



Stillaguamish Tribe of Indians

3322 236th St. NE
Arlington, WA 98223

BUSINESS LICENSING & TAXATION CODE

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BUSINESS LICENSING AND TAXATION CODE

SUBCHAPTER 100
BUSINESSES LICENSES

PART 1 – GENERAL PROVISIONS

SECTION 1. Purpose and Intent.

The Stillaguamish Tribe of Indians (“Tribe”) has a duty and obligation to its members and the Tribe itself, to protect and preserve the political integrity, economic security, and health and welfare of the Tribe. A business license fee is an appropriate method to generate revenue to operate, maintain, and improve essential Tribal governmental services and programs; provide direct and indirect civic and economic benefits to Tribal members and community members; economically develop the Tribe's lands; and preserve Tribal existence.

SECTION 2. Authority.

This Chapter is enacted pursuant to the Tribal Board of Director’s authority provided by Article V, Section 1 of the Tribe’s Constitution. The Commission is authorized and directed to implement this Code in any manner consistent with this Code to best provide for the efficient and consistent licensing of businesses and to provide for the exercise of the Tribe's regulatory jurisdiction consistent with applicable law.

SECTION 3. Definitions.

- (A) “**Adult Day Care Center**” means a non-residential or residential program, facility, or business that provides care to adults.
- (B) “**Applicant**” means a person intending to conduct business that completes and files an application for a Business License to the Commission.
- (C) “**Board of Directors**” means the governing body of the Stillaguamish Tribe of Indians.
- (D) “**Business**” means any regular or temporary business activity engaged in by any Person for the purpose of conducting a trade, profession, or commercial activity involving the sale of any property or services; however, an Isolated Sale of either property or services or non-profit activity does not constitute Business under this Code.
- (E) “**Business License**” means a license issued by the Tribe, in compliance with this Code, to engage in business within Tribal Lands.
- (F) “**Child Care Center**” for purposes of this Ordinance, Child Care Center does not include the Stillaguamish Tribal Child Care Center.

- (G) “**Commission**” means the Business Licensing and Tax Commission of the Stillaguamish Tribe of Indians.
- (H) “**Construction Contractor**” means a Person who constructs, alters, repairs, adds to, subtracts from, improves, moves, wrecks, or demolishes any building, highway, road, railroad, excavation, or other structure, project, development, or improvement to real property, or to do any part thereof. “Construction Contractor” includes subcontractors, specialty contractors, prime contractors, and any Person receiving consideration for the general supervision and/or coordination of such a construction project except for remediation contracting. This definition shall govern without regard to whether or not the construction contractor is acting in fulfillment of a contract.
- (I) “**Customer**” means a Person that buys goods or services from a Tribal government-owned business.
- (J) “**Employee**” means a person subject to the direct supervision and control of a business that is paid using an Internal Revenue Service Form W-2.
- (K) “**Disqualifying Crime**” or “**Disqualifying Crimes**” means the *Stillaguamish Tribal Business License and Tax Commission’s Regulation Governing Disqualifying Crimes for Business Licenses* as approved by the Tribal Board of Directors, which is attached hereto as Appendix A.
- (L) “**Fixed Retail Sales**” means sales of goods or merchandise that are carried on year-round from a fixed location to ultimate consumers, usually in small or individual lots for direct use or consumption by the purchaser.
- (M) “**Governmental Entity**” means an agency, instrumentality, or other entity of the Tribe or other federally-recognized Tribe, Federal, State, or local government.
- (N) “**Isolated Sales**” means intermittent or occasional sales of property or services, or solicitation of, that generally do not occur on consecutive days. An Isolated Sale includes, but is not limited to the following:
- (1) An intermittent or occasional purchase of a service or good by the Tribe, or its agents, or an individual, made on Tribal Lands, regardless of the medium used; or
 - (2) a delivery by common carrier or delivery service of parcel, individuals, furniture, office equipment, food, newspaper, and other services or goods to the Tribe, entity, premise, or individual located on Tribal Lands, regardless of the location of the purchaser at the time of purchase.
- (O) “**Licensee**” means an individual who has been issued a Business License by the Tribe to engage in Business.
- (P) “**Peddler**” means any person who shall sell, offer for or expose for sale, or who shall trade, deal or traffic in any personal property or services on Tribal Lands by going from house to house or who solicits and conducts business in residential areas by going from place to place or by indiscriminately approaching the individuals. The term “Peddler” includes mobile businesses operating from vehicles traveling from place to place in residential areas, such as ice cream vendors.
- (Q) “**Person**” or “**Persons**” means any individual, agent, principal, partnership, private or municipal corporation, or other entity of any kind whatsoever. “Person” does not include the Tribe.

- (R) **“Special Event Business”** means a business that is operated within Stillaguamish Tribal Lands for a brief period of time in connection with a special event taking place in or near Stillaguamish Tribal Lands that is organized by the Stillaguamish Tribal Community, a department of the Tribal government, or an organization created or supported by the Tribe, such as a business in a booth or stand at a special event.
- (S) **“Tribal Lands”** means land that is within the limits of the Stillaguamish Tribe of Indians Reservation, or held in trust by the U.S. Government for the benefit of the Tribe or its members.
- (T) **“Tribe”** means the Stillaguamish Tribe of Indians and its agencies, entities, arms, and enterprises, as appropriate, either together or separately.
- (U) **“Public Utility Company”** means a business that furnishes an everyday necessity to the public, including but not limited to waste removal, internet service, water, sewerage, gas, electricity, and telephone service.
- (V) **“Wholesale Sales”** means sales of goods or merchandise in quantity to retailers, other professional business users, or to other wholesalers. In general, Wholesale Sales are sales of goods to anyone other than an ultimate consumer.

SECTION 4. Non-Waiver of Sovereign Immunity.

Nothing herein shall be construed as a waiver of the Tribe's sovereign immunity.

SECTION 5. Severability.

The provisions of this Chapter are severable. If a court of competent jurisdiction should hold any provision of this Chapter invalid, such ruling shall not affect the validity of any other provision, such that the remaining provisions will have full force and effect.

PART 2 – BUSINESS LICENSES

SECTION 1. Business License Required.

All Persons conducting or engaged in any of the following listed categories of Business on Tribal Lands shall obtain a Business License and pay a license fee, as provided for in this Code, prior to engaging in any such Business:

- (A) Construction Contractors;
- (B) Fixed Retail Sales;
- (C) Peddlers;
- (D) Adult Day Care Centers;
- (E) Child Care Centers, as required under the Tribal Childcare Licensing and Operations Ordinance; and
- (F) Wholesale Sales.

SECTION 2. Classes and Terms of Licenses.

- (A) **Annual Business License.** All persons engaged in business on the Tribe's land for a period exceeding any three (3) consecutive months shall have an annual business license. Annual licenses shall expire twelve (12) months after the date of issuance of the license.
- (B) **Temporary.** All persons engaged in business on the Tribe's land for any period less than three (3) consecutive months shall have a temporary business license.
- (C) **Renewal.** Only to be used to renew an annual business license.
- (D) **Consolidated.** For businesses with multiple branches or locations, the Commission may issue a consolidated license covering all of the person's businesses, provided that the same type of business is conducted at each location.

SECTION 3. Fees and Insurance.

- (A) **Annual, Temporary, and Renewal Licenses.** The Commission shall establish the fees for annual, temporary, and renewal licenses.
- (B) **Consolidated License.** The Commission shall determine the fee for a consolidated license based on the class of license issued multiplied by the number of separate branches or locations of the business.
- (C) **Applicable Licensure Fees.** The Commission shall establish all applicable fees relating to licensure.
- (D) **Insurance.** The Tribe may require that an applicant for a Business License have and maintain in force, throughout the effective period of any Business License that is issued, bodily and personal injury and property damage liability insurance naming the applicant as an insured and providing for coverages, terms and conditions as the Tribe may deem necessary to protect the economic security, health, safety and welfare of the Tribe and its members, and of residents and other persons present in Tribal Lands. The Tribe may require that an applicant present proof of such insurance.

SECTION 4. Exemptions.

- (A) **Exempt from License Requirements.** The following activities, persons, entities, or businesses are exempt from the license requirements of this Code:
 - (1) Governmental Entities, including but not limited to the Stillaguamish Tribal Child Care Center;
 - (2) Employees of a Person engaged in business subject to this Code and employees of businesses that are not required to obtain a license;
 - (3) Casino solo entertainers or bands performing at the Casino less than twenty-four (24) hours per week, provided the entertainer or band has complied with applicable licensing requirements under Stillaguamish laws relating to gaming;
 - (4) State Liquor and Cannabis Board licensees pursuant to the Stillaguamish Marijuana Code, as amended;
 - (5) Members of the Stillaguamish Tribe of Indians engaged in the sale of native art, crafts, or goods.
 - (6) Customers of any Tribal government owned business entity;

- (7) Any Tribal member or group of Tribal members engaged in raising charitable funds for the benefit of the Tribe or other Tribal members;
- (8) Persons requested by the Tribe to conduct Business due to an emergency, only if approved pursuant to Chapter 3, Section 5 of this Code;
- (9) Public Utility Companies; and
- (10) Special Event Business.

SECTION 5. License Not Transferable.

The Business License provided for in this Code is not transferrable and is valid only for the person in whose name it is issued and for the transaction of Business of the same type and at the place or places designated therein.

SECTION 6. Posting of Licenses.

Each business shall post its Tribal Business License in a conspicuous location at its place of business.

PART 3 – BUSINESS LICENSE APPLICATION

SECTION 1. When to file. All Persons required to obtain a Business License under Chapter 2, Section 1 of this Ordinance shall complete and file a Business License application with the Commission and pay the appropriate licensing fee prior to engaging in any such Business.

SECTION 2. Contents of Application. Every Business License Applicant shall file with the Commission an application, signed by the Applicant under penalty of the crime of fraud, for such license, in the form established by the Commission. All Applicants shall include the following information in his or her application:

- (A) The appropriate licensing fee and related licensure fees.
- (B) A statement that Applicant understands payment of all applicable licensure fees shall be deemed evidence of the Applicant's consent to all conditions of the license.
- (C) A description of the type of Business;
- (D) The name and address of the owner(s) of the business and Tribal affiliation, if any.
- (E) The trade name, if any, to be used by the company.
- (F) The location and address on the Tribe's land at which the Business will be conducted.
- (G) A statement that Applicant shall comply with all applicable Tribal, Federal, and state laws to the Applicant's business.
- (H) A statement that Applicant consents to the jurisdiction of the Tribal Court and service of process in matters arising from the conduct of Business.
- (I) A statement that the Applicant has casualty or liability insurance in order to afford adequate protection to those who patronize such Business.
- (J) A statement that Applicant consents to a criminal history check.
- (K) criminal history check. A statement that Applicant shall not send any employees onto Tribal Lands that pose a risk to Tribal members or to any customer of a Tribal business and that applicant accepts any liability that flows from his or her failure to abide by that agreement.

- (L) A statement that Applicant shall notify the Commission of any change of ownership or of name of the business prior to commencing work under new ownership or name of the business.

SECTION 3. Criminal History Check. All Applicants shall consent to a criminal history check, unless the application is for a business that is licensed and bonded by Washington State or otherwise exempt under this Ordinance.

- (A) **Commission Authority and Discretion to Require Criminal History Check.** Regardless of what is required on an initial application, the Commission at all times has the authority and discretion to require any applicant to undergo a criminal history check when it deems it to be in the best interest of public safety to do so. In addition, the Commission at all times has the authority and discretion to waive the requirement for a criminal history check when the Commission determines that the harm to the Tribe outweighs the benefit of requiring the criminal history check prior to commencing work.
- (B) **Casino Gaming Vendor License Exempt.** Any Person who conducts Business with the Tribe's Angel of the Winds Casino and has obtained a duly issued Stillaguamish Gaming Commission vendor license pursuant to applicable Stillaguamish laws related to gaming is not obligated to submit to a criminal history check conducted by the Commission, provided that the Person provides proof of current valid licensure by the Stillaguamish Gaming Commission at the time of the Person's application.
- (C) **Employees of an Applicant.** Employees of an Applicant shall not be subject to a criminal history check by the Commission, but the Commission expects all Applicants to conduct criminal history checks on their own employees and that Applicants will not send any employee onto Tribal Lands that has been charged or convicted of a Disqualifying Crime, or who otherwise poses a risk to the property and welfare of the Tribe, Tribal members, and any other persons on Tribal Lands.

SECTION 4. Renewal – When to file. An application for renewal of a Tribal Business License must be filed with the Commission on or before the expiration date of the license.

SECTION 5. Emergency Exemption – Process. If an emergency occurs, a Commissioner may permit a Person to conduct Business within lands subject to the jurisdiction of the Stillaguamish Tribe without completing and filing a Business License to the Commission.

- (A) **What Constitutes an Emergency.** An emergency occurrence includes, but is not limited to, repairs needed because of wind, rain, floods, fires, natural disasters, or any other urgent need.
- (B) **Preference for Tribally Licensed Businesses.** The authorizing Commissioner shall make a reasonable attempt to use a business already licensed with the Tribe.

PART 4 – COMMISSION DETERMINATION

SECTION 1. Notice of Commission’s Decision. No later than fourteen (14) days after the Commission receives a Business License application, the Commission shall notify the Applicant by regular mail of its determination. All Business Licenses must include a Tribal Identification Number.

SECTION 2. Denial of License or Renewal.

- (A) **Guiding Principles.** The award of a Business License is a privilege and not a right. The Tribe shall refuse to issue a Business License to any business whose presence on the Tribe's lands will not be beneficial to the community. Because the presence of businesses on the Tribe's lands affects the social and economic balance of the community, the Tribe also reserves the right to limit the number of businesses to whom its licenses are issued and to give a preference to Tribal member-owned and local Indian businesses in the licensing process.
- (B) **Grounds for Denial.** The Commission shall deny any application for a Tribal Business License if it determines that:
- a. the Applicant has materially misrepresented facts contained in his or her application;
 - b. the Business will threaten the peace, safety, morals, or general welfare of the Tribe;
 - c. the Applicant is, at the time of the application or renewal application, delinquent in the payment of any license fees, interest, or penalties provided for in this Code, or owes any debt to the Tribe;
 - d. the Applicant is in any other respect in violation of Tribal law, State law, or Federal Law;
 - e. the application is incomplete; or,
 - f. a criminal history check reveals the Applicant has been convicted of, or has pre-conviction charges for, a Disqualifying Crime listed under a Commission regulation.
- (C) **No Right to Hearing or Appeal.** The Commission's determination on an application for a Business License is final. Applicants do not have the right to a hearing or appeal to contest the Commissioner's application determination.

SECTION 3. Suspension or Revocation of License

- i. **Grounds.**
- (1) **Suspension.** The Commission may suspend a Tribal Business License if it determines a licensed business presents an imminent danger to the Tribe, persons, or property, or if the business is not in compliance with any Tribal law.
 - (2) **Revocation.** If any business is more than sixty (60) days delinquent in the payment of any license fees, interest, or penalties imposed by this Code, or is otherwise not in compliance with Tribal law, the Commission may, after notice, revoke the Tribal Business License of such business.
- ii. **Suspension; Effect.** Suspension takes effect immediately upon notice of the suspension to the Licensee and may continue for so long as the reason for the suspension exists as determined by the Commission.
- iii. **Notice of Suspension or Revocation.**
- (1) **Process.** The Commission shall notify the Licensee of his or her suspension or revocation by certified mail, return receipt requested. The Notice must state the reason for the suspension or revocation.
 - (2) **Effective Date of Notice.** Notice by certified mail shall be deemed to have been given on the earlier of: (a) actual delivery or Licensee's direct or indirect refusal to accept delivery; (b) the date of mailing by certified mail; or (c) the day delivery is verified. Actual notice, regardless of how received by Licensee, is always effective. Upon a

showing of certification of mailing by the Commission, it is presumed that the Licensee received the mailing in question.

- iv. **No Right to Appeal.** A Licensee does not have the right to appeal the Commission's determination of suspension or revocation. Notwithstanding the preceding sentence, a Person with a revoked or suspended license may attempt to reinstate his or her license under Section 4 and 5 of this Chapter.

SECTION 4. Reinstatement of License after Suspension.

Upon request by the Person whose license has been suspended, the Commission may reinstate the business license that has been suspended if the Commission determines the reason for the suspension has been resolved and that reinstatement would not jeopardize the welfare and safety of the Tribe, Tribal members, and community members.

SECTION 5. Reinstatement of License after Revocation.

Upon request by the Person whose license has been revoked, the Commission may reinstate a Business License that has been revoked if

- (A) the requestor is current on all license fees, penalties, and interest owed by the requestor to the Tribe pursuant to this Code;
- (B) the requestor is current on the payment of any debt or other financial obligation owed by the requestor to the Tribe;
- (C) the requestor's Business is in compliance with all applicable Tribal law; and
- (D) if required by the Commission, the requestor has furnished a bond to the Tribe, or other adequate security, as security for payment of any Tribal license fees that may become due.

PART 5 - CONDITIONS OF LICENSE

SECTION 1. Licensee Consent to Terms and Conditions of Business License.

Each Licensee shall agree to and abide by each of the following terms and conditions of the Tribal Business License:

- (A) **Comply with Tribal Law.** Each licensee shall comply with all Tribal laws, including but not limited to: Tribal tax laws, Indian employment and contracting preference laws, and applicable federal law. The Licensee is required to comply with any additional Tribal laws as such laws are enacted by the Board of Directors.
- (B) **Tribal Jurisdiction.** Each Licensee shall consent to the jurisdiction of Tribal Court as to any cause of action arising in connection with the transaction of any Business within lands subject to the jurisdiction of the Tribe, or any tortious acts committed in connection with the transaction of any Business within the Tribal Land commencing as of the first day of the term of the Business License issued until the expiration of any applicable limitations period under Tribal law.
- (C) **Service of Process.** Each Licensee shall consent to the service of process of the Commission and the Tribal Court with respect to all actions over which the Commission and the Tribal

Court have subject matter jurisdiction, in accordance with the Rules of Procedure of the Commission and the Tribal Court.

- (D) **Criminal History Check.** Each Licensee shall consent to a criminal history check.
- (E) **Insurance.** Each Licensee shall maintain in force any liability insurance required by Chapter 2(3)(D) throughout the effective period of a Business License.
- (F) **Cooperation with Commission.** Each Licensee shall respond in a timely manner to requests by the Commission for information about the Licensee's Business for the purpose of establishing whether the Licensee is in compliance with the terms of this Code.
- (G) **Application Terms and Conditions.** Each Licensee shall comply with the terms, conditions, and requirements on the Business License Application pursuant to Chapter 3 of this Code.
- (H) **Notification to Commission of Ownership Change.** The Commission shall grant each issued Business License the business under the current business name and current business owner. If a licensed business undergoes a change in ownership or change in name of a business, the business shall notify the Commission of its change of ownership within 30 days.
- (I) **Permits, Licenses, and Responsibilities.** Nothing in this Code alters, limits, or modifies the application of any other applicable law. A successful application for a Tribal Business License will not be deemed as compliant with any Tribal, State, or Federal health and safety law or any other law, regulations, or ordinance that might be applicable to Licensee's business. The Person or Licensee shall, without additional expense to the Tribe or Commission, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable and necessary to conduct its Business. The Person or Licensee shall also be responsible for all damages to persons or property that occur as a result of the Person or Licensee's fault or negligence.
- (J) **Duties and Civil Liabilities of an Owner of a Business.**
 - (1) Each owner of a business shall comply, and shall assure, that the business and all persons employed at the business comply, at all times with all provisions of this Chapter.
 - (2) Each owner of a business is responsible for any violation of, or noncompliance with, any provision of this Chapter by the business or by any person employed at the business, and is jointly and severally liable for any civil fine, forfeiture or other penalty imposed as a result of any such violation or noncompliance by the business or by any person employed at the business.

PART 6 – Violations; Additional Penalties.

SECTION 1. Violations.

