

OMAHA TRIBAL CODE (2013)

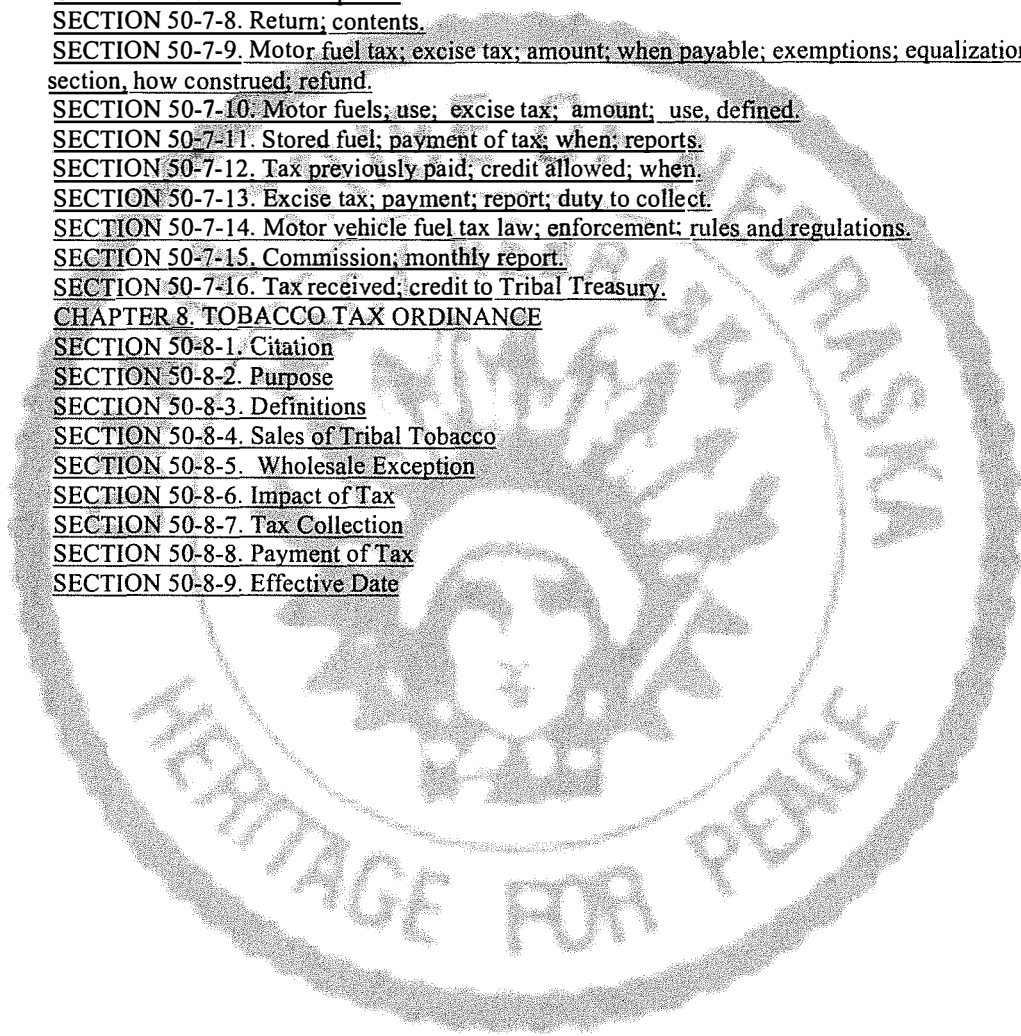
TITLE 50. TAX CODE

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OMAHA TRIBAL CODE (2013)

TITLE 50. TAX CODE

CHAPTER 1. GENERAL PROVISIONS

SECTION 50-1-1. Title.

This title shall be known as the Omaha Tribal Tax Code.

SECTION 50-1-2. Authority.

This Code is adopted by the Omaha Tribal Council pursuant to Article IV, Section 1(h) and 1(i) of the Constitution of the Omaha Tribe of Nebraska and its inherent sovereign powers.

SECTION 50-1-3. Finding and Policies.

- (a) The Omaha Tribe of Nebraska has existed as an independent, sovereign nation since time immemorial.
- (b) The Omaha Tribal Council is the governing body of the Omaha Tribe of Nebraska. The Tribal Council is responsible for economic development of the Tribe and seeks to ensure that residents of the Omaha Indian Reservation enjoy adequate employment, health care, educational opportunities, social services and other governmental services.
- (c) It is the policy of the Tribe to promote economic development on the Reservation and tribal self-sufficiency, to utilize its tax power to help defray the cost of government and of public improvements, and to promote strong tribal government. To achieve those goals, the Tribe is adopting this Tax Code.

SECTION 50-1-4. General Definitions.

Except as otherwise provided, the following terms are defined as follows:

- (a) "Assessor" means a person duly appointed by the Tax Commission for the purpose of valuing property and maintaining records of such values.
- (b) "Owner" means any person who owns any interest in property as grantee, lessee, permittee, assignee, sublessee, or transferee. In the case of parties to a joint venture or operating agreement, the Tribe shall determine whether a joint venture partner or an operator is an owner in light of the terms of the agreement on the basis of the parties' respective participation in and entitlement to income or profits, assets, and management of the venture or operation.
- (c) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, tribe, tribal organization or any group of individuals acting as a unit, whether mutual, cooperative, fraternal or nonprofit doing business, visiting or residing within the Omaha Tribe of Nebraska.
- (d) "Project Lands" means lands leased by the Tribe to tribally owned business enterprises.
- (e) "Property" means all interests in property, real or personal, including an interest limited to a possessory interest.
- (f) "Reservation" means the Omaha Indian Reservation and includes all land located within the exterior boundaries of the Reservation, as identified by the latest map from the Bureau of Indian Affairs.
- (g) "Tax Code" means the Omaha Tribal Tax Code.
- (h) "Tax Commission" means the Omaha Tribe of Nebraska Tax Commission, created pursuant to this Code and charged with carrying out the administrative provisions of this Code.
- (i) "Taxpayer" means any person responsible for the payment of taxes under this Code.

- (j) "Tribal Court" means the Omaha Tribe of Nebraska Tribal Court.
- (k) "Tribal Member" means an individual who is recognized by the Tribe as a member of the Tribe.
- (l) "Tribe" means the Omaha Tribe of Nebraska.

CHAPTER 2. TAX COMMISSION

SECTION 50-2-1. Establishment.

The Omaha Tribe of Nebraska Tax Commission is hereby established as an independent tribal commission.

SECTION 50-2-2. Membership.

- (a) The Tax Commission shall consist of three commissioners.
- (b) Commissioners shall be compensated at a rate approved by the Tribal Council. The initial rate shall be one hundred dollars (\$100.00) per meeting where a quorum of three exist plus expenses allowable according to the tribal personnel policies.
- (c) The Chairman of the Omaha Tribe of Nebraska shall nominate candidates for the Tax Commission. Appointment to the Tax Commission shall be subject to confirmation by the Omaha Tribal Council.
- (d) A tax commissioner may be removed from office only for incompetence, dishonesty, neglect or inability to perform official duties, abuse of power of office, or other good cause. Removal shall be effectuated by action of the Tribal Council after notice and a hearing to determine whether removal is justified.
- (e) The term of office of each tax commissioner shall be three years. Commissioners shall be eligible for reappointment to serve additional terms. The terms shall be staggered; the first commissioners appointed shall serve one, two, and three year terms, respectively. Thereafter, commissioners appointed shall serve three-year terms.
- (f) Should a tax commissioner have a direct or indirect personal interest or stake in the outcome of a matter properly before the Tax Commission, such commissioner shall disqualify himself or herself from any role in deciding that matter. A temporary, disinterested person shall then be appointed to the Tax Commission by the remaining commissioners.

SECTION 50-2-3. Powers.

The Tax Commission shall be vested with the following powers:

- (a) To make all necessary rules and regulations and prescribe all necessary forms or other requirements, not inconsistent with the provisions of this Code, for the purpose of making the administration of this Code effective.
- (b) To recommend to the Tribal Council taxes to be levied by the Tribe.
- (c) To appoint auditors, accountants, attorneys, assessors, inspectors, deputies, clerks and such other assistants or agents as it may deem necessary to enforce its powers and perform its duties under this Title.
- (d) To levy, assess and collect taxes in accordance with this Code and all rules and regulations promulgated pursuant thereto.
- (e) To hear and determine in the first instance all challenges to the validity of the Tax Code and its implementing rules and regulations.
- (f) To hear and determine in the first instance all disputes by taxpayers concerning the levy,

assessment or collection of taxes, penalties, or interest imposed pursuant to this Tax Code and its implementing rules and regulations.

(g) To hold hearings and summon and subpoena witnesses to appear and testify upon any subject material to the determination of issues arising under the Tax Code, and to produce relevant books, records, and documents relative thereto. The hearings may be held at any place the Tax Commission designates, after not less than 10 days' notice of the time and place of the hearing given in writing to the adverse party. The adverse party shall be entitled, on request made to the Tax Commission, to the issuance of a subpoena by the Tax Commission requiring witnesses on behalf of the adverse party to appear and testify at such hearing. The failure of a witness to obey the subpoena of the Tax Commission subjects the witness to the same penalties prescribed by law for failure to obey a subpoena of the Tribal Court.

