group of buildings in which the public may obtain accommodations for consideration, excluding accommodations rented for a continuous period of more than 90 days.
- I. “Occupancy” or “Occupies” means the use or possession, or the right to the use or possession, of any room or rooms in a hotel, and 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.

- J. “Other Tobacco Products” means Tribal Tobacco products other than cigarettes, including without limitation, snuff, pipe tobacco, chewing tobacco, cut and granulated tobacco, Cavendish, plug or twist tobacco, cigars, and small cigars, excluding tobacco powder or tobacco products used exclusively for agricultural or horticultural purposes and unfit for human consumption.
- K. “On and off sale liquor” means the retail sale of intoxicating liquor for consumption on or off the premises.
- L. “Person” means any natural individual, company, Tribally or Community owned partnership, limited liability company, firm, joint venture, association, corporation, estate, trust, commission, governmental agency or other political entity, or other form of business organization to which this Chapter can be applied. .
- M. “Retail Convenience Store” means any enterprise established by the Tribe to conduct retail sales of miscellaneous consumer convenience goods.
- N. “Retailer” is defined to mean and include any Person in the ordinary course of business who sells or rents any goods within the exterior boundaries of the Sokaogon Indian Reservation to another Person.
- O. “Sale(s)” means and includes all sales, any transfer, exchange, trade or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. “Sale(s)” also includes all sales, barter, trades, exchanges, or other transfers of ownership for value of Tribal Tobacco from a Sokaogon Retailer to any Consumer or Person no matter how characterized and the rental, leasing, or other transfer of actual or constructive possession and right to use Tribal Tobacco for value received from a Sokaogon Retailer to any Person no matter how characterized.
- P. “Sokaogon Retailer” is defined to mean and include any Person in the ordinary course of business who sells any Tribal Tobacco product within the exterior boundaries of the Sokaogon Reservation to another Person.
- Q. “Taxpayer” means a Person liable for taxes, penalties or interest imposed under the Tribal Tax Code.
- R. “Tribal Court” means the Sokaogon Chippewa Community Tribal Court.
- S. “Tribal Tobacco” is defined as all tobacco products sold by a Tribal Wholesaler to a Sokaogon Retailer or Sokaogon Internet Retailer that do not have another government jurisdiction’s tax stamp already affixed to the tobacco. The definition of Tribal Tobacco does not include products sold by a Tribal Wholesaler to Persons, customers, retailers or other wholesalers who intend to resell the product outside the exterior boundaries of the Sokaogon Reservation.

- T. “Tribal and Trust Lands” means all lands held in trust by the federal government for the benefit of the Tribe and all fee lands owned by the Tribe.
- U. “Tribal Wholesaler” is defined as a Person who in the ordinary course of business sells Tribal Tobacco products to Sokaogon Retailers or Persons intended for the sale or use within the exterior boundaries of the Sokaogon Reservation or to Sokaogon Internet Retailers intended for shipment to a Person or Consumer at an address outside the exterior boundaries of the Sokaogon Reservation.
- V. “Tribe” means the Sokaogon Chippewa Community of Mole Lake, Wisconsin.

8/08/11 Amended to add definitions for Consumer, Community Tax Stamp, Gasoline and Diesel Fuel, Other Tobacco Products, On and Off Sale Liquor, Retailer, Sokaogon Retailer, Tribal Tobacco, and Tribal Wholesaler, Also, amended the definition for Occupy, Person and Sales,

9.2 LEVY OF TAXES

9.2.1 Imposition of Enterprise Revenue Tax.

- A. Imposition of Tax on Gross Revenues of Gaming Casinos Enterprises. There is hereby levied a tax of 5.0 % (five percent) on the Gross Operational Revenues of any Casino Gaming Tribal Enterprise located on Sokaogon Tribal Lands or Trust Lands.
- B. Imposition of Tax on Gross Revenues of Convenience Store Enterprises. There is hereby levied a tax of 3.0% (three percent) on the Gross Operational Revenues of any Retail Convenience Store Tribal Enterprise located on Sokaogon Tribal Lands or Trust Lands.

