

**TITLE XII
TAXATION**

**CHAPTER 1
GENERAL PROVISIONS**

Section 12-1-1. Purpose. The Tribe wishes to exercise its sovereignty to obtain revenue to fund the government of the Tribe through the imposition of taxes and, therefore, the purpose of this Title is:

1. To strengthen the Tribe's government by licensing and regulating certain conduct within the territory of the Tribe through taxation;

2. To provide for the levy and collection of certain revenue and taxes for the benefit of the Tribe;

3. To provide funding for governmental operations of the Tribe and programs promoting the health, education, and general welfare of the Tribe and its members; and

4. To provide straightforward, fair, and efficient procedures for assessment and collection of taxes imposed and collected by the Tribe.

Section 12-1-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Commission" means the Ponca Tribe of Nebraska Tax Commission.

2. "Commissioner" means a member of the Commission.

3. "Small purchase threshold" means the dollar amount set forth in the procurement policies or regulations of the Tribe below which purchases of property, goods, or services may be made using small purchase methods where no competition, including quotes, bids, or proposals, are required.

4. "Substantial indebtedness of the Tribe" means a financial liability or obligation, including a loan, bond, interim certificate, promissory or other note, debenture, or mortgage, due

and owing by certain and express agreement to repay such liability or obligation to a creditor when such liability or obligation:

a. Is or was in an original principal amount exceeding five million dollars (\$5,000,000);

b. Is either:

i. That of the Tribe itself as debtor; or

ii. That of a commission, board, agency, department, division, instrumentality, or economic enterprise as debtor and expressly authorized or approved by the Tribal Council prior to such liability or obligation being incurred; and

c. Is not an amount owed on a credit card.

5. "Tax" means the tax imposed by or assessed pursuant to this Title and includes any interest, penalty, or collection costs added to such tax.

6. "Taxpayer" means a person who has paid or is liable for or subject to taxes imposed or assessed, including persons required to collect and remit such taxes.

7. "Tribal lands" means:

a. All lands held in trust by the United States for the benefit of the Tribe or its members;

b. All fee lands owned by the Tribe and located within one or more of the Tribe's service areas as defined by Public Law 101-484 and any amendments thereto;

c. All lands of the Tribe or its members defined as Indian country by 18 U.S.C. § 1151, including dependent Indian communities; and

d. All other lands where the Tribe may lawfully exercise its jurisdiction to impose taxes.

Section 12-1-3. Consent to Jurisdiction. Any person who resides in the territory of the Tribe or conducts business or engages in a business transaction in the territory of the Tribe or with the

Tribe, enters into a consensual relationship with Tribe, acts under Tribal authority, or enters the territory of the Tribe shall be deemed to have consented to the following:

1. To be bound by the terms of this Title; and
2. To the exercise of jurisdiction by the Tribal Court over him or her in an action arising under this Title.

Section 12-1-4. Non-Liability. There shall be no liability on the part of the Tribe, its agencies, departments, enterprises, agents, officers, officials or employees for any damages which may occur as a result of reliance upon or conformity with the provisions of this Title.

Section 12-1-5. Severability. If any chapter, section or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 12-1-6. Sovereign Immunity. Except where expressly waived by a section of this Title specifically referring to a waiver of sovereign immunity, nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials or employees.

CHAPTER 2 TAX COMMISSION

Section 12-2-1. Establishment.

1. There is hereby established a tax commission to be known as the Ponca Tribe of Nebraska Tax Commission as an agency of the Tribe, under the authority of the Tribe, and delegated the powers, duties, and responsibilities set forth in this Title and as otherwise provided by the laws of the Tribe.

2. The Commission may employ such other personnel and employees as may be required for the proper discharge of its duties under this Title, provided that, to the maximum extent feasible, the Commission shall first use personnel and employees of the Tribal administration as authorized in this Chapter.

3. The Commission may require any personnel or employee who will handle monies, revenues, tax stamps or like items to be bonded and/or insured in an amount determined by the Commission with any premiums for such bonding and/or insurance to be paid from the Commission's budget.

Section 12-2-2. Composition.

1. The Commission shall consist of five (5) members as follows:

a. The Vice-Chair of the Tribal Council as an ex-officio member, who shall serve as the Chairperson of the Commission;

b. The Treasurer of the Tribal Council as an ex-officio member, who shall serve as the Secretary of the Commission; and

c. Three (3) members of the Tribe who shall be appointed by the Tribal Council.

2. The Tribal Council may require any Commissioner who will handle monies, revenues, tax stamps or like items to be bonded and/or insured in an amount determined by the Tribal Council with any premiums for such bonding and/or insurance to be paid from the Commission's budget.

Section 12-2-3. Qualifications. To be qualified to be appointed a Commissioner that is not an ex-officio member, a person shall:

1. Be an enrolled member of the Tribe;

2. Be at least the age of majority;

3. Have no conflicts of interest, as defined in this Chapter;

4. Be willing and able to comply with the ethical duties of Commissioners, as defined in this Chapter;

5. Be willing and able to perform the Commission's duties in compliance with the laws of the Tribe;

6. Have or acquire knowledge of this Title, unless the Tribal Council waives such qualification for the appointee;

7. Have the time available to actively fulfill the duties of a Commissioner; and

8. Be willing to receive orientation and training regarding the duties of the Commission.

Section 12-2-4. Term of Office.

1. Commissioners serving as ex-officio members shall hold office until they no longer hold the office which causes them to serve on the Commission regardless of whether there is a successor in the office, but a former ex-officio member may be appointed to another position on the Commission in accordance with this Chapter.

2. Upon the selection of the initial Commissioners, the Tribal Council shall choose from the members that are not ex-officio members, by lot, one Commissioner who will serve an initial term of one (1) year, one Commissioner who will serve an initial term of two (2) years, and one Commissioner who will serve an initial term of three (3) years. Thereafter, the term of office for Commissioners who are not ex-officio members shall be three (3) years.

3. Each Commissioner not an ex-officio member shall serve until he or she resigns, is removed, or the Tribal Council appoints his or her successor.

Section 12-2-5. Compensation. Commissioners shall be compensated at a rate set by the Tribal Council. In addition, Commissioners shall be paid for mileage for every Commission meeting attended in accordance with the rules applicable to and at the standard rate established for Tribal officers and employees.

Section 12-2-6. Resignation and Removal.

1. Any Commissioner who is not an ex-officio member may resign from his or her position by delivering a written resignation to the Tribal Council.

2. Any Commissioner who is an ex-officio member shall automatically be removed from the Commission upon the

Commissioner's resignation or removal from the office which causes them to serve on the Commission.

3. The Tribal Council may, by majority vote, remove a Commissioner who is not an ex-officio member or discipline, in accordance with the laws of the Tribe, a Commissioner who is an ex-officio member for any the following:

- a. Violating or permitting violation of this Title;
- b. Neglect of duty;
- c. Malfeasance or misfeasance in the handling of taxation matters;
- d. Acceptance or solicitation of bribes;
- e. Violation of the ethical duties or conflict of interest provisions of this Chapter;
- f. Unexcused absence from three (3) or more Commission meetings;
- g. Any crime committed against the Tribe which results in a conviction or admission of guilt; or
- h. Upon the happening of any event which would have made the Commissioner ineligible for appointment if the event had occurred prior to appointment.

4. The Tribal Council's decision to remove a Commissioner shall be final and not subject to challenge, review or appeal.

Section 12-2-7. Vacancies. In the event of a vacancy on the Commission in a position which is not held by an ex-officio member, whether by removal, resignation, or otherwise, the Tribal Council shall appoint a replacement to serve the remaining term of the Commissioner being replaced. In the event of an emergency vacancy, the Tribal Council may hold a special meeting to fill the vacancy.

Section 12-2-8. Officers.

1. The Chairperson shall call and preside over Commission meetings. The Chairperson shall report to the Tribal Council as required.

2. The Secretary shall be responsible for assuring the timely and proper production, distribution and storage of all written records of the Commission, including administrative and financial documents. The Secretary shall keep minutes of all meetings of the Commission and shall keep informed about the Commission's expenditures and budget.

Section 12-2-9. Ethics and Conflicts.

1. No person may be appointed to the Commission who:

a. Has a private ownership interest, whether direct or indirect, in any entity or organization that does business with or is operated by the Tribe, its agencies, departments, or enterprises;

b. Has failed to pay when due any taxes owed by him or her imposed by this Title or has failed to file when due any return which he or she is required to file as a taxpayer pursuant to this Title;

c. Is engaged in litigation against the Tribe in a matter related to the subject matter of the Commission; or

d. Has a similar interest that would necessarily conflict with the impartial performance of a Commissioner's duties.

2. The Tribal Council's determination whether an applicant for the Commission is barred from appointment by a conflict of interest shall be final and not subject to challenge, review or appeal.

3. Commissioners shall:

a. Avoid the appearance of impropriety;

b. Not act in an official capacity when a matter before the Commission directly and specifically affects a Commissioner's own interests or the interests of his or her immediate family;

c. Not attempt to exceed the authority granted to Commissioners by this Title;

d. Recognize that the authority delegated by this Title is to the Commission as a whole, not to individual Commissioners and, accordingly, the powers of the Commission may only be exercised by the Commission acting through the procedures established by this Title;

e. Not take action on behalf of the Commission unless authorized to do so by the Commission;

f. Not involve the Commission in any controversy outside the Commission's duties; and

g. Hold all confidential information revealed during the course of Commission business in strict confidence and discuss or disclose such information only to persons who are entitled to the information and only for the purpose of conducting official Commission business.

Section 12-2-10. Preparation of Tax Returns. No Commissioner, agent, personnel or employee of the Commission shall, for compensation, prepare or assist in preparing any tax return required to be filed with the Commission.

Section 12-2-11. Recusal.

1. No Commissioner shall participate in any action or decision by the Commission directly involving the tax liability of:

a. Himself or herself;

b. A member of his or her immediate family;

c. Any person, business or other entity of which he or she or a member of his or her immediate family is an employee;

d. Any business or other entity in which he or she or a member of his or her immediate family has a substantial ownership interest; or

e. Any business or other entity with which he or she or a member of his or her immediate family has a substantial contractual relationship.

2. Nothing in this Section shall preclude a Commissioner from participating in any action or decision by the Commission which:

a. Generally affects a class of taxpayers, regardless of whether the Commissioner or a member of his or her immediate family is a member of the affected class; and

b. Affects the Tribe, an economic enterprise of the Tribe, or a person or entity in a contractual relationship with the Tribe or an economic enterprise of the Tribe, regardless of whether the Commissioner is also a member of the Tribe.

3. A Commissioner may voluntarily recuse himself or herself and decline to participate in any action or decision by the Commission when the Commissioner, in his or her own discretion, believes:

a. That he or she cannot act fairly or without bias;
or

b. That there would be an appearance that he or she could not act fairly or without bias.

Section 12-2-12. Quorum. Three (3) Commissioners shall constitute a quorum for conducting business.

Section 12-2-13. Meetings.

1. The Commission may hold meetings as it deems necessary.

2. The Chairperson of the Commission shall have the authority to call a meeting of the Commission as he or she sees fit upon forty-eight (48) hours written notice. The Commissioners, by unanimous consent or appearance at a meeting, may waive any notice requirement.

3. The Commission may conduct a meeting exclusively by telephone, video conference or other electronic means provided that the notice of the Commission meeting provides the manner in which the meeting will be conducted and includes information on how a person may attend the meeting, such as a telephone number for participation in the meeting.

4. All decisions of the Commission shall be made by a majority vote of the Commissioners attending the meeting, provided a quorum is present, unless otherwise provided in this Title.

5. Matters dealing with personnel, enforcement, individual taxpayers, or other confidential matters shall be conducted in executive session and shall not be open to the public.

