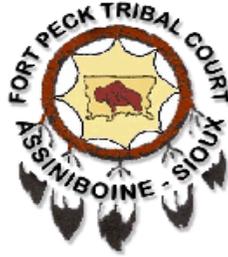


Fort Peck Tribal Court
807 Court Avenue - P.O. Box 1027
Poplar, MT 59255



Title 23 - Taxation

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Chapter 1. Oil and Gas Tax

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Sec. 101. Tax.

Any person or entity engaged in the production of oil or gas, or oil and gas, from land located within the exterior bounds of the Fort Peck Indian Reservation and held in trust by the United States (hereafter "trust oil or gas") for the Tribes, or for an individual Indian, shall, for the privilege of doing business on the Reservation pay seven per centum (7%) of the market value at the well of all trust oil and gas produced, saved and sold or transported from the field where produced.

(AMENDED AS PER RESOLUTION NO. 2413-87, DATED 03/23/87.)

Sec. 102. Exclusions and credit.

(a) Exclusions. The tax imposed by this Chapter shall not apply to:

(1) The interest of the Tribes in such trust oil or gas;

(2) The royalty or other interest in such oil and gas of the United States or any Indian for whom the land from which it was produced is held in trust.

(b) Credits. If the rate of royalty payable to the Tribes, the United States, or any Indian beneficiary of trust land together with this tax exceeds twenty-seven percent (27%) of total production, then any portion of this tax above such twenty-seven percent (27%) shall be credited against payment of the tax so that the total of this tax and royalty shall not exceed twenty-seven percent (27%).

(AMENDED AS PER RESOLUTION NO. 2413-87-3, DATED 03/23/87.)

Sec. 103. Payment.

The tax shall be paid on a quarterly basis by check made payable to the Assiniboine and Sioux Tribes and delivered to the Tribal Oil and Gas Office at Poplar, Montana on or before February 15, May 15, August 15 and November 15 of each year.

Sec. 104. Penalties and interest.

A penalty of five percent (5%) shall be charged on any taxes not paid within the time specified in the Chapter plus interest on the unpaid amount at the rate of one-and-one-half percent (1-1/2%) per month from the date of delinquency until paid.

Sec. 105. Persons responsible for payment.

The lessee, producer, and buyer of the trust oil and gas each shall be responsible for the payment of the tax on all production subject to the tax; provided, that every owner of a taxable interest in trust oil or gas, or in the proceeds thereof, shall be liable for that owner's proportionate share of the tax. Any taxpayer paying the taxes imposed by the Chapter may deduct the taxes paid from any amounts due, or to become due, to the taxable interest ownership.

Sec. 106. Tax reports.

Any person or entity engaged in the production of trust oil or gas shall on or before February 15, May 15, August 15 and November 15 of each year file with the Tribal Oil and Gas Office a report for the preceding calendar quarter showing by least the following:

(a) Identification of the lease or contract under which the trust oil or gas is produced and the name and address of the taxpayer;

(b) The number of wells on the leases, the number of producing wells and the number of days of production by month for each well;

(c) The gross amount of oil and gas produced and saved from each well;

(d) The price or value base on which royalties were computed;

(e) The gross production of trust oil or gas as reported to the United States and the gross

amount of royalties on trust oil or gas as reported to the United States on behalf of the Tribes or the individual Indian owners.

Sec. 107. Refunds of excess tax.

Any excess tax paid shall be refunded to the person paying the tax, or credited to taxes due from the taxpayer, provided that no refund shall be made unless the application for refund is filed with the Tribal oil and Gas Officer within one (1) year of the payment of the excess tax.

Sec. 108. Appeal of refund determination.

(a) Any person whose application for a refund is denied by the Tribal Oil and Gas Office may, within thirty (30) days, appeal the denial to the Tax Commission established under Chapter 3 of this Title. As soon as practicable after receiving an application for refund, the Tax Commission shall review the application for adequacy and completeness. If additional information is required, the Commission shall inform the applicant in writing and provide a reasonable time for the applicant to provide further information. When the application is adequate and complete, the Commission shall schedule a hearing. The applicant shall be given not less than twenty-one (21) days notice of the hearing date.

(b) At the hearing the applicant shall have the right to present oral and written testimony of witnesses under oath, and to be represented by counsel at its own expense. The Commission shall have power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents and other evidence. The Fort Peck Tribal Court shall enforce any subpoena issued by the Commission in the same manner as the Court enforces its own subpoenas. The ordinary rules of evidence shall not apply in any hearing, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfair if admitted, shall be excluded or may be admitted by the Commission only under special conditions or stipulations.

(c) The Chairman of the Tribal Executive Board may appoint a representative to represent

the interest of the Tribes and present the case for the Tribes at the hearing. The representative shall have all the same rights at the hearing as the applicant.

(d) The hearing shall be on the record, with all testimony taken under oath, and a permanent record shall be made by tape recorder or stenographic means.

(e) If the Commission determines that the applicant has proven by a preponderance of the evidence that the applicant is entitled to a refund, it shall order the refund paid. Otherwise, it shall deny all relief. The ruling shall either be issued in writing or orally on the record at the hearing.

(f) The Court of Appeals of the Fort Peck Tribal Court shall have exclusive jurisdiction to hear appeals from final decisions of the Commission pursuant to this Section. Any party may appeal any final decision within thirty (30) days after the decision by filing a notice of appeal with the Tax Commission, and serving a copy on the Tribes. Thereafter the Tax Commission shall promptly file the full record of the proceeding, including the notice of appeal with the Court of Appeals. The Fort Peck Court of Appeals shall hear the appeal in the same manner as it hears appeals of civil cases from the Fort Peck Tribal Court in which a petition for review is granted. In all appeals, the Court shall give proper deference to the administrative expertise of the Commission. The Court of Appeals shall not set aside, modify or remand any determination by the Commission unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence, or contrary to law. The Court of Appeals shall issue a written decision on all appeals, which decision shall be final. The Court of Appeals may, in its discretion, award costs and attorneys' fees to the Tribes against any appellant whose appeal was frivolous, malicious, or in bad faith. Such fees shall be assessed and collected as a tax imposed under this Chapter.

