

# SPIRIT LAKE TRIBE LAW AND ORDER CODE

## TITLE VII: TAXATION

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# SPIRIT LAKE TRIBE LAW AND ORDER CODE

## TITLE VII: TAXATION

### CHAPTER ONE LEGISLATIVE FINDINGS AND PURPOSE

#### §7-1-101. Sovereign Power to Tax.

The power to levy taxes and similar exactions is an inherent and essential part of the authority of any government. This power is therefore an aspect of the retained sovereignty of Indian Tribes except where it has been limited or withdrawn by federal authority. The Devils Lake Sioux Tribe is a sovereign Indian Tribe governed pursuant to a Constitution and By-laws ratified on April 14, 1944, and approved by the Commissioner of Indian Affairs on February 14, 1946, as amended from time to time thereafter. Pursuant to the Constitution and By-laws, the Tribal Council is the governing body of the Tribe. This Title is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Tribal Council in Article VI, Section 3 of the Tribal Constitution, which authorizes the Tribal Council to regulate and license business and professional activities conducted upon the Reservation of the Tribe, and impose assessments upon nonmembers trading or residing within the jurisdiction of the Tribe.

#### §7-1-102. Benefits of Tribal Government.

Among the benefits provided by the tribal government to tribal members and to nonmembers residing or conducting business upon the Devils Lake Sioux Reservation are the following: the provision of governmental services, including tribal roads, sewer systems, water systems, and fire protection; the maintenance of peace and good order, including the provision of a Tribal Court system of general jurisdiction; the promotion and regulation of economic activities within the Tribe's sovereign jurisdiction; economic advantages derived by virtue of Indian ownership and due to the status of the Indian owners, the Reservation and the Tribe, and the protection of Reservation lands and resources.

#### §7-1-103. Tribal Need for Governmental Revenue.

Without the exercise of the Tribe's sovereign authority to tax, as implemented by this Chapter, it is not possible for the Tribe to provide the necessary revenue to meet the health and welfare needs of the members of the Tribe and to provide the normal and appropriate governmental services and protection to both Tribal members and non-members within the exterior boundaries of the Reservation. Tribal members currently bear the burden of providing most governmental services through the expenditure of tribal earnings by the government of the Tribe. The Council finds that it is appropriate to tax dividend income of business entities with substantial Indian ownership whose principal place of business is located on the Reservation, whose income from activities conducted on the Reservation is significantly dependent upon the status of the Reservation and the Tribe, and which benefit from governmental services enumeration in §7-1-102 of this Title. The taxes levied under this Chapter will more equitably distribute the burden of financing tribal governmental services among all persons engaged in business activities or holding possessory interests on the Reservation and benefiting from tribal governmental services, by including nonmembers of the Tribe.



§7-1-104. Intent of Tribe to Preempt State and Local Taxes.

The Tribe, not the State of North Dakota or its political subdivisions, is the primary provider of governmental services on the Reservation. The Tribe, subject solely to the supremacy of federal law, exercises civil regulatory jurisdiction over Indians and non-Indians on the reservation. The burden of financing the Tribe's governmental services and civil regulatory jurisdiction falls solely on the Tribe, and not on the State of North Dakota or its political subdivisions. In order to provide for the equitable collection of revenues with which to support tribal governmental services and the exercise of tribal jurisdiction, it is the express intent of the Tribal Council that the taxes set forth in this Title shall preempt analogous taxes currently imposed by the State of North Dakota or local jurisdictions within the State, or which the State of North Dakota or local jurisdictions may impose in the future.

## CHAPTER TWO GENERAL PROVISIONS

§7-2-101. Definitions, (Amended 1-17-89 by Res, A05-89-084, and amended 7-17-90 by Res. A05-90-203.)

In this Title, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

- (1) “Commission” or “Tax Commission” means the Tribal Tax Commission established pursuant to Chapter Three.
- (2) “Person” means any individual, receiver, assignee, trustee in-bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, association, society, political entity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise; provided, that the term does not include the federal government and any agency thereof, the government of the Tribe and any governmental entities of the Tribe, or any of the above listed forms of business entities that are wholly owned or operated by the Tribe.

§7-2-102. Tribal Council to Determine All Tax Rates.

All tax rates not expressly set forth in this Chapter shall be set by the Tribal Council after consideration of the recommendation, if any, of the Tribal Tax Commission, and after providing the public with notice and an opportunity to be heard unless such notice and opportunity to be heard has already been provided by the Tribal Tax Commission pursuant to §7-3-105(b).

§7-2-103. Sovereign Immunity.

The Tribe, and all its constituent parts, including the Tribal Tax Commission established pursuant to this Chapter, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived by the Tribe or the United States. Nothing in this Chapter shall be construed as waiving the sovereign immunity of the Tribe or any of its constituent parts, including the Tribal Tax Commission, except that after exhaustion of administrative remedies as provided in §7-4-101, a taxpayer aggrieved by the decision of the Tax Commission on a petition for redetermination may petition the Tribal Appeals Court pursuant to §7-4-102, for review of the decision by the Tax Commission. Nothing in Chapter Five of this Title, and no enforcement action taken pursuant to Chapter Five of this Title, including the filing of suit by the Tax Commission for the collection of taxes, penalties, or interest assessed and unpaid, and for recovery of reasonable attorneys fees and expenses incurred in bringing such action, shall 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.

§7-2-104. Tax Fund Established

- (1) There is hereby authorized and directed to be established an account in some federally-insured financial banking institution or the Bureau of Indian Affairs to be known as the Devils Lake Sioux Tax Fund Account.

- (2) The Tax Fund shall be in an interest bearing account and the funds therein may be invested and reinvested as may be approved by the Tribal Council.
- (3) No monies shall be released or expended from this account, except upon written resolution of the Tribal Council appropriating a specific amount of the monies contained therein for the use of a particular department, agency or program of the Tribe, such appropriated amount shall be directly transferred to the account of the receiving department, agency, or program named in the appropriation resolution.
- (4) All tax monies, license fees, penalties, interest, service fees or charges, or other monies collected by the Tax Commission in the administration and enforcement of this Chapter shall be deposited in the Tax Fund.

§7-2-105. Savings Clause.

In the event that any provision of this Title shall be found or declared to be invalid, the remaining provisions of this Title shall be unaffected thereby, and shall remain in full force and effect.

CHAPTER THREE  
TRIBAL TAX COMMISSION

§7-3-101. Establishing Tax Commission.

There is hereby established the Tribal Tax Commission.

- (1) The Commission shall consist of three members, the Chairman of the Devils Lake Sioux Tribal Council who shall serve as Chairman of the Commission, the Secretary-Treasurer of the Tribal Council who shall serve as Vice-Chairman of the Commission, and another Tribal Council member who shall be appointed by the Tribal Council as Tax Commissioner for a term coextensive with the regular term of the Chairman of the Tribal Council.
- (2) The position of Tax Commissioner shall be a full-time paid position. However, the Tribal Council may assign the Tax Commissioner: additional duties, to the extent that such additional duties do not conflict with the performance of his duties as Tax Commissioner.
- (3) The Tax Commissioner shall have primary responsibility for day-to-day oversight of the operation of the Tax Commission and all employees and advisors of the Tax Commission.

§7-3-102. Quorum and Voting by Tax Commission Members,

- (1) A quorum of the Tax Commission shall consist of two members, except that in the case of hearings and decisions on petitions for redetermination pursuant to §7-4-101 quorum shall consist of three members.
- (2) Action by the Tax Commission may be taken only upon the affirmative vote of two or more members, except to the extent that the Commission, by a vote of two or more members, has delegated to an individual member of the Commission, to an individual member of the Tribal Council, or to the Commission staff or tribal staff, pursuant to §7-3-106(k), authority to act on behalf of the Commission.

§7-3-103. Recusal of Tax Commission Members.

- (1) For purposes of this Section, “immediate family” means brother, sister, son, daughter, mother, father, husband, or wife.
- (2) No member of the Tax Commission shall participate in any action or decision by the Commission directly involving his own tax liability, or the tax liability of a member of his immediate family, or the tax liability of any person, business or other entity of which he or a member of his immediate family is an employee, or in which he or a member of his immediate family has a substantial ownership interest, or with which he or a member of his immediate family has a substantial contractual relationship,
- (3) Nothing in this Section shall preclude a Commission member from participating in any action or decision by the Commission which:

- (a) generally affects a class of taxpayers, regardless of whether the Commission member is a member of the affected class;
- (b) affects the Tribe, tribal enterprise, or a person or entity in a contractual relationship with the Tribe or a tribal enterprise, regardless of whether the Commission member is also a member of the Tribal Council.

§7-3-104. Designation of Temporary Tax Commission Members.

Whenever necessitated by the recusal or unavailability of a member of the Tax Commission, the Vice Chairman of the Tribal Council shall serve as a temporary member of the tax Commission. In event of the recusal or unavailability of the Vice Chairman of the Tribal Council, or if additional temporary members of the Tax Commission are necessary; the Tribal Council shall designate from among the members of the Tribal Council a temporary member or temporary members of the Tax Commission.

§7-3-105. Rules of the Tax Commission.

- (1) The Commission shall promulgate and enforce such written rules and regulations as are necessary to carry out the orderly performance of its duties, including but not limited to rules and regulations relating to:
  - (a) internal operation procedures of the Commission;
  - (b) interpretation and application of this Chapter as may be necessary to ascertain or compute the tax owed by any taxpayer;
  - (c) the filing of any reports or returns by, or necessary to implement, this Chapter;
  - (d) and the conduct of assessments, inspections, investigations, hearings, and other authorized activities of the Commission.
- (2) Such rules shall provide for a hearing for all interested persons before the Commission recommends to the Tribal Council that a tax be established or a tax rate be adjusted. Such rules shall provide for reasonable notice to interested persons of the hearing and their right to present oral or written testimony.
- (3) No rule or regulation of the Tax Commission shall be of any force or effect until and unless a certified copy of the rule or regulation bearing the signatures of at least two members of the Tax Commission shall have been filed for record in the office of the Secretary-Treasurer of the Tribe and in the office of the Clerk of the Tribal Court.
- (4) The Tribal Court shall take judicial notice of all rules and regulations of the Tax Commission promulgated pursuant to this Title.

§7-3-106. Powers of the Tax Commission.

The Tribal Tax Commission shall have the following powers:

- (1) To promulgate and enforce rules and regulations consistent with this Title as provided in §7-3-105.
- (2) To determine, levy, and collect all taxes authorized by this Title.
- (3) To employ and consult with such advisors regarding its duties as it may deem necessary.
- (4) To make recommendations to the Tribal Council regarding the setting of tax rates for all taxes authorized by this Title, and regarding the amendment of this Title.
- (5) To hear and rule upon a petition by any taxpayer for redetermination of any taxes levied pursuant to this Title, as provided in §7-4-101; but the Tax Commission shall have no power to alter tax rates established by the Tribal Council pursuant to this Title or to declare any portion of this Title void for any reason.
- (6) To publish and make available to the public standard forms, and to require by regulation the filing of any forms or reports necessary for implementation of this Title.
- (7) To administer oaths, conduct hearings, and, by subpoena, to compel the attendance of witnesses and the production of any books, records, and papers of any taxpayer relating to the enforcement of this Title.
- (8) To make, or cause to be made by its agents or employees, 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, upon reasonable notice, during normal business hours, or at any other time agreed to by the taxpayer, or at any time whatsoever pursuant to a search warrant signed by the Tribal Court.
- (9) To examine, under oath, either orally or in writing, any taxpayer or agent, officer, or employee of any taxpayer, or any other witness with respect to any matter related to this Chapter.
- (10) To exercise all other authority delegated to or conferred upon it by law, or as may be reasonably necessary in the administration or enforcement of any provisions of this Title.
- (11) To delegate to an individual member of the Commission, to an individual member of the Tribal Council, or to the Commission staff or tribal staff, such of its functions as may be necessary to administer this Title efficiently, provided that the Commission may not delegate its powers to promulgate rules and regulations, to approve property appraisals, or to hear and rule upon petitions for redetermination of taxes.