8/8/11 Amended to increase tax rate from 0.05% to 3.0%.)

9.2.2 Imposition of Hotel Use Tax.

- A. There is hereby levied a hotel use tax of 5.0% (five percent) of the Gross Hotel Receipts on every person who uses or occupies a room furnished by a hotel located on Tribal and Trust Lands.
- B. The hotel use tax shall be imposed upon the person who purchases the room. The hotel shall collect the hotel use tax from such person.

9.2.3 Imposition of Food and Beverage Tax.

- A. There is hereby levied a Food and Beverage tax of 5.5% (five and five-tenths percent) on the sale of food and beverage (including on and off sale liquor) in any location on Tribal and Trust Lands.

- B. The Food and Beverage Tax shall be imposed upon the person purchasing the food and/or beverage and collected by the provider thereof at the same time that payment for the food/beverage is collected.
- C. The amount of the tax collected pursuant to this Code shall be separately stated on all documentation pertaining to the sale of food and/or beverages, including receipts.

8/08/11 Amended to clarify that the term beverage includes on and off sale liquor.

9.2.4 Imposition of Tax on Sales of Tribal Tobacco.

- A. There is hereby levied upon the sale of Tribal Tobacco by a Tribal Wholesaler for Sales within the exterior boundaries of the Sokaogon Reservation the following:
 - (1) A tax equal to fifty cents (\$0.50) per pack of cigarettes sold exclusive of any rebate. Such products are required to have the Community Tax Stamp affixed to them.
 - (2) A tax of 30% on the manufacturers' price to distributors on all Other Tobacco Products.
- B. The tax imposed by Section 9.2.4 (A) shall not apply to sales to Persons, customers, retailers or other wholesalers who intend to sell the product outside the exterior boundaries of the Sokaogon Reservation.
- C. Impact of tax. The impact of the tax levied imposed by Section 9.2.4 (D) of this Chapter is declared to be on the Tribal Wholesaler.
- D. Tax Collection. The Tribal Wholesaler shall collect the applicable taxes when selling to a Sokaogon Retailer or Sokaogon Internet Retailer or other Persons intending to sell the tobacco products within the exterior boundaries of the Sokaogon Reservation.
- E. Payment of tax. Every Tribal Wholesaler is required to purchase all applicable tax stamps from the Sokaogon Tax Commissioner. The Tax Commissioner shall sell the applicable tax stamps to the Tribal Wholesaler or Sokaogon Retailer at the applicable rate described in Section 9.2.4 (D).

8/08/11 Added entire section.

9.2.5 Imposition of Tax on Retail Sales of Gasoline and Diesel Fuel.

- A. There is hereby imposed and levied upon the gross receipts of all retail sales of gasoline and diesel fuel in the amount of two (2) cents per gallon.
- B. Impact of tax. The impact of the tax levied imposed by section 9.2.6 (A) of this Chapter is declared to be on the consumer and shall be added to the purchase price of the sale of gasoline and diesel fuel and recovered from the Consumer.

8/08/11 Added entire section.