SECTION 50-2-4. Notices from Tax Commission, Certified Mail.

Unless otherwise provided herein, any notice required to be given by the Tax Commission shall be by certified mail, ~~return receipt requested.~~

CHAPTER 3. CHALLENGES AND APPEALS

SECTION 50-3-1. Limited Waiver of Sovereign Immunity.

The Tribe hereby consents to be sued in Tribal Court in civil actions for equitable relief and for such monetary relief as is expressly provided for in this Tax Code. This consent to suit is strictly limited as provided in this Section. No other private right of action by any person shall be deemed created by the Tax Code. The Tribal Court shall be the sole and exclusive judicial forum vested with subject matter jurisdiction to adjudicate suits brought pursuant to the Tax Code.

SECTION 50-3-2. Challenges and Appeals to Validity of Tribal Tax Code; Petition.

(a) Any person desiring to challenge the legal validity of any provision of the Tax Code must first petition the Tax Commission which shall hear and decide the matter in the first instance.

(b) If the petitioner is not satisfied with the determination of the Tax Commission, the petitioner may appeal the decision to Tribal Court within 30 days of a serving of final adverse determination by the Tax Commission. The Judgment of the Tribal Court shall be final and non-appealable.

SECTION 50-3-3. Challenges and Appeals Concerning the Levy, Assessment or Collection of Taxes.

(a) Subject to the requirements of CHAPTER 5, any person desiring to challenge the levy, assessment or collection of taxes, interest or penalties imposed under this Tax Code must first petition the Tax Commission, and the Tax Commission shall render a decision thereon.

(b) If the petitioner is not satisfied with the determination of the Tax Commission, the petitioner may appeal the decision to Tribal Court within 30 days of serving of a final adverse determination by the Tax Commission. The judgment of the Tribal Court shall be final and non-appealable.

CHAPTER 4. TRIBAL COURT

SECTION 50-4-1. Tribal Court.

The Tribal Court shall be the exclusive forum with jurisdiction for adjudicating appeals from the Tax Commission involving the validity of the Tribal Tax Code and for hearing and deciding appeals involving disputes arising under the Tax Code.

SECTION 50-4-2. Appointment and Approval of Associate Tribal Court Judge.

(a) An associate judge shall be appointed by the Chairman of the Tribe to hear and decide any appeal.

(b) The following criteria shall apply in the selection of an associate judge:

- (1) graduate of an accredited law school;
- (2) admitted to and member in good standing of the bar of the highest court of any state or of the District of Columbia;
- (3) familiarity with federal Indian law and tax law;
- (4) legal experience of at least five years;
- (5) a reputation for honesty and integrity; and
- (6) no direct or indirect interest or stake in any issue that is likely to be litigated before the Court.

(c) Compensation for the associate judge shall be determined and set by the Chairman and paid by the Commission.

(d) The power to remove the associate judge shall be vested solely in the Chairman of the Omaha Tribe of Nebraska. Removal shall be for good cause only and without reference to the merits of any ruling by the associate judge.

SECTION 50-4-3. Powers and Limitations of the Omaha Tribe of Nebraska Tribal Court.

The Tribal Court shall be vested with the following powers:

(a) To hear and decide all appeals properly taken from the Tax Commission involving challenges to the validity of the Tax Code and its implementing rules and regulations.

(b) To hear and decide all appeals properly taken from determinations of the Tax Commission involving disputes arising under the Tax Code and its implementing rules and regulations.

(c) To hear and decide all civil actions brought by the Omaha Tribe of Nebraska to enforce the Tax Code.

(d) To issue warrants or writs to effectuate the levy upon property, liens, and attachment of assets, both on and off the Omaha Indian Reservation, to the full extent provided by applicable law.

(e) To issue subpoenas requiring persons within the jurisdiction of the Court to appear and give testimony regarding matters related to the Tax Code, and to produce any pertinent books, papers and documents, or other tangible items designated therein relevant to the assessment or collection of taxes under the Tax Code, or the administration and enforcement thereof.

(f) No orders shall issue from the Tribal Court restraining or forbidding the assessment, levy, or collection of taxes imposed pursuant to the Tribal Tax Code while a suit brought pursuant thereto is pending.

SECTION 50-4-4. Tax Pre-Payment Required.

All disputed taxes, penalties, or interest shall be paid in full before any action may be instituted in Tribal Court to contest all of any part of such tax payment. Payments made under protest shall be effectuated in accordance with Section 50-5-13.

SECTION 50-4-5. Court Appeal Procedure.

(a) Subject to the exhaustion of administrative remedies as provided by this Code, any person, except one who has failed to keep and preserve books, records, and invoices as required by Section 50-5-4, having paid taxes, penalties, or interest as required and feeling aggrieved by the amount of the taxes, penalties, or interest may appeal to Tribal Court by filing a Notice of Appeal within the proper time period as provided in CHAPTER 3.

(b) In the Notice of Appeal the taxpayer shall set forth the nature of the Tax Commission's decision, the pertinent facts, and the reasons why the Tax Commission's decision should be found erroneous.

(c) The appeal shall be perfected by serving a copy of the Notice of Appeal upon the Tax Commission and by filing the original thereof with proof of service with the Clerk of the Tribal Court.

(d) The Tribal Court proceedings shall be limited to the administrative record introduced to and considered by the Tax Commission, unless good cause exists for allowing new evidence. The standard of review shall be whether the Tax Commission's decision was arbitrary and capricious, or otherwise not in accordance with applicable law. The burden of proof and persuasion shall rest upon the taxpayer to prove that the tax said by him is incorrect, either in whole or in part, and to establish the correct amount of the tax. In such proceeding, the taxpayer shall be deemed the appellant and the Tax Commission shall be deemed the appellee.

(e) The ruling of the Tribal Court shall be final and non-appealable.

CHAPTER 5. ADMINISTRATIVE PROVISIONS

SECTION 50-5-1. Application of Chapter Stated.

The provisions of this Chapter shall apply with respect to the taxes imposed under this Tax Code.

SECTION 50-5-2. Deficient and Delinquent Payments; Penalties and Interest Limitations.

(a) If upon examination of any returns or from other information obtained by the Tax Commission, it appears that a tax or penalty has been paid in an amount less than that properly due, the Tax Commission shall assess against the taxpayer such additional amount found to be due and shall add thereto interest at a rate to be set by the Tax Commission from the date the tax was due until the date of payment. The Tax Commission shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within ten (10) days from the date of the notice or within such further time as the Tax Commission may provide. If payment is not received by the Tax Commission by the due date specified in the notice, or any extension thereof, the Tax Commission shall add a penalty of ten percent (10%) of the amount of the additional tax found due. If the Tax Commission finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent (50%) of the additional tax found to be due shall be added.

(b) No assessment or correction of an assessment for additional taxes due may be made by the Tax Commission more than four years after the close of the tax year in which the tax was first due, except:

1. (1) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer; or
2. (2) where a taxpayer has executed a written waiver of such limitation.

SECTION 50-5-3. Excess or Mistaken Payment; Credit or Refund.

If upon receipt of an application by a taxpayer for a refund or for an audit of his records, or upon an examination of the returns or records of any taxpayer, it is determined by the Tax Commission that within the period of assessment of taxes prescribed by Section 50-5-7(c), a tax has been paid in excess of that properly due or by mistake, the excess or mistaken amount paid within such period, together with interest at a rate to be set by the Tax Commission, shall be credited to the taxpayer's account and shall be refunded to the taxpayer at his option. No refund or credit shall be made for taxes paid more than four years prior to the beginning of the calendar year in which the refund application is made or the examination of records is completed.

SECTION 50-5-4. Records to Be Preserved; Examination.

(a) Every person liable for any tax imposed by this Code shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which that person may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by that person. All relevant books, records and invoices shall be open for examination at any time by the Tax Commission.

(b) In the case of an off-Reservation person who does not keep the necessary books, records and

invoices on the Reservation, it shall be sufficient if that person produces on the Reservation such books, records, and invoices as shall be required by the Tax Commission or permits the examination by an agent authorized or designated by the Tax Commission at the place where such books, records and invoices are kept. Any person who fails to comply with the requirements of this Section shall be forever barred from challenging, in any court action or proceeding, the correctness of any assessment of taxes made by the Tax Commission based upon any period for which such books, records, and invoices have not been so kept and preserved.

(c) Any person claiming a credit or deduction allowed under the terms of this Tax Code shall keep and preserve until the claim has been verified or allowed by the Tax Commission sufficient books, records, and invoices to prove the right to and amount of such claim for credit or deduction, and no such claim shall be allowed by the Tax Commission unless such books, records, and invoices shall have been kept and preserved.

