



TITLE 11 – LICENSING AND TAXATION ORDINANCE

Law & Order Code of the Fallon Paiute-Shoshone Tribe

**Adopted by the Fallon Business Council
on October 23, 2013 by
Resolution No. 13-F-169**



FALLON PAIUTE-SHOSHONE TRIBE

Resolution No. 13-F-169

BE IT RESOLVED BY THE GOVERNING BODY OF THE FALLON PAIUTE-SHOSHONE TRIBE, THE FALLON BUSINESS COUNCIL, THAT:

WHEREAS: the Fallon Business Council ("Council") is the recognized Governing Body of the Fallon Paiute-Shoshone Tribe ("Tribe") and was established to exercise the privileges and powers of self-government, to conserve and develop the Tribe's resources for the social and economic well-being of its members, and to preserve and protect the civil rights of its members; and

WHEREAS: the Fallon Tribe is federally recognized by the United States Government and the Secretary of the Interior as a Native American Tribe, and by the power vested in the Tribal Constitution and Bylaws pursuant to Article VI – Powers & Duties of the Business Council, Section 1(h), the Business Council has the power to "to promulgate and enforce ordinances governing the conduct of all people within the territorial boundaries of the Tribe, as provided by Federal Law; and to provide for the maintenance of law and order and establishment of a tribal court"; and

WHEREAS: the Tax Code of the Fallon Paiute-Shoshone Tribe as set forth as Title 11 of the Tribe's Law and Order Code was last revised/amended on September 23, 2003, by Fallon Business Council Resolution No. 03-F-170 and since that time the Tribe has discovered corrections, revisions, and additions that need to be incorporated into the Tax Code to update laws to reflect compacts/agreements, to address the economic development efforts being undertaken by the Tribe and the Fallon Tribe Development Corporation to attract businesses to tribal lands, and to reflect the operational procedures of the Tribe and Tax Department; and

WHEREAS: the Treasurer's Office and the Tax Department have completed a review and assessment of the current Tax Code, Title 11, and have developed a set of revisions to address issues to enhance and clarify the management and operations of the Tax Department and tax collection efforts, as well as four major revisions:

1. Throughout the code there are references to the Secretary/Treasurer and these various sections have been changed to reflect the Secretary/Treasurer position was separated into two different positions and their roles under the code adjusted accordingly, as well as to add a definition for Chairman into the code;
2. Adjust the tax collection rate to at least match the rate in the county in which the transaction occurs to be compliance with Nevada Revised

Statutes which allows the Tribe to keep these taxes so long as the rate is the same or higher as the county in which the transaction occurs; and

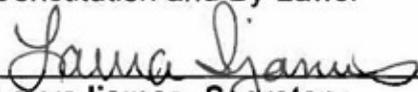
3. Inserts a new chapter into the code (chapter 8) which provided for a liquor excise tax which is currently being done as required under NRS, but not codified in the current code; and
4. Inserts a new chapter into the code (chapter 9) which establishing business licensing requirements for operating on tribal lands which are required for businesses to obtain credit and purchase merchandise and which currently the Tribe issues but there are no codified laws on the matter, including types of licenses and fees, as well as governing regulations.

NOW THEREFORE BE IT RESOLVED by the Fallon Business Council, the governing body of the Fallon Paiute-Shoshone Tribe that Title 11 – Tax Code, as adopted on September 23, 2003, by Resolution No. 03-F-170, is hereby rescinded in its entirety and replaced by the new Title 11 – Licensing and Taxation Ordinance adopted as part of this resolution, effective November 1, 2013; and

BE IT FINALLY RESOLVED that the Fallon Business directs the Office of the Tribal Treasurer and the Tax Department to implement the new Title 11 and to update tax and license forms and to work with businesses to come into compliance.

CERTIFICATION

At a duly held meeting of the seven members of the Governing Body of the Fallon Paiute-Shoshone Tribe, five of which constitute a quorum, there were 5 members present on the 23rd day of October, who **VOTED 5 FOR, 0 AGAINST, and 0 ABSTENTION(S)**, in the adoption of the foregoing resolution, in accordance with the powers vested by the Fallon Paiute-Shoshone Tribe's Constitution and By-Laws.



Laura James, Secretary
Fallon Business Council

TITLE 11 - LICENSING AND TAXATION ORDINANCE

[Adopted by the Fallon Business Council on October, 23, 2013, by Resolution No. 13-F-169]

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TITLE 11

LICENSING AND

TAXATION ORDINANCE

Adopted by the Fallon Business Council on October, 23, 2013, by Resolution No. 13-F-169

CHAPTER 1

LEGISLATIVE FINDINGS AND PURPOSE

11-10-010 Sovereign Power to Tax

The power to levy taxes and similar actions is an inherent and essential part of the authority of any government. The Fallon Paiute-Shoshone Tribe of Indians has existed as an independent, sovereign nation since time immemorial. Historically the Tribe held sole and absolute jurisdiction over the Stillwater marshes and surrounding area. Today the Tribe as a “domestic, dependent nation, “(Buster vs. Wright, 135 Fed 947. (8TH Cir. 1905), appeal dismissed, 203, U.S. 599) continues to govern the Fallon Paiute-Shoshone Reservation and Colony limited only in its authority by its Constitution and By-Laws and the Constitution and laws of the United States. It is the policy of the Tribe to promote the health and well being of its Tribal members as well as to promote economic development on the reservation. To achieve that goal, the Tribe is adopting a tax scheme conducive to economic development in the private sector, which at the same time ensures that taxpayers who receive governmental services on the Reservation and Colony contribute their fair share. This power is therefore an aspect of the retained sovereignty of Indian Tribes except where it has been limited or withdrawn by federal law and/or expressly relinquished by the Tribe itself. In Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 141 (1982), the United States Supreme Court held that the tribe's authority to tax, “derives from the tribe's general authority, as sovereign, to control economic activity within its jurisdiction, and to defray the cost of providing governmental services by requiring contributions from persons or enterprises engaged in economic activities within that jurisdiction” and that the power to tax is “an inherent power necessary to tribal self-government and territorial management.” The Tribe, through enactment of this code, does hereby document and exercise their inherent governmental authority to provide a homeland for their members. The Fallon Paiute-Shoshone Tribe is organized pursuant to the Constitution and Bylaws ratified on December 13, 1968. This Code is enacted pursuant to the inherent sovereign Tribal powers expressly delegated in Article VI, Section 1 of the Fallon Paiute-Shoshone Tribal Constitution.

11-10-020 Benefits of Tribal Government

Among the benefits provided by the Tribal Government to Tribal members and to non-members residing or conducting business within the Fallon Paiute-Shoshone Reservation and Colony are the following: the provision of governmental services, including sewer and water systems, educational services, garbage disposal, road construction and maintenance, police and fire protection, a Tribal Court system of general jurisdictional; the promotion and regulation of economic activities within the Tribes sovereign jurisdiction; the orderly development and protection of the Reservation lands, resources, and community.

11-10-030 Tribal Need for Governmental Revenue

The Tribe has the primary responsibility for meeting the basic needs, including promotion of the health, security, economic and general welfare, of both members and non-members residing or doing business on the Fallon Paiute-Shoshone Reservation and Colony. The enactment of this code will provide an important source of revenue for the economic operation and strengthening of the Tribal Government and the delivery of essential governmental services and the development of the Reservation economy. Accordingly, this Code will provide for an urgently needed revenue source and will more equitably distribute the burden of financing Tribal Governmental services among all persons who engage in business and reside on the Reservation and Colony and persons who benefit from Tribal Governmental services.

11-10-040 Legislative Declarations and Policy

- 1) As a matter of Tribal law, Tribal members have an individual right to share in all Tribal assets, but the Tribal members' share of the income and/or property is used for the maintenance of Tribal government rather than distributed to the individual members in order to help pay for the costs of government and services provided by the Tribal government.
- 2) Requiring Tribal members to pay taxes in addition to contributing their share of income from Tribal assets would unduly burden Tribal members, and unfairly require Tribal members to disproportionately contribute to the cost of Tribal government.
- 3) The unemployment rate among Tribal members is approximately 28% as compared to 7.5% in Churchill County. Among those Tribal members actively seeking work, the unemployment rate is more than 40%.
- 4) Of the Tribal members living on or adjacent to the Reservation, approximately 68% live at or below the poverty line, while 18% are considered low to moderate income level or lower.
- 5) The Business Council finds that the imposition of state taxes upon transactions conducted within the Reservation is inconsistent with federal and Tribal goals of promoting Tribal economic development and self-sufficiency, and also infringes upon the Tribe's right to establish tax policy on the Reservation and to decide for itself the extent to which commerce will be taxed on the Reservation.
- 6) The Business Council finds that the specter of dual tribal and state taxation frustrates economic development of the Reservation, and unduly burdens Reservation commerce. It is the policy of the Business Council to avoid dual taxation whenever possible.
- 7) The Business Council hereby declares that the policy of the Tribe is to minimize further adverse impact on the existing average income of Tribal members, and promote to the maximum extent possible the participation of Tribal members in the economic development of the Reservation and to take all appropriate actions to correct the current disproportionate unemployment and poverty rates existing among Tribal members.
- 8) The Business Council further declares that the policy of the Tribe is to require contribution to Tribal government from members and non-members alike; Tribal members shall continue to contribute the income from Tribal assets, while non-members shall be required to contribute their share through payment of taxes.

CHAPTER 2

GENERAL PROVISIONS

11-20-010 General Definitions

Throughout this Code, words in the singular shall include the plural, and words in the plural shall include the singular. Words in one gender shall include all other genders. The following definitions apply throughout this Code.

- (1) **Tribe.** “Tribe” means the Fallon Paiute-Shoshone Tribe of the Fallon Paiute-Shoshone Reservation and Colony.
- (2) **Business Council.** “Business Council” means the Fallon Paiute-Shoshone Business Council, established pursuant to Article III, Section 1, of the Constitution of the Fallon Paiute-Shoshone Tribe.
- (3) **Indian Tribe.** “Indian Tribe” means any Indian or Alaska Native Tribe, band, village, community, or pueblo recognized by the United States Department of the Interior as eligible for services.
- (4) **Indian.** “Indian” means an individual who is an enrolled member of an Indian Tribe or of Indian descent.
- (5) **Reservation.** “Reservation” means the territory within the present confines of the Fallon Paiute-Shoshone Reservation and Colony, all lands outside and inside the exterior boundaries of the Reservation which are under the jurisdiction of the Tribe, and such other lands without such boundaries as may hereafter be added thereto under any law of the United States except as otherwise provided by law.
- (6) **Tax Department.** “Tax Department” means the Tax Department, or its delegate of the Fallon Paiute-Shoshone Tribe of the Fallon Paiute-Shoshone Reservation and Colony established pursuant to Chapter 3 of this Code.
- (7) **State.** “State” means the State of Nevada.
- (8) **Taxable Year.** The term “Taxable Year” with respect to any taxpayer means the taxable year elected for the federal and state income tax purposes.
- (9) **Assessment Date.** “Assessment Date” means January 1st of each year.
- (10) **Period.** “Period” means a calendar quarter.
- (11) **Taxpayer.** “Taxpayer” means any person who is liable for taxes imposed or assessed. Taxpayer, unless exempt by Federal Law and Statutes, means any person or entity, including any individual partnership, corporation, or other legal entity, having ownership rights in any possessory interest within the Reservation.
- (12) **Person.** “Person” means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm partnership, joint venture, club company, joint stock company, business trust, municipal corporation, corporation, association, society, political entity, or group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise who are or may become taxpayers by reason of the ownership of taxable interest; provided, that the term does not include:
 - a. The government of the Fallon Paiute-Shoshone Tribe of the Fallon Paiute-Shoshone Reservation and Colony and any governmental entities of the Tribe, and Federal Governments; or

- b. Any of the above-listed forms of business entities that are wholly-owned and operated by the Fallon Paiute-Shoshone Tribe, and those of the Federal Governments.
- (13) **Related Persons.** “Related Persons” means two or more persons owned or controlled, directly or indirectly, by the same person and, as applied to individuals, means two or more individuals who have a legal relationship arising out of marriage, adoption, or blood, through the third degree of kinship.
- (14) **Tribal Member.** “Tribal Member” means an enrolled member of the Fallon Paiute-Shoshone Tribe of the Fallon Paiute-Shoshone Reservation and Colony.
- (15) **Individual.** “Individual” means a natural person.
- (16) **Lease.** “Lease” means a lease permit, contract, easement, right-of-way, deed, or any other conveyance instrument which authorizes a person to use that instrument for business profit, or use.
- (17) **Business.** “Business” means any activity engaged in by any person, or caused to be engage in by any person, with the object of gain, benefit, or advantage, either direct or indirect.
- (18) **Indian-Owned Economic Enterprise.** “Indian-Owned Economic Enterprise” means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.
- (19) **Tax.** “Tax” means the total amount of each tax imposed and required to be paid, withheld and paid, or collected and paid under the provisions of this Code to the Tribe and, unless the context otherwise requires, includes the amount of any tax, penalty, or interest relating thereto.
- (20) **Taxes.** “Taxes” means the tax, and any interest, penalty, or costs, imposed or assessed by the Fallon Paiute-Shoshone Tribe of the Fallon Paiute-Shoshone Reservation and Colony.
- (21) **Notice.** “Notice” means publication in the Tribal paper, one other newspaper of general circulation and posted in three (3) public places within the exterior boundaries of the Reservation.
- (22) **Return.** “Return” means the declaration, report, or return required to be filed pursuant to a tax ordinance or law.
- (23) **Control.** “Control” means the right, or any kind of ability, to direct the performance or activity of another person, direct or indirect, whether legally enforceable or not and however such right may be exercisable or exercised.
- (24) **Fraud.** “Fraud” has the same meaning as that established in the interpretation of Section 7206 of the United States Internal Revenue Code of 1954, as amended or renumbered.
- (25) **Code.** “Code” means this Ordinance and any amendments thereto.
- (26) **NRS.** “NRS” means the Nevada Revised Statutes, as amended.
- (27) **Property.** “Property” means any property or rights to tangible property, real or personal, and intangible property of a taxpayer.
- (28) **Secretary.** “Secretary” means the Secretary of the Fallon Paiute-Shoshone Tribe Business Council.
- (29) **Treasurer.** “Treasurer” means the Treasurer of the Fallon Paiute-Shoshone Tribe Business Council.

- (30) **Chairman.** “Chairman” means the Chairman of the Fallon Paiute-Shoshone Tribe Business Council or in his absence the Vice-Chairman.
- (31) **Finance Department.** “Finance Department” shall mean the Tribal department responsible for the Tribe’s financial affairs, including the receipt of funds from taxpayers and licensees.

11-20-020 Business Council to Set All Taxes and Tax Rates

All taxes, tax rates and amendments thereto shall be set by the Business Council, after consideration of the recommendations by the Tax Department, and shall be expressly set forth in this Code.

11-20-030 Sovereign Immunity

The Tribe and all its constitute parts, subordinate organizations, boards or committees, including the Tax Department established pursuant to Chapter 3 of this Code, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived by the Tribe or the United States Government. Nothing in this code shall be construed as waiving the sovereign immunity of the Tribe or any of its constituent parts, including the Tax Department, except for the administrative remedies provided in this Code, which allow a taxpayer aggrieved by the decision of the Tax Department to petition for redetermination and review of the decision by the Tax Department; and after exhaustion of those administrative remedies, to petition the Fallon Paiute-Shoshone Tribal Court for review of the decision of the Tax Department. Except for the remedies provided hereunder, nothing in this Code or enforcement action taken pursuant to Chapter 3 of this Code, including without limitation the filing of suit by the Tax Department for the collection of taxes, penalties, or interests, and for recovery of reasonable attorney fees and expenses incurred in bringing such action, shall constitute a waiver of sovereign immunity, either as to any counterclaim, regardless of whether the asserted counterclaim arises out of the same transaction or occurrence, or in any other respect.

11-20-040 Assessment of Taxes

Each tax imposed is assessed each year as of the assessment date, unless otherwise specified in a particular chapter of this ordinance or law.

11-20-050 Liability for Taxes.

Taxes assessed are the liability of the taxpayer.

- a. **Owners of a Lease.** Owners of interests in a lease shall be jointly liable for the taxes assessed with respect to a lease and shall be severally liable for such taxes in proportion to their interests in the lease on the assessment date.
- b. **Part of Another.** If a taxpayer is a corporation or a trust or a part thereof, then the corporation or trust shall be liable for the taxes. If a taxpayer is an association, joint venture, or partnership, or a part thereof, then all associates, participants, or partners, both general and limited, shall be jointly and severally liable for taxes.
- c. **Right of Contribution.** Subject to alteration by agreement between them, any owner, associate, participant, or partner shall have the right of contribution from any other owner, associate, participant, or partner for its proportionate share of taxes paid.

11-20-060 Property Exempt from Taxation

The following shall be exempt from any tax enacted by this Code.

1. Allotted trust or restricted land owned by any tribal member or any other Indian.
2. Any interest of an enrolled tribal member in any tribal or individually owned trust, restricted, or fee land used solely for the purpose of a permanent residence by the tribal member and his/her immediate family.
3. Any building, barn, home, storage tank or facility, fence, or other structure of a permanent or semi-permanent nature affixed to or placed upon trust, restricted, or fee land used solely for the purpose of a permanent residence.
4. Indian arts and crafts made or maintained for sale, whether wholesale or retail, by any Tribal member.
5. All Federal trust lands.
6. All other exemptions recognized by federal law and statutes.

11-20-070 Savings Clause

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

11-20-080 Conflict With Other Applicable Law

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

11-20-090 Pledge of Tax Revenues

All or any part of any tax, interest, penalty and/or other sum due under this Code may, from time to time, be pledged by the Fallon Business Council as security for the repayment of any debt or the performance of any other obligation.