Section 12-2-14. Powers and Duties of Commission. The power, authority and duties of the Commission shall be as follows:

1. To administer, implement and enforce this Title;
2. To make recommendations to the Tribal Council concerning amendments to this Title;
3. To make recommendations to the Tribal Council on the rates of taxes imposed by this Title and to publish such rates upon the Tribal Council setting such rates as provided in this Chapter;
4. To determine, assess, collect, and issue receipts for all taxes imposed by this Title;
5. To abate, compromise and settle any tax owed in accordance with this Title;
6. To bring legal action in the name of the Tribe to collect taxes, penalties and interest in accordance with this Title;
7. In the conduct of any enforcement action authorized by this Title, including examinations and audits, to make an examination or investigation of the place of business, equipment, facilities, tangible personal property, and the books, records, papers, vouchers, accounts, documents, and financial statements of any taxpayer during normal business hours;
8. To conduct hearings and hear appeals authorized by this Title, provided the Commission shall have no authority to alter tax rates set by this Title or to declare any portion of this Title or other law of the Tribe invalid for any reason;
9. To issue subpoenas, compel the attendance of witnesses, administer oaths, and require testimony under oath at any hearing conducted by the Commission;

10. To examine, under oath, either orally or in writing, any taxpayer or any agent, officer or employee of any taxpayer or any other witness with respect to any matter subject of this Title;

11. To collaborate and cooperate with such other agencies of the Tribe, other tribes, the United States and the states as necessary to implement and enforce this Title and other laws administered by the Commission;

12. To negotiate mutual assessment and collection assistance agreements with other tax jurisdictions, provided that any such agreement shall be subject to approval of the Tribal Council;

13. To develop standard forms and to require by regulation the filing of any such forms or reports necessary for implementation of this Title;

14. To utilize or adopt forms from other appropriate jurisdictions to use as its own so long as such forms meet the requirements of the laws of the Tribe for which such forms are utilized;

15. To promulgate rules and regulations, subject to approval of the Tribal Council and consistent with the laws of the Tribe, which are necessary for carrying out this Title or any other laws administered by the Commission;

16. To delegate any of its power, authority and duties to an individual Commissioner or other personnel or employee of the Commission, provided that the Commission shall not delegate its power to promulgate rules and regulations or to conduct hearings and hear appeals; and

17. To perform all other duties delegated or assigned to the Commission by this Title or other laws of the Tribe or the Tribal Council and otherwise implement this Title.

Section 12-2-15. Obtaining Information.

1. The Commission may request such information relevant and material to the enforcement of this Title from any and all persons who:

a. Are engaged in business activity within the territory of the Tribe or with the Tribe;

b. Own an interest in a lease granted by the Tribe; or

c. Are otherwise subject to the jurisdiction of the Tribe.

2. Upon a written request, such persons shall provide the information requested by the Commission. The Commission may issue a subpoena as provided in this Chapter or request the Court to issue a subpoena or other order, including ex parte without a hearing, to obtain the information required to be provided under this Section.

Section 12-2-16. Investigative Authority.

1. For the purpose of enforcing the provisions of this Title, the Commission shall have the authority to inspect property, to examine and require the production of any pertinent records, books, information, or evidence, and to require the presence of any person and require testimony under oath concerning the subject matter of any inquiry of the Commission, and to make a permanent record of the proceeding.

2. For the purpose of accomplishing the authority granted in this Section, the Commission shall have the power to issue subpoenas and summons requiring attendance and testimony of witnesses and production of papers or other things at any hearing held pursuant to this Title.

3. If a person fails to comply with a subpoena issued by the Commission, the Commission may apply to the Tribal Court for issuance of an order to show cause which directs that the person against whom the subpoena was issued shall comply with the subpoena within ten (10) days or show cause why he or she should not be held in contempt of court in accordance with the laws of the Tribe. The Tribal Court shall issue the order to show cause without notice or hearing, unless the Court finds that the subpoena was not lawfully issued or was not properly served in accordance with this Section.

4. Any subpoena, summons or notice issued by the Commission shall be served in the manner provided for service of the same in the rules of procedure governing civil actions in Tribal Court.

Section 12-2-17. Private Rulings.

1. Upon request as provided in this Section, the Commission shall have the discretionary authority to issue private rulings concerning the validity or application of any law administered by it or any rule or regulation of the Commission with respect to any property, person, or state of facts, except that no ruling will be given in any matter already under examination or appeal.

2. A taxpayer, designee, or representative may request a private ruling in connection with determining any obligation under this Title.

3. A request for a private ruling shall:

- a. Be made in writing at the office of the Commission;
- b. State with particularity the ruling sought; and
- c. Contain a complete statement of the facts to be relied on together with any information and documents necessary to present those facts.

4. Private rulings are binding on the Commission with respect to the facts and issues presented and ruled upon, but only as to the subject property or the person requesting the ruling.

Section 12-2-18. Rules and Regulations. The Commission shall promulgate rules and regulations, not inconsistent with this Title and subject to the approval of Tribal Council, as it deems necessary or desirable in the public interest in carrying out the duties of the Commission including, but not limited to:

1. Internal operational procedures;
2. The forms to be used by taxpayers;
3. The form and manner in which taxpayers keep records, books and accounts;
4. The interpretation or application of laws of the Tribe governing taxation to ascertain or compute the tax owed by a taxpayer;

5. The manner and method of collection of delinquent taxes, including procedures to attach and seize assets;

6. Procedures for conducting investigations, inspections, examinations, and field and office audits;

7. Requirements concerning payment by a taxpayer of all or a portion of the costs of investigation of that taxpayer;

8. Procedures for all hearings conducted by the Commission; and

9. Protection of the due process rights of taxpayers and all persons subject to the enforcement of this Title by the Commission.

Section 12-2-19. Setting Tax Rates.

1. For any tax rate imposed by this Title which is subject to change without amending this Title, the Tribal Council may set such tax rate, including the effective date for such tax rate, by resolution of the Tribal Council.

2. Upon approval by the Tribal Council of any tax rate subject to change by the Commission, the Commission shall post notice of such new tax rate at all Tribal governmental offices and on the Tribe's website and shall publish such notice in the Tribal newsletter. In addition, the Commission shall mail such notice to every taxpayer known to the Commission subject to such tax. Such notice shall include:

a. The name of the tax subject of the new rate with reference to the appropriate chapter or section imposing such tax;

b. The current tax rate for the tax subject of the new rate;

c. The new tax rate for the tax subject of the new tax rate; and

d. The effective date of the new tax rate.

3. The Commission shall maintain an easily accessible list of all current tax rates for all taxes imposed by the Title and

make such list publicly available on the Tribe's website, at the Commission's offices, and upon request of any person.

Section 12-2-20. Commission Seal.

1. The Commission shall acquire an official seal which shall be used on all original and/or certified copies of all documents of the Commission to evidence their authenticity.

2. The seal of the Commission shall:

a. Be circular in shape;

b. Contain the words "Ponca Tribe of Nebraska" around the top edge;

c. Contain the words "Tax Commission" around the bottom edge; and

d. Contain the words "Official seal" in the center.

3. The seal shall be secured at all times to prevent unauthorized use.

Section 12-2-21. Stamps and Licenses.

1. The Commission shall provide for the form, size, color and identifying characteristics of all licenses, permits, tax stamps, tags, receipts or other instruments evidencing receipt of any license or payment of any tax or fee administered by the Commission or otherwise showing compliance with this Title.

2. Unless otherwise provided by the law applicable to a particular instrument developed by the Commission, any instrument developed by the Commission under this Section shall contain at least the following information:

a. The words "Ponca Tribe" or, if space allows, "Ponca Tribe of Nebraska;"

b. If space allows, the words "Tax Commission;"

c. The amount for which the instrument was issued or represents, unless display of the amount is reasonably impractical or constrained by space;

d. If the instrument is for the imposition of a tax, an indication of the tax imposed;

e. If the instrument is a license or permit, an indication of the type of license or permit, its effective dates, and the name and address of the taxpayer to whom it is issued; and

f. If the instrument is a receipt, an indication of what the receipt is for, any amount the receipt is for, and the name and address of the taxpayer to whom it is issued.

3. The Commission shall provide for the manufacture, delivery, storage and safeguarding of any instrument developed under this Section and shall safeguard such instruments against theft, counterfeiting and improper use.

4. The Commission may, pursuant to and in accordance with such rules and regulations as the Commission shall prescribe:

a. Allow the use of metering devices in lieu of paper stamps; and

b. Exchange new stamps for damaged, out of date or otherwise unusable stamps.

Section 12-2-22. Treatment of Tax Proceeds.

1. The Commission, in coordination with the Finance Department, shall maintain financial records and books of account in accordance with the following:

a. Such records and books shall adequately account for all funds received and disbursed by the Commission;

b. Such records and books shall be maintained in accordance with generally accepted accounting standards;

c. Separate records and books shall be maintained for each tax imposed by the laws of the Tribe; and

d. Such records and books shall be reconciled with any original tax returns or other pertinent records of the Commission.

2. The proceeds of any tax imposed by the laws of the Tribe and collected by the Commission shall be distributed by the Commission in accordance with any provisions of the law governing such tax. If no provision for distribution is made by such law, all such tax proceeds shall be deposited in accounts as provided in this Section.

3. Except where a law governing a particular tax provides otherwise, all taxes, fees, penalties, interest or other funds collected by the Commission shall be deposited immediately into a federally insured bank account for the benefit of the Tribe and refunds paid from the same account.

4. For purposes of making deposits and issuing refunds, the Commission may establish an account with a federally insured financial institution or utilize an existing account of the Tribe, provided that if the Commission utilizes an existing account of the Tribe, the Commission, in coordination with the Finance Department, shall maintain appropriate records accounting for all funds deposited to and refunded from such account by the Commission.

5. Except for refunds authorized by the Commission in accordance with this Title and the rules and regulations of the Commission, monies shall be expended from the revenues of the Commission only as directed by the Tribal Council in accordance with the laws and practices of the Tribe governing appropriation of Tribal funds and current procedures of the Finance Department.

Section 12-2-23. Records of Commission.

1. The Commission shall create and maintain accurate and complete records which contain information and documents necessary for the proper and efficient operation of the Commission, including, but not limited to:

a. All taxes, penalties and interest levied, due and collected;

b. All refunds issued;

c. All licenses, permits, stamps and the like issued and any fees or taxes received for the same; and

d. Each and every official transaction, communication or action of the Commission.

2. The records of the Commission shall be maintained at the office of the Commission and shall not be removed from said office without the written authorization of the Commission.

3. Except where expressly provided otherwise in this Section or elsewhere the laws of the Tribe, names, records, and other information concerning the individual business or personal activities of a particular person, including information supplied by a person in response to a request, included in any return or form required to be filed with the Commission or obtained in the course of an examination, shall be held confidential and shall not be provided or open to inspection to any but the following:

a. The person subject of the record or information and his or her legal counsel or other authorized representative;

b. Persons directly connected with the administration of the Commission;

c. Legal counsel for the Commission;

d. Other departments and agencies of the Tribe and the Tribal Attorney upon written request demonstrating a legitimate need for such records or information in connection with the governmental function of such department, agency or Tribal Attorney;

e. To a governmental agency of another federally recognized Indian tribe, the United States or a state according to the terms of a reciprocal agreement for the exchange of information or if the receiving agency has entered into a written agreement with the Commission to use the information for tax purposes only and that the receiving agency has enacted a similar confidentiality rule; and

f. To others when the person subject of the record or information has authorized the release of information or otherwise waived confidentiality expressly in writing.

4. Nothing in this Section shall prevent the Commission from releasing information:

a. To the Tribal Attorney for purposes of assisting or representing the Commission;

b. In a proceeding before the Commission involving the person subject of the record or information;

c. In a proceeding in a court or other tribunal to which the Commission is a party or representing the Tribe, including any action to enforce any act of the Commission, to collect taxes, or where the person subject of the record or information has put his or her own liability for taxes at issue;

d. That is solely the name, address, or other general information which is otherwise in the public record or generally available to the public upon the making of a reasonable inquiry;

e. In recording tax liens on the property of the person subject of the record or information or collecting taxes by levy upon the property or rights to property of such person;

f. Which is only the amount and basis of unpaid taxes to the purchaser or an intended purchaser of property or business of the person subject of the records or information;

g. In accordance with a valid written order of the Tribal Court; or

h. When the person subject of the record or information authorizes the release of information or otherwise waives confidentiality expressly in writing.