- (12) To make, or cause to be made by its agents or employees, appraisals of valuable improvements upon possessory interests, pursuant to §7-9-107 and §7-9-108.
- (13) To adopt by regulation a schedule of fees and charges for services rendered relating to transcripts and certificates of record; for transcripts for appeal and other services involving the furnishing of copies of proceedings, files, and records. Such fees and charges shall be credited to miscellaneous receipts of the Commission and deposited in the Tax Fund Account.

§7-3-107. Tax Commission Employees and Expenses.

- (1) The Tax Commission may employ such employees and incur such expenses as may be necessary for the proper discharge of its duties subject to the limitations and restrictions set out in this Section.
- (2) The Tax Commission shall, to the maximum extent feasible, utilize regular tribal staff in exercising the duties and responsibilities set out in this Title, and may delegate to the tribal staff by rule such of its functions as may be necessary to administer this Title efficiently, consistent with the limitations of §7-3-106(11).
- (3) The total amount disbursed by the Tax Commission in any one fiscal year for the payment of salaries, expenses, and incidentals shall not exceed the amount appropriated therefor by the Tribal Council. The Tax Commission shall submit, to the Tribal Council, a line item proposed budget for the next fiscal year not later than August 15 each year.

§7-3-108. Bonds.

- (1) The Tax Commission may require its members and each of its employees who shall be required to handle public monies or revenues, or who shall be responsible therefor, to give a bond for the honest and faithful performance of his duties, in such amounts as may be fixed by the Commission.
- (2) The premiums on any bonds required of the Tax Commission members and its employees shall be paid from funds authorized in the Tax Commission budget.

§7-3-109. Records of the Tax Commission.

- (1) The Tax Commission shall keep and maintain accurate, complete, and detailed records which reflect all taxes, penalties, and interest levied, due, and paid, and each and every official transaction, communication, or action of the Commission.
- (2) Such records shall be maintained at the Office of the Tax Commission and shall not be removed from that location absent the consent of the Tribal Council by formal resolution.
- (3) Such records shall be subject to audit at any time upon the direction of the Tribal Council, and shall be audited not less than once each year by the Tax Commission.

- (4) Any records of the Tax Commission, except the records of administrative appeals, which relate to the individual business or personal activities of a named particular taxpayer or taxpayers shall not be opened to public inspection and shall be released only to the taxpayer involved, Tribal officials, who have a legitimate official need for such records, or upon the order of the Tribal Court for good cause shown.
- (5) Any records of the Tax Commission which do not relate to the individual business or personal activities of a named particular taxpayer or taxpayers shall be public records of the Tribe and shall be available for public inspection during regular business hours. Copies of such records may be obtained by payment of such copying cost as may be established by rule of the Commission, provided, that names and other identification of any taxpayer appearing in such records shall be rendered unreadable prior to issuance of such copies unless the provisions of Subsections (3) or (4) of this Section would allow release of such information.



## CHAPTER FOUR APPEALS

### §7-4-101. Petitions for Redetermination by Tax Commission.

- (1) If any taxpayer, having made a return and paid the tax levied pursuant to this Chapter, or having made a return and filed an undertaking for the full amount of tax levied with such sureties as the Commission shall require, feels aggrieved thereby, he may, within 30 days after the due date of said return and payment, apply to the Tax Commission by petition in writing for a redetermination of the amount of tax so paid. The petition for redetermination shall set forth the facts and arguments supporting the petition and the amount by which the tax should be reduced.
- (2) Upon receipt of a petition for determination, the Tax Commission shall give notice and an opportunity to be heard to the taxpayer seeking redetermination.
- (3) The Commission may redetermine taxes based on correction of tax computations, corrections to the classification of property or income, redetermination of the assessed value of taxable property, or redetermination of proper allocation between this jurisdiction and other taxing jurisdictions; but the Tax Commission shall have no power to alter tax rates established by the Tribal Council pursuant to this Chapter or to declare any portion of this Chapter void for any reason.

### §7-4-102. Review by Tribal Appeals Court.

- (1) Within 30 days after notice of any decision by the Tax Commission on a petition for redetermination, any taxpayer aggrieved thereby may petition the Appeals Court for review of the decision by the Tax Commission.
- (2) Upon such review, no new or additional evidence may be introduced, but the matter shall be heard on the record established before the Tax Commission as certified by the Commission.
- (3) Before making such petition to the Appeals Court, the full amount of taxes, interest, and any other charges determined to be due by the Tax Commission must be deposited with the Commission or an undertaking filed in such amount and with such sureties as the Commission shall require, sufficient to satisfy any taxes, interest, and any other charges incident to the appeal.
- (4) The Appeals Court shall uphold all factual findings by the Commission unless the Court determines that such findings are not supported by substantial evidence in the record established before the Tax Commission. In reviewing legal conclusions reached by the Tax Commission, the Appeals Court shall give proper weight to the Commission's interpretation of this Title and any regulations promulgated thereunder.
- (5) In no event is the Appeals Court authorized to alter tax rates established by the Tribal Council pursuant to this Title, or to award or order the payment of damages or to

fashion any remedy except to enjoin the collection or order the return of the amount of taxes, penalties, or interest in controversy, unless an additional remedy is specifically provided by this Title.

## CHAPTER FIVE ENFORCEMENT

### §7-5-101. Suit to Collect Taxes, Penalties, and Interest.

The Tax Commission or the Tax Commissioner is hereby authorized to bring any necessary actions in any appropriate court for the collection of any taxes, penalties, or interest assessed and unpaid, and for recovery of reasonable attorneys fees and expenses incurred in bringing such action. Such actions shall be civil in nature and all penalties, interest, attorneys fees, and expenses shall be in the form of civil damages for non-payment. Any civil remedies, including but not limited to garnishment, attachment, and execution, shall be available for the collection of any monies due the Tribe. The Tax Commission or the Tax Commissioner may request the tribal attorney to bring any necessary action for the collection of any taxes, penalties, or interest assessed and unpaid, together with attorneys fees and expenses, when the approval of the Tribal Council has been previously obtained. In all other cases, the Tax Commission or the Tax Commissioner shall be represented in the Tribal Court by the tribal prosecutor.

### §7-5-102. Other Remedies.

- (1) In addition to the remedies available for the collection of monies, the Tax Commission or the Tax Commissioner is authorized to bring an action in any appropriate court to enjoin the beginning or operation of any unlicensed business, activity, or function when tribal law requires a license to be issued for such business, activity, or function, or when the operator of the business, activity, or function willfully fails to comply with any provisions of this Chapter or any of the rules and regulations which the Tax Commission is authorized by this Title to promulgate.
- (2) In addition to the remedies available for the collection of monies, the Tax Commission or the Tax Commissioner, by and through the members and staff assigned thereto, is authorized, when accompanied by a police officer, to seize any property upon which any tax levied is in excess of 60 days past due, under the same conditions, limitations, and exceptions as are applicable to searches for and seizures of evidence of crimes. Within ten days of such seizure, the Tax Commission or the Tax Commissioner shall cause an action to be filed in the Tribal Court or other court of competent jurisdiction against said property alleging the non-payment of tax or other lawful reason for such seizure and forfeiture. Upon proof, the Court shall order such property forfeited for nonpayment of taxes and title thereto vested in the Tribe. Any person claiming ownership, the right to possession, or other interest in such seized property may intervene in such court action and raise any defenses that he may have, and any such person shall be served with process if he is known prior to the beginning of the action. Any such person may redeem seized property at any time prior to the entry of a final judgment of forfeiture by depositing with the Court all taxes, penalties, interest, attorneys' fees and expenses and other fees or charges assessed against or owed by the taxpayer.

### §7-5-103. Inventory of Seized Property.

Whenever any authorized person shall seize any property pursuant to this Title, he shall

inventory and appraise such property and leave a copy thereof with the person from whom it is seized, or if such person cannot be found, at the place from which such property is seized, and deliver a copy of the inventory to the Tax Commission or the Tax Commissioner and the tribal prosecutor.

§7-5-104. Public Sale of Forfeited Property.

- (1) Upon entry of a final order of forfeiture by the Court, the Tax Commission or the Tax Commissioner shall circulate an inventory of forfeited property to all divisions of the tribal government. Any agency of the tribal government may submit a request to the Tribal Council that such portion of the forfeited property as it can use be retained for the benefit of the Tribe. The Tribal Council shall determine which property will be retained and shall order the Tax Commission or the Tax Commissioner to conduct a public sale of the remainder, or to destroy any property which cannot be legally possessed.
- (2) The property to be sold shall be sold at public auction at the headquarters of the Tribe. Notice of such sale shall be posted in the tribal headquarters at least 20 days before the sale and published at least twice in a newspaper of general circulation in the vicinity of the Reservation at least ten days before the sale. All funds received at the sale, in excess of the costs of the sale, shall be deposited in the Tax Fund Account.
- (3) The Tax Commission or the Tax Commissioner may conduct a sale at such times as is deemed sufficient property has accumulated to make the sale profitable, and shall also conduct a sale upon direction of the Tribal Council,
- (4) The seizure, forfeiture, and sale of any property which is not destroyed as contraband pursuant to Subsection (1) of this Section, shall reduce the liability for payment of taxes, penalties, interest and other fees and charges of the person from whom such property was seized, by the sale price, less costs of the sale and attorneys' fees and expenses incident to the forfeiture action, or in the case of property retained for the benefit of the Tribe, by the fair market value of such property, less attorneys' fees and expenses incident to the forfeiture action, provided, that such person shall not receive any credit for any excess monies derived from such sale or from such retention.

§7-5-105. Exempt Property.

The following property shall be exempt from garnishment, attachment, execution, and sale for the payment of taxes, penalties, and interest due the Tribe:

- (1) Three-fourths of the net wages earned per week by the person or an amount equivalent to 40 times the federal minimum hourly wage per week, whichever is greater.
- (2) One automobile of fair market value equity not exceeding \$1,000.

- (3) Tools, equipment, utensils, or books necessary to the conduct of the person's business but not including stock or inventory.
- (4) Actual trust or restricted title to any lands held in trust by the United States or subject to restrictions against alienation imposed by the United States, but not including leasehold or other possessory interest in such property.
- (5) Any dwelling used as the actual residence of the taxpayer including up to five acres of land upon which such dwelling is located, regardless of whether such dwelling is owned or leased by the taxpayer.
- (6) Household goods, furniture, wearing apparel, personal effects, but not including televisions, radios, phonographs, tape and video recorders, more than two firearms, works of art, and other recreational or luxury items.
- (7) One horse, one bridle, and one saddle.
- (8) All implements of husbandry used upon a homestead.
- (9) All ceremonial or religious items.

## CHAPTER SIX PENALTIES AND INTEREST

### §7-6-101. Imposition of Penalties and Interest Charges.

The following penalties and interest charges are imposed with respect to all taxes levied pursuant to this Title.

- (1) Penalty for late filing of any form or return: 5% of net tax due, per month or portion thereof, up to a maximum of 25% of net tax due, but not less than
- (2) Penalty for late payment or underpayment of any tax: 1% of net tax due, per month or portion thereof, up to a maximum of 25% of net tax due, in addition to any other penalties or any interest charges imposed pursuant to this Chapter.
- (3) Penalty for willful failure to file any form or return, or willful filing of a frivolous form or return, or willful misrepresentation on any form or return which results in underpayment of any tax: 25% of net tax due or \$500, whichever is greater in addition to any other penalties and any interest charges imposed pursuant to this Chapter.
- (4) Interest on all late payments and underpayments: 1-1/2% of net tax due per month or any portion thereof.