11-20-100 Requirement to Obtain all Required Licenses and Permits

Nothing in this Ordinance affects, limits, alters, modifies, or waives the need for a business to obtain all licenses and permits required by applicable law, including but not limited to compliance with building and safety regulations, and health and safety regulations. The issuance of a Tribal license or permit shall not be deemed or construed as a certification of a business's compliance with other applicable regulations or laws. Additional permits and licenses may be necessary before a person may lawfully conduct a business. It is the sole responsibility of the person obtaining the licenses and permits under this Title to comply with other applicable laws and regulations concerning operation of the person's business.

11-20-110 Posting of Licenses and Permits

Each business shall post all required licenses and permits issued by the Tribe in a conspicuous location at its place of business.

11-20-120 Interpretation

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall not be deemed a limitation or repeal of any other Tribal power or authority. In the event that these laws are silent on some aspects, the laws of the United States, first, and then the State of Nevada may be looked to as a guide to the interpretation of this Ordinance.

CHAPTER 3

ESTABLISHMENT OF THE TAX DEPARTMENT

11-30-010 Statement of Purpose

Pursuant to the powers of the Business Council to levy taxes or licenses fees, to safeguard and promote the general welfare of the Fallon Paiute-Shoshone Tribe, to establish subordinate boards and to preserve and protect property as set forth in Article VI, Section 1 (c), (e), (g), (h) and (l) of the Fallon Paiute-Shoshone Constitution, the Fallon Paiute-Shoshone Tax Department is hereby established as an independent Department of the Government of the Fallon Paiute-Shoshone Tribe. By virtue of the inherent authority as a sovereign of the Fallon Paiute-Shoshone Tribe to oversee and manage economic and taxation activities occurring within the boundaries of the Fallon Paiute-Shoshone Reservation, the Tax Department shall oversee and administer the tax laws of the Tribe in accordance with those duties, powers and responsibilities set forth herein. The Tax Department shall enforce the provisions of any Tribal tax ordinance now or hereafter in effect, and may prescribe, adopt and enforce rules and regulations relating to the administration and enforcement thereof.

11-30-020 Definitions

As used in this Chapter, the following words and phrases shall have the meaning set forth herein, unless otherwise clearly required. In addition to the definitions contained in this section, other terms used herein shall have the definitions given them in Chapter 2.

1. “Instruction” means a written statement or directive of the Tax Department not dealing with the merits of any tax liability, but which otherwise aids in accomplishment of the Tax Department's duties and responsibilities.
2. “Order” means a written statement of the Tax Department implementing its decision after a hearing before the Tax Department.
3. “Regulation” means a written statement of general application to taxpayers issued by the Tax Department which interprets or amplifies a tax ordinance of the Tribe.
4. “Ruling” means a written statement of limited application issued by the Tax Department and which interprets those tax ordinances of the Tribe to which such written statement relates.
5. “Reservation” means that area encompassed within the exterior boundaries of the Fallon Paiute-Shoshone Reservation, Colony, and any lands added thereto.
6. “Service” means the delivering of a writ or notice to the person(s) named if physically within the exterior boundaries of the Reservation, or the mailing of a writ or notice to the last address on file with the Tax Department, or publishing the same as an advertisement in a newspaper, or any combination of the above designed to give effective actual notice.

11-30-030 Review Revenue Sources.

The Tax Department will research all the sources of wealth and income within the Fallon Paiute-Shoshone Reservation and the possible revenues from the taxation of those sources.

11-30-040 Employment of Experts

The Tax Department may employ accountants, auditors, investigator, consultants, assistants and clerks necessary for the efficient administration of its duties, and may delegate authority to its representatives to conduct hearings, prescribed regulations and perform any other duties imposed by ordinance of the Tribe. The Tax Department shall adhere to the personnel policies of the Tribe in the selection of all employees.

11-30-050 Lay and Collect Taxes

- (1) The Tax Department, from time to time, will submit to the Business Council proposed resolutions to lay and collect taxes on property, both tangible and intangible, on incomes from whatever source derived, and on sales, inventories, and wages completed or earned, and other measures of economic activity or engagement within the Reservation
- (2) The Tax Department will oversee the administration of the tax laws; and will present what recommendations it may have regarding the wealth, income, and revenues of the Reservation and the fiscal policy of the Tribe.

11-30-060 Rules and Regulations

1. The Tax Department will administer such other rules and regulations as it deems necessary for its proper functioning, and enforce the tax laws, to establish the manner and means for compliance with those laws, and to set forth the requirements for the administration of taxes and the general tasks and responsibilities of the Tax Department and its offices. These rules and regulations relate to:
 - a. Internal operation procedures of the Tax Department and its staff.
 - b. Interpretation and application of this Code as may be necessary to ascertain or compute the tax owed by any taxpayer.
 - c. The filing of any reports or returns required by, or necessary to implement, this Code.
 - d. The filing of any reports or returns required by, or necessary to implement, this Code.
2. Such rules shall provide for a hearing for all interested persons prior to a recommendation by the Tax Department to the Business Council that a tax be established or a tax rate be adjusted. Such rules shall provide for reasonable notice to interested persons of the hearing and their right to present oral or written testimony.
3. No rule or regulation of the Tax Department shall be of any force or effect until and unless copies of the rule or regulation have been filed for record with the Secretary of the Tribe and in the office of the Clerk of the Fallon Paiute-Shoshone Tribe Court. The copy shall bear the signature of the Tribal Chairman, certifying that the rule or regulation was duly adopted by the Tax Department pursuant to this Code.
4. The Fallon Paiute-Shoshone Tribal Court shall take judicial notice of all rules and regulations of the Tax Department promulgated pursuant to this Code.

11-30-070 Powers of the Tax Department

The Tax Department is empowered to administer the tax laws of the Tribe and, to that end, will execute the rules and regulations, both substantive and procedural, and orders implementing its decisions, rulings, and instructions, as may be necessary for the proper and efficient administration of those laws. The Tax Department shall have the power to exercise all managerial authority over to the Tax Department pursuant to this Chapter.

11-30-080 Regulations, Rulings, Instructions and Orders

(A) **Authority and Issuance.** The Tax Department is empowered and directed to issue all regulations, rulings, instructions or orders necessary to implement and enforce any provisions of any tax ordinance of the Tribe.

- 1) To be effective, a regulation issued by the Tax Department shall first be submitted for public inspection by publication, posting or distribution to interested persons who shall be invited to comment. After the proposed regulation has been subject to public comment for not less than two (2) weeks, the Tax Department may issue it as a final regulation.
- 2) The Tax Department shall state the extent to which its regulations, rulings or orders will have retroactive effect. If no statement on retroactivity is made, regulations shall be applied prospectively only.
- 3) All orders, rulings, rules and regulations which have been filed in the records of the Tax Department shall be continued in full force and effect until repealed, replaced, superseded or amended by the Tax Department or the Business Council.

(B) **Review and Inspections.** Any ruling or regulation issued by the Tax Department may be reviewed at the discretion of the Tax Department or the Business Council, with the advice of legal counsel employed by the Tribe. All final rulings and regulations of the Tax Department shall be compiled and be subject to public inspection and reference at the offices of the Tax Department.

11-30-090 Accountability

The Tax Department, as an agency of the Tribe, shall enforce provisions of the Tribe's tax ordinances through the administrative procedures provided for herein and through judicial enforcement in the Tribal Court or such other courts as are deemed necessary. The Tax Department shall make annual reports to the Business Council and shall pay over all tax monies collected to the Treasurer of the Tribe. Monies shall be collected and deposited in accordance with 11-30-110 of this Ordinance.

11-30-100 Duties of the Tax Department

(A) **Duties.** The Tax Department, under the supervision of the Office of the Treasurer and control of the Business Council, shall be responsible for carrying out all administrative duties of assessment and monitoring of the taxes provided for by the Business Council, and shall be responsible for maintaining all records and books of accounts that will permit the accurate recording of all tax remittances submitted to the Tax Department.

(B) **Registration of Taxpayers.** The Tax Department shall establish a system for the registration and identification of taxpayers and shall develop a system of checks to determine the accuracy of tax reporting forms submitted and tax computations performed by taxpayers.

11-30-110 Tax Department Receipts and Disbursements

- (A) **Deposits and Payments.** For Tax related purposes, all monies received via the Finance Department shall be deposited as approved by the Treasurer of the Tribe based on the current financial policy. Tax related monies received or disbursed by the Finance Department shall be accounted for by the Finance Department, as reviewed by the Tax Department and as approved by the Treasurer.
- (B) **Credits, Rebates, and Refunds.** Disbursements for tax credits, rebates, refunds, the payment of interest/distributions, and transfers shall be made by the Treasurer of the Tribe upon request and certification of their appropriateness by the Tax Department. The Treasurer of the Tribe shall establish in its accounting system a separate account for revenues collected under each tax ordinance and shall establish a suspense fund for the payment of disbursements upon authorization by the Tax Department.

11-30-120 Tax Department Budget

The Tax Department shall submit a proposed budget for the upcoming fiscal year detailing all anticipated expenses of the Tax Department in accordance with the budget process set forth in the Tribe's Financial Policies. The budget may be revised upon request of the Tax Department in accordance with the Tribe's Financial Policies. The monies budgeted for expenses of the Tax Department shall be disbursed by the Treasurer of the Tribe in accordance with the Tribe's Financial Policies.

11-30-130 Records, Searches and Tax Payments

- (A) **Records.** Every person subject to taxation by the Tribe shall keep such records, receipts, invoices and other pertinent papers in such forms as the Tax Department may require to determine tax liability. Every person who files tax reporting forms required by the Tax Department shall keep such records for not less than four (4) years from the making of such records unless the Tax Department, in writing, authorizes their destruction sooner.
- (B) **Inspection of Records.** Tax records shall, at all times during business hours, be subject to inspection by the Tax Department, its members or agents. The Tax Department, or its delegate, shall cause the records and books of account of taxpayers to be inspected or audited at such times as the Tax Department deems necessary for the effective execution of its responsibilities.
1. Auditors, employees and other officials designated by the Tax Department are authorized to request and require the production for examination of the records and books of account of the taxpayer. Those auditors or officials designated by the Tax Department shall be furnished with credentials identifying them as such, which they shall display to any taxpayer whose books are sought for examination.
 2. Every taxpayer shall, upon requests, make the records and books of account available for inspection, at reasonable hours, to the Tax Department or its employees or delegates who properly identify themselves to the taxpayer.
- (C) **Searches.** On issuance of a warrant by the Tribal Court based on probable cause that contraband property subject to tax is stored, warehoused, or kept for sale, the Tax Department, its agents, and law enforcement officers of the Tribe shall visit, inspect, and search any place to ascertain the existence of contraband property or violations of any tax of the Tribe.

- (D) **Returns and Tax Payments.** Every taxpayer is liable for tax at the time of, and after, the transaction or incident giving rise to the tax until payment thereof is made.
1. Every taxpayer shall, on or before the date on which payment of any tax is due, complete and file a tax return on the form prescribed and according to regulations issued by the Tax Department. A tax return filed under protest shall be treated as a petition for redetermination.
 2. Payment of the total amount of all taxes which are due from the taxpayer shall accompany the return relating thereto. Delivery to the Tax Department of a check that is not payable upon presentment does not constitute payment.
 3. Unless otherwise specifically provided for by an ordinance of the Tribe, the Tax Department may, for good cause, extend in favor of any taxpayer or class of taxpayers for no more than a total of thirty (30) days, the date on which payment of any tax is required or on which any return required by an ordinance of the Tribe must be filed. No extension shall prevent the accrual of interest.
 4. If a taxpayer is granted an exemption from tribal taxes pursuant to Section 11-20-060, the taxpayer shall submit tax reporting forms to fulfill the regulator functions of pertinent ordinances of the Tribe.
- (E) **Installment Payments.** Whenever justified by the circumstances, the Tax Department or its delegate may enter into a written agreement with any taxpayer wherein the taxpayer admits conclusive liability for the entire amount of taxes due and agrees to make monthly installment payments thereof according to the terms of the agreement; provided, that no such agreement may have a term longer than twelve (12) months. No installment agreement shall prevent the accrual of interest as otherwise provided for. At the time of entering into an installment agreement, the Tax Department shall require the affected taxpayer to furnish security for payment of the taxes admitted to be due according to the terms of the agreement. If the taxpayer does not provide security, the Tax Department shall cause a notice of lien to be filed in accordance with the provisions of Section 11-30-150 (B), and when so filed, it shall constitute a lien against the taxpayer's property.
- (F) **Delinquent Taxpayer.** If a taxpayer from whom taxes are due does not either make payment thereof within the time specified by delivering appropriate tax reporting forms accompanied by a tax remittance in the proper amount to the Tax Department, or within the time specified to make a claim for refund as provided for in Section 11-30-170, the taxpayer becomes a delinquent taxpayer and remains such until payment of the total amount of taxes, penalties, and interest is made or until no part of the assessment remains unpaid.
- (G) **Compromise of Taxes.** At any time after assessment of any tax, the Tax Department may, with written approval of the Business Council, compromise the asserted liability for taxes by entering with the taxpayer into a written agreement that adequately protects the interests of the Tribe. Such an agreement is conclusive as to liability or non-liability for payment of assessed taxes relating to the time periods referred to in the agreement and, except upon a showing of fraud, malfeasance or misrepresentation or concealment of material facts, the agreement shall not be modified by any officer, employee or agent of the Tribe, or the Tribal Court.

11-30-140 Penalties, Interests, Tax Liens and Redetermination

- (A) **Computation and Penalty.** With respect to any tribal taxes, if any person shall fail, refuse, or neglect to make or file a tax reporting form and tax remittance within the time prescribed, the Tax Department may ascertain and determine as nearly as may be possible from any returns or reports filed with the Tax Department or from any other information which the Tax Department may be able to obtain, the total tax basis from the relevant activity during the applicable time period immediately preceding the time period in which the tax is to be paid, and shall determine and fix the amount of the tax due to the Tax Department from such person for the applicable time period and shall add to the amount of the tax a penalty of ten percent (10%) thereof plus interest at the rate of one percent (1%) per month or fraction thereof, computed on the total amount and any applicable tax penalty. Interest shall be computed from the date the tax was due to the date of payment.
1. **Notice and Payment.** The Tax Department shall mail to the person required to file a tax reporting form and to pay a tax, a statement setting forth the amount of tax, penalty, and interest due. Upon receipt of this statement, the person shall remit to the Tax Department the full amount of tax, penalty, and interest due within fifteen (15) days of the date of said statement.
 2. **Waiver of Penalty.** The ten percent (10%) penalty herein provided may be waived by the Tax Department, with concurrence from the Tribal Treasurer, if reasonable cause of the failure and neglect to file a tax reporting form is provided to an accepted by the Tax Department.
 3. **Mailing of Notice.** If, before the expiration of the time prescribed in this Section for the mailing of a notice of determination, the taxpayer has consented in writing to the mailing of the notice after that time the notice may be mailed at any time before the expiration of the agreed upon period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
- (B) **Tax Lien.** The tax assessed against any person, together with penalties and interest thereon, shall be a lien upon any and all property owned by such person within the exterior boundaries of the Reservation, which lien shall attach on the date the Tax Department files a duplicate of the statement so made by the Tax Department, or a certified copy of any statement filed by the Tax Department in the Tribal Court and in the Recorder's Office of the County in which the property is located, which lien shall have a precedence over any other claim, lien, or demand there after filed and recorded. A tax lien may be enforced in the name of the Tribe.
- (C) **Redetermination.** Any person against whom a determination is made may petition for a redetermination within thirty (30) days after the date of service upon the person of notice thereof if a petition for redetermination is filed within the thirty (30) day period, the Tax Department shall reconsider the determination and, if the person has so requested in his petition, shall grant that person an oral hearing and shall give him ten (10) days notice of the time of hearing. The Tax Department may decrease or increase the amount of determination before it becomes final. All determinations made by the Tax Department are due and payable at the time they become final. If they are not paid when due and payable, a penalty of ten percent (10%) of the amount of the determination, exclusive of interest and other penalties, shall be added thereto.

- (D) **Recomputation of Tax by Tax Department.** If the Tax Department is not satisfied with the accuracy of the tax reporting form submitted or with the amount of tax remitted, it may compute and determine the amount required to be paid on the basis of the facts obtained in the tax reporting form(s) or upon the basis of any information within its possession or that may come into its possession.
- (E) **Business Discontinuance.** When a business is discounted, a determination may be made as to liability arising out of that business, irrespective of whether the determination is issued before the due date of the liability as otherwise specified in this Code.
- (F) **Interest and Overpayment.** In making a determination, the Tax Department may offset an overpayment for a period, together with interest on the overpayment, against any underpayment for another period, against any penalty, and against the interest on the underpayment. If the Tax Department determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow interest on such payment.
- (G) **Security.** The Tax Department may require any taxpayer to place with it such security as the Tax Department may determine is appropriate. The Tax Department shall fix the security, except as provided in (H) hereof, at an amount not greater than twice the estimated average tax due quarterly of persons filing returns for quarterly periods, or three (3) times the estimated average tax due monthly of persons filing for monthly periods, determined in such a manner as the Tax Department deems proper.
1. The limitations on amounts provided in this Section apply regardless of the type of security placed with the Tax Department.
 2. The amount of the security maybe increased or decreased by the Tax Department subject to the limitations provided in this section.
 3. If the security placed with the Tax Department is property, the Tax Department may sell the security at public auction if it becomes necessary to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale may be served personally or by mail upon the person who placed the security; if the mail, service must be made in the manner prescribed for service of a notice of a deficiency determination and must be addressed to the person at his address as it appears in the records of the Tax Department. Security in the form of bearer bond issued by the United States or the State of Nevada which has a prevailing market price may be sold by the Tax Department at a private sale at a price not lower than the prevailing market price.
 4. Upon any sale of security, any surplus above the amounts due the Tribe shall be returned to the person who placed the security.
- (H) **Additional Security.** In the case of taxpayers who are habitually delinquent in their obligation, the amount of the security may not be greater than three (3) times the average actual tax due quarterly of persons filing returns for quarterly periods, or five (5) times the average actual tax due monthly of persons filing returns for monthly periods.