5. The Commission may limit the information disclosed to persons, agencies, and entities as authorized under this Section to that information necessary to accomplish the purposes for which such information is requested or for which such information is being disclosed. Nothing in this Section shall be construed as granting to the persons, agencies, and entities authorized to receive information under this Section the right to review or copy the complete record involving a person or any information beyond what is necessary.

6. Notwithstanding anything to the contrary in this Section, the following records and information shall be considered public records of the Commission and shall be provided or made available for inspection during regular business hours upon proper written request to the Commission and payment of any copying costs set by the Commission, provided that the names and other identifying or personal information appearing in such record is rendered unreadable prior to provision or inspection:

a. Rulings, decisions and opinions rendered by the Commission; and

b. Any other record or information of the Commission which does not concern the individual business or personal activities of a particular person.

7. Any person who willfully discloses confidential information other than as expressly authorized in this Section shall be subject to a civil fine not to exceed fifty dollars (\$50) or, in the case of an employee or officer of the Tribe, suspension for 30 days, or both, and any such fine may be imposed by the Commission pursuant to a notice of assessment and thereafter enforced and collected through a civil cause of action brought by the Commission on behalf of the Tribe in a proceeding in the Court.

8. The records of the Commission shall be subject to audit at any time at the direction of the Tribal Council, but not less than once each year.

Section 12-2-24. Use of Other Resources. In carrying out its duties and responsibilities:

1. The Commission may use the services, information or records of other departments and agencies of the Tribe or otherwise available to the Tribe, both from within and without the Tribe, and such departments, agencies and others shall furnish such services, information or records upon request of the Commission; and

2. The Commission may use personnel and employees of the Tribal administration as it would personnel and employees of the Commission, provided the Commission coordinates with and obtains approval from the Tribal administration.

CHAPTER 3
COLLECTION AND ENFORCEMENT

Section 12-3-1. Payment and Filing.

1. Except where the laws of the Tribe expressly provide otherwise, all filings and payments related to taxes under the laws of the Tribe shall be tendered to the Commission.

2. Any payment received by the Commission will be applied as follows:

- a. First, to satisfy any penalty;
- b. Second, to satisfy any interest accrued;
- c. Third, to the tax owed; and
- d. Lastly, any overpayment refunded to the taxpayer.

Section 12-3-2. Extensions of Time.

1. A taxpayer may file a written request for a one-month extension of the time for filing a return and for any payment due with the return, subject to the following:

- a. The request must identify the taxpayer, return, and assessment date or period;
- b. The request must include a statement of reason for requesting the extension; and
- c. The request must be filed at the place and by the time for filing the return.

2. Upon receipt of a valid request for extension, the time for filing the return subject of the extension will be automatically extended by one month. The time for any payment shall also be extended, provided that the taxpayer pays with the request an amount equal to the tax liability due for the previous period or at least ninety percent (90%) of the tax due with the return subject of the extension, whichever is less. The balance of any tax due, along with accrued interest, must be paid by the expiration of the extension granted.

3. In its discretion and for good cause shown, the Commission may grant additional extensions of time of up to three months on the basis of a similar written request filed before the expiration of an extension already granted. The Commission may require the payment of an estimated amount of tax or condition the grant of an extension of time to pay upon the posting of a bond or provision of other security or the creation of a lien.

Section 12-3-3. Duty to Keep Records. Every taxpayer shall keep and maintain accurate records in such form as to make it possible

to determine the tax due. Such records shall be maintained until the period of limitations governing the assessment of such tax expires as provided in this Chapter.

Section 12-3-4. Assessment of Tax.

1. The Commission may determine and assess against a taxpayer liability for tax, interest, penalties, or other costs in the following circumstances:

a. When it appears that a return filed or a payment made does not reflect the amount of tax due under applicable law;

b. When a required return has not been filed or is incomplete;

c. If a taxpayer fails or refuses to provide information within its possession or control which is relevant to a determination of tax due and is required to be provided under this Title;

d. Pursuant to an examination and audit as provided for in this Chapter; and

e. When it appears that a taxpayer has made an overpayment.

2. The Commission shall make assessments pursuant to this Section upon the information available to the Commission and may also obtain information in accordance with this Title upon which to base an assessment of the tax.

3. When the value of an item is relevant to the calculation of an assessment, the Commission shall determine the value on the basis of the best information it finds readily available.

4. Upon making an assessment pursuant to this Section, the Commission shall issue a notice of assessment which sets forth the deficiency, interest, penalties and any other costs or, in the case of an overpayment, issue a notice of refund and remit a refund in the amount of overpayment.

Section 12-3-5. Examination and Audit.

1. The Commission may examine and audit any taxpayer for the following purposes:

- a. To make an assessment;
- b. To make a required return where none has been made;
- c. To determine the correctness of any return or form filed;
- d. To determine the liability of the taxpayer for taxes;
- e. To determine the liability in law or in equity of any transferee or fiduciary of any taxpayer for taxes; or
- f. For collecting any liability to the Commission.

2. In conducting an examination and audit pursuant to this Section, the Commission may:

- a. Examine any books, records, papers, maps, documents, or other data which may be relevant and material to the inquiry upon reasonable notice:
 - i. During normal business hours;
 - ii. At any other time agreed to by the person having possession, custody or care for such data; or
 - iii. At any time pursuant to an order of the Tribal Court;

b. Summon the person liable for the tax or required to perform the act, or any officer or employee or agent of the person, or any person having possession, custody or care of the books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Commission may deem proper, to appear before the Commission at the time and place named in the summons and to produce such books, records, papers, maps, documents or other data, and to give such testimony, under oath, as may be relevant or material to the inquiry; and

c. Take testimony of any person, under oath, as may be relevant or material to the inquiry.

Section 12-3-6. Notices of Assessment and Refund.

1. A notice of assessment or refund may arise from:

a. An initial assessment of tax;

b. An estimate of the tax due when a required return has not been filed;

c. A deficiency in the amount of tax reported or paid determined upon examination of a declaration; or

d. An application of interest, penalties, or charges for costs.

2. A notice of assessment or refund will require the payment of the amount assessed or remittance of the refund by a time not less than sixty (60) days after the date of the notice.

3. Upon receipt of a notice of assessment or refund, the taxpayer must either comply with the terms of the notice or request a formal or informal conference as provided in this Chapter.

Section 12-3-7. Formal Conference.

1. Within thirty (30) days of service of a notice of assessment or refund, a taxpayer may request a conference with the Commission to seek an abatement or a review and redetermination of an assessment or denial of refund.

2. A request for a conference shall:

a. Be made in writing to the Commission or its designee;

b. Identify the notice of assessment or denial of refund;

c. Declare the redetermination sought; and

d. Include a complete statement of the facts relied on.

3. The Commission, after an initial inquiry, may deny the request for a conference and direct the taxpayer to proceed to an appeal in accordance with this Chapter.

4. Upon a proper request for a conference, payment on the notice will be stayed until a time not more than thirty (30) days after issuance of a decision.

5. The Commission may confer with the taxpayer by phone or in person, or may require the submission of additional written material and will issue a written decision. If the result sought is denied in whole or in part, the decision will state the basis for the denial.

6. After the Commission issues its decision, the taxpayer may appeal the matters in dispute as provided in this Chapter. The taxpayer may request a stay of payment on the decision within ten (10) days after issuance of the decision, provided the request is based upon an intention to request a hearing.

7. If no appeal is made within the time allowed, the decision from a formal conference is final and is not subject to any appeal before the Commission or in any court.

Section 12-3-8. Appeal to Commission.

1. Within sixty (60) days of service of a notice of assessment or denial of refund, or issuance of a decision from a formal conference, the taxpayer may file an appeal with the Commission.

2. A request for appeal shall:

- a. Be made in writing to the Commission;
- b. Identify the notice of assessment or denial of refund;
- c. Identify any conference decision;
- d. Declare the redetermination sought; and
- e. Include a complete statement of the facts relied on.

3. Payment of taxes which are being appealed in an administrative hearing may be stayed upon the written request of the appellant. The stay may be conditioned on the posting of a bond or provision of other security, or on the creation of a lien.

4. The Commission shall take testimony and examine documentary evidence as necessary to determine the appeal.

5. In voting upon an appeal, any abstention by a Commissioner shall be counted as a vote to deny the appeal.

6. After hearing an appeal, the Commission shall issue a decision, including the actual redetermination of taxes based on correction of tax computations or corrections to the classification of property or income.

7. The decision of the Commission on an appeal under this Section shall be the final decision of the Commission, provided that the Commission shall be considered to have issued a final decision denying the appeal if the Commission:

- a. Fails to schedule and hold a hearing on the merits of an otherwise valid appeal within sixty (60) days after receipt of a notice of appeal; or

- b. Fails to issue a written decision within thirty (30) days of the hearing on the merits of the appeal.

8. The Commission may permit or require, pursuant to the rules and regulations of the Commission, one or more levels of review by its employees or delegates in addition and prior to appeal to the Commission, provided that the failure to proceed to

a next required level of review shall constitute a waiver of any further appeal or judicial review.

9. The failure to file an appeal pursuant to this Section shall not prevent the taxpayer from defending any collection action of the Commission in Tribal Court.

Section 12-3-9. Judicial Review.

1. If a taxpayer is aggrieved by a final decision of the Commission on appeal, the taxpayer may challenge the decision by filing a petition requesting judicial review of the final order in the Tribal Court.

2. Judicial review of the Commission's final decision shall proceed in accordance with the following:

a. The petition for judicial review shall be filed within thirty (30) days of the issuance of the Commission's decision;

b. No new or additional evidence may be introduced, but the matter shall be heard on the record established before the Commission;

c. No new or additional issues may be raised and only issues raised before the Commission may be heard regardless of the Commission's authority to hear the issue;

d. The Tribal Court shall uphold all factual findings of the Commission unless the Tribal Court concludes that such findings are not supported by the substantive evidence in the record established before the Commission;

e. In reviewing legal conclusions reached by the Commission, the Tribal Court shall give proper weight to the Commission's interpretation of this Title and any rules and regulations of the Commission;

f. The Tribal Court may affirm, reverse, modify or vacate and remand the Commission's final decision, but shall affirm the final decision unless the Tribal Court concludes that the final decision of the Commission is:

i. Not supported by the evidence;

- ii. Arbitrary or capricious;
- iii. An abuse of discretion;
- iv. Beyond the Commission's authority; or
- v. Otherwise contrary to the laws of the Tribe.

3. The Tribal Court shall dismiss any action brought against the Commission if:

a. The taxpayer has not exhausted all administrative remedies before the Commission, including an appeal to the Commission; and

b. The payment of the taxes assessed or determined by the Commission have not been made.

4. Notwithstanding anything to the contrary in this Title, the Tribal Court shall not have jurisdiction or authority to award or order the payment of damages or other monies or provide any remedy to a taxpayer except for enjoining the collection of or ordering the return of taxes, penalties or interest.

Section 12-3-10. Collection of Tax.

1. All taxes assessed by the Commission are a debt due and owing the Tribe from the taxpayer.

2. Any amount set forth in a notice of assessment or reported due in a filed return and not paid by the due date is collectible as of that date without further notice.

3. If any amount due the Commission is not paid when due, the Commission may collect such amount in any manner:

a. Provided in this Chapter;

b. Permitted under the laws of the Tribe for the collection of a debt by a member of the public generally, including, but not limited to, garnishment, seizure, attachment and execution; and

c. Available to the Tribe for collection of debts owed the Tribe.

4. Any suit brought by the Commission to collect amounts due and owing or otherwise enforce the laws of the Tribe enforceable by the Commission shall be captioned: "The Ponca Tribe of Nebraska ex rel. Ponca Tribe of Nebraska Tax Commission, Plaintiff vs. (name of taxpayer(s)), Defendant."