1. **What Constitutes.** Conducting business within Tribal Lands in the absence of a Tribal business license or failure by any Licensee to comply with this Code or other Tribal laws shall subject the Person to any of the following:
 - (1) suspension, revocation, or forfeiture of license;
 - (2) forfeiture to the Tribe of all improvements constructed on, or any personal and real property found upon, Tribally-owned lands;
 - (3) immediate removal from Tribally-owned lands;

- (4) expulsion from the Tribe's land;
 - (5) civil fines as provided herein; and
 - (6) any other equitable and legal remedies provided by Tribal law.
2. **Notice of Violation.** A notice of violation is the final decision of the Commission and is not subject to protest or appeal.
3. Subject to the Commission's discretion, a separate and distinct violation shall be regarded as committed each day said Person continues any such violation, or permits any such violation to exist after notification thereof.

SECTION 2. Penalties.

- (A) **Failure to Obtain Business License; Civil Fine.** Any person that conducts or engages in business on Tribal Lands without first obtaining a Business License may be assessed a penalty in the amount of one hundred fifty percent (150%) of the cost of the Business License, in addition to the applicable Business License fee and any other penalty imposed under this Code.
- (B) **Failure to Comply with this Code.** Any Person who violates, disobeys, omits, neglects or refuses to comply with, or resists or opposes the enforcement of any of the provisions of this Code, may be assessed a penalty of not less than Seventy-Five Dollars (\$75.00) nor more than One Thousand Dollars (\$1,000.00) for each such violation.
- (C) **Payment of Penalties.** Penalties must be paid in full prior to the issuance of any Tribal business license.

SECTION 3. Collection Costs.

In addition to any penalties and fees imposed under this Code, a person in violation of this Code may be required to pay the costs of collection. The Commission is entitled to recover a surcharge of twenty percent (20%) of the amount of the total deficiency in connection with the recovery of the debt to cover the costs of processing and handling incident to any administrative or judicial proceeding required to enforce the provisions of this Code.

SECTION 4. Attorney's Fees and Costs.

The Tribe is entitled to recover any reasonable Attorneys' Fees incurred in any litigation, civil proceeding, law suit, action, arbitration, appeal, that in any way relates to or arises out of this Code, either directly or indirectly, including the enforcement or performance of this Code and Business License terms and conditions. "Attorneys' Fees" include any attorney's fees, legal expenses and services, and any other incurred costs related to the dispute, incurred at all stages of the dispute, including but not limited to determination of entitlement to and amount of attorney's fees and appeals.

SUBCHAPTER 200
TAX ADMINISTRATION

GENERAL PROVISIONS

3.06.201 Definitions

Unless the context specifically requires otherwise, as used in this Subchapter:

- (1) "Administrative Review" shall mean an administrative review of the decisions of the Commission or any other action which may be protested under this Subchapter, by the Commission.
- (2) "Attorney" shall mean the Tribe's Attorney unless otherwise designed by the Board of Directors.
- (3) "Board of Directors" means the Stillaguamish Tribal Board of Directors.
- (4) "Business" and "Business Activity" shall mean all activities or acts, personal, corporate or otherwise, engaged in with the object of profit, gain, benefit or advantage, either directly or indirectly, wholly or in part, within the Tribe's land.
- (5) "Chairperson" shall mean the Chairperson of the Board of Directors.
- (6) "Chief of Police" shall mean the Chief of Police of Tribe's Police Department.
- (7) "Claimant" shall mean a person, other than the taxpayer, asserting an ownership interest in real or personal property owned by a taxpayer or in which a taxpayer has an interest.
- (8) "Commission" means the Tax Commission of the Stillaguamish Tribe of Indians.
- (9) "Confidential Information" shall mean any information developed from, discovered by or revealed to the Commission concerning a taxpayer's identity, the nature, source or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments or tax payments, whether the taxpayer's tax return was, is being or will be examined or subject to investigation, collection or processing or any other data received by, recorded by, prepared by, furnished to or collected by the Commission.
- (10) "Constitution" shall mean the Constitution and Bylaws of the Tribe.
- (11) "Costs of Collection" shall mean expenses and costs incurred while collecting or attempting to collect a tax obligation and shall include but not be limited to reasonable attorney fees, costs of advertisement, mileage, copies, service fees, seizure and sale, and court costs.
- (12) "Day" means calendar day.
- (13) "Enrolled Tribal Member" shall mean a person whose name appears on the tribal membership rolls of the Tribe.

- (14) "General Tax Account" shall mean an account in which all tax revenues, interest, penalties, costs of collection and other tax-related monies collected by the Commission shall be deposited.
- (15) "Immediate Family" shall include any brother, sister, son, daughter, mother, father, grandmother, grandfather, husband, wife, mother-in-law, father-in-law, stepmother, stepfather, stepbrother, stepsister, stepdaughter, stepson, half-brother, half-sister, or brother, sister, son, daughter, mother, or father, by adoption.
- (16) "Interest" shall include the interests of any grantee, lessee, licensee, partner, shareholder, permittee, assignee, sublessee, franchisee, or transferee, whether of the whole interest or less than the whole, including the interest of parties to a partnership agreement, joint venture or operating agreement. The ownership and interest of the parties to a partnership agreement, joint venture, franchise, or operating agreement shall be determined in light of applicable law, the terms of the agreement and the basis of the parties' respective participation in income or profits, assets, and management of the venture or operation, as those factors may bear upon the property right conferred under the agreement.
- (17) "Native American Owned Business" shall mean any commercial, industrial, or business activity or business enterprise established or organized with the object of profit, gain, benefit or advantage, either directly or indirectly, wholly or in part, within the Tribe's Indian Country owned, in whole or in part, by an enrolled member of an Indian or Alaska Native tribe, band, village, community, or pueblo recognized by the United States Commission of the Interior; provided that such Native American ownership shall constitute not less than fifty-one percent (51%) of the business enterprise.
- (18) "Non-Indian" shall mean any individual who is not an enrolled member of an Indian or Alaska Native tribe, band, village, community, or pueblo recognized by the United States Commission of the Interior as eligible for the programs and services provided by the United States to Indians because of their status as Indians.
- (19) "Notice" shall mean publication in any newspaper of general circulation on the Tribe's land. Notice shall also include, where applicable, personal service or sending notice to the taxpayer at the taxpayer's last known address of record and depositing such into the U.S. certified mail, return receipt requested. Notice by certified mail shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery; (b) the date of mailing by certified mail; or (c) the day delivery is verified. Actual notice, however and from whoever received, shall always be effective. Upon showing of certification of mailing by the Commission, it shall be presumed that the taxpayer received the mailing in question.
- (20) "Personal Property" shall mean everything which is subject to ownership and which is not included within the term of real property. Personal Property is property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses and, to the extent not prohibited by law, intangible property including but not limited to intellectual property and rights to property and services.
- (21) "Person" means any natural person, trustee, court appointed representative, syndicate, association, partnership, firm, club, company, corporation, business trust, institution, agency, government corporation, municipal corporation, district or other political

subdivision, contractor, supplier, vendor, vendee, operator, user or owner, or any officers, agents, employees or other representative, acting either for himself or herself or for any other person in any capacity, or any other entity recognized by law as the subject of rights and duties. The masculine, feminine, singular or plural is included in any circumstance.

- (22) "Private Taxpayer Ruling" shall mean a written determination by the Commission that interprets and applies one or more provisions of this Subchapter and any applicable administrative regulations that apply to the specific facts described in the request.
- (23) "Real Property" shall mean all land or interests in land including all growing crops, mines, quarries, and minerals in and under the land and all rights and privileges appertaining thereto and improvements thereon, so long as not severed from the land.
- (24) "Reasonable Costs" shall mean costs and expenses that are based on prevailing market rates for the kind and quality of the furnished services but not exceeding the amounts actually incurred by a party.
- (25) "Records" shall mean any books, papers, documents, memoranda, supporting documents, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts and financial statements.
- (26) "Refund Account" shall mean the account in which the Commission may deposit a portion of monies from the General Tax Account to pay any refund to a taxpayer who is lawfully determined to be entitled thereto.
- (27) "Regulations" shall mean those written administrative regulations promulgated by the Commission and approved by the Board of Directors.
- (28) "Return" or "Tax Return" shall mean any form, report or document prescribed and approved by the Commission for the return of a tax obligation including any supporting schedules, attachments, worksheets and lists.
- (29) "State" shall mean the state of Washington.
- (30) "Superintendent" shall mean the Superintendent of the Puget Sound Agency, Bureau of Indian Affairs.
- (31) "Tax Administration" shall mean the functions involved in or relating to the assessment, collection, audit, compliance, investigation, examination, litigation, statistical gathering, enforcement, policy making or management of or under the tax revenue laws of the Tribe.
- (32) "Tax Obligation" shall mean a duty or obligation to pay all applicable taxes, interest, penalties, and costs of collection assessed or collected.
- (33) "Taxable Year" shall mean either the calendar year or the taxpayer's fiscal year, provided permission has been obtained from the Commission to use a fiscal year as the taxable year instead of the calendar year.

- (34) "Taxes" shall include taxes, exclusive of interest, penalties and costs of collection assessed or imposed pursuant to this Subchapter.
- (35) "Taxpayer" shall mean any person or entity subject to the jurisdiction of Tribal or Federal law and liable for the tax obligations imposed under this Subchapter, and the heirs, successors, assigns and transferees of any such person, and shall include the government of the Tribe or any governmental entity or enterprise of the Tribe or the federal government or its agencies, unless otherwise provided.
- (36) "Tribal Court" shall mean the court or court system used by the Tribe.
- (37) "Tribe" shall mean the Stillaguamish Tribe of Indians.
- (38) "Tribe's land" shall mean all land or lands under the civil or criminal jurisdiction of the Tribe.

3.06.202 Purpose

The Tribe has a duty and obligation to all its members and to the Tribe itself, to protect and preserve the political integrity, economic security and health and welfare of the Tribe. In order to provide direct and indirect civic and economic benefits to the members of the Tribe, to residents of the Tribe's land and to the general public, and to promote economic development on the Tribe's land and to preserve tribal existence:

- (1) The Tribe must generate revenue for the operation, maintenance and improvement of essential tribal governmental services and programs including, by way of illustration and not limitation, law enforcement, health services, fire protection, and social and cultural preservation programs.
- (2) The imposition of taxes is an appropriate method of generating revenues for the Tribe and paying for a portion of the costs of governmental services and programs incident to the preservation of tribal existence and the continued economic development of the Tribe's land. Article VII, Section l(d) of the Tribe's Constitution, ratified by the Tribe and approved by the United States, recognizes the authority of the Board of Directors to assess taxes and license fees against members and non-members within the Tribe's jurisdiction.

3.06.203 Application and Scope

This Subchapter shall apply to the full extent of the sovereign jurisdiction of the Tribe in "Indian Country" as that term is now or hereafter defined by Federal law. Compliance with this Subchapter is hereby made a condition of the use of any land or premises in Indian Country subject to the jurisdiction of the Tribe. Any person who resides, conducts business, engages in a business transaction, receives benefits from the Tribal government, including police, fire or emergency services, acts under Tribal authority, or enters the Indian Country under the jurisdiction of the Tribe shall be deemed thereby to have consented to be bound by the terms of this Subchapter; to the exercise of civil jurisdiction by the Tribal Court over said person in legal actions arising pursuant to this Subchapter; and to detainment, service of summons and process, and search and seizure, in conjunction with legal actions arising pursuant to this chapter.

3.06.204 Sovereign Immunity

- (1) The Tribe specifically and unequivocally declares its sovereign immunity and does not waive its sovereign immunity, expressly or impliedly, under any provision of this Subchapter, and nothing in this Subchapter shall be construed as waiving the sovereign immunity of the Tribe or any of its agencies, departments, officials, or employees. A taxpayer aggrieved by a final decision of the Commission or any other action which may be protested under this Subchapter may pursue only those remedies set forth in subparagraph (4) below.
- (2) Any suit or enforcement action commenced under this Subchapter, including without limitation the filing of suit by the Attorney, or its authorized representative, for the collection of a tax obligation, shall not constitute a waiver of sovereign immunity, regardless of whether a taxpayer files a counterclaim.
- (3) A taxpayer shall have no power or authority to challenge the constitutionality or validity of any tax, any tax rate or any administrative regulation, section, provision, phrase, addition, word, sentence or amendment of this Subchapter.
- (4) A taxpayer aggrieved by a final decision of the Commission or any other action which may be protested under this Subchapter may file a written protest to the Commission for review under section 3.06.271 of this Code; provided however, the final decision or other action of the Commission is one which may be challenged by written protest and the taxpayer has complied with the provisions of this Subchapter.

3.06.205 Severability

If any section, provision, phrase, addition, word, sentence or amendment of this Subchapter or its application to any person is held invalid, such invalidity shall not affect other provisions or applications of this Subchapter that can be given effect without the invalid application and to that end, the provisions of this Subchapter are declared severable.

3.06.206 Construction

This Subchapter shall be liberally construed so as to effectuate the purposes hereof. Nothing in this Subchapter shall be construed as creating or authorizing a personal income tax.

3.06.207 Amendments

The Board of Directors may amend, modify, alter, or repeal this Subchapter by formal action at any time.

3.06.208 Conflict With Laws

In the event of a conflict between provisions of this Subchapter or any other provision of Tribal law that, by its terms, is applicable to taxation, this Subchapter shall supersede any other provision of Tribal law and is controlling.

3.06.209 Effective Date

This Subchapter shall take effect on April 30, 2008, at 6:00 p.m. following approval of its provisions by the Board of Directors of the Tribe on April 28, 2008.

TAX COMMISSION

3.06.220 Tax Commission

- (1) There is hereby established the Tribe's Tax Commission which shall be part of the government of the Tribe as a subordinate agency and shall be supervised by Board of Directors.
- (2) The Tax Commission shall act under the authority of the Tribe yet function independently. The Tax Commission shall be governed by the Tax Commissioners, who shall be three (3) members of the Tribe all of whom shall be appointed by the Board of Directors.
- (3) The administration and enforcement of the tax revenue laws of the Tribe and the investigation, examination and audit of tribal finances, departments, offices, officers and employees is vested in and shall be exercised by the Commission. The Commission shall have all the powers and duties prescribed by law or assigned to it by the Board of Directors for such purposes.
- (4) Subject to the appropriation of funds, the Commission shall consist of such divisions, agents, officers, employees, and staff-members as the Commission deems reasonably necessary to achieve maximum efficiency, economy and effectiveness in administering and enforcing this Subchapter.

3.06.221 Tax Commissioners

- (1) The Tax Commission shall select, by majority vote, a Chairman, a Vice-Chairman, and Secretary. The Chairman shall preside over meetings of the Tax Commission and the Vice Chairman shall preside in the absence of the Chairman. The Secretary shall record, in writing, all minutes of the Tax Commission meetings and all official actions taken by the Commission.
- (2) The Tax Commissioners shall appoint a Director of the Tribal Tax Commission who shall have day-to-day responsibility for the oversight and administration of the Tax Commission. The Tax Commissioners may authorize and delegate to the Director such duties, responsibilities, and matters related to the Tax Commission as the Commission shall deem necessary and appropriate consistent with the powers and duties set forth herein.
- (3) The following persons may not serve as Commissioners:
 - (A) Persons who would not be eligible to be officers of the Tribe pursuant to the Tribe's Constitution.
 - (B) Unless specifically provided herein, officers of the Tribe pursuant to the Tribe's Constitution are not eligible to serve on the Tax Commission during their term in office.
- (4) Commissioners shall serve for three (3) year terms, except that immediately after

enactment of this Title, two (2) of the Commissioners shall serve for three (3) years and one (1) Commissioners shall serve for two (2) years. Commissioners may serve for more than one term.

- (5) Commissioners may be removed from office before the expiration of their terms by the Board of Directors for neglect of duty, malfeasance, or other good cause shown. The procedure for removing a Commissioner shall be the same as removing an officer of the Tribe. Nothing contained herein shall preclude or limit the authority of the Board of Directors or the Commission from removing or terminating the employment or contract of any person at any time as a result of his or her failure to pay any tribal tax obligation or file any tribal tax return, record, form, report or document when due.
- (6) Commissioners may be compensated for serving on the Commission at rates to be set and approved by the Board of Directors. All Commissioners shall receive equal compensation. Step increases may be allowed based on length of service. Commissioners may be entitled to receive fringe benefits which are available to other employees of the Tribe to the extent the provider of such benefits qualifies the Tax Commissioners as eligible to receive such benefits. Subject to approval by the Tribe and in accordance with its procedures, Commissioners shall be reimbursed for expenses incurred in connection with the performance of the Tax Commissioner duties.

3.06.222 Quorum; Voting; and Meetings

- (1) Two (2) members of the Tax Commission shall constitute a quorum.
- (2) All actions of the Tax Commission shall be taken by majority vote. The Commission Chairman may vote on any issue.
- (3) Meetings shall be held at least one per month on the first Tuesday of the month at 4:30 p.m. at the Tribe's primary meeting facility ("Scheduled Meetings"). If the first Tuesday of the month falls on a holiday, then the scheduled meeting will occur on the next regular business day. Any tribal member may attend Scheduled Meetings. Scheduled Meetings may be changed at any time by the Tax Commission, with notice of such change posted prominently at least five (5) business days in advance at the Office of the Tax Commission. Additional meetings shall be held as called by the Chairman or by at least two (2) other Commissioners. Notice of additional meetings shall be given in writing to each Commissioner, served by First Class U.S. Mail or personal delivery at least three (3) business days prior to such additional meeting; however, meetings may be called at any time, by any means, with unanimous consent of the Commission.
- (4) All Commission discussions, deliberations, and votes taken regarding specific taxpayers, investigations, or any other matter deemed confidential by the Commission, shall be kept confidential and shall be held in executive session.

3.06.223 Powers and Duties of the Commission

The Commission shall administer and enforce the tax revenue laws of the Tribe and other laws and duties assigned to it by law, regulation and the Board of Directors. The Commission shall have all the powers and duties prescribed by law or assigned to it by the Board of Directors for such purposes.

The Commission shall:

- (1) Develop and provide an integrated, coordinated and uniform system for the internal operations of the Commission.
- (2) Subject to the general personnel policies of the Tribe, employ and remove personnel, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other personnel as may be necessary in the performance of its duties.
- (3) Contract for the services of outside advisors, consultants, attorneys and aides as may be reasonably necessary to carry out its powers, responsibilities, and duties subject to the availability of funds. All attorney contracts shall be approved by the Board of Directors.
- (4) Contract with or assist other tribal departments, enterprises or entities in the furtherance of their purposes, objectives and programs, subject to the availability of funds.
- (5) Provide information and advice within the scope of its duties subject to the laws on confidentiality of information and administrative regulations adopted pursuant thereto.
- (6) Advise with and provide recommendations to the Board of Directors on tax matters, including but not limited to, the adoption of taxes, the setting of tax rates, including adjustments thereto, and additions to or amendments of this Subchapter.
- (7) Develop and provide an integrated, coordinated and uniform system of tax administration and revenue collection for the Tribe.
- (8) Issue private taxpayer rulings upon the written request of a taxpayer.
- (9) Establish plans and procedures for conducting investigations, examinations, audits, compliance and enforcement actions as authorized by this Subchapter and pursuant to any guidelines and policies promulgated by the Commission.
- (10) Provide standard tax returns, records, forms, reports or documents to be used by the public.
- (11) Provide written reports and other information to the Board of Directors regarding tribal taxation matters.
- (12) Establish plans and procedures for conducting investigations, examinations and audits of tribal finances, departments, offices and officers.
- (13) Assess and collect all tax obligations.
- (14) Establish a schedule of fees and charges for the administrative services of the Commission, including fees and charges for transcripts, certification of documents, and copies of records.
- (15) Enter into agreements, subject to the prior approval of the Board of Directors, with federal, state, and local governments and agencies for the purpose of aiding the enforcement of the provisions of this Subchapter.