11-30-150 Enforcement Powers of Tax Department

- (A) **Power of Tax Department of Seize and Sell.** At any time within five (5) years after any person is delinquent in the payment of any tax, the Tax Department may collect the amount due. The Tax Department may seize any property, real or personal, of the person, not held in trust by the United States, and sell the property, or a sufficient part of it, to pay the amount due, together with interest or penalties imposed for the delinquency, and any cost incurred on account of the seizure and sale.
- (B) **Notice of Sale.** Disposition of seized property may be by public or private proceedings. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms, but, every aspect of the disposition, including the method, manner, time, place and terms must be reasonable. Reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the Tax Department to the delinquent taxpayer and to any other person who has a security interest in the property and who has duly filed a statement indexed in the name of the delinquent taxpayer in Tribal Court or the County where the property is located. The proceeds of such sale shall be applied in the following order:
1. The reasonable expense of taking, hold, preparing for sale, and the reasonable attorney's fees and legal expenses incurred by the Tax Department;
 2. The satisfaction of the indebtedness, including any penalty or interest accrued;
 3. If the property sold is insufficient to satisfy the debt, the Tax Department may at its option, institute further legal proceedings or consider said amounts as a complete satisfaction of the debt; and
 4. If such sale results in an excess of the amount due, the excess shall be returned to the person whose property was seized and sold.
- (C) **Hearing and Waiver.** A hearing before the Tax Department may be requested by a delinquent taxpayer any time within thirty (30) days after mailing of a notice of sale. The opportunity for a hearing is deemed waived after that time.

11-30-160 Overpayment and Refunds

- (A) **Claim for Refund.** No refund shall be allowed unless a claim therefore is filed with the Tax Department within three (3) months from the last day of the month following the close of the period in which the payment was made. Every claim shall be in writing and shall state the specific grounds upon which the claim is founded. A payment of tax paid under protest with a statement of specific grounds for the protest shall be considered a claim for refund. Where practicable, the Tax Department shall notify a taxpayer of any overpayment found or identified by the Tax Department within fourteen (14) days of determining that an overpayment has occurred.
1. **Notice of Disallowance of Claim.** Within thirty (30) days after disallowing any claim in whole or in part, service of notice of the Tax Department decision shall be mailed to claimant.
 2. **Action for Refund.** No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected, unless a claim for refund or credit has been duly and timely filed.

- (B) **Appeal.** Within thirty (30) days after the mailing of the notice of the Tax Department's action upon a filed tax claim, a claimant may bring an action in the Tribal Court against the Tax Department on the grounds set forth in the claim for refund of the whole or any part of the amount with respect to which the claim has been disallowed. Any such action shall be limited to the amount of the refund and interest thereon if otherwise allowed. In no event shall the Tax Department, the Business Council, or the Tribe, or individual members of the Tax Department, Business Council, or Tribe be responsible for damages, whether active, direct or indirect, consequential or incidental.
- (C) **Allowance of Interest.** In any judgment allowing a refund, interest shall be allowed at the rate of four percent (4%) per annum upon the amount found to have been illegally collected from the date of payment of the tax to the date of allowance of credit on account of the judgment.
- (D) **Recovery of Erroneous Refunds.** The Tax Department may recover any refund or a part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought in the Tribal Court.

11-30-170 Tribal Court Jurisdiction

The Tribal Court is hereby empowered to hear appeals from final decisions and final actions of the Tax Department upon exhaustion of such administrative remedies as are provided by the Tax Department. Such appeals must be filed within thirty (30) days of the final decision or action being appealed. In the event of an appeal, the Tribal Court shall have judicial review jurisdiction of the action taken by the Tax Department to determine whether the action was arbitrary, capricious, or not in accordance with the law of the tribe, and shall not exercise de novo review.

11-30-180 Consent to Suit

For the limited purpose of review of Tax Department decisions or actions the Tax Department shall be subject to suit in the Tribal Court. The Tax Department shall not, however, be subject to suit for any other purpose or in any other forum. The Tribe and the Business Council shall not be subject to suit for any purpose. Section 11-20-030 in its entirety shall apply.

CHAPTER 4

INTOXICATING LIQUOR: LICENSE AND TAXES

11-40-010 Definitions

As used in this Chapter, the following words and phrases shall have the meaning set forth herein, unless otherwise clearly required. In addition to the definitions contained in this section, other terms used herein shall have the definitions given them in Chapter 2, Section 11-20-010, governing the license and sale of liquor on the Fallon Paiute-Shoshone Reservation and Colony.

- (1) “Importer” means any person who, in the case of liquors which are brewed, fermented or produced outside the Reservation, is first in possession thereof within the Reservation after completion of the act of importation.
- (2) “Original Package” means any container or receptacle first used for holding liquor, which container or receptacle is sealed.
- (3) “Permissible Person” means any doctor, apothecary or pharmacist who uses alcohol for or in compounding medicine, or the representative of any school, university, hospital, clinic or industrial concern where liquor is used and needed for industrial purposes or research and not for concocting beverages for drink.
- (4) “Retail Liquor Store” means an establishment where beers, wines and liquors, in original packages or by the drink are sold to a consumer.
- (5) “Supplier” means, with respect to liquor which is brewed, distilled, fermented, manufactured, produced or bottled:
 - a. Outside the United States, the owner of the liquor when it is first transported into any area under the jurisdiction of the United States Government; or
 - b. Within the United States but outside the Reservation, the brewer, distiller, manufacturer, producer, vintner or bottler of the liquor, or his designated agent.
- (6) “Wholesale Dealer” or “Wholesaler” means a person licensed to sell liquor as is originally packaged to retail liquor stores or to another licensed wholesaler, but not to sell to the consumer or general public.

11-40-020 Applicability of Chapter

This Chapter shall not apply to common carriers, while engaged in interstate commerce, which sell or furnish liquor on their trains, buses or airplanes.

EXCISE TAXES

11-40-030 Levy, Collection and Amount of Tax

Except as otherwise provided in this Chapter, an excise tax is hereby levied and must be collected respecting all liquor and upon the privilege of importing, possessing, storing or selling liquor, according to the same rates and classifications imposed under Nevada Statutes, as may be amended from time to time.

11-40-040 Liquor Sold to Permissible Persons Exempt from Tax

It is hereby declared to be the intent of this Chapter that no excise tax shall be imposed on liquor sold to permissible persons, and the Tax Department, in computing the excise tax to be paid on liquor, shall make rules for refunds or credits to be allowed to any importer making a satisfactory showing of such sales.

11-40-050 Importer's Bond; Waiver of Requirement

- (1) Each licensed importer shall furnish a bond to the Tribe conditioned for the payment of all excise taxes due or to become due from him, her or it under the provisions of this Chapter. Each bond shall be in a principal sum equal to the greatest excise tax paid by the importer in any quarter of the preceding year, or if such standard is not available, then in a sum required from a licensee operating under conditions deemed comparable by the Tax Department. In no case shall bond be for an amount less than \$1,000.00. When cash or a certificate of deposit or investment certificate is used, the amount required shall be rounded off to the next larger integral multiple of \$100.00.
- (2) The bond or undertaking shall be acceptable to and approved by the Tax Department, and a deposit of cash or negotiable United States Government bonds may be accepted in lieu of an undertaking. The Finance Department shall deposit all such United States Government bonds and cash deposits with the Tribal Treasurer as custodian thereof.
- (3) Notwithstanding any other provision of this section, upon application and a satisfactory showing therefore, the Tax Department may, from time to time, increase or decrease the amount of the required bond, having consideration for the amount of importations made by the importer.
- (4) Notwithstanding any other provision of this section, the Tax Department may waive the requirement of a bond pursuant to this section whenever a licensed importer has maintained a satisfactory record of payment of excise taxes for a period of not less than five (5) consecutive years.

11-40-060 Tax Department's Rules

The Tax Department shall make all necessary and convenient rules:

- (1) Prescribing the forms of reports and claims made by taxpayers;
- (2) Prescribing the time for making such reports and settlements thereon; and
- (3) Respecting permissible persons as well as other importers.

11-40-070 Importers and Manufacturers to Pay Tax; Refund or Credit; Discount; Extension of Time for Payment

- (1) For the privilege of importing, possessing, storing or selling liquors, all licensed importers and manufacturers of liquor on the Reservation shall pay the excise tax imposed and established by this Chapter.
- (2) If, after the tax is paid on any such liquor, satisfactory evidence is presented to the Tax Department that the imports have been actually exported and sold outside the Reservation in a manner not in conflict with the law of the place of sale, the Tax Department shall direct that a refund or credit of the tax so paid be made to the taxpayer. The taxpayer shall report all such exports and imports, and pay the tax on

the imports monthly, on forms and subject to regulations prescribed by the Tax Department.

- (3) The excise tax imposed by this Chapter is due on or before the 20th day of the following month. If all such taxes are paid on or before the 15th day of the following month, a discount in the amount of 2 percent (2%) of the tax must be allowed to the taxpayer. The Tax Department may, for good cause, extend for not more than 15 days after the date the tax is due the time for paying the tax if a request for such an extension of time is received by the Tax Department on or before the date the tax was due. If such an extension is granted, interest accrues from the original date the tax was due.
- (4) The Tax Department shall allow refunds or credits on any shipments lost, stolen or damaged in transit, or damaged or spoiled on the premises. The Tax Department may require all claims in connection therewith to be sworn to and may make ratable tax adjustments, credits or refunds to effectuate the purposes of this Chapter.

CHAPTER 5

THE POSSESSORY INTEREST TAX

11-50-010 Statement of Purpose

Pursuant to the provisions of Chapter 1 of this Code, it is the policy of the Fallon Paiute-Shoshone Tribe of the Fallon Paiute-Shoshone Reservation and Colony to provide their members and non-members residing, doing business, or working within the jurisdiction of the Tribe with essential governmental services. To finance this governmental policy, the Tribe adopts in this Chapter a possessory interest tax, which will provide the Tribe a portion of tax revenues necessary to fund essential governmental services within their jurisdictional boundaries and which will benefit all individuals and businesses on the Reservation.

11-50-020 Short Title

The tax levied by this Chapter shall be called the “Possessory Interest Tax” of real and personal property, which includes primary or beneficial interests and any right or interest obtained in a tract of land, (trust, restricted, or fee land), within the boundaries of the Fallon Paiute-Shoshone Reservation and Colony by lease, permit, contract, easement, right-of-way, deed, or other agreement, which authorizes a person, (as defined hereunder in Section 11-20-010 (12) of this Code), to use that real and personal property for business, (as defined hereunder in Section 1120-010 (17)), profit, or use, except as otherwise exempted in Section 11-20-060 of this Code.

11-50-030 Definitions

As used in this Chapter, the following words and phrases shall have the meaning set forth herein, unless otherwise clearly required. In addition to the definitions contained in this section, all terminologies and concepts as defined in Section 11-20-010 of the Code shall apply hereunder.

- (1) Commercial Business. “Commercial Business” shall mean any business for profit which is not a utility/railroad, and shall include land related activities and mining of surface and subsurface rights.
- (2) Utility. “Utility” shall mean any privately or publicly held entity primarily engaged in supplying, transmitting, transporting or distributing electricity, oil and oil products, gas, natural gas, natural gas products, water, geothermal, carbon dioxide, liquid hydrocarbons, telephone, telegraph or other communication services, or transportation services including freight services.

11-50-040 The Tax Cycle

The tax rate and the approaches to determine the appraised value (i.e. the Tax Base) of the Possessory Interest shall remain constant for a two-year tax cycle. The initial tax cycle of this Chapter commences with the effective date of this Chapter and terminates on the last day of December, 1998. Thereafter, the tax cycle shall take a full two year period ending the last day in December of the even-numbered years.

11-50-050 Imposition and Rate of Tax

The Possessory interest tax set forth herein shall be imposed on the ownership of possessory interest on January 1st of each taxable year and shall be assessed at the rate of three percent (3%) of the assessed value of the possessory interest as determined and appraised in accordance with approaches/methodologies utilized in Section 11-50-060. The established said rate and methodologies shall be and remain the same as herein unless, pursuant to Section 11-20-020 of this Code, modified by the Business Council and implemented by the Tax Department. The said tax rate may not be escalated by more than the annual rate of inflation as measured by the annual average rate of the GNP Price Deflator of the preceding year for the succeeding tax cycles. Upon passage of any determination and resolution changing the tax rate and/or the methodologies, notice shall be given to all taxpayers and shall be published in newspapers of general circulation and posted or published at such places as the Tax Department designates.

11-50-060 Computation of Value of Possessory Interest

The value of a possessory interest shall be assessed as provided in this Chapter or any method adopted by the Business Council pursuant to Section 11-20-020 of this Code. The method reflects the reasonable value of the possessory interest which is subject to taxation.

(1) Subject of Valuation.

- a. The subject matter of valuation under this Chapter is real and personal property of possessory interest except as exempted under Section 11-20-060 of this Code. Real property means all lands or interests in land including all mines, quarries, and minerals in and under the land, and all rights and privileges thereunto appertaining; and improvements. Personal property means everything which is subject of ownership and which is not included within the term of "real property". "Personal property" includes machinery, equipment, and other articles related to a commercial or industrial operation which are either affixed or not affixed to the real property for proper utilization of such articles. Improvements mean all structures, buildings, furniture, fences, and water rights erected upon or affixed to land, whether or not title to such land has been acquired.
- b. For the 1997/1998 tax cycle, two classes of personal and real property shall be the subject matter of valuation as follows:
 1. All utilities/railroads and their associated and related personal property and improvements thereto.
 2. mining and manufacturing; and
 3. commercial industrial operations.

(2) Date of Valuation. All possessory interest which is subject to taxation under this Chapter shall be valued as of the 1st of January of a given calendar year.

(3) Valuation for Assessment. The valuation for assessment of all taxable possessory interest shall be eighty percent (80%) for all businesses and utility/railroads of the actual value thereof as determined by the Tax Department in the manner described by this Code, and such percentage shall be uniformly applied without exception and discrimination to the actual value of the various classes and subclasses of possessory interest in Reservation lands.

- (4) **Basis of Valuation.** The information required for the assessment of actual value for a class of possessory interest during the present tax cycle is that which belongs to the previous tax cycle. Information from the preceding year may also be used. If this information is not available, the average for the past five years may be applied. In the ensuing Subsections, the specific nature of the required data is described.
- (5) **Method of Valuation.** The value of a possessory interest shall include the ad valorem value of the real and personal property and shall be determined in accordance with the provisions of this Subsection for purposes of possessory interest taxation as follows:
- a. All categories of possessory interest and the associated and related personal and real property and improvements thereto, as enlisted under Section 11-50-060.
 1. **Statement of Taxpayer.** Every taxpayer of any category of possessory interest, or lands on the Reservation whose possessory interest is in operational mode or is capable of being in operational mode on the assessment date of any year, shall, no later than March 31st of each year, prepare, sign, and file with the Tax Department showing:
 - a) The location thereof, and the name thereof, if there is a name.
 - b) The name, address, and interest of the possessory interest of the taxpayer.
 - c) The gross operating revenue, the gross operating expenses, and the net income exclusive of any non-possessory interest income and deductions of that portion of the utility facility on the Reservation.
 - d) For the utilities subject to the jurisdiction of the FEDERAL REGULATORY AUTHORITIES, the information incorporated in their related forms they file with those authorities shall be adequate. For others, the similar information they file with the state regulatory commissions/authorities shall suffice the purpose.
 2. The taxpayers shall calculate their possessory interests and tax liabilities in accordance with the capitalization net income method. The value of a possessory interest for all categories shall be determined, thus, by computing the capitalized value of the net income exclusive of any non-possessory interest income and deductions as a proportion of the taxpayer's facilities on the Reservation and the values of land, as described in Subsection 3 hereunder. The capitalization rate shall be set at thirteen percent (13%) except when and if the taxpayer demonstrates a different and higher number. The "reasonable" expenses to be incurred in producing the proportional annual net income shall be allowed, and the proper adjustment that the regulatory authorities do not allow to be included in their forms shall also be allowed. Such capitalization shall be done for the remaining life of the possessory interest. If the possessory interest life is perpetual, the life of the possessory interest shall be presumed to be twenty-five (25) years for the purposes of this Chapter.
 3. The value of land for the purposes of this Subsection shall be set at \$4,200.00 per acre; and the said value may not be escalated by more than the annual rate of inflation as measured by the annual average rate of the GNP Price Deflator of the preceding year for the succeeding tax cycles.

11-50-070**Assessment of Tax**

- (1) The Tax imposed by this Chapter is based upon the return filed by the taxpayer.
- (2) The Tax Department shall be authorized to assess taxes against a taxpayer and such assessments are presumed to be correct.
- (3) When it appears that the return filed by the taxpayer does not reflect the tax due under this Chapter, the Tax Department shall assess the taxpayer for the deficiency, interest, penalties, and costs.
- (4) If no return is filed, the Tax Department is authorized to make an estimate of the tax due, and to assess the taxpayer for that tax, interest, penalties, and costs. The assessment is binding on the taxpayer.
- (5) If the taxpayer fails to provide information within its possession or control which is relevant to an assessment of taxes due, and which it is required to provide under this Chapter, the Tax Department is authorized to make an estimate of tax due and assess the taxpayer for that tax, interest, penalties, and costs. This assessment is binding on the taxpayer unless it is shown that the estimate, on the basis of the best information available to the Tax Department, was clearly erroneous.

