

NOTTAWASEPPI HURON BAND OF POTAWATOMI
RETAIL SALES AND FOOD AND BEVERAGE TAX CODE

CHAPTER 1: RETAIL SALES TAX

ARTICLE 1. PURPOSE

SECTION 1.01 PURPOSE. THE PURPOSE OF THIS CHAPTER OF THE RETAIL SALES AND FOOD AND BEVERAGE TAX CODE IS TO RAISE GOVERNMENTAL REVENUES AND TO PROVIDE FOR THE ASSESSMENT AND COLLECTION OF A TAX ON RETAIL SALES AS SPECIFIED IN THIS CHAPTER. THE SCOPE OF THE TAX LEVIED UNDER THIS CHAPTER IS TO BE BROADLY INTERPRETED. THE INCIDENCE OF THIS TAX FALLS UPON THE PURCHASER OF RETAIL GOODS ON TRIBAL LANDS, NOT UPON THE SELLER OF THOSE RETAIL GOODS.

ARTICLE 2. DEFINITIONS

SECTION 2.01 DEFINITIONS. FOR PURPOSES OF THE TAXES COVERED BY THIS CHAPTER, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED TO THEM IN THIS SECTION.

- A. *COLLECTION AGENT* MEANS ANY SELLER OF RETAIL GOODS ON TRIBAL AND TRUST LANDS RESPONSIBLE FOR COLLECTING THE TAXES LEVIED UNDER THE TERMS OF THIS CHAPTER.
- B. *GAAP* MEANS UNITED STATES GENERALLY ACCEPTED ACCOUNTING PRINCIPLES CONSISTENTLY APPLIED TO TRIBAL GOVERNMENT OPERATIONS AS SET OUT IN GOVERNMENTAL ACCOUNTING STANDARDS BOARD STATEMENTS.
- C. *PERSON* MEANS ANY NATURAL PERSON, CORPORATION, LIMITED LIABILITY COMPANY, OTHER BUSINESS ENTITY, OR ANY GOVERNMENT AND ITS POLITICAL SUBDIVISIONS OR INSTRUMENTALITY.
- D. *PURCHASER* MEANS ANY PERSON THAT PURCHASES RETAIL GOODS.
- E. *RESIDENT TRIBAL MEMBER* MEANS A TRIBAL MEMBER WHOSE PRINCIPAL PLACE OF RESIDENCE IS LOCATED WITHIN THE TAX AGREEMENT AREA.
- F. *RETAIL SALES TAX* MEANS THE TAX IMPOSED UNDER THE TERMS OF THIS CHAPTER OF THE RETAIL SALES AND FOOD AND BEVERAGE TAX CODE.
- G. *SALES AT RETAIL* OR *RETAIL SALE* MEANS A SALE, LEASE, OR RENTAL OF TANGIBLE PERSONAL PROPERTY FOR ANY PURPOSE OTHER THAN FOR RESALE, SUBLEASE, OR SUB RENT.
- H. *STATE* MEANS THE STATE OF MICHIGAN.

- I. *TAX AGREEMENT* MEANS THE “TAX AGREEMENT BETWEEN THE NOTTAWASEPPI HURON BAND OF POTAWATOMI AND THE STATE OF MICHIGAN,” DATED DECEMBER 20, 2002, AS THE SAME MAY BE AMENDED FROM TIME-TO-TIME.
- J. *TAX AGREEMENT AREA* MEANS THE AREA DESIGNATED AS SUCH IN APPENDIX A OF THE TAX AGREEMENT, AS THE SAME MAY BE AMENDED FROM TIME TO TIME.
- K. *TAX DEPARTMENT* MEANS THE DIVISION OF THE TRIBE’S ACCOUNTING DEPARTMENT CHARGED WITH THE IMPLEMENTATION AND ADMINISTRATION OF THIS CHAPTER.
- L. *TRIBAL AND TRUST LANDS* MEANS ALL FEE LANDS OWNED BY THE TRIBE AND LANDS HELD IN TRUST BY THE FEDERAL GOVERNMENT FOR THE BENEFIT OF THE TRIBE, WHICH ARE DESIGNATED AS TRIBAL AND TRUST LANDS IN APPENDIX A OF THE TAX AGREEMENT, AS THE SAME MAY BE AMENDED FROM TIME-TO-TIME.
- M. *TRIBAL ENTITY* MEANS ANY ENTITY, OTHER THAN A SINGLE RESIDENT TRIBAL MEMBER OR AN ENTITY WHOLLY OWNED BY THE TRIBE THAT IS WHOLLY OWNED BY ANY COMBINATION OF THE TRIBE AND ITS RESIDENT TRIBAL MEMBERS, OR IS WHOLLY OWNED BY ITS RESIDENT TRIBAL MEMBERS.
- N. *TRIBAL GAMING FACILITY* MEANS ANY PLACE, FACILITY, OR LOCATION LICENSED UNDER SECTION 501 OF TITLE V, “LICENSING AND REGULATION OF BINGO AND OTHER GAMES OF CHANCE,” OF THE TRIBAL CODE, AND OPERATED UNDER THE TRIBE’S CLASS III GAMING COMPACT WITH THE STATE.
- O. *TRIBAL MEMBER* MEANS AN INDIVIDUAL WHO IS AN ENROLLED MEMBER OF THE TRIBE.
- P. *TRIBE* MEANS THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI. THE TERM TRIBE INCLUDES ALL DIVISIONS OR SUBDIVISIONS OF THE TRIBAL GOVERNMENT AND BUSINESS ENTERPRISES, INCLUDING CHARTERED ENTITIES OR INSTRUMENTALITIES THAT ARE WHOLLY OWNED BY THE TRIBE.