- (16) To promulgate administrative regulations as are reasonably necessary to carry out the orderly performance of its powers, responsibilities and duties consistent with this Subchapter and others laws of the Tribe subject to the approval of the Board of Directors. These regulations shall include a list of disqualifying crimes for which convictions or pre-conviction charges would disqualify an individual or business from being granted a business license by the Commission.

3.06.224 Powers and Duties of the Commissioners

- (1) Commissioners shall have no power or authority to declare any tax unconstitutional or otherwise invalid, or to declare any administrative regulation, section, provision, phrase, addition, word, sentence or amendment of this Subchapter unconstitutional or otherwise invalid or to alter any tax rate set by the Board of Directors.
- (2) In addition to any other powers, responsibilities, and duties assigned or delegated to the Commission under this Subchapter, by law, by regulation or by the Board of Directors, the Commissioners shall have the following additional powers, responsibilities, and duties, subject to the overriding supervision, direction and authority of the Board of Directors:
 - (A) Subject to the written approval of the Attorney, to:
 - (1) Abate all or part of the unpaid portion of any tax obligation if the Commissioners determine the balance is uncollectible.
 - (2) Abate all or part of the unpaid portion of any tax obligation if the Commissioners determines that the costs of collection exceed the amount of the tax obligation.
 - (3) Enter into closing agreements regarding the tax obligation of any taxpayer.
 - (4) Enter into an installment plan to assist a taxpayer in satisfying its tax obligation.
 - (5) To create a Tax Amnesty program to allow taxpayers an opportunity to pay any unpaid tax balances while avoiding interest, penalties, or other enforcement action. The purpose of a Tax Amnesty program is to enhance the Tribe's jurisdiction by encouraging voluntary compliance with Tribal laws regarding tax compliance and licensing, and to provide information to the community concerning the taxation structure.
 - (B) To delegate to an agent, officer, employee or staff member of the Commission duties and responsibilities as may be necessary to administer this Subchapter efficiently.
 - (C) To recommend, with the consent of the Board of Directors, that the Attorney, or its authorized representative, commence suit or other enforcement proceeding for the collection of a tax obligation and the enforcement of this Subchapter.
 - (D) To inspect, examine and copy any federal, state or tribal tax return, and any books, papers, documents, memoranda, supporting documents, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts, financial statements, or other records or documents whatsoever relating to a taxpayer's

records to ascertain compliance with the tax revenue laws of the Tribe.

- (E) To enter the business premises of a taxpayer, at any reasonable time to inspect, examine and copy the records of the taxpayer and to ascertain compliance with the tax revenue laws of the Tribe. Such entry into and examination of the business premises may include an examination of the taxpayer's equipment, facilities, personal property, computer records, electronic data, books, business records, papers, vouchers, accounts, documents, and financial statements or any other records or documents whatsoever relating to a taxpayer's records.
- (F) As may be directed by the Board of Directors, deliver monthly to the Board of Directors, on a form prescribed and approved by the Board of Directors, a statement showing all collections made and monies received during the preceding month and separately set forth the revenues collected under each tax and under each of the business classifications.
- (G) To advise with and make recommendations to the Board of Directors on tax matters, including, but not limited to, the adoption of taxes, the setting of tax rates, and additions to or amendments of this Subchapter.
- (H) To promulgate such administrative regulations as are reasonably necessary to carry out the orderly performance of the powers, responsibilities and duties of the Commission, subject to the approval of the Board of Directors.

3.06.225 Service of Process on the Commission

In addition to any other requirements of service under the laws of the Tribe, if suit or other proceeding is commenced against the Commission or agent, officer, employee or staff member of the Commission acting within the scope of his or her duties, a copy of the summons and the complaint shall be served upon the Chairperson of the Tribe and the Attorney to effect service. A courtesy copy of the summons and complaint shall be mailed to the Commission by U.S. certified mail, return receipt requested. Nothing in this provision shall be construed as waiving the inherent sovereign immunity of the Tribe or any of its agencies, departments, officials or employees.

TAX RATES AND PAYMENTS

3.06.230 Board of Directors to Set All Tax Rates

- (1) All taxes, tax rates and tax rate adjustments shall be set and approved by the Board of Directors after consideration of the advice and recommendation of the Commission, if requested by the Board of Directors.
- (2) Taxes imposed under this Subchapter shall be in addition to any and all other licenses and fees imposed by the Tribe.

3.06.231 General Tax Account Established

- (1) The Commission is authorized and directed to establish an account known as the General Tax Account in a federally insured financial institution.
- (2) The funds in the General Tax Account may be invested and reinvested as approved by the

Board of Directors, except as limitations are imposed upon use of tax revenue from sale of cigarettes by Subchapter 300 herein and the Cigarette Tax Contract Between the Stillaguamish Tribe of Indians and the State of Washington.

- (3) No monies shall be released or expended from the General Tax Account except for essential governmental purposes and as otherwise provided in Section 3.06.232.
- (4) All tax revenues, interest, penalties, costs of collection and other tax related monies collected by the Commission shall be deposited in the General Tax Account, unless otherwise authorized for inclusion in the refund account as provided in Section 3.06.232, or otherwise limited by the terms of another provision of applicable law.

3.06.232 Refund Account

- (1) The Commission is authorized and directed to establish an account known as the Refund Account in a federally-insured financial institution.
- (2) Upon written notice of a claim for a refund, written notice of a protest or an appeal, or a determination that a refund is due or may be due a taxpayer, the Commission, at his or her discretion, may deposit a portion of the monies from the General Tax Account into the Refund Account, in an amount sufficient to pay any refund that may be due a taxpayer, or may direct that some balance be maintained in the account from month to month in anticipation of payments which are required to be paid therefrom.
- (3) Upon a written determination of the Commission that a taxpayer is entitled to a refund, the Commission shall direct payment from the Refund Account in the amount of the refund owed the taxpayer provided, however, that all protests and appeals have been exhausted, extinguished, or waived, and the decision that a refund is appropriate is final and binding on the Commission.

3.06.233 Records of the Commission

- (1) The Commission shall maintain and preserve complete, accurate and detailed records of all monies received and disbursed by it for so long as the Board of Directors shall determine.
- (2) Except as otherwise provided in this Subchapter, the Commission shall maintain and preserve all tax returns, books, papers, documents, memoranda, supporting documents, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts, financial statements, and other records or documents filed with or received by the Commission until the Limitations of Actions periods prescribed in this Subchapter have expired.
- (3) All records of the Commission shall be maintained and preserved at the primary office of the Commission, and shall not be removed from that location without the written authorization of the Board of Directors, except that copies of records may be made available for use in an administrative or judicial proceeding involving a taxpayer.
- (4) All records of the Commission shall be subject to an intra-tribal audit at any time upon the written request of the Board of Directors. Except as provided in Subsection 300 herein and

the Cigarette Tax Contract between the Stillaguamish Tribe of Indians and the State of Washington, the Commission may be audited not more than once each calendar year by an independent auditor selected by the Board of Directors.

3.06.234 Disclosure of Confidential Information

- (1) No agent, officer, employee, or staff member of the Commission, including any former commissioner, agent, officer, employee or staff member thereof, who has received confidential information from the Commission, or any other person or entity in receipt of confidential information from the Commission, shall disclose such confidential information to any person or entity except as provided below.
- (2) "Confidential Information" shall mean any information developed by, discovered by or revealed to the Commission concerning a taxpayer's identity, the nature, source or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments or tax payments, whether the taxpayer's tax return was, is being or will be examined or subject to investigation, collection or processing or any other data received by, recorded by, prepared by, furnished to or collected by the Commission.
- (3) Confidential information may be disclosed to the following persons provided, however, the confidential nature of the information be retained:
 - (A) To the taxpayer, its successor in interest or a designee of the taxpayer who is authorized in writing by the taxpayer to receive the information and the taxpayer has waived any rights to confidentiality.
 - (B) To any principal officer of the taxpayer corporation.
 - (C) To any partner of the taxpayer partnership.
 - (D) To any person or entity provided the taxpayer has waived any rights to confidentiality.
 - (E) To any employee of the Commission whose official duties involve tax administration.
 - (F) To the Attorney for its use in an investigation which may result in any proceeding involving the taxpayer.
 - (G) To the Board of Directors.
 - (H) To any judicial officer or attorney in any judicial or administrative proceeding involving the taxpayer.
 - (I) To an independent third party auditor retained by the Tribe or mediator under Subchapter 300 herein and the Cigarette Tax Contract Between the Stillaguamish Tribe of Indians and the State of Washington.
 - (J) When published or circulated as a private taxpayer ruling provided that the name and other information which identifies or may identify the taxpayer appearing in such records is redacted prior to publication or circulation.

- (K) Nothing in this Section is intended to prohibit or limit the taxpayer or its authorized representative from disclosing otherwise confidential information.
- (4) Any person who discloses confidential information without proper authorization may be fined by the Board of Directors or the Tribal Court an amount not to exceed \$1,000.00 for each unauthorized disclosure. Any person who inspects, reviews or examines in any manner confidential information without proper authorization may be fined by the Board of Directors or the Tribal Court an amount not to exceed \$1,000.00 for each unauthorized act. Nothing in the Section is intended to prohibit or limit the Commission or Board of Directors from taking any other action it deems appropriate under the circumstances.
- (5) All tax revenue laws of the Tribe, all administrative regulations, and private taxpayer rulings shall be public records of the Tribe and shall be available for public inspection during regular business hours at the Commission. Copies of such records may be obtained after written request and payment of applicable copying costs and administrative fees and expenses.

3.06.235 Private Taxpayer Rulings

- (1) The Commission may issue private taxpayer rulings to taxpayers and potential taxpayers after receipt of a written request from the taxpayer or potential taxpayer. Each request shall:
 - (A) State the name, address and, if applicable, Taxpayer Identification Number of the taxpayer or potential taxpayer who requests the ruling.
 - (B) Describe all facts that are relevant to the requested ruling.
 - (C) State whether, to the best knowledge of the taxpayer or potential taxpayer, the issue or related issues are being considered by the Commission in connection with an active examination, audit, protest or appeal that involves the taxpayer or potential taxpayer.
 - (D) Be signed by the taxpayer or potential taxpayer who makes the request or by an authorized representative of the taxpayer or potential taxpayer.
- (2) A private taxpayer ruling may be revoked or modified by either:
 - (A) A change or clarification in the law that was applicable at the time the ruling was issued, including changes or clarifications caused by the Board of Directors, administrative regulations, and decisions by the of the Tribal Court or the Tribal Appeals Court.
 - (B) Actual written notice by the Commission to the last known address of the taxpayer or potential taxpayer of the revocation or modification of the private taxpayer ruling.
- (3) With respect to the taxpayer or potential taxpayer to whom the private taxpayer ruling was issued, the revocation or modification of a private taxpayer ruling shall not be applied retroactively to tax periods or tax years before the effective date of the revocation or modification and the Commission shall not assess tax, interest or penalties attributable to erroneous advice that it furnished to the taxpayer or potential taxpayer in the private taxpayer ruling if:
 - (A) The taxpayer reasonably relied on the private taxpayer ruling.

- (B) The tax, interest or penalty did not result either from a failure by the taxpayer to provide adequate or accurate information or from a change in the information.
- (4) A private taxpayer ruling may not be relied upon, cited nor introduced into evidence in any proceeding by a taxpayer other than by the taxpayer who has received the private taxpayer ruling.
- (5) A private taxpayer ruling constitutes the Commission's interpretation of the law or administrative regulations only as they apply to the particular taxpayer identified in the ruling, and the particular facts contained in, the request.
- (6) The Commission shall attempt to issue private taxpayer rulings within thirty (30) days after receiving the written request and on receiving the facts that are relevant to the ruling. If the ruling is expected to be delayed, the Commission shall notify the taxpayer of the delay and the proposed date of issuance.
- (7) Within thirty (30) days after being issued, the Commission shall maintain the private taxpayer ruling as a public record and make it available to the public upon written request at the Commission. The text of private taxpayer rulings is open to public inspection subject to the confidentiality requirements prescribed by this Subchapter.

3.06.236 Employee Preparation of Tax Returns

Except as otherwise provided in this Subchapter, no Commission member, agent, officer, employee, or staff-member of the Commission shall prepare or assist in the preparation of any tribal tax return.

3.06.237 Refunds and Credits

- (1) In the event a taxpayer believes that it has paid its tax obligation in excess of the amount due, and the Commission has not issued a refund to the taxpayer, the taxpayer must file a claim for a refund by filing an amended tax return with the Commission on a form prescribed by the Commission. An amended tax return requesting a refund must be filed within two (2) years from the date a taxpayer filed its original tax return. Within ninety (90) days from the receipt of the amended tax return, the Commission shall determine whether or not a refund is due the taxpayer. If the Commission disallows the claim the Commission shall notify the taxpayer in writing that the claim has been disallowed. The Commission's action on such a claim is subject to written protest to the Commission under section 3.06.271 of this Code. If the Commission fails to respond within ninety (90) days after the amended tax return is deemed received, the claim is disallowed and is final and may be subject to written protest to the Commission.
- (2) All written protests to the Commission under this section must be filed with the Commission within thirty (30) days after the date the final decision of the Commission was deposited into the U.S. certified mail, return receipt requested. In the event that a claim is disallowed due to the Commission's failure to respond to the claim, a written protest must be filed with the Commission within sixty (60) days after the date the claim was considered disallowed.
- (3) If the Commission determines that a taxpayer is entitled to a refund, the Commission shall first apply the refund to any delinquent penalty, interest and tax, in that order, due from the

taxpayer for any other tax period. The balance thereafter, if any, shall be mailed to the taxpayer at the taxpayer's last known address of record.

- (4) A taxpayer may elect to apply any refund to the taxpayer's next tax period. The Commission shall issue a credit in its records in the amount of the refund and shall apply the credit toward the tax obligation owed by the taxpayer for the following tax period by notifying the Commission on the tax return.
- (5) Refunds due a taxpayer shall bear simple interest at the rate per year established by the Board of Directors if the refund is not paid within one hundred eighty (180) days after the date the amended tax return was received by the Commission. Interest shall begin to accrue one hundred eighty-one (181) days after the amended tax return was received by the Commission. No interest shall be paid on a refund that was caused by or the result of the negligence, misrepresentation, fraud, or mistake of the taxpayer. Credits shall not accrue interest.
- (6) In the event the Commission is unable to locate a taxpayer entitled to a refund at the taxpayer's last known address of record, the refund owed the taxpayer shall be deposited into the Refund Tax Account subject to a claim by the taxpayer or its successor in interest. All refunds become the property of the Tribe if not claimed by the taxpayer or its successor in interest within one (1) year after the date the Commission determines the taxpayer is entitled thereto. No interest shall be paid on a refund when the taxpayer has failed to provide the Commission with the taxpayer's current address.

3.06.238 Time for Payment

All tax obligations are to be paid, without assessment or notice and demand, on the date fixed by law, regardless of whether a taxpayer has filed an extension of time for filing a tax return.

3.06.239 Extensions

Upon receipt of a written request for an extension on a form prescribed by the Commission before the due date for the tax return, a taxpayer shall receive an automatic extension of ninety (90) days for filing a tax return, but not for payment of a tax obligation. A taxpayer must estimate its tax obligation and remit the estimated tax obligation with the request. In the event a tax obligation is not properly estimated, late filing and underpayment penalties will be assessed. In the event the estimated tax obligation is less than sufficient to cover the taxpayer's tax obligation, the taxpayer will be charged interest on the past due amount. No late payment penalty will be imposed if the estimated tax obligation paid is at least ninety percent (90%) of the total tax obligation. Except in cases of undue hardship, no additional extensions of time for filing a tax return shall be granted. This subsection does not apply to the time for filing tax returns and payment of tax obligations on cigarette transfers and sales under Subchapter 300.

3.06.240 Delinquent Tax Obligations

All tax obligations are due, without assessment, notice or demand, on the date fixed by law, regardless of whether a taxpayer has filed an extension of time for filing a tax return, and are delinquent if not paid on that date.

3.06.241 Failure to File a Return

In the event a taxpayer fails to file a tax return when due, the Commission is authorized to make an estimate of the tax obligation due and to assess the taxpayer taxes, interest, penalties and costs of collection based upon the information available to the Commission. This assessment is the final decision of the Commission and is binding and conclusive against the taxpayer unless and until the taxpayer can show the assessment was clearly erroneous. The taxpayer may protest the assessment made by the Commission by filing a written protest with the Commission in the time and manner provided for in this Subchapter.

3.06.242 Security for Payment of Tax

The Commission is authorized to require a taxpayer to furnish the Commission an acceptable surety bond to insure the timely payment of any tax obligation due or may be due the Tribe. The Commission shall send the taxpayer written notice that it must furnish the Commission a surety bond.

3.06.243 Deadlines on Weekends or Holidays

In the event the last day for performing any act, such as filing a tax return, paying a tax obligation or filing an amended tax return, falls on a Saturday, Sunday, or legal holiday, the act is timely made if it is performed on the next day that is not a Saturday, Sunday, or legal holiday.

3.06.244 Taxpayer Identification Number

Every person subject to the provisions of this Subchapter shall be assigned a taxpayer identification number by the Commission. All taxpayers shall include their taxpayer identification number on the taxpayer's tax return. Failure to properly include a taxpayer identification number on a tax return will result in the tax return being deemed incomplete and untimely, and may subject to taxpayer to penalties, interest, and costs of collection as provided for in this Subchapter.

3.06.245 Proof of Exemption from Tax

The Commission may require any person claiming exempt status on a tax return to file an affirmative statement of exempt status. With respect to any assessment date or period for which a return is not filed, the Commission may require a person to file an affirmative declaration that it meets the exceptions from filing, together with a statement of the amount of any excluded or exempt receipts and the facts on which the claim of exclusion or exemption is based. The taxpayer must file the statement or declaration required within the time indicated. Failure to comply is subject to the penalties provided for in this Subchapter.

3.06.246 Application of Payments

Any payment received from a taxpayer shall be applied first to costs of collection, interest, penalties, and taxes owed in that order.

ENFORCEMENT

3.06.250 Examinations and Audits

- (1) If a taxpayer fails to file a tax return or if the Commission is not satisfied with the tax return or the amount of the tax obligation declared to be owed, or the Commission determines that

it is in the best interests of the Tribe to ascertain compliance with the tax revenue laws of the Tribe, the Commission may conduct an examination or audit of the taxpayer's records. The Commission is authorized to inspect, examine and copy at any reasonable time, and the taxpayer shall make available, any federal, state or tribal tax return, and any books, papers, documents, memoranda, supporting documents, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts, financial statements, and other records or documents whatsoever, relating to the taxpayer's records. The Commission shall provide the taxpayer reasonable written notice of its intent to inspect, examine or copy the records.

- (2) If a taxpayer refuses to make available any federal, state or tribal tax return and any books, papers, documents, memoranda, supporting documents, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts, financial statements, and other records or documents whatsoever relating to the taxpayer's records for inspection, examination or copying by the Commission, the Commission, in aid of its powers and responsibilities, may petition the Tribal Court for an order requiring the taxpayer or the custodian of the taxpayer's records to produce such records or documents. In case of failure to obey a subpoena, the Commission may petition the Tribal Court for an order requiring the individual or entity against whom the subpoena was issued comply with the subpoena within ten (10) days or show cause why he or she should not be held in civil contempt of Court.
- (3) The Commission is authorized to enter, and the taxpayer shall provide access to, the business premises of the taxpayer at any reasonable time to inspect, examine and copy records of the taxpayer and to ascertain compliance with the tax revenue laws of the Tribe. The taxpayer shall provide access to the taxpayer's equipment, facilities, personal property, federal, state, and tribal tax returns, books, papers, documents, supporting documents, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts, and financial statements. If a taxpayer or its representative refuses to allow access to the business premises of the taxpayer, the Commission, in aid of its powers and responsibilities, may petition the Tribal Court for an order requiring that the taxpayer or its representative provide access to the business premises for the purpose of inspecting, examining and copying the taxpayer's records. In case of failure to obey the order the Commission may petition the Tribal Court for an order requiring that the individual or entity against whom the order was issued comply with the order within ten (10) days or show cause why he or she should not be held in civil contempt of Court.
- (4) Examinations and audits under this Subchapter shall be conducted after reasonable written notice to the taxpayer unless reasonable grounds exist to believe that written notice would frustrate the enforcement or compliance with the tax revenue laws of the Tribe.
- (5) The Commission may request the of the Tribal Court issue a subpoena to require the attendance of any person or entity within the Tribe's land, at a time and place fixed by the Commission, for the purpose of producing records and information in connection with an examination or audit.
- (6) The Commission shall provide the taxpayer a written report within sixty (60) days following the completion of each examination and audit. The written report shall contain a statement of the findings and conclusions of the Commission.