SECTION 50-5-5. Payment; Extension of Time to File Returns.

(a) Payment of the tax may be made by uncertified check under such regulations as the Tax Commission shall prescribe, but, if a check so received is not paid by the bank on which it is drawn, the taxpayer, by whom such check is tendered, shall remain liable for payment of the tax and for all penalties, the same as if such check had not been tendered.

(b) A return or remittance which is transmitted to the Tax Commission by United States Mail shall be deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it.

(c) The Tax Commission, upon the written request of the taxpayer prior to the due date of the return or payment, and for good cause shown, may extend the time for making and filing any return, and may grant such reasonable additional time within which to make and file returns as it may deem proper. Any extension granting the taxpayer a reporting date without penalty in excess of 30 days, however, shall be conditional upon deposit with the Tax Commission of an amount to be determined by the Tax Commission approximately equal to the estimated tax liability for the reporting period or periods for which the extension is granted. In the case of an extension of more than 30 days, the deposit shall be deposited in the tribal tax account and a credit reported to the taxpayer's account that may be applied to the taxpayer's liability upon cancellation of the extension or upon reporting of the tax liability where an extension of more than 30 days has been granted.

(d) The Tax Commission shall keep full and accurate records of all funds received and disbursed by it. The Tax Commission shall apply the payment of the taxpayer first against any penalties and interest, and then upon the tax, without regard to any direction by the taxpayer.

(e) The Tax Commission may refuse to accept any return that is not accompanied by a remittance of the tax shown to be due thereof. When such return is not accepted, a taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the procedures and penalties provided in this Chapter.

SECTION 50-5-6. Late Payment Penalties.

(a) If payment of any tax due is not received by the Tax Commission by the last day of the month in which the tax becomes due, there shall be assessed a penalty of 5% of the amount of the tax; if the tax is not received by the last day of the month next succeeding the month in which the due date falls, there shall be assessed a total penalty of 10% of the amount of the tax; and if the tax is not received by the last day of the second month next succeeding the month in which the due date falls, there shall be assessed a total penalty of 20% of the amount of the tax. No penalty so added shall be less than twenty-five dollars (\$25.00).

(b) If payment of any tax is received within the first 10 days of the month next succeeding the month in which the tax is payable, the amount of such payment shall be credited to, and shall be treated for all purposes as having been collected during the taxable period which includes the month preceding the month in which such due date falls. This subsection shall not affect the penalty provisions of subsection (a).

SECTION 50-5-7. Failure to File Returns; Assessment of Tax by Tax Commission; Penalties.

(a) If any person fails or refuses to make any return or to make available for examination the books, records or invoices required by this Title, the Tax Commission shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax; and to that end the Tax Commission may examine the books, records, and invoices of any such person and may take evidence, on oath, of any person, relating to the subject of inquiry.

(b) As soon as the Tax Commission procures such facts and information as it is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make a return, it shall proceed to determine and assess against such person the tax and penalties due, but such action shall not deprive such person from appealing to the Tribal Court as provided for in CHAPTER 3 and CHAPTER 4. The Tax Commission shall add the appropriate penalties to the assessment. The Tax Commission shall notify ~~the taxpayer~~ by certified mail, return receipt requested, of the total amount that shall become due and shall be paid within 10 days from the date of such notice.

(c) No assessment or correction of assessment may be made by the Tax Commission more than four years after the close of the tax year in which the tax was first due, except:

1. (1) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer; or
2. (2) where a taxpayer has executed a written waiver of such limitation.

SECTION 50-5-8. Waiver or Cancellation of Interest or Penalties.

If the Tax Commission finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was a result of circumstances beyond the control of the taxpayer, the Tax Commission may waive or cancel any interest or penalties is imposed under this Chapter with respect to such tax. Financial inability to pay shall not be considered a circumstance beyond the control of the taxpayer.

SECTION 50-5-9. Taxpayer Quitting Business; Liability of Successor.

(a) Whenever any taxpayer quits business, or sells out, exchanges or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable, and such taxpayer shall, within 10 days thereafter, make a return and pay the tax due; and any person who becomes a successor to such business shall become liable for the full amount of the tax and withhold from the purchase price a sum sufficient to pay any tax due from the taxpayer until such time as the taxpayer shall produce a receipt from the Tax Commission showing payment in full of any tax due or a certificate that no tax is due. If such tax is not paid by the taxpayer within 10 days from the date of such sale, exchange or disposal, the purchaser or successor shall become liable for the payment of the full amount of the tax, and the payment thereof by such purchaser or successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due such purchaser/successor from the taxpayer.

(b) No successor shall be liable for any tax due from the person from whom he has acquired a business or stock of goods if he gives written notice to the Tax Commission of such acquisition and no assessment is issued by the Tax Commission within 90 days of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor.

SECTION 50-5-10. Correction of Assessment; Hearing.

Any person having been issued a notice of additional taxes, delinquent taxes, interest, or penalties assessed by the Tax Commission, may, within 20 days after the issuance of the original notice of the amount thereof or within the period covered by an extension of the due date thereof granted by the Tax Commission, petition the Tax Commission in writing for correction of the amount of the assessment, and for a hearing for examination and review of the assessment. The petition shall set forth the reasons why the correction should be granted and the amount of the tax, interest or penalties that the petitioner believes to be due. The Tax Commission shall promptly consider the petition and may grant or deny it. If denied, the petitioner shall be notified by certified mail thereof forthwith. If a hearing is granted, the Tax Commission

shall fix the time and place therefore and notify the petitioner thereof by mail. After the hearing, the Tax Commission shall make such determination as may appear to be just and lawful and shall send a copy of its determination to the petitioner by certified mail. If no such petition is filed within the 20 day period, the assessment covered by the notice shall become final.

SECTION 50-5-11. Reduction of Tax After Payment; Hearing.

Any person, having paid any tax, original assessment, additional assessment, or corrected assessment of any tax, may apply to the Tax Commission within the limitation for refund provided in this Chapter, or petition in writing for a correction of the amount paid and a hearing for examination and review of the tax liability, in which petition such person shall set forth the reasons why the hearing should be granted, and the amount in which the tax, interest, or penalty should be refunded. The Tax Commission shall promptly consider the petition and may grant or deny it. If denied, then the petitioner shall be notified by certified mail thereof forthwith. If a hearing is granted, the Tax Commission shall fix the time and place therefore and notify the petitioner thereof by mail. After the hearing, the Tax Commission shall notify the petitioner of its determination in writing.

SECTION 50-5-12. Appeals.

Any person, except one who has failed to keep and preserve books, records, and invoices as required in this Chapter, and having paid any taxes, penalties, or interest required and feeling aggrieved by the amount of the tax, penalties, or interest may appeal the final determination of the Tax Commission to Tribal Court as provided in CHAPTER 3 and CHAPTER 4 of this Tax Code.

SECTION 50-5-13. Payment Made Under Protest.

(a) If any person feels aggrieved by a tax assessment, penalty, or interest imposed pursuant to this Tax Code such person shall pay the amount of the assessment, penalty or interest due before the delinquent date and shall at that time give notice, in writing, to the Tax Commission that all or part of the payment is made under protest, and shall in the notice give the grounds and reasons for the protest and shall state that a certain part thereof, or that the total sum, is protested. Within 10 days of filing the protest notice the taxpayer shall request a hearing before the Tribal Tax Commission, and the Tax Commission shall set the matter for hearing as soon as practicable. No appeal to the Tribal Court of any decision adverse to the taxpayer shall be allowed until such payment is made.

(b) Upon the receipt of any payment made under protest, the Tax Commission shall deposit such receipts in a separate escrow account clearly denominated as such. Funds from this account shall not be expended by the Tribe until a final determination is made on the merits of the protest.

(c) Should the aggrieved taxpayer who has paid taxes, penalties, or interest under protest be unsuccessful in challenging all or part thereof, the Tax Commission shall transfer the sum determined to be properly paid from the escrow account to the tribal treasury, as provided in Section 50-5-15.

SECTION 50-5-14. Accounting Period Prescribed.

Taxes imposed hereunder, and the returns required therefore, shall be upon a calendar year basis; except if otherwise provided in this Code; but, if any taxpayer in transacting his business, keeps books reflecting the same on a basis other than the calendar year, each person may, with the consent of the Tax Commission, make returns, and pay taxes on the basis of the accounting period shown on the books of that person's business.

SECTION 50-5-15. Revenue to Omaha Tribe of Nebraska Tribal Tax Account.

Upon the receipt of any payment made pursuant to the terms of this Code, the Tax Commission shall deposit the same in the Omaha Tribe of Nebraska Tribal Tax Account.

SECTION 50-5-16. Closing Agreements Authorized.

(a) The Tax Commission may enter into an agreement in writing with any person relating to the

liability of the person in respect to any tax under this Tax Code for any taxable period or periods. Upon approval of the agreement, evidenced by execution thereof by the Tax Commission and the person so agreeing, the agreement shall be final and conclusive as to tax liability or tax immunity covered thereof, and, except upon a showing of fraud or malfeasance or of misrepresentation of a material fact.