Section 12-3-11. Refunds.

1. Any taxpayer who has made an overpayment may file a written claim for refund with the Commission, except that:

a. No claim for refund need be filed if the basis therefor has already been established under an abatement or asserted in an appeal under this Chapter; and

b. An issue determined in an appeal may not be reopened by filing a claim for refund.

2. If any overpayment arises from an action of a Tribal, federal or state agency or court, other than in an appeal under this Chapter, the time for filing a claim for refund will be one (1) year from the date of such action.

3. A claim for refund may take the form of an amended return for the period for which the overpayment was made. The return must contain a clear statement of the amount of the refund being claimed and the facts or other basis for determining an overpayment.

4. At the option of the taxpayer, an overpayment may be applied toward tax due for a current or future period.

5. If a taxpayer owes other taxes, interest or penalties to the Commission, any overpayment shall be applied to such other taxes, interest or penalties as a payment received from the taxpayer.

Section 12-3-12. Interest.

1. Interest shall be imposed on any unpaid tax from the date the tax was first due until the date payment is received without regard to any extension or stay of time. The rate of

interest on unpaid tax shall be the rate in use from time to time by the United States Internal Revenue Service.

2. Interest shall be remitted to a taxpayer on any overpayment of tax from the date the payment was received to the date a refund is made. The rate of interest on refunds shall be the rate in use by the United States Internal Revenue Service.

Section 12-3-13. Costs of Collection.

1. A taxpayer who fails to pay any taxes at the time due may be charged for extraordinary administrative costs incurred in collecting the unpaid amount, including legal counsel fees and other costs of collection.

2. Costs of collection shall be limited to direct costs and out-of-pocket expenses incurred in collection efforts beyond the ordinary office functions, duties, and notices for collecting taxes and the usual legal expenses for obtaining court judgments.

3. The Commission may relieve a taxpayer from the operation of this Section for good cause shown, considering all surrounding facts and circumstances, including the pattern of compliance of the taxpayer, mistake, the absence of negligence or intentional disregard of the law, or the presence of substantial issues of interpretation of the law.

4. If the Commission determines to charge costs of collection to a taxpayer, the Commission shall issue a notice of assessment to the taxpayer which itemizes all costs charged.

Section 12-3-14. Penalties.

1. A taxpayer who fails to file a return by the time due shall be assessed a penalty of ten percent (10%) of the tax due for the assessment date or period, but not less than one hundred dollars (\$100), provided that a return filed on or before the date of a granted extension for filing shall be deemed timely filed. For each full month a return is overdue, an additional penalty of one percent (1%) of the tax due will be assessed up to an amount equal to twenty-four percent (24%) of the tax. The Commission may waive the penalty under this subsection after the return is filed if the taxpayer shows the failure to timely file was due to reasonable cause and not to willful neglect.

2. A taxpayer who fails to pay an amount of tax by the time it is due shall be assessed a penalty of five percent (5%) of the amount of the underpayment, provided that a payment made on or before the date of a granted extension for paying shall be deemed timely filed. For each full month a payment is overdue, an additional penalty of one-half percent (1/2%) of the amount of the underpayment will be assessed up to an amount equal to thirty-six percent (36%) of the underpayment. The Commission may waive the penalty under this subsection after the tax is paid if the taxpayer shows the failure to timely pay was due to reasonable cause and not to willful neglect.

3. Any taxpayer who is under-assessed by reason of providing incomplete or incorrect information, or who understates tax imposed, through negligent or intentional disregard of the laws of the Tribe governing taxation shall be assessed a penalty of two hundred fifty dollars (\$250) plus twenty-five percent (25%) of the amount of the underpayment of tax. If any part of such under-assessment or understatement of tax is due to fraud, the taxpayer will be assessed an additional penalty of fifty percent (50%) of the amount of the underpayment of tax. Any person who assists a taxpayer in such fraud will be subject to a penalty of five hundred dollars (\$500), plus twenty-five percent (25%) of the amount of the underpayment of the tax.

4. Any taxpayer who violates any provision of this Title or other law of the Tribe governing taxation for the purpose of evading the payment of taxes shall be assessed a penalty of five hundred dollars (\$500) plus twenty-five percent (25%) of the amount of the tax due.

5. Any person obligated to collect or remit a tax imposed by this Title who knowingly fails to collect or remit such tax shall be liable for the full amount of the tax that should have been collected plus interest at the rate set forth in this Chapter. If such failure to collect or remit such tax is willful, the person shall be subject to an additional penalty in an amount equal to one hundred percent (100%) of the taxes that should have been collected or remitted.

Section 12-3-15. Enjoining Business. In addition to any other remedies available to it, the Commission may bring, in the name of the Tribe, an action in any appropriate court to enjoin the operation of any unlicensed business, activity, or function when this Title or other law of the Tribe governing taxation requires

a license for the conduct of such business, activity or function. The enjoining of a business pursuant to this Section shall be deemed an exclusion of the business pursuant to the Tribe's power to exclude and other inherent powers and authority of the Tribe.

Section 12-3-16. Tax Lien.

1. If a taxpayer fails to pay any amount set forth in a notice of assessment by the date required in such notice, the amount shall be a lien in favor of the Tribe against all property of the taxpayer then owned and thereafter acquired that is not exempt from garnishment or attachment under the laws of the Tribe.

2. A lien for unpaid amounts in a notice of assessment shall commence upon the date of the notice of assessment and shall continue until the amount of the lien is satisfied or released or ten (10) years from the date of the notice of assessment, whichever occurs first.

3. A lien for unpaid amounts in a notice of assessment shall not be effective against other parties until a notice of lien is recorded in the office of the Commission in a form available for inspection by the public.

4. The Commission may file or record a notice of lien for unpaid taxes against specified personal or real property of a taxpayer in any office of any jurisdiction in the manner permitted under the laws of such jurisdiction, provided that the Commission shall file a release of any such lien in the same office upon the satisfaction or release of the lien.

5. The Commission may enforce a lien against the property of a taxpayer transferred to another person and the person takes subject to the lien if:

a. The property was transferred after the lien became effective;

b. A notice of the lien has been filed in the offices of the Commission as provided in this Section; and

c. The taxpayer received clearly inadequate or no consideration for the transfer.

6. The Commission may foreclose upon any or all items of property subject to a lien under this Section through an action for foreclosure or writ of execution in an appropriate court.

Section 12-3-17. Seizure of Contraband.

1. In addition to any other remedies available to it, the Commission, pursuant to an order issued by the Commission, may seize any property declared to be contraband by this Title.

2. Upon seizure of any property pursuant to this Section, the Commission shall inventory all items seized and leave a written copy of such inventory with the person from whom it was seized or, if such person cannot be found, posted at the place from which the property was seized.

3. Within ten (10) business days of any seizure of property pursuant to this Section, the Commission shall file a complaint for forfeiture against such property in the Tribal Court. The complaint shall be served on the taxpayer and any and all other persons known by the Commission to claim an ownership interest, right of possession to, or other interest in the property.

4. Upon the Commission showing by clear and convincing evidence that such property is contraband under this Title, the Tribal Court shall enter an order that such property is forfeited and that all title and ownership interest in such property is vested in the Tribe.

5. Any person who claims an ownership interest, right of possession to, or other interest in property seized pursuant to this Section may intervene in the Tribal Court action and raise any defense he or she may have. Such persons may redeem the property at any time prior to final judgment of forfeiture by depositing with the Court all taxes assessed or owing with respect to such property.

Section 12-3-18. Sale of Property.

1. Upon a final order of forfeiture entered by the Tribal Court or receipt of property through foreclosure, execution or other appropriate means, the Commission shall convert such property into money through public sale of such property in accordance with this Section.

2. Prior to any public sale of property, the Commission shall provide notice of the public sale at least twenty (20) days prior to the date of such public sale. The notice shall be posted at all Tribal governmental offices and on the Tribe's website and, if an edition of the Tribal newsletter will be released prior to the public sale, published in the Tribal newsletter. The Commission may post and publish the notice in such other locations and periodicals as the Commission deems appropriate. The notice shall include:

- a. The date and time of the public sale;
- b. The location of the public sale;
- c. A statement that the property will be sold to the highest bidder; and
- d. Unless the inventory of property to be sold is included with the notice, information on where individuals may obtain or view an inventory of the property to be sold.

3. All public sales pursuant to this Section shall be held at one of the government offices of the Tribe and all property shall be sold at public auction to the highest bidder.

4. The amount received for any property sold at public auction in accordance with this Section shall be deemed to be the fair market value of such property for any purpose under applicable law.

5. All revenue from the sale of property at a public sale shall be applied as a payment to the Commission to the credit of the taxpayer who previously owned the property and deposited in the accounts of the Commission, provided that the taxpayer shall not receive any excess funds from the sale of property seized as contraband and such excess funds shall become the property of the Tribe. If the revenues from the sale of property of a taxpayer do not satisfy the total amount owed by the taxpayer, the taxpayer shall remain liable for any remaining balance.

6. The Commission may conduct a public sale at such times as it deems sufficient property has accumulated to make the sale profitable.

Section 12-3-19. Abatement of Taxes.

1. In response to a written request but before any court acquires jurisdiction in the matter, or at any time when an assessment is found to be incorrect, the Commission may abate any part of an assessment which it determines was incorrectly, erroneously, or illegally made.

2. A request for an abatement must:

a. Be made in writing to the Commission or its designee;

b. State the abatement sought; and

c. Contain a complete statement of the facts relied on, together with any information and documents necessary to present those facts.

3. Abatements in excess of \$1,000 will be recorded in the offices of the Commission in a form available for public inspection and shall be maintained for a minimum of six (6) years after the date of abatement.

Section 12-3-20. Settlement Agreements.

1. At any time after an assessment of taxes, the Commission may compromise the liability of a taxpayer by entering with the taxpayer into a written settlement agreement that adequately protects the interests of the Tribe.

2. If a settlement agreement is entered into after a court acquires jurisdiction over the matter, the settlement agreement shall be made part of a stipulated order or judgment disposing of the case.

3. As a condition for entering into a settlement agreement, the Commission may require the provision of security for payment of any taxes due according to the terms of the agreement.

4. Upon the compromise of a liability and according to the terms of the settlement agreement, the Commission will cause the abatement of the appropriate amount of the assessment.

5. A settlement agreement is conclusive as to the liability or non-liability for payment of taxes for the assessment dates or periods referred to in the agreement, except upon a showing of fraud, malfeasance, or misrepresentation or concealment of a material fact.

Section 12-3-21. Violations.

1. It shall be a violation of this Title for any person to:

a. Knowingly file any false report or return with the Commission;

b. Aid, abet, or assist another in making a false or fraudulent return;

c. Aid, abet, or assist another in an attempt to evade the payment of any tax;

d. Counterfeit, forge, embezzle, steal, knowingly convert, knowingly misapply, or knowingly permit to be misapplied any stamp, tag, license or other instrument evidencing the payment of taxes;

e. Use, pass, tender as true, or otherwise be in possession of any unauthorized, altered, forged, counterfeited or previously used stamp, tag, license or other instrument evidencing the payment of taxes for the purpose of evading the payment of taxes; or

f. Knowingly violate any provisions of this Title or other law of the Tribe governing taxation.

2. In addition to any other consequences for a violation of this Title, a person who commits a violation of this Title shall be subject to a civil fine of five hundred dollars (\$500) per occurrence, which may be imposed by the Commission pursuant to a notice of assessment and thereafter enforced and collected through a civil cause of action brought by the Commission on behalf of the Tribe in a proceeding in the Court.

3. The Commission may report any violation of this Title to the appropriate officials of other jurisdictions and request an investigation and, if appropriate, prosecution of such violation

as a violation of the laws of that jurisdiction, including the criminal laws of that jurisdiction.

Section 12-3-22. Effectiveness of Notices.

1. Any notice required to be given by the Commission shall be deemed effectively given to a person if it is mailed to the individual last designated by the person at the address shown on the designation.