- (7) Records obtained under this section are confidential information.
- (8) In the event the Commission determines that the taxpayer owes additional taxes, interest or penalties as a result of an examination or audit, the Commission shall send the taxpayer a Notice of Deficiency and Demand for Payment in writing by U.S. certified mail, return receipt requested, within sixty (60) days after the conclusion of the examination or audit.
- (9) The Notice of Deficiency and Demand for Payment shall provide that the taxpayer shall have thirty (30) days from the date of the Notice to pay any tax obligation due the Tribe.
- (10) The Notice of Deficiency and Demand for Payment is the final decision of the Commission and is subject to written protest to the Commission. All written protests to the Commission under this section must be filed with the Commission within thirty (30) days after the date the Notice of Deficiency and Demand for Payment was deposited into the U.S. certified mail, return receipt requested.
- (11) In the event the taxpayer has failed to file a timely written protest with the Commission, all further administrative and judicial remedies shall be considered exhausted, expired, or waived.
- (12) If, after an examination or audit conducted under this section, the Commission determines that the taxpayer has overpaid its tax obligation, the Commission shall mail the refund to the taxpayer at the taxpayer's last known address of record within sixty (60) days after the conclusion of the examination or audit. Refunds will be provided in the time and manner provided for in this Subchapter.

3.06.251 Additional Examinations and Audits

When the Commission completes an examination or audit and a deficiency has been determined and all protests and appeals have been exhausted, expired or waived, the taxpayer's obligation for the particular tax for the period subjected to the examination or audit is fixed. No additional examinations or audits may be conducted for the same tax period except under when the taxpayer fails to disclose material information during the examination or audit or has falsified books or records or otherwise engaged in conduct preventing an accurate examination or audit. An examination or audit of a particular tax period does not preclude an examination or audit of any other tax period.

3.06.252 Suit and Enforcement Proceedings to Collect Taxes

- (1) The Attorney, or its authorized representative, shall be authorized to commence suit or any other enforcement proceeding in the of the Tribal Court or any other court of competent jurisdiction to enforce the provisions of this Subchapter and the Tribe shall be entitled to recover reasonable attorneys' fees and costs of collection incurred in commencing suit or other enforcement proceeding. Such suit or proceeding shall be civil in nature.
- (2) All civil remedies available under Tribal law, whether or not listed in this Subchapter, including but not limited to garnishment, attachment, and execution, shall be available for the collection of any monies due the Tribe. The Attorney may contract with outside counsel to commence suit or other enforcement proceedings with the approval of the Board of Directors.

- (A) In addition to all other remedies provided for in this Subchapter and Tribal law, the Attorney, or its authorized representative, shall be authorized to commence an action in the Tribal Court or, if the Tribal Court lacks jurisdiction, any other court of competent jurisdiction to enjoin the operation of any business or activity of a taxpayer that fails to comply with the tax revenue laws of the Tribe.
- (B) In addition to all civil remedies and other remedies provided for in this Subchapter, the Attorney, or its authorized representative, is authorized to commence suit to expel, temporarily or permanently, from the Tribe's land any non-Indian who willfully fails to comply with any provision of this Subchapter or any regulation promulgated hereunder subject to the Tribe's expulsion laws.
- (3) The commencement of suit or other enforcement proceedings shall not constitute a waiver of the sovereign immunity of the Tribe.
- (4) The Attorney, or its authorized representative, may defend all suits or proceedings brought against the Commission, officer, agent, employee, or staff member of the Commission, acting within the scope of his or her duties.
- (5) The Attorney, or its authorized representative, may commence suit or other enforcement proceeding for recovery of a tax obligation prior to the date such taxes become delinquent if the Commission first determines that it is necessary prior to that date to commence suit or other enforcement proceeding because there is a great probability that the tax obligation will not be collectible after the delinquency date due to the financial condition of the taxpayer or other suitable reason. The Commission shall file a written declaration under penalty of perjury with the Tribal Court setting forth the grounds and necessity for the action prior to the delinquency date.

3.06.253 General Provisions for the Seizure and Sale of Property

- (1) The Commission shall diligently endeavor and use all lawful means to collect all tax obligations owed the Tribe. In addition to all civil remedies available for the collection of monies due the Tribe, the Attorney, or its authorized representative, shall be authorized to commence suit or other enforcement proceedings to seize and sell the personal or real property of a taxpayer liable for a tax obligation.
- (2) In all suits and proceedings regarding the seizure and sale of property brought under this Subchapter, the Tribal Court shall give such proceedings precedence over all other civil suits and proceedings, except suits and proceedings to which special precedence is otherwise given by law. All such suits and proceedings shall be expedited.
- (3) A tax obligation may be collected by seizure and sale of any personal property, including possessory interests, and real property, including improvements thereto, owned by a taxpayer or in which a taxpayer has an interest.

3.06.254 Procedures for the Seizure of Property

- (1) Property shall not be seized in satisfaction of a tax obligation before the expiration of fourteen (14) days after the date such tax obligation becomes delinquent. At any time after the expiration of fourteen (14) days after a tax obligation becomes delinquent, the Attorney,

or its authorized representative, may petition the Tribal Court to authorize the Chief of Police, or its authorized agent, to seize as much of a taxpayer's property or property in which the taxpayer has an interest as is necessary to pay the delinquent tax obligation. The Attorney, or its authorized representative, shall file with the Tribal Court a tax bill together with a written affidavit executed by the Commission under penalty of perjury setting forth the amounts constituting the delinquent tax obligation and affirming that the amounts are true and correct to the best knowledge and belief of the Commission.

- (2) Notwithstanding the foregoing, where the Commission determines that seizure prior to fourteen (14) days after the date such tax obligation becomes delinquent is necessary because there is a great probability that the tax obligation will not be collectible after the due date due to the financial condition of the taxpayer or other suitable reason and, prior to the seizure, executes a written declaration under penalty of perjury setting forth the grounds and necessity for such seizure. The Attorney, or its authorized representative, shall file the written declaration in addition to a tax bill and written affidavit executed by the Commission with the Tribal Court.
- (3) The Chief of Police or its authorized agent shall deliver a copy of the tax bill, affidavit, declaration, if applicable, and Court order, to the taxpayer on the date of seizure. In the event the taxpayer cannot be found at the time of seizure, the Chief of Police or its authorized agent shall mail a copy of the documents to the taxpayer's last known address of record by U.S. certified mail, return receipt requested.
- (4) An itemized inventory shall be made by the Chief of Police, or its authorized agent, of all property seized pursuant to this section and a copy thereof shall be left with the individual or entity from whom the property is seized or, if such individual or entity cannot be found, at the place from which such property is seized. A copy of the inventory shall be filed with the Commission.
- (5) Upon finding that a tax obligation is delinquent or that there is a great probability that the tax obligation will not be collectible after the date due to the financial condition of the taxpayer or other suitable reason, the Court shall issue an Order commanding the Chief of Police or its authorized agent, to sell the seized property at public auction.
- (6) Any claimant or other person claiming ownership, the right to possession, or other interest in seized property may intervene in any court action or enforcement proceeding regarding the seized property and may raise any applicable defenses to the seizure and sale of the property.

3.06.255 Procedures for the Sale of Property

- (1) The Chief of Police or its authorized agent may conduct a sale at any time it deems sufficient property has accumulated to make the sale profitable, but in no event shall the sale occur later than ninety (90) days after the date the Tribal Court issues an order to sell the property.
- (2) Prior to the sale of the property, the Chief of Police or its authorized agent shall give no less than ten (10) calendar days' notice of the sale by publishing notice in a newspaper within the Tribe's land and by posting notice in three public places within the Tribe's land. The

notice shall describe the property to be sold, state the time and place of sale and the acceptable methods of payment for the property. In the event that it is necessary to continue the sale to a later date, an additional notice shall be given as provided herein.

- (3) The sale shall be at public auction and held within the Tribe's Indian Country at the place designated in the notice of sale. A sufficient amount of the property shall be sold and the proceeds applied to the tax obligation of the taxpayer.
- (4) A taxpayer or any person acting on behalf of the taxpayer may not bid less than the amount of the taxpayer's tax obligation for the property being sold at auction.
- (5) On payment of the price bid for property sold, the delivery of the property, with a bill of sale executed by the Chief of Police or its authorized agent, vests title in the purchaser.
- (6) All sale proceeds shall be immediately delivered to the Commission and shall be applied towards the costs of collection and the taxpayer's penalties, interest and taxes, in that order. Any excess proceeds shall be refunded to the owner of the property at the owner's last known address of record. In the event the Commission is unable to locate the owner at its last known address, the excess proceeds shall be deposited in the Refund Account subject to a claim by the owner or its successor in interest subject to the provisions of this Subchapter.
- (7) Prior to a sale, a taxpayer may challenge the seizure of property by petitioning the Tribal Court for a stay of execution of the sale. The petition shall set forth good cause why the execution of sale should be stayed or quashed. Good cause shall include:
 - (A) That there are no grounds for the seizure.
 - (B) That the affidavit or declaration of the Commission is untrue or inaccurate.
 - (C) Sufficient funds exist to pay the tax obligation.
- (8) Prior to a sale, a taxpayer may file with the Commission a bond sufficient to pay the taxpayer's tax obligation and shall furnish proof of the bond with the Tribal Court. Upon the filing of the bond, the Chief of Police or its authorized agent shall release the seized property.
- (9) At any time after a tax obligation becomes delinquent and before the sale of seized property or the completion of suit, a taxpayer may pay to the Commission the entire delinquent tax obligation including, but not limited to, the costs of collection, and redeem the property. The Commission shall issue a receipt for the amount paid.
- (10) The owner of seized property, the taxpayer, or a claimant may redeem the property at any time before sale, by paying to the Commission or to the Chief of Police or its authorized agent at the place of sale but prior to the time of sale, the delinquent tax obligation. The right to redeem terminates after a bid for the property is accepted by the Chief of Police or its authorized agent.

- (11) The Commission shall not commence nor continue a suit against a taxpayer nor commence or continue a seizure or sale of a taxpayer's property upon receipt of the payment in full of taxpayer's tax obligation.
- (12) In any case where a seizure or sale action by the Commission is dismissed for a procedural error without reaching the merits of the tax obligation and the tax obligation remains unpaid, the Commission shall be entitled to recover the taxes and all interests, penalties and costs of collection.

3.06.256 Liens and Offsets

- (1) Any final Tribal Court order, or such order of a court of competent jurisdiction, awarding a delinquent tax obligation to the Tribe may be recorded as a lien against all property, real and personal, of the taxpayer as might be provided for under applicable law. The Commission shall comply with all applicable law concerning the recording, satisfaction, and release of such a lien if filed.
- (2) The Commission may collect on a delinquent tax obligation by means of an offset of any amount due the Tribe from the taxpayer, against any amount owing that taxpayer by the Tribe pursuant to the following offset procedure:
 - (A) No sooner than fourteen (14) days after the tax obligation becomes due, the Commission shall send the taxpayer a notice at the taxpayer's last known address of record that the Commission intends to offset the tax obligation from any amount owing the taxpayer by the Tribe by U.S. certified mail, return receipt requested. The notice shall be deemed given at the time of the deposit of the notice in the mail. The notice shall provide the taxpayer with ten (10) days to respond to the notice and pay the delinquent tax obligation due before the offset is applied.
 - (B) No sooner than ten (10) days after notice is mailed, the Commission may offset any amount due the Tribe from the taxpayer, against any amount owing that taxpayer by the Tribe.
 - (C) The Commission shall send notice of the offset and a demand to the Tribal department or enterprise owing the taxpayer funds. Upon receipt of such written demand, the Tribal department or enterprise owing the amount involved shall immediately transfer the amount which it owes, but not in excess of the tax obligation specified in the demand, to the Commission. Upon receipt of the transfer, the Commission shall apply such payment to the tax obligation due, and remit any excess to the taxpayer. Amounts paid to or applied by the Commission pursuant to this section shall constitute payment by the taxpayer and the account of such taxpayer shall be credited by the Commission. Once the offset is applied, the Commission shall give written notice of payment to taxpayer and the Tribal department or enterprise that transferred the amount owed.
 - (D) Whenever insufficient to offset the delinquent tax obligation due to the Tribe, the amount available shall be applied in such manner as the Commission shall determine. Any remaining tax obligation after the offset is applied shall remain subject to a lien, if any is recorded.
 - (E) The Commission may deduct and retain from any amount offset in favor of the Tribe

an amount sufficient to reimburse the Tribe for any administrative costs of processing the offset payment.

- (F) An amount owing to a taxpayer by any Tribal department or enterprise shall include a tax refund.
- (G) Nothing in this section shall permit any Tribal department or enterprise to collect or obtain such property or amount from another Tribal department or enterprise so long as the latter has any rights against such property or amount.
- (H) Nothing in this section shall permit the Commission to offset taxes owed from property owing to a taxpayer by any Tribal department or enterprise that is otherwise exempt from attachment pursuant to this Subchapter.

3.06.257 Recovery of Costs of Collection

A taxpayer who fails to pay any tax obligation is liable for the costs of collection incurred by the Commission to collect the delinquent amount, in addition to all other penalties or fees provided for under this Subchapter. The Commission is entitled to recover a surcharge of twenty percent (20%) of the amount of the total deficient tax obligation in connection with the recovery of the debt to cover the costs of processing and handling incident to any administrative or judicial proceeding required to enforce the provisions of this Subchapter. The costs of collection may be imposed at the time of collecting the delinquent tax obligation. Notwithstanding any other provision of law, the Commission is authorized to retain all funds received as collection fees as a "Recovery Fund" for use in defraying the costs of collection of deficient tax obligations.

3.06.258 Offers in Compromise

- (1) A taxpayer who is unable to pay all or part of a tax obligation may make an offer in compromise for abatement of part of the tax obligation on the grounds that the remainder is uncollectible.
- (2) The Attorney and the Commission must approve, in writing, all offers in compromise.
- (3) While the offer in compromise is under consideration by the Commission and the Attorney, the Commission shall not execute on the taxpayer or on any holder of the taxpayer's assets unless the Commission determines that collection could otherwise be jeopardized by a delay.
- (4) A taxpayer may not protest or appeal the Commission's refusal to accept or negotiate an offer in compromise.

3.06.259 Installment Payment Plan

- (1) The Commission may enter into a written agreement with a taxpayer to allow the taxpayer to satisfy a liability for any tax obligation by means of installment payments. The Commission may require a taxpayer who requests an installment payment plan to complete a financial report in such form and manner as the Commission may prescribe.
- (2) The Commission, without notice, may alter, modify or terminate an installment payment plan if the taxpayer:

- (A) Fails to pay an installment at the time the installment payment is due under the plan.
 - (B) Fails to pay any other tax obligation at the time the tax obligation is due.
 - (C) Fails to file any tribal tax return, form, report or other document at the time the tax return, form report or other document is due.
 - (D) Fails to furnish any information requested by the Commission within thirty (30) calendar days after the request.
 - (E) Provides inaccurate, false or incomplete information to the Commission.
- (3) Except as may be otherwise provided in the installment payment plan, the Commission may offset any tax refunds against the liabilities provided for in the installment payment plan, may file and fully enforce any tax liens and may engage in collection activities including the sale of assets.
 - (4) The Commission, without notice, may terminate an installment payment plan if the Commission reasonably believes that the collection of the tax obligation to which the payment plan pertains is in jeopardy.
 - (5) An installment payment plan shall remain in effect for the term of the plan except as otherwise provided in this section.
 - (6) The Commission and the taxpayer may modify any installment payment plan at any time by entering into a new or modified agreement.
 - (7) Interest will continue to accrue on the taxpayer's tax obligation for so long as the obligation, or any portion thereof, remains unpaid.
 - (8) Before entering into any installment plan pursuant to this section, the Commission shall obtain the written approval of the Attorney.
 - (9) A taxpayer may not protest or appeal the Commission's refusal to accept or negotiate an installment plan.

3.06.260 Closing Agreements

- (1) The Commission may enter into a written closing agreement with a taxpayer regarding the liability of the taxpayer in respect to any tax obligation. The purpose of a closing agreement is to determine conclusively the tax obligations of a taxpayer for a tax period that ended prior to the date of the agreement or to determine one or more specific items affecting the tax obligation for any tax period. A closing agreement under this section may abate some or all of the tax, interest penalties and costs of collection that the taxpayer has failed to remit.
- (2) Closing agreements are final, conclusive and binding upon both parties and may not be later protested, appealed, reopened or modified except upon a showing of fraud or misrepresentation of a material fact.

- (3) No closing agreement shall be valid and binding without the written approval of the Attorney.

3.06.261 Exempt Property

The following property shall be exempt from garnishment, attachment, execution, and sale for the payment of a tax obligation:

- (1) Three-fourths (3/4) of the net wages earned per week by the person or an amount equivalent to forty (40) times the federal minimum hourly wage per week, whichever is greater.
- (2) One (1) automobile of fair market value equity not exceeding five thousand dollars (\$5,000).
- (3) Tools, equipment, utensils, or books necessary to the conduct of the person's business not to exceed \$5,000.00 but not including stock or inventory.
- (4) 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 use or possessory interests in such property.
- (5) Any dwelling used as the actual residence of the taxpayer including up to five (5) 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, and up to two (2) firearms, the total value of all items not to exceed \$10,000.00.
- (7) All ceremonial or religious items.
- (8) Public Assistance Payments.
- (9) Worker's Compensation Payments.
- (10) Disability Payments.
- (11) Monies held in trust by the United States or subject to restrictions imposed by the United States.

PROTESTS TO THE COMMISSION

3.06.270 Repealed

3.06.271 Protests for Review by the Commission

- (1) A business licensee or taxpayer aggrieved by a final decision of the Commission that may be protested under this Title may protest the final decision to the Commission pursuant to the procedures in this Section. The failure to file a protest in the time and manner provided in this Section shall result in the irrevocable and uncontestable waiver by the taxpayer of all further rights to protest or appeal the final decision of the Commission.
 - (A) A taxpayer protesting a final decision of the Commission determining that a taxpayer owes a tax obligation and demanding payment shall: (i) pay the total tax obligation

then determined to be due, including unpaid taxes, penalties, interest, and costs of collection within fourteen (14) days after the date the Notice of Deficiency and Demand for Payment was deposited into the U.S. Mail; and (ii) file a written protest with the Commission within thirty (30) days after the date the Notice of Deficiency and Demand for Payment was deposited into the U.S. Mail. In lieu of paying the tax obligation, the taxpayer may post a surety bond with the Tribal Court in an amount sufficient to satisfy the tax obligation, including the Tribe's costs of collection.

- (B) A taxpayer protesting a final decision of the Commission that does not demand payment of a tax obligation shall file a written protest with the Commission within thirty (30) days after the final decision being protested was deposited into the U.S. Mail.
 - (C) A business licensee protesting a final decision of the Commission under the Business Licensee Subchapter shall file a written protest with the Commission within thirty (30) days after the final decision being protested was deposited into the U.S. Mail.
- (2) A protest for review shall include the following information:
- (A) The business licensee's or taxpayer's name, address, and tax identification number;
 - (B) A copy of the Commission notice or a statement that references the:
 - i. Tax type;
 - ii. Tax period; and
 - iii. The amount of the tax assessment, including tax, penalties, interest, and costs of collection incurred.
 - (C) A statement of the amount of the tax assessment or other amount of action being protested;
 - (D) A statement of any alleged error committed by the Commission in determining the tax assessment or other amount being protested;
 - (E) A statement of facts and legal arguments upon which the business licensee or taxpayer relies to support the petition;
 - (F) The relief sought;
 - (G) The payment for all amounts of tax, interest, penalties, and collection fees, or the posting of a surety bond within the time provided by this Subchapter, if applicable; and
 - (H) The business licensee's or taxpayer's or the business licensee's or taxpayer's representative's signature.