(b) The case shall not be subject to being reopened as to the matters agreed upon, or the agreement modified, by any agent of the Tribe or Tax Commission, or the taxpayer; and in any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith shall not be annulled, modified, set aside, or disregarded.

SECTION 50-5-17. Seizure and Sale of Property to Satisfy Taxes and Costs; Procedure.

(a) If the person assessed with taxes under this Code neglects or refuses to pay the taxes within 180 days after demand, the Tax Commission may seize, seal, or lock enough of the property within the Reservation of the person so neglecting or refusing to pay to satisfy the taxes and costs. The Tax Commission shall take appropriate action to ensure that creditors holding prior perfected security interests are adequately protected.

(b) The Tax Commission shall then post a notice of the seizure, with a description of the property, in at least three public places on the Reservation and in such public places off the Reservation as it deems appropriate, and shall, at the expiration of five days, proceed to sell at public auction, at the time and place mentioned in the notice, to the highest bidder, for lawful money of the United States, a sufficient quantity of the property to pay the taxes and expenses incurred, together with any penalties, late charges, and interest accrued.

(c) Upon payment of the purchase money, the Tax Commission shall deliver to the purchaser the property sold, with a certificate of the sale, a statement of the amount of taxes or assessment and the expenses thereof for which the property was sold, whereupon the title of the property so sold shall vest absolutely in the purchaser, subject to the period for redemption provided for in this Chapter.

(d) The Tax Commission may not enter the taxpayer's private business or personal premises for the purpose of seizing property of the taxpayer without first obtaining a distress warrant from Tribal Court authorizing such entry.

(e) The Taxpayer shall have 30 days after the sale in which to redeem the property sold, by paying the full purchase price, plus all costs associated with the sale to the Tax Commission.

SECTION 50-5-18. Action to Recover Tax.

(a) In addition to any other remedies provided by law for the collection of delinquent taxes, the Tax Commission may bring a civil action in Tribal Court for the recovery of any tax due.

(b) Where a nonresident of the Reservation, or owner of migratory property, is a defendant in any such action and judgment is recovered against such owner, such judgment becomes a lien on any property of such owner then or thereafter found within the Reservation, or elsewhere to the extent allowed by law.

SECTION 50-5-19. Filing of Abstract or Copy of Judgment with County Recorder; Creation, Duration and Extension of Lien.

(a) If an action is commenced in Tribal Court and a judgment is rendered in favor of the Tax Commission, an abstract of the judgment or a copy may be filed for record with the county recorder of any county and in the office of tribal government performing the same or similar function.

(b) From the time of the filing, the amount required to be paid, together with interest and penalty set forth, shall constitute a lien upon all the property within the exterior boundaries of the Reservation owned by the judgment debtor or acquired by the judgment debtor afterwards and before the lien expires. The lien has the effect and priority of a judgment lien and continues for five years from the date of the judgment so entered by the county clerk and in the office of tribal government performing the same or similar function, unless sooner released or otherwise discharged.

(c) The lien may, within five years from the date of the judgment or within five years from the

date of the last extension of the lien pursuant to this subsection, be extended by filing for record in the office of the county recorder of any county and in the office of tribal government performing the same or similar function, an abstract or copy of the judgment. From the time of the filing, the lien is extended to the property for five years, unless sooner released or otherwise discharged.

SECTION 50-5-20. Execution; Issuance; Sale.

Execution must issue upon the judgment upon request of the Tax Commission in the same manner as execution may issue upon other judgments, and sales must be held under the execution as prescribed by law.

SECTION 50-5-21. Recordation of Certificate of Delinquency; Resulting Lien; Duration and Extension.

(a) If any amount required to be paid to the Tribe under this Code is not paid when due, the Tax Commission may, within three years after the amount is due, file for record in the office of any county recorder and in the office of tribal government performing the same or similar function a certificate specifying the amount, interest, or penalty due, the name and address as it appears on the records of the Tax Commission of the person liable for the amount due, and the fact that the Tax Commission has complied with all applicable provisions of the Tax Code in the determination of the amount required to be paid.

(b) From the time of the filing for record, the amount required to be paid, together with interest and penalty, shall constitute a lien upon all property within the Reservation owned by the delinquent taxpayer or acquired by him afterwards and before the lien expires. The lien shall have a priority over all other liens of any nature whatsoever, including any liens imposed by any law of any state, until said taxes, delinquent interest, penalty costs and fees have been collected except as provided in Section 50-5-22 hereof.

SECTION 50-5-22. Tax Commission May Release or Subordinate Lien.

The Tax Commission may at any time release all or any portion of the property subject to any lien provided for in this Chapter from the lien or subordinate the lien to other liens and encumbrances if it determines that the amount, interest, and penalties are secured sufficiently by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount, interest and penalties.

SECTION 50-5-23. Evidentiary Effect of Certificate of Release or Subordination.

A certificate by the Tax Commission to the effect that any property has been released from the lien, or that the lien has been subordinated to other liens and encumbrances, is conclusive evidence that the property has been selected, or that the lien has been subordinated as provided in the certificate.

SECTION 50-5-24. Issuance; Effect; Levy and Sale.

(a) At any time within three years after any person is delinquent in the payment of any amount required to be paid, or within three years after the last recording of an abstract or a certificate, either the Tax Commission or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the Tribe under this Chapter.

(b) The warrant must be directed to any tribal or Bureau of Indian Affairs law enforcement offices and has the same effect as a writ of execution.

(c) The warrant must be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

SECTION 50-5-25. Payment of Delinquent Taxes Before Sale and Institution of Suit; Filing of Tax Receipt.

(a) At any time after a tax becomes due and before the completion of suit, as provided in this Title, and before the sale of any property, any delinquent taxpayer may pay to the Tax Commission the taxes assessed against the delinquent taxpayer, together with the penalties and costs provided by law, receiving

from the Tax Commission a receipt for the amount paid. In cases where suit has been filed, such receipt shall be filed with the Tribal Court.

(b) After having been paid by any person for the total amount of the taxes, penalties, and costs due from such person, the Tax Commission shall not commence or continue the suit authorized by this Chapter against such person or property.

SECTION 50-5-26. List of Delinquent Taxes as Prima Facie Evidence; Sufficient for Issuance of Distress Warrant.

(a) The delinquent list or a copy thereof certified by the Tax Commission showing unpaid taxes against any person or property shall be prima facie evidence in any court to prove:

- (1) The assessment;
- (2) The property assessed;
- (3) The delinquency;
- (4) The amount of taxes due and unpaid; and
- (5) That all the forms of law in relation to the assessment and levy of such taxes have been complied with.

(b) The taxpayer shall be provided a full and fair opportunity to rebut such prior facie evidence pursuant to the provisions of this Title.

(c) Such delinquent list or certified copy thereof shall be sufficient to authorize the issuance of a distress warrant for the seizure of the delinquent taxpayer's personal property in accordance with Section 50-5-17.

SECTION 50-5-27. Enforcement of Chapter: Duties of Peace Officers.

All peace officers of the Tribe are charged with the duty, without further compensation, of assisting in the enforcement of this Chapter.

SECTION 50-5-28. Penalty Provisions Not Applicable in Certain Cases.

The provisions for the payment of penalties in this Chapter shall not apply in those cases where a specific provision has been otherwise made elsewhere in the Tax Code for the payment of penalties.

TAXES

CHAPTER 6. SALES TAX

SECTION 50-6-1. Definitions

(a) "Business" means any activity engaged in by any person or caused to be engaged in by such person with the object of gain, benefit or advantage, either direct or indirect.

(b) "Gross Receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

- (1) The cost of the property sold.
- (2) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense.
- (3) The cost of transportation of the property prior to its sale to the purchaser.

The total amount of the sale or lease or rental price includes all of the following:

- (A) Any services that are a part of the sale.

(B) All receipts, cash, credits and property of any kind.

(C) Any amount for which credit is allowed by the seller to the purchaser.

“Gross receipts” does not include any of the following;

(D) Cash discounts allowed and taken on sales.

(E) Sale price of property returned by customers when the full sale price is refunded either in cash or credit.

(F) The price received for labor or services used in installing or applying the property sold.

(G) The amount of any tax (not including, however, any manufacturers’ or importers’ excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(c) “Occasional Sale” means a sale of property not held or used by a seller in the ordinary course of business.

(d) “Purchase” means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

(e) “Retail sale” or “sale at retail” means a sale for any purpose other than resale in the regular course of business of tangible personal property.

(f) “Retailer” means:

(1) Casino Omaha operated by the Omaha Tribe of Nebraska in Onawa, Iowa;

(2) Omaha Tribe Fuel Plaza operated by Omaha Nation Enterprises, Inc. (ONE, Inc.) or its successor in interest; and

(3) Omaha Tribe C-Store operated by Omaha Nation Enterprises, Inc. (ONE, Inc.) or its successor in interest.