11-50-080**Tax Declaration and Designation of Natural Person**

Every entity or person owning any non-exempt possessory interest on the Reservation shall designate a natural person as the individual empowered by the taxpayer to act on behalf of the taxpayer with respect to all matters involving the possessory interest tax. Said designated natural person shall complete the forms distributed by the Tax Department and shall provide the information required therein.

11-50-090**Reporting Requirements**

Each taxpayer shall comply with the following reporting requirements and such other requirements as are by rules or regulations adopted by the Tax Department:

- (1) **Forms.** The Tax Department shall provide taxpayers with forms for the reporting of the value of all possessory interest to the Tribe. Information reported by the taxpayer on these forms shall be the basis for assessment of tax due.
- (2) **Reporting Date.** Each taxpayer shall report the value of its possessory interests by March 31st of the taxable year.
- (3) **Extension of Time.** Upon timely written request to the Tax Department a taxpayer may request an extension of time within which to report the value of its possessory interests; and for good cause shown, the Tax Department may extend, for a period not to exceed thirty (30) days, the reporting date, but no further extension shall be allowed. Such a request for extension, to be timely, must be received by the Tax Department prior to the reporting date. Requests for extension received by the Tax Department after the reporting date shall not be considered. If the Tax Department extends the date for filing valuation reports for a taxpayer, the date for mailing the notice of tax assessment to that taxpayer provided for in Section 11-30-150 of this Chapter shall automatically be extended by the extent of additional time granted the taxpayer for filing the valuation reports.
- (4) **Failure to Report – Administrative Valuation.** If a taxpayer fails to file substantially complete possessory interest tax reporting information, or to otherwise provide requested information or documents within its possession or control which are relevant to an assessment of the extent or value of its possessory interests, the Tax

Department may proceed to assess the value of the taxpayer's possessory interests and to assess taxes accordingly. This assessment will be binding on the taxpayer unless it shows that the valuation, on the basis of the best information available to the Tax Department, was clearly erroneous or unless the Tax Department for other good cause shown relieves the taxpayer from the operation of this Subsection.

- (5) **Reporting Value of Exempt Interests.** No taxpayer or entity shall be required to file property valuation forms for any possessory interest which is exempt under Section 11-20-060 and other relevant Sections of this Code, provided that the Tax Department may require any taxpayer or entity to file the information necessary to establish the claimed tax exemption.
- (6) **Authority of the Tax Department.** The Tax Department may, by form or regulation, require any taxpayer to file the information or documents deemed necessary for the proper and efficient administration of the tax.
- (7) **Administrative Reports.** The Tax Department shall report all possessory interest tax activities and collections to the Business Council at least annually.
- (8) **Amended Returns.** Amended returns for assessment may be filed, and will be considered for a period of one year from the date of the original report. After one year, all reports will be considered final. Any refunds or overpayment as a result of corrected assessment will be paid to the taxpayer.

11-50-100 Payment of Taxes Due

The assessed tax shall be paid no later than April 15th of each year, unless another due date is specified by the Tax Department. Any taxes assessed shall be paid by check or money order made payable to the Fallon Paiute-Shoshone Tribe - Finance Department. Payment is timely made if it is postmarked before midnight on the date on which the tax is due or if it is delivered to the Finance Department by certified mail or in person and a receipt is given before midnight on the due date.

11-50-110 Extension of Time for Paying Tax

Upon the filing with the Tax Department of a timely request for an extension of time within which to pay assessed taxes, and upon a showing of good cause, the Tax Department may extend, for a period not to exceed forty-five (45) days, the due date for payment of taxes assessed, but no further extension shall be allowed. Such a request for extension, to be timely, must be filed on or before the date the assessed taxes are due. The penalty for late payment as provided for in Section 11-30-150 of this Code shall not apply to any payment for which an extension has been granted.

11-50-120 Penalty for Late Payment

Any taxpayer failing to pay the amount of tax assessed by the due date, except in cases where extensions have been granted, shall pay a penalty on the outstanding balance in accordance with the provisions of Chapter 3 of this Code.

11-50-130 Lien for Taxes – Lien against Possessory Interest

The possessory interest tax shall be a lien against the possessory interest of the taxpayer in favor of the tribe to secure payment of the tax and any penalty and interest that become due. The lien under this subsection shall arise as of March 1 of the tax year, without notice or demand, and shall be a first lien and superior to any interest in the property. The entire provisions of Section 11-30-150 of Chapter 3 are applicable herewith.

- 11-50-140 Exemptions – Service Lines**
No possessory interest used exclusively to operate a utility service line, utility delivery facility, or utility distribution facility which exclusively serves the Fallon Paiute-Shoshone Reservation and Colony shall be subject to this tax. Possessory interests used to operate utility lines passing through the Reservation and providing service beyond the Reservation boundaries shall not be subject to this exemption.
- 11-50-150 Method of Claiming Exemption**
Any taxpayer owning both taxable and exempt possessor interests shall file with the Tax Department a claim for any exemption. The claims for exemption shall be filed on the form provided by the Tax Department and at the time of filing the valuation reports required by Section 11-50-060, and shall be accompanied by a map clearly indicating the specific property for which exemption is claimed. Any taxpayer owning only exempt possessory interests shall be required to claim such exemptions only at the written request of the Tax Department.
- 11-50-160 Appeal Procedures for Protested Taxes**
All administrative and legal remedies are those authorized in Chapter 3, Sections 11-30-170 of the Code.
- 11-50-170 Collection Powers**
The Tax Department, in the name of the Tribe, shall have full power to enforce the collection of collect taxes and penalties assessed, including the power to file suit in Tribal Court or in any other court of competent jurisdiction, and to execute on any judgment by all appropriate legal remedies including attachment/seizure of the assets of any delinquent taxpayer. The procedures for Enforcement are set forth in Chapter 3, Sections 11-30-150 and 11-30-160.
- 11-50-180 No Waiver of Sovereign Immunity**
Any challenge to the validity or application of this Chapter shall be pursuant to Section 11-20-030, 11-30-180 and 11-30-190 of this Code.
- 11-50-190 Severability**
If any part or application of this Chapter is held invalid, the remainder of this Chapter and other Chapters of this Licensing and Taxation Ordinance, or their application to other situations or taxpayers shall not be affected.
- 11-50-200 Use of Tax Proceeds**
A recommendation on the use of proceeds shall be submitted to the Business Council annually by the Tax Department, in accordance with the Tribe’s budgetary process, and approved by the Business Council to defray the costs of providing essential governmental services on the Reservation and for other purposes as approved by the Business Council.
- 11-50-210 Amendment**
This Chapter may be amended by the Business Council in accordance with the Constitution of the Tribe. The Tax Department shall notify taxpayers of any amendment in the manner considered appropriate by the Tax Department under Tribal laws.
- 11-50-220 Effective Date**
This Chapter shall be effective on the date of its adoption by the Business Council.

CHAPTER 6

SALES AND USE TAX

11-60-010 Definitions

As used in this Chapter, the following words and phrases shall have the meaning set forth herein, unless otherwise clearly required. In addition to the definitions contained in this section, all terminologies and concepts as defined in Section 11-20-010 of the Code shall apply hereunder.

- (1) **Business.** “Business” includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.
- (2) **Gross Receipts.** “Gross Receipts” means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:
 - a. The cost of the property sold. However, in accordance with such rules and regulations as the Tax Department may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state, or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.
 - b. The cost of the materials used, labor or service cost, interest paid, losses or any other expense.
 - c. The cost of the transportation of the property prior to its sale to the purchaser.
 - The total amount of the sale or lease or rental price includes all of the following:
 - a. Any services that are part of the sales.
 - b. All receipts, cash, credits and property of any kind.
 - c. Any amount for which credit is allowed by the seller to the purchaser.
 - “Gross Receipts” does not include any of the following:
 - a. Cash discounts allowed and taken on sales.
 - b. Sales price of property returned by customers when the full sale price is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.
 - c. The price received for labor or services used in installing or applying the property sold.

- d. The amount of any tax (not including, however any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.
 - For purposes of the sales tax, if the retailers establish to the satisfaction of the Tax Department that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.
- (3) **Occasional sale.** "Occasional sale" includes:
- a. A sale of property not held or used by a seller in the course of an activity for which he is required to hold a seller's permit under Tribal law or Nevada law, provided such sale is not one of a series of sales sufficient in number, scope and character to constitute an activity requiring the holding of a seller's permit.
 - b. Any transfer of all or substantially all the property held or used by a person in the course of such an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer.
 - c. For the purposes of this section, stockholders, bondholders, partners or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the property of such corporation or other entity.
- (4) **Purchase.** "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.
- a. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price is a purchase.
 - b. A transfer for a consideration of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of any publication, is also a purchase.
- (5) **Retail Sale.** "Retail sale" or "Sale at retailer" means a sale for any purpose other than resale in the regular course of business of tangible personal property. Retail sale or sale at retail includes:
- a. The delivery on the Reservation of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business on the Reservation, is a retail sale on the Reservation by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.
- (6) **Retailer.** "Retailer" includes:
- a. Every person who makes any retail sale of sales of tangible personal property, and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.
 - b. Every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption; and

- c. Every person making more than two retail sales of tangible personal property during any 12 month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy.
 - d. When the Tax Department determines that it is necessary for the efficient administration of this Chapter to regard any salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the Tax Department may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this Chapter.
 - e. A licensed optometrist or physician and surgeon is a consumer, and shall not be considered, a retailer within the provisions of this Chapter, with respect to the ophthalmic materials used or furnished by him in the performance of his professional services in the diagnosis, treatment or correction of conditions of the human eye, including the adaptation of lenses or frames for the aid thereof.
- (7) **Sale.** “Sale” means and includes any transfer or title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, or tangible personal property for a consideration.
- a. “Transfer of possession”, “lease”, or “rental” includes only transactions found by the Tax Department to be in lieu of a transfer of title, exchange or barter.
 - b. “Sale” includes:
 - 1. The producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing or imprinting;
 - 2. The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others;
 - 3. The furnishing, preparing or seeing for a consideration of food meals or drinks;
 - 4. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; and
 - 5. A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of any publication.
- (8) **Sale price.** “Sales price” means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:
- a. The cost of the property sold;
 - b. The cost of materials used, labor or service cost, interest charged, losses, or any other expenses; or
 - c. The cost of transportation of the property prior to its purchase.

- d. The total amount for which property is sold includes all of the following:
 1. Any services that are a part of the sale; and
 2. Any amount for which credit is given to the purchaser by the seller.
 - e. “Sale price” does not include any of the following:
 1. Cash discounts allowed and taken on sales;
 2. The amount charged for property returned by customers when the entire amount charged therefore is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned;
 3. The amount charged for labor or services rendered in installing or applying the property sold; and
 4. The amount of any tax (net including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.
- (9) **Seller.** “Seller” includes every person engaged in the business of selling tangible personal property of any kind, the gross receipt from the retail sale of which are required to be included in the measure of the sales tax.
- (10) **Storage.** “Storage” includes any keeping or retention on this Reservation for any purpose except sale in the regular course of business or subsequent use solely outside the Reservation of tangible personal property purchased from a retailer.
- (11) **Storage and Use.** “Storage” and “Use” do not include the keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the Reservation for use thereafter solely outside the Reservation, or for the purpose of being processed, fabricated or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the Reservation and thereafter used solely outside the Reservation.
- (12) **Tangible Personal Property.** “Tangible Personal Property” means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.

SALES TAX

11-60-020 Imposition and Rate

A tax is hereby imposed upon all retail sales at the most current rate of the county (as compiled by the Nevada Department of Taxation) in which the sale occurred, on the gross receipts received by the retailer from the sale of all tangible personal property sold at retail on the Reservation.

11-60-030 Method of Collection

The sales tax shall be imposed on the consumer and shall be collected by the retailer from the consumer insofar as it can be done.

- 11-60-040 Tax as Debt to Tribe**
The tax required to be collected by the retailer constitutes a debt owed by the retailer to the Tribe.
- 11-60-050 Advertisement of Assumption or Absorption of Tax by Retailer Unlawful**
- (1) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.
 - (2) A person violating any provision of this section is guilty of a misdemeanor, or shall be subject to a civil fine not to exceed \$5,000.00.
- 11-60-060 Tax must be displayed Separately from Price**
The Tax Department may, by regulation, provide that the amount collected by the retailer from the consumer be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale.
- 11-60-070 Application for Permit Required – Form - Contents**
- (1) Every person desiring to engage in or conduct business as a seller within the Reservation must file with the Tax Department an application for a permit for each place of business.
 - (2) Every application for a permit must:
 - a. Be made upon a form prescribed by the Tax Department;
 - b. Set forth the name under which the applicant transacts or intends to transact business and the location of his, her or its place or places of business; and
 - c. Set forth other information which the Tax Department may require.
 - (3) The application must be signed by the owner if he or she is a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which must be attached the written evidence of their authority.
- 11-60-080 Fee and Permit**
At the time of making an application, the applicant must pay to the Finance Department a permit fee of \$1.00 for each permit. A copy of the receipt shall be provided to the Tax Department to verify that the fee has been paid.
- 11-60-090 Issuance and Display of Permit; Assignability**
After compliance with Section 11-60-070 and 11-60-080 by the applicant, the Tax Department shall grant and issue to each applicant a separate permit for each place of business within the Reservation. A permit is not assignable, and is valid only for the person in whose name it is issued and for the transaction of business at the place designated on it. It must at all times be conspicuously displayed at the first place for which issued.
- 11-60-100 Fee for Reinstatement of Suspended or Revoked Permit**
A seller who permit has been previously suspended or revoked must pay the Tax Department a fee of \$1.00 for the renewal or issuance of a permit.

- 11-60-110 Revocation or Suspension of Permit - Procedures - Limitation on Issuance of New Permit**
- (1) Whenever any person fails to comply with any provision or any regulation of the Tax Department, relating to the sales tax prescribed and adopted under this chapter, the Tax Department after a hearing at which the person was given prior notice of at least 10 days in writing specifying the time and place of the hearing and requiring him, her or it to show cause why his, her, or its permit or permits should not be revoked, may revoke or suspend anyone or more of the permits held by the person.
 - (2) The Tax Department shall give to the person written notice of the suspension or revocation of any of his permits.
 - (3) The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.
 - (4) The Tax Department may not issue a new permit after the revocation of a permit unless it is satisfied that the former holder of the permit will comply with the provisions of this Chapter relating to the sales tax and to all of the regulations of the Tax Department.
- 11-60-120 Presumption of Taxability; Resale Certificate**
- For the purpose of the proper administration of this Chapter and to prevent evasion of the sales tax, it is presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.
- 11-60-130 Effect of Resale Certificate**
- A resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who at the time of purchasing the tangible personal property; intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.
- 11-60-140 Form and Contents of Resale Certificate**
- (1) The resale certificate must:
 - a. Be signed by and bear the name and address of the purchaser;
 - b. Indicate the number of the permit issued to the purchaser; and
 - c. Indicate the general character of the tangible personal property sold by the purchaser in the regular course of business.
 - (2) The resale certificate must be substantially in such form as the Tax Department may prescribe.
- 11-60-150 Liability of Purchaser Giving Resale Certificate**
- If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business the use is taxable to the purchase as of the time the property is first so used by him, and the sales price of the property to him is the measure of the tax. Only when there is an unsatisfied use tax liability on this basis is the seller liable for sales tax with respect to the sale of the property to the purchaser. If the sole use of the property other than retention,

demonstration, or display in the regular course of business is the rental of the property while holding it for sale, the purchaser may elect to include in his gross receipts the amount of the rental charged rather than the sales price of the property to him.

11-60-160 Improper Use of Resale Certificate; Penalty

Any person who gives a resale certificate for property which he knows at the time of purchase is not to be resold by him in the regular course of business for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction is guilty of a misdemeanor, and shall be subject to a civil fine not to exceed \$5,000.00.

11-60-170 Resale Certificate: Commingled Fungible Goods

If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

USE TAX

11-60-180 Imposition and Rate

- (1) An excise tax is hereby imposed on the storage, use or other consumption on the Reservation of tangible personal property purchased from any retailer for storage, use or other consumption on the Reservation at the most current rate of the county (as compiled by the Nevada Department of Taxation) where the activity occurs on the sales price of the property.
- (2) The tax is imposed with respect to all property which was acquired off the Reservation in a transaction that would have been a taxable sale if it had occurred on the Reservation.

11-60-190 Liability for Tax; Extinguishment of Liability

Every person storing, using or otherwise consuming on the Reservation tangible personal property purchased from a retailer is liable for the tax. A person's liability is not extinguished until the tax has been paid to the Tribe, except that a receipt from a retailer maintaining a place of business on the Reservation or from a retailer who is authorized by the Tax Department, under such rules and regulations as it may prescribe, to collect the tax and who is, for the purposes of this Chapter relating to the use tax, regarded as a retailer maintaining a place of business on the Reservation, given to the purchaser pursuant to Section 11-60-200 is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

11-60-200 Collection by Retailer; Purchaser's Receipt

Every retailer maintaining a place of business on the Reservation and making sales of tangible personal property for storage, use or other consumption on the Reservation, not exempted under this Chapter shall, at the time of making the sales or, if the storage use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt thereof in the manner and form prescribed by the Tax Department.

11-60-210 Advertisement of Assumption or Absorption of Tax by Retailer Unlawful

- (1) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.
- (2) Any person who violates this section shall be subject to a civil fine not to exceed \$5,000.00.

11-60-220 Tax must be displayed Separately from Price

The tax required to be collected by the retailer from the purchaser must be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales.