The Commission may reject a protest for review that does not contain all of the information required by this Section. Except as may be provided herein, the Commission shall not charge a fee for filing a petition or any supporting documents.

- (3) Within twenty-five (25) days after receipt of the business licensee's or taxpayer's written

protest, the Commission shall set the protest for hearing.

- (4) When hearing a protest, the Commission shall give the business licensee or taxpayer no less than twenty (20) days' notice of the time and place of the hearing. The parties shall be entitled to be heard on the record, to present oral and written evidence, and to examine and cross-examine witnesses. In any proceeding before the Commission on appeal, the final decision of the Commission is entitled to a presumption of correctness and the burden of proof shall be on the taxpayer to prove that the final decision is erroneous by a preponderance of the evidence. A business licensee or taxpayer may represent themselves or hire an attorney to represent them at a hearing at the taxpayer's expense. The Commission will not provide legal counsel to a business licensee or taxpayer. Any attorney must be admitted to practice before the Stillaguamish Tribal Court and have a Stillaguamish business license. The Commission may proceed with the hearing, dispose of the issues raised, and enter a final order should a business licensee or taxpayer or the authorized representative fail to appear at a hearing.
- (5) The Commission shall have the power to administer oaths, take testimony, subpoena the attendance of witnesses and the production of federal, state and tribal tax returns, and any books, papers, documents, memoranda, supporting documentation, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts, financial statements, or other records or documents whatsoever, relating to the taxpayer. In case of a failure to obey a subpoena, the Commission may petition the Tribal Court for an order requiring the individual or entity against whom the subpoena was issued comply with the subpoena within ten (10) days or show cause why he or she should not be held in civil contempt of Court.
- (6) The Commission shall issue an Administrative Ruling within thirty (30) days after the conclusion of the hearing. If the Commission expects its ruling to be delayed, it shall notify the business licensee or taxpayer of the proposed issue date but in no event shall the Commission delay its ruling in excess of ninety (90) days from the date of the hearing.
- (7) The Commission shall include with its administrative ruling a written statement of the questions of law and fact and the factual findings and legal conclusions reached therefrom. The Commission shall keep a certified audio or transcribed record of the proceeding together with all evidence received or offered in the proceeding. A copy of the administrative ruling shall be submitted to the business licensee or taxpayer by depositing it in the U.S. certified mail, return receipt requested. The Administrative Ruling of the Commission is final and not subject to further appeal.
- (8) Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties.

3.06.272 Repealed

3.06.273 Disposition of Refunds

Refunds owed a taxpayer pursuant to a determination made by the Commission shall bear simple interest at the rate per year established by the Board of Directors which shall begin to accrue thirty

(30) days from the date all protests and appeals have been exhausted, extinguished or waived, provided, however, that no interest shall be paid on a refund that was caused by or is the result of the negligence, misrepresentation, fraud, or mistake of the taxpayer.

3.06.274 Reimbursement of Reasonable Costs

- (1) A taxpayer who is a prevailing party may be eligible to recover reasonable costs related to an administrative or judicial proceeding in connection with a tax matter. For purposes of this section, a taxpayer is considered to be a prevailing party when:
 - (A) The Commission's position was not substantially justified, and
 - (B) The taxpayer prevails on all material issues actually litigated and decided.
- (2) The taxpayer shall present a detailed itemized statement of its costs to the Commission within fifteen (15) days after the conclusion of the final proceeding. The validity and reasonableness of the itemized statement shall be determined by the Commission within ten (10) days after receiving the itemized statement. A determination of the validity and reasonableness of the costs, and any award thereof, is final and there shall be no further proceedings thereon.
- (3) Reimbursement to a taxpayer shall not exceed five thousand dollars (\$5,000.00) or actual money spent, whichever is less. The taxpayer shall not be entitled to recover for attorneys' fees or punitive damages.

VIOLATIONS

3.06.280 Penalties and Interest

- (1) Penalties:
 - (A) Failure to File Return. A failure to file any tax return, form or document within the time prescribed by this Subchapter shall result in a penalty. The penalty shall be an addition to the tax. The penalty is 5% of the tax due for each month (or fraction thereof) during which there is a failure to file any tax return, up to 25% of the tax due. In the event the tax return, form or document is not filed within sixty (60) days of the prescribed due date the penalty will be \$250.00 or 100% of the tax due on the tax return, whichever is less. In the case of a fraudulent failure to file a return, report or document, the penalty is 15% of the tax due for each month, up to 75% of the tax due. In the event a taxpayer files a single tax return covering an entire calendar year, the Department shall assume that any taxes paid apply to the first reporting period for which the tax return was due and penalties shall apply as of said first tax reporting period at a rate of 5% of the tax due for each month during which there was a failure to file a tax return, up to 25% of the tax due.
 - (B) Failure to Pay Tax. A failure to pay any tax obligation within the time prescribed by this Subchapter shall result in a penalty. This penalty shall be an addition to the tax. The penalty is 1% of the tax due for each month (or fraction thereof) that any tax obligation remains unpaid, up to 25% of the tax due.

- (C) **Accuracy Related Penalty for Underpayments.** An accuracy related penalty shall be due for any underpayment that is attributable to one or more of the following: (a) negligence or disregard of the provisions of this Subchapter, (b) substantial understatement of a tax obligation, (c) substantial valuation misstatement and (d) substantial misrepresentation. The penalty is not less than 20% and no more than 40% of the portion of the underpayment and shall be an addition to the tax.
 - (D) **Frivolous Return Penalty.** In addition to other penalties that may be imposed, there is a penalty not less than \$100.00 nor more than \$5,000 for filing a frivolous tax return or form. This penalty shall be an addition to the tax. A frivolous tax return or form is one that omits information necessary to determine the taxpayer's tax obligation, shows a substantially incorrect tax obligation, or is based upon a frivolous position.
 - (E) **Frivolous Proceedings.** A penalty in an amount not to exceed \$5,000.00 may be assessed against a taxpayer, which institutes or maintains proceedings primarily for delay or on frivolous grounds.
 - (F) In the event a taxpayer files a late tax return or form that is subject to both the failure to file and failure to pay penalties the former may be reduced by the latter. However, if no tax return or form is filed or if a late filed tax return or form understates the amount required to be due, the failure to pay penalty attributable to additional tax demanded by the Commission may not be used to offset any portion of the failure to file penalty. If the penalty for failure to file beyond sixty (60) days applies, the penalty may not be reduced by a failure to file penalty.
 - (G) In addition to, or in lieu of, any penalties provided in this Subchapter, the Commission may report any taxpayer with delinquent tax obligations to a credit reporting agency or bureau. The Commission shall provide written notice to the taxpayer of the nature and amount of the tax delinquency and the proposed reporting ten (10) days before the Commission reports the taxpayer to a credit reporting agency or bureau. The Commission shall comply with all applicable privacy laws when reporting the delinquency.
- (2) **Interest:**
- (A) **Interest on Late Payments and Underpayments.** Interest on late payments and underpayments is imposed at a rate established by the Board of Directors which shall not exceed 15% of the tax due. Interest accrues from the date the payment was due, determined without regard to any extensions of time, until it is received by the Commission. Interest is to be compounded daily. The interest rate is 10%.
 - (B) **Interest on Additions and Penalties.** Interest on penalties and additions to tax for failure to file, failure to pay, and for the accuracy related penalties will be imposed at a rate established by the Board of Directors which shall not exceed 15% of each penalty and additions to tax. Interest on penalties and additions to tax for failure to file, failure to pay, and for the accuracy related penalties accrues from the date the payment was due, determined without regard to any extensions of time, until it is received by the Commission. Interest is to be compounded daily. The interest rate is 5%.
- (3) **Costs of Collection.** A taxpayer who fails to pay any tax obligation is liable for the costs of collection, as provided for in this Subchapter, incurred by the Commission to collect the

delinquent amount, in addition to all other penalties or fees provided for under this Subchapter. Costs of collection are part of the tax obligation.

3.06.281 Abatement of Penalties

In the event a taxpayer has been assessed a penalty, the Commission may abate the penalty if it determines that the conduct or lack of conduct that caused the penalty to be imposed was due to reasonable cause and not due to willful neglect. Reasonable cause includes, but is not limited to, situations in which the taxpayer had a reasonable basis to believe that the tax did not apply to the taxpayer or to the taxpayer's business activities. A penalty may not be abated if it is determined that the taxpayer committed fraud or misrepresentation.

3.06.282 Abatement of Interest

- (1) The Commission may abate all or part of any interest which has accrued on a tax obligation due to unreasonable error or delay by an officer, agent, employee or staff-member of the Commission acting in the employee's official capacity.
- (2) The Commission may consider an error or delay only if no significant aspect of the error or delay can be attributed to the actions of the taxpayer.

LIMITATIONS OF ACTIONS

3.06.290 Limitations on Credits and Refunds

An amended tax return requesting a refund must be filed within two (2) years from the date a taxpayer filed its original tax return.

3.06.291 Limitations on Taxpayer Record Retention

Every taxpayer shall maintain and preserve appropriate books, papers, documents, memoranda, supporting documents, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts, financial statements, and other records or documents necessary to determine the tax obligation for which the taxpayer is or may be liable for four (4) years after the tax return was filed or the amount of tax determined to be due becomes final, whichever is later. In the case of a fraudulent tax return filed with the intent to evade a tax obligation, no period of limitations shall apply to the maintenance and preservation of records or documents.

3.06.292 Limitations on Enforcement

- (1) The Attorney, or its authorized representative, shall commence any action or proceeding for the collection of a tax obligation within four (4) years after the tax return was filed or the amount of tax determined to be due becomes final, whichever is later.
- (2) A taxpayer's obligations for any tax, interest, penalty or costs of collection for any tax period are extinguished, if not previously satisfied, four (4) years after the tax return is filed or the amount of tax determined to be due becomes final, whichever is later, unless one of the following applies:
 - (A) The Commission has commenced a suit to collect the debt.

- (B) The taxpayer has agreed in writing to extend the time period.
- (C) Collection has been stayed by the operation of federal or tribal law.
- (3) In the case of a fraudulent tax return filed with the intent to evade a tax obligation, no period of limitations shall apply.

3.06.293 Limitations on Violations

The Commission shall impose any penalty or interest for a violation of this Subchapter within four (4) years from the date such violation occurs.

3.06.294 Effect of Limitations; Tolling

- (1) The periods of limitation established by this Subchapter may be tolled as other periods of limitation are tolled under the laws of the Tribe.
- (2) The failure to take appropriate action under this Chapter within the times specified shall bar recovery.
- (3) The running of the period of limitations is suspended during the taxpayer's absence from the Tribe's territorial jurisdiction to avoid legal process or collection of a debt, during any properly lodged period of protest, appeal or stay of collection by operation of federal or tribal law and the period of limitations shall be extended for that period.

SUBCHAPTER 300
STILLAGUAMISH TRIBAL CIGARETTE SALES AND TAX CODE

GENERAL PROVISIONS

3.06.301 General Purpose

The Tribe has a significant interest in protecting the health, safety and general welfare of its members, the residents within the Tribe's Indian Country and those persons and businesses doing business on and/or visiting the Tribe's Indian Country. The purpose of the tax is to regulate and monitor the sale of cigarettes within the Tribe's Indian Country and to raise revenues to fund health, safety and general welfare programs and services provided to residents of and visitors to land within the Tribe's territorial jurisdiction. The Stillaguamish Board of Directors' authority to adopt the ordinance codified herein is found in the Stillaguamish Tribe of Indians Constitution and in the inherent sovereignty of the Stillaguamish Tribe of Indians to regulate its own territory and activities therein. Therefore, in the public interest and for the welfare of the people of the Stillaguamish Tribe of Indians, its employees, the residents of and visitors to Indian Country, the Stillaguamish Board of Directors, in the exercise of its authority under the Tribe's Constitution, declares its purpose by the provisions of this chapter to regulate the sale of cigarettes and to impose, collect and administer taxes on the retail sale of cigarettes.

3.06.302 Definitions

All Definitions of the Taxation Code apply herein unless the terms are other defined in this Subchapter. For purposes of this Subchapter, whenever any of the following words, terms or definitions is used herein, they shall have the meaning ascribed to them in this Subchapter:

- (1) "Auditor" means an independent third party auditor selected pursuant to Section 3.06.341 of this Subchapter.
- (2) "Carton" or "carton of cigarettes" means a carton of two hundred (200) cigarettes.
- (3) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural all leaf tobacco in its natural state.
- (4) "Contract" means the Cigarette Tax Contract Between the Stillaguamish Tribe of Indians and the State of Washington entered into by the Stillaguamish Tribe of Indians and the state of Washington dated April 21, 2008.
- (5) "Enterprise activities" include paying wages, benefits, bonuses or expenses, related to the maintenance and operation of the retail facility or typically considered to be part of a business' operating expenses and overhead.
- (6) "Essential government services" means services such as Tribal administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development.

- (7) "General fund" means the Stillaguamish Tribe of Indians' General Fund.
- (8) "Indian Country," consistent with the meaning given in 18 U.S.C. § 1151 means: (a) all land within the limits of the Stillaguamish Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation; and (b) all Indian allotments or other lands held in trust for the Tribe or a member of the Tribe, including rights of way running through the same.
- (9) "Local retail sales tax" means the combined Washington State and local retail sales taxes applicable in the area.
- (10) "Non-enterprise activities" include, but are not limited to: government services to provide and maintain infrastructure such as sidewalks, roads, and utilities; services such as fire protection and law enforcement; the costs of administering deductions and exemptions similar to those available to retailers, wholesalers and others under state law; Tribal administration activities such as tax functions, contracting for health benefits, providing direct social and health care services, economic development, natural resources, and the provision of job services; and distribution of moneys related to trust funds, education, and general assistance.
- (11) "Nonmember Indian" means an enrolled member of a federally recognized Indian Tribe other than the Stillaguamish Tribe of Indians.
- (12) "Quarter" means a three-month period, each quarter immediately succeeding the next. The first quarter begins the first day of the first month the Tribal cigarette tax is imposed, if the imposition of the tax is on or before the 15th of the month, or begins the first day of the second month the Tribal cigarette tax is imposed, if the imposition of the tax is after the 15th of the month.
- (13) "Quarterly average sales" means the sum of the retail sales made during the two quarters divided by two.
- (14) "Retail selling price" means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, which price includes the Tribal cigarette tax.
- (15) "Self-certified tribal wholesaler" means a wholesaler who is a federally recognized Indian Tribe or a member of such a Tribe, who is not required to be licensed under any state law, and who has by letter certified to the State Commission that it will abide by the terms of the Contract and who has signed a contract with the Tribe requiring it to abide by the terms of the Contract.
- (16) "Self-certified wholesaler" means an out-of-state wholesaler who is not a self-certified tribal wholesaler and who has by letter certified to the State Commission that it will abide by the terms of the Contract and who has signed a contract with the Tribe requiring it to abide by the terms of the Contract.
- (17) "Stillaguamish Indian Reservation" or "reservation" means the area recognized as the Stillaguamish Tribe of Indians Indian Tribe's Indian Country by the United States Department of the Interior.

- (18) "State Department" means the state of Washington Department of Revenue.
- (19) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. "Tobacco product" does not include cigarettes.
- (20) "Tribal tax" means the combined tax or taxes enacted as a provision of Tribal law on the units of cigarettes sold (Tribal cigarette excise tax) and on the purchase of cigarettes by retail buyers. (Tribal retail cigarette sales tax).
- (21) "Tribal member" means an enrolled member of the Stillaguamish Tribe of Indians.
- (22) "Tribal member tax" means the Tribal tax imposed on sales of cigarettes to Tribal members.
- (23) "Tribal retailer" means a cigarette retailer wholly owned by the Stillaguamish Tribe of Indians and located in Indian Country.
- (24) "Tribally-licensed retailer" means a Tribal member who has a business license from the Tribe to sell cigarettes at retail from a business located in Indian Country.
- (25) "Tribal tax stamp" means the stamp or stamps that indicate the Stillaguamish Tribal cigarette tax imposed under the Contract is paid or that identify those cigarettes with respect to which no tax or another Tribal tax is imposed.
- (26) "Wholesaler" means every person who purchases, sells, or distributes cigarettes for the purpose of resale only.

3.06.303 Cigarette Tax Contract with Washington State

On April 21, 2008, the Tribe entered into a Contract with the State regarding the sale and taxation of cigarettes in Indian Country. In accordance with the terms of the Contract and during its term, the Tribe enacts this Subchapter. To the extent provisions of this Subchapter conflict with the Contract, the terms of the Contract control. Prior Board of Directors Resolution 2002/23 dealing with the levy of Tribal cigarette taxes is superseded by this Subchapter.

PERMITTED SALES

3.06.310 Permitted Sales

Tribal retailers and Tribally-licensed retailers are the only retail businesses authorized to sell cigarettes within Indian Country.

3.06.311 Limitations on Tribal Sales

The Tribe shall not engage in mail order type sales, such as internet, catalog, and telephone sales, to State residents outside of Indian Country, unless and until the state and the Tribe have entered into a

memorandum of agreement in regard to the taxability of such sales.

3.06.312 Tribally-Licensed Retailers

- (1) "Tribally-licensed retailer" refers to, as of the date of the Contract, the Blue Stilly Smoke Shop.
- (2) The Tribe shall notify the State Department thirty (30) days prior to the start-up of cigarette sales by a Tribal retailer or any other Tribally-licensed retailer.
- (3) The Tribe shall provide to the State Department information regarding the status of land upon which any Tribal retailer or new Tribally-licensed retailer is located at least thirty (30) days prior to the startup of any new cigarette sales by such retailer.
- (4) Tribal retailers and Tribally-licensed retailers may purchase cigarettes for sale in Indian Country only from:
 - (A) Wholesalers or manufacturers licensed to do business in the State;
 - (B) Self-certified wholesalers who meet the requirements of Part 7.2 of the Contract;
 - (C) Self-certified tribal wholesalers who meet the requirements of Part 7.3 of the Contract; and
 - (D) The Tribe or its enterprises as a Tribal wholesaler or manufacturer.
- (5) The Tribe, or its designee, shall notify the State Department seventy-two (72) hours in advance of all shipments of cigarettes by the self-certified wholesaler or self-certified tribal wholesaler to the Tribe or Tribally-licensed retailers. Such notice shall include who is making the shipment (meaning who is the wholesaler), detail regarding both quantity and brand, and the invoice order number.

3.06.313 License Required of Tribal retailers and Tribally-licensed Retailers

- (1) Every person engaging in the business of selling cigarettes within the Tribe's Indian Country shall secure a license from the Tribe in the manner provided for by Subsection 100 of this Title.
- (2) Tribal retailers and Tribally-licensed retailers that receive Tribal Business Licenses shall prominently display notice that cigarettes sold on the premises are not for resale.
- (3) Notwithstanding any other provision contained in this Chapter, each license issued under this Subchapter is conditioned upon the licensee's full compliance with all provisions the Contract applicable to Tribal retailers and Tribally-licensed retailers. Tribal retailers and Tribally-licensed retailers shall attest that they have received, read, understand, and shall comply with the terms of the Contract.
 - (A) Any person violating the provisions of this section shall be subject to a civil penalty of not less than \$250.00 or more than \$1,000.00.
 - (B) For purposes of this Subchapter, the act or omission of any officer, agent, or other

person acting for or employed by any person, corporation, association or partnership within the scope of his office, agency or employment shall be deemed to be the act or omission of such person corporation, association or partnership as well as his own.