(g) “Sale” means and includes any transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

(1) “Transfer of possession,” “lease,” or “rental” includes only transactions found by the Tax Commission to be in lieu of a transfer of title, exchange, or barter.

(2) “Sale” is limited, until further ordinance of the Omaha Tribal Council, to the furnishing, preparing, or serving for a consideration of food, meals, or drinks, and does not include sales to the Tribe or ONE, Inc.

(h) “Sales Price” means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold;

(2) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses; or

(3) The cost of transportation of the property prior to its purchase.

The total amount for which tangible property is sold includes all of the following:

(A) Any services that are a part of the sale; and

(B) Any amount for which credit is given to the purchaser by the seller.

“Sales price” does not include any of the following:

(C) Cash discounts allowed and taken on sales;

(D) The amount charged for property returned by customers when the entire amount charged therefore is refunded either in cash or credit.

(E) The amount charged for labor or services rendered in installing or applying the property sold; and

(F) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(i) "Seller" includes every person engaged in the business of selling tangible personal property of any kind, the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, but until further order of the Omaha Tribal Council is limited to:

(1) Casino Omaha operated by the Omaha Tribe of Nebraska in Onawa, Iowa;

(2) Omaha Tribe Fuel Plaza operated by Omaha Nation Enterprises, Inc. (ONE, Inc.) or its successor in interest; and

(3) Omaha Tribe C-Store operated by Omaha Nation Enterprises, Inc. (ONE, Inc.) or its successor in interest.

(j) "Tangible personal property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses, but until further ordinance of the Omaha Tribal Council is limited to food, meals, or drinks.

(k) "Taxpayer" means the person, whether natural or artificial, upon which a tax is levied under this Code.

SECTION 50-6-2. Imposition and Rate

A tax is hereby imposed upon all retail sales at the rate of three percent (3%) of the gross receipts received by the retailer from the sale of any tangible personal property sold at retail on or after the effective date of this Code.

SECTION 50-6-3. Method of Collection.

The legal incidence of the sales tax hereby imposed on the retailer shall be passed on by the retailer to the consumer.

SECTION 50-6-4. Tax as Debt to Tribe

The tax required to be collected by the retailer constitutes a debt owed by the retailer to the Tribe.

SECTION 50-6-5. Application for Seller's Permit Required: Form; Contents.

(a) Every person desiring to engage in or conduct business as a seller must file with the Tax Commission an application for a seller's permit, which shall be separate and apart from any other permits or licenses required by tribal law necessary to engage in or conduct business.

(b) Every application for a seller's permit must:

(1) Be made upon a form prescribed by the Tax Commission;

(2) Set forth the name under which the applicant transacts or intends to transact business and the location of his, her or its place or places of business; and

(3) Set forth other information which the Tax Commission may require.

(c) The application must be signed by the owner if he or she is a natural person; in the case of an association, limited liability company or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which must be attached the written evidence of his or her authority.

SECTION 50-6-6. Fee for Seller's Permit

At the time of making an application, the applicant must pay to the Tax Commission a one-time seller's permit fee of fifty dollars (\$50.00) for each permit.

SECTION 50-6-7. Issuance and Display of Permit; Assignability

After compliance with sections 50-7-5 and 50-7-6 by the applicant, the Tax Commission shall grant and issue to each applicant a separate permit for each place of business. A permit is not assignable, and is valid only for the person in whose name it is issued and for the transaction of business at the place designated on it. It must at all times be conspicuously displayed at the place for which issued.

SECTION 50-6-8. Fee for Reinstatement of Suspended or Revoked Permit

A seller whose permit has been previously suspended or revoked must pay the Tax Commission a fee of one hundred dollars (\$100.00) for the renewal or issuance of a permit.

SECTION 50-6-9. Revocation or Suspension of Permit; Procedure; Limitation on Issuance of New Permit

(a) Whenever any person fails to comply with any provision or any regulation of the Tax Commission, relating to the sales tax prescribed and adopted under this Chapter, the Tax Commission may revoke or suspend any one or more of the permits held by the person, after a hearing at which the person was given prior notice of at least ten (10) days in writing specifying the time and place of the hearing and requiring such person to show cause why such person's permit or permits should not be revoked.

(b) The Tax Commission shall give to the person written notice of the suspension or revocation of any of his permits.

(c) The notice may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(d) The Tax Commission may not issue a new permit after the revocation of a permit unless it is satisfied that the former holder of the permit will comply with the provisions of this Chapter relating to the sales tax and to all of the regulations of the Tax Commission.

SECTION 50-6-10. Presumption of Taxability

For the purpose of the proper administration of this Chapter and to prevent evasion of the sales tax, it is presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale.

SECTION 50-6-11. Date Tax Due

The taxes imposed by this Chapter are payable to the Tax Commission monthly on or before the last day of the month next succeeding each month.

SECTION 50-6-12. Return: Time for Filing; Persons Required to File; Signatures

(a) On or before the last day of the month following each reporting period, a return for the preceding period must be filed with the Tax Commission in such form as the Tax Commission may prescribe.

(b) For purposes of the sales tax a return must be filed by each seller.

(c) Returns must be signed by the person required to file the return or by such person's authorized agent.

SECTION 50-6-13. Contents of Return

(a) For the purposes of the sales tax, the return must show the gross receipts of the seller during

the preceding reporting period.

(b) The return must also show the amount of the taxes for the period covered by the return, the amount of returns or refunds on sales subject to the sales tax, and such other information as the Tax Commission deems necessary for the proper administration of this Chapter.

SECTION 50-6-14. Delivery of Return; Remittance

The person required to file the return shall deliver the return together with remittance of the amount of the tax due to the Tax Commission.

SECTION 50-6-15. Periods for Returns

(a) The reporting and payment period of a taxpayer whose taxable sales do not exceed ten thousand dollars (\$10,000) per month is a calendar quarter; otherwise, reporting and payment shall be made as provided in sections 50-7-11 to 50-7-14.

(b) The Tax Commission, if it deems this action necessary in order to insure payment to, or to facilitate the collection by the Tribe of the amount of taxes, may require returns and payment of the amount of taxes for periods other than calendar months or quarters, dependent upon the principal place of business of the seller, retailer or purchaser, as the case may be, or for other than monthly or quarterly periods.

SECTION 50-6-16. Lease and Rental Receipts: Reporting; Payment.

For the purpose of the sales tax, gross receipts from rentals or leases of tangible personal property must be reported and the tax paid in accordance with such regulations as the Tax Commission may prescribe.

SECTION 50-6-17. Extension of Time for Filing Return and Paying Tax

The Tax Commission for good cause may extend, not to exceed one month, the time for making any return or paying any amount required to be paid under this Chapter.

Deficiency Determinations

SECTION 50-6-18. Recomputation of Tax; Determination on Discontinuance of Business

(a) If the tax Commission is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the Tribe by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made of the amount due for one or for more than one period.

(b) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in Section 50-7-22 as to liability arising out of that business, irrespective of whether the determination is issued before the due date of the liability as otherwise specified in this Chapter.

SECTION 50-6-19. Offsetting of Overpayments; Computation of Interest

(a) In making a determination under Section 50-7-18, the Tax Commission may offset an overpayment for a period, together with interest on the overpayment, against any underpayment for another period, against any penalty, and against the interest on the underpayment.

(b) The interest on any underpayment or overpayment must be computed in the manner prescribed by the Tax Commission.

SECTION 50-6-20. Disallowance of Interest

If the Tax Commission determines that any overpayment has been made intentionally or by reason of carelessness, it may not allow any interest on it.

SECTION 50-6-21. Notice of Tax Commission's Determination; Service by Mail Complete upon Deposit

with United States Postal Service

(a) The Tax Commission shall give to the person required to pay written notice of its determination under Section 50-7-18.

(b) The notice may be served personally or by mail; if by mail, the notice must be addressed to such person at such person's address as it appears in the records of the Tax Commission.

(c) In case of service by mail of any notice required by this Chapter, the service is complete at the time of deposit with the United States Postal Service.

SECTION 50-6-22. Time Within Which notice of Determination Must Be Mailed; Consent to Later Mailing of Notice

(a) Except in the case of fraud, intent to evade this Chapter or regulations adopted under it, or a failure to make a return, every notice of the determination of a deficiency must be personally served or mailed within three years after the last day of the calendar month following the period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires later. In the case of a failure to make a return, every notice of determination must be mailed or personally served within five years after the last day of the calendar month following the period for which the amount is proposed to be determined.

(b) If, before the expiration of the time prescribed in this Section for the mailing of a notice of determination, the taxpayer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time before the expiration of the agreed upon period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Determinations When No Return Made

SECTION 50-6-23. Estimation and Computation by Tax Commission; Discontinuance of Business

If any person fails to make a return, the Tax Commission shall make an estimate of the amount of the gross receipts of the person, or, as the case may be, of the amount of the total sales price of tangible personal property sold by the person. The estimate must be made for the period or periods in respect to which the person failed to make a return and be based upon any information which is in the Tax Commission's possession or may come into its possession. Upon the basis of that estimate, the Tax Commission shall compute and determine the amount required to be paid to the Tribe, adding to the sum thus arrived at a penalty equal to ten percent (10%) of the sum. One or more determinations may be made for one or for more than one period.