ARTICLE 3. RETAIL SALES TAX

SECTION 3.01 IMPOSITION AND RATE OF TAX; TAX ADDED TO SELLING PRICE; EXEMPTIONS AND RECORDS OF EXEMPT RETAIL SALES

- A. *IMPOSITION AND RATE OF TAX.* A RETAIL SALES TAX, EQUAL TO 6% OF THE SELLING PRICE OF ANY RETAIL SALE ON TRIBAL AND TRUST LANDS, WILL BE LEVIED AND COLLECTED. THE RETAIL SALES TAX WILL BE PAID BY THE PURCHASER OF THE RETAIL GOODS, WHOM SHALL BEAR THE BURDEN OF THE TAX; COLLECTED BY THE COLLECTION AGENT; AND DELIVERED TO THE TAX AUTHORITY REFERENCED UNDER THE TERMS OF THIS CHAPTER.
- B. *TAX ADDED TO SELLING PRICE.* EVERY COLLECTION AGENT WILL ADD THE AMOUNT OF THE RETAIL SALES TAX TO THE TOTAL SELLING PRICE OF THE RETAIL SALE.

THE RETAIL SALES TAX WILL BE STATED SEPARATELY ON ANY SALES RECEIPTS OR SLIPS, CHARGE TICKETS, INVOICES, STATEMENTS OF ACCOUNT, OR OTHER TANGIBLE EVIDENCE OF SALE.

C. *EXEMPTIONS.* THE FOLLOWING SALES OF TANGIBLE PERSONAL PROPERTY ARE EXEMPT FROM APPLICATION OF THE TAX IMPOSED UNDER THIS CHAPTER:

1. RETAIL SALES OF TANGIBLE PERSONAL PROPERTY PROVIDED ON A COMPLIMENTARY BASIS;
2. RETAIL SALES TO THE TRIBE OF TANGIBLE PERSONAL PROPERTY IF THE TRANSACTION TAKES PLACE AND THE PROPERTY IS USED EXCLUSIVELY WITHIN TRIBAL AND TRUST LAND,
3. RETAIL SALES TO TRIBE OF TANGIBLE PERSONAL PROPERTY THAT IS PRIMARILY USED (95% OR MORE) IN PERFORMING A TRIBAL GOVERNMENTAL FUNCTION IF THE TRANSACTION TAKES PLACE WITHIN THE AGREEMENT AREA REGARDLESS OF WHERE THE TANGIBLE PERSONAL PROPERTY IS USED. TRIBAL GOVERNMENT FUNCTIONS UNDER THE TAX AGREEMENT INCLUDE PUBLIC SAFETY AND CONSERVATION, ENVIRONMENTAL SERVICES, TRIBAL JUDICIARY, TRIBAL LEGISLATURE, TRIBAL EXECUTIVE ADMINISTRATIVE ACTIVITY, PUBLIC WELFARE AND OTHER SOCIAL SERVICES, EDUCATION, HEALTH SERVICES, HOUSING AND HOUSING SERVICES, CASINO GAMING, AND OTHER SIMILAR FUNCTIONS CUSTOMARILY PERFORMED BY STATE AND LOCAL UNITS OF GOVERNMENT.
4. RETAIL SALES OF TANGIBLE PERSONAL PROPERTY TO A RESIDENT TRIBAL MEMBER OR RESIDENT TRIBAL MEMBER'S BUSINESS, OR TRIBAL ENTITY FOR A BUSINESS PURPOSE ON TRIBAL OR TRUST LANDS, PROVIDED THE RESIDENT TRIBAL MEMBER OR ENTITY CERTIFIES THAT THE ITEM(S) PURCHASED WILL BE USED OR CONSUMED ENTIRELY AT ITS BUSINESS LOCATION ON TRIBAL AND TRUST LANDS;
5. RETAIL SALES OF TANGIBLE PERSONAL PROPERTY, OTHER THAN GASOLINE, DIESEL FUEL, CIGARETTES AND OTHER TOBACCO PRODUCTS, TO A RESIDENT TRIBAL MEMBER FOR HIS/HER PERSONAL USE WITHIN THE TAX AGREEMENT AREA;
6. RETAIL SALES OF PASSENGER VEHICLES, INCLUDING AUTOMOBILES, PICK-UP TRUCKS, RECREATIONAL VEHICLES, MOTORCYCLES, RECREATIONAL WATERCRAFT, SNOWMOBILES AND OFF-ROAD VEHICLES TO A RESIDENT TRIBAL MEMBER;
7. RETAIL SALES OF MODULAR OR MOBILE HOMES TO RESIDENT TRIBAL MEMBERS FOR USE AS THEIR PRINCIPAL RESIDENCE;