(g) Any final finding or determination of the Tax Commission which is not timely appealed, and any final determination by the Court of Appeals in proceedings pursuant to this Section,

shall be final and binding in any other proceeding against or by the same person.

(AMENDED AS PER RESOLUTION NO. 2413-87-3, DATED 03/23/87.)

Sec. 109. Regulations.

The Tribal Executive Board may promulgate such rules and regulations as may be appropriate for the administration of this Chapter.

Sec. 110. Effective date.

This amended Chapter shall become effective and supersede the previous ordinance upon approval in accordance with the Constitution and By-Laws.

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Sec. 201. Tax.

Any person or entity engaged in contracts for the improvement of real estate of any kind whatsoever on trust land on the Reservation shall, for the privilege of doing business on the Reservation, pay one half of one percent (1/2%) of the gross receipts from each prime contract for realty improvement on trust land; provided that any contract between an Indian tribe or tribal organization and the United States under P.L. 93-638 or any other statute authorizing such contracts shall not be considered a prime contract, and any sub-contract by such tribe or tribal organization shall be considered a prime contract.

Sec. 202. Exemption.

(a) The tax imposed by this Chapter shall not apply to the Tribes, any organization or agency of the Tribes, or any business wholly owned by the Tribes.

(b) The tax imposed by this Chapter shall not apply to any contract from which the gross receipts are less than one hundred thousand dollars (\$100,000.00).

Sec. 203. Definitions of gross receipts.

For the purpose of this Chapter, "gross receipts" means the amount received in money, credits, property, or other consideration for the performance of contracts for the improvement of real estate of any kind on trust lands within the Reservation, without any deduction on account of the cost of the property sold, materials used, services and labor purchased, state or federal taxes paid, or any other expenses whatsoever.

Sec. 204. Payment.

(a) The tax on any contract which is completed or terminated in the same year it is begun shall be paid on or before sixty (60) days from the date of substantial completion or termination of the contract.

(b) The tax on any contract which is not completed or terminated in the same year it is begun shall be paid in installments. An installment shall be paid on or before March 1 of each year for gross receipts on the contract during the preceding calendar year. The balance of the tax shall be paid within sixty (60) days of substantial completion or termination of the contract.

(c) All payments shall be by check payable to the Assiniboine and Sioux Tribes of the Fort Peck Reservation and delivered to the Tribal Office, at Poplar, Montana.

Sec. 205. Delinquent taxes.

(a) A penalty of five percent (5%) plus interest on the unpaid amount at the rate of one and one half percent (1 1/2%) per month from the date of delinquency until payment shall be charged on any taxes not paid within the time specified in Section 204.

(b) Any person or entity delinquent in payment of taxes by more than six (6) months may be barred from doing business on the Reservation by the Executive Board.

Sec. 206. Reports and returns.

(a) Prior to beginning work on any contract subject to the tax, the contractor shall file a report with the Tribes showing:

- (1) The date of the contract;
- (2) The location of land on which the contract will be performed;
- (3) The names and addresses of all parties to the contract;
- (4) The amount to be received under the contract;
- (5) When the work is expected to begin;
- (6) When the contract is expected to be completed;
- (7) A brief description of the work to be performed under the contract;

(b) On or before the due date of the tax or an installment of the tax as specified in Section 204 is due, the contractor shall file a return with the Tribes identifying the contract by the date and parties and showing:

- (1) The gross receipts received under the contract during the period covered by the return; and
- (2) The amount of the tax due under Section 201 and Section 204. The return shall also update or correct the information contained in the report required by subsection (a) to reflect any changes since the filing of the last report or return. Payment of the tax due shall accompany each return.

Sec. 207. Refunds.

(a) Any excess tax paid shall be refunded to the person or entity paying the tax, or credited to taxes due from the taxpayer, provided that no refund shall be made unless an application for refund is filed within one (1) year of the payment of the tax.

(b) Any person whose application for a refund is denied may, within thirty (30) days, appeal the denial to the Fort Peck Tribal Court, which shall determine de novo, after holding a hearing and

taking evidence, whether the appealing party is entitled to a refund.

Sec. 208. Regulations.

The Executive Board may promulgate such rules and regulations as may be appropriate for the administration of this Chapter.

Sec. 209. Effective date.

This Chapter shall apply to all receipts received after the date of enactment of this Chapter from realty improvement contracts.

Chapter 3. Utilities Tax

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Sec. 301. Definitions.

For the purposes of this Chapter, unless the context specifically requires otherwise:

(a) "Utility" means any publicly or privately owned railroad; communications, telegraph, telephone, electric power or transmission line; natural gas or oil pipeline; or similar system for transmitting or distributing services or commodities; but does not include roads or highways constructed or maintained by the United States, the Tribes or the State of Montana or a subdivision thereof.

(b) Property or an interest in property is "used for utility purposes" if it was granted, or is used, in connection with operation of a utility, as that term is defined herein.

(c) "Utility property" means all property used for utility purposes and located on or using trust lands on the reservation. Utility property shall include all improvements placed on trust land on the reservation. For purposes of this section, trust land includes the entire acreage of any tract where the United States holds an undivided interest in such tract in trust for the Tribes or for any Indian.