SECTION 50-6-24. Interest on Amount of Determination

The amount of the determination, exclusive of penalties, bears interest at the rate of one and one-half percent (1.5%) per month, or fraction of a month, from the last day of the month following the period for which the amount or any portion of it should have been returned until the date of payment.

SECTION 50-6-25. Penalty for Failure to File Return Resulting from Fraud or Intent to Evade

If the failure of any person to file a return is due to fraud or intent to evade this Chapter or regulations, a penalty of fifteen percent (15%) of the amount required to be paid by the person, exclusive of penalties, must be added to it in addition to the ten percent (10%) penalty provided in Section 50-7-27(b).

SECTION 50-6-26. Notice of Estimate, Determination and Penalty; Service

Promptly after making its determination under Section 50-7-23, the Tax Commission shall give to the person written notice of the estimate, determination and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Redetermination

SECTION 50-6-27. Effectiveness of Redetermination Unless Appealed, Date Upon Which Determined Amount Is Due, Penalties.

(a) Unless the Tax Commission's determination is appealed pursuant to the applicable provisions of this Tax Code, the order or decision of the Tax Commission as to a determination becomes effective after service upon the taxpayer of the notice of estimate and determination pursuant to Section 50-7-26. If appealed, the determination becomes final after the appeal is completed.

(b) All determinations of amounts of taxes made by the Tax Commission under Sections 50-7-18 to 50-7-27 are due at the time they become effective. If they are not paid when due, a penalty of ten percent (10%) of the amount of the determination, exclusive of interest and other penalties, must be added to it.

Security

SECTION 50-6-28. Authority of Tax Commission; Amount; Sales; Return of Surplus

(a) The Tax Commission, whenever it deems it necessary to insure compliance with this Chapter, may require any person subject to this Chapter to place with it such security as the Tax Commission may determine. The Tax Commission shall fix the amount of the security which, except as provided in subsection (b) of this Section, may not be greater than twice the estimated average tax due quarterly of persons filing returns for quarterly periods or three times the estimated average tax due monthly of persons filing for monthly periods, determined in such owner as the Tax Commission deems proper.

(b) In the case of persons who are habitually delinquent in their obligations under this Chapter, the amount of the security may not be greater than three times the average actual tax due quarterly of persons filing returns for quarterly periods or five times the average actual tax due monthly of persons filing returns for monthly periods.

(c) The limitations provided in this Section apply regardless of the type of security placed with the Tax Commission.

(d) The amount of the security may be increased or decreased by the Tax Commission subject to the limitations provided in this Section.

(e) The Tax Commission may sell the security at public auction if it becomes necessary to recover any tax or any amount required to be collected, interest, or penalty due. Notice of the sale may be served upon the person who placed the security personally or by mail; if by mail, service must be made in the manner prescribed for service of a notice of a deficiency determination and must be addressed to the person at his address as it appears in the records of the Tax Commission. Security in the form of a bearer bond issued by the United States that has a prevailing market price may be sold by the Tax Commission at a private sale at a price not lower than the prevailing market price.

(f) Upon sale any surplus above the amounts due must be returned to the person who placed the security.

Delinquency Certificate

SECTION 50-6-29. Evidentiary Effect of Certificate Showing Delinquency

In any proceeding or action commenced to collect delinquent taxes hereunder, a certificate by the Tax Commission showing the delinquency is prima facie evidence of the determination of the tax or the amount of the tax, of the delinquency in the amounts set forth, and of the compliance by the Tax Commission with all the provisions of this Chapter in relation to the computation and determination of the amounts.

Payment On Termination of Business and Successor's Liability

SECTION 50-6-30. Successor or Assignee to Withhold Tax from Purchase Price

If any retailer who is liable for any amount under this Chapter sells out his, her or its business or stock of goods, or quits the business, that retailer's successors or assignees shall withhold a sufficient amount of the purchase price to cover taxes until the former owner produces a receipt from the Tax Commission showing that it has been paid or a certificate stating that no amount is due.

SECTION 50-6-31. Liability of Purchaser for Failure to Withhold Sufficient Amount; Release

(a) If the purchaser of a business or stock of goods fails to withhold the amount as required in Section 50-7-30, the purchaser becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within 60 days after receiving a written request from the purchaser for a certificate, or within 60 days from the date the former owner's records are made available for audit, whichever period expires later, but not later than 90 days after receiving the request, the Tax Commission shall issue the certificate or mail the notice to the purchaser at his address as it appears on the records of the Tax Commission, of the amount that must be paid as a condition of issuing the certificate.

(b) Failure of the Tax Commission to mail the notice releases the purchaser from any further obligation to withhold the amount from the purchase price.

(c) The time within which the obligation of a successor may be enforced begins at the time the retailer sells out the retailer's business or stock of goods or at the time that the determination against the retailer becomes final, whichever event occurs later.

Overpayments and Refunds

SECTION 50-6-32. Certification of Excess Amount Collected; Credit and Refund

If the Tax Commission determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Tax Commission shall set forth that fact in its records and certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. The excess amount collected or paid must be credited on any amounts then due from the person under this Chapter, and the balance refunded to the person, or the person's successors, administrators or executors.

SECTION 50-6-33. Limitations on Claims for Refund or Credit

Except as provided in this Chapter,

(a) No refund may be allowed unless a claim for it is filed with the Tax Commission within three years from the last day of the month following the close of the period for which the overpayment was made, or, with respect to determinations made under Sections 50-7-18 to 50-7-27, inclusive, within six months after the determinations become final, or within six months from the date of overpayment, whichever period expires later.

(b) No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Tax Commission within that period, or unless the credit related to a period for which a waiver is given pursuant to Section 50-7-22.

SECTION 50-6-34. Form and Contents of Claim for Credit or Refund

Every claim must be in writing and must state the specific grounds upon which the claim is founded.

SECTION 50-6-35. Failure to File Claim Constitutes Waiver

Failure to file a claim within the time prescribed in Section 50-7-33 constitutes a waiver of any demand against the Tribe on account of overpayment.

SECTION 50-6-36. Service of Notice of Disallowance of Claim

Within 30 days after disallowing any claim in whole or in part, the Tax Commission shall serve notice

of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

SECTION 50-6-37. Injunction or other Process to Prevent Collection of Tax Prohibited

No injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against the Tribe or against any officer of the Tribe to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected.

Administration

SECTION 50-6-38. Records to be Kept by Sellers, Retailers and Others

(a) Every seller, and every retailer storing, using, offering for sale or rent tangible personal property shall keep records, receipts, invoices and other pertinent papers in such form as the Tax Commission may require.

(b) Every seller, retailer or person who files the returns required under this Chapter shall keep the records for not less than four years from their making unless the Tax Commission in writing authorizes their destruction at an earlier time.

(c) Every seller, retailer or person who fails to file the returns required under this Chapter shall keep the records for not less than five years from their making unless the Tax Commission in writing authorizes their destruction.

SECTION 50-6-39. Claim for Refund or Credit Required

No suit or proceeding may be maintained in any Court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been filed, and payment under protest has been made in accordance with the provisions of CHAPTER 5.

SECTION 50-6-40. Examination of Records; Investigation of Business.

The Tax Commission, or any person authorized in writing by it, may examine the books, papers, records and equipment of any person selling tangible personal property and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

SECTION 50-6-41. Disclosure of Information Unlawful; Exceptions

(a) Except as otherwise provided in this Section, it is a civil violation of not more than five thousand dollars (\$5,000.00) for any member of the Tax Commission or officer or employee of the Tax Commission to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular of them, set forth or disclosed in any return, or to permit any return or copy of a return, or any book containing any abstract or particulars of it to be seen, copied or examined by any person not connected with the Tax Commission.

(b) The Tax Commission may agree with any governmental entity for the continuing exchange of information concerning taxpayers.

(c) The Tribal Council may, by general or special order, authorize examination of the records maintained by the Tax Commission under this Chapter by tax officers of any state, by the Federal Government, or by any other person. The information so obtained may not be made public except to the extent and in the manner that the order may authorize that it be made public.

(d) Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amount of any unpaid tax or amounts of tax required to be collected, interest, and penalties.

(e) Relevant information may be disclosed as evidence in an appeal by the taxpayer from a

determination of tax due.

Penalties

SECTION 50-6-42. Failure to Make Return or Furnish Data

Any retailer or other person who fails or refuses to furnish any return required to be made, or who fails, neglects or refuses to furnish a supplemental return or other data required by the Tax Commission, shall be subject to a civil fine of not more than five hundred dollars (\$500.00) for each incident.

SECTION 50-6-43. False or Fraudulent Return

Any person who makes, renders, signs, or verifies any report or who makes any false or fraudulent return, with intent to defeat or evade the determination of an amount due required by law to be made, shall for each offense be fined a civil penalty as set forth in Section 50-7-25, or be subject to exclusion from the Tribe or the Reservation.