2. Where a person has not designated an individual, notice shall be deemed effectively given if mailed to any owner of an interest in the business or property subject of the notice.

3. Public notice of lien shall be deemed effective as to all property and rights to property of a taxpayer, business, or person if the description of the taxpayer, business, or person is sufficient to put a reasonable person on inquiry to ascertain the existence of a lien on the property.

4. Nothing in this Section shall preclude the use of other methods of providing notice, including publication, so long as such methods comport with due process.

Section 12-3-23. Limitations of Actions.

1. Any claim or request for credit or refund must be filed within four (4) years of the date the taxes from which such refund or credit is claimed or requested were due and not afterward.

2. A tax, interest or penalty shall not be assessed after the expiration of four (4) years from the date set for the filing of the return or the date the return was filed, whichever is later.

3. The Commission shall impose any civil fine for a violation of this Title within four (4) years from the date such violation occurs and not afterward.

4. The limitation periods provided in this Section will be suspended:

a. During the pendency of any hearing or other legal proceeding concerning the deficiency, interest or penalty;

b. Upon the consent of the taxpayer or, in the case of a claim or request for refund or credit, the Commission; and

c. Except for a claim or request for refund or credit, for any period for which a return is not filed.

5. The issuance of a notice of assessment shall commence a cause of action for collection of any amounts stated in the notice as well as any penalties and interest which may later be added to such amounts for purposes of any civil statute of limitations which may apply to the collection of such amounts.

6. The filing of a written request for refund or credit with the Commission shall commence a cause of action for a return of such amount claimed as well as any interest applicable to such amount for purposes of any civil statute of limitations which may apply to the collection of such refund so long as such request for refund is diligently pursued.

Section 12-3-24. Prohibition of Suits. No suit to restrain the assessment and collection of any tax imposed by this Title or any other law of the Tribe shall be maintained in any court by any person, whether or not such person is the one on whom such taxes were assessed.

Section 12-3-25. Sovereign Immunity in Enforcement.

1. Except for valid judicial review of a decision of the Commission as provided in this Title, nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Commission or any of its agents, officers, officials, personnel or employees.

2. An action brought or taken by the Commission, including without limitation the bringing of suit for the collection of taxes or fines or enjoining a business, activity or function, shall not constitute a waiver of sovereign immunity as to any counterclaim, regardless of whether the asserted counterclaim arises out of the same transaction or occurrence or in any other respect.

3. No economic enterprise of the Tribe may claim sovereign immunity as a defense to any action brought or taken by the Commission, including a suit for the collection of taxes or fines or enjoining a business, activity or function of such economic enterprise and, to the extent necessary, the Tribe waives the

sovereign immunity of its economic enterprises in any action brought or taken by the Commission against such economic enterprise.

CHAPTER 4 SALES TAX

Section 12-4-1. Purpose. The purpose of the tax imposed on sales pursuant to this Chapter is:

1. To regulate and monitor retail sales made by the economic enterprises of the Tribe and otherwise within the territory of the Tribe;

2. To support tribal government, tribal public improvement programs, and tribal infrastructure that benefit members of the Tribe and others within the territory of the Tribe;

3. To raise revenues to help fund health, safety, economic development and general welfare programs and services provided to members of the Tribe and others within the territory of the Tribe.

Section 12-4-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Buyer" means, without limiting the scope thereof, a person who receives goods from a seller in exchange for money, other goods, or services delivered to the seller.

2. "Complimentary" means the provision of goods without charge to a person.

3. "Food" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value, but does not include dietary supplements.

4. "Goods" means tangible personal property which may be seen, weighed, measured, felt, or touched or which is in any other manner perceptible to the senses.

5. "Gross receipts" means the total amount of the sales of a seller either on Tribal lands or outside Tribal lands, exclusive of any rebates.

6. "Occasional sale" means:

a. A sale of an individual's own property at his or her residence or at an online auction site, including garage sales, provided such sales do not occur for more than seven (7) days during a calendar year and the individual does not conduct or engage in a trade or business of selling similar items;

b. Sales of goods solely from an individual's primary residence or at an online auction site with gross receipts of less than \$10,000 per year even if the individual is engaged in a trade or business of selling goods;

c. Sales of goods for a period of less than seven (7) consecutive days at a time, such as sales by a vendor at a powwow or similar cultural event, flea market, craft show, antique show, coin show, stamp show, comic book show, convention exhibit area, school or community-based fundraising event, or similar selling event;

d. Sales of household goods or personal farm equipment at auction by an auctioneer, provided the auctioneer has five (5) or fewer auctions per year;

e. Sales made at public auction pursuant to the laws of the Tribe by the Commission or another department or agency of the Tribe.

7. "Prepared foods" means:

a. Food intended for immediate consumption either on or off the premises of the seller;

b. Food sold in a heated state or heated by the seller;

c. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws;

d. Two or more food ingredients mixed or combined by the seller for sale as a single item, except for:

i. Bakery items, including, but not limited to, bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas;

ii. Ready-to-eat meat and seafood in an unheated state sold by weight;

iii. Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer so as to prevent food borne illnesses; and

iv. Food that is only sliced, repackaged, or pasteurized by the seller; or

e. Food otherwise sold in or by restaurants, cafes, lunch counters, cafeterias, other eating establishments, hotels, gaming establishments, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, convenience stores, and other like places of business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities.

8. "Retail sale" means any sale made for any purpose other than for resale or further processing, but includes any goods purchased at wholesale and withdrawn from stock to be used or consumed in the business or by the owner or any other person, whether or not in the regular course of business or trade.

9. "Sale" means the transfer, whether singly, by subscription, or in any other manner, of all or part of the ownership of, title to, possession of, use of, or other interest in goods for money, other goods, services, or other valuable consideration, including bartering, trading, exchanging, renting, leasing, licensing, conditional sales, and any sales where possession or use of goods is given to the buyer but title is retained by the seller.

10. "Seller" means the person making a sale to a buyer.

11. "Soft drinks" means non-alcoholic carbonated beverages and other non-alcoholic beverages that contain natural or

artificial sweeteners, but does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume.

Section 12-4-3. Tax Imposed.

1. For the privilege of conducting retail sales in the territory of the Tribe, there is levied and there shall be collected a tax at the rate set by the Tribal Council as provided in this Title, but initially at the rate of seven percent (7%), upon the gross receipts from all retail sales of goods on Tribal lands.

2. For purposes of this Chapter, a retail sale occurs on Tribal lands if the location at or from which delivery of the goods is made to the buyer is located on Tribal lands.

3. Every seller shall collect the tax imposed by this Chapter from the buyer. Until collected by the seller, such tax shall constitute a debt owed to the seller from the buyer and shall be recoverable as such. Whether collected or not, the tax shall constitute a debt of the seller owed to the Tribe and collectible by the Tribe as such.

4. For any retail sale consummated by trade, barter, or exchange of anything other than money, the amount of gross receipts from such retail sale for computing the tax imposed by this Chapter shall be the fair market value of the goods sold.

Section 12-4-4. Exemptions.

1. In computing the amount of tax imposed by this Chapter, a seller shall deduct from the amount of gross receipts and shall not collect sales tax on the following:

a. Sales made to the Tribe where the gross receipts from the sale of goods in the transaction is not more than the small purchase threshold, unless payment for the goods is made directly from the proceeds of a substantial indebtedness of the Tribe;

b. Sales made to the government of a state or another federally recognized Indian tribe when the state or tribe

grants a reciprocal exemption to the Tribe and its agencies and departments;

- c. Sales made outside Tribal lands;
- d. Occasional sales;
- e. Sales of food other than soft drinks and prepared foods;
- f. Sales of feminine hygiene products;
- g. Sales of items paid for by food stamps;
- h. Sales of residential heating fuels, natural or artificial gas, electricity, water, steam, telecommunications service, and any other utility;
- i. Sales of automobiles, trucks, truck-tractors, semi-trailers, trailers, boats, travel trailers, motorcycles and all-terrain cycles;
- j. The provision of complimentary goods to customers or employees;
- k. Sales of cigarettes and tobacco products subject to the tax imposed pursuant to Chapter 6 of this Title;
- l. Sales of liquor subject to the tax imposed pursuant to Chapter 7 of this Title;
- m. Sales of motor vehicle fuel subject to the tax imposed pursuant to Chapter 6 of this Title;
- n. Sales of medical and dental supplies, medicines, and pharmaceutical products;
- o. Sales of newspapers and periodicals;
- p. Sales of admissions to events and movies;
- q. Sales of gambling devices regulated by the laws of the Tribe governing gaming and gambling within the territory of the Tribe;

r. Wagers or other amounts paid as consideration for playing a game of chance; or

s. Sales of products from vending machines.

2. In computing the amount of sales tax due under this Chapter, a seller shall deduct from the amount of tax due the amount of tax actually paid by the seller to a state or territory of another federally recognized Indian tribe when such state or tribe grants a reciprocal exclusion or an exemption to similar transactions in the territory of the Tribe.

3. A seller only making occasional sales shall be exempt from collection and payment of the tax imposed by this Chapter.

Section 12-4-5. Tax as Additional Tax. The tax imposed by this Chapter shall be in addition to all other taxes imposed by Tribe or another jurisdiction.

Section 12-4-6. Legal Incidence of Tax. Without limiting the liability of a buyer to remit the tax to the seller, the legal incidence of the tax imposed by the Chapter shall be on the seller.

Section 12-4-7. Tax Stated Separately.

1. Each seller shall state the tax imposed by this Chapter separately from the selling price on any receipt, invoice or other instrument of sale. If the seller does not state the tax separately on the instrument of sale, then the seller shall account for the tax separately in the seller's records of the transaction.

2. In computing the tax imposed by this Chapter, the amount of gross receipts from a retail sale shall be conclusively presumed to be the selling price quoted in any price list, sales document, contract or other agreement between the seller and buyer without tax unless the seller advertises the selling price as including the tax imposed by this Chapter.

Section 12-4-8. License.

1. Any person who engages in retail sales on Tribal lands shall be required to first obtain a retail sales tax license from the Commission. If a person makes retail sales at two or more separate places of business on Tribal lands, a separate retail sales tax license shall be required for each place of business.

2. A retail sales tax license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the Commission may require.

3. A retail sales tax license issued by the Commission shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.

4. A retail sales tax license issued by the Commission shall permit the licensee to purchase goods for resale from a wholesaler or any other person free from the tax imposed by this Chapter on such goods, provided that if the licensee later withdraws the goods, in whole or in part, from inventory for use or consumption by the licensee or any other person, the purchase price of such goods shall be included in the licensee's gross receipts for purposes of calculating the tax imposed by this Chapter.

5. A seller making only occasional sales shall not be required to obtain a retail sales tax license.

6. The Commission, after at least ten (10) days notice and a full hearing, may revoke the retail sales tax license of any person found by the Commission to have violated any provision of this Chapter or any other provision of this Title with respect to the tax imposed by this Chapter.

7. Any person liable for the tax imposed by this Chapter who fails to obtain a retail sales tax license under this Section or who continues to conduct business after such license has been revoked shall forfeit his or her right to make retail sales on Tribal lands until he or she complies with all of the provisions of this Title.

Section 12-4-9. Return.

1. Any seller subject to the tax imposed by this Chapter shall, on or before the twentieth (20th) day following the end of each calendar month, complete a return for the preceding month, on a form prescribed by the Commission, showing the entire amount of gross receipts for its business, the allowable deductions, and the amount of tax for which the seller is liable. The return shall be

signed by the seller or its duly authorized agent and, if applicable, the person and/or firm preparing the return.

2. Any seller operating two (2) or more places of business shall file a consolidated return covering all such places of business.

3. No return need be filed by any seller who is exempt under this Chapter, provided that the Commission may require such seller to file the information necessary to establish his or her exempt status.

Section 12-4-10. Payment. A seller shall remit the amount of tax due under this Chapter with its return and such tax shall be due at the time the return is due.