- (4) The Commission shall assign a taxpayer identification number upon approval of the applicant's tribal business license.

3.06.314 Investigation and Penalties for Sales to Minors

- (1) No person shall sell or give, or permit to be sold or given, cigarettes to any person under the age of eighteen (18).
- (2) If a violation of this Section is reported to the Tribe, the Tribe shall investigate the allegation and, when there is probable cause to believe a violation has occurred, cite the person who is alleged to have made a sale or gift in violation of this Section for such violation and apply the penalties provided for in this Section.
- (3) The following penalties shall apply to violations of this Section:
 - (A) Upon a first violation, a fine of two hundred fifty dollars (\$250.00);
 - (B) Upon a second violation within any rolling one-year period, a fine of five hundred dollars (\$500.00);
 - (C) Upon a third violation within any rolling one-year period, a fine of seven hundred fifty dollars (\$750.00);
 - (D) Upon a fourth violation within any rolling two-year period, a fine of one thousand dollars (\$1,000.00);
 - (E) Upon a fifth violation within any rolling two-year period, a fine of one thousand dollars (\$1,000.00) and termination from employment. Upon the fifth violation within any rolling two-year period, the person shall no longer be permitted to make cigarette sales in Indian Country for a period of no less than one year; and
 - (F) Notwithstanding the foregoing, in addition to or in lieu of the penalties imposed by this Section, the Commission reserves the right to revoke a license upon a violation of this Section.
- (4) It shall be no defense to a citation for a violation of this Section that the purchaser acted, or was believed by the person making the sale to act, as agent or representative of another.
- (5) It shall be a defense to a citation for a violation of this Section that the person making a sale reasonably relied on official government issued identification showing the purchaser's age and bearing the purchaser's signature and photograph.

TAX STAMPS

3.06.320 Tax Stamp Required

- (1) All cigarettes sold by Tribal retailers or Tribally-licensed retailers shall bear a Tribal tax

stamp, including cigarettes subject to Tribal tax and the Tribal member tax. The stamps shall be purchased and affixed in accordance with the terms of the Contract.

- (2) It shall be unlawful for any person to knowingly sell, offer for sale, display for sale or possess with intent to sell, any cigarette within the Tribe's Indian Country unless all Tribal taxes imposed thereon has been paid and such package containing cigarettes has been stamped with a Tribal cigarette tax stamp evidencing such payment pursuant to this Chapter and the Contract. Any person who violates the provisions of this Section shall be subject to a civil penalty of not more than \$100.00 for the first offense and for each subsequent offense of not less than \$50.00 or more than \$1,000.00.
- (3) The display or possession, except in unopened shipping package, container, or case, of cigarettes by any retailer unless stamped in accordance with this Subchapter shall constitute prima facie evidence of possession with intent to sell the same.
- (4) There shall be no violation of Subsection 3.06.320 (2) if a Tribal Retailer or Tribally-Licensed Retailer discovers unstamped cigarettes in the retailer's possession that were transferred directly from an authorized wholesaler, discovery is made within a reasonable time following transfer, said retailer promptly notifies the Tribe following discovery that unstamped cigarettes were inadvertently transferred to the retailer, and all such unstamped cigarettes are immediately transferred to the Tribe.
- (5) Any cigarettes found at any place within the Tribe's Indian Country without stamps affixed thereto as required by this Subchapter, unless such cigarettes shall be in the possession of a licensed wholesaler in the original unopened shipping package or unless they shall be in the course of transit to a licensed wholesaler, are declared to be contraband goods and may be seized by the Tribe, its agents, employees or any peace officer of the Tribe when directed by the Tribe to do so, without a warrant.
- (6) Any cigarettes seized under the provisions of this Subchapter shall be confiscated and forfeited to the Tribe. The Tribe shall sell such confiscated property to a licensed dealer or distributor to the best advantage of the Tribe. The proceeds from such sale shall be remitted to the Tribe as income from the enforcement of this Subchapter. The seizure and sale of cigarettes does not abrogate the requirement that all Tribal taxes be paid as otherwise provided in this Subchapter.
- (7) It shall be unlawful for any person to sell or transfer any stamps issued under the provisions of this Subchapter. An person who shall fraudulently make, utter, forge, or counterfeit any stamp prescribed under this Subchapter, or cause or procure the same to be done, or who shall willfully utter, publish, pass or render as true, any false, altered, forged or counterfeited stamp, or knowingly possess such false, altered, forged or counterfeited stamp, or use more than once any stamp provided for and required by this Subchapter, for the purpose of evading all Tribal taxes thereby imposed, shall be found to have committed an unlawful act under this Section. Upon a finding that such unlawful act has been committed by a preponderance of evidence, the Defendant shall be assessed a fine not to exceed \$5,000.00. In the event such act is committed by a nonmember of the Tribe, the Defendant may be temporarily or permanently excluded from the Tribe's Indian Country.

TAX PAYMENT, RATE, AND COLLECTION

3.06.330 Imposition of Tribal Tax; Legal Incidence; Collection

- (1) Beginning no later than April 25, 2008 ("Effective Date"), the Tribe shall impose Tribal tax, on all sales by Tribal retailers and Tribally-licensed retailers of cigarettes within the Tribe's Indian Country. The Tribal tax imposed under this Subchapter shall apply to all assessment dates and periods beginning on or after the Effective Date.
- (2) The Tribal cigarette excise tax shall be paid prior to the sale, distribution, or transfer of possession of any cigarettes to the Tribal retailer or Tribally-licensed retailer. During the term of the Contract, the terms of the Contract regarding the purchase, stamping, transportation, and sale of cigarettes shall apply. The Tribe shall impose two separate taxes, collectively the Tribal tax, on sales made to non-Indians and nonmember Indians as follows:
 - (A) The Tribe shall impose a Tribal cigarette excise tax, consistent with the Contract, based on units of cigarettes sold or transferred by a Wholesaler to a Tribal retailer or Tribally-licensed retailer within the Tribe's Indian Country for sale to non-Indian and nonmember Indian consumers. A Tribal retailer or Tribally-licensed retailer shall pay the Tribal cigarette excise tax upon receipt of the cigarettes from the Wholesaler. Such payment shall be considered as an advance payment and shall thereafter be added to the price of the cigarettes and recovered by the Tribal retailer or Tribally-licensed retailer from the non-Indian and nonmember Indian consumers at the point of sale.
 - (B) The Tribe shall impose a Tribal cigarette retail sales tax, consistent with the Contract, on the purchase of cigarettes by consumers from a Tribal retailer or Tribally-licensed retailer within the Tribe's Indian Country. Unless otherwise provided by the Board of Directors, Tribal retailers and Tribally-licensed retailers shall collect the Tribal retail cigarette sales tax at the point of sale to non-Indian and nonmember Indian consumers. Tribal retailers and Tribally-licensed retailers may prepay the Tribal cigarette retail sales tax to the Wholesaler at the time the Tribal cigarette excise tax is paid if specifically authorized by the Board of Directors. Whenever the Tribal retail cigarette tax is paid by the Tribal retailers and Tribally-licensed retailers, or any person other than the consumer, user, or possessor, that payment shall be considered a pre-collection of such taxes due. When the tax is prepaid by another, this amount shall thereafter be added to the price of the cigarettes and recovered by the Tribal retailer or Tribally-licensed retailer from the non-Indian and nonmember Indian consumers at the point of sale.
- (3) Wholesalers, Tribal retailers, or Tribally-licensed retailers liable for collecting the Tribal tax shall pay to the Commission all Tribal taxes under this Subchapter. Wholesalers, Tribal retailers, or Tribally-licensed retailers liable for collecting the Tribal tax shall file monthly tax returns showing tax receipts received during each monthly period on forms prescribed by the Commission. The tax return shall be filed before the last day of the calendar month next succeeding the month for which the tax return is made and shall be accompanied by payment of all taxes due and owing for the month covered by said tax return.

3.06.331 Tax Rate

The Tribal tax rate shall be set by ordinance or resolution of the Board of Directors. The Tribal tax rate shall be as follows:

- (1) For the first thirty-six (36) months ("phase-in period"), the tax rate shall equal no less than

the sum of an amount equal to eighty (80) percent of the State cigarette tax, which is expressed in cents per cigarette, plus an amount equal to eighty (80) percent of the State and local retail sales taxes. This phase-in period may be reduced in accordance with the terms of this Subchapter.

- (2) No later than thirty-six (36) months after the initial imposition of tax under this section, and subject to the phase-in period reduction pursuant to this Subchapter, the Tribal tax rate shall be no less than the sum of an amount equal to one hundred percent (100%) of the State cigarette tax, which is expressed in cents per cigarette, plus an amount equal to one hundred percent (100%) of the State and local retail sales taxes.
- (3) If during any quarter the number of cartons of cigarettes, excluding those manufactured by the Tribe or its enterprises, that are sold at retail exceeds by at least ten percent (10%) the quarterly average sales of the six (6) months preceding the imposition of the Tribal tax, the 36-month phase-in period shall be reduced by three months. These reductions will be cumulative. The quarterly average sales baseline shall be determined by the Auditor.
- (4) During the term of the Contract, upon any future increase in the State cigarette tax, State retail sales tax, or local retail sales tax, the Tribal tax on cigarettes shall increase by no less than one hundred percent (100%) of the increase in the combined State and local tax rates; provided, however, that during the phase-in period, the Tribal tax rate shall be set that it is at least equal to eighty percent (80%) of the then-current combined State cigarette tax and State and local sales tax.
- (5) During the term of the Contract, upon any future decrease in the State cigarette tax, State retail sales tax, or local retail sales tax, the Tribal tax on cigarettes may decrease to a minimum of no less than one hundred percent (100%) of the combined State and local tax rates; provided, however, that during the phase-in period, the Tribal tax rate shall be set that it is at least equal to eighty percent (80%) of the then-current combined State cigarette tax and State and local sales tax.

3.06.332 Exemptions from Tribal Tax

The following shall not be subject to the Tribal tax:

- (1) Sales of tobacco products.
- (2) Sales of cigarettes to enrolled members of the Tribe; however, such sales are subject to the Tribal member tax.
- (3) All cigarettes manufactured by the Tribe or its enterprises in Indian Country.
- (4) Mail order type sales of cigarettes, such as internet, catalog, and telephone sales, to purchasers outside of Indian Country and outside of the State.

3.06.333 Records

- (1) Wholesalers, Tribal retailers, or Tribally-licensed retailers liable for collecting the Tribal tax shall maintain accurate written records of the purchase, stamping, and retail sales of cigarettes, and shall make such records available for inspection by the Commission or the

Commission's designee and/or Auditor retained by the Tribe. Records shall be maintained for no less than four years after the audit is accepted by the appropriate oversight agency.

- (2) Wholesalers, Tribal retailers, or Tribally-licensed retailers shall maintain and preserve complete and accurate books, records and accounts including, but not limited to (a) invoices showing the amount by type of cigarettes sold by a Wholesaler to a retailer and the amount of tax required by this Subchapter to be paid and actually paid by the retailer or Wholesaler ; (b) where generated, daily journal tapes of the retailer showing the date, amount of sale and price of cigarettes sold on a daily basis; and (c) where daily journal tapes are not generated, such information generated by computer program or otherwise. All such books, records and accounts shall be made available to the Commission for examination for the periods of time prescribed in Section 3.06.291.

3.06.334 Tribal Member Cigarette Tax

The Tribe shall impose a Tribal member tax on sales of cigarettes made to Tribal members which shall be equal to the Tribal tax levied under this Subchapter on sales to non-Indian and nonmember Indian consumers. The Tribal member tax imposed under this Subchapter shall apply to all assessment dates and periods beginning on or after the Effective Date of the Contract. Unless otherwise provided by the Board of Directors, the Tribal member tax shall be imposed, paid, and collected in the same manner and at the same rate as the Tribal tax on sales to non-Indians and nonmember Indian consumers as provided in this Subchapter, and all other licensing, reporting, and enforcement provisions of this Subchapter shall apply, except that the tax revenue generated by the Tribal member tax from sales to enrolled members of the Tribe shall be exempt from the prohibition on subsidization in Section 3.06.340 of this Subchapter.

3.06.335 Failure to Pay Tax

Any tax not remitted to the Commission on or before the due date is delinquent.

USE OF REVENUE

3.06.340 Use of Tribal Tax Revenue

- (1) Tribal tax revenue shall be used only for Essential government services, and may not be used to subsidize Tribal cigarette and food retailers. For the purposes of this Section, "subsidize" means that proceeds from the Tribal tax pursuant to the Contract cannot be expended on the Enterprise activities of the Tribal retail cigarette business. Where the retail cigarette business is located within the same business premises as a retail food business, the proceeds from the Tribal tax pursuant to the Contract cannot be expended on the Enterprise activities of either business located on the business premises.
- (2) Use of Tribal member tax revenue is not subject to the limitations of this Section.

3.06.341 Audit

The Tribe shall retain at the Tribe's cost a third-party independent auditor for the purposes of verifying compliance with the Contract. The Auditor shall perform all work required under Part 10 of the Contract.

VIOLATIONS AND PENALTIES

3.06.350 Violations; Additional Penalties

Any Wholesaler, Tribal retailer, or Tribally-licensed retailer that violates, disobeys, omits, neglects or refuses to comply with, or resists or opposes the enforcement of any of the provisions of this Subchapter, may be assessed a penalty of not less than Seventy Five Dollars (\$75.00) nor more than Five Thousand Dollars (\$5,000.00) for the first violation, and not less than One Hundred Fifty Dollars (\$150.00), nor more than Five Thousand Dollars (\$5,000.00) for the second violation, and not less than Three Hundred Dollars (\$300.00) nor more than Five Thousand Dollars (\$5,000.00) for the third violation, and not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00) for the fourth and each subsequent violation, or five (5) times the amount of the tax imposed, if any, whichever is higher, for the second and each subsequent violation. A separate and distinct violation shall be regarded as committed each day said Wholesaler, Tribal retailer, or Tribally-licensed retailer, whichever the case may be, continues any such violation, or permits any such violation to exist after notification thereof. The penalties imposed under this Subchapter shall be in addition to the tax and in addition to those penalties, if any, imposed under Section 3.06.280. Nothing in this Section shall be deemed or construed to limit the Tribe's ability to enforce the terms of this Subchapter through any other provision of Tribal law, including but not limited to the seizure and sale provisions of Section 3.06.253 to Sections 3.06.256 inclusive.

3.06.351 Failure to Remit; Licensing

Payment of this tax may be enforced by action in any court of competent jurisdiction, and failure to, account for or pay the tax for sales of cigarettes shall be cause for revocation of any license, in addition to any other penalty provided in this Subchapter.

ADMINISTRATION

3.06.360 Severability

If any section, provision, phrase, addition, word, sentence or amendment of this Subchapter or its application to any person is held invalid, such invalidity shall not affect the other provisions or applications of this Subchapter that can be given effect without the invalid application, and to that end the provisions of this Subchapter are declared severable.

3.06.361 Nondiscrimination

No provision of this Subchapter shall be construed as imposing a tax that discriminates on the basis of whether a cigarette Wholesaler or Retailer is owned, managed or operated by a member of the Tribe.

SUBCHAPTER 400
RETAIL SALES TAX

GENERAL PROVISIONS

3.06.400 General Purpose

The Tribe has a significant interest in protecting the health, safety and general welfare of its members, the residents within the boundaries of the Tribe's land and those persons and businesses doing business on and/or visiting the Tribe's land. The Stillaguamish Board of Directors' authority to adopt the ordinance codified herein is found in the Stillaguamish Tribe of Indians' Constitution and in the inherent sovereignty of the Stillaguamish Tribe of Indians to regulate its own territory and activities therein. Therefore, in the public interest and for the welfare of the people of the Stillaguamish Tribe of Indians, its employees, the residents of and visitors to Indian Country, the Stillaguamish Board of Directors, in the exercise of its authority under the Tribe's Constitution, declares its purpose by the provisions of this chapter to regulate and monitor the sales of tangible personal property within the Tribe's land and to raise revenues to fund health, safety, and general welfare programs and services provided to residents of and visitors to the Tribe's land.

3.06.401 Definitions

All provisions and definitions of Title 3, Chapter 6, Business Licensing and Taxation Code apply herein unless terms are otherwise defined in this Subchapter. For purposes of this Subchapter, whenever any of the following words, terms or definitions are used herein, they shall have the meaning ascribed to them in this Subchapter:

- (1) "Consumer" means any person who receives or comes into possession of property from a retailer by means of a sale of such property.
- (2) "Indian Country," consistent with the meaning given in 18 U.S.C. § 1151, means: (a) all land within the limits of the Stillaguamish Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights of way running through the reservation; and (b) all Indian allotments or other lands held in trust for the Tribe or a member of the Tribe, including rights of way running through the same.
- (3) "Person" means any natural person, trustee, court appointed representative, syndicate, association, partnership, firm, club, company, corporation, business trust, institution, agency, government corporation, municipal corporation, district or other political subdivision, contractor, supplier, vendor, vendee, operator, user or owner, or any officers, agents, employees or other representative, acting either for himself or herself or for any other person in any capacity or any other entity recognized by law as the subject of rights and duties. The masculine, feminine singular or plural is included in any circumstance.
- (4) "Property" means all tangible personal property of every kind and description. For purposes of this Subchapter, the term "property" includes, but is not limited to:

- (A) "Prepared food" means heated foods, combined foods, or food and food ingredients sold with utensils provided by the retailer for immediate consumption, and includes any and all non-alcoholic beverages and dietary supplements for immediate consumption. "Food" and "food ingredients" means substances, whether in liquid concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Immediate consumption" means prepared foods sold for non-home use. Food or food ingredients are prepared foods if any one of the following are true:
- (a) Food or food ingredients are prepared foods if sold in a heated state or are heated by the retailer. Food is sold in a heated state or is heated by the retailer when the retailer provides the food to the consumer at a temperature that is higher than the air temperature of the retailer's business. Food is not sold in a heated state or heated by the retailer if the consumer, rather than the retailer, heats the food in a microwave provided by the retailer.
 - (b) Food or food ingredients are prepared foods if the item' sold consists of two or more foods or food ingredients' mixed or combined by the retailer for sale as a single item, unless the food or food ingredients are a bakery item that is sold without a utensil or are items that the retailer only cuts, repackages, or pasteurizes. "Bakery items" include bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
 - (c) Food or food ingredients are prepared foods if sold with utensils provided by the retailer. "Utensils" include plates, knives, forks, spoons, glasses, cups, napkins, and straws. A plate does not include a container or packaging used to transport the food. A food or food ingredient is "sold with utensils provided by the retailer" if the retailer's customary practice for that item is to physically deliver or hand a utensil to the consumer with the food or food ingredient as part of the sales transaction, and the utensil is necessary for the consumer to receive the food or food ingredient. If the food or food ingredient is prepackaged with a utensil, the retailer is considered to have physically delivered a utensil to the consumer, unless the food and utensil are prepackaged together by the food manufacturer.
- (B) "Services" means installing, repairing, cleaning, improving, constructing, and decorating real or personal property for consumers; constructing and improving new or existing buildings and structures; clearing land and moving earth; landscape maintenance and horticultural services (excluding farmers); physical fitness activities; tanning or tattooing; and amusement and recreational businesses, including golf, skiing, billiards, bowling and similar activities. "Services" excludes sales of any ticket, license, permit, or other property that entitles a person to gain admission to any theatre, moving picture exhibition or show, pier, exhibition, sporting event, concert, or other place of amusement; and the rendering of professional services such as those by lawyers, accountants, and doctors.
- (C) "Cigarettes" means any roll for smoking made wholly or in part of tobacco,

irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state. "Cigarette" excludes the term "Tobacco product" as defined by Title 3, Chapter 6, Subchapter 300.