9.3 ESTABLISHMENT OF TAX COMMISSIONER

- A. The position of Tax Commissioner is hereby established.
- B. The Tax Commissioner shall be appointed by a majority vote of the Tribal Council.
- C. The Tax Commissioner may be a member of the Tribal Council, but is not required to be.
- D. The Tax Commissioner shall serve for three years and may be removed from office prior to the expiration of that term only for cause by a vote of an absolute majority of the Tribal Council following a hearing.
- E. Vacancies shall be filled within thirty days by the Tribal Council for the balance of the term.
- F. The Tax Commissioner shall have the powers and duties granted or imposed by this Code which shall include the following:
 - (1) To administer the application and enforcement of this Code. Assess, collect and issue receipts for such taxes as are imposed by Code or resolution of the Sokaogon Tribal Council and to bring actions on behalf of the Community in Tribal Court for the collection of Community taxes, penalties and interest, and the enforcement of the Community tax laws.
 - (2) To make recommendations to the Tribal Council regarding amendments to this Code.
 - (3) To demand access to and inspect, examine and audit all papers, books and records of all persons subject to taxation under this Code.
 - (4) To conduct hearings authorized by this 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 Tax Commissioner is guilty of perjury. Any process or notice may be served in the matter provided for service of process and notices in a civil action in Tribal Court. The Tax Commissioner may pay transportation and other expenses of witnesses as it may deem reasonable and proper.
 - (5) To propose regulations as authorized by this Code.
 - (6) To receive and investigate complaints of violations of this Code or of its rules, and to refer for prosecution the results of any such investigation.
 - (7) To keep and maintain such files and records as deemed necessary.

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

8/08/11 Amended 9.3 (F)(1).

G. The Tax Commissioner shall make an annual report to the Tribal Council by May 15th of the following year. The report shall include a summary of all tax revenues collected as provided in this Code and all investigative actions completed during the year.

H. The Tax Commissioner shall, from time to time, propose for adoption, amendment, or repeal such regulations, consistent with the policy, objects and purpose of this Code, as it may deem necessary or desirable in the public interest in carrying out the duties of the Tax Commissioner as defined by this Code. Commission regulations shall be submitted to the Tribal Council for review and adoption by resolution. The Tax regulations may include the following:

- (1) The forms to be used by Taxpayers.
- (2) The form and manner, in which Taxpayers keep records, books and accounts.
- (3) The manner and method of collection of delinquent taxes.
- (4) Requirements concerning payment by a Taxpayer of all or a portion of the costs of investigation of that Taxpayer.
- (5) Procedures for all hearings conducted by the Tax Commissioner.
- (6) Protection of the due process rights of Taxpayers and all individuals subject to the enforcement of this Code by the Tax Commission.
- (7) Procedures for proposing rules by the Tax Commissioner.

I. Tax Stamps and Licenses.

- (1) The Tribal Council shall provide for the form, size, color and identifying characteristics of all licenses, permits, tax stamps, tags, receipts or other documents or things evidencing receipt of any license or payment of any tax or fee administered by the Tax Commissioner or otherwise showing compliance with the Tax laws of the Sokaogon Chippewa Community.
- (2) Licenses shall contain at least the following information:
 - (a) The words: "Sokaogon Chippewa Community" or other identifiable abbreviation, logo, symbol or mark.

- (b) The monetary amount for which the tax or license was issued.
 - (c) Wording which indicates the type of tax imposed.
 - (d) If the instrument is a license, permit or receipt, wording indicating the type of license, permit or receipt, its effective dates and the name and address of the taxpayer to whom issued.
- (3) The Tax Commissioner shall provide for the manufacture, delivery, storage and safeguarding of such stamps, licenses, permits, tags, receipts or other documents and shall safeguard such instruments against theft, counterfeiting and improper use.
- (4) When the Tax Commissioner deems it necessary to do so, it may allow the use of metering devices in lieu of paper stamps under such rules and regulations as it shall prescribe.
- (5) The Tax Commissioner may exchange new stamps for damaged, out of date or otherwise unusable stamps under such rules and regulations as the Tax Commission shall prescribe.

8/08/11 Added entire section 9.3 (I).

9.3.1 Collection Process for All Taxes Levied Under This Code.

- A. **Monthly Return:** The Taxpayer shall file a monthly return with the Tax Commissioner by the 15th day of the succeeding month. The monthly return shall be filed on a form prescribed by the Tax Commissioner. The Taxpayer shall remit payment for all taxes owed with the return. The monthly return shall be signed by an authorized signatory of the Taxpayer.
- B. **Annual Return:** The Taxpayer shall file an annual return with the Tax Commissioner by April 15th of the succeeding year. The annual return shall be filed on a form prescribed by the Tax Commissioner. The Taxpayer shall remit any final liability for any taxes owed with the return. The annual return shall be signed by an authorized signatory of the Taxpayer.