CHAPTER 5 SERVICES TAX

Section 12-5-1. Purpose. The purpose of the tax imposed on sales pursuant to this Chapter is:

1. To regulate and monitor sales of services made to the Tribe and otherwise within the territory of the Tribe;

2. To support tribal government, tribal public improvement programs, and tribal infrastructure that benefit members of the Tribe and others within the territory of the Tribe;

3. To raise revenues to help fund health, safety, economic development, and general welfare programs and services provided to members of the Tribe and others within the territory of the Tribe.

Section 12-5-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Buyer" means, without limiting the scope thereof, a person who purchases or receives services from a seller in exchange for money, goods, other services, or other consideration delivered to the seller.

2. "Complimentary" means the provision of services without charge to a person.

3. "Construction services" means the performance of services which constitute or are part of construction, repair, demolition, replacement, alteration, modification, or improvement of property, other than personal property which retains its identity as personal property upon completion of the construction services, and includes, but is not limited to:

a. Designing, constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing, or adding to any building, project, development, highway, street, road, railroad, sidewalk, bridge, culvert, excavation, sewer system, irrigation, system, water system, power plant, electrical system, air conditioning system, heating system, transmission line, pipeline, tower, water well, or other improvement or structure, or any part thereof; and

b. Pre-development services, architect services, engineer services, geologist services, land surveying services, landscape architect services, and other design services, regardless of whether such services are provided separately from or as part of other construction services.

4. "Gross contract price" means the total price or other consideration valued in money, whether received in money or otherwise, paid to a seller under a contract, whether written or unwritten, for all work, items, and other obligations, including goods, materials, services, and labor, prior to deduction for any costs, expenses, or payments to subcontractors or other third parties and exclusive of any rebates.

5. "Gross receipts" means the total amount of the sales of a seller either on Tribal lands or outside Tribal lands, exclusive of any rebates.

6. "Occasional sale" means:

a. A sale of an individual's own personal services, provided such sales do not occur for more than seven (7) days during a calendar year and the individual does not conduct or engage in a trade or business of selling similar services; and

b. Sales of services solely from an individual's primary residence or on an online site with gross receipts of less than \$10,000 per year even if the individual is engaged in a trade or business of selling services.

7. "Seller" means the person making a sale to a buyer.

8. "Service" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing goods or property, including construction activities, facilitating or providing financial transactions, and activities performed by a business entity for its owners, members, or shareholders, but excluding services rendered by an employee for his or her employer for the payment of wages.

Section 12-5-3. Tax Imposed.

1. For the privilege of conducting sales of services in the territory of the Tribe, there is levied and there shall be collected a tax at the rate set by the Tribal Council as provided in this Title, but initially at the rate of seven percent (7%), upon the gross receipts from all sales of services on Tribal lands.

2. For purposes of this Chapter, a sale of services occurs on Tribal lands if:

a. The seller is located on Tribal lands;

b. The location where services are provided is on Tribal lands; or

c. The buyer or other person to whom services are provided is located on Tribal lands.

3. Every seller shall collect the tax imposed by this Chapter from the buyer. Until collected by the seller, such tax shall constitute a debt owed to the seller from the buyer and shall be recoverable as such. Whether collected or not, the tax shall constitute a debt of the seller owed to the Tribe and collectible by the Tribe as such.

4. For any sale of services consummated by trade, barter, or exchange of anything other than money, the amount of gross receipts from such sale of services for computing the tax imposed

by this Chapter shall be the fair market value of the services provided.

Section 12-5-4. Exemptions.

1. In computing the amount of tax imposed by this Chapter, a seller shall deduct from the amount of gross receipts and shall not collect service sales tax on the following:

a. Sales of services made to the Tribe other than construction services where the gross contract price, including as modified by any change orders or modifications, is greater than the small purchase threshold, unless payment for the construction services is made directly from the proceeds of a substantial indebtedness of the Tribe;

b. Sales of services made to the government of a state or another federally recognized Indian tribe when the state or tribe grants a reciprocal exemption to the Tribe and its agencies and departments;

c. Sales of services provided outside Tribal lands;

d. Occasional sales;

e. Sales of residential heating fuels, natural or artificial gas, electricity, water, steam, telecommunications service, and any other utility;

f. The provision of complimentary services to customers or employees;

g. Sales of any goods included in such gross receipts separately invoiced and for which the tax imposed pursuant to Chapter 4 of this Title has been charged and paid;

h. Sales of motor vehicle fuel included in such gross receipts separately invoiced and for which the tax imposed pursuant to Chapter 6 of this Title has been charged and paid;

i. Sales of cigarettes and tobacco products included in such gross receipts subject to the tax imposed pursuant to Chapter 7 of this Title;

j. The provision of liquor included in such gross receipts for which the tax imposed pursuant to Chapter 8 of this Title has been charged and paid;

k. The provision of lodging or other occupancy included in such gross receipts for which the tax imposed pursuant to Chapter 9 of this Title has been charged and paid;

l. Sales of medical, dental, and pharmaceutical services;

m. Sales of admissions to events and movies; or

n. Wagers or other amounts paid as consideration for playing a game of chance.

2. In computing the amount of service sales tax due under this Chapter, a seller shall deduct from the amount of tax due the amount of tax actually paid by the seller to a state or territory of another federally recognized Indian tribe when such state or tribe grants a reciprocal deduction or exclusion or an exemption to similar transactions in the territory of the Tribe.

3. A seller only making occasional sales of services shall be exempt from collection and payment of the tax imposed by this Chapter.

4. The Tribe, other than its economic enterprises, shall be exempt from the collection and payment of the tax imposed by this Chapter.

Section 12-5-5. Tax as Additional Tax. The tax imposed by this Chapter shall be in addition to all other taxes imposed by Tribe or another jurisdiction.

Section 12-5-6. Legal Incidence of Tax. Without limiting the liability of a buyer to remit the tax to the seller or the liability of a seller to remit the tax to the Tribe, the legal incidence of the tax imposed by the Chapter shall be on the seller.

Section 12-5-7. Tax Stated Separately.

1. Each seller may state the tax imposed by this Chapter separately from the selling price on any receipt, invoice, or other instrument of sale. If the seller does not state the tax

separately on the instrument of sale, then the seller shall account for the tax separately in the seller's records of the transaction.

2. In computing the tax imposed by this Chapter, the amount of gross receipts from a sale of services shall be conclusively presumed to be the price quoted in any price list, sales document, contract, or other agreement between the seller and buyer without tax unless the seller advertises the selling price as including the tax imposed by this Chapter.

Section 12-5-8. License.

1. Any person who engages in sales of services and is located on Tribal lands shall be required to first obtain a services sales tax license from the Commission. If a person makes sales of services at two or more separate places of business on Tribal lands, a separate service sales tax license shall be required for each place of business. Upon application of such person, the Commission may also issue a service sales tax license to any person who is not located on Tribal lands, but engages in sales of services to the Tribe or on Tribal lands.

2. A service sales tax license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the Commission may require.

3. A service sales tax license issued by the Commission shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.

4. A service sales tax license issued by the Commission shall permit the licensee to purchase services from subcontractors free from the tax imposed by this Chapter on such services, provided that the gross cost or other price paid for such subcontractor shall be included in the licensee's gross receipts for purposes of calculating the tax imposed by this Chapter.

5. A seller making only occasional sales shall not be required to obtain a service sales tax license.

6. The Commission, after at least ten (10) days notice and a full hearing, may revoke the service sales tax license of any person found by the Commission to have violated any provision of

this Chapter or any other provision of this Title with respect to the tax imposed by this Chapter.

7. Any person who engages in sales of services and is located on Tribal lands who is liable for the tax imposed by this Chapter and fails to obtain a service sales tax license under this Section or who continues to conduct business after such license has been revoked shall forfeit his or her right to make service sales to the Tribe and on Tribal lands until he or she complies with all of the provisions of this Title.

Section 12-5-9. Return.

1. Any seller subject to the tax imposed by this Chapter shall, on or before the twentieth (20th) day following the end of each calendar month, complete a return for the preceding month, on a form prescribed by the Commission, showing the entire amount of gross receipts for its business, the allowable deductions, and the amount of tax for which the seller is liable. The return shall be signed by the seller or its duly authorized agent and, if applicable, the person and/or firm preparing the return.

2. Any seller operating two (2) or more places of business shall file a consolidated return covering all such places of business.

3. No return need be filed by any seller who is exempt under this Chapter, provided that the Commission may require such seller to file the information necessary to establish his or her exempt status.

Section 12-5-10. Payment. A seller shall remit the amount of tax due under this Chapter with its return and such tax shall be due at the time the return is due.

**CHAPTER 6
MOTOR VEHICLE FUEL TAX**

Section 12-6-1. Purpose. The purpose of the tax imposed on motor vehicle fuel pursuant to this Chapter is:

1. To regulate and monitor sales of motor vehicle fuel made by the economic enterprises of the Tribe and otherwise within the territory of the Tribe;

2. To support tribal government, tribal public improvement programs, and tribal infrastructure that benefit members of the Tribe and others within the territory of the Tribe;

3. To raise revenues to help fund health, safety, general welfare and economic development programs and services provided to members of the Tribe and others within the territory of the Tribe.

Section 12-6-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Gallon" means the quantity of fuel that fills a standard United States gallon liquid measurement.

2. "Motor vehicle fuel" means flammable hydrocarbon liquid, including blended gasoline of any type and diesel fuel, used primarily in internal combustion engines for the generation of power for the propulsion of motor vehicles.

3. "Purchase" means the transfer of ownership of, title to, or possession of motor vehicle fuel for money, other goods, services, or other valuable consideration, including bartering, trading, exchanging, renting, leasing, conditional sales, and any sales where possession of motor vehicle fuel is given to the buyer but title is retained by the seller as security for the payment of the purchase price.

4. "Retailer" means any person who acquires motor vehicle fuel from a wholesaler or otherwise sells, distributes, or gives away any amount of motor vehicle fuel from any location or facility which generally dispenses such motor vehicle fuel into the fuel supply tanks of motor vehicles.

5. "Wholesaler" means any person who acquires motor vehicle fuel for resale or otherwise sells, distributes, resells or gives away any amount of motor vehicle fuel to a retailer.

Section 12-6-3. Tax Imposed.

1. For the privilege of distributing or retailing any amount of motor vehicle fuel within the territory of the Tribe, there is levied and there shall be collected a tax at the rate set by the Tribal Council as provided in this Title, but initially at

the rate of four cents (\$0.04), upon each gallon of motor vehicle fuel or fraction thereof purchased by a retailer located on Tribal lands.

2. Every retailer shall account for and pay all taxes imposed by this Chapter based on the amount of motor vehicle fuel purchased by it. The tax imposed by this Chapter shall constitute a debt of the retailer owed to the Tribe and collectible by the Tribe as such.

3. For purposes of this Chapter, motor vehicle fuel is purchased by a retailer located on Tribal lands if:

a. The location of the retailer at which delivery of the motor vehicle fuel is made is located on Tribal lands; or

b. The location of the retailer from which such motor vehicle fuel will be or is intended to be sold or dispensed is located on Tribal lands.

Section 12-6-4. Tax as Additional Tax. The tax imposed by this Chapter shall be in addition to all other taxes imposed by Tribe or another jurisdiction.

Section 12-6-5. Legal Incidence of Tax. The legal incidence of the tax imposed by this Chapter shall be on the retailer.

Section 12-6-6. Tax Included in Price. The tax imposed by this Chapter shall be included in the selling price of the motor vehicle fuel. No retailer shall state the tax imposed by this Chapter separately from the selling price on any receipt, invoice or other instrument of sale.

Section 12-6-7. License.

1. Any person who is a retailer located on Tribal lands shall be required to first obtain a motor vehicle fuel tax license from the Commission. If a person makes retail sales of motor vehicle fuel at two or more separate places of business on Tribal lands, a separate motor vehicle fuel tax license shall be required for each place of business.

2. A motor vehicle fuel tax license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the

location, including the street number of such business, and such other facts as the Commission may require.