(d) "Owner" means any person who owns any interest in utility property as grantee, lessee, permittee, assignee, sublessee, or transferee. In the case of parties to a joint venture or operating agreement, the Tribes shall determine whether a joint venture partner or an operator is an owner in light of the terms of the agreement on the basis of the parties; respective participation in and entitlement to income or profits, assets and management of the venture or operation.

(e) "Person" means any individual, whether Indian or non-Indian, or any organization, including, but not limited to sole proprietorships, partnerships, joint ventures, trusts, estates, unincorporated associations, corporations and governments, or any division, department or agency of any of the foregoing.

(f) "Taxes" include the tax and any interest, penalties or costs imposed or assessed pursuant to this Chapter.

(AMENDED AS PER RESOLUTION NO. 885-2000-7, DATED 02/08/99).

Sec. 302. The Tax Commission.

(a) There is hereby created a Tax Commission, which shall consist of three (3) members, appointed for a term of three (3) years each by a two-thirds (2/3) majority of those voting at a meeting of the Tribal Executive Board at which a quorum is present. The initial Commission shall have one member serving for a term of three (3) years, one member serving for a term of two (2) years and one member serving for a term of one (1) year.

(b) To be eligible to hold the office of Tax Commissioner, a person must (1) be at least twenty-five (25) years of age; (2) have a least a high school education or its equivalent; (3) be of high moral character and integrity; (4) never have been convicted of a criminal offense other than traffic offenses; and (5) be physically able to carry out the duties of office. Members of the Executive Board may serve on the Tax Commission.

(c) On taking office each member of the Commission shall take an oath as follows:

"I, _____, do solemnly swear (or affirm) that I will administer justice and do equal right without respect to persons and will truly, faithfully, and impartially discharge and perform all the duties incumbent upon me as a member of the Tax Commission according to the best of my abilities. So help me God."

(d) Compensation of the Commission members shall be fixed by the Executive Board. Commission members shall receive compensation only for those days they sit as members of the Commission, including meetings they are required to attend as members of the Commission. The rate of compensation for Commission member may not be altered during his/her term of office.

(e) Members of the Commission may be suspended or removed in accordance with the procedures of Title 23, Section 306 of the Code of Justice.

(f) A member of the Commission shall disqualify himself/herself in any proceeding in which his/her impartiality might reasonably be questioned, in which he/she has any personal bias or prejudice concerning any party, in which he/she or a member of his/her immediate family might

be a witness or has any personal knowledge of disputed evidentiary facts concerning the proceeding, in which he/she or any member of his/her immediate family is a party or has any financial or other interest in the proceeding, has acted or is acting as an attorney in the proceeding, or in which he/she might otherwise appear to be biased or prejudiced.

Sec. 303. Tax Imposed.

A tax of four percent (4%) of the value on each assessment date of all utility property is hereby imposed.

(AMENDED AS PER RESOLUTION NO. 1213-99-2, DATED 02/08/99.)

Sec. 304. Assessment and valuation.

(a) The assessment date for each calendar year shall be January 1 of that year. Utility property shall be assessed annually as of the assessment date. The Tribes may assess unassessed utility property as of the date upon which they should have been assessed, and may redetermine incorrect or erroneous assessments.

(b) The value of utility property shall be presumed to be equal to the full value per linear mile of the utility as assessed by the State of Montana pursuant to Chapter 15-23 of the Montana Code Annotated, multiplied by the number of miles of the utility located on trust land within the Reservation. The value of utility property not measured by linear mile shall be presumed to be equal to the full value as assessed by the State of Montana pursuant to Chapter 15-23 of the Montana Code Annotated. For purpose of these presumptions the most recent Montana assessment made prior to the assessment date shall be used. Unless a presumed value is challenged pursuant to Section 313, the tax shall be levied and collected upon the presumed value.

(AMENDED AS PER RESOLUTION NO. 1213-99-2, DATED 02/08/99; AND AS PER RESOLUTION NO. 606-98-7, DATED 07/13/98).

(c) If a presumption of value is challenged pursuant to Section 313, the value of the utility property shall be determined by the Tax Commission,

after a hearing, based on one or more of the following methods:

(1) Fair market value method. On the basis of the selling prices of comparable property (whether within or outside the Reservation) which are sold by willing sellers to willing buyers, neither of whom are under a compulsion to act.

(2) Present value of income method. By computing the capitalized value of the gross income to be received from the property less the reasonable expenses to be incurred in producing the income, over the remaining useful life of the property.

(3) Any other method which reasonably and accurately reflects the value of the utility property.

(AMENDED AS PER RESOLUTION NO. 606-98-7, DATED 07/13/98.)

Sec. 305. Persons liable for payment.

(a) All owners of utility property are liable for payment of the entire tax assessed upon that interest.

(b) If an owner is an association, joint venture or partnership, the associates, participants or partners both limited and general, shall be jointly and severally liable for the entire tax assessed upon that property.

(c) Each person liable for taxes under this Section shall have a right of contribution from any other person liable for a share of the taxes paid proportionate to the share of such person in the utility property. The owners may, by agreement, alter the allocation by contribution of the tax liability among themselves; but no such agreement shall affect the liability to the Tribes of any person named in subsection (a) and (b) hereof.

Sec. 306. Exemptions.

The tax imposed by this Chapter shall not apply to:

(a) The Assiniboine and Sioux Tribes, any subdivision, agency or program of the Tribes or any enterprise or entity wholly owned by the Tribes;

(b) The United States of its subdivisions, agencies or departments, except to the extent such taxes are authorized by federal law; or If a utility property is owned in part by entities exempt under this Section and in part by entities not exempt, the proportionate share owned by nonexempt entities shall be subject to tax.