11-60-230 Registration of Retailers

Every retailer who sells tangible personal property for storage, use or other consumption on the Reservation shall register with the Tax Department and give:

- (1) The name and address of all agents operating on the Reservation.
- (2) The location of all distribution or sales houses or offices or other places of business on the Reservation.
- (3) Such other information as the Tax Department may require.

11-60-240 Presumption of Purchase of Use; Resale Certificate

For the purpose of the proper administration and to prevent evasion of the use tax and the duty to collect the use tax, it is presumed that tangible personal property sold by any person for delivery on the Reservation until the contrary is established. The burden of providing the contrary is upon the person who makes the sale unless that person takes from the purchaser a certificate to the effect that the property is purchased for resale.

11-60-250 Effect of Resale Certificate

A resale certificate relieves the person selling the property from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the permit provided by this Chapter and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase, whether the property will be sold or will be used for some other purpose.

11-60-260 Form and Contents of Resale Certificate

- (1) The resale certificate must:
 - a. Be signed by and bear the name and address of the purchaser;
 - b. Indicate the number of the permit issued to the purchaser; and
 - c. Indicate the general character of the tangible personal property sold by the purchaser in the regular course of business.
- (2) The resale certificate must be substantially in such form as the Tax Department may prescribe.

11-60-270 Liability of Purchaser Giving Resale Certificate

If a purchaser who gives a resale certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used by him. If the sole use of the property other than retention, demonstration or display in the regular course of business is the rental of the property while holding it for sale, the purchaser may elect to pay the tax on the use measured by the amount of the rental charged rather than the sales price of the property to him, her or it.

11-60-280 Resale Certificate: Commingled Fungible Goods

If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

11-60-290 Presumption of Purchase from Retailer

It is presumed that tangible personal property shipped or brought to the Reservation by the purchaser on or after the effective date of this Act was purchased from a retailer on or after the effective date of this Act for storage, use or other consumption on the Reservation.

11-60-300 Presumption of Use; Off Reservation Delivery

- (1) On and after the effective date of this Act, it is presumed that tangible personal property delivered outside the Reservation to a purchaser known by the retailer to be a resident of the Reservation was purchased from a retailer for storage, use or other consumption on the Reservation and stored, used or otherwise consumed on the Reservation.
- (2) This presumption may be controverted by:
 - a. A statement in writing, signed by the purchaser or his, her or its authorized representative, and retained by the vendor, that the property was purchased for use at a designated point or points outside the Reservation.
 - b. Other evidence satisfactory to the Tax Department that the property was not purchased for storage, use or other consumption on the Reservation.

11-60-310 Applicability

Except as otherwise expressly provided by the Licensing and Taxation Ordinance, the sales and use tax imposed by this Chapter shall apply only to the same extent that the sales and use tax applies under the law of Nevada, as evidenced in NRS Chapter 372 inclusive. All exemptions, deductions, credits, etc. granted under Nevada law shall also be granted under this Chapter.

11-60-320 Exemption for Purchases Subject to Nevada Taxes

The provisions of the Sales and Use Tax shall not apply to the purchase of property off the Reservation and within the State of Nevada which is subject to the imposition of Nevada's taxes or which is exempt from taxation under Nevada law.

RETURNS & PAYMENTS

11-60-330 Date Tax Due

Except as provided in 11-60-410, the taxes imposed by this Chapter are payable to the Tax Department monthly on or before the last day of the next succeeding month.

11-60-340 Time for Filing; Person Required to File; Signatures

- (1) On or before the last day of the month following each reporting period, a return for the preceding period must be filed with the Tax Department in such form as the Tax Department may prescribe.
- (2) For purposes of the sales tax a return must be filed by each seller. For purposes of the use tax a return must be filed by each retailer maintaining a place of business on the Reservation and by each person purchasing tangible personal property, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax.
- (3) Returns must be signed by the person required to file the return or by his, her or its authorized agent but need not be verified by oath.

11-60-350 Contents of Return

- (1) For the purposes of the sales tax, the return must show the gross receipts of the seller during the preceding reporting period. For purposes of the use tax, in the case of a return filed by a retailer, the return must show the total sales price of the property sold by the retailer; the storage, use or consumption of which property became subject to the use tax during the preceding reporting period.
- (2) In the case of a return filed by a purchaser, the return must show the total sales price of the property purchased by the purchaser; the storage, use or consumption of which became subject to the use tax during the preceding reporting period.
- (3) The return must also show the amount of the taxes for the period covered by the return and such other information as the Tax Department deems necessary for the proper administration of this Chapter.

11-60-360 Reimbursement to Taxpayer for Collection of Tax

The taxpayer shall deduct and withhold from the taxes otherwise due from him 1.5% of it to reimburse himself for the cost of collecting the tax.

11-60-370 Delivery of Return – Remittance

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

11-60-380 Periods for Returns

- (1) The reporting and payment period of a taxpayer whose taxable sales do not exceed \$10,000.00 per month is a calendar quarter.
- (2) The Tax Department, if it deems this action necessary in order to insure payment to, or to facilitate the collection by the Tribe of the amount of taxes, may require returns and payment of the amount of taxes for periods other than calendar months or quarters, depending upon the principal place of business of the seller, retailer or purchaser, as the case may be, or for other than monthly or quarterly periods.

11-60-390 Lease and Rental Receipts – Reporting; Payment

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

11-60-400 Affixing and Canceling of Revenue Stamps

The Tax Department, if it deems it necessary to insure the collection of the taxes, may provide by regulation for the collection of the taxes by the affixing and canceling of revenue stamps and may prescribe the form and method of the affixing and canceling.

11-60-410 Extension of Time for Filing Return and Paying Tax

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

11-60-420 Deferral of Payment

- (1) Payment of the tax on the sale of capital goods which are made to expand a business, establish a new business, or renovate or replace capital equipment for a sales price of \$100,000.00 or more may be deferred without interest in accordance with this section. If the sales price is:
 - a. At least \$100,000.00 but less than \$350,000.00, the tax must be paid within 12 months.
 - b. At least \$350,000.00 but less than \$600,000.00, the tax must be paid within 24 months.
 - c. At least \$600,000.00 but less than \$850,000.00, the tax must be paid within 36 months.
 - d. At least \$850,000.00 but less than \$1,000,000.00, the tax must be paid within 48 months.
 - e. One million dollars or more, the tax must be paid within 60 months. Payment must be made in each month at a rate which is at least sufficient to result in payment of the total obligation within the permitted period.
- (2) A person may apply to the Tax Department for such deferment. If the Tax Department finds that the applicant is eligible for deferment under Nevada Law, NRS 372.397, the Tax Department shall allow for deferment.
- (3) Upon allowance of deferment the Tax Department shall verify the sale, the price paid and the date of the sale and assign the applicable period for payment of the deferred tax. It may require security for the payment in an amount which does not exceed the amount of tax deferred.
- (4) The Tax Department shall adopt regulations governing:
 - a. The aggregation of related purchases which are made to expand a business, establish a new business, or renovate or replace capital equipment; and
 - b. The period within which such purchases may be aggregated.

11-60-430 Re-computation of Tax – Determination on Discontinuance of Business

- (1) If the Tax Department is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the Tribe by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made of the amount due for one or for more than one period.
- (2) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in 11-60-470 as to liability arising out of that business, irrespective of whether the determination is issued before the due date of the liability as otherwise specified in this Chapter.

11-60-440 Offsetting of Overpayments; Computation of Interest

- (1) In making a determination the Tax Department may offset an overpayment for a period, together with interest on the overpayment, against any underpayment of another period, against any penalty, and against the interest on the underpayment.
- (2) The interest on any underpayment or overpayment must be computed in the manner set forth under Nevada Law NRS 360.403 and 372.660.

11-60-450 Disallowance of Interest

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

11-60-460 Notice of Tax Department's Determination; Service by Mail Complete Upon Deposit with United States Postal Service

- (1) The Tax Department shall give to the retailer or person storing, using or consuming tangible personal property written notice of its determination.
- (2) The notice may be served personally or by mail: if by mail, the notice must be addressed to the retailer or person storing, using or consuming tangible personal property at his, her or its address as it appears in the records of the Tax Department.
- (3) In case of service by mail of any notice required by this Chapter, the service is complete at the time of deposit with the United States Postal Service.

11-60-470 Time within which Notice of Determination Must be Mailed; Consent to Later Mailing of Notice

- (1) Except in the case of fraud, intent to evade this Chapter or regulations adopted under it, or a failure to make a return, every notice of the determination of a deficiency must be personally served or mailed within 3 years after the last day of the calendar month following the period for which the amount is proposed to be determined or within 3 years after the return is filed, whichever period expires later. In the case of a failure to make a return, every notice of determination must be mailed or personally served within 8 years after the last day of the calendar month following the period for which the amount is proposed to be determined.
- (2) If, before the expiration of the time prescribed in this section for the mailing of a notice of determination, the taxpayer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time before the expiration of the agreed upon period. The period so agreed upon may be extended by

subsequent agreements in writing made before the expiration of the period previously agreed upon.

11-60-480 Estimation and Computation by Tax Department; Discontinuance of Business

- (1) If any person fails to make a return, the Tax Department shall make an estimate of the amount of the gross receipts of the person, or as the case may be, of the amount of the total sales price of tangible personal property sold or purchased by the person, the storage, use or other consumption of which on the Reservation is subject to the use tax. The estimate must be made for the period or periods in respect to which the person failed to make a return and be based upon any information which is in the Tax Department's possession or may come into its possession. Upon the basis of that estimate, the Tax Department shall compute and determine the amount required to be paid to the Tribe, adding to the sum thus arrived at a penalty equal to 10 percent of the sum. One or more determinations may be made for one or for more than one period.
- (2) The interest on any underpayment or overpayment shall be computed in the manner set forth under Nevada law; NRS 360.403 and 372.660.

11-60-490 Interest on Amount of Determination

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

11-60-500 Penalty for Failure to File Return Resulting from Fraud or Intent to Evade

If the failure of any person to file a return is due to fraud or intent to evade this Chapter or regulations, a penalty of 25 percent (25%) of the amount required to be paid by the person, exclusive of penalties, must be added to it in addition to the 10 percent (10%) penalty provided in 11-60-520.

11-60-510 Notice of Estimate, Determination and Penalty: Service

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

11-60-520 Effectiveness of Redetermination Unless Appealed, Date Upon Which Determined Amount is Due, Penalties

- (1) Unless the Tax Department's determination is appealed pursuant to the applicable provisions of this Licensing and Taxation Ordinance, the order or decision of the Tax Department as to a determination becomes effective after service upon the taxpayer of the notice of estimate and determination pursuant to 11-60-510. If appealed, the determination becomes final after all appeals are exhausted.
- (2) All determinations of amounts of taxes made by the Tax Department under 11-60-430 thru 11-60-520 are due at the time they become effective. If they are not paid when due, a penalty of 10 percent (10%) of the amount of the determination, exclusive of interest and other penalties, must be added to it.

11-60-530 Authority of Tax Department; Amount; Sales; Return of Surplus

- (1) The Tax Department, whenever it deems it necessary to insure compliance with this Chapter may require any person subject to the Chapter to place with it such security as the Tax Department may determine. The Tax Department shall fix the amount of the security which, except as provided in subsection 2, may not be greater than twice the estimated average tax due quarterly of persons filing returns for quarterly periods or three times the estimated average tax due monthly of persons filing for monthly periods, determined in such manner as the Tax Department deems proper.
- (2) In the case of persons who are habitually delinquent in their obligations under this Chapter, the amount of the security may not be greater than three times the average actual tax due quarterly of persons filing returns for quarterly periods or five times the average actual tax due monthly of persons filing returns for monthly periods.
- (3) The limitations provided in this section apply regardless of the type of security placed with the Tax Department.
- (4) The amount of the security may be increased or decreased by the Tax Department subject to the limitations provided in this section.
- (5) The Tax Department may sell the security at public auction if it becomes necessary to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale may be served upon the person who placed the security personally or by mail; if by mail, service must be made in the manner prescribed for service of a notice of a deficiency determination and must be addressed to the person at his address as it appears in the records of the Tax Department. Security in the form of a bearer bond issued by the United States or the State of Nevada which has a prevailing market price may be sold by the Tax Department at a private sale at a price not lower than the prevailing market price.
- (6) Upon any sale any surplus above the amounts due must be returned to the person who placed the security.

11-60-540 Evidentiary Effect of Certificate Showing Delinquency

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

11-60-550 Successor or Assignee to Withhold Tax: From Purchase Price

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

11-60-560 Liability of Purchaser for Failure to Withhold Sufficient Amount; Release

- (1) If the purchaser of a business or stock of goods fails to withhold the purchase price as required, he, she or it becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within 60 days after receiving a written request from the purchaser for a certificate,

or within 60 days from the date the former owner's records are made available for audit, whichever period expires later, but not later than 90 days after receiving the request, the Tax Department shall issue the certificate or mail notice to the purchaser at his address as it appears on the records of the Tax Department of the amount that must be paid as a condition of issuing the certificate.

- (2) Failure of the Tax Department to mail the notice releases the purchaser from any further obligation to withhold the purchase price.
- (3) The time within which the obligation of a successor may be enforced begins at the time the retailer sells out his business or stock of goods or at the time that the determination against the retailer becomes final, whichever event occurs later.

11-60-570 Certification of Excess Amount Collected; Credit and Refund; Overpayment of Use Tax by Purchaser

- (1) If the Tax Department determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Tax Department shall set forth that fact in its records and certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. The excess amount collected or paid must be credited on any amounts then due from the person under this Chapter, and the balance refunded to the person, or his successors, administrators, or executors.
- (2) Any overpayment of the Use Tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefore pursuant to sections 34 to 38, inclusive, of the Sales and Use Tax Act (chapter 397, Statutes of Nevada 1955) and 11-60-200 to 11-60-240 inclusive, must be credited or refunded by the Tribe to the purchaser.

11-60-580 Limitations on Claims for Refund or Credit. Except as provided in this chapter.

- (1) No refund may be allowed unless a claim for it is filed with the Tax Department within 3 years from the last day of the month following the close of the period for which the overpayment was made, or, with respect to determination made under 11-60-430 to 11-60-520 inclusive, within 6 months from the date of overpayment, whichever period expires later.
- (2) No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Tax Department within that period, or unless the credit relates to a period for which a waiver is given pursuant to 11-60-470.

11-60-590 Credit or Refund for Use Tax: Reimbursement of Vendor for Sales Tax

No credit or refund of any amount paid pursuant to the Use Tax imposed under this chapter may be allowed on the ground that the storage, use or other consumption of the property is exempt under section 65 of the Nevada Sales and Use Tax Act, unless the person who paid the amount reimburses the vendors for the amount of the Sales Tax imposed upon his vendor with respect to the sale of the property and paid by his vendor to the Tribe.

11-60-600 Form and Contents of Claim for Credit or Refund

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

- 11-60-610 Failure to File Claim Constitutes Waiver**
Failure to file a claim within the time prescribed in 11-30-170 constitutes a waiver of any demand against the Tribe on account of overpayment.
- 11-60-620 Service of Notice of Disallowance of Claim**
Within 30 days after disallowing any claim in whole or in part, the Tax Department shall service notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.
- 11-60-630 Injunction or Other Process to Prevent Collection of Tax Prohibited**
No injunction, writ of mandate or other legal or equitable process may issue in any suit, action, or proceeding in any court against the Tribe or against any officer of the Tribe to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected.
- 11-60-640 Records to be Kept by Sellers, Retailers and Others**
Notwithstanding the provisions of Section 11-30-140 to the contrary:
- (1) Every seller, every retailer, and every person storing, using or otherwise consuming on the Reservation tangible personal property purchased from a retailer shall keep records, receipts, invoices and other pertinent papers in such form as the Tax Department may require.
 - (2) Every seller, retailer or person who files the returns required under this Chapter shall keep the records for not less than four (4) years from their making unless the Tax Department in writing authorizes their destruction at an earlier time.
 - (3) Every seller, retailer, or person who fails to file the returns required under this chapter shall keep the records for not less than eight (8) years from their making unless the Tax Department in writing authorizes their destruction.
- 11-60-650 Claim for Refund or Credit Required**
No suit or proceeding may be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been filed, and payment under protest has been made in accordance with the provisions of Section 11-30-170.
- 11-60-660 Examination of Records; Investigation of Business**
The Tax Department, or any person authorized in writing by it, may examine the books, papers, records and equipment of any person selling tangible personal property or any person liable for the Use Tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.
- 11-60-670 Reports for Administering Use Tax: Contents**
In its administration of the Use Tax, the Tax Department may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property, the storage, use or other consumption of which is subject to the tax. The report must:
- (1) Be filed when the Tax Department requires; and

- (2) Set forth the names and addresses of purchasers of the tangible personal property, the sales price of the property, the date of sale, and such other information as the Tax Department may require.

11-60-680 Disclosure of Information Unlawful; Exceptions

- (1) Except as otherwise provided in this section, it is a misdemeanor for any member of the Tax Department or officer or employee of the Tax Department to make known in any manner whatever the business affairs operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount of or source of income, profits, losses, expenditures or any particular of them, set forth or disclosed in any return, or to permit any return or copy of a return, or any book containing any abstract or particulars of it to be seen, copied or examined by any person not connected with the Tax Department.
- (2) The Tax Department may agree with the governing body of any county, city or town or with any other governmental entity for the continuing exchange of information concerning taxpayers.
- (3) The Business Council may, by general or special order, authorize examination of the records maintained by the Tax Department under this Chapter by Tax Department officers, by tax officers of the State of Nevada or any other state, by the Federal Government, or by any other person. The information so obtained may not be made public except to the extent and in the manner that the order may authorize that it be made public.
- (4) Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amount of any unpaid tax or amounts of tax required to be collected, interest, and penalties.
- (5) Relevant information may be disclosed as evidence in an appeal by the taxpayer from a determination of tax due.