### §7-6-102. Waiver of Penalties.

For good cause, the Tax Commission or the Tax Commissioner may waive any penalties imposed pursuant to §7-6-101, but shall not waive interest charges pursuant to §7-6-101(4)

## CHAPTER SEVEN USE TAX

### §7-7-101. Definitions.

In this title, unless the context and subject matter otherwise require:

- (1) “Use” means the exercise by any corporation of any right or power over tangible personal property incident to the ownership or possession of that property, including storage and consumption, except that it shall not include processing, or the sale of property in the regular course of business.
- (2) Property used in “processing,” as that term is used in Subsection (1), shall mean any tangible personal property, including containers, which is intended, by means of fabrication, compounding, manufacturing, producing, or germination, to become an ingredient, or an integral or component part, of other tangible personal property intended to be sold ultimately at retail. The purchase of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property shall be considered as a purchase of tangible personal property for a purpose other than for processing.
- (3) “Purchase” means any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.
- (4) “Purchase price” means the total amount for which tangible personal property is sold, leased, or rented, valued in money, whether paid in money or otherwise, but not including cash discounts and trade-ins allowed and taken on sales; provided, that if the transaction is not conducted at arms-length, or if for any other reason the Tax Commission finds that total amount for which the property is sold, leased, or rented does not represent the fair market value of the property interest transferred, “purchase price” means the fair market value of the property interest transferred as determined by the Commission.
- (5) “Tangible personal property” means:
  - (a) Tangible goods, wares, and merchandise; and gas, when furnished or delivered to corporations within the Reservation.
  - (b) The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or a use tax by the Tribe.

### §7-7-102. Use Tax Imposed.

A use tax is here by imposed on the use within the Reservation by any corporation of, tangible personal property purchased at retail for use in conjunction with any business activity conducted on the Reservation, at the rate of 3% of the purchase price of such property.

§7-7-103. Collection of Tax.

Any corporation purchasing-property upon which the tax set forth in this Chapter is imposed, shall, on or before the last day of the month next succeeding each quarterly period, pay the tax upon all such property purchased by it during the preceding quarterly period, in such manner and accompanied by such returns as the tax commission shall prescribe.



## CHAPTER EIGHT CORPORATE INCOME TAX

### §7-8-101. Definitions,

As used in this Title, unless the context otherwise requires:

- (1) “Business income” means income arising from transactions and activity in the regular course of the corporation’s trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the corporation’s regular trade or business operations;
- (2) “Commercial domicile” means the principal place from which the trade or business of the corporation is directed or managed.
- (3) “Compensation” means wages, salaries, commissions, and any form of remuneration paid to employees for personal services;
- (4) “Financial organization” means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, investment company, or any type of insurance company;
- (5) “Nonbusiness income” means all income other than business income;
- (6) “Public utility” means any business entity which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products, or gas;
- (7) “Sales” means all gross receipts of the corporation not allocated under §7-8-106 through §7-8-11D.

### §7-8-102. Tax Imposed.

There is hereby levied a tax on the Reservation Taxable Income of all corporations located or doing business on the Reservation, which shall be collected and paid annually pursuant to the rules and regulations of the Tribal Tax Commission, to be computed at the following rates:

- (1) For the first three thousand dollars of taxable income, at the rate of two percent.
- (2) On all taxable income above three thousand dollars and not in excess of eight thousand dollars, at the rate of three percent.
- (3) On all taxable income above eight thousand dollars and not in excess of twenty thousand dollars, at the rate of four percent.

- (4) On all taxable income above twenty thousand dollars, and not in excess of thirty thousand dollars, at the rate of five percent.
- (5) On all taxable income above thirty thousand dollars, and not in excess of fifty thousand dollars, at the rate of six percent
- (6) On all taxable income above fifty thousand dollars, at the rate of seven percent.

§7-8-103. Reservation Taxable. Income. Defined,

The taxes levied pursuant to this Chapter shall be based upon the portion of the corporations taxable income, as computed for federal income tax purposes under the provisions of the United States Internal Revenue Code of 1986, as amended, which is allocated and apportioned pursuant to §7-8-104 through §7-8-119 to business activities and operations conducted on the Reservation, as adjusted by the following amounts:

- (1) Reduced by any interest received from obligations of the United States that is included in taxable income or in the computation thereof on the federal return, and by any other such income which is exempt from taxation by the Tribe because of the provisions of the Constitution or laws of the United States;
- (2) Reduced by the amount of federal income taxes paid or accrued, as the case may be, during the applicable tax year, adjusted by any federal income tax refunds;
- (3) Increased by the amount of any income, franchise, or privilege taxes measured by income, to the extent that such taxes were deducted to determine federal taxable income;
- (4) Increased by the amount of any interest and dividends from foreign securities and from securities of any state for the political subdivisions of any state which are exempt from federal income tax; except that taxable income shall not be increased by the amount of interest or dividends from securities of the Tribe which are exempt from federal income tax;
- (5) Provided, however, that each adjustment made pursuant to the above Subsections shall be allowed only to the extent that the adjustment is allocated and apportioned to business activities and operations on the Reservation.

§7-8-104. Allocation and Apportionment of Corporate Income.

Any taxpayer having income from business activity which is taxable both within and without the Reservation, including a public utility, but other than activity as a financial organization or the rendering of purely personal service by an individual, shall allocate and apportion net income as provided in §7-8-105 through §7-8-118.

§7-8-105. Nonresident Taxpayer.

For purposes of allocation and apportionment of income under §7-8-104 through §7-8-118, a corporation is taxable in another jurisdiction if:

- (1) In that jurisdiction it is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or
- (2) That jurisdiction has jurisdiction to subject the corporation to a net income tax regardless of whether, in fact, the jurisdiction does or does not.

§7-8-106. Certain Items--Allocation.

Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute non-business income, shall be allocated as provided in §7-8-107 through §7-8-110.

§7-8-107. Rents and Royalties.

- (1) Net rents and royalties from real property located within the Reservation are allocable to the Reservation.
  - (a) Net rents and royalties from tangible personal property are allocable to the Reservation:
  - (b) If and to the extent that the property is utilized within the Reservation; or
- (2) In their entirety if the Corporation's commercial domicile is within the Reservation and the Corporation is not organized under the laws of or taxable in the jurisdiction in which the property is utilized.
- (3) The extent of utilization of tangible personal property in a jurisdiction is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the jurisdiction during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the corporation tangible property utilized in the jurisdiction in which the property was located at the time the rental or royalty payer obtained possession.

§7-8-108. Property--Capital Gains and Losses.

- (1) Capital gains and losses from sales of real property located within the Reservation are allocable to the Reservation.
- (2) Capital gains and losses from sales of tangible personal property are allocable to the Reservation if:
  - (a) The property has a situs within the Reservation at the time of the sale; or

- (b) The corporation's commercial domicile is within the Reservation and the corporation is not taxable in the jurisdiction in which the property had a situs.
- (3) Capital gains and losses from sales of intangible personal property are allocable to the Reservation if the corporation's commercial domicile is within the Reservation.

§7-8-109. Interest and Dividends.

Interest and dividends are allocable to the Reservation if the corporation's commercial domicile is within the Reservation.

§7-8-110. Patents and Copyrights.

- (1) Patents and copyrights are allocable to the Reservation:
  - (a) If and to the extent that the patent or copyright is utilized by the corporation within the Reservation; or
  - (b) If and to the extent that the patent or copyright is utilized by the corporation in a jurisdiction in which the corporation is not taxable and the corporation's commercial domicile is within the Reservation,
- (2) A patent is utilized in a jurisdiction to the extent that it is employed in production, fabrication, manufacturing, or other processing in the jurisdiction or to the extent that a patented product is produced in the jurisdiction. If the basis of receipts from patent royalties does not permit allocation to jurisdictions or if the accounting procedures do not reflect jurisdiction of utilization, the patent is utilized in the jurisdiction in which the corporation's commercial domicile is located.
- (3) A copyright is utilized in a jurisdiction to the extent that printing or other publication originates in the jurisdiction. If the basis of receipts from copyright royalties does not permit allocation to jurisdictions or if the accounting procedures do not reflect jurisdictions of utilization, the copyright is utilized in the jurisdiction in which the corporation's commercial domicile is located.

§7-8-111. Business income.

All business income shall be apportioned to the Reservation by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

§7-8-112. Property Factor.

The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used within the Reservation during the tax period and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the tax period.

§7-8-113. Property Owned and Rented.

Property owned by the corporation is valued at its original cost. Property rented by the corporation is valued at eight times the net annual rental rate net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals.

§7-8-114. Average Value of Property.

The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the Tax Commission may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the corporation's property.

§7-8-115. Payroll Factor.

The payroll factor is a fraction, the numerator of which is the total amount paid within the Reservation during the tax period by the corporation for compensation, and the denominator of which is the total compensation paid everywhere within the tax period.

§7-8-116. Compensation.

Compensation is paid within the Reservation if:

- (1) The individual's service is performed entirely within the Reservation; or
- (2) The individual's service is performed both within and without the Reservation, but the service performed without the Reservation is incidental to the individual's service within the Reservation; or
- (3) Some of the service is performed within the Reservation and:
  - (a) The base of operations or, if there is no base of operations, the place from which the service is directed or controlled is within the Reservation; or
  - (b) The base of operations or the place from which the service is directed and controlled is not in any jurisdiction in which some part of the service is performed, but the individual's residence is within the Reservation.

§7-8-117. Sales Factor.

The sales factor is a fraction, the numerator of which is the total sales of the corporation within the Reservation during the tax period, and the denominator of which is the total sales of the corporation everywhere during the tax period.

§7-8-118. Local Tangible Personal Property Sales.

Sales of tangible personal property are within the Reservation if:

- (1) The property is delivered or shipped to a purchaser, other than the United States government, within the Reservation regardless of the f.o.b. point or other conditions of the sale; or
- (2) The property is shipped from an office, store, warehouse, factory, or other place of storage within the Reservation and:
  - (a) The purchaser is the United States government; or
  - (b) The corporation is not taxable in the jurisdiction of the purchaser.

§7-8-119. Other Sales.

Sales, other than sales of tangible personal property, are within the Reservation if:

- (1) The income-producing activity is performed within the Reservation; or
- (2) The income-producing activity is performed both within and outside the Reservation and a greater proportion of the income-producing activity is performed within the Reservation than in any other jurisdiction, based on costs of performance.

§7-8-120. Allocation and Apportionment in Special Circumstances

This Section applies to all corporations to which §7-8-104 through §7-8-118 do not apply, and to other corporations with respect to which §7-8-104 through §7-8-118 do not fairly represent the extent of the corporation's business activity within the Reservation. Such corporations may petition for, or the Tax Commission may require, with respect to all or any part of the corporation's business activity:

- (1) Separate accounting;
- (2) The exclusion of one or more of the factors set forth in §7-8-104 through §7-8-119;
- (3) The inclusion of one or more additional factors which will fairly represent the corporation's business activity within the Reservation; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the corporation's income.

§7-8-121. Filing of Return and Payment of Tax.

All corporations taxable under this Title shall file their corporate income tax return, on a form to be prescribed by the Tribal Tax Commission, within 15 days after the due date for filing of their federal corporate income tax return. Estimated and Final tax payments shall be made within 15 days of the due dates for estimated and final federal corporate income tax payments.