(AMENDED AS PER RESOLUTION NO. 1213-99-2, DATED 02/08/99; AND PER RESOLUTION NO. 606-98-7, DATED 07/13/98).

Sec. 307. Declarations of interest.

On or before March 1 following each assessment date, each owner subject to tax under this Chapter must file with the Tribes a declaration of its interest in any utility property on such forms and containing such information as the Tribes may require. If the owner of the utility property is exempt under Section 306, the declaration shall so state. The declaration shall state the value per linear mile of the utility as most recently assessed by the State of Montana.

Sec. 308. Notice of and payment of tax.

(a) The Tribes shall, by April 15 of each year, mail to each owner notice of the assessed value of the utility property and the tax due. The notice shall be based on the presumed value established as provided in Section 304 (b) unless a different value has been finally established by the Tax Commission. The notice shall be mailed to the address specified in the most recent declaration filed pursuant to Section 307, or, if no declaration has been filed, to the owners' last known address. Failure to send or receive notice, shall not relieve the owner of the obligation to timely pay the tax due.

(b) The tax due shall be paid in two (2), equal semi-annual installments, with one-half (½) being due by May 15 following the assessment date, and one-half (½) being due November 15 following the assessment date.

(c) The tax shall be paid by check made payable to the Assiniboine and Sioux Tribes and mailed or delivered to the Tribes at Poplar, Montana. Payment is timely if postmarked or actually delivered on or prior to the due date.

Sec. 309. Penalties and interest for late payment.

(a) A penalty of five percent (5%) shall be charged on any taxes not paid when due, and interest at one and one-half percent (1 ½%) per month shall be charged on the unpaid balance from the payment due date until the date of payment.

(b) Any person failing to pay taxes when due shall also be liable for a penalty equal to any extraordinary administrative costs, including attorneys' fees and other litigation costs, incurred in collecting the unpaid amount.

(c) The penalties and interest set forth in this Section shall be assessed and collected as a tax imposed under this Chapter.

Sec. 310. Lien for taxes.

(a) Taxes assessed shall be a lien against the utility property subject to the tax. Such lien shall arise in favor of the Tribes as of the assessment date, without notice or demand, and shall be prior and superior to all other liens and encumbrances.

(b) The lien shall continue until the amount of the lien is paid to the Tribes or the lien is released by the Tribes. Partial payment of the taxes shall reduce the amount of the lien by the amount paid.

(c) The Tribes may foreclose upon the utility property subject to a lien by filing a civil action in Tribal Court for that purpose. In the event of such a foreclosure, the utility property shall be sold in a commercially reasonable manner and the proceeds applied first to the expenses for the foreclosure, then to the liability for costs, penalties, interest and tax, in that order. Any remaining balance shall be remitted to the owners of the utility property in proportion to their ownership interest.

(d) The Tribes may release liens as part of a settlement of the taxes due or where the payment of the tax is adequately protected by other security or by a surety bond.

Sec. 311. Civil actions for tax penalties and interest.

In any case of failure of a person liable for taxes under this Chapter to pay the taxes, penalties or interest due the amount of such taxes, penalties and interest may be recovered in a civil action in Tribal Court pursuant to Title 7 of the Code of Justice, or in any other court of competent jurisdiction.

Sec. 312. Refunds of excess tax payments.

Any person who believes that it has overpaid taxes under this Chapter may apply to the Tax Commission for a refund within six (6) months of the overpayment. Any tax paid which, after a hearing pursuant to Section 314 is found to be in excess of that required to be paid, shall be refunded to the person paying the tax, or credited against taxes due from the taxpayer.

Sec. 313. Challenges to presumed value.

(a) Any owner of utility property may, at the time of filing a declaration of interest, or at any time prior to the deadline for filing a declaration of interest, file a challenge to the presumed value established as provided in Section 304 (b). The challenge shall state in detail why the presumed value is not accurate, what the correct value is, and why that value is correct. It shall have attached to it as an exhibit any appraisals or other information upon which the owner intends to rely. The challenge shall be filed with the Tax Commission and a copy shall be served on the Tribes.

(b) During the pendency of a challenge proceeding the tax shall be paid and collected based on the presumed value established as provided by Section 304 (b). If the value assessed by the Tax Commission is greater than the presumed value, any further tax due shall be paid within thirty (30) days of the date of the decision, or, if the decision is appealed, within thirty (3) days of the decision of the appeal. If the value assessed by the Tax Commission is less than the presumed value the Commission shall order a refund of any overpayment or permit the owner to deduct it from future payments.

Sec. 314. Hearing on application for refund or challenge to presumed value assessment.

(a) As soon as practicable after receiving an application under Section 312 of a challenge under Section 313, the Tax Commission shall review the application for adequacy and completeness. If additional information is required, the Commission shall so inform the applicant in writing and provide a reasonable time for the applicant to provide further information. When the application is adequate and complete the Commission shall schedule a hearing. In the case of a challenge under Section 313, the hearing shall not be less than three (3) months after the date the challenge was served on the Tribes. The applicant shall be given not less than twenty-one (21) days notice of the hearing date.

(b) At the hearing the applicant shall have the right to present oral and written testimony of witnesses under oath, and to be represented by counsel at its own expense. The Commission shall have power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents and other evidence. The Fort Peck Tribal Court shall enforce any subpoena issued by the Commission in the same manner as the Court enforces its own subpoenas. The ordinary rules of evidence shall not apply in any hearing, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfair if admitted, shall be excluded or may be admitted by the Commission only under special conditions or stipulations.

(c) The Chairman of the Tribal Executive Board may appoint a representative to represent the interests of the Tribes and present the case for the Tribes at the hearing. The staff member or representative shall have all the same rights at the hearing as the applicant. The Tribes may employ an outside appraiser to assist it.