3. A motor vehicle fuel tax license issued by the Commission shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.

4. The Commission, after at least ten (10) days notice and a full hearing, may revoke the motor vehicle fuel tax license of any retailer found by the Commission to have violated any provision of this Chapter or any other provision of this Title with respect to the tax imposed by this Chapter.

5. Any person liable for the tax imposed by this Chapter who fails to obtain a motor vehicle fuel tax license under this Section or who continues to conduct business after such license has been revoked shall forfeit his or her right to sell motor vehicle fuel on Tribal lands until he or she complies with all of the provisions of this Title.

Section 12-6-8. Return.

1. Any retailer subject to the tax imposed by this Chapter shall, on or before the twentieth (20th) day following the end of each calendar month, complete a return for the preceding month, on a form prescribed by the Commission, showing the entire amount of motor vehicle fuel purchased for its business, any allowable deductions, and the amount of tax for which the retailer is liable. The return shall be signed by the retailer or its duly authorized agent and, if applicable, the person and/or firm preparing the return.

2. Any retailer operating two (2) or more places of business shall file a consolidated return covering all such places of business.

Section 12-6-9. Payment. A retailer shall remit the amount of tax due under this Chapter with its return and such tax shall be due at the time the return is due.

CHAPTER 7
TOBACCO TAX

Section 12-7-1. Purpose. The purpose of the tax imposed on cigarettes and tobacco pursuant to this Chapter is:

1. To regulate and monitor sales of cigarettes and tobacco made by the economic enterprises of the Tribe and otherwise within the territory of the Tribe for the purpose of safeguarding and promoting the peace, safety, health, morals, and general welfare of the Tribe and its members;

2. To reduce the risk of harm to the health and welfare of the Tribe and its members associated with the use of cigarettes and tobacco products, particularly by minors;

3. To support tribal government, tribal public improvement programs, and tribal infrastructure that benefit members of the Tribe and others within the territory of the Tribe;

4. To raise revenues to help fund health, safety, general welfare and economic development programs and services provided to members of the Tribe and others within the territory of the Tribe.

Section 12-7-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Cigarette" means:

a. Any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state; and

b. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subsection.

2. "Consumer" means, without limiting the scope thereof, a person who receives cigarettes or tobacco products from a retailer regardless of whether the person ultimately uses or consumes the cigarettes or tobacco products.

3. "Retail sale" means any sale made for any purpose other than for resale or further processing, but includes any product purchased at wholesale and withdrawn from stock to be used or consumed in the business or by the owner or any other person, whether or not in the regular course of business or trade.

4. "Retailer" means any person who acquires cigarettes or tobacco products from a wholesaler or otherwise sells, distributes, or gives away any cigarettes and/or tobacco products from any location or facility for any purpose other than resale or further processing.

5. "Sale" means the transfer of ownership of, title to, or possession of cigarettes or tobacco products for money, other goods, services, or other valuable consideration, including bartering, trading, exchanging, renting, leasing, conditional sales, and any sales where possession of goods is given to the buyer but title is retained by the seller as security for the payment of the purchase price.

6. "Tax stamp" means the tax stamp developed and approved by the Commission as provided in this Chapter to be affixed to cigarettes.

7. "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking, or both for chewing and smoking and any other product, regardless of form, that contains tobacco and is intended for human consumption or placement in the oral or nasal cavity or absorption into the human body by any other means, but excludes cigarettes.

8. "Wholesaler" means any person who acquires or otherwise possesses cigarettes or tobacco products for resale or otherwise sells, distributes, resells or gives away cigarettes and/or tobacco products to a retailer.

Section 12-7-3. Tax Imposed on Cigarettes.

1. For the privilege of selling cigarettes within the territory of the Tribe, there is levied and there shall be collected a tax at the rate set by the Tribal Council as provided in this Title, but initially at the rate of three-quarters of a cent (\$0.0075) upon each cigarette or fifteen cents (\$0.15) per pack of twenty (20) cigarettes until March 1, 2020, and thereafter at the rate of one cent (\$0.01) upon each cigarette or twenty cents (\$0.20) per pack of twenty (20) cigarettes, purchased by a retailer located on Tribal lands.

2. For purposes of this Chapter, cigarettes are purchased by a retailer located on Tribal lands if:

a. The location of the retailer at which delivery of the cigarettes is made is located on Tribal lands; or

b. The location of the retailer from which such cigarettes will be or are intended to be sold is located on Tribal lands.

3. Every wholesaler shall collect the tax imposed by this Chapter on cigarettes from the retailer based on the number of cigarettes sold to a retailer located on Tribal lands. Until collected by the wholesaler, such tax shall constitute a debt owed to the wholesaler from the retailer and shall be recoverable as such. Whether collected or not, the tax shall constitute a debt of the wholesaler and the retailer jointly and severally owed to the Tribe and collectible by the Tribe as such.

Section 12-7-4. Tax Imposed on Tobacco Products.

1. For the privilege of selling tobacco products in the territory of the Tribe, there is levied and there shall be collected a tax at the rate set by the Tribal Council as provided in this Title, but initially at the rate of seven percent (7%), upon the gross receipts from all retail sales of tobacco products on Tribal lands.

2. For purposes of this Chapter, a retail sale occurs Tribal lands if the location at or from which delivery of the

tobacco products is made to the consumer is located on Tribal lands.

3. For any retail sale of tobacco products consummated by trade, barter, exchange of anything other than money or given away, the amount of gross receipts from such retail sale for computing the tax imposed by this Chapter on tobacco products shall be the fair market value of the tobacco products sold.

4. Every retailer shall collect the tax imposed by this Chapter on tobacco products from the consumer. Until collected by the retailer, such tax shall constitute a debt owed to the retailer from the consumer and shall be recoverable as such. Whether collected or not, the tax shall constitute a debt from the retailer owed to the Tribe and collectible by the Tribe as such.

Section 12-7-5. Tax as Additional Tax. The taxes imposed by this Chapter shall be in addition to all other taxes imposed by Tribe or another jurisdiction.

Section 12-7-6. Legal Incidence of Tax. The legal incidence of the taxes imposed by this Chapter shall be on the retailer.

Section 12-7-7. Inclusion of Tax in Price.

1. The tax imposed by this Chapter upon cigarettes shall be included in the selling price of the cigarette. No retailer shall state the tax imposed by this Chapter upon cigarettes separately from the selling price on any receipt, invoice or other instrument of sale.

2. Each retailer may state the tax imposed by this Chapter on tobacco products separately from the selling price on any receipt, invoice or other instrument of sale. If the retailer does not state the tax separately on the instrument of sale, then the retailer shall account for the tax separately in the retailer's records of the transaction.

3. In computing the tax imposed by this Chapter on tobacco products, the amount of gross receipts from a retail sale shall be conclusively presumed to be the selling price quoted in any price list, sales document, contract or other agreement between the retailer and consumer without tax unless

the retailer advertises the selling price as including the tax imposed by this Chapter.

Section 12-7-8. Tax Stamp.

1. The Commission shall develop and approve a tax stamp in accordance with this Title to be affixed to all cigarettes sold to a retailer on Tribal lands.

2. The Commission shall only disseminate tax stamps to a wholesaler upon payment by the wholesaler of the tax imposed by this Chapter on cigarettes, provided that the Commission may enter into a written agreement with a wholesaler to permit the wholesaler to remit the tax to the Commission based upon the number of tax stamps affixed by the wholesaler and sold to retailers located on Tribal lands.

3. All cigarettes sold by a retailer shall bear the tax stamp provided for under this Section, unless the cigarettes already have another jurisdiction's tax stamp affixed. Any cigarettes which do not bear the tax stamp provided for under this Section shall be contraband and subject to seizure as provided in this Title.

4. Every wholesaler shall be responsible for affixing the tax stamp provided for under this Section to the smallest container or package that will be handled, sold, used, consumed, or distributed to permit any person to readily ascertain by inspection whether or not the tax imposed by this Chapter has been paid. In the case of cigarettes contained in individual packages, as distinguished from cartons or larger containers, the tax stamp shall be affixed securely on each individual package.

5. The tax stamp provided for under this Section shall be affixed so that the tax stamp may not be removed from the package or container without destroying the tax stamp.

Section 12-7-9. License.

1. Any person who is a retailer located on Tribal lands shall be required to first obtain a tobacco tax license from the Commission. If a person makes retail sales of cigarettes or tobacco products at two or more separate places of business on

Tribal lands, a separate tobacco tax license shall be required for each place of business.

2. A tobacco tax license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the Commission may require.

3. A tobacco tax license issued by the Commission shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.

4. The Commission, after at least ten (10) days notice and a full hearing, may revoke the tobacco tax license of any person found by the Commission to have violated any provision of this Chapter or any other provision of this Title with respect to the taxes imposed by this Chapter.

5. Any person liable for the taxes imposed by this Chapter who fails to obtain a tobacco tax license under this Section or who continues to conduct business after such license has been revoked shall forfeit his or her right to sell cigarettes and tobacco products on Tribal lands until he or she complies with all of the provisions of this Title.

Section 12-7-10. Return.

1. Any wholesaler who sells cigarettes subject to the tax imposed by this Chapter shall, on or before the twentieth (20th) day following the end of each calendar month, complete a return for the preceding month, on a form prescribed by the Commission, showing the number of cigarettes sold to retailers located on Tribal lands by retailer, the number of tax stamps affixed to cigarettes, the number of affixed tax stamps purchased from the Commission and paid in full, any allowable deductions, and the amount of tax for which the wholesaler is liable. The return shall be signed by the wholesaler or its duly authorized agent and, if applicable, the person and/or firm preparing the return.

2. Any retailer subject to the taxes imposed by this Chapter shall, on or before the twentieth (20th) day following the end of each calendar month, complete a return for the preceding month on a form prescribed by the Commission showing the number of cigarettes purchased from wholesalers for its

business by wholesaler, the entire amount of gross receipts for its business from the retail sale of tobacco products, any allowable deductions, and the amount of tax for which the retailer is liable. The return shall be signed by the retailer or its duly authorized agent and, if applicable, the person and/or firm preparing the return.

3. Any wholesaler or retailer operating two (2) or more places of business shall file a consolidated return covering all such places of business.

Section 12-7-11. Payment. Wholesalers and retailers shall remit the amount of tax due under this Chapter with their returns and such tax shall be due at the time the return is due.

CHAPTER 8 LIQUOR TAX

Section 12-8-1. Purpose. The purpose of the tax imposed on sales of liquor pursuant to this Chapter is:

1. To impose, collect, and administer taxes on retail sales of liquor made by the economic enterprises of the Tribe and otherwise within the territory of the Tribe;

2. To support tribal government, tribal public improvement programs, and tribal infrastructure that benefit members of the Tribe and others within the territory of the Tribe;

3. To raise revenues to help fund health, safety, economic development and general welfare programs and services provided to members of the Tribe and others within the territory of the Tribe.

Section 12-8-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Buyer" means, without limiting the scope thereof, a person who receives goods from a seller in exchange for money, other goods, or services delivered to the seller.

2. "Complimentary" means the provision of goods without charge to a person.

3. "Gross receipts" means the total amount of the sales of a seller either on Tribal lands or outside Tribal lands, exclusive of any rebates.

4. "Liquor" means alcohol, beer, spirits, wine, all other fermented, spirituous, vinous, or malt liquors, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor or otherwise intoxicating, and includes every liquid, solid, semi-solid or other substance, patented or not, containing alcohol, beer, spirits, or wine and all preparations or mixtures of liquor capable of human consumption.

5. "Retail sale" means any sale made for any purpose other than for resale or further processing, but includes any liquor purchased at wholesale and withdrawn from stock to be used or consumed in the business or by the owner or any other person, whether or not in the regular course of business or trade.

6. "Sale" means the transfer of ownership of, title to, or possession of or otherwise supplying liquor for money, other goods, services, or other valuable consideration, including bartering, trading, exchanging, renting, leasing, conditional sales, and any sales where possession of liquor is given to the buyer but title is retained by the seller as security for the payment of the purchase price.