- 8 RETAIL SALES OF CONSTRUCTION MATERIALS TO A RESIDENT TRIBAL MEMBER THAT ARE PURCHASED, USED, OR ACQUIRED IN THE PERFORMANCE OF A CONTRACT FOR CONSTRUCTION OF, OR IMPROVEMENT TO, HIS/HER PRINCIPAL RESIDENCE ON TRIBAL AND TRUST LANDS;
- 9 RETAIL SALES OF VANS AND BUSES TO THE TRIBE OR TRIBAL ENTITY FOR USE IN TRANSPORTING PASSENGERS TO AND FROM ANY LOCATION WITHIN A 25-MILE RADIUS OF ANY TRIBAL GAMING FACILITY;
10. RETAIL SALES OF CIGARETTES AND OTHER TOBACCO PRODUCTS TO A RESIDENT TRIBAL MEMBER, TO THE EXTENT THOSE SALES ARE OF PRODUCT THAT HAS BEEN PURCHASED WITHOUT IMPOSITION OF STATE TOBACCO PRODUCTS TAXES;
11. RETAIL SALES OF GASOLINE AND DIESEL FUEL TO THE TRIBE OR A RESIDENT TRIBAL MEMBER, TO THE EXTENT THOSE SALES ARE OF PRODUCT THAT HAS BEEN PURCHASED WITHOUT IMPOSITION OF MOTOR FUELS TAXES;
12. RETAIL SALES OF CONSTRUCTION MATERIALS TO A TRIBAL ENTITY THAT ARE PURCHASED, USED, OR ACQUIRED IN THE PERFORMANCE OF A CONTRACT FOR CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF TRIBAL AND TRUST LANDS IF THERE IS NO CONTRACTUAL ENTITLEMENT FOR A NON-RESIDENT TRIBAL MEMBER OR NON-TRIBAL ENTITY TO REMOVE THE IMPROVEMENT(S);
- 13 RETAIL SALES OF ELECTRICITY, NATURAL GAS, ARTIFICIAL GAS, HOME HEATING FUELS AND ALL TRANSMISSION AND DISTRIBUTION CHARGES IF THE PRODUCT IS DELIVERED TO:
 - (a) LAND OWNED BY THE TRIBE OR HELD IN TRUST BY THE FEDERAL GOVERNMENT FOR THE BENEFIT OF THE TRIBE, A TRIBAL ENTITY, OR TRIBAL MEMBER AND IS WITHIN TRIBAL AND TRUST LANDS;
 - (b) LAND OCCUPIED BY THE TRIBE WITHIN THE AGREEMENT AREA THAT IS PRIMARILY USED (95% OR MORE) IN PERFORMING A GOVERNMENTAL FUNCTION; OR
 - (c) A RESIDENT TRIBAL MEMBER'S PRINCIPAL RESIDENCE LOCATED WITHIN THE TAX AGREEMENT AREA.
- 14 RETAIL SALES OF TELEPHONE (INTERSTATE OR INTRASTATE), TELEGRAPH LEASED WIRE, INTERNET, CABLE, AND OTHER SIMILAR COMMUNICATION RENDERED TO AND PAID FOR BY THE TRIBE, A TRIBAL ENTITY, OR RESIDENT TRIBAL MEMBER IF THE SERVICE IS RENDERED TO:
 - (a) LAND OWNED BY THE TRIBE OR HELD IN TRUST BY THE FEDERAL GOVERNMENT FOR THE BENEFIT OF THE TRIBE, TO THE EXTENT THAT THE LAND IS OCCUPIED BY THE TRIBE, A TRIBAL ENTITY OR A TRIBAL MEMBER AND IS WITHIN THE TRIBAL AND TRUST LANDS;

- (b) LAND OCCUPIED BY THE TRIBE WITHIN THE TAX AGREEMENT AREA THAT IS PRIMARILY USED (95% OR MORE) IN PERFORMING A GOVERNMENTAL FUNCTION; OR
 - (c) A RESIDENT TRIBAL MEMBER'S PRINCIPAL RESIDENCE LOCATED WITHIN THE TAX AGREEMENT AREA.
15. RETAIL SALES TO GOVERNMENTAL ENTITIES AND QUALIFIED NON-PROFIT ORGANIZATIONS THAT ARE EXEMPT FROM MICHIGAN STATE SALES AND USE TAXES, PROVIDED THE PERSON MAKING THE PURCHASE PROVIDES THE FORM USED BY THE STATE FOR CLAIMING AN EXEMPTION UNDER ONE OF THE PROVISIONS OF THE GENERAL SALES TAX ACT; AND
 16. RETAIL SALES MADE AT TRIBAL CULTURAL EVENTS, INCLUDING POW-WOWS, BAZAARS, AND FAIRS.
- D. *RECORDS OF EXEMPT SALES BY RETAILERS.* ALL LICENSED RETAILERS, INCLUDING THE TRIBE, ANY TRIBAL MEMBER, OR ANY TRIBAL ENTITY WILL MAINTAIN A RECORD OF SALES EXEMPTED FROM APPLICATION OF THE RETAIL SALES TAX. THESE RECORDS MUST INCLUDE THE DATE OF THE RETAIL SALE, THE NAME, AND IF APPLICABLE, TRIBAL IDENTIFICATION NUMBER OF THE PURCHASER, THE VALUE OF THE RETAIL SALE, AND, EXCEPT FOR SALES OF MOTOR FUELS, AND ANY INDIVIDUAL ITEM VALUED AT MORE THAN \$50, OR SALE OF MORE THAN ONE ITEM VALUED AT GREATER THAN \$200 IN THE AGGREGATE, A GENERAL IDENTIFICATION OF THE ITEMS PURCHASED.