(d) The hearing shall be on the record, with all testimony taken under oath, and a permanent record shall be made by tape recorder or stenographic means.

(e) If the Commission determines that the applicant has proven by a preponderance of the evidence that the applicant is entitled to a refund or correction of the assessment or both, it shall order the appropriate relief. If the Commission determines that the Tribes have proved by a preponderance of the evidence that a greater assessment is required it shall order an increase in the assessment. Otherwise, it shall deny all relief. The ruling shall either be issued in writing, or orally on the record at the hearing.

Sec. 315. Appeals.

(a) The Court of Appeals of the Fort Peck Tribal Court shall have exclusive jurisdiction to hear appeals from final decisions pursuant to Section 314.

(b) Any party may appeal any final decision under Section 314 within thirty (30) days after the decision by filing a notice of appeal with the Tax Commission, and serving a copy on the Tribes. Thereafter the Tax Commission shall promptly file the full record of the proceeding, including the notice of appeal, with the Court of Appeals.

(c) The Fort Peck Court of Appeals shall hear the appeal in the same manner as it hears appeals of civil cases from the Fort Peck Tribal Court in which a petition for review is granted. In all appeals, the Court shall give proper deference to the administrative expertise of the Commission. The Court of Appeals shall not set aside, modify or remand any determination by the Commission unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence or contrary to law. The Court of Appeals shall issue a written decision on all appeals, which decision shall be final.

(d) The Court of Appeals may, in its discretion, award costs and attorneys' fees to the Tribes against any appellant whose appeal was frivolous, malicious, or in bad faith. Such fees shall be assessed and collected as a tax imposed under this Chapter.

Sec. 316. Finality of Tax Commission or Court action.

Any final finding or determination of the Tax Commission pursuant to Sections 312 to 314 which is not timely appealed, and any final determination of the Court of Appeals in proceedings pursuant to Section 315 and of the Tribal Court in proceedings pursuant to Section 311, shall be final and binding in any other proceeding against or by the same person before the Tax Commission or the Tribal Court. In all proceedings before the Tax Commission or any court, the presumed value established as provided in Section 304 (b) shall be treated as conclusive unless it has been timely challenged pursuant to Section 313, and the Tax Commission has established a different value.

Sec. 317. Enforcement and recordkeeping.

(a) The Tribes may require each owner to keep such records as may be necessary to determine ownership and value of utility property subject to tax under this Chapter. Such records shall be retained for at least six (6) years beyond the date of payment of the tax to which they relate, or if no payment is due, for six (6) years beyond the due date of the declaration of interest to which the records relate.

(b) The Tribes may, for the purposes of preparing for a challenge proceeding under this Chapter or otherwise implementing or enforcing the provisions of this Chapter, inspect property, examine and require the production of pertinent records, books, information, or evidence, and require the presence and testimony under oath of any person within the jurisdiction of the Tribes.

(c) If an owner or other person fails upon request to testify, or to provide information or documents, the Tax Commission may seek and obtain a subpoena or other order from the Fort Peck Tribal Court compelling the testimony or production of the information or documents.

Sec. 318. Settlements of taxes due.

(a) If at any time, the Tribes in good faith are in doubt of the liability of the owner for the payment

of taxes, it may compromise the liability by entering in writing with the owner an agreement that adequately protects the interests of the Tribes.

(b) If entered into after any court acquires jurisdiction of the matter, a settlement agreement shall be part of a stipulated order or judgement disposing of the case.

(c) As a condition for entering into a settlement agreement, the Tribes may require the provision of security for payment of any taxes due according to the terms of the agreement.

(d) A settlement agreement is conclusive as to the liability or no liability for payment of taxes relating to the periods referred to in the agreement, except upon a showing of fraud, malfeasance, misrepresentation or concealment of a material fact.

Sec. 319. Assignment or transfer of utility property.

(a) If a person buys substantially all of the assets of an owner of utility property, that person shall withhold from the purchase price and pay to the Tax Commission the amount of taxes owed by the owner prior to the purchase.

(b) If a person buys an interest in utility property, that person shall withhold from the purchase price and pay the Tax Commission a share of the amount of taxes owed by the owner prior to the purchase proportionate to the interest purchased.

(c) Any purchaser failing to withhold taxes shall be personally liable for said taxes up to the value of all the property acquired. Any liability arising under this Section shall be assessed and collected as a tax imposed by this Chapter.

(d) The purchaser may make a written request for and, within thirty (30) days after the owner's records are made available for audit, the Tribes shall send to the purchaser, a notice of the taxes due. Thereafter, the purchaser shall not be personally liable under this Section for any taxes in excess of the amount stated in the notice, or for any such taxes if not notice is given with the time required.

(e) No consent to the assignment or transfer of any utility property shall be granted by the Tribes unless all taxes owed by the transferor have been

paid, or that payment has been adequately secured.

Sec. 320. Civil penalties for evasion or interference with tax.

(a) Any owner under-assessed by reason of incomplete or incorrect information provided through negligence or intentional disregard of this Chapter or rules and regulations issued pursuant to this Chapter (but without the intent to defraud) shall be assessed a penalty of twenty-five percent (25%) of the underpayment of tax, but not less than two hundred fifty dollars (\$250.00).

(b) Any owner under-assessed as a result of its fraud shall be assessed a penalty of fifty percent (50%) of the underpayment of tax, but not less than five hundred dollars (\$500.00).

(c) Any person who assists an owner in fraud resulting in an underassessment shall be subject to a penalty of twenty-five percent (25%) of the underpayment of tax, but not less than two hundred fifty dollars (\$250.00).