11-60-690 Failure to Make Return or Furnish Date

Any retailer or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplement return or other data required by the Tax Department, or who renders a false or fraudulent return shall be subject to a civil fine or not more than \$500.00 for each incident.

11-60-700 False or Fraudulent Return

Any person who makes, renders, signs or verifies any report, who makes any false or fraudulent return, with intent to defeat or evade the determination of an amount due required by law to be made, shall for each offense be fined not less than \$300.00 nor more than \$5,000.00 or be imprisoned for not more than one year in the Tribal jail, or be punished by both fine and imprisonment.

- 11-60-710 Sales and Use Tax Account: Remittances; Deposits**
All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid to the Tribe under this Chapter must be paid to the Tribe's Finance Department in the form of remittances payable to the Tribe or FPST Finance Department. All payments must include the taxpayer's ID number issued by the Tax Department for record-keeping and accounting purposes.
- 11-60-720 Sales and Use Tax Account Refunds**
The money collected from Sales and Use Taxes may be, upon order of the Tax Department, used for refunds under this Chapter, in accordance with the Tribe's Financial Policies.
- 11-60-730 Remedies of Tribe are Cumulative**
The remedies of the Tribe provided for in this Chapter are cumulative, and no action by the Tax Department constitutes an election by the Tribe to pursue any remedy to the exclusion of any other remedy for which provision is made in this Chapter.
- 11-60-740 Tax Department's Authority**
In all proceedings under this Chapter the Tax Department may act for and on behalf of the people of the Tribe, subject to supervision of the Tribal Treasurer and control of the Fallon Business Council.

CHAPTER 7

TOBACCO TAX

11-70-010 Definitions

As used in this Chapter, the following words and phrases shall have the meaning set forth herein, unless otherwise clearly required. In addition to the definitions contained in this section, all terminologies and concepts as defined in Section 11-20-010 of the Code shall apply hereunder.

- (1) **“Cigarette”** means all rolled tobacco or any substitute thereof wrapped in paper or any substitute thereof other than tobacco.
- (2) **“Cigarette vending machine operator”** means any person licensed by the Tribe to sell cigarettes within the Reservation by means of coin operated machines.
- (3) **“Consumer”** means any person who comes into possession of cigarettes on the Reservation as a final user for any purpose other than offering them for sale as a wholesale or retail dealer.
- (4) **“Contraband cigarettes”** means any cigarettes exported from or imported on to the reservation by any person in violation of any provision of this Chapter or which are, in any way, held in possession or constructive possession of any person not authorized under this Chapter to possess or constructively possess these cigarettes.
- (5) **“Retail dealer”** means any person who offers to sell cigarettes at retail or who is engaged in selling cigarettes at retail.
- (6) **“Sale” and “to sell”** defined. **“Sale” and “to sell”** means:
 - a. To exchange, barter, possess or traffic in;
 - b. To solicit or receive an order for;
 - c. To keep or expose for sale;
 - d. To deliver for value;
 - e. To peddle;
 - f. To possess with intent to sell;
 - g. To transfer to anyone for sale or resale;
 - h. To possess or transport in contravention of the provisions of this Chapter;
 - i. To traffic in for consideration, promised, or obtained directly or indirectly; or
 - j. To procure or allow to be procured for any reason.
- (7) **“Wholesale dealer”** means:
 - a. Any person who brings or causes to be brought onto the Reservation unauthorized cigarettes purchased from the manufacturer or another wholesaler, and who stores, sells, or otherwise disposes of them within the Reservation; and
 - b. Any person who manufactures or produces cigarettes within the Reservation and who sells or distributes them within the Reservation.

11-70-020 Authorized Searches for Unauthorized Cigarettes

In order to obtain evidence of any violation of this Chapter, the Tax Department, its agents and all Tribal law enforcement officers and revenue collecting officers shall have the right of visitation and inspection of any place where they may have reason to believe unauthorized cigarettes are stored, warehoused or kept for sale. Such visitation and inspection shall be conducted during business hours. All taxes paid under the provisions of this Chapter are direct taxes upon the consumer are pre-collected for convenience only. Taxes paid by persons other than the consumer are advances and shall be added to the selling price of the cigarettes.

11-70-030 Dealer's License Required

A person shall not engage in business as a dealer of cigarettes on the Reservation unless he first secures as a wholesale or retail cigarette dealer's license from the Tax Department.

11-70-040 Place of Business and Required Inventory for Licensing as Wholesale Dealer; Exception

Each applicant for as a wholesale cigarette dealer's license and each wholesale licensee shall:

- (1) Establish and maintain as a place of business on the Reservation; and
- (2) Keep on hand therein at all times cigarettes of wholesale value of at least \$10,000.00.

11-70-050 Application for License: Form; Contents; Fee

An application for as a cigarette dealer's license shall:

- (1) Be made to the Tax Department on forms prescribed by the Tax Department;
- (2) Include the name and address of the applicant. If the applicant is as a partnership, the application shall include the names and addresses of all partners. If the applicant is as a corporation, association, or other organization, the application shall include the names and addresses of the president, vice president, secretary and managing officer or officers';
- (3) Specify the location of the premises for which the license is sought; and
- (4) Be accompanied by the required license fee.

11-70-060 Contents of License

Each cigarette dealer's license issued under this Chapter shall set forth:

- (1) The name of the person to whom it is issued. If the license is issued under as a fictitious name, the license shall also set forth the name of each of the persons conducting the business under the fictitious name; and
- (2) The location, by street and number if possible, of the premises for which the license is issued.

11-70-070 Signing, Posting and Transfer of License

Each holder of as a cigarette dealer's license shall:

- (1) Sign the license or cause an authorized representative to sign it; and
- (2) Post the license in as a conspicuous place in the premises for which it was issued.

Licenses issued under the provisions of this Chapter are nontransferable, except that upon prior written notice to the Tax Department the location of the premises for which it was issued may be changed.

11-70-080 Privileges of Licenses; Prohibited Purchases

- (1) Wholesale cigarette dealer's licenses shall permit the holders thereof to sell cigarettes to retail dealers, or to other licensed wholesale cigarette dealers or to cigarette vending machine operators anywhere on the Reservation.
- (2) No retailer, retail cigarette dealer or cigarette vending machine operator shall purchase any cigarettes from other than licensed wholesale cigarette dealer; provided that purchases may be made from wholesalers off the Reservation who are licensed under federal or Nevada law.

11-70-090 License Fees

- (1) The Tax Department shall not charge license fees for as a retail cigarette dealer's license.
- (2) An annual license fee of \$150.00 shall be charged for each wholesale cigarette dealer's license. If any license, other than the renewal of as a delinquent license, is issued at any time during the year other than on January 1, the licensee shall pay as a proportionate part of the annual license fee.
- (3) Wholesale cigarette dealer's license fees are due and payable on January 1 of each year. If the annual license fee is not paid by January 1st, the license is canceled automatically.
- (4) A wholesale cigarette dealer's license which is canceled for nonpayment of the annual license fee may be renewed at any time by the payment of the fee plus a five percent (5%) penalty thereon.

11-70-100 Licensed Wholesale Cigarette Dealer's Bond; Waiver of Requirement

- (1) Except as otherwise provided in this section or unless waived by the Tax Department, each licensed wholesale cigarette dealer shall furnish a bond to the Tax Department conditioned for the payment of all excise taxes required to be pre-collected by him under the provisions of this Chapter. Each bond shall be in a principal sum equal to the largest amount of tax pre-collected by the wholesale cigarette dealer in any quarter of the preceding year, or if the information to establish that amount is not available, then in a sum required from a licensee operating under conditions deemed comparable by the Tax Department. No bond may be less than \$1,000.00. When cash or a certificate of deposit or investment certificate is used, the amount shall be rounded up to the next larger integral multiple of \$100.00.
- (2) The bond or undertaking shall be acceptable to and approved by the Tax Department, and a deposit of cash or negotiable United States Government bonds may be accepted in lieu of an undertaking. The wholesale cigarette dealer shall remit deposits of all United States Government bonds and cash deposits with the Finance Department and provide a copy of the receipt to the Tax Department for their records.
- (3) Upon application and as a satisfactory showing, the Tax Department may increase or decrease the amount of the required bond, based on the amount of excise tax pre-collected by the wholesale cigarette dealer.

- (4) The Tax Department may waive the requirement of a bond whenever a licensed wholesale cigarette dealer has maintained a satisfactory record of payment of excise taxes for a period of 5 consecutive years.

11-70-110 Levy, Rate and Collection of Tax

There is hereby levied a tax upon the purchase or possession of cigarettes by a consumer on the Reservation at the rate equal to that imposed under Nevada law, N.R.S. Chapter 370, as that Nevada law may be amended from time to time. The rate imposed shall be based on the applicable rate for the county in which the purchase or possession takes place. The tax shall be collected by the Finance Department and a copy of the receipt of payment provided to the Tax Department for their records, under such terms and conditions as the Tax Department shall prescribe, consistent with the provisions of this Ordinance, and with the provisions of N.R.S. 370.028.1 (c) and (d) and any regulations issued there under. The tax must be pre-collected by the wholesale or retail dealer and must be recovered from the consumer by adding the amount of the tax to the selling price.

11-70-120 Monthly Reports of Dealers

- (1) Each dealer authorized to sell cigarettes on the Reservation shall report to the Tax Department:
 - a. The inventory of all cigarettes in his possession or control at the close of business on the last day of each month; and
 - b. The total amount and value of all cigarettes sold on, or shipped onto the Reservation by the dealer during the preceding month;
- (2) The report shall be made by the 15th day of the month following shipments upon forms to be provided by the Tax Department; and
- (3) The dealer may be allowed 15 additional days to file the report, if the dealer makes prior written application to the Tax Department and the Tax Department finds good cause for an extension.

11-70-130 Suspension of License for Failure to Make Report; Suspension or Revocation of License for Other Violations

- (1) If any dealer in cigarettes upon which a pre-collected or advance tax is required to be paid fails to report to the Tax Department or its agents on or before the due date, the Tax Department may suspend his/her or its license or permit until the report is received and found to be collected.
- (2) The Tax Department may temporarily suspend or permanently revoke the license of any cigarette dealer for violating, or causing or permitting to be violated, any of the provisions of this Chapter.

11-70-140 Dealer to Maintain and Preserve Records of Cigarettes Received, Sold or Distributed

Each dealer authorized to sell cigarettes shall maintain records of all cigarettes received, sold or distributed by him. Each dealer shall also obtain and keep receipts, freight bills, invoices and other documents necessary to substantiate those records. Records and documents shall be kept at the dealer's place of business on the Reservation for not less than four (4) years unless the Tax Department authorizes in writing, their earlier removal or destruction.

11-70-150 Audit of Records by Tax Department

The Tax Department may audit the records of each dealer authorized to sell cigarettes to determine that the dealer has complied with the provisions of this Chapter.

11-70-160 Seizure of Contraband Cigarettes by Tribal Law Enforcement Officers

The Tax Department, its agents, and all peace officers of the Tribe shall seize any contraband cigarettes found or located on the Reservation.

11-70-170 Use Tax; Levy; Amount; Exemptions

- (1) Except as provided in subsection 3, a tax is hereby levied and imposed upon the use of cigarettes on the Reservation.
- (2) The amount of the use tax shall be equal to that imposed under Nevada law, as amended from time to time and the rate shall be based on the applicable rate for the county in which the use of cigarettes occurs.
- (3) The use tax does not apply where:
 - a. The Tribal Sales Tax has been paid pursuant to Chapter 6.
 - b. Tax exemption is provided for in the Licensing and Taxation Ordinance.
 - c. Purchasers have paid the Nevada cigarette tax in connection with purchases made off the Reservation.

11-70-180 Payment of Use Tax; Reports

Every person using or consuming cigarettes subject to taxation on the use thereof under the provisions of Chapter 6 shall pay such tax and make such reports thereon to the Tax Department under such regulations as may be prescribed by the Tax Department.

11-70-190 Penalty for Delinquent Payment of Use Tax; Interest

If the tax provided for in this section is not paid within such time as may be limited for payment thereof by the regulations prescribed by the Tax Department, the tax shall become delinquent and a penalty of 25 percent (25%) shall be added thereto, together with interest at the rate of 1 percent per month until paid.

11-70-200 Special Requirements for Tribally Owned Retail and Wholesale Dealers

In those cases where as a Tribally owned retail and/or wholesale dealers' sales price exceeds the wholesale price of cigarettes by an amount at least equal to the taxes imposed by this Chapter, Tribally Owned wholesale and/or retail sellers shall be exempt from the provisions of this Chapter relating to the payment and collection of the tax imposed under 11-70-130.

11-70-210 Regulations of Tax Department

The Tax Department may make all necessary regulations for the administration and enforcement of this Chapter, including:

- (1) Necessary regulations for the keeping for records to insure compliance with this Chapter by persons dealing in both taxable and exempt cigarettes; and
- (2) Regulations authorizing persons other than dealers to possess unstamped cigarettes.

OTHER PRODUCTS MADE FROM TOBACCO

11-70-220 Definitions

As used in this Chapter, the following words and phrases shall have the meaning set forth herein, unless otherwise clearly required. In addition to the definitions contained in this section, all terminologies and concepts as defined in Section 11-20-010 of the Code shall apply hereunder.

- (1) **Other tobacco products.** “Other tobacco products” means products made from the tobacco plant, other than cigarettes.
- (2) **Retail Dealer.** “Retail Dealer” means any person other than a wholesale dealer who is engaged in selling products made from tobacco, other than cigarettes, to customers.
- (3) **Sale.** “Sale” means any transfer, exchange, barter, gift, offer for sale, or distribution for consideration of products made from tobacco, other than cigarettes.
- (4) **Wholesale dealer.** “Wholesale dealer” means any person who purchases products made from tobacco, other than cigarettes, directly from the manufacturer or who purchases those products from any other person who purchases them from the manufacturer to sell to retail dealers and who serves retail outlets from an established place of business including, but not limited to, the maintenance of a warehouse for the storage and distribution of those products.
- (5) **Wholesale price.** “Wholesale price” means the established price for which a manufacturer sells a product made from tobacco, other than cigarettes, to as a wholesale dealer before any discount or other reduction is made.

11-70-230 Levy Rate and Collection of Tax; Retention of Portion by Dealer; Penalty

- (1) There is hereby imposed upon the purchase or possession of products made from tobacco, other than cigarettes, by as a customer on the Fallon Paiute-Shoshone Reservation a tax of 30% of the wholesale price of those products.
- (2) The provisions of subsection 1 do not apply to those products which are shipped out of the Fallon Paiute-Shoshone Reservation for sale and use outside the Fallon Paiute-Shoshone Reservation.
- (3) This tax must be collected and paid by the wholesale dealer to the Finance Department, with a copy of the receipt provided to the Tax Department, before the sale of such products to the customer. The wholesale dealer is entitled to retain 2% of the taxes collected to cover the costs of collecting and administering the taxes.
- (4) Any wholesale dealer who sells any such products without first paying the tax provided for in this section is guilty of a misdemeanor.

11-70-240 Unlawful Sale of Products on Which Tax Has Not Been Paid

It is unlawful for any person to sell or offer to sell any products made from tobacco, other than cigarettes, on which the tax has not been paid as provided for in the Fallon Paiute-Shoshone Tribal Code, Chapter 7, 11-70-230.

11-70-250 Records Required of Wholesale Dealer

The wholesale dealer must procure from each manufacturer itemized invoices of all products made from tobacco, other than cigarettes, purchased from and delivered by that

manufacturer. The wholesale dealer must obtain from the manufacturer separate invoices for each purchase made. The invoice must show the name and address of the manufacturer, the date of the purchase and the wholesale price.

11-70-260 Records Required of Retail and Wholesale Dealer; Period for Retention

- (1) Every wholesale dealer must keep at his place of business complete and accurate records for that place of business, including copies of all invoices of products made from tobacco, other than cigarettes, which he holds purchases and delivers or sells on the Fallon Paiute-Shoshone Reservation. All records must be preserved for at least 3 years after the date of purchase or after the date of the last entry made on the record.
- (2) Every retail dealer shall keep at his place of business complete and accurate records for that place of business, including copies of all itemized invoices or purchases of such products purchased and delivered from wholesale dealers. The invoices must show the name and address of the wholesale dealer and the date of the purchase. All records must be preserved for 3 years after the date of the purchase.

11-70-270 Credits Allowed

- (1) The Tax Department shall allow a credit of 30% of the wholesale price, less a discount of 2% for the services rendered in collecting the tax, for products made from tobacco, other than cigarettes, that may no longer be sold. If the products have been purchased and delivered, a credit memo of the manufacturer is required for proof of returned merchandise.
- (2) A credit must also be granted for any products made from tobacco, other than cigarettes, shipped from the Fallon Paiute-Shoshone Reservation and destined for retail sale and consumption outside the Fallon Paiute-Shoshone Reservation on which the tax has previously been paid. A duplicate or copy of the invoice is required for proof of the sale outside the Fallon Paiute-Shoshone Reservation.

11-70-280 Remittance of Tax

All amounts of tax required to be paid to the Tribe pursuant to this Chapter must be paid in the form of remittances payable to the Finance Department, with a copy of the receipt provided to the Tax Department for their records.