Miscellaneous Provisions

SECTION 50-6-44. Sales Tax Account: Remittances; Deposits

- (a) All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid to the Tribe under this Chapter must be paid to the Tax Commission in the form of remittances payable to the Tax Commission.
- (b) The Tax Commission shall deposit the payments in the tribal treasury to the credit of the sales and use tax account in the tribal fund.

SECTION 50-6-45. Sales Tax Account; Refunds

The money in the sales tax account may, upon order of the Tax Commission, be used for refunds under this Chapter.

SECTION 50-6-46. Remedies of Tribe are Cumulative

The remedies of the Tribe provided for in this Chapter are cumulative, and no action taken by the Tax Commission constitutes an election by the Tribe to pursue any remedy to the exclusion of any other remedy for which provision is made in this Chapter.

SECTION 50-6-47. Tax Commission's Authority

In all proceedings under this Chapter the Tax Commission may act for and on behalf of the people of the Tribe.

CHAPTER 7. MOTOR VEHICLE FUELS TAX

SECTION 50-7-1. Motor Fuel Tax Ordinance

- (a) The Omaha Tribal Council does hereby impose on the retail or actual consumer of motor vehicle fuels purchased at any tribally operated enterprise located on the Omaha Indian Reservation an excise tax equivalent to the rate and base of transaction provided for by the laws of the state within which the enterprise is located, which excise tax shall be added to the sales price of such fuel and collected and remitted, for the convenience of the consumer, by the supplier, distributor, or wholesaler of such motor vehicle fuels to the Tribal Treasurer or his or her designate on the first day of each month;
- (b) The supplier, distributor, or wholesaler shall keep records of the gallonage of motor vehicle fuels sold to tribally operated enterprises and submit such records with the taxes as they are due;
- (c) The intentional or knowing failure to comply with the provisions of this ordinance shall result in a civil fine of \$5,000 on a supplier, distributor, or wholesaler of motor vehicle fuels sold to any tribally operated enterprise located on the Omaha Indian Reservation, and/or a civil fine of \$100 on a retail or

actual consumer of motor vehicle fuels purchased at any such tribally operated enterprise; and

(d) All revenue raised by this tax shall be used for general governmental purposes, including, but not limited to, road construction and maintenance, economic development, and general health and welfare programs and services for tribal members.

SECTION 50-7-2. General Definitions.

For purposes of this Chapter:

(a) *Motor vehicle* means any vehicle propelled by any power other than muscular power except (1) mopeds, (b) farm tractors, (c) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (d) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (e) vehicles which run only on rails or tracks, (f) off-road designed vehicles, including, but not limited to, golf carts, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, snowmobiles, and minibikes, (g) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (h) self-propelled chairs used by persons who are disabled, and (i) electric personal assistive mobility devices;

(b) *Motor vehicle fuel* shall include all products and fuel commonly or commercially known as gasoline, including casing head or natural gasoline, and shall include any other liquid and such other volatile and inflammable liquids as may be produced, compounded, or used for the purpose of operating or propelling motor vehicles, motorboats, or aircraft or as an ingredient in the manufacture of such fuel. Agricultural ethyl alcohol produced for use as a motor vehicle fuel shall be considered a motor vehicle fuel. Motor vehicle fuel shall not include the products commonly known as methanol, kerosene oil, kerosene distillate, crude petroleum, naphtha, and benzine with a boiling point over two hundred degrees Fahrenheit, residuum gas oil, smudge oil, leaded automotive racing fuel with an American Society of Testing Materials research method octane number in excess of one hundred five, and any petroleum product with an initial boiling point under two hundred degrees Fahrenheit, a ninety-five percent distillation (recovery) temperature in excess of four hundred sixty-four degrees Fahrenheit, an American Society of Testing Materials research method octane number less than seventy, and an end or dry point of distillation of five hundred seventy degrees Fahrenheit maximum;

(c) *Supplier* shall mean any person who owns motor vehicle fuel imported and stored within the Reservation and any person who refines and stores motor vehicle fuel at a refinery in this Reservation;

(d) *Distributor* shall mean any person who acquires ownership of motor vehicle fuel directly from a supplier at terminal in this Reservation;

(e) *Wholesaler* shall mean any person, other than a supplier, distributor, or importer, who acquires motor vehicle fuel for resale;

(f) *Retailer* shall mean a person that acquires motor vehicle fuel from a supplier, distributor, wholesaler, or importer for resale to consumers of such fuel;

(g) *Exporter* shall mean any person who acquires ownership of motor vehicle fuel from any licensed supplier, distributor, wholesaler, or importer exclusively for use or resale outside the Reservation;

(h) *Gross gallons* shall mean measured gallons without adjustment or correction for temperature or barometric pressure;

(i) *Person* shall mean any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision;

(j) *Commission* shall mean the Omaha Tribe Tax Commission; and

(k) *Semiannual period* shall mean either the period that begins on January 1 and ends on June 30 of each year or the period that begins on July 1 and ends on December 31 of each year.

(l) *Highway* shall mean every way or place generally open to the use of the public for the purpose of vehicular travel, even though such way or place may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction.

SECTION 50-7-3. Application for license; contents.

Before engaging in business as a supplier, distributor, wholesaler, importer, or exporter, a person shall file an application with the Commission. The application shall be filed upon a form prepared and furnished by the Commission. If the applicant is an individual, the application shall include the applicant's social security number. The application shall contain such information as the Commission deems necessary.

SECTION 50-7-4. License required.

Before engaging in business as a supplier, distributor, wholesaler, importer, or exporter, a person shall procure a license from the Commission permitting him or her to transact such business within the Reservation. After reviewing the application required in section 50-7-2, the Commission may issue a license as provided in this section.

SECTION 50-7-5. Security.

The Commission, for the first year of a new license or whenever it deems it necessary to insure compliance with this Chapter, may require any supplier, distributor, wholesaler, exporter, or importer subject to such sections to place with the Commission such security as it determines. The amount and duration of the security shall be fixed by the Commission and shall be approximately three times the total estimated average monthly tax liability payable by such supplier, distributor, wholesaler, or importer pursuant to such sections. Such security shall consist of a surety bond executed by a surety company duly licensed and authorized to do business within this state in the amount specified by the Commission. In the case of an exporter, the amount and duration of the security shall be fixed by the Commission. Such security shall run to the Commission and be conditioned upon the payment of all taxes, interest, penalties, and costs for which such producer, supplier, distributor, wholesaler, exporter, or importer is liable, whether such liability was incurred prior to or after such security is filed.

SECTION 50-7-6. Motor fuel tax; collection; commission.

(a) In lieu of the expense of collecting and remitting the motor vehicle fuel tax and furnishing the security pursuant to this Chapter, and complying with the laws and rules and regulations related thereto, the supplier, distributor, wholesaler, or importer shall be entitled to deduct and withhold a commission of five percent on the first five thousand dollars and two and one-half percent upon all amounts above five thousand dollars remitted each reporting period.

(b) Except as otherwise provided this Chapter, the per-gallon amount of the tax shall be added to the selling price of every gallon of such motor fuels sold in this Reservation and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax. The tax shall be a direct tax on the retail or ultimate consumer precollected for the purpose of convenience and facility to the consumer. The levy and assessment on the supplier, distributor, wholesaler, or importer as specified in this Chapter shall be as agents of the Commission for the precollection of the tax. The provisions of this section shall in no way affect the method of collecting the tax as provided in this Chapter. The tax imposed by this section shall be collected and paid at the time, in the manner, and by those persons specified in this Chapter.

(c) In consideration of receiving the commission, the supplier, distributor, wholesaler, or importer shall not be entitled to any deductions, credits, or refunds arising out of such supplier's, distributor's, wholesaler's, or importer's failure or inability to collect any such taxes from any subsequent purchaser of motor fuels.

(d) For purposes of this section, reporting period means calendar month unless otherwise provided by rules and regulations of the Commission, but under no circumstance shall such reporting period extend beyond an annual basis.

SECTION 50-7-7. Records required.

(a) Every licensed supplier, distributor, wholesaler, exporter, and importer shall keep a complete and accurate record of all gallonage of motor fuels, to be based on gross gallons, received, purchased, refined, manufactured, or obtained and imported by a supplier, distributor, wholesaler, or importer, which record shall show the name and address of the person from whom each transfer or purchase of motor fuels so received or imported was made, the point from which shipped or delivered, the point at which received, the method of delivery, the quantity of each transfer or purchase, and a complete and accurate record of the number of gallons, to be based on gross gallons, of motor fuels imported, produced, refined, manufactured, or compounded and the date of importation, production, refining, manufacturing, or compounding. If any licensed supplier, distributor, wholesaler, or importer sells to another licensed supplier, distributor, wholesaler, importer, or exporter any motor fuels, such seller shall keep as part of its records the name, address, and license number of the supplier, distributor, wholesaler, importer, or exporter to whom the motor fuels were sold along with the date, quantity, and location where the motor fuels were sold.