## CHAPTER NINE POSSESSORY INTEREST TAX

### §7-9-101. Definitions

For purposes of this Title;

- (1) “Possessory interest” means the interest and rights in real property within the tribal jurisdiction obtained by every lessee who enters into any business lease, agricultural lease grazing lease, oil and gas lease, or other leasehold estate approved by the Bureau of Indian Affairs within the jurisdiction of the Tribe.
- (2) “Lessee” means the person or persons who have obtained directly from the Indian or tribal owners any possessory interest in any lands held in trust by the United States for the benefit of any Indian or tribal owner or owners, or held by an Indian or tribal owner or owners in fee subject to a restriction upon alienation imposed by the United States, and the assignees and successors in interest of such Indian or tribal owner or owners. This term does not apply to a sublessee where the lessee retains an interest in the leasehold estate.
- (3) “Valuable improvement” or “improvement” means every building, barn, home, storage tank or facility, fence, and other structure of a permanent or semi-permanent nature affixed to or placed upon the leasehold which is for the benefit or subject to the use of the lessee and his assigns, sublessees, and those holding under or through him.

### §7-9-102. Tax Imposed.

There is hereby levied upon every possessory interest within the jurisdiction of the Tribe a basic tax of one dollar (\$1.00) per year per acre or fraction of an acre contained within the possessory interest.

### §7-9-103. Surcharge on Valuable Improvements Imposed.

There is hereby levied upon every valuable improvement within any possessory interest a surcharge tax equal to 1% of the fair market value of such valuable improvements per year.

### §7-9-104. Incidence of the Tax.

The incidence of the tax and surcharge levied and imposed by this Title shall be upon the lessee, and the lessor and his interest in such leasehold shall in no way become liable for payment of the taxes herein levied.

### §7-9-105. Due Date of Tax.

The taxes levied and imposed by this Title shall be due and payable in advance on the first day of March of each year provided, that when a new valuable improvement is constructed or otherwise made to such leasehold or a new possessory interest is created, or when an existing

possessory interest is extended past its basic term, all taxes for the balance of the tax year not prepaid shall become due on the date of creation or extension.

§7-9-106. Taxes To Be Apportioned.

Whenever, by its terms or by virtue of creation of a new possession interest, a possessory interest will not exist for the entire tax year, the amount of tax due shall be apportioned over such tax year so that the yearly tax due shall be reduced by 1/12th for each full month of such tax year that the possessory interest will not or did not exist.

§7-9-107. Valuable Improvements May Be Appraised.

The Tax Commission shall as soon as reasonably practical cause the valuable improvements upon any possessory interest to be appraised to determine the fair market value thereof. Thereafter, the Tax Commission may cause the valuable improvements upon any possessory interest to be reappraised pursuant to an appraisal schedule established by the rules Of the Commission, or when it appears or the Commission has information to indicate that the market may have changed since the last appraisal; provided, that except upon request of a taxpayer, the Commission shall not appraise a valuable improvement for at least six-months after the last appraisal. The Tax Commission shall promptly notify the lessee of the results of the appraisal.

§7-9-108. Manner of Making Appraisals.

The appraisal of the market value of valuable improvements upon a possessory interest shall be made by at least three disinterested persons appointed by the Tax Commission from within or without its membership for that purpose. The appraisers shall personally view the subject property, inform themselves of the market value of similar properties in the local area, and make their appraisal accordingly. Whenever possible, one or more of the appraisers should be, or should consult with, some disinterested person approved by the Commission who is engaged in the business of selling real estate on the open market.

§7-9-109. Assessment of Taxes.

On or before the fifteenth day of December of each year, the Tax Commission shall send notice of the amount of tax and surcharge assessed against the possessory interest and valuable improvements owned, and the due date of such tax and surcharge, to each lessee known to the Tax Commission. Failure to receive this notice shall not relieve a lessee from the obligation to file a timely, proper return and pay all taxes and surcharges due.

§7-9-110. Payments of Taxes by Sublessees and Others.

- (1) Any sublessee or other person interested in any possessory interest upon which taxes or surcharges are due and unpaid may file a return and pay on behalf of the lessee any taxes and surcharges due upon such possessory interest in order to protect his rights in such possessory interest.
- (2) Upon payment of such taxes or surcharges the payor shall be entitled to recover from the lessee the amount of such payment with interest thereon at the rate of 6%.



- (3) If the lessee shall make payment of the taxes and surcharges due after they have been paid by some other person, the person making such payment on behalf of the lessee shall be entitled to a refund of the amount paid.

§7-9-111. Forfeiture Provisions to Apply.

Possessory interests may be forfeited for non-payment of taxes and surcharges in the same manner that personal property may be forfeited pursuant to §7-5-102 of this Title, provided, that no person may be ousted from actual and peaceful possession and enjoyment of any possessory interest until a judgment or forfeiture of the 'possessory interest has been entered by the Tribal Court.

§7-9-112. Forfeiture Does Not Relieve Lessee From Obligations.

The order of forfeiture of any possessory interest pursuant to law shall not relieve the lessee from any of his duties or obligations to the lessor.

§7-9-113. Tribe May Assume Lessee's Obligations.

- (1) Whenever taxes and surcharges levied and imposed by this Title are not paid on or before the due date of such taxes and surcharges, the Tribal Council, after determining that it is in the best interests of the Tribe to retain any possessory interest as public tribal property, may, by resolution, assume all the obligations and duties of the lessee contained in the lease instrument from that date forward, and shall notify the lessor of such action. Thereafter the Tribe shall be entitled to exercise all the rights and powers of the original lessee in such possessory interest.
- (2) Notwithstanding the doctrine of sovereign immunity, any lessor shall have the right to bring an action exclusively in the Tribal Court against the Tribe solely to enforce his rights in such an assumed lease.

§7-9-114. Public Sale of Possessory Interests.

- (1) Any possessory interest which has been forfeited by judicial proceedings for non-payment of taxes or surcharges may be sold pursuant to §7-5-104 of this Title, in the same manner that personal property may be sold when such possessory interest is not assumed on behalf of the Tribe by the Tribal Council pursuant to §7-9-113.
- (2) The Chairman of the Tax Commission shall issue to the purchaser of the possessory interest sold pursuant to this Section:
  - (a) An assignment on behalf of the Tribe.
  - (b) A certified copy of the Judgment of Forfeiture issued by the Tribal Court.
  - (c) A notice to the purchaser that the assignment and judgment should be filed with the Superintendent, Devils Lake Sioux Agency, Bureau of Indian Affairs.

- (3) The Tax Commission shall take all reasonable steps to insure that the purchaser of any possessory interest sold pursuant to this Section is qualified to hold such interest under the rules and regulations governing such possessory interests established by the Secretary of the Interior, and shall request the assistance of the Superintendent when necessary in making such assignment.
- (4) The purchaser of such possessory interest shall execute the assignment which shall stipulate that the purchaser assumes all the duties and obligations of the lessee contained in the lease instrument from that day forward, and thereafter, with the approval of the assignment by the Secretary of the Interior when necessary, the purchaser shall be entitled to exercise all the rights and powers of the original lessee in such possessory interest.
- (5) The Tax Commission shall inform the lessor of the name of the purchaser of the possessory interest and the purchaser's address and telephone number.

CHAPTER TEN  
CHARITABLE GAMES TAX

§7-10-101. Definitions.

For purposes of this Title:

- (1) “Devils Lake Sioux Charitable Games Foundation” means the wholly-owned, subordinate tribal enterprise of the Tribe established and chartered pursuant to Chapter Eight of this Title,
- (2) “Games of Chance” means any contest, game, gaming scheme, or gaming device authorized by the State of North Dakota but regulated by Chapter 8 of this Title, which the Devils Lake Sioux Charitable Games Foundation is authorized to conduct pursuant to Chapter Eight of this Title,

§7-10-102. Tax Imposed.

A charitable games tax of 5% of the total gross proceeds from the conduct of Games of Chance is hereby imposed on the Devils Lake Sioux Charitable Games Foundation, to be paid on a quarterly basis in such manner and upon such form as shall be prescribed by the Tax Commission or the Tax Commissioner.

CHAPTER ELEVEN  
DIVIDEND INCOME TAX

§7-11-101. Definitions.

For purposes of this Title:

- (1) “Dividend” means the share allotted to each or several persons or corporations entitled to share in a division of profits or property of a corporation.

§7-11-102. Tax Imposed.

There is hereby established a tax on dividend income derived from any business entity whose principal place of business is located within the exterior boundaries of the Devils Lake Sioux Indian Reservation and whose ownership contains any Indian individual or Tribal ownership. The tax upon such dividend income shall be 15% and the business entity declaring the dividend and therefore subject to this tax shall be legally liable for insuring that this tax is deducted and paid before any dividend income is paid to the appropriate owner or shareholder.

## CHAPTER TWELVE SALE OF TOBACCO PRODUCTS

### §7-12-101. Findings.

The Council finds that it has the responsibility to regulate business in an orderly fashion and provide for the common good. The Council finds that enactment of this Tobacco Products Chapter will promote uniformity of business and benefit the members of the Tribe.

### §7-12-.102. Definitions.

- (1) “Indian” means any person recognized as an Indian by the United States pursuant to its trust responsibility to American Indians.
- (2) “License” means the certificate or document granted to an individual which gives permission to sell tobacco products on the Reservation pursuant to this Chapter.
- (3) “Purchaser” means the buyer of tobacco products from a seller operating under a license pursuant to this Chapter.
- (4) “Seller” means a person who has been authorized pursuant to this Chapter to sell tobacco products.
- (5) “Tax” means the assessment placed on tobacco products to be collected by the seller and paid by the purchaser to the Tribe pursuant to this Chapter.
- (6) “Tobacco product” means any product for sale which contains tobacco,

### §7-12-103. Tobacco Products License.

- (1) No Indian shall sell tobacco products within the exterior boundaries of the Reservation without first obtaining a license from the Council or its delegated official.
- (2) The Council may set reasonable conditions relative to the granting of a Tobacco Products License.
- (3) The Council shall set a fee which must be paid before a tobacco products license may be issued.

### §7-12-104. License Holder’s Responsibility,

It shall be the responsibility of all holders of a Tobacco Products License to collect all taxes on tobacco products and account for any of these taxes to the appropriately designated Tribal official.

§7-12-105. Non-Indian Sellers, [Reserved]

§7-12-106. Tax Schedule.

The Council shall publish a schedule of taxes on tobacco products which shall be collected by license holders. This schedule of taxes on tobacco products may be changed by the Council by resolution and is effective immediately without need of secretarial approval.

§7-12-107. Tax Liability.

The taxes assessed on tobacco products pursuant to this Chapter shall apply to all purchasers, Indian and non-Indian.

§7-12-108. Failure to Collect Taxes.

Failure by a license holder to collect taxes may result in the suspension or revocation of that seller's tobacco products license. A civil fine in the amount of \$200.00 may also be levied by the Council against a license holder who fails to collect taxes pursuant to this Chapter or who falsifies records to return less than accurate amounts of tax monies to the Tribe. Every day of noncompliance with this Chapter shall constitute a separate violation and may result in a fine.

CHAPTER THIRTEEN  
CORPORATE PROPERTY TAX  
(Adopted 8-22-89 by Res. A05-89-183)

§7-13-101. Legislative Findings and Purpose.

The Tribal Council finds that business corporations doing business on the Reservation are not bearing their proportionate share of the expense of the benefits of, tribal government, which they enjoy; in addition, the Tribal Council finds it necessary to provide tax incentives for business corporations doing business on the Reservation to employ the maximum number of tribal employees. Thus the Tribal Council has determined the need to enact a corporate property tax.

§7-13-102. Definitions.

For purposes of this Chapter the term:

- (1) "Business corporation" means any corporation organized under the laws of the United States or of any state or Indian tribal government, other than
  - (a) A not-for-profit corporation organized under laws specifically providing for the establishment of not-for-profit corporations; or
  - (b) A tribal entity organized pursuant to Chapter Four of Title 10 of this Code, and whose principal place of business is on the Reservation.
- (2) "Assessment date" means the first day of January in each year.
- (3) "Reservation taxable property" means all real and personal property of a business corporation, both tangible and intangible, which is located On the Reservation, including:
  - (a) Real property located on the Reservation, including without limitation the value of any leasehold interest and all leasehold improvements including buildings and fixtures;
  - (b) Tangible personal property located on the Reservation as of the assessment date;
  - (c) All intangible personal property, wherever located, including without limitation accounts receivable, contract rights, instruments, deposit accounts, money, securities, choses in action, and general intangibles.