ARTICLE 4. LICENSING OF RETAILERS LOCATED WITHIN TRIBAL AND TRUST LANDS

SECTION 4.01 *RETAILERS WHOLLY OWNED BY THE TRIBE AND/OR TRIBAL MEMBERS.* ANY RETAILER OWNED BY THE TRIBE, TRIBAL MEMBERS, OR SOME COMBINATION OF THE TRIBE AND TRIBAL MEMBERS, LOCATED WITHIN TRIBAL AND TRUST LANDS, IS REQUIRED TO OBTAIN A RETAILER TAX LICENSE FROM THE TRIBE ON THE FORM PRESCRIBED BY THE TAX DEPARTMENT.

SECTION 4.02 *NON-MEMBER RETAILERS.* ANY RETAILER ON TRIBAL AND TRUST LANDS THAT IS OWNED ENTIRELY, OR IN PART, BY ONE OR MORE NON-TRIBAL MEMBERS IS REQUIRED TO OBTAIN A RETAILER TAX LICENSE FROM THE TRIBE ON THE FORM PRESCRIBED BY THE TAX DEPARTMENT.

SECTION 4.03 *NON-TRIBAL AND TRUST LAND SALES.* ANY RETAILERS OWNED BY THE TRIBE, TRIBAL MEMBERS, OR SOME COMBINATION OF THE TRIBE AND TRIBAL MEMBERS ENGAGING IN RETAIL SALES OUTSIDE OF TRIBAL AND TRUST LANDS ARE REQUIRED TO OBTAIN ANY LICENSE, PERMIT, OR REGISTRATION REQUIRED UNDER APPLICABLE PROVISIONS OF STATE LAW.

SECTION 4.04 *TAX DEPARTMENT PUBLICATION OF LICENSE FORMS AND PROCEDURES.* THE TAX DEPARTMENT WILL DEVELOP NECESSARY APPLICATION FORMS AND

PROCEDURES FOR ISSUING THE LICENSES AND PERMITS REQUIRED UNDER THIS CHAPTER. UNTIL THE TAX DEPARTMENT DEVELOPS THE REQUIRED FORMS AND PROCEDURES, IT WILL UTILIZE THE FORMS ISSUED BY THE MICHIGAN DEPARTMENT OF TREASURY ENTITLED "REGISTRATION FOR MICHIGAN TAXES."

SECTION 4.05 *TRANSMISSION OF APPLICATION FORMS TO THE STATE.* THE TAX DEPARTMENT WILL ISSUE A RETAILER TAX LICENSE TO EACH APPLICANT WHO IS VERIFIED AS A RETAILER AND WILL TRANSMIT THE APPLICATION FORM TO THE STATE.

SECTION 4.06 *INFORMATION REQUIRED FOR LICENSING.* A PERSON APPLYING FOR A RETAILER TAX LICENSE WILL PROVIDE THE TAX DEPARTMENT WITH THE FOLLOWING INFORMATION:

- A. LEGAL NAME OF THE BUSINESS, INCLUDING ANY ASSUMED NAME(S), THAT THE BUSINESS OPERATES UNDER;
- B. LEGAL ADDRESS, MAILING ADDRESS (IF DIFFERENT) AND PHYSICAL ADDRESS OR LOCATION(S) FROM WHICH THE BUSINESS MAKES RETAIL SALES SUBJECT TO THIS CHAPTER;
- C. TYPE OF BUSINESS OWNERSHIP OR ORGANIZATION (I.E. SOLE PROPRIETORSHIP, CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP);
- D. JURISDICTION UNDER WHOSE LAWS THE BUSINESS ENTITY IS ORGANIZED, IF APPLICABLE;
- E. IF THE BUSINESS QUALIFIES AS A TRIBAL ENTITY, COPIES OF THE BUSINESSES' CHARTER, ARTICLES OF INCORPORATION OR ORGANIZATION, AND OTHER INFORMATION (INCLUDING, IF APPLICABLE, STOCK CERTIFICATES) VERIFYING THE OWNERSHIP OF THE BUSINESS BY THE TRIBE OR TRIBAL MEMBERS;
- F. THE NAME, TITLE, ADDRESS, AND TELEPHONE, AND FACSIMILE NUMBER OF THE BUSINESS ENTITY'S REGISTERED AGENT OR AGENT FOR SERVICE OF PROCESS; AND
- G. A DESCRIPTION OF THE GOODS AND SERVICES SOLD BY THE BUSINESS, INCLUDING WHETHER THE BUSINESS INTENDS TO SELL TOBACCO PRODUCTS OR MOTOR FUELS.