(d) Any person who removes from the Reservation any property upon which there is a lien for taxes under Section 308 shall be subject to a penalty equal to the amount of the lien.

(e) Any liability arising under this Section shall be assessed and collected as a tax imposed by this Chapter.

Sec. 321. Criminal offenses.

(a) Any Indian obligated to pay taxes, to file a declaration, to provide information or documents or allow access to property within his/her control pursuant to the provisions of this Chapter who fails to do so, is guilty of a Class B. misdemeanor.

(b) Any Indian who by fraud or misrepresentation attempts to defeat or evade the tax imposed by this Chapter or to assist another to defeat or evade such tax is guilty of a Class A misdemeanor.

(c) Any non-Indian who violates the provisions of subsection (a) or (b) may be excluded from the Fort Peck Reservation or may have his/her right to do business on the Reservation suspended or revoked by order of the Tribal Executive Board.

Sec. 322. Prohibition of suits.

No suits for the purpose of restraining the assessment of collection of the taxes imposed under this Chapter shall be maintained in any court by a person, whether or not such person is the person against whom such taxes were assessed. The remedies provided in Section 312 to 314 shall be exclusive.

Sec. 323. Severability.

If any provision of this Chapter or its application to any person or circumstance, is held invalid by a final judgement of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

Sec. 324. Effective date.

This Chapter shall be effective beginning on the date of approval of this Chapter by the Secretary of the Interior or his/her designated representative. The taxes for the year during which this Chapter is approved shall be assessed as provided herein, but shall be prorated by the number of days during the year that this Chapter was in effect. The Tribes may send out notices for such taxes at any time. The first installment of such taxes shall be due on the due date under Section 308 (b) or thirty (30) days after the notice is mailed, whichever date is later. The second installment shall be due on the due date under Section 308 (b) or thirty (30) days after the notice is mailed, whichever date is later.

(AMENDED AS PER RESOLUTION NO. 2150-87-1, DATED 01/27/87)

Chapter 4. Basic Gasoline License Tax

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- Sec. 406. Examination of records..... 12

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Sec. 401. Definitions.

As used in this chapter, unless otherwise noted, the following definitions apply:

(1) “State” means the State of Montana, Department of Transportation.

(2) “Agreement” means the Fort Peck-Montana Gasoline Tax Agreement.

(3) “Distributor” means any a person who maintains a valid distributor license with the State; and

(a) Who engages in the business with the Reservation of producing, refining, manufacturing, or compounding gasoline for sale, use or distribution; or

(b) Who imports gasoline for sale, use or distribution; or

(c). Who engages in the wholesale distribution of gasoline within the Reservation.

(4) “Gasoline” includes all products commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline, and all flammable liquids composed of a mixture of selected hydro-carbon expressly manufactured and blended for the purpose of effectively operating internal combustion engines.

(5) “Import” means to receive into any person’s possession or custody first after its arrival and coming to rest at destination within the Reservation of any gasoline shipped or transported into this Reservation from a point of origin outside this Reservation other than in the fuel supply tank of a motor vehicle.

(6) “Person” means any person, firm, association, joint-stock company, syndicate, or corporation.

(7) “Use” includes and means the operation of motor vehicles upon the public roads or highways of the Reservation.

Sec. 402. Tax Imposed.

Every distributor shall pay a Tribal license tax for the privilege of engaging in and carrying on business on the Reservation in an amount equal

to 21.4 cents for each gallon of all gasoline distributed by him within the Reservation, and upon which the gasoline tax has not been paid by any other distributor. Pursuant to the Agreement, this tax shall be collected by the State.

Sec. 403. Distributor's statement and payment.

Each distributor shall, not later than the 25th day of each calendar month, render a true statement, duly signed, to the State of all gasoline distributed and received by him within the Reservation during the preceding calendar month and containing any other information the Tribes or the State may reasonably require in order to administer this tribal gasoline license tax law. Where the distributor has not separately paid the state gasoline license tax with respect to such gasoline, the statement must be accompanied by a payment in an amount equal to the tax imposed by Sec. 402, less any per capita agricultural refund credit issued pursuant to the Agreement and less 1% of the total tax that may be deducted by the distributor as an allowance for evaporation and other loss of gasoline distributed by the distributor.

Sec. 404. Recordkeeping requirement.

(a) Each distributor, retail service station owner, or any other person dealing in, transporting, receiving, or storing gasoline shall keep for a period not to exceed three years such records, receipts, invoices, and statements (required under Sec. 403) and any other pertinent papers and information as the Tribes or State may require.

(b) Retail service station owners within the Reservation are hereby required to maintain a record of total purchases and sales of gasoline and total taxes paid to all distributors of gasoline on a quarterly basis, and to report the same to the State within 25 days after the close of each calendar month.

Sec. 405. Invoice of distributors.

Each distributor operating on the Reservation, shall at the time of delivery, except where author-

ized by the Tribes, issue to the purchaser an invoice in which shall be stated the number of gallons of gasoline covered by such invoice.

Sec. 406. Examination of records.

The Tribes, or its authorized representative is hereby empowered to examine all pertinent books, papers, records, and equipment of any gasoline distributor or retail service station owner operating on the Reservation.

Sec. 407. Tax penalty for delinquency.

(1) Any license tax not paid within the time provided shall be delinquent, and a penalty of 10% shall be added to the tax, in addition the tax shall bear interest at the rate of 1% per month from the date of delinquency until paid. Upon showing good cause by the distributor, the Tribes may waive the penalty.

(2) If any distributor or other person subject to the payment of such license tax shall willfully fail, neglect, or refuse to make any statement required by this Chapter or shall willfully fail to make payment of such license tax within the time provided, the Tribes shall be authorized to revoke any license to engage in and carry on business on the Reservation.