- (5) "Retailer" means any person who in the ordinary course of business, sells any property to a consumer, such sale described as a retail sale, so as to entitle such person or persons to all or a portion of the net receipts from the sale thereof, and includes all businesses operating within lands subject to the jurisdiction of the Tribe regardless whether the business has obtained a tribal business license pursuant Title 3, Chapter 6, Subchapter 100. For purposes of this Subchapter, the term Retailer shall include, but is not limited to:
- (A) "Restaurant" means and includes any public place kept, used, maintained advertised and held out to the public as a place at which food items for immediate consumption are sold and/or prepared, whether or not consumed or intended to be consumed on the premises.
- (B) Wholesalers, Tribal retailers, and Tribally-licensed retailers liable for collecting the Tribal tax on "cigarettes" as provided by Title 3, Chapter 6, Subchapter 300.
- (6) "Sale" or "sales" means all sales, barter, trades, exchanges, deliveries, leases or rentals, conditional or otherwise, or other transfer of ownership for value of property from a retailer to any person no matter how characterized and includes any transaction by which the possession of property is transferred but the retailer retains title as security for payment. "Sale" excludes the amount of the tax imposed, collected, or factored.

TAX PAYMENT, RATE, AND COLLECTION

3.06.410 Imposition of Tribal Retail Sales Tax; Legal Incidence; Collection

- (1) There is hereby levied and imposed a tax on every retailer engaged in the sale of property to a consumer within the Tribe's Indian Country. Unless otherwise provided by the Board of Directors the Tribal retail sales tax applies at the point of sale from a retailer to a consumer.
- (2) Each retailer that makes sales within the Tribe's Indian Country is liable for the retail sales tax and shall pay to the Commission the tax due under this Subchapter based on the sale or charge made in selling property to each consumer. The retailer is solely responsible for paying the tax to the Tribe and shall be liable for the payment of the tax to the Tribe, regardless of whether any additional fee is actually collected from the consumer, and regardless of whether the consumer pays by cash or credit. Payment of the tax to the Tribe shall be made at the time the tax return is due.

3.06.411 Tax Rate

The tax rate imposed under this Subchapter shall be set by ordinance or resolution of the

Board of Directors. The tax rate imposed under this Subchapter shall be levied, imposed and collected at the rate of nine point one percent (9.1%) of the actual sales price of a single item purchased exclusive of any rebates. If a sale is consummated by trades, barter or exchange for anything other than money, the tax shall be computed at the fair market value of the property sold.

3.06.412 Filing of Return

Retailers shall pay to the Commission all taxes levied under this Subchapter. Retailers shall file monthly tax returns showing tax receipts received during each monthly period on forms prescribed by the Commission. The tax return shall be filed before the last day of the calendar month next succeeding the month for which the tax return is made and shall be accompanied by payment of all taxes due and owing for the month covered by said tax return.

3.06.413 Filing of Applications

Retailers intending to conduct business within the Tribe's Indian Country shall complete and file with the Commission an application for a tribal business license prior to conducting business pursuant to the provisions of Title 6, Chapter 3, Subchapter 100. Retailers conducting business within lands subject to the jurisdiction of the Tribe on the effective date of this Subchapter shall complete and file an application for a tribal business license within thirty (30) days of the effective date of this Subchapter. The Commission shall assign a business license number that shall be used as the taxpayer identification number upon approval of the retailer's tribal business license application.

3.06.414 Records

Retailers shall maintain accurate written records of all sales to consumers, whether the consumer pays by cash or credit, and shall make such records available for inspection by the Tribe. Retailers shall keep, maintain and preserve complete and accurate books, records and accounts showing the gross income from the sale of or charge made for the furnishing of property and the taxes for each day, and shall make available such books, records, and accounts to the Commission for examination for those periods of time prescribed in Section 3.06.291.

EXEMPTIONS AND INCENTIVES

3.06.420 Exemptions from Tribal Retail Sales Tax

The following shall not be subject to the Tribal retail sales tax:

- (1) Sales of cigarettes manufactured by the Tribe or Tribal enterprises in Indian Country.
- (2) Sales of cigarettes made through the mails, such as internet, catalog, and telephone sales, to consumers outside of Indian Country and outside of the State.
- (3) Sales of cigarettes already subject to the "Tribal tax" as defined and levied pursuant to

Title 6, Chapter 3, Subchapter 300.

- (4) Sales of prepared food from automatic food dispensing or non-alcoholic beverage vending machines that dispense items in sealed containers.
- (5) Sales of prepared food sold by persons primarily engaged in an activity or business other than the sale of prepared food items. By way of illustration, these establishments that do not hold themselves out as retailers and include churches, grade schools, junior high schools, or high schools; institutional living establishments such as dormitories, senior citizen centers, residential care facilities and hospitals; and not-for-profit organizations who may, from time to time, provide prepared food items without holding themselves out as retailers of such items.
- (6) Sales of prepared food that might qualify as food exempt under the Federal Food Stamp Act purchased with any coupon, stamp, type of certificate, authorization card, cash or check issued in lieu of a coupon, or access device, including an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food Stamp Act of 1977.
- (7) Sales of property at wholesale to a retailer that is intended to be resold by the retailer to a consumer, except as might otherwise be provided in Title 6, Chapter 3, Subchapter 300.
- (8) Casual or isolated sales, such as garage sales, made by a person who is not engaged in the business of selling the type of property involved as part of the person's ordinary course of business.
- (9) Sales directly to the Federal or State government, or to any department and agency thereof.
- (10) Sales of machinery and equipment, including cogeneration and pollution control equipment, and repair and replacement parts with a useful life of at least one year, used directly in a manufacturing operation, research and development by a manufacturer or processor for hire, or used directly in a testing operation by persons engaged in testing for a manufacturer or processor for hire are exempt from sales tax. This exemption also applies to labor and services involved in the installation, repair, and maintenance of such machinery and equipment.
- (11) Sales of newspapers, whether by publishers or others. "Newspaper" means a publication of general circulation and general interest bearing a title, issued regularly at stated intervals of at least once every two weeks, and formed of printed paper sheets without substantial binding including school newspapers, regardless of the frequency of publication, where such newspapers are distributed regularly to a paid subscription list. Magazines, periodicals, and all publications other than newspapers are subject to the retail sales tax when sold to consumers.
- (12) Sales of legend drugs for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailments of humans when sold to hospitals, doctors, dentists, or any

other medical practitioner, as well as to patients. "Legend drugs" are those drugs which may not be legally dispensed under applicable law without a prescription.

- (13) Sales of nonlegend drugs, nutrition products including dietary supplements or dietary adjuncts, medicines, prescription lenses, or other substances, when dispensed by a licensed dispensary pursuant to a written prescription issued by a medical practitioner for diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans.
- (14) Sales of laboratory reagents and other diagnostic substances when used as part of a test prescribed to diagnose disease in humans.
- (15) Sales of property used for the administration of drugs prescribed to a patient, including needles and tubing, when used for the administration of drugs prescribed to a patient, and catheters, infusion pumps, syringes, and similar items when used for the delivery of prescription drugs.
- (16) Sales of prosthetic devices; orthotic devices prescribed by physicians, osteopaths, or chiropractors; and ostomic items. "Prosthetic devices" are artificial substitutes which generally replace missing parts of the human body, such as a limb, bone, joint, eye, tooth or other organ or part thereof, and materials which become ingredients or components of prostheses. "Orthotic devices" are apparatus designed to activate or supplement a weakened or atrophied limb or function including braces, collars, casts, splints, and other similar apparatus as well as parts thereof, but do not include durable medical equipment such as wheelchairs, crutches, walkers, and canes nor consumable supplies such as embolism stockings, arch pads, belts, supports bandages, and the like, whether prescribed or not. "Ostomic items" are medical supplies used by colostomy, ileostomy, and urostomy patients, including bags, tapes, rubes, adhesives, deodorants, soaps, jellies, creams, germicides, and sundry related supplies.
- (17) Sales of medically prescribed oxygen when sold to an individual having a prescription for use in the medical treatment of that individual.
- (18) Sales of anesthesia gases, medical gases, contrast media, or irrigation solutions when these items are used under a physician's order as part of a medical treatment for a specific patient.
- (19) Sales of property by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code.
- (20) Sales of parts that replace an existing part, or which are essential to maintain the working condition, of a piece of qualifying farm machinery and equipment; installing replacement parts for qualifying farm machinery and equipment; and repairing qualifying farm machinery and equipment. "Qualifying farm machinery and equipment" includes machinery and equipment used primarily for growing, raising, or producing agricultural products including farm tractors and other farm implements.
- (21) Sales of property by Tribal Retailers located on Tribal fee land.

- (22) Sales of objects related to a traditional or cultural activity any members of federally-recognized tribes whose cultural practices are within Coast Salish culture, including, but not limited to: arts and crafts, music, materials, tools and foods; items used for hunting, fishing and gathering; items used for traditional games; and items used in spiritual or religious practice and all other objects related to cultural preservation and conservation, on land owned by the Tribe, whether the land is held in trust or owned by the Tribe in fee.

3.06.421 Tax Incentives

[RESERVED]

VIOLATIONS AND PENALTIES

3.06.430 Failure to Pay Tax

Tax not remitted to the Commission by a retailer on or before the due date is delinquent.

3.06.431 Violations; Additional Penalties

- (1) Retailers who fail to file a tax return when due, fail to pay any tax obligation within the time prescribed, fail to pay the correct amount of the tax: obligation, or file frivolous returns or proceedings shall be subject to the penalties and interest imposed pursuant to Title 6, Chapter 3, Subchapter 200, Section 3.06.280.
- (2) In addition to the penalties and interest imposed pursuant to Title 6, Chapter 3, Subchapter 200, Section 3.06.280, the Commission may assess additional penalties against a retailer who violates, disobeys, omits, neglects or refuses to comply with, or resists or opposes the enforcement of any of the provisions of this Subchapter, may be assessed a penalty of not less than Seventy Five Dollars (\$75.00) nor more than Five Thousand Dollars (\$5,000.00) for the first violation, and not less than One Hundred Fifty Dollars (\$150.00), nor more than Five Thousand Dollars (\$5,000.00) for the second violation, and not less than Three Hundred Dollars (\$300.00) nor more than Five Thousand (\$5,000.00) for the third violation, and not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) for the fourth and each subsequent violation, or five (5) times the amount of the tax imposed if any, whichever is higher, for the second and each subsequent violation. A separate and distinct violation shall be regarded as committed each day said retailer shall continue any such violation or permits any such violation to exist after notification thereof. Penalties imposed under this Subchapter shall be in addition to the tax and in addition to those penalties, if any, imposed under Section 3.06.280. Nothing in this Section shall be deemed or construed to limit the Tribe's ability to enforce the terms of this Subchapter through any other provision of Tribal law, including but not limited to the seizure and sale provisions of Section 3.06.2453 to Section 3.06.256 inclusive.

3.06.432 Failure to Remit; Licensing

Compliance with this Subchapter may be enforced by action in any court of competent jurisdiction pursuant to Title 6, Chapter 3, Subchapter 200, Section 3.06.252. Failure to account for and pay the tax by any retailer shall be cause for revocation of any Tribal license of such retailer or applicable to

the premises thereof, in addition to any other penalty provided in this Subchapter.

ADMINISTRATIVE

3.06.440 Severability

If any section, provision, phrase, addition, word, sentence or amendment of this Subchapter or its application to any person is held invalid, such invalidity shall not affect other provisions or applications of this Subchapter that can be given effect without the invalid application and to that end the provisions of this Subchapter are declared severable.

3.06.441 Application to Tribe

This Subchapter shall also apply to the Tribe, including any governmental entity or enterprise owned, operated, or managed by or on behalf of the Tribe. For purposes of this Subchapter the Tribe, including any governmental entity or enterprise owned, operated, or managed by or on behalf of the Tribe, shall be included within the definition of "Retailer".

3.06.442 Nondiscrimination

No provision of this Subchapter shall be construed as imposing a tax that discriminates on the basis of whether a retail business is owned, managed, or operated by the Tribe or a member of the Tribe.

SUBCHAPTER 500
STILLAGUAMISH TRIBAL FUEL SALES AND TAX CODE

GENERAL PROVISIONS

3.06.501 General Purpose

The Stillaguamish Tribe of Indians has a significant interest in protecting the health, safety and general welfare of its members, the residents within the Tribe's Indian Country and those persons and businesses doing business on and/or visiting the Tribe's Indian Country. The purpose of this Code is to regulate the sale of motor vehicle fuels and special fuels within the Tribe's Indian Country and to raise revenues to fund health, safety and general welfare programs and services provided to residents of and visitors to land within the Tribe's territorial jurisdiction. The Tribe has substantial unmet needs in funding road construction and maintenance, transportation services, public safety, transportation planning, transportation infrastructure, and governmental programs that serve Tribal members and the community. The Stillaguamish Board of Directors' authority to adopt the ordinance codified herein is found in the Stillaguamish Tribe of Indians Constitution and in the inherent sovereignty of the Stillaguamish Tribe of Indians to regulate its own territory and activities therein. Therefore, in the public interest and for the welfare of the people of the Stillaguamish Tribe of Indians, its employees, the residents of and visitors-to Indian Country, the Stillaguamish Board of Directors, in the exercise of its authority under the Tribe's Constitution, declares its purpose by the provisions of this chapter to regulate the sale of motor vehicle fuels and special fuels, and to administer taxes on the retail sale of motor vehicle fuels and special fuels.

3.06.502 Definitions

All definitions of the Taxation Code Section 3.06.201 apply herein unless the terms are other defined in this Subchapter. For purposes of this Subchapter, whenever any of the following words, terms or definitions is used herein, they shall have the meaning ascribed to them in this Subchapter:

- (1) "Agreement" means the "Agreement Concerning Taxation of Motor Vehicle Fuel and Special Fuel Between the Stillaguamish Tribe of Indians and the State of Washington" executed on February 2, 2011.
- (2) "Commission" means the Tax Commission of the Stillaguamish Tribe of Indians as created and empowered pursuant to Sections 3.06.220-225 of this Title.
- (3) "Consumer" means any person who receives or comes into possession of motor vehicle fuel or special fuel from a retailer by means of sale of such fuels.
- (4) "Essential government services" means, for purposes of this Subchapter, services that the Tribe provides to its members and to residents of and visitors to Indian Country in order to fulfill its governmental responsibilities and includes, but is not limited to, planning, construction, and maintenance of roads, bridges, ramps, and boat ramps; transit and transportation services and facilities; transportation planning; police services; and other transportation and highway related purposes to fulfill its governmental responsibility.
- (5) "Filling Station" means a place of business operated for the purpose of delivering to the public motor vehicle fuel or special fuel into the fuel tanks of motor vehicles.

- (6) "Indian Country," consistent with the meaning given in 18 U.S.C. § 1151 means: (a) all land within the limits of the Stillaguamish Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation; and (b) all Indian allotments or other lands held in trust for the Tribe or a member of the Tribe, including rights of way running through the same.
- (7) "Motor Vehicle" means every self-propelled vehicle designed for operation upon land that uses motor vehicle fuel or special fuel as a means of propulsion.
- (8) "Motor Vehicle Fuel" in the plural or singular means gasoline and any other inflammable gas or liquid, by whatsoever name the gasoline, gas, or liquid may be known or sold, the chief use of which is as fuel for the propulsion of motor vehicles or motorboats, as set forth in RCW 82.36.010(9) as it now exists or may hereafter be amended.
- (9) "Special Fuel" in the plural or singular means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as set forth above and in RCW 82.36 or dyed special fuel as defined by federal regulations, unless the use is in violation of RCW 82.38.
- (10) "State Motor Vehicle Fuels Tax" means the Washington State Motor Vehicle Fuels Tax imposed pursuant to RCW 82.36 and 82.38 as they now exist or may hereafter be amended.
- (11) "Tribal retailer" means a motor vehicle fuel or special fuel retailer wholly owned by the Stillaguamish Tribe of Indians and located in Indian Country.
- (12) "Tribally-licensed retailer" means a motor vehicle fuel or special fuel retailer who has a business license from the Tribe to sell motor vehicle fuel or special fuel at retail from a business located in Indian Country.

3.06.503 Motor Vehicle Fuel and Special Fuel Tax Agreement with Washington State

In accordance with the terms of the Agreement and during its term, the Tribe enacts this Subchapter. To the extent provisions of this Subchapter conflict with the Agreement, the terms of the Agreement control.

PERMITTED SALES

3.06.510 Permitted Sales

Tribal retailers and Tribally-licensed retailers are the only retail businesses authorized to make sales of motor vehicle fuel or special fuel to the consumer within the Tribe's Indian Country. Pursuant to the Agreement, the Tribal retailers and Tribally-licensed retailers shall purchase only fuel on which *applicable* state taxes have been paid.

3.06.511 Applicable Law Compliance Required

- (1) Tribal retailers and Tribally-licensed retailers shall only purchase motor vehicle fuel and special fuel at wholesale or retail on which the applicable State Motor Vehicle Fuels Tax

has been paid; and

- (2) Tribal retailers and Tribally-licensed retailers shall only purchase motor vehicle fuel and special fuel from persons or entities operating lawfully in accordance with all applicable State law, or from a tribal distributor, supplier, importer, or blender lawfully doing business according to all applicable laws. For purposes of this section, a “tribal distributor, supplier, importer, or blender” means a distributor, supplier, importer, or blender owned by any federally recognized tribe or persons who are enrolled members of any federally recognized tribe.

3.06.512 License Required of Tribal Retailers and Tribally-licensed Retailers

Every person engaging in the business of selling motor vehicle fuels or special fuels within the Tribe's Indian Country shall secure a license from the Tribe in the manner provided for by Subsection 100 ("Business Licenses") of this Title, and shall otherwise comply with all provisions of Subchapter 100.

TAX PAYMENT AND COLLECTION

3.06.520 Imposition of Tax; Tax Rate; Collection

The Tribe hereby exercises its inherent regulatory and taxing jurisdiction to impose taxes on the sale of motor vehicle fuels and special fuels within the Tribe's Indian Country as follows:

- (1) Where an applicable State Motor Vehicle Fuels Tax is already included in the price of motor vehicle fuel and special fuel to be sold at retail, Tribal retailers and Tribally-licensed retailers shall pass on to the consumer such applicable State Motor Vehicle Fuels Tax included in the price of motor vehicle fuel and special fuel.
- (2) Where the applicable State Motor Vehicle Fuels Tax is not already included in the price of motor vehicle fuel and special fuel to be sold at retail, Tribal retailers and Tribally-licensed retailers shall collect from the consumer the Tribal Fuels Tax on motor vehicle fuel and special fuel. The Tribal Fuels Tax shall be set at a rate identical to the State Motor Fuels Tax. The Tribal Fuels Tax rate shall be established by resolution of the Board of Directors.
- (3) Tribal retailers and Tribally-licensed retailers shall collect the applicable tax at the point of sale from consumers.
- (4) Where there is not an applicable State Motor Vehicle Fuels Tax to be included in the price of motor vehicle fuel and special fuel to be sold at retail, Tribal retailers and Tribally-licensed retailers may or may not collect from the consumer a Tribal Fuels Tax on motor vehicle fuel and special fuel. If the Tribe chooses to impose a Tribal Fuels Tax on the consumer, then the Tribal Fuels Tax rate shall be established by resolution of the Board of Directors.

3.06.521 Fuel Sales Not Subject to Other Tribal Taxes

Sales of motor vehicle fuel or special fuel within the Tribe's Indian Country shall not be subject to the Tribe's other taxes, including but not limited to the Tribe's Retail Sales Tax.

3.06.522 Sales to the Stillaguamish Tribe

Sales of motor vehicle fuel or special fuel to the Tribe for use in Tribal vehicles for essential governmental functions, as defined by Federal law, shall be accounted for separately by all Tribal retailers and Tribally-licensed retailers.

3.06.523 No Reduction of Price

Tribal retailers or Tribally-licensed retailers shall pass onto the consumer any applicable State Motor Vehicle Fuels Tax or any applicable Tribal Fuels Tax included in the price of motor vehicle fuels or special fuels pursuant to the Agreement, but must not use the amounts of tax remitted or refunded to the Tribe from the State pursuant to the Agreement to reduce the price at which motor vehicle fuels or special fuels are sold from the filling stations of Tribal retailers or Tribally-licensed retailers.

