

NOTTAWASEPPI HURON BAND OF POTAWATOMI
SALE OF TOBACCO PRODUCTS

CHAPTER 1: REGISTRATION OF RETAILERS SELLING TOBACCO PRODUCTS; REGULATION OF SALES OF TAX FREE TOBACCO PRODUCTS

ARTICLE 1. PURPOSE

SECTION 1.01 PURPOSE. THE PURPOSE OF THIS CHAPTER IS TO PROVIDE A FRAMEWORK FOR ENSURING THAT TOBACCO PRODUCTS PURCHASES AND SALE TRANSACTIONS BY RETAILERS WITHIN THE JURISDICTION OF THE TRIBE ARE UNDERSTOOD, UNDERTAKEN IN COMPLIANCE WITH LEGAL OBLIGATIONS UNDER THE TAX AGREEMENT BETWEEN THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI AND THE STATE OF MICHIGAN, AND TO ENSURE UNIFORMITY OF PROCEDURES.

ARTICLE 2. DEFINITIONS

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

- A. *COLLECTION AGENT* MEANS ANY SELLER OF MAKING SALES AT RETAIL OF TOBACCO PRODUCTS FROM A LOCATION WITHIN TRIBAL AND TRUST LANDS.
- 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 TOBACCO PRODUCTS AT RETAIL.
- E. *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.
- F. *STATE* MEANS THE STATE OF MICHIGAN.
- G. *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.
- H. *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.

- I. *TAX DEPARTMENT* MEANS THE DIVISION OF THE TRIBE'S ACCOUNTING DEPARTMENT CHARGED WITH THE IMPLEMENTATION AND ADMINISTRATION OF THIS CHAPTER.
- J. *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.
- K. *TRIBAL MEMBER* MEANS AN INDIVIDUAL WHO IS AN ENROLLED MEMBER OF THE TRIBE.
- L. *TRIBE* MEANS THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI INDIANS. 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. TOBACCO PRODUCTS RETAILERS

SECTION 3.01 LICENSING OF RETAILERS. ANY RETAILER ENGAGED IN THE SALE AT RETAIL OF TOBACCO PRODUCTS FROM ANY LOCATION ON TRIBAL AND TRUST LANDS SHALL BE REQUIRED TO POSSESS, OR OBTAIN, A RETAILER TAX LICENSE FROM THE TRIBE AS PRESCRIBED IN THE RETAIL SALES AND FOOD AND BEVERAGE TAX CODE.

SECTION 3.02 SALE OF TAX EXEMPT TOBACCO PRODUCTS. ONLY THOSE RETAILERS AUTHORIZED BY TRIBAL COUNCIL RESOLUTION MAY PURCHASE TAX EXEMPT TOBACCO PRODUCTS UNDER THE TRIBE'S TAX EXEMPT QUOTA ESTABLISHED UNDER THE TAX AGREEMENT. LICENSED RETAILERS SHALL BE LIMITED TO THAT PORTION OF THE TAX EXEMPT QUOTA AS MAY BE DESIGNATED BY THE TRIBAL COUNCIL.

SECTION 3.03 REGISTRATION CONDITIONS APPLICABLE TO RETAILERS LICENSED TO SELL TOBACCO PRODUCTS. ANY RETAILER LICENSED TO ENGAGE IN THE SALE AT RETAIL OF TOBACCO PRODUCTS SHALL, AS A CONDITION OF OBTAINING THAT LICENSE AND/OR REGISTRATION, BE REQUIRED TO AGREE TO COMPLY WITH THE FOLLOWING REQUIREMENTS:

- A. THE RETAILER MUST PURCHASE ALL TOBACCO PRODUCTS FROM A STATE-LICENSED WHOLESALER DESIGNATED BY THE TRIBE;
- B. ALL TOBACCO PRODUCTS OFFERED FOR SALE BY THE RETAILER MUST BEAR THE STATE TRIBAL STAMP;
- C. THE RETAILER MUST AGREE TO MAINTAIN SUCH BOOKS AND RECORDS AS WOULD BE REQUIRED UNDER STATE LAW FOR RETAILERS LICENSED BY THE STATE TO ENGAGE IN THE SALE AT RETAIL OF TOBACCO PRODUCTS;
- D. IN ADDITION TO MAINTAINING THE BOOKS AND RECORDS REQUIRED BY STATE LAW, ALL RETAILERS AUTHORIZED TO SELL TAX EXEMPT TOBACCO PRODUCTS TO THE TRIBE OR TRIBAL MEMBERS SHALL MAINTAIN A LOG OF EACH PURCHASE OF TAX

FREE TOBACCO PRODUCTS SHOWING DATE, TYPE (CIGARETTES, CIGAR, CHEW, ETC.) QUANTITY, AND BRAND, TOGETHER WITH THE NAME, TRIBAL IDENTIFICATION NUMBER AND SIGNATURE OF THE PURCHASER. THE PURCHASER'S SIGNATURE SHALL NOT BE REQUIRED IF A SWIPE CARD SYSTEM, ACCEPTABLE TO BOTH THE TRIBE AND STATE IS UTILIZED.