(3) In addition, the Tribes shall inform itself regarding the matters required to be in any such statement and determine the amount of the license tax due the Tribes from such distributor and shall add thereto a penalty of \$25.00 or 10% thereof, whichever is the greater, together with interest at the rate of 1% per month from the date of such statements should have been made and said license tax paid.

(4) The Tribes shall proceed to collect such license tax, with penalties and interest. The Tribes may commence and prosecute to final determination in any court of competent jurisdiction an action to collect such license tax.

(AMENDED AS PER RESOLUTION NO. 609-92-3, DATED 03/09/92.)

Chapter 5. Basic Liquor, Beer and Wine License Tax

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Sec. 501. Definitions.

As used in this Chapter, unless otherwise noted, the following definitions apply:

- (1) "Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Reservation.
- (2) "State" means the State of Montana.
- (3) "Agreement" means the Fort Peck-Montana Liquor, Wine and Beer Tax Agreement.
- (4) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.
- (5) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.
- (6) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.
- (7) "Beer importer" means a person other than a brewer who imports malt beverages.
- (8) "Brewer" means a person who produces malt beverages.
- (9) "Liquor" means an alcoholic beverage except beer and table wine.
- (10) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom and with or without other wholesome products suitable for human food consumption.
- (11) "Distributor" means any person:

(i) Who imports liquor, beer, or wine for sale, use or distribution; or

(ii) Who engages in the wholesome distribution of liquor, beer, or wine within the Reservation.

(12) "Wholesaler" means any person who engages in the wholesale distribution of liquor, beer, or wine within the Reservation.

(13) "Package" means a container or receptacle used for holding an alcoholic beverage.

(14) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(15) "Table wine" means wine as defined below which contains not more than 15% alcohol by volume.

(16) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed with the Fort Peck Reservation.

(17) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine.

(18) "Import" means to receive into any person's possession or custody first after its arrival and coming to rest at destination within the Reservation of any alcoholic beverage shipped or transported into this Reservation from a point of origin outside this Reservation.

(19) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

Sec. 502. Tax on liquor imposed.

(1) Each purchaser shall pay, at the time of the sale and delivery of any liquor on the Fort Peck Reservation, a liquor tax at the rate of:

(a) 26% of the retail selling price on all liquor sold and delivered on the Reservation by a company that manufactures, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(b) 22.4% of the retail selling price on all liquor sold and delivered on the Reservation by a company that manufactures, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The liquor tax shall be charged and collected on all liquor brought into the Reservation. The retail selling price shall be computed by adding to the cost of said liquor the State markup as designated by the State.

(3) Pursuant to the Agreement, the tax on liquor shall be collected by the State.

Sec. 503. Tax on beer imposed.

(1) Any wholesaler shall pay a tax of \$4.30 per barrel of 31 gallons on each and every barrel of beer sold on the Assiniboine and Sioux Tribe of the Fort Peck Reservation by any wholesaler.

(2) Said tax shall be paid by said wholesaler at the end of each month upon any such beer so sold by him during that month. As to any beer sold in containers other than barrels of more or less capacity of 31 gallons, the quantity content shall be ascertained and computed in determining the amount of tax due.

(3) Pursuant to the Agreement, the tax on beer shall be collected by the State.

Sec. 504. Tax on wine imposed.

(1) Any table wine distributor shall pay a tax of 27 cents per liter on table wine imported by such distributor.

(2) The tax on table wine imported by a table wine distributor shall be paid by the table wine

distributor by the 15th day of the month following the sale of the table wine from the table wine distributor's warehouse.

(3) Pursuant to the Agreement, the tax on table wine shall be collected by the State.

Sec. 505. Distributor's and wholesaler's statement.

(1) Every beer wholesaler or table wine distributor subject to this tax and licensed to do business in the State shall, on or before the 15th day of each month, in the manner and form as shall be prescribed by the State Department of Revenue, make an exact return to the Department of the amount of beer or wine sold and delivered by him within the Reservation during the previous month. Where the distributor or wholesaler has not separately paid the State, the beer or wine tax with respect to such beer or wine must be accompanied by a payment in an amount equal to the tax imposed by Sections 503 and 504.

Sec. 506. Recordkeeping requirements.

(1) Each distributor or wholesaler shall keep for a period not to exceed three years such records, receipts, invoices, and statements (required under Sec. 505) and any other pertinent papers and information as the Tribes may require.

Sec. 507. Examination of records.

(1) The Tribes, or its authorized representative, is hereby empowered to examine all pertinent books, papers, and records of any wholesaler or distributor on the Reservation.

Sec. 508. Tax Penalty for delinquency.

(1) Any tax not paid within the time provided shall be delinquent, and a penalty of 10% shall be added to the tax, and in addition the tax shall bear interest at a rate of 1% per month from the date of delinquency until paid. Upon showing of good cause by a distributor or wholesaler, the Tribes may waive the penalty.

(2) If any distributor or other person subject to the payment of such tax shall willfully fail, neglect, or refuse to make any statement required by

this Chapter or shall willfully fail to make payment of such tax within the time provided, the Tribes shall be authorized to revoke any license to engage in and carry on business on the Reservation.

(3) In addition, the Tribes shall inform itself regarding the matters required to be in any such statement and determine the amount of the tax due the Tribes from such distributor or wholesaler and shall add thereto a penalty of \$25.00 or 10% thereof, whichever is the greater, together with interest at the rate of 1% per month from the date such statements should have been made and said tax paid.

(4) The Tribes shall proceed to collect such tax, with penalties and interest. The Tribes may commence and prosecute to final determination in any court of competent jurisdiction an action to collect such tax.