SECTION 4.07 *LICENSE RENEWAL.* RETAILERS LICENSED UNDER THIS CHAPTER ARE REQUIRED TO RENEW THEIR RETAILER TAX LICENSE, INCLUDING ANY UPDATED OR NEW INFORMATION, ANNUALLY ON A FORM PRESCRIBED BY THE TAX DEPARTMENT.

SECTION 4.08 *SUSPENSION OR TERMINATION OF BUSINESS.* EACH RETAILER MUST INFORM THE TAX DEPARTMENT, IN THE MANNER PRESCRIBED BY THE DEPARTMENT, OF ANY SUSPENSION OR TERMINATION OF THE RETAILER'S BUSINESS NO LATER THAN THE 15TH DAY OF THE MONTH SUCCEEDING THE MONTH IN WHICH THE SUSPENSION OR TERMINATION OCCURS. UPON RECEIPT OF A SUSPENSION OR TERMINATION NOTICE THE TAX DEPARTMENT WILL

TERMINATE THE RETAIL LICENSE AND/OR REGISTRATION AND ADVISE THE STATE OF THE LICENSE'S TERMINATION.

SECTION 4.09 INCIDENTAL RETAILERS. PERSONS ENGAGED IN SALES MADE AT TRIBAL CULTURAL EVENTS, INCLUDING BUT NOT EXCLUSIVE OF BAZAARS, POW-WOWS, AND TRIBAL FAIRS SHALL BE EXEMPT FROM THE LICENSING REQUIREMENTS.

ARTICLE 5. COLLECTION; REMITTANCE; RETURNS; APPROPRIATION

SECTION 5.01 COLLECTION. THE RETAIL SALES TAX WILL BE COLLECTED AS FOLLOWS:

- A. EVERY RETAIL ESTABLISHMENT ENGAGING IN A RETAIL SALE WITHIN THE MEANING OF THIS CHAPTER MUST COLLECT THE TRIBAL RETAIL SALES TAX FROM THE PURCHASER.
- B. THE RETAIL SALES TAX MUST BE COLLECTED FROM PURCHASERS CONTEMPORANEOUSLY WITH PAYMENT OF THE PURCHASE CONSIDERATION FOR THE RETAIL SALE. EACH COLLECTION AGENT MUST ADD THE TAX LEVIED IN THIS CHAPTER TO THE SELLING PRICE OR CHARGE OF EACH RETAIL SALE.

SECTION 5.02 REMITTANCE AND RETURNS. ON OR BEFORE THE TWENTIETH (20TH) DAY FOLLOWING THE END OF THE EACH CALENDAR QUARTER, EACH COLLECTION AGENT SHALL REPORT AND REMIT THE RETAIL SALES TAX DUE TO THE TRIBAL TAX DEPARTMENT ON THE SCHEDULE, AND IN ACCORDANCE WITH ANY REPORTING FORMS AND PROCEDURES, ESTABLISHED BY THE TAX DEPARTMENT.

SECTION 5.03 APPROPRIATION. THE TRIBAL COUNCIL MAY APPROPRIATE THE FUNDS COLLECTED UNDER THE TERMS OF THIS CHAPTER FOR ANY GOVERNMENTAL PURPOSE.

ARTICLE 6. FINANCIAL STANDARDS; RECORD KEEPING

SECTION 6.01 FINANCIAL STANDARDS. ALL COLLECTION AGENTS WILL MAINTAIN FINANCIAL RECORDS IN ACCORDANCE WITH GAAP, UNLESS OTHERWISE PERMITTED BY THE TAX DEPARTMENT. ALL TAXES WILL BE COMPUTED IN ACCORDANCE WITH GAAP, UNLESS OTHERWISE PERMITTED BY THE TAX DEPARTMENT.

SECTION 6.02 RECORD KEEPING. EVERY COLLECTION AGENT WILL MAINTAIN FINANCIAL RECORDS RELATING TO RETAIL SALES TAXES FOR A PERIOD OF AT LEAST FOUR YEARS FROM THE DATE THAT A RETURN IS FILED. IF AN EXEMPTION FOR TAX IS CLAIMED FOR ANY TRANSACTION UNDER ANY OF THE EXEMPTIONS ALLOWED UNDER THIS CHAPTER, A RECORD SHALL BE KEPT OF THE NAME AND ADDRESS OF THE PERSON TO WHOM THE SALE IS MADE, THE DATE OF THE SALE, THE AMOUNT OF THE SALE, THE TYPE OF EXEMPTION CLAIMED, AND ANY DOCUMENTATION REQUIRED BY THIS CHAPTER.