CHAPTER 8

LICENSING REQUIREMENTS

11-80-010**Purpose**

- (1) The Fallon Paiute-Shoshone 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 lands and to the general public, and to promote economic development on tribal lands and to preserve tribal existence, the Tribe has determined that licensing fees are an appropriate method for generating revenue for the operation, maintenance, and improvement of essential tribal governmental services and programs, and for 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.
- (2) The Tax Department is authorized and directed to establish a process to fully implement the provisions of this Title with respect to all persons doing business on tribal lands. The Tax Department will seek ways to enhance the jurisdiction of the Tribe by reviewing existing licenses, leases, easements, and other commercial dealings. The Tax Department shall conduct such review in conjunction with the Office of the Chairman and the Office of the Tribal Treasurer, as well as with the Tribe's Legal Counsel as necessary.
- (3) The Tax Department may, by direction of the Chairman and Treasurer, work with the Tribe's Legal Counsel to engage in a process of re-writing current licenses, leases, and easements to enhance the Tribe's jurisdiction. The Tax Department may develop new relationships between the Tribe and persons conducting business on tribal lands. Nothing contained herein shall preclude the ability of the Council to enter into such relationships on its own accord or exercise any of the powers reserved to it under this Title.

BUSINESS LICENSES

11-80-020**License Required**

No person, shall engage or carry on any trade, business, profession, or commercial activity of any sort for which a license may be required by this Act until a business license is obtained, except as provided under the exemption provisions of this Chapter.

11-80-030**Definitions**

As used in this Chapter, the following words and phrases shall have the meaning set forth herein, unless otherwise clearly required. In addition to the definitions contained in this section, all terminologies and concepts as defined in Section 11-20-010 of the Code shall apply hereunder.

- (1) **"Business"** means 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 tribal lands.

- (2) **“Peddler”** means any person with no fixed place of business who goes from any place to place within the exterior boundaries of the Tribe’s lands for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, or attempting to obtain orders for, the goods, wares, products, merchandise, food, or other property that the person is carrying or otherwise transporting. Peddler shall include a transient merchant, meaning any person with no fixed place of business who temporarily engages in business out of a vehicle, cart, stand, wagon, trailer, boxcar, tent, other portable shelter, empty store front, or from one’s person, on tribal lands for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering goods, wares, products, merchandise, food, or other property, and who does not remain or intend to remain in any one location or within 100 yards of that location for more than four (4) consecutive days.
- (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.
- (4) **“Tribal lands”** means the area within the exterior boundaries of the Fallon Paiute-Shoshone Tribe’s Reservation, Colony, or lands added thereto or any lands under jurisdiction of the Tribe.

11-80-040**Business License Required of All Businesses; No Effect on Other Laws**

- (1) All persons conducting or engaged in business or trade upon tribal lands must obtain a tribal business license and pay a license fee, as provided for in this Title, prior to engaging in any such business. For any person engaged in such business on the effective date of this Title operating pursuant to a tribal business license, said license shall remain in effect until the natural expiration of its term, at which time the person shall be required to obtain a new tribal business license as provided in this chapter.
- (2) The tribal business license provided for in this chapter is required of every business upon tribal lands, whether temporary or permanent, regardless of whether such business is required to obtain any other license or permit required under the laws of the Tribe, and shall include all entities required to obtain a federal tax identification number.
- (3) Separate licensees shall be obtained for each branch establishment or each separate location of a business.

11-80-050**Exemptions**

- (1) The following shall not be required to obtain a license under this Title:
 - a. Federal, state and local governmental entities.
 - b. Tribal programs and/or departments performing essential governmental functions.

- c. Persons employed by a business subject to the license requirements of this Title, including, but not limited to:
 - 1. persons employed by a business required to obtain a license under this Title who are engaged in delivery, in the regular course of business, of food items for immediate consumption or other goods prepared by a business with a fixed permanent location to the premises of a person ordering or otherwise entitled to the same; and
 - 2. persons canvassing or soliciting for businesses that are not required to pay a fee for the issuance of a license under this Title.
 - d. Persons engaged in the type of sales commonly known as garage sales, rummage sales, or estate sales.
- (2) The following shall not be required to pay a fee for the issuance of a license under this Title:
- a. any church engaged in raising funds for religious or charitable purposes;
 - b. any school, club, or athletic organization engaged in staging athletic events for which an admission fee is charged, provided such admission fees do not accrue to the personal benefit of any individual; and
 - c. any accredited school, no part of the income of which accrues to the personal benefit of any individual.
 - d. any other business, the entire proceeds of which, are distributed to any charitable, religious, educational, or other non-profit Native American group or organization.
 - e. Tribal members engaged in the creation of traditional Indian art or handicrafts in their home or selling of traditional Indian art and handicraft materials.
 - f. Tribal members engaged in the traditional practice of medicine.

11-80-060 Application for Business License.

- (1) **Requirements.** An applicant intending to conduct business within lands subject to the jurisdiction of the Tribes shall complete and file with the Tax Department an application for a business license form, as prescribed by the Tax Department, within thirty (30) days of first conducting business. Persons engaged in such business on the effective date of this Title shall complete and file an application for a business license within thirty (30) days of the effective date of this Title.
- (2) **Late Filings – Penalties.** Failure to complete or file a license application when due shall result in the imposition of a late fee. Failure to renew an annual license by January 1 shall also result in the imposition of a late fee. The late fee shall be twenty dollars (\$20.00) if paid after the due date but within thirty days of its due date. If the license fee is not paid within thirty days after its due date, the late fee shall be an additional ten dollars (\$10.00) for each subsequent month the fee is not paid. Late fees shall be added to and included within the total license fee.
- (3) **Required Information on Application.** All applications shall include, but are not limited to, the following:
- a. A description of the type of business;

- b. The name and address (mailing and physical locations) of the owner or owners of the business;
 - c. The trade name, if any, to be used by the company;
 - d. The locations on the Tribe's lands at which the business will be conducted;
 - e. A sworn statement that the applicant will comply with all tribal laws applicable to the applicant's business;
 - f. A statement that the applicant consents to the jurisdiction of the Fallon Tribal Court and service of process in matters arising from the conduct of business;
 - g. The name, address and signature of the agent who will accept service of process on behalf of the company.
- (4) **Notification.** The Tax Department shall notify the applicant by regular mail within fourteen (14) days after receipt of the application whether a license shall be issued. The license shall include the business license and a Tribal Taxpayer Identification Number.
- (5) **Renewals.** An application for renewal of a tribal business license should be filed with the Tax Department no later than thirty (30) days prior to the expiration date of the license to avoid processing delays.

11-80-070 License Classes and Fees.

- (1) **License Types**
- a. **Temporary Business License.** All persons engaged in business on tribal lands for a period of seven (7) days or less shall have a temporary business license. The fee for a temporary business license is ten dollars (\$10.00).
 - b. **Seasonal Business License.** All persons engaged in business on tribal lands for a period of three (3) months or less shall have a seasonal business license. The fee for a seasonal business license is twenty-five dollars (\$25.00).
 - c. **Permanent Business License.** All persons engaged in business on Tribal lands for a period exceeding three (3) months shall have a permanent business license. The fee for a permanent business license is fifty dollars (\$50.00) annually.
 - 1. Since all licenses will expire on December 31st of each year, the Permanent License Fee shall be prorated based on the quarter in which the month the application is filed, i.e. January – March at 100%; April – June at 75%; July – September at 50%; October – December at 25%.
 - d. **Tribal Member Arts & Crafts Business License.** Tribal members who create or sell Indian Arts or Crafts may, upon application from the Tribal member, request to have the Tax Department issue a Tribal Member Arts & Crafts Business License. There shall be no fee for a Tribal Member Arts & Crafts Business License. A licensee holding a Tribal Member Arts & Crafts Business License must reapply annually to receive a new business license.
- (2) **Remittance of Fees.** All license fees required to be paid to the Tribe, pursuant this Chapter 8, inclusive, must be paid in the form of remittances payable to the Finance Department, with a copy of the receipt provided to the Tax Department for their records.

- (3) **Responsibility to Pay Applicable Taxes/Fees.** Persons who obtain a Fallon Tribal business license shall in a timely manner, report and remit all sales and use taxes, cigarette excise taxes, and any and all other applicable taxes and/or fees to the proper agencies and/or authorities.
- (4) **Collection of Fees.** The Tax Department is authorized and empowered by the Council to collect from any person, by legal proceedings in the Fallon Tribal Court, the amount of any such unpaid licenses fees and/or taxes together with interest and/or penalty due.
- (5) **Failure to Pay Fees/Taxes.** In addition to the institution of legal proceeding for the collection of any of the unpaid fees, taxes, interest, and/or penalty, the Council, upon the recommendation of the Tax Department, is empowered with respect to any person not a Tribal member:
 - a. to prohibit such person from coming upon any and all lands subject to the jurisdiction of the Tribe and to enforce such prohibition pursuant to its Law & Order Codes and Constitution & Bylaws; and
 - b. to prohibit such person from engaging in any business or other occupation upon any and all lands subject to the jurisdiction of the Tribe.

11-80-080 Consolidated License.

For businesses with multiple branches or locations, the Tax Department may issue a consolidated license covering all of the person's businesses, provided that the same type of business is conducted at each location (a separate application, though, must still be filled out for each location). The fee for a consolidated license shall be determined based on the class of license issued pursuant to this Article multiplied by the number of separate branches or locations of the business.

11-80-090 Denial of License or Renewal.

The award of a business license is a privilege and not a right. A business license may be denied if it is determined that:

- (1) the application is incomplete or the appropriate fee has not been paid; or
- (2) the applicant has materially misrepresented facts contained in the application or has filed an application which is incomplete in any way; or
- (3) the applicant is presently in non-compliance with tribal law or has engaged in a fraudulent, deceptive, or dishonest practice; or
- (4) the applicant is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in commercial activity or any particular practice related to such activity; or
- (5) the business will threaten the political integrity, economic security, or health and welfare of the Tribe.

In such instances, the Director shall issue an order of denial to the applicant by certified mail, return receipt requested, within fourteen (14) calendar days after receipt of the application. The order of denial shall set forth the reasons for such denial and shall state that the applicant has seven (7) business days from receipt of the order of denial to file a request for reconsideration with the Tax Department under 11-80-100 of this Title.

11-80-100 Process for Reconsideration and Appeal of License Denial

- (1) **Filing Procedure.** Any person who is denied a business license, pursuant to Section 11-80-090 of this Title, may file a request for reconsideration as follows:
 - a. The Request for Reconsideration shall be in writing, dated and signed by the aggrieved party;
 - b. The Request for Reconsideration shall include a concise statement of relief requested and any new or previously unconsidered information that supports the relief; and
 - c. A copy of the Request for Reconsideration shall be given to the Tax Department within seven business days from the person's receipt of the order of denial.
- (2) **Expedited Administrative Hearing.** Within seven (7) business days of receipt of the Request for Reconsideration, the Tax Department shall set a date for hearing and shall notify the applicant.
 - a. A closed hearing shall be held within thirty (30) calendar days of receipt of the Request for Reconsideration;
 - b. At the closed hearing, the aggrieved party shall be given the opportunity to present any testimony, documents, or other evidence to support the request; and
 - c. The Tax Department shall inform the aggrieved party of the final determination, in writing by certified mail, within seven (7) business days of the hearing.
- (3) **Appeal from Final Determination.** Any person who is aggrieved by a final determination of the Tax Department, pursuant to subsection (2) above, may appeal the decision to the Council.
 - a. The aggrieved party shall file a written Notice of Appeal with the Tribal Secretary who shall add the item to the next closed Council meeting (but in no situation should the hearing date be set beyond a two week period for the filing);
 - b. The aggrieved party shall attach to the written Notice of Appeal, copies of the original Request for Reconsideration and supporting documentation presented at the hearing;
 - c. Upon the filing of the Notice of Appeal, the Tax Department shall provide any record of the expedited administrative hearing to the Council;
 - d. The aggrieved party and the Tax Department shall attend the Council meeting at which the appeal is to be heard;
 - e. The Council shall reverse a final determination of the Tax Department if it finds that the original denial determination was arbitrary, capricious, or an abuse of discretion.

11-80-110 Conditions of License.

- (1) 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 Council. Each licensee consents to the jurisdiction of Fallon Tribal Court as to any cause of action arising in connection with the transaction of any business within lands under jurisdiction of the Tribe, or any tortious acts committed in connection with the transaction of any business on tribal lands.

- (2) Each licensee consents to the service of process of the Fallon Tribal Court with respect to all actions over which the Court has subject matter jurisdiction, in accordance with the Rules of Procedure of the Court. Each licensee shall respond in a timely manner to requests by the Tax Department for information about the licensee's business for the purpose of establishing whether the licensee is in compliance with this Title.

11-80-120 Failure to Obtain License or to Comply with Terms of License

- (1) **Failure to Obtain a License.** Any person who fails to obtain a license required under this Title shall be issued a Notice of Violation, which may include an order to show cause why that person should not be enjoined from doing business on tribal lands without a license.
- (2) **Failure to Comply with License.** Any person who fails to comply with the terms of a license under this Title shall be issued a Notice of Violation, which may include an order to show cause why that person's license should not be revoked.

11-80-130 Notice of Violation

The Notice of Violation, as set forth in Section 11-80-120, shall describe the specific violation, the amount of any monetary penalty, and if applicable, shall order the violation to cease and desist. The notice shall be given to the person directly or sent by certified mail with return receipt requested.

11-80-140 Revocation of License

- (1) Licenses issued under the provisions of this Title may be revoked for any of the following causes:
 - a. Fraud, misrepresentation, or incorrect statement contained in the application for license; or
 - b. Fraud or misrepresentation made in the course of carrying on the business; or
 - c. The license holder is in violation of any or all Tribal Laws, Codes, Resolutions, Ordinances, Compacts, or Agreement of any kind as determined by the Tax Department, subject to review by the Council.
 - d. Conducting business in an unlawful manner or in such a manner as to constitute a danger to public health, safety, or general welfare; or
 - e. Failure to comply with any other applicable licensing, certification, or bonding requirements specific to the business licensed.
- (2) When it is brought to the attention of the Tribe that grounds for revocation exist, the Tax Department shall investigate the matter and, if accurate, shall issue a written Notice of Revocation to the licensee.

11-80-150 Notice of Revocation.

The Notice of Revocation shall describe the specific grounds for the revocation and order the licensee to cease and desist business immediately. The notice shall be given to the person directly or sent by certified mail with return receipt requested.

11-80-160 Violations; Additional Penalties; Appeal.

- (1) **Violations.** Conducting business on tribal lands in the absence of a tribal business license or the failure by any licensee to comply with the requirements of this Title shall subject the person to any of the following:
 - a. forfeiture of license;
 - b. forfeiture to the Tribe of all improvements constructed on, or any personal and real property found upon, tribally owned lands;
 - c. expulsion from the Tribe and its lands; and/or
 - d. civil fines as provided in subsection (2), below.
- (2) **Civil Fines.** 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 Title, may be assessed a penalty as follows:
 - a. First Violation. Penalty of not less than Seventy-Five Dollars (\$75.00) nor more than One Thousand Dollars (\$1,000.00)
 - b. Second Violation. Penalty of not less than One Hundred Fifty Dollars (\$150.00) nor more than One Thousand Dollars (\$1,000.00)
 - c. Third Violation. Penalty of not less than Three Hundred Dollars (\$300.00) nor more than One Thousand Dollars (\$1,000.00)
 - d. Fourth and Each Subsequent Violation. Penalty of not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) or five (5) times the amount of the applicable license licensee fee imposed, if any, whichever is higher

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.
- (3) **Late Fees/Penalties.** Failure to pay the license fee on or before the due date of any amount payable hereunder whether as licensee fee or otherwise shall bear interest at a rate of ten percent (10%) per year from the date of which the fee became due and payable. In addition to any other penalties or interest imposed under this Title, a person in violation of this Title may be required to pay the costs of collection incident to any administrative or judicial proceeding brought to enforce the provisions of this Title.
- (4) **Enforcement Authority.** The Tax Department shall have the authority to take all action necessary to enforce the terms of this Title and shall recommend to the Tribal Council/Tribal Court on the assessment of penalties and costs of collection and issuing of notices of violation of this Title. Notices of violation shall be provided, where applicable, by personal service or by sending notice to the person engaged in business at the business owner's last known address of record and depositing such into the U.S. certified mail, return receipt requested. Actual notice, however and from whoever received, shall always be effective. 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.
- (5) **Protests/Appeals.** A notice of violation issued by the Council shall be the final decision of the Tribe. A person receiving a notice of violation may protest the notice of violation. Any protest shall be filed within thirty (30) days from the date of issuance of the notice of violation. Protests shall be filed in Fallon Tribal Court in accordance with Tribal Law and the rules of the Tribal Court.

11-80-170**Appeals of Revocation.****(1) Administrative Appeals.**

- a. After receiving a Notice of Revocation, a licensee may make an administrative appeal to the Council. A Notice of Appeal must be filed with the Tribal Secretary within five (5) business days of the notice of violation or notice of revocation, unless additional time has been granted after written request by the licensee.
- b. Upon receipt of the notice of appeal, the Tribal Secretary shall notify the appellant in person, by telephone, or by other electronic means, of the time set for the hearing. The hearing shall take place within 15 calendar days after filing of the notice of appeal, unless this time is extended by the Council.
- c. At the hearing, the appellant shall be entitled to present testimony, to cross-examine opposing witnesses, and to present other evidence to support their case. All oral testimony shall be recorded and retained until expiration of the time within which the appellant could appeal to Tribal Court. In the event of such an appeal, the Tribal Secretary shall immediately certify the record and deliver the recordings and all other evidence in the record to the Tribal Court. If no appeal is filed, all evidence, except recordings, submitted by the applicant shall be returned.
- d. The Council shall rule upon the appeal within five (5) business days after the hearing and shall issue a written letter informing the appellant of its decision. If the appeal is denied, the ruling shall state that the applicant has five (5) business days from receipt thereof to file a notice of appeal with the Fallon Tribal Court as provided under subsection (2). Failure to follow the administrative appeals in this section will preclude the appellant of any appeal rights in the Fallon Tribal Court.