(AMENDED AS PER RESOLUTION NO. 3201-93-9, DATED 09/12/93.)

Chapter 6. Cigarette Tax and Tax on Other Tobacco Products

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Sec. 601. Definitions.

Unless otherwise noted, as used in this chapter, the following definitions apply:

(1) "Agreement" means the Fort Peck-Montana Tobacco Tax Agreement.

(2) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, regardless of size or shape or whether or not the tobacco is favored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of

non-tobacco paper or any other substance or material except tobacco.

(3) "Insignia" means an impression, mark, or stamp approved by the Montana Department of Revenue for use on cigarette packages.

(4) "Moist snuff" means any product containing finely cut, ground or powdered tobacco, other than dry snuff, intended to be placed in the oral cavity.

(5) "Person" means an individual, firm, partnership, corporation, association, company, or other business entity, however formed.

(6) "Reservation" means the Fort Peck Indian Reservation.

(7) "Sale" means any transfer of cigarettes or a tobacco product for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means, where such transfer occurs within the Reservation and is not subject to State tobacco taxes.

(8) "State" means the State of Montana, Department of Revenue.

(9) "State tobacco taxes" means the Montana cigarette tax and the Montana tax on other tobacco products.

(10) "Tribal tobacco taxes" means the Tribal cigarette tax and the Tribal tax on other tobacco products.

(11) "Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

(12) "Tobacco product" means a substance other than cigarettes or moist snuff that is intended for human consumption and contains tobacco.

(13) "Wholesaler" means a person who sells cigarettes and other tobacco products for resale on the Reservation.

(AMENDED AS PER RESOLUTION NO. 1749-2003-6, DATED 06/23/03).

Sec. 602. Intent.

This ordinance is enacted to meet the requirement on Paragraph 3 of the Agreement that the Tribal Executive Board adopt and keep in force an ordinance imposing Tribal tobacco taxes similar to the State tobacco taxes.

Sec. 603. Tribal cigarette tax.

(1) A Tribal cigarette tax is imposed on the sale of cigarettes within the Reservation. The tax is equal to seventy (70) cents for each package of cigarettes containing twenty (20) cigarettes. When a package contains more or less than twenty (20) cigarettes, the tax on each cigarette is equal to one-twentieth (1/20th) of the tax on a package containing twenty (20) cigarettes.

(2) A wholesaler selling cigarettes for resale within the Reservation must pre-collect and pay the Tribal cigarette tax through the purchase of State tax insignia as provided in Sec. 504.

(3) With respect to pre-collected Tribal cigarette taxes, a wholesaler must report to the State the same information that would be required under Montana laws and regulations with respect to pre-collected State cigarette taxes.

(AMENDED AS PER RESOLUTION NO. 1749-2003-6, DATED 06/23/03).

Sec. 604. Tax Insignia.

A State tax insignia must be affixed to all cigarettes sold within the Reservation. A wholesaler selling cigarettes subject to the Tribal cigarette tax shall comply with Montana laws and regulations on the requirements for purchasing and affixing State tax insignia. In calculation any insignia discount, sales subject to the State cigarette tax and sales subject to the Tribal cigarette tax should be combined.

Sec. 605. Records of wholesalers.

All wholesalers making sales of cigarettes subject to the Tribal cigarette tax must maintain for five (5) years and make available for examination by the State and/or the Tribes the same books and records as are maintained with respect to cigarette sales subject to the Montana cigarette tax.

Sec. 606. Licenses.

All wholesalers must be licensed by the State of Montana before selling cigarettes or other tobacco products for resale within the Reservation.

Sec. 607. Tax on other tobacco products.

(1) A Tribal tax is imposed on the sale of other tobacco products on the Reservation. The tax is equal to twenty-five percent (25%) of the wholesale price paid by the wholesaler.

(2) A Tribal tax is imposed on the sale of moist snuff at a rate of thirty-five (35) cents per ounce, or any portion thereof, based upon the net weight of the package listed by the manufacturer on the package. When a package contains more or less than one (1) ounce, the tax on the package shall be proportional to the weight of the package.

(3) A wholesaler making sales of moist snuff and other tobacco products for resale within the Reservation must pre-collect and pay to the State the Tribal tax on other tobacco products. A wholesaler may reduce the amount of the Tribal tax on other tobacco products the wholesaler pays by two and one half percent (2.5%) to compensate for such person's collection and administrative expenses.

(4) With respect to the pre-collected Tribal tax on moist snuff and other tobacco products, a wholesaler must report to the State the same information that is required under Montana laws and regulations with respect to the State tax on other tobacco products.

(AMENDED AS PER RESOLUTION NO. 1749-2003-6, DATED 06/23/03).

Sec. 608. Payment to Tribes.

The State shall pay the Tribes its share of all taxes upon the sale of cigarettes and other tobacco products in accordance with Paragraph 5 of the Agreement.

Sec. 609. Transition Reflecting Change in State Taxes on Cigarettes

To observe the changes in state tax law as proposed in Montana Senate Bill No. 407 (2003), the Tribes require all vendors, retailers and wholesalers to:

(1) Report to the State the number of stamped cigarettes and the cigarette insignia on hand as of 12:01 a.m. on April 30, 2003, and

(2) Pay the difference between the former tax rate on cigarettes and the cigarette insignia and

the new tax rate, if the inventory count taken April 30, 2003, exceeds the inventory amount of stamped cigarettes and cigarette insignia listed at the close of the last income tax reporting year. A statement that no taxes are owed after comparing inventory amounts should be reported the State.
(AMENDED AS PER RESOLUTION NO. 1749-2003-6, DATED 06/23/03).