SECTION 6.03 ASSESSMENT. IF A COLLECTION AGENT FAILS TO MAINTAIN OR PRESERVE PROPER RECORDS AS PRESCRIBED BY THIS CODE OR THE TAX DEPARTMENT, OR IF THE TAX DEPARTMENT HAS REASON TO BELIEVE THAT ANY RECORDS MAINTAINED ARE INACCURATE OR INCOMPLETE AND THAT ADDITIONAL TAXES ARE DUE, THE TAX DEPARTMENT MAY ASSESS THE AMOUNT OF THE TAX DUE FROM THE COLLECTION AGENT BASED ON INFORMATION THAT IS AVAILABLE OR THAT MAY BECOME AVAILABLE TO THE TAX DEPARTMENT. THE ASSESSMENT IS CONSIDERED PRIMA FACIA CORRECT FOR THE PURPOSE OF THIS CODE AND THE BURDEN OF REFUTING THE ASSESSMENT IS UPON THE COLLECTION AGENT.

ARTICLE 7. TAX SHARING

SECTION 7.01 TAX SHARING. IN COMPLIANCE WITH THE STATE-TRIBE TAX AGREEMENT, THE TRIBE SHALL SHARE THE APPROPRIATE AMOUNT OF TAXES WITH THE STATE OF MICHIGAN.

ARTICLE 8. SEVERABILITY

SECTION 8.01 SEVERABILITY. IF ANY PROVISION OF THIS CHAPTER OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCES IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION.

CHAPTER 2:FOOD AND BEVERAGE TAX

ARTICLE 1. PURPOSE

SECTION 1.01 PURPOSE. THE PURPOSE THIS CHAPTER OF THE RETAIL SALES AND FOOD AND BEVERAGE TAX CODE IS TO RAISE GOVERNMENTAL REVENUES AND TO PROVIDE FOR THE ASSESSMENT AND COLLECTION OF A TAX ON FOOD AND BEVERAGE SALES AS SPECIFIED IN THIS CHAPTER. THE SCOPE OF THE TAX LEVIED UNDER THIS CHAPTER IS TO BE BROADLY INTERPRETED. THE INCIDENCE OF THIS TAX FALLS UPON THE PURCHASER OF FOOD AND BEVERAGES AT ANY RETAIL ESTABLISHMENT ON TRIBAL LANDS, NOT UPON THE SELLER OF THOSE FOOD AND BEVERAGES.

ARTICLE 2. DEFINITIONS

SECTION 2.01 DEFINITIONS. FOR PURPOSES OF THE TAXES COVERED BY THIS CHAPTER, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED TO THEM IN THIS SECTION.

- A. *COLLECTION AGENT* MEANS ANY SELLER OF FOOD AND BEVERAGES ON TRIBAL AND TRUST LANDS RESPONSIBLE FOR COLLECTING THE TAXES LEVIED UNDER THE TERMS OF THIS CHAPTER.
- B. *FOOD AND BEVERAGE* MEANS FOOD AND BEVERAGES THAT MEET ANY ONE OF THE FOLLOWING CONDITIONS:
 - 1 ANY SUBSTANCE, WHETHER IN LIQUID, CONCENTRATED, SOLID, FROZEN, DRIED, OR DEHYDRATED FORM, THAT IS SOLD FOR INGESTION OR CHEWING BY HUMANS AND IS CONSUMED FOR ITS TASTE OR NUTRITIONAL VALUE;
 - 2. FOOD THAT IS EITHER PRESENTED OR SOLD WITH EATING UTENSILS PROVIDED

BY THE SELLER, INCLUDING PLATES, KNIVES, FORKS, SPOONS, GLASSES, CUPS, NAPKINS, OR STRAWS;