3.06.524 Records

Tribal retailers or Tribally-licensed retailers shall maintain accurate written records of retail sales of motor vehicle fuel and special fuel. Such records shall include invoices showing the number of gallons of motor vehicle fuel and special fuel sold, including dates and the amount of tax collected. Tribal retailers or Tribally-licensed retailers shall make such records available for inspection by the Commission or the Commission's designee and/or an auditor retained by the Tribe. Records shall be provided to the Tribe monthly or upon request. Records shall be maintained for no less than three years.

USE OF REVENUE

3.06.530 Use of Fuel Tax Revenues

Tax revenue refunded to the Tribe from the State pursuant to the Agreement shall be used only for essential government services.

3.06.531 Audit

The Tribe shall retain at the Tribe's cost a third-party independent auditor for the purposes of verifying compliance with the Agreement. The auditor shall perform all work required under the Agreement.

ADMINISTRATION

3.06.540 Severability

If any section, provision, phrase, addition, word, sentence or amendment of this Subchapter or its application to any person is held invalid, such invalidity shall not affect the other provisions or applications of this Subchapter that can be given effect without the invalid application, and to that end the provisions of this Subchapter are declared severable.

3.06.541 Nondiscrimination

No provision of this Subchapter shall be construed as imposing a tax that discriminates on the basis of whether a retail filling station is owned, managed or operated by a member of the Tribe.

3.06.542 No Waiver

No provision of this Subchapter shall be deemed or construed as a waiver or limitation of the Tribe's inherent sovereign immunity, nor as a waiver or limitation of the Tribe's inherent sovereign right to impose taxes on the sale of motor vehicle fuels and special fuels.

SUBCHAPTER 600
STILLAGUAMISH TRIBE OF INDIANS LIQUOR CONTROL ORDINANCE

GENERAL PROVISIONS

3.06.600 General Purpose

The Stillaguamish Tribe of Indians (Tribe) has a significant interest in protecting the health, safety and general welfare of its members, the residents within the Tribe's Indian Country and those persons and businesses doing business on and/or visiting the Tribe's Indian Country. The purpose of the Ordinance is to exercise the Tribe's jurisdiction to regulate the sale, distribution and taxation of liquor within the Tribe's Indian Country in conformity with any compact between the Tribe and the state of Washington, Article 10 of the Treaty of Point Elliott of 1855, 12 Stat. 927, to which the Tribe is a party, and in conformity with 18 U.S.C. 1161, and to raise revenues to fund health, safety and general welfare programs and services provided to Tribal members and residents of and visitors to land within the Tribe's territorial jurisdiction.

The authority to protect the Tribe as a sovereign political entity and to adopt the Ordinance codified herein is vested in the Stillaguamish Tribe of Indians, Board of Directors under Article IV and Article VII, Sec. 1 of the Constitution, which Board has enumerated authority under Article VII, Sec. 1 (a) to enact a comprehensive law and order code which provides for Tribal civil and criminal jurisdiction; under Article VII, Sec. 1(b) to administer the affairs and assets of the Tribe, including Tribal lands and funds; under Article VII, Section 1(d) to provide for taxes, assessments, permits and license fees upon members and non-members within the Tribe's jurisdiction; and under Article VII, Sec. 1(h), to exercise other necessary powers to fulfill the Board's obligations, responsibilities and purposes as the governing body of the Tribe; and in the inherent sovereignty of the Stillaguamish Tribe of Indians to regulate its own territory and activities therein.

The need exists for strict Tribal regulation and control over liquor distribution, sales and taxation within the Tribe's Indian Country. Therefore, in the public interest and for the welfare of the people of the Stillaguamish Tribe of Indians, its employees, the residents of and visitors to Indian Country, the Stillaguamish Board of Directors, in the exercise of its authority under the Tribe's Constitution, declares its purpose by the provisions of this Subchapter to regulate the sale and distribution of liquor.

3.06.601 Scope

- (1) This Subchapter shall apply to the full extent of the sovereign jurisdiction of the Tribe.
- (2) Compliance with this Subchapter is hereby made a condition of the use of any land or premises within the Tribe's Indian Country.
- (3) Any person who resides, conducts business, engages in a business transaction, receives benefits from the Tribe, acts under Tribal authority, or enters the Tribe's Indian Country shall be deemed to have consented to the following:
 - (a) To be bound by the terms of this Subchapter;
 - (b) To the exercise of the exclusive jurisdiction of the Stillaguamish Tribal Court for legal actions arising pursuant to this Subchapter; and

(c) To detention, service of summons and process, and search and seizure, in conjunction with legal actions arising pursuant to this Subchapter.

(4) No portion of this Ordinance and Subchapter shall be construed as contrary to Federal law.

3.06.602 Repeal of Prior Liquor Control Laws

- (1) All ordinances and resolutions of the Tribe regulating, authorizing, prohibiting or in any way dealing with the sale of liquor heretofore enacted or now in effect, including, but not limited to Resolution 2007/145 adopting the Stillaguamish Tribe Liquor Ordinance of October 10, 2007, are hereby repealed and are declared to be of no further force and effect, with the exception of the provisions of the Stillaguamish Tribe of Indians Law and Order Code, including but not limited to the provisions of Chapter 8.40, Alcohol-Related Offenses.
- (2) The provisions of this Subchapter shall be prospective only from the date of its enactment. Nothing contained herein shall be deemed to revoke any presently existing valid license or permit or renewal thereof previously issued by the Washington State Liquor Control Board or the exercise of privilege given thereunder to any retailer subject to the provisions of this Subchapter.

3.06.603 Definitions

All definitions of the Taxation Code Section 3.06.201 apply herein unless the terms are otherwise defined in this Subchapter. For purposes of this Subchapter, whenever any of the following words, terms or definitions is used herein, they shall have the meaning ascribed to them in this Subchapter:

- (1) "Indian Country," consistent with the meaning given in 18 U.S.C. § 1151 means: (a) all land within the limits of the Stillaguamish Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation; and (b) all Indian allotments or other lands held in trust for the Tribe or a member of the Tribe, including rights of way running through the same.
- (2) "Liquor" means that liquid as now defined as set forth by the Revised Code of Washington in RCW 66.04.010 (1), (3), (25), (26) and (43).
- (3) "Sale" and "sell" means as now defined as set forth by the Revised Code of Washington in RCW 66.04010 (38).
- (4) "Tribal retailer" means a liquor retailer wholly owned by the Stillaguamish Tribe of Indians and located in Indian Country.
- (5) "Tribally-licensed retailer" means a person who has a business license from the Tribe to sell liquor at retail from a business located in Indian Country.

3.06.604 Stillaguamish Tax Commission

The Board hereby authorizes the Tax Commission of the Stillaguamish Tribe of Indians to administer this Subchapter, including general control, management and supervision of all liquor sales, places of sale and sales outlets, and to exercise all of the powers and accomplish all of the purposes thereof as hereinafter set forth any do the following acts and things for and on behalf of and in the name of the Tribe:

- (A) Adopting and enforcing rules and regulations for the purpose of carrying into effect the provisions of this Subchapter the performance of its functions;
- (B) Collecting, auditing and issuing fees, licenses, taxes and permits; and
- (C) Performing all matters and things incidental to and necessary to conduct its business and carry out its duties and functions under this Subchapter.

LICENSE REQUIRED

3.06.610 License Required of Tribal Retailers and Tribally-licensed Retailers

Every person engaging in the business of selling liquor within the Tribe's Indian Country shall secure a business license from the Tribe in the manner provided for by Subchapter 100 of this Title ("Business Licenses") and otherwise comply with all provisions of Subchapter 100.

3.06.611 Prohibitions

- (1) The purchase, sale, and dealing in liquor within Tribe's Indian Country by any person, party, firm, or corporation except pursuant to the control, licensing, and regulation of the Stillaguamish Tax Commission, is hereby declared unlawful. Without limitation as to any other penalties and fines that may apply, any violation of this subsection is an infraction punishable by a fine of up to five hundred dollars (\$500.00).
- (2) Every person engaging in the business of selling liquor within the Tribe's Indian Country shall comply with the provisions of Chapter 8.40, Alcohol-Related Offenses, of the Stillaguamish Tribe of Indians Law and Order Code, the provisions of which are re-affirmed and are specifically incorporated herein by this reference. Any violation of this subsection is punishable pursuant to the penalty provisions of Chapter 8.40, Alcohol-Related Offenses of the Stillaguamish Tribe of Indians Law and Order Code.

3.06.612 Conformity With State Law As Required

Tribal retailers and Tribally-licensed retailers shall comply with any applicable Washington State liquor law standards to the extent required by 18 U.S.C. § 1161 and the Agreement Between the Washington State Liquor Control Board and the Stillaguamish Indian Tribe for Purchase and Resale of Liquor in Indian Country ("Agreement"), if any. To the extent provisions of this Subchapter conflict with the Agreement, the terms of the Agreement control.

TAXATION

3.06.620 Tribal Liquor Tax

The Tribe expressly reserves its inherent sovereign right to regulate the use and sale of liquor through the imposition of Tribal taxes thereon. The Board hereby authorizes and expressly reserves its authority to impose a Tribal Liquor Tax on sales of all alcoholic beverages, including packaged and retail sales of liquor, wine, and beer, at a rate determined to be fair and equitable by the Board through independent action.

3.06.621 Liquor Sales Not Subject to Tribal Retail Sales Tax

The Tribe's Retail Sales Tax shall not apply to retail sales of liquor.

ADMINISTRATION

3.06.630 Severability

If any section, provision, phrase, addition, word, sentence or amendment of this Subchapter or its application to any person is held invalid, such invalidity shall not affect the other provisions or applications of this Subchapter that can be given effect without the invalid application, and to that end the provisions of this Subchapter are declared severable.

3.06.631 Nondiscrimination

No provision of this Subchapter shall be construed as imposing a regulation or tax that discriminates on the basis of whether a retail liquor establishment is owned, managed or operated by a member of the Tribe.

3.06.632 Effective Date

This Subchapter shall be and become effective after thirty (30) days of publication by the United States Department of the Interior's certification in the Federal Register.

3.06.633 Sovereign Immunity

Nothing in this Subchapter shall be construed as a waiver or limitation of the inherent sovereign immunity of the Tribe.

Ordinance 2008/060 enacting this Title 3, Chapter 6 took effect on April 30, 2008, at 6:00 p.m. upon the approval of its provisions by the Board of Directors of the Stillaguamish Tribe of Indians, which date was April 28, 2008. Title 3, Chapter 6 of the Tribe's Law and Order Code is hereby repealed and replaced with this Title, as amended by resolution 2011/048, enacted by the Board of Directors of the Stillaguamish Tribe of Indians on April 14, 2011, as amended by resolution 2012/146 dated September 27, 2012.

SUBCHAPTER 700
STILLAGUAMISH TRIBAL HOTEL ROOM OCCUPANCY TAX CODE

GENERAL PROVISIONS

3.06.700 General Purpose

The Tribe has a significant interest in protecting the health, safety and general welfare of its members, the residents within the Tribe's Indian Country and those persons and businesses doing business on and/or visiting the Tribe's Indian Country. The purpose of the tax is to regulate and monitor the ownership and operation of hotels, motels and similar lodging establishments within the Tribe's Indian Country, and to raise revenues to fund health, safety and general welfare programs and services provided to residents of and visitors to land within the Tribe's territorial jurisdiction. The Stillaguamish Board of Directors' authority to adopt the ordinance codified herein is found in the Stillaguamish Tribe of Indians Constitution and in the inherent sovereignty of the Stillaguamish Tribe of Indians to regulate its own territory and activities therein. Therefore, in the public interest and for the welfare of the people of the Stillaguamish Tribe of Indians, its employees, the residents of and visitors to the Tribe's Indian Country, the Stillaguamish Board of Directors, in the exercise of its authority under the Tribe's Constitution, declares its purpose by the provisions of this chapter to regulate the ownership and operation of hotels, motels and similar lodging establishments and to impose, collect and administer taxes on the rental and occupancy revenue of these businesses.

Definitions

All Definitions of the Taxation Code apply herein unless the terms are other defined in this Subchapter. For purposes of this Subchapter, whenever any of the following words, terms or definitions is used herein, they shall have the meaning ascribed to them in this Subchapter:

"Essential government services" means services such as Tribal administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development.

"Guest" means any person that receives temporary lodging from a motel, hotel, lodge or other facility providing temporary lodging.

"Indian Country," consistent with the meaning given in 18 U.S.C. § 1151 means: (a) all land within the limits of the Stillaguamish Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the Reservation; and (b) all Indian allotments or other lands held in trust for the Tribe or a member of the Tribe, including rights of way running through the same.

"Local retail sales tax" means the combined Washington State and local retail sales taxes, and any Tourism promotion area charge applicable in the area as applied to lodging facilities.

"Stillaguamish Indian Reservation" or "reservation" means the area recognized as the Stillaguamish Tribe of Indians Indian Tribe's Indian Country by the United States Department of the Interior.

"Temporary" means less than thirty (30) consecutive days.

"Temporary lodging room" means a room in a motel, hotel, lodge or other facility providing temporary lodging to a Guest.

“Tribal temporary lodging facility” means a motel, hotel, lodge or other facility providing temporary lodging to a Guest that is wholly owned by the Stillaguamish Tribe of Indians and located in Indian Country.

“Tribally-licensed temporary lodging facility” means a person who has obtained a valid business license from the Tribe to operate a motel, hotel, lodge or other facility providing temporary lodging to guests located in Indian Country.

TAX PAYMENT, RATE, AND COLLECTION

3.06.710 Imposition of Tribal Tax; Legal Incidence; Collection

- (1) There is hereby levied and imposed a tax on the gross rental revenue derived from the rental of a Temporary lodging room to a Guest by every Tribal temporary lodging facility and Tribally-licensed temporary lodging facility. The Tribal tax imposed under this Subchapter shall apply to all assessment dates and periods beginning on or after the Effective Date of this Subchapter.
- (2) Each Tribal temporary lodging facility and Tribally-licensed temporary lodging facility is liable for the Tribal tax and shall pay the Commission the tax due under this Subchapter based on the gross rental revenue derived from the rental of a Temporary lodging room to a Guest. Each Tribal temporary lodging facility and Tribally-licensed temporary lodging facility is solely responsible for paying the tax to the Tribe and shall be liable for the payment of the tax regardless of whether any additional fee is actually collected from a Guest, and regardless of whether the Guest pays by cash or credit. Payment of the tax to the Tribe shall be made at the time the Tax Return is due.
- (3) Unless otherwise provided by the Board of Directors, every Tribal temporary lodging facility and Tribally-licensed temporary lodging facility shall collect the Tribal tax at the point of sale to Guests. The Tribal tax shall be separately stated from the Temporary lodging room fee or charge on any invoice or receipt provided to the Guest upon checkout.

3.06.711 Tax Rate

The tax rate imposed under this Subchapter shall be set by ordinance or resolution of the Board of Directors. The tax rate imposed under this Subchapter shall be levied, imposed and collected at a rate equal to the current Local retail sales tax.

3.06.712 Filing of Return

Every Tribal temporary lodging facility and Tribally-licensed temporary lodging facility shall pay to the Commission all taxes levied under this Subchapter. Every Tribal temporary lodging facility and Tribally-licensed temporary lodging facility shall file monthly tax returns showing tax receipts received during each monthly period on forms prescribed by the Commission. The tax return shall be filed before the last day of the calendar month next succeeding the month for which the tax return is made and shall be accompanied by payment of all taxes due and owing for the month covered by said tax return.

3.06.713 Records

Every Tribal temporary lodging facility and Tribally-licensed temporary lodging facility shall maintain accurate written records of all rentals of a Temporary lodging room to a Guest, whether the Guest pays by cash or credit, and shall make such records available for inspection by the Tribe. Every Tribal temporary lodging facility and Tribally-licensed temporary lodging facility shall keep, maintain and

preserve complete and accurate books, records and accounts showing the gross rental revenue from the sale of or charge made for all rentals of a Temporary lodging room to a Guest and the taxes for each day, and shall make available such books, records, and accounts to the Commission for examination for those periods of time prescribed in Section 3.06.291.

EXEMPTIONS

3.06.720 Exemptions from Tribal Tax

The following shall not be subject to the Tribal tax on Temporary lodging rooms:

- (1) A business owned or operated by a person engaged in the rental of a house or rooms within a house within the Tribe's Indian Country.
- (2) Space rental for storage, mobile homes, or recreational vehicles.
- (3) Promotional gifts or vouchers (also known as "comps") that allow a Guest free rental of a Temporary lodging room.
- (4) Emergency provision of a Temporary lodging room in the event of a State of Emergency proclamation by the Board of Directors that affects the Tribe's Indian County and requires temporary shelter.

USE OF REVENUE

3.06.730 Use of Tribal Tax Revenue

Tribal tax revenue shall be used by the Tribe for Essential government services.

VIOLATIONS AND PENALTIES

3.06.740 Failure to Pay Tax

Tribal tax not remitted to the Commission by a Tribal temporary lodging facility or a Tribally-licensed temporary lodging facility on or before the due date is delinquent.

3.06.741 Violations; Additional Penalties

- (1) A Tribal temporary lodging facility or a Tribally-licensed temporary lodging facility that fails to file a tax return when due, fail to pay any tax obligation within the time prescribed, fail to pay the correct amount of the tax obligation, or file frivolous returns or proceedings shall be subject to the penalties and interest imposed pursuant to Title 6, Chapter 3, Subchapter 200, Section 3.06.280.
- (2) In addition to the penalties and interest imposed pursuant to Title 6, Chapter 3, Subchapter 200, Section 3.06.280, the Commission may assess additional penalties against a Tribal temporary lodging facility or a Tribally-licensed temporary lodging facility that violates, disobeys, omits, neglects or refuses to comply with, or resists or opposes the enforcement of any of the provisions of this Subchapter, may be assessed a penalty of not less than Seventy Five Dollars (\$75.00) nor more than Five Thousand Dollars (\$5,000.00) for the first violation, and not less than One Hundred Fifty Dollars (\$150.00), nor more than Five Thousand Dollars (\$5,000.00) for the second

violation, and not less than Three Hundred Dollars (\$300.00) nor more than Five Thousand Dollars (\$5,000.00) for the third violation, and not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) for the fourth and each subsequent violation, or five (5) times the amount of the tax imposed if any, whichever is higher, for the second and each subsequent violation. A separate and distinct violation shall be regarded as committed each day said Tribal temporary lodging facility or a Tribally-licensed temporary lodging facility shall continue any such violation or permits any such violation to exist after notification thereof. Penalties imposed under this Subchapter shall be in addition to the tax and in addition to those penalties, if any, imposed under Section 3.06.280. Nothing in this Section shall be deemed or construed to limit the Tribe's ability to enforce the terms of this Subchapter through any other provision of Tribal law, including but not limited to the seizure and sale provisions of Section 3.06.2453 to Section 3.06.256 inclusive.

3.06.742 Failure to Remit; Licensing

Compliance with this Subchapter may be enforced by action in any court of competent jurisdiction pursuant to Title 6, Chapter 3, Subchapter 200, Section 3.06.252. Failure to account for and pay the tax by any Tribal temporary lodging facility or a Tribally-licensed temporary lodging facility shall be cause for revocation of any Tribal license applicable to the premises thereof, in addition to any other penalty provided in this Subchapter.

ADMINISTRATION

3.06.750 Severability

If any section, provision, phrase, addition, word, sentence or amendment of this Subchapter or its application to any person is held invalid, such invalidity shall not affect the other provisions or applications of this Subchapter that can be given effect without the invalid application, and to that end the provisions of this Subchapter are declared severable.

3.06.751 Nondiscrimination

No provision of this Subchapter shall be construed as imposing a tax that discriminates on the basis of whether a Tribal temporary lodging facility or a Tribally-licensed temporary lodging facility is owned, managed or operated by the Tribe or a member of the Tribe.