§7-13-103. Tax Imposed.

There is hereby levied a property tax on all business corporations having any property located on the Reservation, which shall be collected and paid annually on the first day of September at the rate established by the Tribal Council prior to the first day of August in each year;

provided, that for tax year 1989, the rate of tax shall be 15% of the fair market value of the reservation taxable property of each such corporation as of the assessment date.

#### §7-13-104. Exemption For Indian Employment

Each business corporation which employs enrolled tribal members for more than 25% of its total number of employees shall be exempt from the tax levied by §7-13-103 for every year during which such employment percentage is maintained for the entire fiscal year, after the first year in which such tax is paid in full

#### §7-13-105. Statements of Valuation.

On or before the first day of September of each year, each corporation which is subject to tax under this Chapter shall file with the Commission a statement of the fair market value of its reservation taxable property as of the assessment date. Each such statement of valuation shall append the audited financial statement of the corporation for the preceding 31st day of December, or if no such statement was prepared, the audited financial statement for the last period ending prior to the assessment date, or shall certify that no audited financial statements were prepared for the preceding year. Each statement of valuation shall either certify that the value stated for the reservation taxable property of the corporation is identical to the value of the assets of the corporation as stated in the audited financial statement appended to the statement of valuation, or shall identify each difference in stated value from such audited financial statement and provide a detailed explanation of each difference.

#### §7-13-106. Power to Assess Property.

The Commission shall review each statement of valuation submitted in accordance with §7-13-105 and may accept such statement or determine the fair market value of the reservation taxable property in accordance with any reasonable means of appraisal of fair market value. The Commission may for this purpose apply a rebuttable presumption that the fair market value of any property on the assessment date is the value set forth for such property in the audited financial statement of the corporation for the period immediately preceding the assessment date. The Commission shall also determine the fair market value of the reservation taxable property of any corporation failing to file a statement in accordance with §7-13-105.

#### §7-13-107. Procedure for Notice and Protest of Deficiency.

In the event that the Commission finds a deficiency in the statement of valuation submitted in accordance with §7-13-105, or determines the valuation of reservation taxable property of a corporation failing to file a statement of valuation in accordance with §7-13-105 the Commission shall serve a notice of deficiency on the taxpayer on or before the 15<sup>th</sup> day October in the taxable year setting forth the valuation as determined by the Commission and the amount of tax due and unpaid. Within 15 day of receipt of such notice of deficiency, the taxpayer shall either pay the amount of the deficiency or file a protest with the Commission requesting a hearing on the issue of valuation. The Commission shall conduct such hearing with 60 day of receipt of any notice of protest, and shall within 30 days of such hearing notify the taxpayer of its final determination of the amount of tax due and unpaid. Penalties and interest shall accrue in accordance with Chapter Six from the first day of September with respect to the tax as finally determined.



CHAPTER FOURTEEN  
MOTOR VEHICLE FUELS TAX  
(Adopted 12-03-2008 by Resolution A05-09-025)

§7-14-101. Definitions. As used in this chapter, unless the context otherwise requires.

- (1) “Agricultural purpose” means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
- (2) “Commissioner” means the Tribal Tax Commissioner or [Tribal Tax Director].
- (3) “Consumer” means a user of motor vehicle fuel including any person purchasing motor vehicle fuel within the jurisdiction of the Tribe for use in a licensed motor vehicle; any person importing motor vehicle fuel into the jurisdiction of the Tribe or purchasing motor vehicle fuel within the jurisdiction of the Tribe for an agricultural, industrial, or railroad purpose; or any person purchasing motor vehicle fuel within the jurisdiction of the Tribe for use in a recreational or any other type of motor vehicles. It does not include a person importing or purchasing motor fuel for resale.
- (4) “Common carrier” or contract carrier” means a person involved in the movement of motor vehicle fuel from a terminal or movement of motor vehicle fuel imported into the jurisdiction of the Tribe, who is not an owner of the motor vehicle fuel.
- (5) “Distributor” means a person, other than a retailer, who acquires motor vehicle fuel from a supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
- (6) “Exporter” means a refiner, supplier, or distributor who exports motor vehicle fuel out of the jurisdiction of the Tribe in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
- (7) “Gallon” means a United States gallon (3.79 liters] measured on a gross volume basis.
- (8) “Gross volume” means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
- (9) “Importer” means a refiner, supplier, or distributor who imports motor vehicle fuel into the jurisdiction of the Tribe in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
- (10) “Industrial purpose” means:
  - (a) A manufacturing, warehousing, or loading dock operation;

- (b) Construction;
- (c) Sand and gravel processing;
- (d) Well drilling, well testing, or well servicing;
- (e) Maintenance of business premises, golf courses, or cemeteries;
- (f) A commercial or contract painting operation;
- (g) Electrical services;
- (h) A refrigeration unit on a truck;
- (i) A power-take-off unit; and
- (j) Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for railroad purpose, or fuel used to operate a licensed motor vehicle.

- (11) “Jurisdiction of the Tribe” shall mean and include all areas within the original exterior boundaries of the Spirit Lake Reservation (*formerly Devils Lake Sioux Indian Reservation*) and all lands held by the United States in trust for the Tribe outside the exterior borders of the Spirit Lake Reservation.
- (12) “Licensed motor vehicle” means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
- (13) “Motor vehicle” means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the motor vehicle fuels defined in this chapter, but does not include aircraft.
- (14) “Motor vehicle fuel” means all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classifications or uses, and any liquid which, when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (American society for testing materials designation D-86), shows not less than ten percent distilled (recovered) below three hundred forty-seven degrees Fahrenheit [175 degree Celsius] and not less than ninety-five percent distilled (recovered) below four hundred sixty-four degrees Fahrenheit [240 degrees Celsius] but does not include aviation fuel. It includes agriculturally derived alcohol blended with gasoline, used in a pure state, or if blended with another agriculturally derived liquid.
- (15) “Person” means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business, trust, receiver, or any other group or combination acting as a unit.
- (16) “Persons subject to the jurisdiction of the Tribe” means individual members of the Tribe, nonmember Indians residing within the jurisdiction of the Tribe and any other persons subject to the taxing jurisdiction of the Tribe that are not subject to the state tax authority.

- (17) “Physical inventory reading” means a measurement of motor vehicle fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum or other receptacle.
- (18) “Public road or highway” means every way or place generally open to the use of the public as a matter of right, for purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
- (19) “Rack” means a mechanism used to dispense motor vehicle fuel from a terminal.
- (20) “Refiner” means a person who produces, manufactures, or refines motor vehicle fuel within the jurisdiction of the Tribe or a person who produces alcohol, or alcohol derivative substance within the jurisdiction of the Tribe for blending with motor vehicle fuel.
- (21) “Retail location” means a site at which motor vehicle fuel is dispensed through a pump from an underground or aboveground storage tank into the supply tank of a motor vehicle.
- (22) “Retailer” means a person who acquires motor vehicle fuel from a supplier or distributor for resale to a consumer at a retail location.
- (23) “Sale” means, with respect to motor vehicle fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
- (24) “Supplier” means a refiner who distributes motor vehicle fuel from a terminal within the jurisdiction of the Tribe, or person who acquires motor vehicle fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal or a person who acquires motor vehicle fuel by truck or railcar for storage at and distribution from a terminal within the jurisdiction of the Tribe.
- (25) “Tax Commission” means the Tribal Tax Commission.
- (26) “Taxpayer” means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
- (27) “Terminal” means a motor vehicle fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the motor vehicle fuel may be removed from the rack.
- (28) “Terminal operator” means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by co-venturers, “terminal operator” means the person appointed to exercise the responsibility for, or physical control over, and

operation of the terminal.

- (29) “Wholesale distribution” means the sale of motor vehicle fuel by a supplier or distributor.

§7-14-102. Tax imposed on motor vehicle fuels.

- (1) Except as otherwise provided in this chapter, a tax of twenty-three cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used within the Spirit Lake Reservation.
- (2) A supplier, distributor or retailer shall remit the tax imposed by this section on motor vehicle fuel used, and on direct sales or motor vehicle fuel to a consumer.
- (3) The tax imposed by this section does not apply on a sale by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a supplier or distributor to a retailer, on an export, or on a sale to an exempt consumer.
- (4) The person required to remit the tax imposed by this section shall pass the tax on to the consumer. A retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.
- (5) The person required to remit the tax imposed by this section shall pay the tax to the Commissioner by the twenty-fifth day of the calendar month after the month during which the motor vehicle fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.

§7-14-103. Refund of tax for fuel used for an industrial purpose.

Any consumer who buys or uses any motor vehicle fuel for an industrial purpose on which the motor vehicle fuel tax has been paid may file a claim with the Commissioner for a refund under this chapter.

§7-14-104. Refund of tax for fuel used for agricultural purposes.

Any consumer who buys or uses any motor vehicle fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a claim with the Commissioner for a refund under this chapter.

§7-14-105. Form of claim for refund.

A refund claim must be on a form furnished by the Commissioner and must have a written declaration by the claimant that it is made under the penalties of perjury. The Commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic

means, including telecommunications that shall have the same validity and consequence as the actual signature and written declaration for a paper return. The refund claim must state that the motor vehicle fuel was used or is to be used by the claimant other than in a licensed motor vehicle, the purpose or type of project for which the motor vehicle fuel was used, and such other information as is required. The original invoices or sales tickets proving the purchase or motor vehicle fuel on which the refund is claimed must be attached to the refund claim. The invoices or sales tickets must include the seller's name and address, the date the fuel was purchased, the type of product, the number of gallons [liters] of motor vehicle fuel purchased, the tax as a separate item or a statement that the tax is included in the price, and the name of the claimant. If the original invoices or sales tickets are lost, the claimant may substitute duplicate invoices or sales tickets plus a separate affidavit on a form or in a form as required by the Commissioner. A certified history of purchases detailing required information may be accepted by the Commissioner in lieu of original sales invoices or sales tickets. A supplier, distributor, or retailer is prohibited from preparing a refund claim for the consumer.

§7-14-106. Claim for refund - Limitation on filing.

A refund claim must be filed, for all motor vehicle fuel purchases during a calendar year, on or after January first and before July first of the next year following the year during which the purchase was made, or the claim for refund is barred unless the Commissioner grants an extension of time for cause. However, any claim for refund may be filed in the calendar year of the motor vehicle fuel purchase when:

- (1) The business is being discontinued;
- (2) No further purchases subject to fuel tax refund will be made in the remainder of the calendar year; or
- (3) The claim for refund exceeds four hundred dollars.

Such limitations shall not apply to the government of the Spirit Lake Tribe.

No claim for refund may be made or approved unless the amount of the claim is in excess of five dollars.

§7-14-107. Refund of tax on tax-exempt sales.

When a person purchasing motor vehicle fuel for resale purposes pays the tax imposed by this chapter and later makes a sale of fuel to an exempt consumer, the person may apply to the Commissioner for a refund of the tax.

§7-14-108. Commissioner to examine and pay claims.

Within thirty days of the receipt of a claim for a refund of tax, the Commissioner shall examine the claim and if there are no apparent discrepancies, shall prepare an abstract showing the claim number and the name, address, and the amount due each claimant. All claims approved by the Commissioner must be paid by warrant-checks prepared by the Tribal Treasurer. The Tribal Treasurer is not required to retain the canceled checks by which any refund may have been paid for

a period of more than six years from July first of the fiscal year in which the refund check is issued.