- E. THE RETAILER SHALL IDENTIFY WHETHER IT WILL OPERATE TOBACCO PRODUCTS VENDING MACHINES AND, IF SO, IF THE RETAILER WILL SUPPLY AND STOCK THE TOBACCO PRODUCTS FOR ITS VENDING MACHINES;
- F. THE RETAILER SHALL SPECIFY THE SPECIFIC LOCATION(S) (UTILIZING FACILITY FLOOR PLANS IF AVAILABLE) ON ITS PREMISES WHERE TOBACCO PRODUCTS WILL BE OFFERED FOR SALE (INCLUDING THE LOCATION OF VENDING MACHINES) AND THE LOCATION(S) WHERE THE RETAILER STORES ITS INVENTORY OF TOBACCO PRODUCTS;
- G. THE RETAILER SHALL PERMIT REPRESENTATIVES OF THE STATE ACCESS TO THE RETAILER'S PREMISES FOR THE PURPOSE OF CONDUCTING INSPECTIONS, INCLUDING UNANNOUNCED INSPECTIONS OF LOCATIONS WHERE TOBACCO PRODUCTS ARE SOLD AND STORED, AS WELL AS ANY VEHICLES USED TO TRANSPORT TOBACCO PRODUCTS.

ARTICLE 4. RETAIL SALES OF TAX FREE TOBACCO PRODUCTS.

SECTION 4.01 *DESIGNATION OF AUTHORIZED RETAILER FOR TAX EXEMPT TOBACCO PRODUCTS.* FIREKEEPERS CASINO SHALL BE THE DESIGNATED RETAIL OUTLET THAT IS ASSIGNED 100% OF THE TRIBE'S TAX FREE QUOTA FOR TOBACCO PRODUCTS AND IS AUTHORIZED TO PURCHASE TAX FREE QUOTA TOBACCO PRODUCTS FROM THE WHOLESALE DISTRIBUTOR DESIGNATED BY THE TRIBAL COUNCIL FOR RESALE TO TRIBAL MEMBERS WITHOUT PAYMENT OF THE MICHIGAN TOBACCO PRODUCTS TAX.

SECTION 4.02 *PURCHASES SUBJECT TO MICHIGAN TOBACCO PRODUCTS TAX.* UNLESS EXEMPTED BY THE TAX AGREEMENT AND THIS CODE, ALL PURCHASES OF TOBACCO PRODUCTS BY TRIBAL MEMBERS WITHIN TRIBAL AND TRUST LANDS OF THE TRIBE SHALL BE SUBJECT TO THE IMPOSITION AND COLLECTION OF THE MICHIGAN TOBACCO PRODUCTS TAX, WHICH SHALL BE ADDED TO THE PURCHASE PRICE. RETAILERS OPERATING WITHIN TRIBAL AND TRUST LANDS SHALL REMIT TAX PROCEEDS AND PROVIDE INFORMATION AS REQUIRED UNDER THE PROVISIONS OF THE TOBACCO PRODUCTS TAX ACT, MCL 205.421 ET SEQ., AS IT MAY BE AMENDED FROM TIME TO TIME.

SECTION 4.03 *LIMITS ON PURCHASES OF TAX FREE TOBACCO PRODUCTS BY TRIBAL MEMBERS.*

- A. TRIBAL MEMBERS MAY PURCHASE TOBACCO PRODUCTS FROM THE DESIGNATED RETAILER WITHOUT PAYMENT OF THE MICHIGAN TOBACCO PRODUCTS TAX, PROVIDED THE PURCHASE IS SOLELY FOR PERSONAL USE AND NOT FOR RESALE.

B. TRIBAL MEMBERS SHALL BE PROHIBITED FROM PURCHASING MORE THAN THE POSTED LIMIT OF TAX FREE TOBACCO PRODUCTS ON ANY DAY OR MONTH AS FOLLOWS:

1 DAILY LIMITS:

- (a) THREE (3) CARTONS OF TAX EXEMPT CIGARETTES PER TRIBAL MEMBER;
- (b) SEVEN (7) TINS OF TAX EXEMPT SMOKELESS TOBACCO PER TRIBAL MEMBER; AND
- (c) TWELVE (12) INDIVIDUAL TAX EXEMPT CIGARS OR ONE (1) BOX OF TAX EXEMPT CIGARS PER TRIBAL MEMBER.