(2) Fallon Tribal Court Appeal.

- a. If the Council denies the administrative appeal, the licensee may appeal to Tribal Court. A written Notice of Appeal must be filed with the court within five (5) business days of receipt of the Council's decision. Appeals shall be governed in all respects in accordance with the rules and procedures of the Tribal Court, except as specified in provision b below.
- b. Upon receipt of a Notice of Appeal from an administrative hearing, the Tribal Court shall notify the applicant of the time set for the appeal hearing. The appeal shall be decided by the Tribal Court sitting without a jury, solely on the record established during the administrative hearing. No new or additional evidence may be introduced during the appeal. The Tribal Court shall uphold all factual findings of the Council unless the Court determines that such findings are not supported by substantial evidence in the record, and the standard of review shall be abuse of discretion.

11-80-180 Reinstatement of License.

The Tax Department may, upon application, reinstate a business license that has been revoked upon the payment of all license fees, penalties, and interest owed by the business pursuant to this Title, provided the business is otherwise in compliance with Tribal law, and provided further that the Tax Department may require as a condition of such reinstatement that the applicant furnish a bond to the Tribe, or other adequate security, as security for payment of any tribal license fees that may become due. An applicant shall pay a \$50.00 reinstatement fee.

11-80-190 License Not Transferable.

The business license provided for in this Chapter is not transferable, 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.

LIQUOR & ALCOHOL LICENSES

11-80-200 License Required

No person may sell liquor within the Reservation, or manufacture liquor within the Reservation for sale anywhere, except as specifically authorized by a license issued in accordance with this Chapter.

11-80-210 Definitions

As used in this Chapter, the following words and phrases shall have the meaning set forth herein, unless otherwise clearly required. In addition to the definitions contained in this section, all terminologies and concepts as defined in Section 11-20-010 of the Code shall apply hereunder.

- (1) “Beer” means any beverage produced by the fermentation of barley, malt, hops, or a combination of these, including beverages commonly known as porter, ale, and malt liquor, if they contain not more than twelve percent (12%) alcohol (ethanol) by volume.
- (2) “Broken Package” means any container of liquor on which the applicable tax seal has been broken or removed, or from which the cap, cork, seal, or tab inserted by the manufacturer has been removed.
- (3) “License” means a Liquor & Alcohol License issued pursuant to this Chapter.
- (4) “Licensee” means any person issued a license pursuant to this Chapter.
- (5) “Liquor” includes alcohol (ethanol) and beverages containing more than one-half of one percent (0.5%) by volume, including beverages commonly known as brandy, whiskey, rum, tequila, mescal, gin, wine, beer, malt liquor, and absinthe.
- (6) “Off-Sale Retailer” means any person selling liquor in unbroken packages, to be consumed elsewhere.
- (7) “On-Sale Retailer” means any person selling liquor in individual portions, by the glass, or in broken packages, for consumption at the place of sale.

- (8) “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.
- (9) “Premises” or “Licensed Premises” means the specific location or address at which a licensee is authorized to manufacture or sell liquor by the terms of his license;
- (10) “Restaurant” means and includes any public place kept, used, maintained, advertised and held out to the public, as a place at which prepared food items for immediate consumption are served and/or prepared, whether or not consumed or intended to be consumed on the premises, but shall not include coin-operated automatic food dispensing machines.
- (11) “Retailer” means any person or persons conducting a business within the boundaries of the Tribe that sells alcoholic liquor so as to entitle such person or persons to all or a portion of the net receipts from the sale thereof, and includes a Restaurant as defined above.
- (12) “Sell” means to exchange for money or for goods, either for oneself or for another, and includes offering to sell liquor by display or by advertisement, and keeping or obtaining liquor with intent to sell it;
- (13) “Wholesaler” means any person who sells liquor for subsequent resale, and includes the original manufacturer, distiller, brewer, vintner or bottler;
- (14) “Wine” means any beverage produced by the fermentation of grapes or other fruits containing natural or added sugar, including those fortified with grape brandy, if they contain not more than twenty-four percent (24%) alcohol (ethanol) by volume.

11-80-220**Exceptions**

The provisions of this Chapter do not apply to the sale of liquor upon a physician's prescription, or to ethanol used or intended for use:

- (1) for scientific research or manufacturing products other than liquor;
- (2) by a physician, medical or dental clinic, or hospital;
- (3) in preparations not fit for human consumption such as cleaning compounds and toilet products, or flavoring extracts; or
- (4) by persons exempt from regulation in accordance with the laws of the United States.

11-80-230**Registration of Salesmen**

No person may take or solicit orders for liquor within the Reservation without first registering his name, address, purpose, and the name and address of his employer or principal, on the forms prescribed by the Tax Department. Registrations require renewal each calendar year.

11-80-240 Applications

- (1) Applicants for a liquor license must file with the Tax Department on the forms it prescribes.
- (2) Upon receipt of an application, the Tax Department shall fix a date for a public hearing to determine whether a license should be issued. The hearing shall be held within thirty (30) days of the date of filing unless delayed at the request of the applicant.
- (3) The Council, upon recommendation of the Tax Department, shall issue a license only if satisfied of the applicant's capability, qualifications, and reliability, and that the best interests of the Tribe will be served by the issuance of the license.
- (4) Applications must disclose the identity of all persons who have an economic interest in the applicant's proposed business, and the nature and extent of their interests.

11-80-250 Hearings on License

At either a regular or special meeting held by the Council, anyone with an interest in the application shall be allowed to present evidence and to address the license request. This includes the applicant, any resident of the Reservation, and the owner or manager of any business located on the Reservation. The Council nevertheless may limit duplicative evidence. Any decision of the Council denying a license may be appealed to the Fallon Tribal Court within twenty (20) days. In the event of an appeal, the Tribal Court shall have judicial review jurisdiction of the action taken to determine whether the action was arbitrary, capricious, or not in accordance with the laws of the Tribe, and shall not exercise de novo review.

11-80-260 Form of Licenses

- (1) Each license shall specify the name and address of the licensee, the license class granted, the premises to which the license applies, and that such license shall expire at midnight on December 31st of the calendar year in which it is issued.
- (2) Each license may be issued for only one of the following classes:
 - a. Class 1, on-sale retailer of liquor;
 - b. Class 2, on-sale retailer of beer and wine only;
 - c. Class 3, off-sale retailer of liquor;
 - d. Class 4, off-sale retailer of beer and wine only; or
 - e. Class 5, wholesaler.
- (3) The licensee must keep the license posted at all times in a conspicuous place on the premises for which it has been issued.

11-80-270 Renewal

- (1) Application for renewal shall be made in writing on the forms developed for that purpose by the Tax Department.
- (2) Applications for license renewals for the next license year shall be submitted on or before November 1st of the preceding license year. Licensees who fail to meet this deadline shall be required to apply as new licensees. The Council shall act on all renewal applications on or before December 15th.

- (3) The Council shall not be liable for any losses incurred by a licensee resulting from cancellation, suspension or non-renewal of a license.
- (4) Upon timely application for renewal, the Council shall renew the license unless it shall be cancelled pursuant to the provisions of this Chapter hereof.

11-80-280 Transfer or Modification of Licenses

Any change in the terms of a license or, if the licensee is a partnership or corporation, change in its ownership, shall require the issuance of a new license in accordance with this Chapter. Any attempt to transfer or assign a license is void and of no effect.

11-80-290 Fees

- (1) Applications for an original license must be accompanied by a non-refundable application fee of Two Hundred Dollars (\$200.00). Applications for the renewal of a license must be accompanied by a non-refundable application fee of Fifty Dollars (\$50.00).
- (2) A license fee shall be paid before any license will be issued. The person shall pay the license fee to the Finance Department and provide a copy of the receipt to the Tax Department for their records and to ensure that a license is issued. The fee for a license shall be:
 - a. Class 1 and Class 5 licenses: One Thousand Dollars (\$1,000.00), and thereafter One Hundred Fifty Dollars (\$150.00) per each succeeding year the license is renewed; and
 - b. Class 2, Class 3 and Class 4 licenses: Five Hundred Dollars (\$500.00), and thereafter Seventy-Five Dollars (\$75.00) per each succeeding year the license is renewed.
- (3) The Board may, at the request of an applicant, limit a license to some number of months less than twelve (12), in which case the fee shall be proportional to the amount of months that the license is issued for.
- (4) All license fees and fines or other monies received by the Finance Department pursuant to this Chapter shall be deposited in the designated tax account of the Tribe.

11-80-300 Management of Licensed Premises

- (1) No licensee may reseal, reuse, or refill any package that contains or contained liquor.
- (2) No Class 1 or Class 2 licensee may lock, or permit the locking of the entrances to the licensed premises until all persons other than the licensee and his employees have left.
- (3) No licensee may change the name of his licensed premises without first obtaining written acknowledgment from the Tax Department.
- (4) Each licensee must conduct his business in a decent, orderly and respectable manner, and not permit loitering by intoxicated persons, rowdiness, undue noise, or any other disturbance offensive to the residents of the Reservation and/or surrounding communities.

- (5) Licensees must keep all books of account, invoices, bills and other records of the purchase and sale of liquor for at least two (2) years, and surrender them to the Tax Department, or to an auditor appointed by the Council upon recommendation of the Tax Department, on demand.
- (6) Licensees must pay all taxes assessed under this Chapter at the time the tax return is due.

11-80-310 Application of Laws

Licensees must comply with all applicable laws of the State of Nevada and United States governing the manufacture, distribution and sale of alcohol and alcoholic beverages, in as much such matters are not covered by this Chapter or other Tribal Law & Code or Ordinance.

11-80-320 Violations

It is unlawful:

- (1) to sell liquor without first obtaining a license in accordance with the provisions of this Chapter;
- (2) to sell liquor in violation of the terms of a license issued pursuant to this Chapter;
- (3) to sell liquor without first obtaining all necessary federal licenses, including a license to trade with the Indians in accordance with Title 25 of the United States Code, if applicable;
- (4) to take or solicit orders for the delivery of liquor from outside the Reservation, unless registered as a salesman in accordance with Section 11-80-230;
- (5) to knowingly sell liquor to a person under the age of twenty-one (21) years;
- (6) for a licensee to employ a person under nineteen years of age to manufacture, sell or dispose of spirituous liquors. This paragraph shall not prohibit the employment by an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least nineteen years of age, package or carry merchandise, including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor;
- (7) for an on-sale retailer to employ a person under nineteen years of age in any capacity connected with the handling of spirituous liquors. This paragraph does not prohibit the employment by an on-sale retailer of a person under nineteen years of age who cleans up the tables on the premises for reuse, removes dirty dishes, keeps a ready supply of needed items and helps clean up the premises.
- (8) for a wholesaler, to transport liquor except in a vehicle conspicuously marked on its outside with the name and address of the wholesaler;
- (9) for a Class 1, Class 2, Class 3, or Class 4 licensee, to obtain liquor in unbroken packages except from a Class 5 licensee or from a salesman registered in accordance with Section 11-80-230;
- (10) for a Class 1, Class 2, Class 3, or Class 4 licensee, to have any interest in the property or business of a Class 5 licensee or any other wholesale of liquor;
- (11) for a Class 1, Class 2, Class 3, or Class 4 licensee, or his employee, to consume liquor or be intoxicated while selling liquor on the licensed premises;

- (12) for a Class 1, Class 2, Class 3, or Class 4 licensee, or his employee, to accept or give gifts of liquor in connection with his business, except for the sampling of wines and beers as provided by a wholesaler in the ordinary course of the trade;
- (13) for a Class 1 or Class 2 licensee, to employ any person for the purpose of soliciting the purchase of liquor within the licensed premises, on a percentage basis or otherwise.
- (14) for a Class 1 or Class 2 licensee to sell liquor without insurance covered as required in Section 11-80-360 (2); or
- (15) for a Class 3 or Class 4 licensee, to sell liquor in broken packages, or permit the consumption of liquor on the licensed premises.

11-80-330**Penalties**

- (1) Every person violating the provisions of Section 11-80-320 is guilty of a misdemeanor and shall be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment for not more than six (6) months, or both. Each day during which any such violation shall continue, after written notice to the person in violation, shall constitute a separate offense, punishable as herein provided.
- (2) Every person violating the provision of Section 11-80-320 shall forfeit to the Tribe in a civil action a sum of not more than Five Hundred Dollars (\$500.00) for each violation. Each day during which such violation shall continue shall constitute a separate civil violation of such Section.
- (3) Subsection (1) of this Section shall not be construed to authorize the imposition of any criminal penalty against any person who, because of his status as a non-Indian or otherwise, pursuant to Federal law is not subject to the imposition of criminal penalties by the Tribe.
- (4) If an act is unlawful, pursuant to Section 11-80-320, when committed by the licensee, the licensee is also liable if the act is committed by one of his employees or agents. A licensee may not be imprisoned, however, for the act of an employee or agent in which he did not knowingly conspire or agree.

11-80-340**Intoxication**

It is unlawful:

- (1) to consume liquor from a broken package in a public place, other than premises specified in a Class 1 or Class 2 license, or a Special Event license; or
- (2) for a Class 1 or Class 2 licensee, or his employee, to sell or give liquor to an intoxicated person within the licensed premises, or permit an intoxicated person to remain on the premises.

11-80-350**Penalties**

- (1) Every person violating the provision of Section 11-80-340 is guilty of an offense and shall be punished by a fine of not more than One Hundred Dollars (\$100.00), or by imprisonment for not more than one (1) month, or both.
- (2) Every person violating the provisions of Section 11-80-340 shall forfeit to the Tribe in a civil action a sum of not more than One Hundred Dollars (\$100.00) for each violation.

- (3) Subsection (1) of this Section shall not be construed to authorize the imposition of any criminal penalty against any person who, because of his status as a non-Indian or otherwise, pursuant to Federal law is not subject to the imposition of criminal penalties by the Tribe.

11-80-360 Civil Responsibility; Insurance

- (1) Licensees under this Chapter, and their employees, are liable for injuries or damage to property resulting from their negligent or reckless conduct, whether in the management of licensed premises, or in their violation of Section 11-80-320.
- (2) All Class 1 and Class 2 licensees shall maintain insurance coverage insuring against liability under Subsection (1) of this Section, in the amount of at least \$1,000,000.00 for any one (1) accident or personal injury, and \$100,000.00 for property damage.

11-80-370 Contraband

- (1) Any liquor found in the possession, custody or control of a person other than a licensee in accordance with this Chapter, which is offered or intended for sale may be seized by a law enforcement officer of the Tribe.
- (2) Seized liquor no longer required for prosecution evidence by be sold for the benefit of the Tribe, or destroyed, under the supervision of the Tax Department and Council, after the right of appeal pursuant to Subsection (3) of this Section has expired.
- (3) The legality of any seizure of liquor may be appealed to the Tribal Court within twenty (20) days of the seizure. The Tribal Court may order the seized liquor returned to the person from whom it was seized, if warranted, but may not assess damages or costs against the Tax Department or the Tribe.
- (4) For purposes of this Section 11-80-370 only, the Tribe waives their immunity from suit subject to the provisions of Title 1 – the Tribal Court, Section 1-10-030.

11-80-380 Revocation of Licenses

- (1) The Council, upon recommendation by the Tax Department, may summarily suspend any license for up to fifteen (15) days upon a satisfactory showing of imminent danger to the public welfare, or, after notice to the licensee and a public hearing, revoke the license.
- (2) The Council must hold a hearing to determine the truth of every written complaint it receives alleging a violation of this Chapter by a licensee.
- (3) The Tax Department shall develop a set of published rules and procedures for the conduct of license revocation hearings providing, at a minimum, for the right of the licensee to appear and be represented by legal counsel subject to final approval by the Council.

11-80-390 Grounds for Suspension/Revocation

Grounds for suspension or revocation of a license include the violation of any of the provisions of this Chapter including the failure to pay all taxes at the time the tax return is due, the misrepresentation of a material fact in the licensee's application for a license, conviction of the licensee for a crime involving a maximum penalty of six (6) months imprisonment or more, and failure of the licensee to correct unhealthy or unsafe conditions on the licensed premises within a reasonable time after notice from the Tribe.

11-80-400 Appeals

- (1) Suspension or revocation of a license may be appealed to the Tribal Court within twenty (20) days. The Tribal Court may reinstate a suspended or revoked license, if warranted, but may not assess damages or costs against the Tax Department or the Tribe.
- (2) For purposes of this Section 11-80-400 only, the Tribe waives their immunity from suit subject to the provisions of Title 1 – the Tribal Court, Section 1-10-030.

SPECIAL EVENT LIQUOR LICENSES

11-80-410 Special Event Licenses

- (1) The Council, upon recommendation by the Tax Department, may issue an on-sale Special Event license to qualified organizations authorizing the sale of liquor for consumption on the premises specified for up to four (4) days. The fee for this license shall be Twenty-Five Dollars (\$25.00) per day. Applications must be made on the forms prescribed by the Tax Department, and be accompanied by a non-refundable application fee of Ten Dollars (\$10.00).
- (2) No organization may be issued more than four (4) Special Event licenses in any single year.

11-80-420 Qualifications of Organizations

- (1) A Special Event license may be issued only to an organization which has been formed for purposes of a religious, philanthropic, social, fraternal, patriotic, political or athletic nature, and not for profit, or which is a charter branch, lodge or chapter of such an organization.
- (2) A Special Event license may be issued to members of the Tribe, tribal member-owned organizations, or tribally-owned entities conducting events, functions, or activities for the Tribe.

11-80-430 Grounds for Denial

The Council, upon recommendation from the Tax Department, may deny an application for a Special Event license if it believes the sale of liquor by the applicant would be injurious to the public welfare by reason of the nature of the proposed event, its location, or the applicant's failure to conduct itself in compliance with applicable laws and regulations in the past.