§7-14-109. Refund to tribe or political subdivision.

When any construction, reconstruction, or maintenance of a public road, highway, street, or airport is undertaken by any tribe, state or any political subdivision thereof and where public funds of the United States, a state, a tribe or any political subdivision thereof are directly used for the purchasing of motor vehicle fuel to be used in publicly owned vehicle for such construction, reconstruction, or maintenance, such motor vehicle fuel is subject to a refund of the tax paid on the fuel as provided for in this chapter and under the same terms and conditions.

§7-14-110. Credit for taxes paid on worthless accounts and refunds.

Taxes paid on motor vehicle fuel represented by accounts found to be worthless, and actually charged off for income tax purposes, may be taken as a credit against subsequent taxes due provided the account is subsequently collected, the tax must be remitted on the amount collected. If in any case the credit or any part of it cannot be utilized because of a discontinuance of a business or for valid reason, the amount may be refunded.

§7-14-111. Retailer, refiner, supplier, distributor, importer, exporter, and terminal operator required to secure license.

- (1) A person may not engage in business within the jurisdiction of the Tribe as a retailer, refiner, supplier, distributor, importer, exporter, or terminal operator of motor vehicle fuel unless that person holds an unrevoked license issued by the Commissioner.
- (2) The person shall file an application for a license with the Commissioner providing such information as required by the Commissioner and on a form or in a format as required by the Commissioner.
- (3) An applicant for a single or multiple license as a refiner, supplier, distributor, importer, exporter, or terminal operator shall pay to the Commissioner a license fee of one hundred fifty dollars. The license fee must be paid at the time the application is made.

§7-14-112. Application for license - Issuance of license - Denial of license.

- (1) Upon receipt and approval of an application for a license and the license fee, the Commissioner shall issue a license which shall be valid until it is suspended, revoked for cause, or otherwise canceled. The license is not transferable.
- (2) A multiple license must be issued to a person who applies and qualifies for more than one type of license.
- (3) The Commissioner may refuse to issue a license to a person who has failed to provide the information requested on the application, who previously held a license which was revoked by the Commissioner or any state, who is subterfuge for the real party in interest who previously held a license that was revoked by the Commissioner

or any state, or upon other sufficient cause being shown. The Tax Commission shall grant the person the right to a hearing in accordance with the rules and regulations prescribed by the Tax Commission.

§7-14-113. Revocation of license - Hearing to show cause- Reinstatement.

- (1) The Commissioner may revoke a license for reasonable cause. Before revoking a license, the Tax Commission shall grant a hearing in accordance with the rules and regulations prescribed by the Tax Commission to allow the person to show cause why the license should not be revoked.
- (2) Before a new license may be issued to a person who is obligated to remit the tax imposed by this chapter and whose license was revoked, the person shall pay to the Commissioner the amount of any delinquent tax, penalties, and interest remaining unpaid.

§7-14-114. Monthly report by refiner, supplier, distributor, retailer, importer, or exporter required.

- (1) A refiner, supplier, distributor, retailer, importer, or exporter shall file a monthly report with the Commissioner no later than the twenty-fifth day of each calendar month covering motor vehicle fuel sold and used within the jurisdiction of the Tribe during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
- (2) The report to the Commissioner must be on a form prescribed and furnished by the Commissioner. The report must contain the information as required by the Commissioner including:
  - (a) A detailed schedule of motor vehicle fuel sold to a person eligible to purchase the motor vehicle fuel without the tax imposed by this chapter.
  - (b) A detailed schedule of motor vehicle fuel refined, purchased, imported and exported.
  - (c) A detailed schedule of motor vehicle fuel sold tax-paid for resale, including a list of persons who purchased the motor vehicle fuel for resale.
  - (d) The total number of gallons of motor vehicle fuel sold tax-exempt to a qualified consumer.
  - (e) The total number of gallons of motor vehicle fuel sold and used subject to the tax imposed by this chapter.
  - (f) The number of gallons of motor vehicle fuel in inventory at the beginning of

the calendar month, the number of gallons in inventory at the close of the calendar month, and any gains or losses experienced.

- (3) The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury.
- (4) The commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

§7-14-115. Common or contract carrier - license required -records -diverted loads - Commissioner to audit records.

- (1) A common or contract carrier shall obtain a license issued by the commissioner. The Application for a license must be made on a form prescribed by the commissioner and contain the information required by the commissioner.
- (2) A common or contract carrier transporting motor vehicle fuel in a vehicle, railcar, or vessel into the jurisdiction of the Tribe from another jurisdiction, shall insure that a bill of lading indicating a destination within the jurisdiction of the Tribe has been issued by the terminal or bulk plant from which the fuel was removed. If the bill of lading issued by the terminal or the bulk plant indicates a destination outside the jurisdiction of the Tribe, the transporter shall issue a diversion ticket indicating a destination within the jurisdiction of the Tribe. If a bill of lading was not issued by the terminal or bulk plant, the transporter shall issue a bill of lading for each shipment indicating a destination within the jurisdiction of the Tribe. A copy of a diversion ticket and a bill of lading prepared by the transporter shall be mailed, faxed, or electronically transmitted to the commissioner before the fuel enters the jurisdiction of the Tribe.
- (3) A common or contract carrier transporting motor vehicle fuel within the jurisdiction of the Tribe shall provide a copy of the bill of lading accompanying the shipment, along with any drop load tickets and diversion tickets issued for the delivered fuel to the refiner, supplier, distributor, importer, retailer, or consumer to whom delivery of the shipment was made.
- (4) A refiner, supplier, distributor, importer, retailer, or consumer, may not knowingly accept delivery of motor vehicle fuel into storage facilities within the jurisdiction of the Tribe if that delivery is not accompanied by a bill of lading or, diversion ticket issued by the terminal operator, bulk plant operator, or transporter, which specifically indicates a destination within the jurisdiction of the Tribe.
- (5) If a common or contract carrier unloads only a portion of a shipment at a location or if the load is loaded at a location other than what is indicated in the bill of lading or diversion ticket, the transporter shall issue a drop ticket. If the fuel is dropped at more than one location, the drop load ticket must identify the name and address of all locations and type of fuel and gallonage dropped. A copy of the ticket must be maintained on board and a copy must accompany the bill of lading that is provided to



the refiner, supplier, distributor, importer, retailer, or consumer taking delivery of the fuel.

- (6) The commissioner may audit the records of the common or contract carrier, whether or not licensed by the commissioner, and may impose such penalties as authorized by this chapter.

§7-14-116. Commissioner to audit report and assess tax.

- (1) The Commissioner, or an authorized representative may audit the records, books, and papers, and examine fuel and any equipment used to store, transport, or dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer, or common or contract carrier. For a person required to file a report, the examination and audit shall be done no later than three years after the due date of a report, or three years after the report was filed, whichever period expires later. The Commissioner is authorized to make assessments of tax, plus penalty and interest, or to issue credits or refunds as determined on the basis of the examination and audit.
- (2) If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a report, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the report, or six years after the report was filed, whichever period expires later.
- (3) Except as otherwise provided in this chapter, the Commissioner may audit any consumer's claim for a refund of tax, and, not later than three years after the due date of the claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the commissioner shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as required by the Commissioner of fuel purchases, payment of the tax, use of the fuel for a purpose entitling the claimant to a refund, and use of the fuel other than in a licensed motor vehicle.
- (4) If a person gives false or fraudulent information in a tax report or in a claim for refund, or if the failure by a person to file a tax report is due to the fraudulent intent or the willful attempt of the person in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time.
- (5) If, before the expiration of the time prescribed in this chapter for the assessment of tax, the Commissioner and the person consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
- (6) A determination of additional tax due issued to a person fixes the tax finally and

irrevocably unless the person against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the Tax Commission.

- (7) A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the person claiming the refund, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the Tax Commission.

§7-14-117. Determination if no report is filed.

If a person fails, neglects, or refuses to file a motor fuel tax report when due, the Commissioner shall, on the basis of available information, determine the tax liability for the period during which no report was filed, and to the tax thus determined the Commissioner shall add the penalty and interest as provided in section 7-14-118. An assessment made by the commissioner is presumed to be correct, and in any case where the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by fair preponderance of evidence that it is erroneous or excessive.

§7-14-118. Corporate officer liability.

- (1) If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, the president, vice president, secretary, or treasurer, jointly or severally, having control or supervision of, or charged with the responsibility for making, such returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter for the assessment and collection of other liabilities.
- (2) If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit. The cash deposit provided for in this section must be in an amount equal to the estimated annual motor vehicle fuel tax liability of the corporation.

§7-14-119. Governor and manager liability.

- (1) If a limited liability company holding a license issued under this chapter or by the State of North Dakota fails for any reason to file the required returns or to pay the taxes due under this chapter, the governors or managers, jointly or severally, charged with the responsibility of supervising the preparation of such returns and payments are personally liable for such failure. The dissolution of a limited liability company does not discharge a governor or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.
- (2) If the governors or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit. The cash deposit provided for in this section must be in an

amount equal to the estimated annual motor vehicle fuel tax liability of the limited liability company.

§7-14-120. Penalty and Interest - Violations.

- (1) If a person fails to file the required report or to pay the full amount of the tax as required by this chapter, there is imposed a penalty of five dollars, or a sum equal to five percent of the tax due, whichever is greater, with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which the delinquency continues, excepting the month within which the report was required to be filed or the tax became due. If a person files a false or fraudulent report with intent to evade the tax imposed by this chapter, there is imposed a penalty equal to ten percent of the deficiency, with interest at the rate of two percent per month of the deficiency, for each calendar month or fraction of a month during which the deficiency continues. The Commissioner, for good cause shown, may waive all or part of the penalty or interest provided by this subsection.
- (2) A person is guilty of a class A misdemeanor if:
  - (a) The person refuses or knowingly or intentionally fails to make and file any report required by this chapter in the manner or within the time required; or
  - (b) The person knowingly or with intent to evade or aid in the evasion of the tax imposed by this chapter makes any false statement or conceals any material fact in any application, record, report, or claim for refund provided for in this chapter.

§7-14-121. Tax collection allowance.

The person required to remit the tax imposed by this chapter shall retain two percent of the amount of tax due to cover the costs of collecting the tax and transmitting it to the Commissioner. This provision does not apply to additional tax assessed during an audit.

§7-14-122. Retention of records - Subject to inspection.

A refiner, supplier, distributor, importer, exporter, terminal operator, and retailer shall maintain and retain records of all motor vehicle fuel refined, purchased, imported, or otherwise acquired within the jurisdiction of the Tribe; of all motor vehicle fuel exported, sold, distributed, and used; and of all inventory records, for a period of not less than three years. Inventory records include physical readings, metered readings of sales, delivery tickets, and delivery readings. The records are open to inspection by the Commissioner or by any agent or employee authorized by the Commissioners during regular business hours.

§7-14-123. Administration - Assistance authorized - Rules.

The Commissioner shall enforce the provisions of this chapter. The Commissioner may employ assistance and conduct investigations as may be necessary or the efficient administration and enforcement of this chapter and may adopt and enforce reasonable rules relating to the

administration and enforcement of this chapter.

§7-14-124. Erroneously or illegally collected taxes.

If any taxes, penalties, or interest imposed by this chapter have been erroneously or illegally collected from any person, the Commissioner may permit that person to take credit against a subsequent tax return for the amount of the erroneous or illegal overpayment. In the alternative, the Commissioner shall present a voucher to the Tribal Treasurer for payment of the amount erroneously or illegally collected.

§7-14-125. Civil Action for Tax, Penalties and Interest.