3. FOOD THAT IS SOLD IN A HEATED STATE OR HEATED BY THE SELLER;
 4. TWO OR MORE FOOD INGREDIENTS THAT ARE MIXED OR COMBINED BY THE SELLER FOR SALE AS A SINGLE ITEM; OR
 5. ANY ALCOHOLIC OR NON-ALCOHOLIC BEVERAGE, INCLUDING NONALCOHOLIC BEVERAGES THAT CONTAIN NATURAL OR ARTIFICIAL SWEETENERS, MILK OR MILK PRODUCTS, SOY, RICE, OR SIMILAR MILK SUBSTITUTES, FRUIT OR VEGETABLE JUICE, COFFEE, INCLUDING ANY BEVERAGE DERIVED FROM COFFEE, AND, AND TEA, INCLUDING ANY BEVERAGE DERIVED FROM TEA.
- C. FOOD AND BEVERAGE TAX* MEANS THE TAX DESCRIBED UNDER THE TERMS OF THIS CHAPTER.
- D. GAAP* MEANS UNITED STATES GENERALLY ACCEPTED ACCOUNTING PRINCIPLES CONSISTENTLY APPLIED TO TRIBAL GOVERNMENT OPERATIONS AS SET OUT IN GOVERNMENTAL ACCOUNTING STANDARDS BOARD STATEMENTS.
- E. GAMING FACILITY* MEANS ANY PLACE, FACILITY, OR LOCATION LICENSED UNDER SECTION 501 OF TITLE V, "LICENSING AND REGULATION OF BINGO AND OTHER GAMES OF CHANCE," OF THE TRIBAL CODE, AND OPERATED UNDER THE TRIBE'S CLASS III GAMING COMPACT WITH THE STATE OF MICHIGAN.
- F. PERSON* MEANS ANY NATURAL PERSON, CORPORATION, LIMITED LIABILITY COMPANY, OTHER BUSINESS ENTITY, OR ANY GOVERNMENT AND ITS POLITICAL SUBDIVISIONS.
- G. PURCHASER* MEANS ANY PERSON THAT PURCHASES FOOD AND BEVERAGES ON TRIBAL AND TRUST LANDS.
- H. TAX AGREEMENT* MEANS THE "TAX AGREEMENT BETWEEN THE NOTTAWASEPPI HURON BAND OF POTAWATOMI AND THE STATE OF MICHIGAN," DATED DECEMBER 20, 2002, AS THE SAME MAY BE AMENDED FROM TIME-TO-TIME.
- I. TAX DEPARTMENT* MEANS THE DIVISION OF THE TRIBE'S ACCOUNTING DEPARTMENT CHARGED WITH THE IMPLEMENTATION AND ADMINISTRATION OF THIS CHAPTER.
- J. TAX YEAR* MEANS THE CALENDAR YEAR, OR THE FISCAL YEAR ENDING DURING A CALENDAR YEAR, WHICH SERVES AS THE BASIS FOR COMPUTING A TAX SUBJECT TO THIS CHAPTER.
- K. TAXABLE SALE* MEANS ANY RETAIL FOOD AND BEVERAGE SALE ON TRIBAL OR TRUST LANDS, EXCEPT FOR SALES MADE TO THE TRIBE.

- L. *TRIBAL COUNCIL* MEANS THE TRIBAL COUNCIL OF THE NOTTAWASEPPI HURON BAND OF POTAWATOMI.
- M. *TRIBAL AND TRUST LANDS* MEANS ALL FEE LANDS OWNED BY THE TRIBE AND LANDS HELD IN TRUST BY THE FEDERAL GOVERNMENT FOR THE BENEFIT OF THE TRIBE, WHICH ARE DESIGNATED AS TRIBAL AND TRUST LANDS IN APPENDIX A OF THE TAX AGREEMENT, AS THE SAME MAY BE AMENDED FROM TIME-TO-TIME.
- N. *TRIBE* MEANS THE NOTTAWASEPPI HURON BAND OF POTAWATOMI. THE TERM TRIBE INCLUDES ALL DIVISIONS OR SUBDIVISIONS OF THE TRIBAL GOVERNMENT AND BUSINESS ENTERPRISES, INCLUDING CHARTERED ENTITIES THAT ARE WHOLLY OWNED BY THE TRIBE.

ARTICLE 3. FOOD AND BEVERAGE TAX

SECTION 3.01 IMPOSITION AND RATE OF TAX; TAX ADDED TO SELLING PRICE, EXEMPTIONS.

- A. *IMPOSITION AND RATE OF TAX.* A FOOD AND BEVERAGE TAX, EQUAL TO 6% OF THE SELLING PRICE ON RETAIL SALES OF FOOD AND BEVERAGES ON TRIBAL AND TRUST LANDS, WILL BE LEVIED AND COLLECTED. THE TAX WILL BE PAID BY THE PURCHASER OF THE FOOD AND BEVERAGES, WHO SHALL BEAR THE BURDEN OF THE TAX; COLLECTED BY THE COLLECTION AGENT; AND DELIVERED TO THE TAX AUTHORITY REFERENCED UNDER THE TERMS OF THIS ORDINANCE.
- B. *TAX ADDED TO SELLING PRICE.* EVERY COLLECTION AGENT WILL ADD THE AMOUNT OF THE FOOD AND BEVERAGE TAX TO THE TOTAL SELLING PRICE OF THE FOOD AND BEVERAGES AND MUST BE ACCOUNTED FOR BY EVERY COLLECTION AGENT. THE FOOD AND BEVERAGE TAX MAY BE INCLUDED IN THE TOTAL SALE PRICE SHOWN ON ANY SALES RECEIPTS OR SLIPS, CHARGE TICKETS, INVOICES, STATEMENTS OF ACCOUNT, OR OTHER TANGIBLE EVIDENCE OF SALE (COLLECTIVELY “SALES RECEIPTS”) OR IT MAY, AT THE OPTION OF THE COLLECTION AGENT, BE STATED SEPARATELY ON SALES RECEIPTS.
- C. *EXEMPTIONS.* THE FOLLOWING SALES ARE EXEMPT FROM APPLICATION OF THE TAX IMPOSED UNDER THIS CHAPTER:
 - 1. FOOD AND BEVERAGE SALES AT TRIBAL CULTURAL AND COMMUNITY EVENTS INCLUDING BUT NOT EXCLUSIVE OF POW-WOWS, BAZAARS, FAIRS AND CHARITY EVENTS;
 - 2. SALES OF PREPACKAGED FOOD AND FOOD PRODUCTS AT ANY TRIBALLY-OWNED BUSINESSES;
 - 3. FOOD AND BEVERAGE PROVIDED ON A COMPLIMENTARY BASIS
 - 4. SALES OF FOOD AND BEVERAGE TO THE TRIBE, ANY OTHER TRIBAL GOVERNMENT, LOCAL GOVERNMENT, STATE GOVERNMENT OR THE UNITED