(b) Every licensed supplier, distributor, wholesaler, exporter, and importer shall include the information prescribed in subsection (a) of this section with the return required by section 50-10-7.

(c) The records required by this section shall be retained and be available for audit and examination by the Commission or its authorized agents during regular business hours for a period of three years following the date of filing fuel tax reports supported by such records or for a period of five years if the required reports are not filed.

SECTION 50-7-8. Return; contents.

(a) Every supplier, distributor, wholesaler, importer, and exporter who engages in the sale, distribution, delivery, and use of motor fuels shall render and have on file with the Commission a return reporting the number of gallons of motor fuels, based on gross gallons, received, imported, or exported and unloaded and emptied or caused to be received, imported, or exported and unloaded and emptied by such producer, supplier, distributor, wholesaler, or importer within the Reservation and the number of gallons of motor fuels produced, refined, manufactured, blended, or compounded by such producer, supplier, distributor, wholesaler, or importer within the Reservation, during the preceding reporting period, and defining the nature of such motor fuels. The return shall also show such information as the Commission reasonably requires for the proper administration and enforcement of this Chapter. The return shall contain a declaration, by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the return and shall be in lieu of such verification. The return shall be signed by the supplier, distributor, wholesaler, importer, or exporter or a principal officer, general agent, managing agent, attorney in fact, chief accountant, or other responsible representative of the supplier, distributor, wholesaler, importer, or exporter, and such return shall be entitled to be received in evidence in all courts of this state and shall be prima facie evidence of the facts therein stated. The supplier, distributor, wholesaler, importer, or exporter shall file the return in such format as prescribed by the Commission on or before the twenty-fifth day of the next succeeding calendar month following the reporting period to which it relates. If the final filing date for such return falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. The return shall be considered filed on time if transmitted or postmarked before midnight of the final filing date.

(b) For purposes of this section, reporting period means calendar month unless otherwise provided by rules and regulations of the Commission, but under no circumstance shall such reporting period extend beyond an annual basis.

SECTION 50-7-9. Motor fuel tax; excise tax; amount; when payable; exemptions; equalization fee; section, how construed; refund.

At the time of filing the return required by the preceding section, such supplier, distributor, wholesaler, or importer shall, in addition to the other taxes provided for by law, pay a tax equivalent to the rate and base of transaction provided for by the laws of the state within which the enterprise is located upon all motor fuels as shown by such return, except that there shall be no tax on the motor fuels reported if (1) the required taxes on the motor fuels have been paid, (2) the motor fuels have been sold to a licensed exporter

exclusively for resale or use outside the Reservation, or (3) as otherwise provided in this section. Such supplier, distributor, wholesaler, or importer shall remit such tax to the Commission.

SECTION 50-7-10. Motor fuels; use; excise tax; amount; use, defined.

There is hereby levied and imposed an excise tax equivalent to the rate and base of transaction provided for by the laws of the state within which the enterprise is located upon the use of all motor fuels used in this Reservation and due the Commission under section 50-7-8. Users of motor fuels subject to taxation under this section shall be allowed the same exemptions, deductions, and rights of reimbursement as are authorized and permitted by this Chapter, other than any commissions provided under such section. For purposes of this section and section 50-7-13, use shall mean the purchase or consumption of motor fuels in this Reservation.

SECTION 50-7-11. Stored fuel; payment of tax; when; reports.

(a) No tax shall be collected with respect to motor fuels imported and stored at a terminal in this Reservation or refined at a refinery in this Reservation and stored thereat until the motor fuels are withdrawn for sale or use in this Reservation or are loaded at the terminal or refinery into transportation equipment for shipment or delivery to a destination in this Reservation.

(b) When motor fuels are withdrawn or loaded as provided in this section, the supplier, or distributor in this state shall be liable for payment of the motor fuels tax.

(c) The person owning and operating such refinery or terminal may, at the Commission's request, make and file such verified reports of operations within the Reservation that may include reporting all motor fuels loaded within this Reservation for delivery outside the Reservation and such other information as shall be required by the Commission.

SECTION 50-7-12. Tax previously paid; credit allowed; when.

If such tax has been paid upon any of the ingredients or compounds under the provisions of section 50-7-8, credit shall be allowed for such tax previously paid, in computing the tax upon such compound, so that the motor fuels used in the compound are not taxed twice.

SECTION 50-7-13. Excise tax; payment; report; duty to collect.

Every person using motor fuels subject to taxation on the use thereof shall pay the excise taxes and make a report concerning the same to the Commission in like manner, form, and time as is required by section 50-7-8 for suppliers, distributors, wholesalers, or importers of motor fuels. No such payment of tax or report shall be required if such tax has been paid and the report has been made for such user by any supplier, distributor, wholesaler, or importer licensed under this Chapter. Suppliers, distributors, wholesalers, or importers or other persons having paid such tax or liable for its payment shall collect the amount thereof from any person to whom such motor fuels are sold in this Reservation along with the selling price thereof.

SECTION 50-7-14. Motor vehicle fuel tax law; enforcement; rules and regulations.

The Commission or any peace officer of the Tribe shall enforce this Chapter. The Commission shall adopt and promulgate ~~reasonable rules and regulations intended to collect revenue arising under such sections and for the payment thereof.~~

SECTION 50-7-15. Commission; monthly report.

The Commission shall transmit monthly to the Tribal Treasurer a report of the tax receipts generated under this Chapter.

SECTION 50-7-16. Tax received; credit to Tribal Treasury.

All sums of money received under this Chapter shall be credited to the Tribe's account at the Tribal Treasurer's direction.

CHAPTER 8. TOBACCO TAX ORDINANCE

[Note: Except as otherwise noted, the provisions of Chapter 8, Title 50 were enacted on April 2, 2014 by Omaha Tribal Council Res. No. 14-60.]

SECTION 50-8-1. Citation.

This Chapter may be cited as the Omaha Tribe of Nebraska Tobacco Tax Ordinance.

SECTION 50-8-2. Purpose.

The purpose of this Chapter is to regulate certain conduct and provide for the levy and collection of certain taxes for the benefit of the Tribe. Such taxes shall serve to strengthen the tribal government by providing funds for tribal government operations and services.

SECTION 50-8-3. Definitions.

(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 Tribal Retailer located within the exterior boundaries of the Reservation.

(b) "Person" is defined to mean and include any natural person, company, Tribally owned corporation, partnership, corporation, commission, government agency, joint venture, association, trust, or other political or identifiable entity to which this Code can be applied.

(c) "Sale" or "Sales" or their derivatives is defined to mean and include all sales, barter, trades, exchanges, or other transfers of ownership for value of Tribal Tobacco from a Tribal 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 one Person to another Person no matter how characterized.

(d) "Tribal 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 Tribal Reservation to another Person.

(e) "Tribal Tax Stamp" is defined as a tax stamp officially approved by the Tribe that is applied to all tobacco packages intended for sale by a Tribal Retailer.

(f) "Tribal Tobacco" is defined as all tobacco products sold by a Tribal Wholesaler to a Tribal Retailer that do not have another government jurisdiction's tax stamp already affixed to the tobacco package. The definition of Tribal Tobacco does not include products sold by a Tribal Wholesaler to Persons, Consumers, retailers or other wholesalers who intend to resell the product outside the exterior boundaries of the Reservation.

(g) "Tribal Wholesaler" is defined as a Person who in the ordinary course of business sells Tribal Tobacco products to Tribal Retailers or Persons intended resale within the exterior boundaries of the Reservation or to other wholesalers who intend to resell the product outside the exterior boundaries of the Reservation.

SECTION 50-8-4. Sales of Tribal Tobacco.

There is hereby levied upon the sale of Tribal Tobacco by a Tribal Wholesaler for Sales within the exterior boundaries of the Tribal Reservation a tax equal to five cents (\$0.05) per pack of cigarettes sold exclusive of any rebate. Such products are required to have the Tribal Tax Stamp affixed to them.

SECTION 50-8-5. Wholesale Exceptions.

The tax imposed by Section 50-8-4 shall not apply to sales to Persons, customers, retailers or other wholesalers who intend to sell the product outside the exterior boundaries of the Tribal Reservation.

SECTION 50-8-6. Impact of tax.

The impact of the tax levied imposed by Section 50-8-4 of this Chapter is declared to be on the Tribal Wholesaler.

SECTION 50-8-7. Tax Collection.

The Tribal Wholesaler shall collect the applicable taxes when selling to a Tribal Retailer or other Persons intending to resell the tobacco products within the exterior boundaries of the Reservation.

SECTION 50-8-8. Payment of tax.

Every Tribal Wholesaler is required to purchase all applicable tax stamps from the Tribe or its designee. The Tribe or its designee shall sell the applicable tax stamps to the Tribal Wholesaler at the applicable rate described in Section 50-8-4.

SECTION 50-8-9. Effective Date.

This Chapter applies to all Sales of Tribal Tobacco effective as of the date of adoption of this Chapter by the Tribal Council.