In any case of the failure of a taxpayer to pay taxes imposed by this chapter, or penalties or interest due under this chapter, the amount due may be recovered in a civil action brought by the Tax Commission in the Spirit Lake Tribal Court, or any court of competent jurisdiction. In any such action, if the Tribe prevails in whole or in part, the Tribe shall be entitled to recover its reasonable costs of bringing suit, including attorney's fees.

§7-14-126. Rulemaking authority.

The Tax Commission shall have the authority to prescribe, promulgate, and enforce written rules and regulations not inconsistent with this chapter for its detailed and efficient administration ; or to interpret or apply any Tribal tax laws as may be necessary to ascertain or compute the tax owing by any taxpayer; or for the filing of any reports or returns required by any Tribal tax laws; or as shall be reasonably necessary for the efficient performance of its duties, or as may be required or permitted by law; or rules governing the conduct of hearings before the Tax Commission regarding any matters arising pursuant to this chapter.

§7-14-127. Adoption of Regulations.

No rule or regulation prescribed by the Tax Commission shall be effective until and unless such rule or regulation is deemed by the Treasurer as necessary to the efficient administration and enforcement of this chapter, and a certified copy of said rule or regulation bears the signature of the Treasurer.

§7-14-128. Construction.

This chapter shall be interpreted and applied in a manner consistent with all other codes, laws, ordinances, resolutions, and regulations of the Spirit Lake Tribe.

CHAPTER FIFTEEN  
SPECIAL FUELS TAXES  
(Adopted 12-03-2008 by Resolution A05-09-025)

§7-15-101. Definitions. As used in this Chapter, unless the context otherwise requires:

- (1) “Agricultural purpose” means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
- (2) “Clear diesel fuel” means all diesel fuel not dyed red for Federal motor fuel tax exemption purposes.
- (3) “Commissioner” means the Tribal Commissioner [or Tribal Tax Director].
- (4) “Common carrier” or “contract carrier” means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into the jurisdiction of the Tribe, who is not an owner of the special fuel.
- (5) “Consumer” means a user of special fuel including any person purchasing special fuel within the jurisdiction of the Tribe for use in a licensed motor vehicle; any person importing special fuel within the jurisdiction of the Tribe for agricultural, industrial, or railroad purpose; or any person purchasing special fuel within the jurisdiction of the Tribe for use in recreational or any other types of motor vehicles. Tribe It does not include a person importing or purchasing fuel for resale.
- (6) “Distributor” means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
- (7) “Exporter” means a refiner, supplier, or distributor who exports special fuel out of the jurisdiction of the Tribe in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
- (8) “Gallon” means a United States gallon (3.79 liters] measured on a gross volume basis.
- (9) “Gross volume” means measurement in United States gallons (3.79 liters] without temperature or barometric adjustment.
- (10) “Heating fuel use” means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
- (11) “Highway purpose” means any use of special fuel in any motor vehicle in any phase

of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.

- (12) “Importer” means a refiner, supplier, or distributor who imports motor vehicle fuel into the jurisdiction of the Tribe in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
- (13) “Industrial purpose” means:
- (a) A manufacturing, warehouse, or loading dock operation;
  - (b) Construction;
  - (c) Sand and gravel processing;
  - (d) Well drilling, well testing, or well servicing;
  - (e) Maintenance of business premises, golf courses, or cemeteries;
  - (f) A commercial or contract painting operation;
  - (g) Electrical services;
  - (h) A refrigeration unit on a truck;
  - (i) A power-take-off unit; and
  - (j) Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

- (14) “Jurisdiction of the Tribe” shall mean and include all areas within the original exterior boundaries of the Spirit Lake Reservation and all lands held by the United States in trust for the Tribe outside the exterior borders of the Spirit Lake Reservation.
- (15) “Licensed motor vehicle” means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
- (16) “Motor vehicle” means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter, but does not include aircraft.
- (17) “Person” means every individual, partnership, firm, association, joint venture corporation or limited liability company, estate, business, trust, receiver, or any other group or combination acting as a unit.
- (18) “Persons subject to the jurisdiction of the Tribe” means individual members of the Tribe, nonmember Indians residing within the jurisdiction of the Tribe and any other persons subject to the taxing jurisdiction of the Tribe that are not subject to state taxing authority.

- (19) “Physical inventory reading” means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum or other receptacle.
- (20) “Public road or highway” means every way or place generally open to the use of the public as a manner of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
- (21) “Rack” means a mechanism used to dispense special fuel from a terminal.
- (22) “Railroad purpose” means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
- (23) “Refiner” means a person who produces, manufactures, or refines special fuels.
- (24) “Retail location” means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank or a motor vehicle.
- (25) “Retailer” means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
- (26) “Sale” means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
- (27) “Special fuel” means all clear diesel fuel sold for use in a licensed motor vehicle on public roads.
- (28) “Supplier” means a refiner who distributes special fuel from a terminal within the jurisdiction of the Tribe, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at the distribution from a terminal within the jurisdiction of the Tribe.
- (29) “Tax Commission” means the Tribal Tax Commission.
- (30) “Taxpayer” means a refiner, supplier, distributor, importer, exporter, terminal operator or retailer.
- (31) “Terminal” means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.

- (32) “Terminal operator” means a person who by ownership or contractual agreement who is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by co-venturers, “terminal operator” means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
- (33) “Wholesale distribution” means the sale of special fuel by a supplier or distributor.

§7-15-102. Tax imposed.

- (1) Except as otherwise provided in this chapter, an excise tax of twenty-three cents per gallon [3.79 liters] is imposed on all special fuel sold at retail locations within the jurisdiction of the Tribe and sold in bulk for licensed motor vehicle use to persons subject to the jurisdiction of the Tribe.
- (2) A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to consumers.
- (3) The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
- (4) The tax imposed by this section does not apply to special fuels purchased for use in operating vehicles of the government of the United States or any of its agencies, any state, or any political subdivision of any state, or any Tribe or any of its agencies or political subdivision.
- (5) The tax imposed by this section does not apply to bulk delivery sales of special fuel within the jurisdiction of the Tribe for use in non-licensed equipment for agricultural or industrial purposes, or to the Tribe or any of its agencies or political subdivisions.
- (6) The person required to remit the tax imposed by this section shall pass the tax on to the consumer.
- (7) The person required to remit the tax imposed by this section shall pay the tax to the Commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.

§7-15-103. Tax collection allowance.

The person required to remit the tax shall deduct one percent from the amount of tax due, up to a maximum of three hundred dollars per month, to cover the cost of collecting the tax and remitting it to the Commissioner. This provision does not apply to additional tax assessed during



an audit.

§7-15-104. Credit for taxes paid on worthless accounts and refunds.

Taxes paid on special fuels represented by accounts found to be worthless, and actually charged off for income tax purposes, may be taken as a credit against subsequent taxes due provided the accounts charged off included the cost of the fuel as well as the taxes due. If the worthless account is subsequently collected, the tax must be remitted on the amount collected. If in any case the credit or any part of it cannot be utilized because of a discontinuance of a business or for other valid reason, the amount may be refunded

§7-15-105. Refiner, supplier, distributor, importer, exporter, retailer, and terminal operator required to secure license.

- (1) A person may not engage in business within the jurisdiction of the Tribe as a refiner, supplier, distributor, importer, exporter, retailer, or terminal operator of special fuel unless that person holds an unrevoked license issued by the Commissioner.
- (2) The person shall file an application for a license with the Commissioner providing such information as required by the Commissioner and on a form or in a format as required by the Commissioner.
- (3) An applicant for a single or multiple license as a refiner, supplier, distributor, importer, exporter, or terminal operator shall pay to the Commissioner a license fee of one hundred fifty dollars. The license fee must be paid at the time the application is made.

§7-15-106. Application for license - Issuance of license - Denial of license.

- (1) Upon receipt and approval of an application for a license and the license fee, the Commissioner shall issue a license which shall be valid until it is suspended, revoked for cause, or otherwise canceled. The license is not transferable.
- (2) A multiple license must be issued to a person who applies and qualifies for more than one type of license.
- (3) The Commissioner may refuse to issue a license to a person who has failed to provide the information requested on the application, who previously held a license which was revoked by the Commissioner or any state, who is subterfuge for the real party in interest who previously held a license that was revoked by the Commissioner or any state, or upon other sufficient cause being shown.

§7-15-107. Revocation of license - Hearing to show cause - Reinstatement.

- (1) The commissioner may revoke a license for reasonable cause. Before revoking a license, the Tax Commission shall grant a hearing in accordance with the rules and regulations prescribed by the Tax Commission to allow the person to show cause why the license should not be revoked.

- (2) Before a new license may be issued to a person who is obligated to remit the tax imposed by this chapter and whose license was revoked, the person shall pay to the commissioner the amount of any delinquent tax, penalties, and interest remaining unpaid.

§7-15-108. Retention of records - Subject to inspection.

A refiner, supplier, distributor, importer, exporter, terminal operator, and retailer shall maintain and retain records of all motor vehicle fuel refined, purchased, imported, or otherwise acquired within the jurisdiction of the Tribe; of all special fuel exported, sold, distributed, and used; and of all inventory records, for a period of not less than three years. Inventory records include physical readings, metered readings of sales, delivery tickets, and delivery readings. The records are open to inspection by the Commissioner or by any agent or employee authorized by the Commissioners during regular business hours.

§7-15-109. Reports by refiner, supplier, distributor, retailer, importer, or exporter required.

- (1) A refiner, supplier, distributor, retailer, importer, or exporter shall file a monthly report with the Commissioner no later than the twenty-fifth day of each calendar month covering special fuel sold and used within the jurisdiction of the Tribe during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
- (2) The report to the Commissioner must be on a form prescribed and furnished by the Commissioner. The report must contain the information as required by the Commissioner including:
  - (a) A detailed schedule of special fuel refined, purchased, imported, and exported.
  - (b) A detailed schedule of special fuel sold to a person eligible to purchase the special fuel without the tax imposed by this chapter.
  - (c) A detailed schedule of special fuel sold tax-paid to a person for resale, including a list of persons who purchased the special fuel for resale.
  - (d) The total number of gallons of special fuel sold and used subject to tax imposed by this chapter.
  - (e) The total number of gallons of special fuel sold tax-exempt to a qualified consumer.
  - (f) The number of number of gallons of special fuel inventory at the beginning of the calendar month, the number of gallons in inventory at the close of the calendar month, and any gains or losses experienced.

- (3) The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury. The commissioner may prescribe alternative methods for signing, subscribing, or verifying a report filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

§7-15-110. Common or contract carrier - license required - records - diverted loads - Commissioner to audit records.

- (1) A common or contract carrier shall obtain a license issued by the commissioner. The application for a license must be made on a form prescribed by the commissioner and contain the information required by the commissioner.
- (2) A common or contract carrier transporting special fuel in a vehicle, railcar, or vessel into the jurisdiction of the Tribe from another jurisdiction, shall insure that a bill of lading indicating a destination within the jurisdiction of the Tribe has been issued by the terminal or bulk plant from which the fuel was removed. If the bill of lading issued by the terminal or the bulk plant indicates a destination outside the jurisdiction of the Tribe, the transporter shall issue a diversion ticket indicating within the jurisdiction of the Tribe. If a bill of lading was not issued by the terminal or bulk plant, the transporter shall issue a bill of lading for each shipment indicating a destination within the jurisdiction of the Tribe. A copy of a diversion ticket and bill of lading prepared by the transporter shall be mailed, faxed, or electronically transmitted to the commissioner before the fuel enters the jurisdiction of the Tribe.
- (3) A common or contract carrier transporting special fuel within the jurisdiction of the Tribe shall provide a copy of the bill of lading accompanying the shipment, along with any drop load tickets and diversion tickets issued for the delivered fuel to the refiner, supplier, distributor, importer, retailer, or consumer to whom delivery of the shipment was made.
- (4) A refiner, supplier, distributor, importer, retailer, or consumer, may not knowingly accept delivery of special fuels into storage facilities within the jurisdiction of the Tribe if that delivery is not accompanied by a bill of lading or diversion ticket issued by the terminal operator, bulk plant operator, or transporter which specifically indicates a destination within the jurisdiction of the Tribe.
- (5) If a common or contract carrier unloads only a portion of a shipment at a location or if the load is loaded at a location other than what is indicated in the bill of lading or diversion ticket, the transporter shall issue a drop ticket. If the fuel is dropped at more than one location, the drop load ticket must identify the name and address of all locations and type of fuel and gallonage dropped. A copy of the ticket must be maintained on board and a copy must accompany the bill of lading that is provided to the refiner, supplier, distributor, importer, retailer, or consumer taking delivery of the fuel.
- (6) The commissioner may audit the records of the common or contract carrier, whether

or not licensed by the commissioner, and may impose such penalties as authorized by this chapter.