2 MONTHLY LIMITS:

- (a) FIFTEEN (15) CARTONS OF TAX EXEMPT CIGARETTES PER TRIBAL MEMBER.

THE DESIGNATED RETAILER SHALL INCLUDE THE FULL AMOUNT OF THE MICHIGAN TOBACCO PRODUCTS TAX IN THE PRICE OF ALL TOBACCO PRODUCTS SOLD TO TRIBAL MEMBERS IN EXCESS OF THE POSTED LIMIT ON ANY DAY OR MONTH.

- C. THE DAILY OR MONTHLY LIMIT FOR TAX FREE PURCHASES MAY BE ADJUSTED QUARTERLY BY THE TRIBE'S TAX DEPARTMENT, BASED ON THE REMAINING QUOTA TAX-EXEMPT CIGARETTES AVAILABLE FOR THE BALANCE OF THE CALENDAR YEAR. ADJUSTED PURCHASE LIMITS, IF ANY, WILL BE POSTED BY THE TAX DEPARTMENT AT THE DESIGNATED RETAILER.
- D. TRIBAL MEMBERS SHALL BE SOLELY RESPONSIBLE FOR STAYING WITHIN THE DAILY AND MONTHLY PURCHASE LIMITS POSTED AT THE DESIGNATED RETAILER. TRIBAL MEMBERS ARE REQUIRED TO KEEP TRACK OF THEIR OWN TAX FREE PURCHASES OF TOBACCO PRODUCTS.
- E. ALL SALES OF TOBACCO PRODUCTS TO TRIBAL MEMBERS IN EXCESS OF THE TOTAL ANNUAL CEILING FOR TAX-EXEMPT TOBACCO PRODUCTS SALES AGREED TO BY THE TRIBE AND THE STATE SHALL INCLUDE THE FULL AMOUNT OF THE MICHIGAN TOBACCO PRODUCTS TAX.
- F. THE TAX DEPARTMENT SHALL AUDIT THE RECORDS OF DESIGNATED RETAILERS TO ENFORCE THE LIMITS PRESCRIBED IN THIS CODE. TRIBAL MEMBERS WHO PURCHASE TAX FREE CIGARETTES ABOVE THE DAILY OR MONTHLY LIMITS ESTABLISHED SHALL BE RESPONSIBLE FOR PAYING THE TOBACCO PRODUCTS TAX ON EXCESS PURCHASES. CIVIL PENALTIES WILL BE ASSESSED ON EXCESS PURCHASES.

SECTION 4.04 CIVIL PENALTIES; REMEDIES.

ANY PERSON WHO VIOLATES SECTION 4.03(A) OF THIS CODE BY SELLING OR GIVING ONE OR MORE PACK(S) OF TAX FREE TOBACCO PRODUCTS TO A PERSON WHO IS NOT A TRIBAL MEMBER SHALL BE GUILTY OF A CIVIL INFRACTION AND SHALL BE SUBJECT TO A CIVIL PENALTY OF TWO-HUNDRED FIFTY DOLLARS (\$250.00). EACH TRANSACTION BY WHICH A PERSON VIOLATES SECTION 4.03(B) SHALL BE TREATED AS A SEPARATE OFFENSE.

- A. ANY PERSON WHO VIOLATES SECTION 4.03(B) OF THIS CODE SHALL BE GUILTY OF A CIVIL INFRACTION AND SHALL BE SUBJECT TO A CIVIL PENALTY OF FIFTY DOLLARS (\$50.00). EACH TRANSACTION BY WHICH A PERSON VIOLATES SECTION 4.03(B) SHALL BE TREATED AS A SEPARATE OFFENSE.

- B. THE CIVIL PENALTIES PROVIDED FOR IN THIS SECTION ARE NOT INTENDED TO BE EXCLUSIVE, BUT SHALL BE IN ADDITION TO AND INDEPENDENT OF:
 - 1. SEIZURE OF TOBACCO PRODUCTS POSSESSED IN VIOLATION OF THE TAX AGREEMENT OR THIS CODE;
 - 2. SUSPENSION OF A TRIBAL MEMBER'S PRIVILEGE TO PURCHASE TAX FREE TOBACCO PRODUCTS FOR UP TO 1 YEAR;
 - 3. PROSECUTION OR OTHER ENFORCEMENT ACTION UNDER TRIBAL, FEDERAL, OR STATE LAW.

ARTICLE 5. SEVERABILITY

SECTION 5.01 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.