9.3.2 Distribution of Tax Proceeds. The Tax Commissioner shall remit to the Tribe all tax proceeds collected pursuant to this Code, and the Tribe shall transfer such tax proceeds into the general fund.

9.3.3 Procedure in the Case of Tax Deficiencies

- A. In any case of failure of any Taxpayer to pay any part or all of the tax when due under this Code, the Tax Commissioner shall give written notice to the Taxpayer of the amount owed.

- B. The Taxpayer may request a conference with the Tax Commissioner on the question of liability for the assessment if the request is made within twenty (20) days of receipt of the notice.
- C. Upon receipt of a request for conference the Tax Commissioner shall set a time and place for the conference and shall give the Taxpayer reasonable notice of the conference.
- D. The Taxpayer may appear or be represented before the Tax Commissioner and may present testimony and argument. After the conference the Tax Commissioner 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.
- E. The decision of the Tax Commissioner is appealable to the Tribal Court in accordance with the general tribal appellate provisions.
 - (1) Any suit against the Tax Commissioner authorized by this section must be commenced by filing a petition in Tribal Court within thirty (30) days of the date of the Tax Commissioner's decision pursuant to paragraph 9.3.3 (D) above.
 - (2) In no event shall the Court be authorized to award or order the payment of damages or to fashion any remedy except to enjoin the collection or order the return of the taxes, penalties or interest in controversy unless an additional remedy is specifically provided by this Title.
 - (3) Any person subject to tax under this Code who fails to pay the tax when due shall be subject to a penalty of 10% for the first year or part thereof, and 6% for each additional year or part thereof.

8/08/11 Added provision 9.3.3 (E)(1) and (2).

9.3.4 Overpayments. 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.

9.4 VIOLATIONS

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

- A. Fail or refuse to make a return required by this Code, make a false or fraudulent return, or aid, abet, or assist another in making a false or fraudulent return with the intent to defraud the Tribe or to evade payment of the tax, or any part of the tax, imposed by this Code or who otherwise knowingly violated any provision of this 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 Code.

- C. Make or permit to be made for himself or for any business or association any false return required by this Code.
- D. Every person who shall fail to collect the taxes imposed by this Chapter shall be liable for the full amount of the taxes owed plus interest at the statutory rate until paid.

8/08/11 Amended section 9.5 (A) and added section 9.5 (D).

9.4.1 Enforcement. The Tax Commissioner shall have the authority to perform services reasonably necessary to conduct investigations within the scope for the Tax Commissioner position or to monitor and assure compliance with the provisions of this Code.

9.4.2 Penalties. Each violation of Section 9.5 shall be punishable by a fine of up to \$5,000.00. This is a civil penalty.

8/08/11 Amended to reflect that each violation is subject to a civil fine.

9.5 EFFECTIVE DATE

This Code shall take effect January 1, 2011. Amendments to this Code shall be effective on the date the amendment was adopted by the Tribal Council.

This Amended Code was passed by Resolution _____ of the Sokaogon Chippewa Community Tribal Council, composed of () members of whom () were present, which constitutes a quorum, held on the ____ day of _____, 20____, by a vote of () member(s) for, and () member(s) against, and () member(s) abstaining, and () member(s) absent.

8/8/11 Amended by resolution # 823A2011 to add tobacco tax and gasoline and diesel fuel tax provisions, and increasing the tax on Retail Convenience Store Gross Revenues.

History:

Enacted - unknown.

7/20/11 adopted, ratified and codified by Resolution #720A2011 and as amended by Resolution #825A2011 on August 25, 2011.