§7-15-111. Commissioner to audit report and assess tax.

- (1) The Commissioner, or an authorized representative, may audit the records, books, and papers and examine fuel and any equipment used to store, transport, or dispense fuel, or a refiner, supplier, distributor, importer, exporter, terminal operator, retailer, or common or contract carrier. For a person required to file a report, the examination and audit must be done no later than three years after the due date of a report, or three years after the report was filed, whichever period expires later. The Commissioner is authorized to make assessments of tax, plus penalty and interest, or to issue credits or refunds as determined on the basis of the examination and audit.
- (2) If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a report, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the report, or six years after the reports was filed, whichever period expires later.
- (3) Except as otherwise provided in this chapter, the commissioner may audit any consumer's claim for a refund of tax, and, not later than three years after the due date of the claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the commissioner shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as required by the commissioner of fuel purchases, payment of the tax, use of the fuel for a purpose entitling the claimant to a refund, and use of the fuel other than in a licensed motor vehicle.
- (4) If a person gives false or fraudulent information in a tax report or in a claim for refund, or if the failure by a person to file a tax report is due to the fraudulent intent or the willful attempt of the person to file a tax report is due to the fraudulent intent or the willful attempt of the person in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time.
- (5) If, before the expiration of the time prescribed in this chapter for the assessment of tax, the commissioner and the person consent in writing to the extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
- (6) A determination of additional tax due is issued to a person fixes the tax finally and irrevocably unless the person against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the Tax Commission.

- (7) A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the person claiming the refund, and within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the Tax Commission.

§7-15-112. Penalty and interest - Violations.

- (1) If a person fails to file the required report or to pay the full amount of the tax as required by this chapter, there is imposed a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which the delinquency continues, excepting the month within which the tax became due. If a person files a false or fraudulent report with intent to evade the tax imposed by this chapter, there is imposed a penalty equal to ten percent of the deficiency, with interest at the rate of two percent per month on the deficiency, for each calendar month or fraction of a month during which the deficiency continues.
- (2) If a consumer fails to pay any tax under this chapter, there shall be imposed a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, together with interest at a rate of one percent per month on the tax due, for each calendar month or fraction of a month during which the delinquency continues, not including the month within which the tax became due. The Commissioner, for good cause shown, may waive all or a part of the penalty of the interest provided by this subsection. No refiner, supplier, distributor, importer, exporter, or retailer may be held liable for taxes due directly from a consumer.
- (3) A person is guilty of a class A misdemeanor if:
  - (a) The person refuses or knowingly or intentionally fails to make and file any report required by this chapter in the manner or within the time required; or
  - (b) The person knowingly or with intent to evade or aid in the evasion of the tax imposed by this chapter makes any false statement or conceals any material fact in any application, record, report, or claim for a refund provided for in this chapter.

§7-15-113. Determination if no report is filed.

If a person, neglects, or refuses to file a special fuel tax report when due, the Commissioner shall, on the basis of available information, determine the tax liability for the period during which no return was filed, and to the tax thus determined shall add the penalty and interest. An assessment made under this section is presumed to be correct, and in any case where the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by fair preponderance of evidence that it is erroneous or excessive.

§7-15-114. Corporate officer liability.

- (1) If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, the president, vice president, secretary, or treasurer, jointly or severally, having control or supervision of, or charged with the

responsibility for making such returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter for the assessment and collection of other liabilities.

- (2) If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit. The cash deposit provided for in this section must be in an amount equal to the estimated annual special fuel tax liability of the corporation.

§7-15-115. Governor and manager liability.

- (1) If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governors or managers, jointly or severally, charged with the responsibility of supervising the preparation of such returns and payments are personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
- (2) If the governors or managers elect not to be personally liable for the failure to file the required returns or pay the tax due, the limited liability company must be required to make a cash deposit. The cash deposit provided for in this section must be in an amount equal to the estimated annual special fuel tax liability of the limited liability company.

§7-15-116. Erroneously or illegally collected taxes.

If any taxes, penalties, or interest imposed by this chapter have been erroneously or illegally collected from any person, the commissioner may permit that person to take credit against a subsequent tax return for the amount of the erroneous or illegal overpayment. In the alternative, the commissioner shall present a voucher to the Tribal Treasurer for payment of the amount erroneously or illegally collected.

§7-15-117. Civil Action for Tax, Penalties and Interest.

In any case of the failure of a taxpayer to pay taxes imposed by this chapter, or penalties or interest due under this chapter, the amount due may be recovered in a civil action brought by the Tax Commission in the Spirit Lake Tribal Court, or any other court of competent jurisdiction. In any such action, if the Tribe prevails in whole or in part, the Tribe shall be entitled to recover its reasonable costs of bringing suit, including attorney's fees.

§7-15-118. Administration - Assistance authorized - Rules.

The Commissioner shall enforce the provisions of this chapter. The Commissioner may employ assistance and conduct investigations as may be necessary for the efficient administration and enforcement of this chapter and may adopt and enforce reasonable rules relating to the

administration and enforcement of this chapter.

§7-15-119. Rulemaking authority.

The Tax Commission shall have the authority to prescribe, promulgate, and enforce written rules and regulations not inconsistent with this chapter for its detailed and efficient administration; or to interpret or apply any Tribal tax laws as may be necessary to ascertain or compute the tax owing by any taxpayer; or for the filing of any reports or returns required by any Tribal tax laws; or as shall be reasonably necessary for the efficient performance of its duties, or as may be required or permitted by law; or rules governing the conduct of hearings before the Tax Commission regarding any matters arising pursuant to this chapter.

§7-15-120. Adoption of Regulations.

No rule or regulation prescribed by the Tax Commission shall be effective until and unless such rule or regulation is deemed by the Treasurer as necessary to the efficient administration and enforcement of this chapter, and a certified copy of said rule or regulation bears the signature of the Treasurer.

§7-15-121. Construction.

This chapter shall be interpreted and applied in a manner consistent with all other codes, laws, ordinances, resolutions, and regulations of the Spirit Lake Tribe.

CHAPTER SIXTEEN  
Tax on Materials Used in Construction Projects  
(Materials Tax)  
(Adopted 12-03-2008 by Resolution A05-09-026)

§7-16-101. Definitions.

In this chapter, unless the context and subject matter otherwise require:

- (1) "Tax Commissioner" or "Commissioner" means the Tax Commissioner of the Spirit Lake Tribe Tax Department.
- (2) "Reservation" means those areas within the exterior boundaries of the Spirit Lake Reservation.
- (3) "Purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.
- (4) "Purchase price" means the total amount for which materials are sold, leased, or rented, valued in money, whether paid in money or otherwise, but not including cash discounts and trade-ins allowed and taken on sales; provided that if the transaction is not conducted at arms-length, or if for any other reason the Tax Commissioner finds that the total amount for which the property is sold, leased or rented does not represent the fair market value of the property interest transferred, "purchase price" means the fair market value of the property interest transferred as determined by the Commissioner.
- (5) "Contractor" means any person or group or combination of persons acting as a unit engaged or retained under a contract to provide services or materials.
- (6) "Subcontractor" includes person or group or combination of persons acting as a unit, who undertakes to perform all or any part of work covered by a contract entered into by a contractor, including the furnishing of any materials for use in connection with that contract.
- (7) "Retailer" includes every person engaged in the business of selling materials for use within the meaning of this chapter.
- (8) "Materials" means tangible personal property, including but not limited to goods, wares, merchandise, and supplies, when furnished or delivered to users within the Reservation for purposes of construction projects within the Reservation.

§7-16-102. Tax imposed.

There is hereby imposed a tax of four percent upon the purchase price of all materials used, consumed or incorporated into each construction project within the confines of the Spirit Lake Reservation. The Tribal Council may change the rate of the tax imposed by this chapter pursuant to the procedures set out in §7-2-10 of the Tribe's Law and Order Code.



§7-16-103. Property not subject to the materials tax.

The tax imposed by this chapter does not apply to:

- (1) materials brought into the Reservation by a nonresident of the Reservation for that person's own storage, use, or consumption while temporarily within the Reservation and not incorporated into a construction project within the Reservation;
- (2) the value of equipment and tools used in the course of a construction project where such equipment and tools are not incorporated into or made a part of the project being constructed;
- (3) electricity, motor fuel, special fuels, natural gas, or water used in connection with construction projects within the Reservation.

§7-16-104. Collection of the Tax.

The tax imposed by this chapter shall be paid to the Tribe by the contractor, subcontractor, or retailer who provides or uses any materials for use on a construction project within the Reservation where the tax imposed by this chapter has not otherwise been paid. The tax imposed under this chapter applies to materials used in all construction projects within the Reservation without regard to who owns the real property on which the construction is being done. The tax required to be collected constitutes a debt owed to the Tribe.

§7-16-105. Filing of returns and remittance of the tax.

Each contractor, subcontractor, or retailer who supplies or uses any materials upon which the tax imposed by this chapter has not been paid, is liable for payment of the tax, and shall pay the tax upon all such property used or provided by that contractor, subcontractor or retailer upon completion or partial completion of the project or delivery of the materials in accord with a schedule as set by the Tax Commissioner and in such manner and accompanied by such returns as the Tax Commissioner shall require. For good cause shown, the Tax Commission may grant extensions of time for filing a return and for remitting the tax. The Tax Commissioner shall issue receipts for the tax paid to the Tribe under this chapter.

§7-16-106. Business licenses, security, record-keeping.

- (1) Every retailer, contractor or subcontractor who provides or uses materials that are subject to the tax imposed by this chapter shall obtain and maintain a business license as required by Title 14 of the Tribe's Law and Order Code.
- (2) The Tax Commissioner may, in his or her discretion, require a contractor, subcontractor or retailer who is subject to this tax to furnish a bond to the Tribe or other adequate security, to secure the payment of any tax or penalties due or which may become due from such person.
- (3) Each contractor, subcontractor and retailer liable for the tax imposed by this chapter shall keep such records, receipts, invoices, and other pertinent papers as the Tax

Commissioner shall require and as necessary to allow the Tax Commissioner to verify the accuracy of any return made or to ascertain and determine the amount of tax due. Any such books, papers, and records must be made available within the Reservation for such examination upon reasonable notice if the Tax Commissioner shall make a request or an order to that effect.

§7-16-107. Enforcement.

If any contractor, subcontractor, or retailer fails to comply with any of the provisions of this chapter, or with any order or regulation of the Commissioner, the Commissioner may initiate proceedings to revoke the business license issued to such person or entity as provided by Title 14 of the Tribe's Law and Order Code, or take such other action to enforce collection of the tax, as well as penalties and interest as provided in this Title. The Tribe, upon the request of the Tax Commissioner, may bring an action at law or in equity, as the facts may justify, to enforce payment of any taxes due, penalties and interest. The foregoing remedies of the Tribe are cumulative and no action taken by the Tribe or the Tax Commissioner may be construed to be an election on the part of the Tribe or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.