7. "Seller" means the person making a sale to a buyer.

Section 12-8-3. Tax Imposed.

1. For the privilege of conducting retail sales of liquor in the territory of the Tribe, there is levied and there shall be collected a tax at the rate set by the Tribal Council as provided in this Title, but initially at the rate of seven percent (7%), upon the gross receipts from all retail sales of liquor, in whatever package or container, on Tribal lands.

2. For purposes of this Chapter, a retail sale occurs on Tribal lands if the location at or from which delivery of the liquor is made to the buyer is located on Tribal lands.

3. Every seller shall collect the tax imposed by this Chapter from the buyer. Until collected by the seller, such tax shall constitute a debt owed to the seller from the buyer and shall

be recoverable as such. Whether collected or not, the tax shall constitute a debt of the seller owed to the Tribe and collectible by the Tribe as such.

4. For any retail sale consummated by trade, barter, or exchange of anything other than money, the amount of gross receipts from such retail sale of liquor for computing the tax imposed by this Chapter shall be the fair market value of the liquor sold.

Section 12-8-4. Exemptions.

1. In computing the amount of tax imposed by this Chapter, a seller shall deduct from the amount of gross receipts and shall not collect sales tax on the following:

- a. Sales made outside Tribal lands;
- b. The provision of complimentary liquor to customers, guests, or employees;
- c. Sales by a licensed practicing physician or dentist in the strict practice of his or her profession;
- d. Sales by a hospital or other institution caring for the sick and diseased persons, for the treatment of patients of the hospital or institution;
- e. Sales by a drug store employing a licensed pharmacist in the compounding of prescriptions from licensed physicians.

2. In computing the amount of sales tax due under this Chapter, a seller shall deduct from the amount of tax due the amount of tax actually paid by the seller to a state or territory of another federally recognized Indian tribe when such state or tribe grants a reciprocal exclusion or an exemption to similar transactions in the territory of the Tribe.

Section 12-8-5. Tax as Additional Tax. The tax imposed by this Chapter shall be in addition to all other taxes imposed by Tribe or another jurisdiction.

Section 12-8-6. Legal Incidence of Tax. Without limiting the liability of a buyer to remit the tax to the seller, the legal incidence of the tax imposed by the Chapter shall be on the seller.

Section 12-8-7. Tax Stated Separately.

1. Each seller shall state the tax imposed by this Chapter separately from the selling price on any receipt, invoice or other instrument of sale. If the seller does not state the tax separately on the instrument of sale, then the seller shall account for the tax separately in the seller's records of the transaction.

2. In computing the tax imposed by this Chapter, the amount of gross receipts from a retail sale shall be conclusively presumed to be the selling price quoted in any price list, sales document, contract or other agreement between the seller and buyer without tax unless the seller advertises the selling price as including the tax imposed by this Chapter.

Section 12-8-8. License.

1. Any person who engages in retail sales of liquor on Tribal lands shall be required to first obtain a retail liquor tax license from the Commission. If a person makes retail sales at two or more separate places of business on Tribal lands, a separate retail liquor tax license shall be required for each place of business.

2. A retail liquor tax license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the Commission may require.

3. A retail liquor tax license issued by the Commission shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.

4. A retail liquor tax license issued by the Commission shall permit the licensee to purchase liquor for resale from a wholesaler or any other person free from the tax imposed by this Chapter on such liquor, provided that if the licensee later withdraws the liquor, in whole or in part, from inventory for use or consumption by the licensee or any other person, the purchase price of such liquor shall be included in the licensee's gross receipts for purposes of calculating the tax imposed by this Chapter.

5. A seller making only sales exempt from the tax imposed by this Chapter shall not be required to obtain a retail liquor tax license.

6. The Commission, after at least ten (10) days notice and a full hearing, may revoke the retail liquor tax license of any person found by the Commission to have violated any provision of this Chapter or any other provision of this Title with respect to the tax imposed by this Chapter.

7. Any person liable for the tax imposed by this Chapter who fails to obtain a retail liquor tax license under this Section or who continues to conduct business after such license has been revoked shall forfeit his or her right to make retail sales of liquor on Tribal lands until he or she complies with all of the provisions of this Title.

Section 12-8-9. Return.

1. Any seller subject to the tax imposed by this Chapter shall, on or before the twentieth (20th) day following the end of each calendar month, complete a return for the preceding month, on a form prescribed by the Commission, showing the entire amount of gross receipts of liquor sales for its business, the allowable deductions, and the amount of tax for which the seller is liable. The return shall be signed by the seller or its duly authorized agent and, if applicable, the person and/or firm preparing the return.

2. Any seller operating two (2) or more places of business shall file a consolidated return covering all such places of business.

3. No return need be filed by any seller who is exempt under this Chapter, provided that the Commission may require such seller to file the information necessary to establish his or her exempt status.

Section 12-8-10. Payment. A seller shall remit the amount of tax due under this Chapter with its return and such tax shall be due at the time the return is due.

CHAPTER 9
LODGING TAX

Section 12-9-1. Purpose. The purpose of the tax imposed on occupancy pursuant to this Chapter is:

1. To regulate and monitor the rental of motels, hotels, and other temporary lodging businesses located within the territory of the Tribe;
2. To support tourism within the territory of the Tribe;
3. To support tribal government, tribal public improvement programs, and tribal infrastructure that benefit members of the Tribe and others within the territory of the Tribe;
4. To raise revenues to help fund health, safety, economic development, and general welfare programs and services provided to members of the Tribe and others within the territory of the Tribe.

Section 12-9-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Complimentary" means the provision of space in a hotel without charge to a person.
2. "Gross consideration" means the total amount charged or other consideration paid for the use of space in a hotel if the space is one ordinarily used for accommodations, but excludes any charge for food or beverage served or personal services rendered to the occupant of such space.
3. "Hotel" means any facility in which the public may, for a consideration, obtain sleeping accommodations, including hotels, motels, tourist homes, campgrounds, houses, courts, lodging houses, inns, rooming houses, trailer houses, trailer motels, recreational vehicle parks, and dormitories, apartments, and all other facilities where sleeping accommodations are rented to individuals or groups for less than thirty (30) consecutive days, but excluding hospitals, sanitariums, nursing homes, chronic care centers, and dormitories or facilities

operated by an educational institution and regularly used to house students.

4. "Occupant" means a person who uses, possesses, or has the right to use or possess any space in a hotel if the space is ordinarily used for accommodations.

5. "Operator" means any person operating a hotel, including, but not limited to, the owner, proprietor, lessee, sub-lessee, and mortgagee in possession, licensee, or any other person otherwise operating such hotel or entitled to receive consideration for the use of space in a hotel.

Section 12-9-3. Tax Imposed.

1. For the privilege of conducting a hotel business and the privilege of use and occupancy of a hotel in the territory of the Tribe, there is levied and there shall be collected a tax at the rate set by the Tribal Council as provided in this Title, but initially at the rate of seven percent (7%), upon the gross consideration charged for occupancy of any space furnished by any hotel located on Tribal lands.

2. Every operator shall collect the tax imposed by this Chapter from the occupant. Until collected by the operator, such tax shall constitute a debt owed to the operator from the occupant and shall be recoverable as such. Whether collected or not, the tax shall constitute a debt of the operator owed to the Tribe and collectible by the Tribe as such.

3. For any occupancy of any space in a hotel consummated by trade, barter, or exchange of anything other than money, the amount of gross consideration from such occupancy for computing the tax imposed by this Chapter shall be the fair market value of the space furnished.

Section 12-9-4. Exemptions.

1. In computing the amount of tax imposed by this Chapter, an operator shall deduct from the amount of gross consideration and shall not collect lodging tax on the following:

a. Space furnished to the Tribe or any of its agencies or departments;

b. Space furnished to the government of a state or another federally recognized Indian tribe when the state or tribe grants a reciprocal exemption to the Tribe and its agencies and departments; or

c. The provision of complimentary space in a hotel.

2. In computing the amount of lodging tax due under this Chapter, an operator shall deduct from the amount of tax due the amount of tax actually paid by the operator to a state or territory of another federally recognized Indian tribe when such state or tribe grants a reciprocal exclusion or an exemption to similar transactions in the territory of the Tribe.

Section 12-9-5. Tax as Additional Tax. The tax imposed by this Chapter shall be in addition to all other taxes imposed by the Tribe or another jurisdiction.

Section 12-9-6. Legal Incidence of Tax. Without limiting the liability of an occupant to pay the tax to the operator, the legal incidence of the tax imposed by the Chapter shall be on the hotel and operator.

Section 12-9-7. Tax Stated Separately.

1. Each operator shall state the tax imposed by this Chapter separately from the gross consideration on any receipt, invoice, or other instrument recording the transaction or occupancy. If the operator does not state the tax separately on the instrument recording the transaction, then the operator shall account for the tax separately in the operator's records of the transaction.

2. In computing the tax imposed by this Chapter, the amount of gross consideration for occupancy of any space in a hotel shall be conclusively presumed to be the price quoted in any price list, rental document, contract, or other agreement between the operator and occupant without tax unless the operator advertises the price as including the tax imposed by this Chapter.

Section 12-9-8. License.

1. Any person who engages in operating a hotel on Tribal lands shall be required to first obtain a lodging tax license from the Commission. If a person operates hotels at two or more

separate places of business on Tribal lands, a separate lodging tax license shall be required for each place of business.

2. A lodging tax license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of the hotel and the location, including the street number of such hotel, and such other facts as the Commission may require.

3. A lodging tax license issued by the Commission shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.

4. The Commission, after at least ten (10) days notice and a full hearing, may revoke the lodging tax license of any person found by the Commission to have violated any provision of this Chapter or any other provision of this Title with respect to the tax imposed by this Chapter.

5. Any person liable for the tax imposed by this Chapter who fails to obtain a lodging tax license under this Section or who continues to operate a hotel after such license has been revoked shall forfeit his or her right to operate a hotel on Tribal lands until he or she complies with all of the provisions of this Title.

Section 12-9-9. Return.

1. Any operator subject to the tax imposed by this Chapter shall, on or before the twentieth (20th) day following the end of each calendar month, complete a return for the preceding month, on a form prescribed by the Commission, showing the entire amount of gross consideration received for its hotel, the allowable deductions, and the amount of tax for which the operator is liable. The return shall be signed by the operator or its duly authorized agent and, if applicable, the person and/or firm preparing the return.

2. Any operator operating two (2) or more hotels shall file a consolidated return covering all such hotels.

3. No return need be filed by any operator who is exempt under this Chapter, provided that the Commission may require such operator to file the information necessary to establish his or her exempt status.

Section 12-9-10. Payment. An operator shall remit the amount of tax due under this Chapter with its return and such tax shall be due at the time the return is due.

**CHAPTER 10
TAX AGREEMENTS**

Section 12-10-1. Tax Agreements. The Tribe may enter into an intergovernmental agreement or compact with any state or other foreign jurisdiction for purposes of collection and remittance of any tax imposed by the laws of the Tribe or any other tax.

Section 12-10-2. Compliance with Agreement. Any tax imposed by the laws of the Tribe shall conform to any requirements imposed by an intergovernmental agreement or compact entered into by the Tribe, including the manner of collection and filing of returns.

Section 12-10-3. Tax Rate Affected. The tax rates applicable to any tax imposed by the laws of the Tribe shall be the greater of the applicable tax rate set forth in the laws of the Tribe or the tax rate set forth in an intergovernmental agreement or compact related to such tax, provided that the amount of tax collected and paid under any agreement or compact to the Tribe shall be an amount equal to or exceeding the amount imposed by the laws of the Tribe.

Section 12-10-4. Tax Exemptions. Any exemptions or deductions provided in an intergovernmental agreement or compact related to a tax imposed by the laws of the Tribe shall be in addition to any exemptions or deductions provided in the laws of the Tribe applicable to such tax, provided that if there is a conflict between any exemption or deduction provided in such agreement or compact and the laws of the Tribe governing such tax, the agreement or compact shall prevail.

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