STATES GOVERNMENT, INCLUDING ANY DEPARTMENT OR SUBDIVISION OF THOSE GOVERNMENTS

5. SALES OF FOOD AND BEVERAGE TO A NONPROFIT SCHOOL, NONPROFIT HOSPITAL, OR NONPROFIT CORPORATION INCORPORATED UNDER THE LAWS OF THE STATE OF MICHIGAN OR THE LAWS OF THE TRIBE.

ARTICLE 4. COLLECTION; REMITTANCE; RETURNS, APPROPRIATIONS

SECTION 4.01 *COLLECTION.* THE FOOD AND BEVERAGE TAX WILL BE COLLECTED AS FOLLOWS:

- A. EVERY RETAIL ESTABLISHMENT ENGAGING IN TAXABLE SALES MUST COLLECT THE TRIBAL FOOD AND BEVERAGE TAX FROM THE PURCHASER.
- B. THE FOOD AND BEVERAGE TAX MUST BE COLLECTED FROM A PURCHASER CONTEMPORANEOUSLY WITH THE PAYMENT OF THE PURCHASE CONSIDERATION FOR THE TAXABLE SALE. EACH COLLECTION AGENT MUST ADD THE TAX LEVIED IN THIS CHAPTER TO THE SELLING PRICE OR CHARGE OF EACH TAXABLE SALE.

SECTION 4.02 *REMITTANCE AND RETURNS.* ON OR BEFORE THE TWENTIETH (20TH) DAY FOLLOWING THE END OF THE EACH CALENDAR QUARTER, EACH COLLECTION AGENT SHALL REPORT AND REMIT THE FOOD AND BEVERAGE TAX DUE TO THE TRIBAL TAX DEPARTMENT ON THE SCHEDULE, AND IN ACCORDANCE WITH ANY REPORTING FORMS AND PROCEDURES, ESTABLISHED BY THE TAX DEPARTMENT.

SECTION 4.03 *APPROPRIATION.* THE TRIBAL COUNCIL MAY APPROPRIATE THE FUNDS COLLECTED UNDER THE TERMS OF THIS CHAPTER FOR ANY GOVERNMENTAL PURPOSE.

ARTICLE 5. FINANCIAL STANDARDS; RECORD KEEPING

SECTION 5.01 *FINANCIAL STANDARDS.* ALL COLLECTION AGENTS WILL MAINTAIN FINANCIAL RECORDS IN ACCORDANCE WITH GAAP, UNLESS OTHERWISE PERMITTED BY THE TAX DEPARTMENT. ALL TAXES WILL BE COMPUTED IN ACCORDANCE WITH GAAP, UNLESS OTHERWISE PERMITTED BY THE TAX DEPARTMENT.

SECTION 5.02 *RECORD KEEPING.* EVERY COLLECTION AGENT WILL MAINTAIN FINANCIAL RECORDS RELATING TO FOOD AND BEVERAGE TAXES FOR A PERIOD OF AT LEAST FOUR YEARS FROM THE DATE THAT A RETURN IS FILED. IF AN EXEMPTION FOR TAX IS CLAIMED FOR ANY TRANSACTION UNDER ANY OF THE EXEMPTIONS ALLOWED UNDER THIS CHAPTER, A RECORD SHALL BE KEPT OF THE NAME AND ADDRESS OF THE PERSON TO WHOM THE SALE IS MADE, THE DATE OF THE SALE, THE AMOUNT OF THE SALE, THE TYPE OF EXEMPTION CLAIMED, AND ANY DOCUMENTATION REQUIRED BY THIS CHAPTER.

SECTION 5.03 *ASSESSMENT.* IF A COLLECTION AGENT FAILS TO MAINTAIN OR PRESERVE PROPER RECORDS AS PRESCRIBED BY THIS CODE OR THE TAX DEPARTMENT, OR IF THE TAX DEPARTMENT HAS REASON TO BELIEVE THAT ANY RECORDS MAINTAINED ARE INACCURATE OR INCOMPLETE AND THAT ADDITIONAL TAXES ARE DUE, THE TAX DEPARTMENT MAY ASSESS THE AMOUNT OF THE TAX DUE FROM THE COLLECTION AGENT BASED ON INFORMATION THAT IS

AVAILABLE OR THAT MAY BECOME AVAILABLE TO THE TAX DEPARTMENT. THE ASSESSMENT IS CONSIDERED PRIMA FACIA CORRECT FOR PURPOSES OF THIS CODE AND THE BURDEN OF REFUTING THE ASSESSMENT IS UPON THE COLLECTION AGENT.

ARTICLE 6. SEVERABILITY

SECTION 6.01 SEVERABILITY. IF ANY PROVISION OF THIS CHAPTER OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCES IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION.