

ORDINANCE NO. 04-01 (as amended)

Be it enacted by the Tribal Council of the Colorado River Indian Tribes that the Taxation Code Title 20 Articles I, II, III, IV, V, and VI of the Colorado River Indian Tribes is hereby enacted as follows:

TITLE 20: TAXATION

ARTICLE I. TAX ADMINISTRATION..... 1

CHAPTER 1. GENERAL PROVISIONS1

 Section 20-1101. Definitions.1

 Section 20-1102. Purpose.5

 Section 20-1103. Sovereign Immunity.5

 Section 20-1104. Severability.6

 Section 20-1105. Construction.6

 Section 20-1106. Amendments6

 Section 20-1107. Conflict With Laws.6

 Section 20-1108. Preemption.6

 Section 20-1109. Effective Date.6

CHAPTER 2. TRIBAL TREASURER6

 Section 20-1201. Responsibilities of the Tribal Treasurer.6

CHAPTER 3. TRIBAL DEPARTMENT OF REVENUE AND FINANCE7

 Section 20-1301. Department of Revenue and Finance.7

 Section 20-1302. Powers and Duties of the Department.7

 Section 20-1303. Organization of the Department.9

 Section 20-1304. Powers and Duties of the Director.9

 Section 20-1305. Removal from Office.11

 Section 20-1306. Suspension of Director or Department Staff.11

 Section 20-1307. Service of Process on the Department.11

CHAPTER 4. GENERAL ADMINISTRATIVE PROVISIONS11

 Section 20-1401. Tribal Council to Set All Tax Rates.11

 Section 20-1402. Jurisdiction Program Established12

 Section 20-1403. General Tax Account Established.12

 Section 20-1404. Refund Account.12

 Section 20-1405. Records of the Department.13

 Section 20-1406. Disclosure of Confidential Information.13

 Section 20-1407. Private Taxpayer Rulings.15

 Section 20-1408. Employee Preparation of Tax Returns.16

 Section 20-1409. Record Retention.17

 Section 20-1410. Refunds and Credits.17

 Section 20-1411. Time for Payment.18

 Section 20-1412. Extensions.18

 Section 20-1413. Delinquent Tax Obligations.18

 Section 20-1414. Failure to File a Return.18

 Section 20-1415. Security for Payment of Tax.19

 Section 20-1416. Deadlines on Weekends or Holidays.19

 Section 20-1417. Taxpayer Identification Number.19

 Section 20-1418. Bill of Rights.19

CHAPTER 5. ENFORCEMENT19

 Section 20-1501. Examinations and Audits.19

 Section 20-1502. Additional Examinations and Audits.22

 Section 20-1503. Injunction.22

 Section 20-1504. Suit and Enforcement Proceedings to Collect Taxes.22

 Section 20-1505. General Provisions for the Seizure and Sale of Property.23

Section 20-1506.	Procedures for the Seizure of Property.....	24
Section 20-1507.	Procedures for the Sale of Property.....	26
Section 20-1508.	Liens.....	27
Section 20-1509.	Recovery of Costs of Collection.....	29
Section 20-1510.	Recovery of Attorney Fees.....	29
Section 20-1511.	Expulsion of Non-Members from the Reservation.....	29
Section 20-1512.	Offers in Compromise.....	29
Section 20-1513.	Redemption before Sale or Institution of Suit.....	30
Section 20-1514.	Installment Payment Plan.....	30
Section 20-1515.	Closing Agreements.....	31
Section 20-1516.	Exempt Property.....	32
CHAPTER 6.	PROTESTS TO THE ADMINISTRATIVE HEARING OFFICER.....	32
Section 20-1601.	Qualifications of the Administrative Hearing Officer.....	32
Section 20-1602.	Protests for Review by the Administrative Hearing Officer.....	33
Section 20-1603.	Tax Division of the Tribal Court.....	35
Section 20-1604.	Review by the Tax Division of the Tribal Court and Tribal Appeals Court.....	36
Section 20-1605.	Disposition of Refunds.....	36
CHAPTER 7.	VIOLATIONS.....	37
Section 20-1701.	Penalties and Interest.....	37
Section 20-1702.	Abatement of Penalties.....	38
Section 20-1703.	Abatement of Interest.....	39
CHAPTER 8.	LIMITATIONS OF ACTIONS.....	39
Section 20-1801.	Limitations on Credits and Refunds.....	39
Section 20-1802.	Limitations on Record Retention.....	39
Section 20-1803.	Limitations on Enforcement.....	39
Section 20-1804.	Limitations on Violations.....	40
Section 20-1805.	Effect of Limitations; Tolling.....	40
CHAPTER 9.	REIMBURSEMENT OF REASONABLE COSTS.....	40
Section 20-1901.	Reimbursement of Reasonable Costs.....	40
ARTICLE II.	TOBACCO PRODUCTS TAX.....	44
CHAPTER 1.	GENERAL PROVISIONS.....	44
Section 20-2101.	General Purpose.....	44
Section 20-2102.	Definitions.....	44
Section 20-2103.	Imposition of Tax.....	44
Section 20-2104.	Rates of Tax.....	45
Section 20-2105.	Tax is Additional Tax.....	46
Section 20-2106.	Legal Incidence; Liability for Collection.....	46
Section 20-2107.	Collection of Tax.....	46
Section 20-2108.	Payment of Tax.....	46
Section 20-2109.	Intergovernmental Agreement for Collection.....	46
Section 20-2110.	Administration.....	46
Section 20-2111.	Filing of Applications.....	46
Section 20-2112.	Filing of Return.....	47
Section 20-2113.	Records.....	47
Section 20-2114.	Information Returns.....	47
Section 20-2115.	Failure to Pay Tax.....	47
Section 20-2116.	Tax Stamps.....	48
Section 20-2117.	Violations; Additional Penalties.....	48
Section 20-2118.	Failure to Remit; Licensing.....	48
Section 20-2119.	Promulgation of Regulations.....	48
Section 20-2120.	Severability.....	48
Section 20-2121.	Effective Date.....	48
Section 20-2122.	Application to the Tribes.....	49
Section 20-2123.	Nondiscrimination.....	49
ARTICLE III.	RESTAURANT PRIVILEGE TAX.....	50

CHAPTER 1. GENERAL PROVISIONS	50
Section 20-3101. General Purpose.	50
Section 20-3102. Definitions.	50
Section 20-3103. Imposition of Tax.	51
Section 20-3104. Rate of Tax.	51
Section 20-3105. Tax is Additional Tax.	51
Section 20-3106. Exemptions.	51
Section 20-3107. Liability for Payment.	51
Section 20-3108. Collection of Tax.	52
Section 20-3109. Payment of Tax.	52
Section 20-3110. Administration.	52
Section 20-3111. Filing of Applications.	52
Section 20-3112. Filing of Return.	52
Section 20-3113. Records.	52
Section 20-3114. Failure to Pay Tax.	53
Section 20-3115. Violations; Additional Penalties.	53
Section 20-3116. Promulgation of Regulations.	53
Section 20-3117. Failure to Remit; Licensing.	53
Section 20-3118. Severability.	53
Section 20-3119. Effective Date.	54
Section 20-3120. Application to the Tribes.	54
Section 20-3121. Nondiscrimination.	54
ARTICLE IV. TRANSIENT LODGING TAX	55
CHAPTER 1. GENERAL PROVISIONS	55
Section 20-4101. General Purpose.	55
Section 20-4102. Definitions.	55
Section 20-4103. Imposition of Tax.	55
Section 20-4104. Rate of Tax.	55
Section 20-4105. Tax is Additional Tax.	56
Section 20-4106. Exemptions.	56
Section 20-4107. Liability for Payment.	56
Section 20-4108. Collection of Tax.	56
Section 20-4109. Payment of Tax.	56
Section 20-4110. Administration.	56
Section 20-4111. Filing of Applications.	57
Section 20-4112. Filing of Return.	57
Section 20-4113. Records.	57
Section 20-4114. Failure to Pay Tax.	57
Section 20-4115. Violations; Additional Penalties.	57
Section 20-4116. Promulgation of Regulations.	58
Section 20-4118. Severability.	58
Section 20-4119. Effective Date.	58
Section 20-4120. Application to the Tribes.	58
Section 20-4121. Nondiscrimination.	58
ARTICLE V. SALES TAX	59
CHAPTER 1. GENERAL PROVISIONS	59
Section 20-5101. General Purpose.	59
Section 20-5102. Definitions.	59
Section 20-5103. Imposition of Tax.	60
Section 20-5104. Rates of Tax.	60
Section 20-5105. Tax is Additional Tax.	60
Section 20-5106. Exemptions.	60
Section 20-5107. Legal Incidence; Liability for Collection.	62
Section 20-5108. Collection of Tax.	63
Section 20-5109. Payment of Tax.	63

Section 20-5110.	Administration.....	63
Section 20-5111.	Filing of Applications.....	63
Section 20-5112.	Filing of Return.....	63
Section 20-5113.	Records.....	63
Section 20-5114.	Failure to Pay Tax.....	64
Section 20-5115.	Violations; Additional Penalties.....	64
Section 20-5116.	Promulgation of Regulations.....	64
Section 20-5117.	Failure to Remit; Licensing.....	64
Section 20-5118.	Severability.....	64
Section 20-5119.	Effective Date.....	64
Section 20-5120.	Application to the Tribes.....	65
Section 20-5121.	Nondiscrimination.....	65
ARTICLE VI.	UTILITY BUSINESS ACTIVITY TAX.....	66
CHAPTER 1.	GENERAL PROVISIONS.....	66
Section 20-6101.	General Purpose.....	66
Section 20-6102.	Definitions.....	66
Section 20 6103.	Imposition of Tax.....	67
Section 20 6104.	Rates of Tax.....	67
Section 20 6105.	Tax is Not an Additional Tax.....	68
Section 20-6106.	Exemptions.....	68
Section 20-6107.	Legal Incidence; Liability for Collection.....	68
Section 20-6108.	Collection of Tax.....	68
Section 20-6109.	Payment of Tax.....	68
Section 20-6110.	Administration.....	68
Section 20-6111.	Filing of Applications.....	68
Section 20-6112.	Filing of Return.....	69
Section 20-6113.	Records.....	69
Section 20-6114.	Failure to Pay Tax.....	69
Section 20-6115.	Violations; Additional Penalties.....	69
Section 20-6116.	Promulgation of Regulations.....	70
Section 20-6117.	Failure to Remit; Licensing.....	70
Section 20-6118.	Severability.....	70
Section 20-6119.	Effective Date.....	70
Section 20-6120.	Application to the Tribes.....	70
Section 20-6121.	Nondiscrimination.....	70

TITLE 20: TAXATION

Any and all prior Titles designated as the Taxation Code and any Articles thereof enacted or amended including Ordinances 95-1 enacted on July 8, 1995, Ordinance 99-1 enacted on March 5, 1999, and Ordinance 02-03 enacted December 11, 2002, repealing all prior Ordinances and enacting a revised Title 20, are hereby repealed. Ordinance 04-01 enacting this Title 20 shall take effect upon the approval of its provisions by the Tribal Council of the Colorado River Indian Tribes, which date was March 12, 2004.

ARTICLE I. TAX ADMINISTRATION

CHAPTER 1. GENERAL PROVISIONS

Section 20-1101. Definitions.

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

- (1) “Administrative Review” shall mean an administrative review of the final decisions of the Director or any other action which may be protested under this Title, by an Administrative Hearing Officer appointed by the Tribal Council.
- (2) “Attorney General” shall mean the Attorney General or Acting Attorney General of the Colorado River Indian Tribes.
- (3) “Business” and “Business Activity” shall mean all activities or acts, personal, corporate or otherwise, engaged in with the object of profit, gain, benefit or advantage, either directly or indirectly, wholly or in part, within the boundaries of the Reservation.
- (4) “Chairperson” shall mean the Chairperson of the Colorado River Indian Tribes Tribal Council.
- (5) “Chief of Police” shall mean the Chief of Police of the Colorado River Indian Tribes’ Police Department.
- (6) “Claimant” shall mean a person, other than the taxpayer, asserting an ownership interest in real or personal property owned by a taxpayer or in which a taxpayer has an interest.
- (7) “Confidential Information” shall mean any information developed from, discovered by or revealed to the Department concerning a taxpayer’s identity, the nature, source or amount of the taxpayer’s income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over-assessments or tax payments, whether the taxpayer’s tax return was, is being or will be examined or subject to investigation, collection or processing or any other data received by, recorded by, prepared by, furnished to or collected by the Department.

TAX CODE

- (8) “Constitution” shall mean the Constitution and Bylaws of the Colorado River Indian Tribes.
- (9) “Costs of Collection” shall mean expenses and costs incurred while collecting or attempting to collect a tax obligation and shall include but not be limited to reasonable attorney fees, costs of advertisement, mileage, copies, service fees, seizure and sale, and court costs.
- (10) “Department” shall mean the Department of Revenue and Finance of the Colorado River Indian Tribes which is responsible for the administration and enforcement of the tax revenue laws of the Tribes and the investigation, examination and audit of tribal finances, departments, offices, officers and employees.
- (11) “Director” shall mean the Director of the Department of Revenue and Finance of the Colorado River Indian Tribes.
- (12) “Enrolled Tribal Member” shall mean a person whose name appears on the tribal membership rolls of the Colorado River Indian Tribes.
- (13) “General Tax Account” shall mean an account in which all tax revenues, interest, penalties, costs of collection and other tax-related monies collected by the Department shall be deposited.
- (14) “Immediate Family” shall include any brother, sister, son, daughter, mother, father, grandmother, grandfather, husband, wife, mother-in-law, father-in-law, stepmother, stepfather, stepbrother, stepsister, stepdaughter, stepson, half-brother, half-sister, or brother, sister, son, daughter, mother, or father, by adoption.
- (15) “Interest” shall include the interests of any grantee, lessee, licensee, partner, shareholder, permittee, assignee, sublessee, franchisee, or transferee, whether of the whole interest or less than the whole, including the interest of parties to a partnership agreement, joint venture or operating agreement. The ownership and interest of the parties to a partnership agreement, joint venture, franchise, or operating agreement shall be determined in light of applicable law, the terms of the agreement and the basis of the parties' respective participation in income or profits, assets, and management of the venture or operation, as those factors may bear upon the property right conferred under the agreement.
- (16) “Native American-Owned Business” shall mean any commercial, industrial, or business activity or business enterprise established or organized with the object of profit, gain, benefit or advantage, either directly or indirectly, wholly or in part, within the boundaries of the Reservation owned, in whole or in part, by an enrolled member of an Indian or Alaska Native tribe, band, village, community, or pueblo recognized by the United States Department of the Interior; provided that such Native American ownership shall constitute not less than fifty-one percent (51%) of the business enterprise.

- (17) “Non-Indian” shall mean any individual who is not an enrolled member of an Indian or Alaska Native tribe, band, village, community, or pueblo recognized by the United States Department of the Interior as eligible for the programs and services provided by the United States to Indians because of their status as Indians.
- (18) “Notice” shall mean publication in any newspaper of general circulation on the Reservation. Notice shall also include, where applicable, sending notice to the taxpayer at the taxpayer’s last known address of record and depositing such into the U.S. certified mail, return receipt requested.
- (19) “Personal Property” shall mean everything which is subject to ownership and which is not included within the term of real property. Personal Property is property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses.
- (20) “Person” means any natural person, trustee, court appointed representative, syndicate, association, partnership, firm, club, company, corporation, business trust, institution, agency, government corporation, municipal corporation, district or other political subdivision, contractor, supplier, vendor, vendee, operator, user or owner, or any officers, agents, employees or other representative, acting either for himself or herself or for any other person in any capacity, or any other entity recognized by law as the subject of rights and duties. The masculine, feminine, singular or plural is included in any circumstance.
- (21) “Private Taxpayer Ruling” shall mean a written determination by the Department that interprets and applies one or more provisions of this Title and any applicable administrative regulations that apply to the specific facts described in the request.
- (22) “Real Property” shall mean all land or interests in land including all growing crops, mines, quarries, and minerals in and under the land and all rights and privileges appertaining thereto and improvements thereon, so long as not severed from the land.
- (23) “Reasonable Costs” shall mean costs and expenses that are based on prevailing market rates for the kind and quality of the furnished services but not exceeding the amounts actually incurred by a party.
- (24) “Records” shall mean any books, papers, documents, memoranda, supporting documents, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts and financial statements.
- (25) “Refund Account” shall mean the account in which the Director may deposit a portion of monies from the General Tax Account to pay any refund to a taxpayer who is lawfully determined to be entitled thereto.
- (26) “Reservation” shall mean all territory within the exterior boundaries of the Colorado River Indian Reservation, as established by the Act of March 3, 1865 and delineated by

TAX CODE

the Executive Orders of May 15, 1876 and November 22, 1915.

- (27) “Regulations” shall mean those written administrative regulations promulgated by the Director and approved by the Tribal Council.
- (28) “Return” or “Tax Return” shall mean any form, report or document prescribed and approved by the Department for the return of a tax obligation including any supporting schedules, attachments, worksheets and lists.
- (29) “Secretary” shall mean the Secretary of the United States Department of the Interior.
- (30) “State” shall mean the State of Arizona or the State of California, whichever the case may be.
- (31) “Superintendent” shall mean the Superintendent of the Colorado River Agency, Bureau of Indian Affairs.
- (32) “Tax Administration” shall mean the functions involved in or relating to the assessment, collection, audit, compliance, investigation, examination, litigation, statistical gathering, enforcement, policy making or management of or under the tax revenue laws of the Tribes.
- (33) “Tax Division of the Tribal Court” shall mean the division of the Tribal Court exercising jurisdiction over matters which involve the imposition, assessment, collection or enforcement of a tax obligation.
- (34) “Tax Obligation” shall mean a duty or obligation to pay all applicable taxes, interest, penalties and costs of collection.
- (35) “Taxable Year” shall mean either the calendar year or the taxpayer’s fiscal year, provided permission has been obtained from the Department of Revenue and Finance to use a fiscal year as the taxable year instead of the calendar year.
- (36) “Taxes” shall include taxes, interest, penalties and costs of collection assessed or imposed pursuant to this Title.
- (37) “Taxpayer” shall mean any person or entity subject to the jurisdiction of Tribal or Federal law and liable for the tax obligations imposed under this Title, and the heirs, successors, assigns and transferees of any such person, and shall include the government of the Colorado River Indian Tribes or any governmental entity or enterprise of the Tribes or the federal government or its agencies, unless otherwise provided.
- (38) “Tribal Council” shall mean the Tribal Council of the Colorado River Indian Tribes.

- (39) “Tribal Treasurer” shall mean the Treasurer of the Colorado River Indian Tribes.
- (40) “Tribes” shall mean the Colorado River Indian Tribes.
- (41) “Trust Land or Restricted Title” shall mean any land on the Reservation to which the United States holds legal title in trust for the Tribes, or for any particular Indian; or owned by a particular Indian or by the Tribes subject to a restriction against alienation imposed by the United States.

Section 20-1102. Purpose.

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

- (1) The Tribes must generate revenue for the operation, maintenance and improvement of essential tribal governmental services and programs including, by way of illustration and not limitation, law enforcement, health services, fire protection, and social and cultural preservation programs.
- (2) The imposition of taxes is an appropriate method of generating revenues for the Tribes and paying for a portion of the costs of governmental services and programs incident to the preservation of tribal existence and the continued economic development of the Reservation.

Section 20-1103. Sovereign Immunity.

- (1) The Tribes specifically and unequivocally declare its sovereign immunity and does not waive its sovereign immunity, expressly or impliedly, under any provision of this Title, and nothing in this Title shall be construed as waiving the sovereign immunity of the Tribes or any of its agencies, departments, officials, or employees. A taxpayer aggrieved by a final decision of the Director or any other action which may be protested under this Title may pursue only those remedies set forth in subparagraph (4) below.
- (2) Any suit or enforcement action commenced under this Title, including without limitation the filing of suit by the Attorney General, or its authorized representative, for the collection of a tax obligation, shall not constitute a waiver of sovereign immunity, regardless of whether a taxpayer files a counterclaim.
- (3) A taxpayer shall have no power or authority to challenge the constitutionality or validity of any tax, any tax rate or any administrative regulation, section, provision, phrase, addition, word, sentence or amendment of this Title.
- (4) A taxpayer aggrieved by a final decision of the Director or any other action which may be

TAX CODE

protested under this Title may file a written protest to the Administrative Hearing Officer for review and thereafter may petition the Tax Division of the Tribal Court and Tribal Appeals Court for further review; provided however, the final decision or other action of the Director is one which may be challenged by written protest and the taxpayer has complied with the provisions of Chapter 6, Protests to the Administrative Hearing Officer.

Section 20-1104. Severability.

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

Section 20-1105. Construction.

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

Section 20-1106. Amendments .

The Tribal Council may amend, modify, alter or repeal this Title.

Section 20-1107. Conflict With Laws.

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

Section 20-1108. Preemption.

In the event of a conflict between provisions of this Title or any other provision of law that, by its terms, is applicable to taxation, this Title shall preempt and nullify any other provision or law, whether tribal, state or federal, and is controlling.

Section 20-1109. Effective Date.

This Title shall take effect upon the approval of its provisions by the Tribal Council of the Colorado River Indian Tribes.

CHAPTER 2. TRIBAL TREASURER

Section 20-1201. Responsibilities of the Tribal Treasurer.

- (1) In addition to the powers and duties prescribed by law or assigned to him by the Tribal Council for such purposes, the Treasurer of the Tribal Council shall act as a liaison between the Director of the Department of Revenue and Finance and the Tribal Council.
- (2) The Tribal Treasurer shall be kept apprised of all actions taken by the Director through the submission of monthly reports, as described in Section 20-1405, detailing the actions, administrative and otherwise, taken by the Department of Revenue and Finance. The Tribal Treasurer shall make this report available to the Tribal Council at the last Tribal Council meeting of each month. The Director and the Tribal Treasurer shall be responsible for furnishing a final annual report in the time and manner provided to the Tribal Council.

CHAPTER 3. TRIBAL DEPARTMENT OF REVENUE AND FINANCE

Section 20-1301. Department of Revenue and Finance.

- (1) There is hereby established the Department of Revenue and Finance of the Colorado River Indian Tribes (“Department”), which shall be part of the Government of the Tribes as a subordinate agency and shall be supervised by the Director of the Department (“Director”). Agents, officers, employees and staff-members of the Department shall be subject to the general personnel policies of the Tribes.
- (2) The administration and enforcement of the tax revenue laws of the Tribes and the investigation, examination and audit of tribal finances, departments, offices, officers and employees is vested in and shall be exercised by the Department. The Department shall have all the powers and duties prescribed by law or assigned to it by the Tribal Council for such purposes.
- (3) Subject to the appropriation of funds by the Tribal Council, the Department shall employ, as necessary, agents, officers, employees and staff-members who shall perform such duties as may be required by the Department.
- (4) The day-to-day direction, operation, management, control, and supervision of the Department shall be the responsibility of the Director who shall be appointed by the Tribal Council and shall be a full-time paid employee of the Tribes. The Director shall be subject to the general personnel policies of the Tribes and any written employment agreement applicable thereto. The Director shall not be a member of the Tribal Council and shall be under the direct administrative supervision, direction and authority of the Chairperson of the Tribes.
- (5) The Tribal Treasurer shall serve as the Director of the Department until such time as the Director is appointed by the Tribal Council. After such time, the Tribal Treasurer shall serve solely as a liaison between the Department and the Tribal Council as described in this Title.

Section 20-1302. Powers and Duties of the Department.

TAX CODE

The Department shall administer and enforce the tax revenue laws of the Tribes and other laws and duties assigned to it by law, regulation and the Tribal Council. The Department shall have all the powers and duties prescribed by law or assigned to it by the Tribal Council for such purposes. The Department shall:

- (1) Develop and provide an integrated, coordinated and uniform system for the internal operations of the Department.
- (2) Subject to the general personnel policies of the Tribes, employ and remove personnel, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other personnel as may be necessary in the performance of its duties.
- (3) Contract for the services of outside advisors, consultants, attorneys and aides as may be reasonably necessary to carry out its powers, responsibilities, and duties subject to the availability of funds.
- (4) Contract with or assist other tribal departments, enterprises or entities in the furtherance of their purposes, objectives and programs, subject to the availability of funds.
- (5) Provide information and advice within the scope of its duties subject to the laws on confidentiality of information and administrative regulations adopted pursuant thereto.
- (6) To Advise with and provide recommendations to the Tribal Council on tax matters, including but not limited to, the adoption of taxes, the setting of tax rates, including adjustments thereto, and additions to or amendments of this Title.
- (7) Develop and provide an integrated, coordinated and uniform system of tax administration and revenue collection for the Tribes.
- (8) Issue private taxpayer rulings upon the written request of a taxpayer.
- (9) Establish plans and procedures for conducting investigations, examinations, audits, compliance and enforcement actions as authorized by this Title and pursuant to any guidelines and policies promulgated by the Department.
- (10) Provide standard tax returns, records, forms, reports or documents to be used by the public.
- (11) Provide written reports and other information to the Tribal Council and to the Tribal Treasurer regarding tribal financial affairs.
- (12) Establish plans and procedures for conducting investigations, examinations and audits of

tribal finances, departments, offices and officers.

- (13) Assess and collect all tax obligations.
- (14) Establish a schedule of fees and charges for the administrative services of the Department, including fees and charges for transcripts, certification of documents, and copies of records.
- (15) Enter into agreements, subject to the prior approval of the Tribal Council, with federal, state, and local governments and agencies for the purpose of aiding the enforcement of the provisions of this Title.
- (16) To promulgate administrative regulations as are reasonably necessary to carry out the orderly performance of its powers, responsibilities and duties consistent with this Title and others laws of the Tribes subject to the approval of the Tribal Council.

Section 20-1303. Organization of the Department.

Subject to the appropriation of funds, the Department shall consist of such divisions, agents, officers, employees, and staff-members as the Director deems reasonably necessary to achieve maximum efficiency, economy and effectiveness in administering and enforcing this Title.

Section 20-1304. Powers and Duties of the Director.

- (1) The Director shall have no power or authority to declare any tax unconstitutional or otherwise invalid, or to declare any administrative regulation, section, provision, phrase, addition, word, sentence or amendment of this Title unconstitutional or otherwise invalid or to alter any tax rate set by the Tribal Council.
- (2) In addition to any other powers, responsibilities, and duties assigned or delegated to the Director under this Title, by law, by regulation or by the Tribal Council, the Director, on behalf of the Department, shall have the following additional powers, responsibilities, and duties, subject to the overriding supervision, direction and authority of the Tribal Council:
 - (A) To exercise the day-to-day direction, operation, management, control, and supervision of the Department.
 - (B) Subject to the written approval of the Attorney General, to:
 - (1) Abate all or part of the unpaid portion of any tax obligation if the Director determines the balance is uncollectible.
 - (2) Abate all or part of the unpaid portion of any tax obligation if the Director determines that the costs of collection exceed the amount of the tax obligation.

TAX CODE

- (3) Enter into closing agreements regarding the tax obligation of any taxpayer.
 - (4) Enter into an installment plan to assist a taxpayer in satisfying its tax obligation.
 - (5) Relieve a taxpayer from joint and several liability when, under all of the facts and circumstances, it is inequitable to hold the taxpayer liable for all or part of a tax obligation.
- (C) To delegate to an agent, officer, employee or staff member of the Department duties and responsibilities as may be necessary to administer this Title efficiently.
 - (D) To recommend, with the consent of the Tribal Council, that the Attorney General, or its authorized representative, commence suit or other enforcement proceeding for the collection of a tax obligation and the enforcement of this Title.
 - (E) To inspect, examine and copy any federal, state or tribal tax return, and any books, papers, documents, memoranda, supporting documents, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts, financial statements, or other records or documents whatsoever relating to a taxpayer's records to ascertain compliance with the tax revenue laws of the Tribes.
 - (F) To enter the business premises of a taxpayer, at any reasonable time to inspect, examine and copy the records of the taxpayer and to ascertain compliance with the tax revenue laws of the Tribes. Such entry into and examination of the business premises may include an examination of the taxpayer's equipment, facilities, personal property, computer records, electronic data, books, business records, papers, vouchers, accounts, documents, and financial statements or any other records or documents whatsoever relating to a taxpayer's records.
 - (G) On or before the twentieth (20th) day of each month to deliver to the Tribal Treasurer and to the Tribal Council, on a form prescribed and approved by the Tribal Council, a monthly statement showing all collections made and monies received during the preceding month and separately set forth the revenues collected under each tax and under each of the business classifications.
 - (H) To advise with and make recommendations to the Tribal Council on tax matters, including, but not limited to, the adoption of taxes, the setting of tax rates, and additions to or amendments of this Title.
 - (I) To promulgate such administrative regulations as are reasonably necessary to carry out the orderly performance of the powers, responsibilities and duties of the

Department, subject to the approval of the Tribal Council.

Section 20-1305. Removal from Office.

The Director of the Department may be removed from office by the Tribal Council, but only for good cause after a hearing before the Tribal Council. Good cause shall include by way of example and not limitation, incompetency, dishonesty, neglect of duties, excessive absenteeism, failure to pay a tax obligation owed the Tribes and failure to file any tribal tax return, record, form or other report or document which he or she is required to file with the Department.

Section 20-1306. Suspension of Director or Department Staff.

The Director and any agent, officer, employee or staff-member of the Department shall be temporarily suspended, without pay, whenever such Director, agent, officer, employee, or staff-member has failed to pay when due a tax obligation owed the Tribes or has failed to file when due any tribal tax return, record, form, report or document which he or she is required to file. The temporary suspension shall remain in effect until the Director, agent, officer, employee, or staff-member has filed such tribal tax return, record, form, report or document, and has paid in full all tribal tax obligations, if any, or has entered into an agreement approved by the Tribal Council regarding the payment of such sums. Nothing contained herein shall preclude or limit the authority of the Tribal Council or the Director from removing or terminating the employment or contract of any person at any time as a result of his or her failure to pay any tribal tax obligation or file any tribal tax return, record, form, report or document when due.

Section 20-1307. Service of Process on the Department.

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

CHAPTER 4. GENERAL ADMINISTRATIVE PROVISIONS

Section 20-1401. Tribal Council to Set All Tax Rates.

- (1) All taxes, tax rates and tax rate adjustments shall be set and approved by the Tribal Council after consideration of the advice and recommendation of the Director, if requested by the Tribal Council.
- (2) Taxes imposed under this Title shall be in addition to any and all other licenses and fees imposed by the Tribes.

Section 20-1402. Jurisdiction Program Established .

- (1) The Director is authorized and directed to establish a process, known as the Jurisdiction Program, to fully implement the provisions of this Title with respect to all persons living and doing business on the Reservation.
- (2) The Jurisdiction Program will seek ways to enhance the taxing jurisdiction of the Tribes by reviewing existing licenses, leases, easements, and other commercial dealings. The Director shall conduct such review in conjunction with the Office of the Attorney General and with the authorization of the Tribal Council.
- (3) The Director may, with the authorization of the Tribal Council and in conjunction with the Office of the Attorney General, also engage in a process of re-writing current licenses, leases, and easements to enhance the Tribes' taxing jurisdiction. The Director may, with the authorization of the Tribal Council and in conjunction with the Office of the Attorney General, develop new relationships between the Tribes and persons living and conducting business on the Reservation. Nothing contained herein shall preclude the ability of the Tribal Council to enter into such relationships on its own accord or exercise any of the powers reserved to it under this Title.

Section 20-1403. General Tax Account Established.

- (1) The Director is authorized and directed to establish an account known as the General Tax Account in a federally insured financial institution.
- (2) The funds in the General Tax Account may be invested and reinvested as approved by the Tribal Council.
- (3) No monies shall be released or expended from the General Tax Account except upon written Resolution of the Tribal Council, except as otherwise provided in Section 20-1404.
- (4) All tax revenues, interest, penalties, costs of collection and other tax related monies collected by the Department shall be deposited in the General Tax Account.

Section 20-1404. Refund Account.

- (1) The Director is authorized and directed to establish an account known as the Refund Account in a federally-insured financial institution.
- (2) Upon written notice of a claim for a refund, written notice of a protest or an appeal, or a determination that a refund is due or may be due a taxpayer, the Director, at his or her discretion, may deposit a portion of the monies from the General Tax Account into the Refund Account, in an amount sufficient to pay any refund that may be due a taxpayer, or

may direct that some balance be maintained in the account from month to month in anticipation of payments which are required to be paid therefrom.

- (3) Upon a written determination of the Director that a taxpayer is entitled to a refund, the Director shall pay from the Refund Account the refund owed the taxpayer provided however that all protests and appeals have been exhausted, extinguished or waived.
- (4) At the end of each month, the Director may, in his or her discretion, pay any amounts held in the Refund Account to the General Tax Account.

Section 20-1405. Records of the Department.

- (1) The Department shall maintain and preserve complete, accurate and detailed records of all monies received and disbursed by it for so long as the Tribal Council shall determine.
- (2) Except as otherwise provided in this Title, the Department shall maintain and preserve all tax returns, books, papers, documents, memoranda, supporting documents, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts, financial statements, and other records or documents filed with or received by the Department until the Limitations of Actions periods prescribed in Chapter 8 of this Article have expired.
- (3) On or before the twentieth (20th) day of each month the Director shall deliver to the Tribal Treasurer and to the Tribal Council, on a form prescribed and approved by the Tribal Council, a monthly statement showing all collections made and monies received during the preceding month and shall separately set forth the revenues collected under each tax and under each of the business classifications.
- (4) The Department shall maintain and preserve complete, accurate, and detailed records of each and every official transaction, communication, or act for so long as the Tribal Council shall determine or until the Limitations of Actions period prescribed in Chapter 8 of this Article has expired, whichever is later.
- (5) All records of the Department shall be maintained and preserved at the primary office of the Department, and shall not be removed from that location without the written authorization of the Tribal Council, except that copies of records may be made available for use in an administrative or judicial proceeding involving a taxpayer.
- (6) All records of the Department shall be subject to an intra-tribal audit at any time upon the written request of the Tribal Treasurer or the Tribal Council, and shall be audited not less than once each calendar year by an independent auditor selected by the Tribal Council.

Section 20-1406. Disclosure of Confidential Information.

- (1) No agent, officer, employee, or staff member of the Department, including any former commissioner, agent, officer, employee or staff member thereof, who has received

TAX CODE

confidential information from the Department, or any other person or entity in receipt of confidential information from the Department, shall disclose such confidential information to any person or entity except as provided below.

- (2) “Confidential Information” shall mean any information developed by, discovered by or revealed to the Department concerning a taxpayer’s identity, the nature, source or amount of the taxpayer’s income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over-assessments or tax payments, whether the taxpayer’s tax return was, is being or will be examined or subject to investigation, collection or processing or any other data received by, recorded by, prepared by, furnished to or collected by the Department.
- (3) Confidential information may be disclosed to the following persons provided however the confidential nature of the information be retained:
 - (A) To the taxpayer, its successor in interest or a designee of the taxpayer who is authorized in writing by the taxpayer to receive the information and the taxpayer has waived any rights to confidentiality.
 - (B) To any principal officer of the taxpayer corporation.
 - (C) To any partner of the taxpayer partnership.
 - (D) To any person or entity provided the taxpayer has waived any rights to confidentiality.
 - (E) To any employee of the Department whose official duties involve tax administration.
 - (F) To the Attorney General for its use in an investigation which may result in any proceeding involving the taxpayer.
 - (G) To the Tribal Council.
 - (H) In any judicial or administrative proceeding involving the taxpayer.
 - (I) When published or circulated as a private taxpayer ruling provided that the name and other information which identifies or may identify the taxpayer appearing in such records is redacted prior to publication or circulation.
 - (J) Nothing in this Section is intended to prohibit or limit the taxpayer or its authorized representative from disclosing otherwise confidential information.
- (4) Any person who discloses confidential information without proper authorization may be

fined by the Tribal Tax Court in an amount not to exceed \$1,000.00 for each unauthorized disclosure. Any person who inspects, reviews or examines in any manner confidential information without proper authorization may be fined by the Tribal Tax Court in an amount not to exceed \$1,000.00 for each unauthorized act. Nothing in the Section is intended to prohibit or limit the Director or Tribal Council from taking any other action it deems appropriate under the circumstances.

- (5) All tax revenue laws of the Tribes and all administrative regulations and private taxpayer rulings shall be public records of the Tribes and shall be available for public inspection during regular business hours at the Department. Copies of such records may be obtained after written request and payment of applicable copying costs and administrative fees and expenses.

Section 20-1407. Private Taxpayer Rulings.

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

TAX CODE

or modification and the Department shall not assess tax, interest or penalties attributable to erroneous advice that it furnished to the taxpayer or potential taxpayer in the private taxpayer ruling if:

- (A) The taxpayer reasonably relied on the private taxpayer ruling.
 - (B) The tax, interest or penalty did not result either from a failure by the taxpayer to provide adequate or accurate information or from a change in the information.
- (4) A private taxpayer ruling may not be relied upon, cited nor introduced into evidence in any proceeding by a taxpayer other than by the taxpayer who has received the private taxpayer ruling.
 - (5) A taxpayer may file a written protest to the Administrative Hearing Officer to contest the propriety of a retroactive application of a revoked or modified private taxpayer ruling by filing a written protest with the Department within thirty (30) calendar days after the date the written notice of the Department's intent to retroactively apply a revoked or modified private taxpayer ruling was deposited into the U.S. certified mail, return receipt requested.
 - (6) A private taxpayer ruling constitutes the Department's interpretation of the law or administrative regulations only as they apply to the taxpayer making, and the particular facts contained in, the request.
 - (7) The Department shall attempt to issue private taxpayer rulings within thirty (30) calendar days after receiving the written request and on receiving the facts that are relevant to the ruling. If the ruling is expected to be delayed, the Department shall notify the taxpayer of the delay and the proposed date of issuance.
 - (8) Within thirty (30) calendar days after being issued, the Department shall maintain the private taxpayer ruling as a public record and make it available to the public upon written request at the Department. The text of private taxpayer rulings is open to public inspection subject to the confidentiality requirements prescribed by Section 20 -1406.
 - (9) In this section, "private taxpayer ruling" means a written determination by the Department that interprets and applies one or more provisions of this Title and any applicable administrative regulations that apply to the specific facts described in the request.

Section 20-1408. Employee Preparation of Tax Returns.

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

Section 20-1409. Record Retention.

- (1) Except as otherwise provided in this Title, every taxpayer shall maintain and preserve appropriate books, papers, documents, memoranda, supporting documents, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts, financial statements, and other records or documents necessary to determine the tax obligation for which the taxpayer is or may be liable for the periods prescribed in Chapter 8 of this Article.
- (2) Except as otherwise provided in this Title, the Department, shall preserve all tax returns, books, papers, documents, memoranda, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts, financial statements, and other records or documents filed with or received by the Department for the period of time prescribed in Chapter 8 of this Article.

Section 20-1410. Refunds and Credits.

- (1) In the event a taxpayer believes that it has paid its tax obligation in excess of the amount due, and the Department has not issued a refund to the taxpayer, the taxpayer must file a claim for a refund by filing an amended tax return with the Department on a form prescribed by the Department. An amended tax return requesting a refund must be filed within two (2) years from the date a taxpayer filed its original tax return. Within ninety (90) calendar days from the receipt of the amended tax return, the Director shall determine whether or not a refund is due the taxpayer. If the Director disallows the claim the Director shall notify the taxpayer in writing that the claim has been disallowed. The Director's action on such a claim is his or her final decision and subject to written protest to the Administrative Hearing Officer. If the Director fails to respond within ninety (90) calendar days after the amended tax return is received, the claim is disallowed and is then final and subject to written protest to the Administrative Hearing Officer.
- (2) All written protests to the Administrative Hearing Officer under this section must be filed with the Department within thirty (30) calendar days after the date the final decision of the Director was deposited into the U.S. certified mail, return receipt requested. In the event that a claim is disallowed due to the Director's failure to respond to the claim, a written protest must be filed with the Department within sixty (60) calendar days after the date the claim was considered disallowed.
- (3) If the Director determines that a taxpayer is entitled to a refund, the Director shall first apply the refund to any delinquent penalty, interest and tax, in that order, due from the taxpayer for any other tax period. The balance thereafter, if any, shall be mailed to the taxpayer at the taxpayer's last known address of record.
- (4) A taxpayer may elect to apply any refund to the taxpayer's next tax period. The Department shall issue a credit in its records in the amount of the refund and shall apply the credit toward the tax obligation owed by the taxpayer for the following tax period by

TAX CODE

notifying the Department on the tax return.

- (5) Refunds due a taxpayer shall bear simple interest at the rate per year established by the Tribal Council if the refund is not paid within one hundred eighty (180) calendar days after the date the amended tax return was received by the Department. Interest shall begin to accrue one hundred eighty one (181) calendar days after the amended tax return was received by the Department. No interest shall be paid on a refund that was caused by or the result of the negligence, misrepresentation, fraud or mistake of the taxpayer. Credits shall not accrue interest.
- (6) In the event the Department is unable to locate a taxpayer entitled to a refund at the taxpayer's last known address of record, the refund owed the taxpayer shall be deposited into the Refund Tax Account subject to a claim by the taxpayer or its successor in interest. All refunds become the property of the Tribes if not claimed by the taxpayer or its successor in interest within one (1) year after the date the Director determines the taxpayer is entitled thereto. No interest shall be paid on a refund when the taxpayer has failed to provide the Department with the taxpayer's current address.

Section 20-1411. Time for Payment.

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

Section 20-1412. Extensions.

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

Section 20-1413. Delinquent Tax Obligations.

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

Section 20-1414. Failure to File a Return.

In the event a taxpayer fails to file a tax return, when due, the Director is authorized to make an estimate of the tax obligation due and to assess the taxpayer taxes, interests, penalties and costs of collection. This assessment is the final decision of the Director and is binding and conclusive against the taxpayer unless and until the taxpayer can show the assessment, based upon the information available to the Director, was clearly erroneous. The taxpayer may protest the assessment made by the Director by filing a written protest with the Department within thirty (30) calendar days after a Notice of Assessment was deposited into the U.S. certified mail, return receipt requested.

Section 20-1415. Security for Payment of Tax.

The Director is authorized to require a taxpayer to furnish the Department an acceptable surety bond to insure the timely payment of any tax obligation due or may be due the Tribes. The Director shall send the taxpayer written notice that it must furnish the Department a surety bond within twenty (20) calendar days of the date of the Notice of Additional Security.

Section 20-1416. Deadlines on Weekends or Holidays.

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

Section 20-1417. Taxpayer Identification Number.

Every person subject to the provisions of this Title shall be assigned a taxpayer identification number by the Department. All taxpayers shall include their taxpayer identification number on the taxpayer's tax return. Failure to properly include a taxpayer identification number on a tax return will subject the taxpayer to a penalty in an addition to the tax due and owing, in an amount no less than 1% of the tax due for each month (or fraction thereof) that any tax obligation remains unpaid, up to 25% of the tax due, and/or may result in the revocation of taxpayer's tribal business license.

Section 20-1418. Bill of Rights.

The Department shall provide every taxpayer a written statement detailing and describing the taxpayer's rights and the Department's obligations during the examination, audit, protest, appeals, and refund process.

CHAPTER 5. ENFORCEMENT

Section 20-1501. Examinations and Audits.

- (1) If a taxpayer fails to file a tax return or if the Director is not satisfied with the tax return or the amount of the tax obligation declared to be owed, or the Director determines that it is in the best interests of the Tribes to ascertain compliance with the tax revenue laws of the Tribes, the Director may conduct an examination or audit of the taxpayer's records.

TAX CODE

The Director is authorized to inspect, examine and copy at any reasonable time, and the taxpayer shall make available, any federal, state or tribal tax return, and any books, papers, documents, memoranda, supporting documents, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts, financial statements, and other records or documents whatsoever, relating to the taxpayer's records. The Director shall provide the taxpayer reasonable written notice of his or her intent to inspect, examine or copy the records.

- (2) If a taxpayer refuses to make available any federal, state or tribal tax return and any books, papers, documents, memoranda, supporting documents, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts, financial statements, and other records or documents whatsoever relating to the taxpayer's records for inspection, examination or copying by the Director, the Director, in aid of its powers and responsibilities, may petition the Tax Division of the Tribal Court for a subpoena ordering the taxpayer or the custodian of the taxpayer's records to produce such records or documents. In case of failure to obey a subpoena, the Director may petition the Tax Division of the Tribal Court for a Show Cause Order requiring the individual or entity against whom the subpoena was issued comply with the subpoena within ten (10) calendar days or show cause why he or she should not be held in civil contempt of Court.
- (3) The Director is authorized to enter, and the taxpayer shall provide access to, the business premises of the taxpayer at any reasonable time to inspect, examine and copy records of the taxpayer and to ascertain compliance with the tax revenue laws of the Tribes. The taxpayer shall provide access to the taxpayer's equipment, facilities, personal property, federal, state, and tribal tax returns, books, papers, documents, supporting documents, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts, and financial statements. If a taxpayer or its representative refuses to allow access to the business premises of the taxpayer, the Director, in aid of its powers and responsibilities, may petition the Tax Division of the Tribal Court for an order requiring that the taxpayer or its representative provide access to the business premises for the purpose of inspecting, examining and copying the taxpayer's records. In case of failure to obey the order the Director may petition the Tax Division of the Tribal Court for a Show Cause Order requiring that the individual or entity against whom the order was issued comply with the order within ten (10) calendar days or show cause why he or she should not be held in civil contempt of Court.
- (4) In the event that a taxpayer or its authorized representative is held in contempt of Court as a result of paragraphs 2 and 3 of this Section, the Tax Division of the Tribal Court shall issue an order authorizing the Director to enter the premises and seize any and all federal, state or tribal tax returns and any books, papers, documents, memoranda, supporting documents, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts, financial statements, and other records or documents whatsoever relating to the taxpayer.

- (5) In the event that the Judge assigned to hear matters for the Tax Division of the Tribal Court is unavailable to issue a subpoena or order, any Judge of the Tribal Court shall be authorized to issue any subpoena or order.
- (6) Examinations and audits under this Title shall be conducted after reasonable written notice to the taxpayer unless reasonable grounds exist to believe that written notice would frustrate the enforcement or compliance with the tax revenue laws of the Tribes.
- (7) The Director may request the Tax Division of the Tribal Court issue a subpoena to require the attendance of any person or entity within the boundaries of the Reservation, at a time and place fixed by the Director, for the purpose of producing records and information in connection with an examination or audit.
- (8) The Director shall provide the taxpayer a written report within thirty (30) calendar days following the completion of each examination and audit. The written report shall contain a statement of the findings and conclusions of the Director.
- (9) Records obtained under this section are confidential information.
- (10) In the event the Director determines that the taxpayer owes additional taxes, interest or penalties as a result of an examination or audit, the Director shall send the taxpayer a Notice of Deficiency and Demand for Payment in writing by U.S. certified mail, return receipt requested, within thirty (30) calendar days after the conclusion of the examination or audit.
- (11) The Notice of Deficiency and Demand for Payment shall provide that the taxpayer shall have thirty (30) calendar days from the date of the Notice to pay any deficiency due the Tribes.
- (12) The Notice of Deficiency and Demand for Payment is the final decision of the Director and is subject to written protest to the Administrative Hearing Officer. All written protests to the Administrative Hearing Officer under this section must be filed with the Department within thirty (30) calendar days after the date the Notice of Deficiency and Demand for Payment was deposited into the U.S. certified mail, return receipt requested.
- (13) In the event the taxpayer has failed to file a timely written protest with the Department, all further administrative and judicial remedies shall be considered exhausted, expired or waived.
- (14) If, after an examination or audit conducted under this section, the Director determines that the taxpayer has overpaid its tax obligation, the Director shall mail the refund to the taxpayer at the taxpayer's last known address of record within thirty (30) calendar days after the conclusion of the examination or audit.
- (15) In the event the Department is unable to locate a taxpayer entitled to a refund at the

TAX CODE

taxpayer's last known address of record, the refund owed the taxpayer shall be deposited into the Refund Tax Account subject to a claim by the taxpayer or its successor in interest. All refunds become the property of the Tribes if not claimed by the taxpayer or its successor in interest within one (1) year after the date the Director determines the taxpayer is entitled thereto. No interest shall be paid on a refund which is owed the taxpayer as a result of an examination or audit or when the taxpayer has failed to provide the Department with the taxpayer's current address.

Section 20-1502. Additional Examinations and Audits.

When the Director completes an examination or audit and a deficiency has been determined and all protests and appeals have been exhausted, expired or waived, the taxpayer's obligation for the particular tax for the period subjected to the examination or audit is fixed. No additional examinations or audits may be conducted for the same tax period except under the following circumstances:

- (1) When the taxpayer has filed an amended tax return.
- (2) When the taxpayer makes changes or corrections required to be reported to the Department.
- (3) When the taxpayer fails to disclose material information during the examination or audit or has falsified books or records or otherwise engaged in conduct preventing an accurate examination or audit.

Section 20-1503. Injunction.

In addition to all other remedies provided for in this Title, the Attorney General, or its authorized representative, shall be authorized to commence an action in the Tax Division of the Tribal Court or any other court of competent jurisdiction to enjoin the operation of any business or activity when the operator of the business or activity fails to comply with the tax revenue laws of the Tribes.

Section 20-1504. Suit and Enforcement Proceedings to Collect Taxes.

- (1) The Attorney General, or its authorized representative, shall be authorized to commence suit or any other enforcement proceeding in the Tax Division of the Tribal Court or any other court of competent jurisdiction to enforce the provisions of this Title and the Tribes shall be entitled to recover reasonable attorneys fees and costs of collection incurred in commencing suit or other enforcement proceeding. Such suit or proceeding shall be civil in nature.
- (2) All civil remedies, including but not limited to garnishment, attachment and execution, shall be available for the collection of any monies due the Tribes. The Attorney General

may contract with outside counsel to commence suit or other enforcement proceedings with the approval of the Tribal Council.

- (3) The commencement of suit or other enforcement proceedings shall not constitute a waiver of the sovereign immunity of the Tribes.
- (4) The Attorney General, or its authorized representative, may defend all suits or proceedings brought against the Department, officer, agent, employee, or staff member of the Department, acting within the scope of his or her duties.
- (5) The Attorney General, or its authorized representative, may commence suit or other enforcement proceeding for recovery of a tax obligation prior to the date such taxes become delinquent if the Director first determines that it is necessary prior to that date to commence suit or other enforcement proceeding because there is a great probability that the tax obligation will not be collectible after the delinquency date due to the financial condition of the taxpayer or other suitable reason. The Director shall file a written declaration under penalty of perjury with the Tax Division of the Tribal Court, as part of the petition or Writ of Attachment for Tax Obligation, whichever the case may be, setting forth the grounds and necessity for the action prior to the delinquency date.

Section 20-1505. General Provisions for the Seizure and Sale of Property.

- (1) The Department shall diligently endeavor and use all lawful means to collect all tax obligations owed the Tribes. In addition to all civil remedies available for the collection of monies due the Tribes, the Attorney General, or its authorized representative, shall be authorized to commence suit or other enforcement proceedings to seize and sell the property of a taxpayer liable for a tax obligation.
- (2) In all suits and proceedings regarding the seizure and sale of property brought under this Title, the Tax Division of the Tribal Court shall give such proceedings precedence over all other civil suits and proceedings, except suits and proceedings to which special precedence is otherwise given by law. All such suits and proceedings shall be expedited.
- (3) Where property is insufficient, in the judgment of the Director, to secure the payment of the tax obligation, the Attorney General, or its authorized representative, may commence any civil action, including suit or other enforcement proceeding, in the Tax Division of the Tribal Court or any other court of competent jurisdiction, against the taxpayer in its own name, including general partners, persons who have assumed the liability to pay the tax obligation by contract or lease, or those persons who are the alter ego or successor in interest of a corporate taxpayer, for the recovery of the delinquent tax obligation.
- (4) A tax obligation may be collected by seizure and sale of any of the following property owned by a taxpayer or in which a taxpayer has an interest, including but not limited to:
 - (A) Personal property including possessory interests.

- (B) Real property.
- (C) Improvements on Real Property.

Section 20-1506. Procedures for the Seizure of Property.

- (1) Property shall not be seized in satisfaction of a tax obligation before the expiration of fourteen (14) calendar days after the date such tax obligation becomes delinquent. At any time after the expiration of fourteen (14) calendar days after a tax obligation becomes delinquent, the Attorney General, or its authorized representative, may petition the Tax Division of the Tribal Court for a Writ of Attachment for Tax Obligation authorizing the Chief of Police, or its authorized agent, to seize as much of a taxpayer's property or property in which the taxpayer has an interest as is necessary to pay the delinquent tax obligation. The Attorney General, or its authorized representative, shall file with the Tax Division of the Tribal Court a tax bill together with a written affidavit executed by the Director under penalty of perjury setting forth the amounts constituting the delinquent tax obligation and affirming that the amounts are true and correct to the best knowledge and belief of the Director. The Attorney General, or its authorized representative, shall be entitled to an ex parte Writ of Attachment for Tax Obligation from the Tax Division of the Tribal Court for as much of the taxpayer's property as is necessary to satisfy the tax obligation on the basis of the Director's affidavit.
- (2) Property shall not be seized in satisfaction of taxes before the expiration of fourteen (14) calendar days after the date such tax obligation becomes delinquent, unless the Director first determines that seizure prior to that date is necessary because there is a great probability that the tax obligation will not be collectible after the due date due to the financial condition of the taxpayer or other suitable reason and, prior to the seizure, executes a written declaration under penalty of perjury setting forth the grounds and necessity for such seizure. The Attorney General, or its authorized representative, shall file the written declaration in addition to a tax bill and written affidavit executed by the Director with the Tax Division of the Tribal Court. The Attorney General, or its authorized representative, shall be entitled to an ex parte Writ of Attachment for Tax Obligation from the Tax Division of the Tribal Court for so much of the taxpayer's property as is necessary to satisfy the tax obligation on the basis of the Director's declaration and written affidavit.
- (3) In any suit for a tax obligation under this section, a copy of the tax bill accompanied by an affidavit and declaration, if applicable, executed by the Director, showing the taxpayer, the property, and delinquent tax obligation, is prima facie evidence of the Department's right to recover.
- (4) The Writ of Attachment for Tax Obligation shall be in the following form:

Writ of Attachment for Tax Obligation

In the matter of the delinquent tax obligation assessed against_____.

To the Chief of Police of the Colorado River Indian Tribes:

You are commanded to enter into any premises to seize the following property:

(Description)

Or as much of it as is necessary to pay the amount of \$_____, constituting delinquent taxes, plus ____% interest on that amount from (Date) as prescribed by law, plus \$_____ in penalties, plus \$_____ for costs of collection. This Writ of Attachment for Tax Obligation is your warrant of authority to seize the property. You are authorized to seize the property within the boundaries of the Reservation.

Judge
(Date)

- (5) The Chief of Police or its authorized agent shall deliver a copy of the tax bill, affidavit, declaration, if applicable, and Writ of Attachment for Tax Obligation, to the taxpayer on the date of seizure. In the event the taxpayer cannot be found at the time of seizure, the Chief of Police or its authorized agent shall mail a copy of the documents to the taxpayer’s last known address of record by U. S. certified mail, return receipt requested.
- (6) An itemized inventory shall be made by the Chief of Police, or its authorized agent, of all property seized pursuant to this section and a copy thereof shall be left with the individual or entity from whom the property is seized or, if such individual or entity cannot be found, at the place from which such property is seized. A copy of the inventory shall be filed with the Department.
- (7) Within ten (10) calendar days of the seizure of property pursuant to this section, the Attorney General, or its authorized representative, shall file an action in the Tax Division of the Tribal Court or other court of competent jurisdiction, alleging the nonpayment of a tax obligation or other lawful reason for such seizure. A copy of a tax bill accompanied by an affidavit and declaration, if applicable, executed by the Director, showing the taxpayer, the property, and the unpaid tax obligation, is prima facie evidence of the Department’s right to recover and seize property. Upon finding that a tax obligation is delinquent or that there is a great probability that the tax obligation will not be collectible after the date due to the financial condition of the taxpayer or other suitable reason, the Court shall issue an Order commanding the Chief of Police or its authorized agent, to sell the seized property at public auction.

TAX CODE

- (8) Any claimant or other person claiming ownership, the right to possession, or other interest in seized property may intervene in any court action or enforcement proceeding regarding the seized property and may raise any applicable defenses to the sale of the property.

Section 20-1507. Procedures for the Sale of Property.

- (1) The Chief of Police or its authorized agent may conduct a sale at any time it deems sufficient property has accumulated to make the sale profitable, but in no event shall the sale occur later than ninety (90) calendar days after the date the Tax Division of the Tribal Court issued its Order to sell the property.
- (2) Prior to the sale of the property, the Chief of Police or its authorized agent shall give no less than ten (10) calendar days notice of the sale by publishing notice in a newspaper within the boundaries of the Reservation and by posting notice in three public places within the boundaries of the Reservation. The notice shall describe the property to be sold, state the time and place of sale and the acceptable methods of payment for the property. In the event that it is necessary to continue the sale to a later date, an additional notice shall be given as provided herein.
- (3) The sale shall be at public auction and held at the place designated in the notice of sale. A sufficient amount of the property shall be sold and the proceeds applied to the tax obligation of the taxpayer.
- (4) A taxpayer or any person acting on behalf of the taxpayer may not bid less than the amount of the taxpayer's tax obligation for the property being sold at auction.
- (5) On payment of the price bid for property sold, the delivery of the property, with a bill of sale executed by the Chief of Police or its authorized agent, vests title in the purchaser.
- (6) All sale proceeds shall be immediately delivered to the Department and shall be applied towards the costs of collection and the taxpayer's penalties, interest and taxes, in that order. Any excess proceeds shall be refunded to the owner of the property at the owner's last known address of record. In the event the Department is unable to locate the owner at its last known address, the excess proceeds shall be deposited in the Refund Account subject to a claim by the owner or its successor in interest. All excess proceeds become the property of the Tribes if not claimed by the owner or its successor in interest within one (1) year from the date of sale. No interest shall be paid on excess sale proceeds when the taxpayer or the owner of seized property, whichever the case may be, has failed to provide the Department with the taxpayer or owner's current address.
- (7) Any claimant or other person claiming ownership, the right to possession, or other interest in seized property may intervene in any court action or enforcement proceeding

regarding the seized property and may raise any applicable defenses to the sale of the property.

- (8) Prior to a sale, a taxpayer may challenge the seizure of property by petitioning the Tax Division of the Tribal Court for a stay of execution of the sale. The petition shall set forth good cause why the execution of sale should be stayed or quashed. Good cause shall include:
 - (A) That there are no grounds for the seizure.
 - (B) That the affidavit or declaration of the Director is untrue or inaccurate.
 - (C) That there are and will be sufficient funds to pay the tax obligation prior to the date such tax obligation becomes delinquent, provided however the property was seized prior to the date the tax obligation became delinquent.
- (9) Prior to a sale, a taxpayer may file with the Department a bond sufficient to pay the taxpayer's tax obligation including the costs of collection incurred by the Department as a result of the seizure and shall furnish proof of the bond with the Tax Division of the Tribal Court. Upon the filing of the bond, the Chief of Police or its authorized agent shall release the seized property.
- (10) If the taxpayer prevails in a special proceeding for a stay of execution of the sale of the property as a result of the provisions of this Chapter, the Tax Division of the Tribal Court may order that the taxpayer recover from the Department all reasonable costs incurred by the taxpayer by virtue of the seizure and that the Department bear the costs of seizure and any costs and expenses of keeping the seized property.
- (11) The Tax Division of the Tribal Court may, in its discretion, require payment of the tax obligation as a condition of releasing the property or challenging any writ, proceeding or action.
- (12) In any case where an action by the Department is dismissed for a procedural error without reaching the merits of the complaint and the taxpayer is not required by the Tax Division of the Tribal Court to pay the tax obligation as a condition of dismissal and the tax obligation remains unpaid, the Department shall be entitled to recover the taxes and all interests, penalties and costs of collection accruing thereon notwithstanding said dismissal.

Section 20-1508. Liens.

- (1) Any delinquent tax obligation owed the Tribes constitutes a tax lien in favor of the Tribes upon all of the taxpayer's property, real, personal, tangible and intangible, including possessory interests, other than trust land or restricted property, then owned by the taxpayer or thereafter acquired. The tax lien shall continue in force and effect until the tax obligation is satisfied or otherwise released. A tax lien is superior to any lien of any

TAX CODE

kind and description regardless of when such other lien attached.

- (2) A tax lien attaches to a taxpayer's property including real, personal, tangible and intangible property, and possessory interests, whenever acquired, after the taxpayer has neglected, failed or refused to pay its tax obligation within fourteen (14) calendar days after the tax obligation becomes due.
- (3) The Department may, but is not required to, record the Tribes' tax lien with the Superintendent of the Colorado River Agency, the Register of Deeds of the county in which the property is located or the Office of the Secretary of the Tribes.
- (4) Within seven (7) calendar days after recording the tax lien, the Department shall send the taxpayer a notice at the taxpayer's last known address of record that the Department has recorded the tax lien by U.S. certified mail, return receipt requested.
- (5) A taxpayer may protest a recorded tax lien to the Administrative Hearing Officer by filing a written protest with the Department, provided the taxpayer files its written protest with the Department within thirty (30) calendar days of the date the notice of recorded tax lien was deposited into the U.S. certified mail, return receipt requested.
- (6) If any tax lien imposed by this Section has been satisfied and a tax lien has been recorded by the Department, the Director shall issue a release of the tax lien to the taxpayer against whom the tax lien was recorded, within thirty (30) calendar days after the tax obligation has been paid or otherwise satisfied. The Director shall thereafter record the release of tax lien with the Superintendent of the Colorado River Agency, the Registrar of Deeds in the county in which the tax lien was recorded or the Office of the Secretary of the Tribes, whichever the case may be.
- (7) The Director may, at any time, release all or any portion of the property subject to the tax lien from the tax lien or subordinate the tax lien to other liens if the Director determines that:
 - (A) The tax obligation is sufficiently secured by a tax lien on other property of the taxpayer.
 - (B) The release or subordination of the tax lien will not endanger or jeopardize the collection of the tax obligation.
 - (C) The Department's interests are best served by withdrawing the notice.
 - (D) Withdrawing the notice will facilitate collecting the outstanding tax obligation.
 - (E) The taxpayer has entered into an installment payment plan, unless the plan provides otherwise.

- (F) The taxpayer has filed with the Department a bond in an amount sufficient to pay the tax obligation.
- (8) If a tax obligation has been extinguished by payment or satisfaction of the tax obligation, the tax lien is also extinguished.

Section 20-1509. Recovery of Costs of Collection.

A taxpayer who fails to pay any tax obligation is liable for all costs of collection incurred by the Department to collect the delinquent amounts. The Department may collect these costs at the time of collecting the delinquent tax obligation. Costs of collection include but are not limited to reasonable attorney fees, costs of advertising, mileage, copies, service fees, costs of seizure and sale, court costs and other costs and expenses incurred while collecting or attempting to collect a tax obligation. Nothing in this Section shall prohibit or limit the Administrative Hearing Officer or the Tax Division of the Tribal Court from awarding the costs of collection to a party.

Section 20-1510. Recovery of Attorney Fees.

A taxpayer who fails to pay its tax obligation is liable for attorney fees in the event it is necessary to use the services of the Attorney General or other attorney to collect or attempt to collect the delinquent tax obligation. The Department may collect attorney fees as costs of collection at the time of collecting the tax obligation. The fees of the Attorney General shall be charged to the taxpayer at a rate of \$100.00 per hour or any other rate established by Resolution of the Tribal Council. The fees of any other attorney shall be charged to the taxpayer at the rate incurred and charged to the Department but shall not be less than \$100.00 per hour.

Section 20-1511. Expulsion of Non-Members from the Reservation.

In addition to all civil remedies and other remedies provided for in this Title, the Attorney General, or its authorized representative, is authorized to commence suit to expel, temporarily or permanently, from the boundaries of the Reservation any non-Indian who willfully fails to comply with any provision of this Title or any regulation promulgated hereunder. Suit may not be commenced against a taxpayer authorized by federal law to be within the boundaries of the Reservation or an owner of fee land within the boundaries of the Reservation.

Section 20-1512. Offers in Compromise.

- (1) A taxpayer who is unable to pay all or part of a tax obligation may make an offer in compromise for abatement of part of the tax obligation on the grounds that the remainder is uncollectible.
- (2) The Attorney General and the Director must approve, in writing, all offers in compromise.
- (3) While the offer in compromise is under consideration by the Director and the Attorney

TAX CODE

General, the Department shall not execute on the taxpayer or on any holder of the taxpayer's assets unless the Department determines that collection could otherwise be jeopardized by a delay.

- (4) A taxpayer may not protest or appeal the Director's refusal to accept or negotiate an offer in compromise.

Section 20-1513. Redemption before Sale or Institution of Suit.

- (1) At any time after a tax obligation becomes delinquent and before the sale of seized property or the completion of suit, a taxpayer may pay to the Department the delinquent tax obligation including, but not limited to, the costs of collection and redeem the property. The Department shall issue a receipt for the amount paid.
- (2) The owner of seized property, the taxpayer, or a claimant may redeem the property at any time before sale, by paying to the Department or to the Chief of Police or its authorized agent at the place of sale but prior to the time of sale, the delinquent tax obligation including, but not limited to, costs of collection and redeem the property.
- (3) The right to redeem terminates after a bid for the property is accepted by the Chief of Police or its authorized agent.
- (4) The Director shall not commence nor continue a suit against a taxpayer nor commence or continue a seizure or sale of a taxpayer's property upon receipt of the taxpayer's tax obligation, including costs of collection.

Section 20-1514. Installment Payment Plan.

- (1) The Director may enter into a written agreement with a taxpayer to allow the taxpayer to satisfy a liability for any tax obligation by means of installment payments. The Director may require a taxpayer who requests an installment payment plan to complete a financial report in such form and manner as the Department may prescribe.
- (2) The Director, without notice, may alter, modify or terminate an installment payment plan if the taxpayer:
 - (A) Fails to pay an installment at the time the installment payment is due under the plan.
 - (B) Fails to pay any other tax obligation at the time the tax obligation is due.
 - (C) Fails to file any tribal tax return, form, report or other document at the time the tax return, form report or other document is due.

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

Section 20-1515. Closing Agreements.

- (1) The Director may enter into a written closing agreement with a taxpayer regarding the liability of the taxpayer in respect to any tax obligation. The purpose of a closing agreement is to determine conclusively the tax obligations of a taxpayer for a tax period that ended prior to the date of the agreement or to determine one or more specific items affecting the tax obligation for any tax period. A closing agreement under this section may abate some or all of the tax, interest penalties and costs of collection that the taxpayer has failed to remit.
- (2) Closing agreements are final, conclusive and binding upon both parties and may not be later protested, appealed, reopened or modified except upon a showing of fraud or misrepresentation of a material fact.
- (3) No closing agreement shall be valid and binding without the written approval of the Attorney General.

TAX CODE

Section 20-1516. Exempt Property.

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

- (1) Three-fourths (3/4) of the net wages earned per week by the person or an amount equivalent to forty (40) times the federal minimum hourly wage per week, whichever is greater.
- (2) One (1) automobile of fair market value equity not exceeding two thousand dollars (\$2,000).
- (3) Tools, equipment, utensils, or books necessary to the conduct of the person's business not to exceed \$5,000.00 but not including stock or inventory.
- (4) Trust or restricted title to any lands held in trust by the United States or subject to restrictions against alienation imposed by the United States, but not including leasehold or other use or possessory interests in such property.
- (5) Any dwelling used as the actual residence of the taxpayer including up to five (5) acres of land upon which such dwelling is located, regardless of whether such dwelling is owned or leased by the taxpayer.
- (6) Household goods, furniture, wearing apparel, personal effects, and up to two (2) firearms, the total value of all items not to exceed \$10,000.00.
- (7) One (1) saddle horse, one (1) bridle, and one (1) saddle.
- (8) All ceremonial or religious items.
- (9) Public Assistance Payments.
- (10) Worker's Compensation Payments.
- (11) Disability Payments.
- (12) Monies held in trust by the United States or subject to restrictions imposed by the United States.

CHAPTER 6. PROTESTS TO THE ADMINISTRATIVE HEARING OFFICER

Section 20-1601. Qualifications of the Administrative Hearing Officer.

- (1) The Tribal Council shall appoint two (2) to five (5) Administrative Hearing Officers to

hear protests of the final decisions of the Director and any other protest provided for in this Title.

- (2) All Administrative Hearing Officers shall qualify under minimum standards of experience and education in tax law as required by the Tribal Council.
- (3) All Administrative Hearing Officers shall be under the administrative supervision of the Chairperson of the Tribes who shall establish the personnel and budget requirements of the Administrative Hearing Officer.
- (4) One (1) Administrative Hearing Officer shall be appointed by the Chairperson of the Tribes from the pool of Administrative Hearing Officers to hear and determine a particular protest.
- (5) An Administrative Hearing Officer shall recuse himself and decline to participate in any dispute where the Hearing Officer cannot act fairly or without bias; there is an appearance that the Hearing Officer cannot act fairly or without bias; or the Hearing Officer has any demonstrated proprietary, pecuniary, personal, or immediate familial or other relationship with the taxpayer, or interest in the outcome of the proceeding, that would impair his ability to render independent professional judgment.

Section 20-1602. Protests for Review by the Administrative Hearing Officer.

- (1) A taxpayer aggrieved by a final decision of the Director or any other action which may be protested under this Title, may protest the decision or action to the Administrative Hearing Officer by filing the protest in writing with the Department but only after the taxpayer has first paid all tax obligations then determined to be due, if any, within 14 (fourteen) calendar days of the date of issuance of the final decision of the Director. In lieu of paying the tax obligation, the taxpayer may post a surety bond with the Tribal Court in an amount sufficient to satisfy all taxes due and owing, and any potential costs and fees associated with the Tribes' efforts in collecting said taxes.
- (2) Failure to file a timely written protest with the Department shall result in the irrevocable and non-contestable waiver by the party of all further rights to protest or appeal the decision or action made by the Director.
- (3) Within seven (7) calendar days after receipt of the protest, the Department shall deliver to the Chairperson of the Tribes, a copy of the protest. The Chairperson of the Tribes shall immediately appoint one (1) Administrative Hearing Officer from the pool of appointed Administrative Hearing Officers to hear and determine the protest.
- (4) Within fifteen (15) calendar days after receipt of the protest, the Department shall deliver to the appointed Administrative Hearing Officer a certified copy of the taxpayer's file.
- (5) Within twenty-five (25) calendar days after receipt of the taxpayer's certified file, the Administrative Hearing Officer shall set the protest for hearing.

TAX CODE

- (6) When hearing a protest, the Administrative Hearing Officer shall give the taxpayer no less than twenty (20) calendar days notice of the time and place of the hearing. The parties shall be entitled to be heard on the record, to present oral and written evidence and to examine and cross examine witnesses.
- (7) The Administrative Hearing Officer shall have the power to administer oaths, take testimony, subpoena the attendance of witnesses and the production of federal, state and tribal tax returns, and any books, papers, documents, memoranda, supporting documentation, schedules, attachments, lists, computer records, electronic data, business records, papers, vouchers, accounts, financial statements, or other records or documents whatsoever, relating to the taxpayer. In case of a failure to obey a subpoena, the Administrative Hearing Officer may petition the Tax Division of the Tribal Court for a Show Cause Order requiring the individual or entity against whom the subpoena was issued comply with the subpoena within ten (10) calendar days or show cause why he or she should not be held in civil contempt of Court.
- (8) The Administrative Hearing Officer shall issue an Administrative Ruling within thirty (30) calendar days after the conclusion of the hearing. If the Administrative Hearing Officer expects its ruling to be delayed, it shall notify the Department and the taxpayer of the proposed issue date but in no event shall the Administrative Hearing Officer delay its ruling in excess of ninety (90) calendar days from the date of the hearing.
- (9) The Administrative Hearing Officer shall file with the Department its administrative ruling and shall include with its administrative ruling a written statement of the questions of law and fact and the factual findings and legal conclusions reached therefrom. The Administrative Hearing Officer shall also file with the Department a certified, transcribed record of the proceeding together with all evidence received or offered in the proceeding. A copy of the administrative ruling shall be submitted to the taxpayer by depositing it in the U.S. certified mail, return receipt requested, at the time the administrative ruling is filed with the Department. The taxpayer's right to appeal the administrative ruling to the Tax Division of the Tribal Court shall be included with the decision.
- (10) Any party aggrieved by an administrative ruling of the Administrative Hearing Officer may appeal that administrative ruling to the Tax Division of the Tribal Court provided the party has filed a written Notice of Appeal with the Tax Division of the Tribal Court within thirty (30) calendar days after the date the administrative ruling of the Administrative Hearing Officer was filed with the Department or was mailed to the taxpayer at the taxpayer's last known address of record by U.S. certified mail, return receipt requested, whichever is later. The Tax Division of the Tribal Court shall issue a written ruling within no more than six (6) months of hearing the dispute.
- (11) In no event shall the Administrative Hearing Officer have the power or authority to declare any tax unconstitutional or otherwise invalid, to declare any regulation, section,

provision, phrase, addition, word, sentence, or amendment of this Title unconstitutional or otherwise invalid, to alter any tax rate set by the Tribal Council, to enjoin the collection of any tax or to award or order the payment of damages to any party.

- (12) Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties.

Section 20-1603. Tax Division of the Tribal Court.

- (1) Unless the context otherwise requires, “Tax Division of the Tribal Court” means the division of the Tribal Court when exercising jurisdiction over matters which involve the imposition, assessment, collection or enforcement of a tax obligation.
- (2) The Tax Division of the Tribal Court is under the supervision of the Presiding Judge of the Tribal Court who shall establish the personnel and budget requirements of the Tax Division of the Tribal Court and its Judges.
- (3) All documents and pleadings filed with the Tribal Court that involve the imposition, assessment, collection or enforcement of a tax obligation including all questions of law and fact relating to a tax obligation shall be assigned by the Presiding Judge of the Tax Division of the Tribal Court.
- (4) The Tribal Court shall adopt rules regarding the identification and assignment of actions to the Tax Division of the Tribal Court including a requirement that any action involving matters to be assigned to the Tax Division of the Tribal Court be identified at the time of filing, by captioning the document or pleading, “In The Tax Division of the Tribal Court”.
- (5) The filing and appearance fees in the Tax Division of the Tribal Court shall be the same as the fees in the Tribal Court and subject to the same exemptions as provided by tribal law.
- (6) In all proceedings regarding the seizure or sale of seized property, the Tax Division of the Tribal Court shall give such proceedings precedence over all other civil suits and proceedings, except suits and proceedings to which special precedence is otherwise given by law. All such suits and proceedings shall be expedited.
- (7) In no event shall the Tribal Court have the power or authority to declare any tax unconstitutional or otherwise invalid, to declare any administrative regulation, section, provision, phrase, addition, word, sentence, or amendment of this Title unconstitutional or otherwise invalid, to alter any tax rate set by the Tribal Council; to enjoin the application or collection of any tax imposed under the Article; or to award or order the payment of damages or attorneys fees to the taxpayer.
- (8) Except as may be otherwise provided herein, proceedings in the Tax Division of the Tribal Court shall be governed by the rules of civil procedure in the Tribal Court.

Section 20-1604. Review by the Tax Division of the Tribal Court and Tribal Appeals Court.

- (1) Any party aggrieved by an administrative ruling by an Administrative Hearing Officer may appeal that ruling to the Tax Division of the Tribal Court, provided a written Notice of Appeal has been timely filed with the Tax Division of the Tribal Court pursuant to the provisions of Sections 20-1602 and 20-1603.
- (2) Failure to file a timely appeal with the Tax Division of the Tribal Court shall result in the irrevocable and non-contestable waiver by the party of all further rights to appeal an Administrative Ruling.
- (3) Upon such review, which shall be by the Tax Division of the Tribal Court sitting without a jury, no new or additional evidence may be introduced, but the matter shall be heard on the record established before and certified by the Administrative Hearing Officer.
- (4) The Tax Division of the Tribal Court shall uphold the factual findings and legal conclusions of the Administrative Hearing Officer unless the Tax Division of the Tribal Court concludes that such findings and conclusions are not supported by substantive evidence in the record or are arbitrary, capricious, an abuse of discretion or otherwise contrary to applicable tribal or federal law. The Tax Division of the Tribal Court shall give proper weight to the Administrative Hearing Officer's interpretation of this Title and any administrative regulations promulgated thereunder.
- (5) The decision of the Tax Division of the Tribal Court is final unless a timely written appeal is filed with the Tribal Appeals Court in accordance with Article II, Chapter B, Section 211 of the Law and Order Code. The decision of the Tribal Appeals Court shall be final, and no further appeal shall be allowed.
- (6) Failure to file a timely written appeal with the Tribal Appeals Court shall result in the irrevocable and non-contestable waiver by the party of all further rights to appeal the decision of the Tax Division of the Tribal Court.
- (7) In no event shall the Tribal Appeals Court have the power or authority to declare any tax unconstitutional or otherwise invalid, to declare any administrative regulation, section, provision, phrase, addition, word, sentence, or amendment of this Title unconstitutional or otherwise invalid, to alter any tax rate set by the Tribal Council; to enjoin the application or collection of any tax imposed under the Article; or to award or order the payment of damages or attorneys fees to the taxpayer.

Section 20-1605. Disposition of Refunds.

Refunds owed a taxpayer pursuant to a determination made by an Administrative Hearing

Officer, Tax Division of the Tribal Court or Tribal Appeals Court, whichever the case may be, shall bear simple interest at the rate per year established by the Tribal Council which shall begin to accrue thirty (30) days from the date all protests and appeals have been exhausted, extinguished or waived, provided however, that no interest shall be paid on a refund that was caused by or is the result of the negligence, misrepresentation, fraud or mistake of the taxpayer.

CHAPTER 7. VIOLATIONS

Section 20-1701. Penalties and Interest.

(1) Penalties:

- (A) **Failure to File Return.** A failure to file any tax return, form or document within the time prescribed by this Title shall result in a penalty. The penalty shall be an addition to the tax. The penalty is 5% of the tax due for each month (or fraction thereof) during which there is a failure to file any tax return, up to 25% of the tax due. In the event the tax return, form or document is not filed within sixty (60) days of the prescribed due date the penalty will be \$250.00 or 100% of the tax due on the tax return, whichever is less. In the case of a fraudulent failure to file a return, report or document, the penalty is 15% of the tax due for each month, up to 75% of the tax due.
- (B) **Failure to Pay Tax.** A failure to pay any tax obligation within the time prescribed by this Title shall result in a penalty. This penalty shall be an addition to the tax. The penalty is 1% of the tax due for each month (or fraction thereof) that any tax obligation remains unpaid, up to 25% of the tax due.
- (C) **Accuracy Related Penalty for Underpayments.** An accuracy related penalty shall be due for any underpayment that is attributable to one or more of the following: (a) negligence or disregard of the provisions of this Title, (b) substantial understatement of a tax obligation, (c) substantial valuation misstatement and (d) substantial misrepresentation. The penalty is 20% of the portion of the underpayment and shall be an addition to the tax.
- (D) **Frivolous Return Penalty.** In addition to other penalties that may be imposed, there is a \$500.00 penalty for filing a frivolous tax return or form. This penalty shall be an addition to the tax. A frivolous tax return or form is one that omits information necessary to determine the taxpayer's tax obligation, shows a substantially incorrect tax obligation, or is based upon a frivolous position.
- (E) **Frivolous Proceedings.** A penalty in an amount not to exceed \$5,000.00 may be assessed against a taxpayer which institutes or maintains proceedings primarily for delay or on frivolous grounds.
- (F) In the event a taxpayer files a late tax return or form that is subject to both the failure to file and failure to pay penalties the former may be reduced by the latter.

TAX CODE

However, if no tax return or form is filed or if a late filed tax return or form understates the amount required to be due, the failure to pay penalty attributable to additional tax demanded by the Department may not be used to offset any portion of the failure to file penalty. If the penalty for failure to file beyond sixty (60) days applies, the penalty may not be reduced by a failure to file penalty.

- (2) Interest:
 - (A) Interest on Late Payments and Underpayments. Interest on late payments and underpayments is imposed at a rate established by the Tribal Council which shall not exceed 15% of the tax due. Interest accrues from the date the payment was due, determined without regard to any extensions of time, until it is received by the Department. Interest is to be compounded daily. The interest rate for 2002 and 2003 is 10% of the tax due.
 - (B) Interest on Additions and Penalties. Interest on penalties and additions to tax for failure to file, failure to pay, and for the accuracy related penalties will be imposed at a rate established by the Tribal Council which shall not exceed 15% of each penalty and additions to tax. Interest on penalties and additions to tax for failure to file, failure to pay, and for the accuracy related penalties accrues from the date the payment was due, determined without regard to any extensions of time, until it is received by the Department. Interest is to be compounded daily. The interest rate for 2002 and 2003 is 5%.
- (3) In addition to any other penalties or interest imposed under this Title, a person in violation of this Title may be required to pay the costs of collection incident to any administrative or judicial proceeding brought to enforce the provisions of this Title.
- (4) The Director, the Administrative Hearing Officer, the Tax Division of the Tribal Court, and Tribal Appeals Court shall have the authority to assess costs of collection against a taxpayer. In the event the Director determines that the taxpayer owes costs of collection, the Director shall send a notice, in writing, to the taxpayer stating that the Director has determined that the taxpayer owes costs of collection in addition to its tax obligation. The notice shall be the final decision of the Director. Any taxpayer aggrieved by the Director's decision to impose costs of collection against the taxpayer may file a written protest to the Administrative Hearing Officer provided the taxpayer has complied with the terms and conditions of Section 20-1602. In the event the Administrative Hearing Officer or Tax Division of the Tribal Court imposes costs of collection against the taxpayer, the taxpayer may appeal that decision provided the taxpayer has complied with the terms and conditions of Sections 20-1602 and 20-1603.

Section 20-1702. Abatement of Penalties.

In the event a taxpayer has been assessed a penalty, the Director or the Administrative Hearing

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

Section 20-1703. Abatement of Interest.

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

CHAPTER 8. LIMITATIONS OF ACTIONS

Section 20-1801. Limitations on Credits and Refunds.

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

Section 20-1802. Limitations on Record Retention.

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

Section 20-1803. Limitations on Enforcement.

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

TAX CODE

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

Section 20-1804. Limitations on Violations.

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

Section 20-1805. Effect of Limitations; Tolling.

- (1) The periods of limitation established by this Title may be tolled as other periods of limitation are tolled under the laws of the Tribes.
- (2) The failure to take appropriate action under this Chapter within the times specified shall bar recovery.
- (3) The running of the period of limitations is suspended during any properly lodged period of protest, appeal or stay of collection by operation of federal or tribal law and the period of limitations shall be extended for that period.

CHAPTER 9. REIMBURSEMENT OF REASONABLE COSTS

Section 20-1901. Reimbursement of Reasonable Costs.

- (1) A taxpayer who is a prevailing party may be eligible to recover reasonable costs related to an administrative or judicial proceeding in connection with a tax matter. For purposes of this section, a taxpayer is considered to be a prevailing party when:
 - (A) The Department's position was not substantially justified, and
 - (B) The taxpayer prevails on all material issues actually litigated and decided.
- (2) The taxpayer shall present a detailed itemized statement of its costs to the Administrative Hearing Officer, Tax Division of the Tribal Court, or Tribal Appeals Court, whichever the case may be, within fifteen (15) calendar days after the conclusion of the final proceeding. The validity and reasonableness of the itemized statement shall be determined by the administrative or judicial tribunal, whichever the case may be, within ten (10) calendar days after receiving the itemized statement. A determination of the

validity and reasonableness of the costs, and any award thereof, is final and there shall be no further proceedings thereon.

- (3) Reimbursement to a taxpayer shall not exceed five thousand dollars (\$5,000.00) or actual money spent, whichever is less. There shall be no recovery for attorneys fees or punitive damages by the taxpayer.

TAX CODE

ARTICLE II. TOBACCO PRODUCTS TAX

CHAPTER 1. GENERAL PROVISIONS

Section 20-2101. General Purpose.

The Colorado River Indian Tribes has a significant interest in protecting the health, safety and general welfare of its members, the residents within the boundaries of the Colorado River Indian Reservation and those persons and businesses doing business on and/or visiting the Reservation. The purpose of the Tobacco Products Tax is to regulate and monitor the sale of tobacco products within the boundaries of the Reservation and to raise revenues to fund health, safety and general welfare programs and services provided to residents of and visitors to the Reservation.

Section 20-2102. Definitions.

For purposes of this Article, whenever any of the following words, terms or definitions is used herein, they shall have the meaning ascribed to them in this Article:

- (1) “Tobacco” means commercially cultivated tobacco, the leaves of which are processed chiefly for use in cigarettes, cigars, snuff, plug or chewing tobacco, or for smoking pipes.
- (2) “Tobacco product” means any commercially processed and/or manufactured product for human consumption which consists of or contains tobacco, including cigarettes.
- (3) “Distributor” means any person or persons within or without the boundaries of the Colorado River Indian Reservation which manufactures, produces, ships, transports or imports tobacco products for the purpose of sale within lands subject to the jurisdiction of the Colorado River Indian Tribes.
- (4) “Person” means any natural person, trustee, court appointed representative, syndicate, association, partnership, firm, club, company, corporation, business trust, institution, agency, government corporation, municipal corporation, district or other political subdivision, contractor, supplier, vendor, vendee, operator, user or owner, or any officers, agents, employees or other representative, acting either for himself or herself or for any other person in any capacity, or any other entity recognized by law as the subject of rights and duties. The masculine, feminine, singular or plural is included in any circumstance.
- (5) “Retailer” means any person or persons conducting a business within lands subject to the jurisdiction of the Colorado River Indian Tribes that sells tobacco products so as to entitle such person or persons to all or a portion of the net receipts from the sale thereof, and shall include a distributor selling at retail.

Section 20-2103. Imposition of Tax.

There is hereby levied and imposed a tax upon the privilege of selling at retail tobacco products within lands subject to the jurisdiction of the Colorado River Indian Tribes.

Section 20-2104. Rates of Tax.

- (1) The tax rates imposed under this Article shall be established by the Tribal Council of the Colorado River Indian Tribes and shall be:
- (A) On each cigarette, no less than 2 cents nor more than 10 cents.
 - (B) On smoking tobacco, snuff, fine cut chewing tobacco, cut and granulated tobacco, shorts and refuse of fine cut chewing tobacco, and refuse, scraps, clippings, cuttings and sweepings of tobacco, excluding tobacco powder or tobacco products used exclusively for agricultural or horticultural purposes and unfit for human consumption, no less than 4.5 cents nor more than 15 cents per ounce or major fraction thereof.
 - (C) On all Cavendish, plug or twist tobacco, no less than 1.1 cents nor more than 10 cents per ounce or fraction thereof.
 - (D) On each twenty small cigars or fractional part thereof weighing not more than three pounds per thousand, no less than 8.9 cents nor more than 30 cents.
 - (E) On cigars of all descriptions except those included in paragraph D of this subsection, made of tobacco or any substitute therefore, if manufactured to retail at not more than 5 cents each, no less than 4.4 cents nor more than 18 cents on each three cigars, but if manufactured to retail at more than 5 cents each, no less than 4.4 cents nor more than 20 cents on each cigar.
- (2) Until the tax rates are changed by Resolution of the Tribal Council, the current tax rates imposed under this Article shall be levied, imposed and collected at the following rates:
- (A) On each cigarette, 5 cents.
 - (B) On smoking tobacco, snuff, fine cut chewing tobacco, cut and granulated tobacco, shorts and refuse of fine cut chewing tobacco, and refuse, scraps, clippings, cuttings and sweepings of tobacco, excluding tobacco powder or tobacco products used exclusively for agricultural or horticultural purposes and unfit for human consumption, 11.3 cents per ounce or major fraction thereof.
 - (C) On all Cavendish, plug or twist tobacco, 2.8 cents per ounce or fraction thereof.
 - (D) On each twenty small cigars or fractional part thereof weighing not more than three pounds per thousand, 22.3 cents.
 - (E) On cigars of all descriptions except those included in paragraph D of this subsection, made of tobacco or any substitute therefore, if manufactured to retail at not more than 5 cents each, 11 cents on each three cigars, but if manufactured to retail at more than 5 cents each, 11 cents on each cigar.

Section 20-2105. Tax is Additional Tax .

The tax herein levied and imposed shall be in addition to all other taxes.

Section 20-2106. Legal Incidence; Liability for Collection.

- (1) The legal incidence of the tax imposed by this Article shall be on the “retailer.”
- (2) The retailer shall account for and pay all taxes imposed herein based on the amount of tax stamps and/or taxes corresponding to the sale of cigarettes and other tobacco products sold to consumers within lands subject to the jurisdiction of the Colorado River Indian Tribes. The retailer is ultimately responsible for remitting payment to the Tribes regardless of whether the retailer charges the consumer an additional fee.

Section 20-2107. Collection of Tax .

Each retailer, or distributor who sells at retail, shall remit to the Tribes the taxes imposed herein for the purchase of tobacco products, whether such payment is by cash or credit.

Section 20-2108. Payment of Tax.

Payment of the tax shall be made at the time the tax return is due.

Section 20-2109. Intergovernmental Agreement for Collection.

Nothing contained herein shall limit the ability of the Tribal Council to enter into an intergovernmental agreement with any state for purposes of collection and remittance to the Department of Revenue and Finance of the taxes levied by this Article.

Section 20-2110. Administration.

All provisions of the Taxation Code, Article I, shall apply to this Article.

Section 20-2111. Filing of Applications.

- (1) All retailers and distributors selling at retail intending to conduct business within lands subject to the jurisdiction of the Colorado River Indian Tribes shall complete and file with the Department of Revenue and Finance an application for a tribal business license prior to conducting business. The Department shall assign a taxpayer identification number upon approval of the applicant’s tribal business license.
- (2) All retailers and distributors selling at retail conducting business within lands subject to the jurisdiction of the Colorado River Indian Tribes shall complete and file with the Department of Revenue and Finance an application for a tribal business license on a form

prescribed by the Department within thirty (30) days of conducting business. The Department shall assign a taxpayer identification number upon approval of the applicant's tribal business license.

- (3) All retailers and distributors selling at retail conducting business within lands subject to the jurisdiction of the Colorado River Indian Tribes on the effective date of this Article shall complete and file an application for a tribal business license within thirty (30) days of the effective date of this Article. The Department shall assign a taxpayer identification number upon approval of the applicant's tribal business license.

Section 20-2112. Filing of Return.

All retailers and distributors selling at retail shall pay to the Department of Revenue and Finance all taxes collected under this Article. Each retailer or distributor selling at retail conducting business within the Reservation shall file monthly tax returns showing tax receipts received during each monthly period on forms prescribed by the Department. The tax return shall be filed before the last day of the calendar month next succeeding the month for which the tax return is made and shall be accompanied by payment of all taxes due and owing for the month covered by said tax return.

Section 20-2113. Records.

All retailers and distributors selling at retail shall maintain and preserve complete and accurate books, records and accounts including, but not limited to (a) invoices showing the amount by type of tobacco products sold by a distributor to a retailer and the amount of tax required by this Article to be paid and actually paid by the retailer or distributor selling at retail; (b) where generated, daily journal tapes of the retailer showing the date, amount of sale and price of tobacco products sold on a daily basis; and (c) where daily journal tapes are not generated, such information generated by computer program or otherwise. All such books, records and accounts shall be made available to the Director of the Department of Revenue and Finance for examination for the periods of time prescribed in Article I, Chapter 8 of the Taxation Code.

Section 20-2114. Information Returns.

All retailers and distributors selling at retail shall file with the Department of Revenue and Finance monthly information returns on forms prescribed by the Department showing the amount, by type, of tobacco products purchased each month, the amount of inventory of such tobacco products, by type, remaining at the end of each month and any other information determined from time to time by the Department to be necessary for the enforcement of this Article. The information return shall be filed before the last day of the calendar month next succeeding the month for which the information return is made.

Section 20-2115. Failure to Pay Tax.

Taxes that are not remitted to the Department of Revenue and Finance on or before the due date are delinquent.

Section 20-2116. Tax Stamps.

To ensure payment of the tax imposed by this Article the Tribal Council, by Resolution, may require the use of appropriate tax stamps.

Section 20-2117. Violations; Additional Penalties.

Any retailer or distributor selling at retail which violates, disobeys, omits, neglects or refuses to comply with, or resists or opposes the enforcement of any of the provisions of this Article, may be assessed a penalty of not less than Seventy-Five Dollars (\$75.00) nor more than Five Thousand Dollars (\$5,000.00) for the first violation, and not less than One Hundred Fifty Dollars (\$150.00), nor more than Five Thousand Dollars (\$5,000.00) for the second violation, and not less than Three Hundred Dollars (\$300.00) nor more than Five Thousand Dollars (\$5,000.00) for the third violation, and not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00) for the fourth and each subsequent violation, or five (5) times the amount of the tax imposed, if any, whichever is higher, for the second and each subsequent violation. A separate and distinct violation shall be regarded as committed each day said distributor or retailer, whichever the case may be, continues any such violation, or permits any such violation to exist after notification thereof. The penalties imposed under this Article shall be in addition to the tax and in addition to those penalties, if any, imposed under Article I, Chapter 7 of the Taxation Code.

Section 20-2118. Failure to Remit; Licensing.

Collection and payment of this tax may be enforced by action in any court of competent jurisdiction, and failure by any retailer or distributor selling at retail to, account for or pay the tax for sales of tobacco products shall be cause for revocation of any license, in addition to any other penalty provided in this Article.

Section 20-2119. Promulgation of Regulations.

The Director shall have the power to promulgate regulations for the enforcement of the provisions of this Article and the collection of revenues hereunder.

Section 20-2120. Severability.

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

Section 20-2121. Effective Date.

This Article shall take effect upon the approval of its provisions by the Tribal Council of the Colorado River Indian Tribes. The tax imposed under this Article shall apply to all assessment dates and periods beginning on or after the effective date.

Section 20-2122. Application to the Tribes.

The provisions of this Article shall also apply to the Tribes including any governmental entity or enterprise of the Tribes. For purposes of this Article, the Tribes, including any governmental entity or enterprise of the Tribes, if applicable, shall be included in the definition of “distributor” and “retailer”.

Section 20-2123. Nondiscrimination.

No provision of this Article shall be construed as imposing a tax that discriminates on the basis of whether a tobacco products distributor or retailer is owned, managed or operated by a member of the Tribes.

ARTICLE III. RESTAURANT PRIVILEGE TAX

CHAPTER 1. GENERAL PROVISIONS

Section 20-3101. General Purpose.

The purpose of the restaurant privilege tax is to provide the Colorado River Indian Tribes with the revenues necessary to fund essential governmental services, including health and hospital services, public improvement programs and police and fire protection which will benefit all residents, nonresidents and businesses within the boundaries of the Reservation.

Section 20-3102. Definitions.

For purposes of this Article, whenever any of the following words, terms or definitions are used herein they shall have the meaning ascribed to them in this Article:

- (1) “Person” means any natural person, trustee, court appointed representative, syndicate, association, partnership, firm, club, company, corporation, business trust, institution, agency, government corporation, municipal corporation, district or other political subdivision, contractor, supplier, vendor, vendee, operator, user or owner, or any officers, agents, employees or other representative, acting either for himself or herself or for any other person in any capacity, or any other entity recognized by law as the subject of rights and duties. The masculine, feminine, singular or plural is included in any circumstance.
- (2) “Prepared Food Item for Immediate Consumption” means and includes any and all food, whether solid, semi-solid or liquid used or intended to be used for human consumption and for nourishment of the human body which is prepared for immediate consumption. The term defined herein includes any and all non-alcoholic beverages. The term shall include and be limited to:
 - (A) Food items prepared for immediate consumption purchased at establishments where facilities are provided for on-premise consumption, including but not limited to restaurants, cafes, cafeterias and other similar establishments, whether or not consumed on-premises or off-premises.
 - (B) Food items prepared for immediate consumption purchased from delicatessens, concession stands, snack shops and other similar establishments which sell food items primarily in individual sized servings, such as ice cream cones and individually served sandwiches, for immediate on-premise or off-premise consumption; and
 - (C) Food items prepared for immediate consumption that are purchased for immediate on-premise or off-premise consumption from catering establishments and restaurants with delivery services.

- (3) “Restaurant” means and includes any public place kept, used, maintained, advertised and held out to the public, as a place at which prepared food items for immediate consumption are served and/or prepared, whether or not consumed or intended to be consumed on the premises, but shall not include coin-operated automatic food dispensing machines.
- (4) “Retailer” means any person or persons conducting a business within lands subject to the jurisdiction of the Colorado River Indian Tribes that sells prepared food items for immediate consumption so as to entitle such person or persons to all or a portion of the net receipts from the sale thereof, and includes a Restaurant as defined above.

Section 20-3103. Imposition of Tax.

There is hereby levied and imposed a tax upon the privilege of selling within lands subject to the jurisdiction of the Colorado River Indian Tribes prepared food items for immediate consumption.

Section 20-3104. Rate of Tax.

The tax rate imposed under this Article shall be established by the Tribal Council of the Colorado River Indian Tribes and shall be no less than two percent (2%) nor more than ten percent (10%) of the purchase price of the prepared food items for immediate consumption. Until the tax rate is changed by Resolution of the Tribal Council, the current tax rate imposed under this Article shall be levied, imposed and collected at the rate of three percent (3%) of the purchase price of the prepared food items for immediate consumption.

Section 20-3105. Tax is Additional Tax.

The tax herein levied and imposed shall be in addition to all other taxes.

Section 20-3106. Exemptions.

Prepared food items for immediate consumption purchased at establishments primarily engaged in an activity or business other than the sale of prepared food items within lands subject to the jurisdiction of the Colorado River Indian Tribes are exempt from the provisions of this Article. By way of illustration, these establishments include churches, grade schools, junior high schools or high schools; institutional living establishments such as dormitories, senior citizen centers, residential care facilities and hospitals; and organizations who may, from time to time, provide prepared food items for immediate consumption without holding themselves out as retailers of such items.

Section 20-3107. Liability for Payment.

- (1) The legal incidence of and liability for payment of said tax shall be on the “retailer.”
- (2) Each retailer within lands subject to the jurisdiction of the Colorado River Indian Tribes shall have the duty to collect and account for the tax imposed herein, and shall remit all

due and owing taxes from the sale of prepared food items for immediate consumption to consumers, whether such payment is by credit or cash, to the Tribes at the time such payment is due.

Section 20-3108. Collection of Tax.

Each retailer is required to remit the tax imposed by this Article for the sale of prepared food items for immediate consumption, whether such payment is by cash or credit. The invoice, receipt or other statement of payment given to the consumer at the time of payment shall show the amount due under the tax provided herein which shall be stated separately on said invoice, receipt or statement. The retailer shall be liable for the payment of the tax to the Tribes, whether or not any additional fee is actually collected from the consumer.

Section 20-3109. Payment of Tax.

Payment of the tax shall be made at the time the tax return is due.

Section 20-3110. Administration.

All provisions of the Taxation Code, Article I, shall apply to this Article.

Section 20-3111. Filing of Applications.

All retailers intending to conduct business within lands subject to the jurisdiction of the Colorado River Indian Tribes shall complete and file with the Department of Revenue and Finance an application for a tribal business license prior to conducting business. All retailers conducting business within lands subject to the jurisdiction of the Colorado River Indian Tribes shall complete and file with the Department an application for a tribal business license on a form prescribed by the Department of Revenue and Finance within thirty (30) days of conducting business. Retailers conducting business within lands subject to the jurisdiction of the Colorado River Indian Tribes on the effective date of this Article shall complete and file an application for a tribal business license within thirty (30) days of the effective date of this Article. The Department shall assign a taxpayer identification number upon approval of the applicant's tribal business license.

Section 20-3112. Filing of Return.

All retailers shall pay to the Department of Revenue and Finance all taxes due under this Article. Each retailer that sells prepared food items for immediate consumption within lands subject to the jurisdiction of the Colorado River Indian Tribes shall file monthly tax returns showing tax receipts received during each monthly period on forms prescribed by the Department. The tax return shall be filed before the last day of the calendar month next succeeding the month for which the tax return is made and shall be accompanied by payment of all taxes due and owing for the month covered by said tax return.

Section 20-3113. Records.

All retailers shall keep, maintain and preserve complete and accurate books, records and accounts showing the gross receipts for sales of prepared food items for immediate consumption and the taxes each day and shall make available such books, records and accounts to the Director of the Department of Revenue and Finance for examination for those periods of time prescribed in Article I, Chapter 8 of the Taxation Code.

Section 20-3114. Failure to Pay Tax.

Taxes that are not remitted to the Department of Revenue and Finance on or before the due date are delinquent.

Section 20-3115. Violations; Additional Penalties.

Any retailer which violates, disobeys, omits, neglects or refuses to comply with, or resists or opposes the enforcement of any of the provisions of this Article, may be assessed a penalty of not less than Seventy-Five Dollars (\$75.00) nor more than Five Thousand Dollars (\$5,000.00) for the first violation, and not less than One Hundred Fifty Dollars (\$150.00), nor more than Five Thousand Dollars (\$5,000.00) for the second violation, and not less than Three Hundred Dollars (\$300.00) nor more than Five Thousand (\$5,000.00) for the third violation, and not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00) for the fourth and each subsequent violation, or five (5) times the amount of the tax imposed, if any, whichever is higher, for the second and each subsequent violation. A separate and distinct violation shall be regarded as committed each day said retailer continues any such violation, or permits any such violation to exist after notification thereof. The penalties imposed under this Article shall be in addition to the tax and in addition to those penalties, if any, imposed under Article I, Chapter 7 of the Taxation Code.

Section 20-3116. Promulgation of Regulations.

The Director shall have the power to promulgate regulations for the enforcement of the provisions of this Article and the collection of the revenues hereunder.

Section 20-3117. Failure to Remit; Licensing.

Collection and payment of this tax may be enforced by action in any court of competent jurisdiction, and failure to account for or pay the tax on prepared food items for immediate consumption shall be cause for revocation of any license of such retailer or applicable to the premises thereof, in addition to any other penalty provided in this Article.

Section 20-3118. Severability.

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

Section 20-3119. Effective Date.

This Article shall take effect upon the approval of its provisions by the Tribal Council of the Colorado River Indian Tribes. The tax imposed under this Article shall apply to all assessment dates and periods beginning on or after the effective date.

Section 20-3120. Application to the Tribes.

The provisions of this Article shall also apply to the Tribes including any governmental entity or enterprise of the Tribes. For purposes of this Article, the Tribes, including any governmental entity or enterprise of the Tribes, if applicable, shall be included in the definition of “retailer.”

Section 20-3121. Nondiscrimination.

No provision of this Article shall be construed as imposing a tax that discriminates on the basis of whether a restaurant or similar establishment is owned, managed or operated by a member of the Tribes.

ARTICLE IV. TRANSIENT LODGING TAX**CHAPTER 1. GENERAL PROVISIONS****Section 20-4101. General Purpose.**

The purpose of the transient lodging tax is to support tourism on the Colorado River Indian Reservation and to support tribal government and tribal public improvement programs that benefit the members of the Colorado River Indian Tribes, the residents within the boundaries of the Reservation and those persons and businesses doing business on and/or visiting the Reservation.

Section 20-4102. Definitions.

For purposes of this Article, whenever any of the following words, terms or definitions is used herein they shall have the meaning ascribed to them in this Article:

- (1) “Gross income” shall mean all income derived from the sale of or charge made for the furnishing of lodging by a transient lodging establishment, but shall not include income received from the sale of food, drinks, meals, room service, valet service or the collection of any federal, state, local or tribal tax.
- (2) “Transient lodging establishment” shall mean an establishment within lands subject to the jurisdiction of the Colorado River Indian Tribes, containing guest rooms or overnight lodging units, hereinafter referred to as “transient lodging units”, with respect to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. By way of illustration and not limitation, transient lodging establishment includes hotels, motels, inns, boardinghouses, tourist homes, campgrounds, resorts, R.V. parks, mobile homes or house trailers. Occupancy of real property for thirty (30) consecutive days or more with the intent to make the occupancy a permanent place of residence constitutes a rental or lease of real property and is exempt from the provisions of this Article.

Section 20-4103. Imposition of Tax.

There is hereby levied and imposed a tax upon the sale of or the charge made for the privilege of the furnishing of transient lodging units by a transient lodging establishment within lands subject to the jurisdiction of the Colorado River Indian Tribes.

Section 20-4104. Rate of Tax.

The tax rate imposed under this Article shall be established by the Tribal Council of the Colorado River Indian Tribes and shall be no less than two percent (2%) nor more than ten percent (10%) of the gross income from the sale of or charge made for the furnishing of transient lodging units. Until the tax rate is changed by Resolution of the Tribal Council, the current tax rate imposed under this Article shall be levied, imposed and collected at the rate of five and

one-half percent (5.50%) of the gross income from the sale of or charge made for the furnishing of transient lodging units.

Section 20-4105. Tax is Additional Tax.

The tax herein levied and imposed shall be in addition to all other taxes.

Section 20-4106. Exemptions.

The tax imposed under this Article does not apply to the leasing or renting of transient lodging units which are intended primarily to be leased or rented to persons as their permanent places of residence. Occupancy of real property for thirty (30) consecutive days or more with the intent to make the occupancy a permanent place of residence constitutes a rental or lease of real property and is exempt from the provisions of this Article. Transient lodging establishments having fewer than four (4) transient lodging units are also exempt from the provisions of this Article.

Section 20-4107. Liability for Payment.

- (1) The legal incidence of this tax is on every person or firm operating a transient lodging establishment as defined in this Title within lands subject to the jurisdiction of the Colorado River Indian Tribes.
- (2) Each person or firm operating a transient lodging establishment within lands subject to the jurisdiction of the Colorado River Indian Tribes shall have the duty to account for and remit the tax imposed herein to the Tribes based on the sale or charge made in furnishing transient lodging units.

Section 20-4108. Collection of Tax.

Each transient lodging establishment within lands subject to the jurisdiction of the Colorado River Indian Tribes shall have the duty to pay the tax imposed on all transient lodging units furnished to guests, whether the guest pays by cash or credit, and shall account for the tax imposed herein. Each transient lodging establishment shall maintain accurate written records of all transient lodging units furnished to guests, whether the guest pays by cash or credit, and shall make such records available for inspection by the Tribes. The transient lodging establishment is solely responsible for paying the tax to the Tribes and shall be liable for the payment of the tax to the Tribes, regardless of whether any additional fee is actually collected from the guest.

Section 20-4109. Payment of Tax.

Payment of the tax shall be made at the time the tax return is due.

Section 20-4110. Administration.

All provisions of the Taxation Code, Article I, shall apply to this Article.

Section 20-4111. Filing of Applications.

All transient lodging establishments intending to conduct business within lands subject to the jurisdiction of the Colorado River Indian Tribes shall complete and file with the Department of Revenue and Finance an application for a tribal business license prior to conducting business. All transient lodging establishments conducting business within lands subject to the jurisdiction of the Colorado River Indian Tribes shall complete and file with the Department an application for a tribal business license on a form prescribed by the Department of Revenue and Finance within thirty (30) days of conducting business. Transient lodging establishments conducting business within lands subject to the jurisdiction of the Colorado River Indian Tribes on the effective date of this Article shall complete and file an application for a tribal business license within thirty (30) days of the effective date of this Article. The Department shall assign a taxpayer identification number upon approval of the applicant's tribal business license.

Section 20-4112. Filing of Return.

All transient lodging establishments shall pay to the Department of Revenue and Finance all taxes under this Article. Each transient lodging establishment within lands subject to the jurisdiction of the Colorado River Indian Tribes shall file monthly tax returns showing tax receipts received during each monthly period on forms prescribed by the Department. The tax return shall be filed before the last day of the calendar month next succeeding the month for which the tax return is made and shall be accompanied by payment of all taxes due and owing for the month covered by said tax return.

Section 20-4113. Records.

All transient lodging establishments shall keep, maintain and preserve complete and accurate books, records and accounts showing the gross income from the sale of or charge made for the furnishing of transient lodging units and the taxes for each day and shall make available such books, records, and accounts to the Director of the Department of Revenue and Finance for examination for those periods of time prescribed in Article I, Chapter 8 of the Taxation Code.

Section 20-4114. Failure to Pay Tax.

Taxes that are not remitted to the Department of Revenue and Finance by a transient lodging establishment on or before the due date are delinquent.

Section 20-4115. Violations; Additional Penalties.

Any transient lodging establishment which violates, disobeys, omits, neglects or refuses to comply with, or resists or opposes the enforcement of any of the provisions of this Article, may be assessed a penalty of not less than Seventy-Five Dollars (\$75.00) nor more than Five Thousand Dollars (\$5,000.00) for the first violation, and not less than One Hundred Fifty Dollars (\$150.00), nor more than Five Thousand Dollars (\$5,000.00) for the second violation, and not less than Three Hundred Dollars (\$300.00) nor more than Five Thousand (\$5,000.00) for the third violation, and not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand

Dollars (\$10,000.00) for the fourth and each subsequent violation, or five (5) times the amount of the tax imposed, if any, whichever is higher, for the second and each subsequent violation. A separate and distinct violation shall be regarded as committed each day said transient lodging establishment shall continue any such violation or permits any such violation to exist after notification thereof. The penalties imposed under this Article shall be in addition to the tax and in addition to those penalties, if any, imposed under Article I, Chapter 7 of the taxation Code.

Section 20-4116. Promulgation of Regulations.

The Director shall have the power to promulgate regulations for the enforcement of the provisions of this Article and the collection of revenues hereunder.

Section 20-4117. Failure to Remit; Licensing.

Collection and payment of this tax may be enforced by action in any court of competent jurisdiction and failure to account for and pay the tax by any transient lodging establishment shall be cause for revocation of any license of such establishment or applicable to the premises thereof, in addition to any other penalty provided in this Article.

Section 20-4118. Severability.

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

Section 20-4119. Effective Date.

This Article shall take effect upon approval of its provisions by the Tribal Council of the Colorado River Indian Tribes. The tax imposed under this Article shall apply to all assessment dates and periods beginning on or after the effective date.

Section 20-4120. Application to the Tribes.

The provisions of this Article shall also apply to the Tribes including any governmental entity or enterprise of the Tribes. For purposes of this Article, the Tribes, including any governmental entity or enterprise of the Tribes, if applicable, shall be included in the definition of “transient lodging establishment”.

Section 20-4121. Nondiscrimination.

No provision of this Article shall be construed as imposing a tax that discriminates on the basis of whether a transient lodging establishment is owned, managed or operated by a member of the Tribes.

ARTICLE V. SALES TAX**CHAPTER 1. GENERAL PROVISIONS****Section 20-5101. General Purpose.**

The Colorado River Indian Tribes has a significant interest in protecting the health, safety and general welfare of its members, the residents within the boundaries of the Colorado River Indian Reservation and those persons and businesses doing business on and/or visiting the Reservation. The purpose of the Sales Tax is to regulate and monitor the sales of tangible personal property within the boundaries of the Reservation and to raise revenues to fund health, safety, and general welfare programs and services provided to residents of and visitors to the Reservation.

Section 20-5102. Definitions.

For purposes of this Article, whenever any of the following words, terms or definitions is used herein, they shall have the meaning ascribed to them in this Article:

- (1) "Consumer" means any person who receives or comes into possession of property from a retailer by means of a sale of such property.
- (2) "Person" means any natural person, trustee, court appointed representative, syndicate, association, partnership, firm, club, company, corporation, business trust, institution, agency, government corporation, municipal corporation, district or other political subdivision, contractor, supplier, vendor, vendee, operator, user or owner, or any officers, agents, employees or other representative, acting either for himself or herself or for any other person in any capacity, or any other entity recognized by law as the subject of rights and duties. The masculine, feminine, singular or plural is included in any circumstance.
- (3) "Property" means all tangible personal property of every kind and description. For the purpose of this Article, the term "property" includes any natural or artificial gas, electricity, water, or any other utility or public service by telephone and telegraph companies to subscribers or users within lands subject to the jurisdiction of the Tribes, including transmission of messages, whether local or long distance, or services and rental charges having any connection with the transmission of any messages.
- (4) "Retailer" means any person who in the ordinary course of business sells any property to another, such sale described as a "retail" sale, so as to entitle such person or persons to all or a portion of the net receipts from the sale thereof, and includes all businesses operating within lands subject to the jurisdiction of the Tribes regardless of whether they are required to obtain a tribal business license pursuant to the Business and Professions Code, Article I.
- (5) "Sale" or "sales" means all sales, barter, trades, exchanges, or other transfer or ownership for value of property from a retailer to any person no matter how characterized.

Section 20-5103. Imposition of Tax.

There is hereby levied and imposed a tax upon the privilege of conducting a sale of property within lands subject to the jurisdiction of the Colorado River Indian Tribes.

Section 20 5104. Rates of Tax.

The tax rates imposed under this Article shall be established by the Tribal Council of the Colorado River Indian Tribes and shall be no less than one percent (1%) nor more than seven percent (7%) of the actual sales price thereof exclusive of any rebates. Until the tax rate is changed by Resolution of the Tribal Council, the current tax rate imposed under this Article shall be levied, imposed and collected at the rate of two percent (2%) of the actual sales price thereof for the first \$2,500 of a single item purchase, exclusive of any rebates. The current tax rate imposed under this Article shall be levied, imposed and collected at the rate of one percent (1%) of the actual sales price that exceeds \$2,500 for any single item purchase, exclusive of any rebates. If a sale is consummated by trades, barter or exchange for anything other than money, the tax shall be computed at the fair market value of the property sold.

Section 20 5105. Tax is Additional Tax.

Except as provided in Section 20-5106 (Exemptions), the tax herein levied and imposed shall be in addition to all other taxes.

Section 20-5106. Exemptions.

The tax imposed under this Article shall not apply to the following sales:

- (1) Tangible personal property sold at "wholesale" to a retailer;
- (2) "Prepared Food Item for Immediate Consumption" as defined in Taxation Code § 20-3102(2);
- (3) Drugs and medical oxygen, including delivery hose, mask or tent, regulator and tank, on the prescription of a member of the medical, dental or veterinarian profession who is licensed by law to administer such substances;
- (4) Food items sold by an eligible grocery business;
 - (a) An "eligible grocery business" is defined as an establishment whose sales of food are such that it is eligible to participate in the food stamp program established by the food stamp act of 1977 (P.L. 95-113; 91 Stat. 958; 7 United States Code Sections 2011 through 2029), according to regulations in effect on January 1, 1979. An establishment is deemed eligible to participate in the Food Stamp Program if it is authorized to participate in the program by the United States Department of Agriculture Food and Nutrition Service field office on July 1, 1980

or if, prior to a reporting period for which the return is filed, such retailer proves to the satisfaction of the department of revenue that the establishment, based on the nature of the retailer's food sales, could be eligible to participate in the food stamp program established by the Food Stamp Act of 1977 according to regulations in effect on January 1, 1979.

- (b) For the purposes of this Article only, "Food" means any food item intended for human consumption which is intended for home consumption and shall include:
 - (i) Returnable containers for which a deposit is collected;
 - (ii) Ice and dry ice used in packing, shipping or transporting food; and
 - (iii) Seeds and plants to grow food for personal consumption.
- (c) "Food" shall not include alcoholic beverages or tobacco.
- (5) Tangible personal property sold by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code;
- (6) Prescription eyeglasses or contact lenses, frames and eye examinations;
- (7) Prosthetic appliances or devices necessary to support or take the place of a part of the body, or to increase the acuity of a sense organ prescribed or recommended by a licensed health professional;
- (8) Insulin, insulin syringes and glucose test strips;
- (9) Hearing aids, which are any wearable instrument or device designed for or represented as aiding or improving human hearing or as aiding, improving or compensating for defective human hearing, and any parts, attachments or accessories of such instrument or device, including ear molds, but excluding batteries and cords;
- (10) Items purchased with United States Department of Agriculture food stamp coupons issued under the Food Stamp Act of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under Section 17 of the Child Nutrition Act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, Section 4302; 42 United States Code Section 1786);
- (11) Articles of food, drink or condiment and accessory tangible personal property to a school district if such articles and accessory tangible personal property are to be prepared and served to persons for consumption on the premises of a public school within the district during school hours;
- (12) Sales of seeds, seedlings, roots, bulbs, cuttings and other propagative material to persons who use those items to commercially produce agricultural, horticultural, viticultural or

- floricultural crops within lands subject to the jurisdiction of the Tribes;
- (13) Machinery, equipment, technology or related supplies that are only useful to assist a person who is physically disabled with a physical impairment that substantially limits one or more major life activities and who has a diagnosis of such impairment;
 - (14) Livestock and poultry feed, salts, vitamins and other additives for livestock or poultry consumption that are sold to persons who are engaged in producing livestock, poultry, or livestock or poultry products or who are engaged in feeding livestock or poultry commercially. For purposes of this paragraph, "poultry" includes ratites;
 - (15) Sales of implants used as growth promotants and injectable medicines, not already exempt under paragraph 8 of this subsection, for livestock or poultry owned by or in possession of persons who are engaged in producing livestock, poultry, or livestock or poultry products or who are engaged in feeding livestock or poultry commercially. For purposes of this paragraph, "poultry" includes ratites;
 - (16) Agricultural crops or produce sold by the grower to a broker or retailer; or
 - (17) Durable medical equipment which is prescribed by a licensed health professional, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.
 - (18) New machinery and equipment consisting of tractors, tractor-drawn implements, self-powered implements, machinery and equipment necessary for extracting milk, and machinery and equipment necessary for cooling milk and livestock, and drip irrigation lines not already exempt under Paragraph 6 of this subsection and that are used for commercial production of agricultural, horticultural, viticultural and floricultural crops and products within lands subject to the jurisdiction of the Tribes. In this paragraph:
 - (a) "New machinery and equipment" means machinery and equipment which have never been sold at retail except pursuant to leases or rentals which do not total two years or more.
 - (b) "Self-powered implements" includes machinery and equipment that are electric-powered.

Section 20-5107. Legal Incidence; Liability for Collection.

- (1) The legal incidence of this tax is on every retailer engaged in the sale of property as defined in this Article within lands subject to the jurisdiction of the Colorado River Indian Tribes.
- (2) Each retailer operating within lands subject to the jurisdiction of the Colorado River Indian Tribes shall have the duty to account for and remit the tax imposed herein to the

Tribes based on the sale or charge made in selling property to each consumer.

Section 20-5108. Collection of Tax.

Each retailer operating within lands subject to the jurisdiction of the Colorado River Indian Tribes shall have the duty to pay the tax imposed on all property sold to consumers, whether the consumer pays by cash or credit, and shall account for the tax imposed herein. Each retailer shall maintain accurate written records of all sales to consumers, whether the consumer pays by cash or credit, and shall make such records available for inspection by the Tribes. The retailer is solely responsible for paying the tax to the Tribes and shall be liable for the payment of the tax to the Tribes, regardless of whether any additional fee is actually collected from the consumer.

Section 20-5109. Payment of Tax.

Payment of the tax shall be made at the time the tax return is due.

Section 20-5110. Administration.

All provisions of the Taxation Code, Article I, shall apply to this Article.

Section 20-5111. Filing of Applications.

All retailers intending to conduct business within lands subject to the jurisdiction of the Colorado River Indian Tribes shall complete and file with the Department of Revenue and Finance an application for a tribal business license prior to conducting business. All retailers conducting business within lands subject to the jurisdiction of the Colorado River Indian Tribes shall complete and file with the Department an application for a tribal business license on a form prescribed by the Department of Revenue and Finance within thirty (30) days of conducting business. Retailers conducting business within lands subject to the jurisdiction of the Colorado River Indian Tribes on the effective date of this Article shall complete and file an application for a tribal business license within thirty (30) days of the effective date of this Article. The Department shall assign a taxpayer identification number upon approval of the applicant's tribal business license.

Section 20-5112. Filing of Return.

All retailers shall pay to the Department of Revenue and Finance all taxes collected under this Article. Each retailer operating on lands subject to the jurisdiction of the Tribes shall file monthly tax returns showing tax receipts received during each monthly period on forms prescribed by the Department. The tax return shall be filed before the last day of the calendar month next succeeding the month for which the tax return is made and shall be accompanied by payment of all taxes due and owing for the month covered by said tax return.

Section 20-5113. Records.

All retailers shall keep, maintain and preserve complete and accurate books, records and

accounts showing the gross income from the sale of or charge made for the furnishing of property and the taxes for each day and shall make available such books, records, and accounts to the Director of the Department of Revenue and Finance for examination for those periods of time prescribed in Article I, Chapter 8 of the Taxation Code.

Section 20-5114. Failure to Pay Tax.

Taxes not remitted to the Department of Revenue and Finance by a retailer on or before the due date are delinquent.

Section 20-5115. Violations; Additional Penalties.

Any retailer who violates, disobeys, omits, neglects or refuses to comply with, or resists or opposes the enforcement of any of the provisions of this Article, may be assessed a penalty of not less than Seventy-Five Dollars (\$75.00) nor more than Five Thousand Dollars (\$5,000.00) for the first violation, and not less than One Hundred Fifty Dollars (\$150.00), nor more than Five Thousand Dollars (\$5,000.00) for the second violation, and not less than Three Hundred Dollars (\$300.00) nor more than Five Thousand (\$5,000.00) for the third violation, and not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) for the fourth and each subsequent violation, or five (5) times the amount of the tax imposed, if any, whichever is higher, for the second and each subsequent violation. A separate and distinct violation shall be regarded as committed each day said retailer shall continue any such violation or permits any such violation to exist after notification thereof. The penalties imposed under this Article shall be in addition to the tax and in addition to those penalties, if any, imposed under Article I, Chapter 7 of the taxation Code.

Section 20-5116. Promulgation of Regulations.

The Director shall have the power to promulgate regulations for the enforcement of the provisions of this Article and the collection of revenues hereunder.

Section 20-5117. Failure to Remit; Licensing.

Collection and payment of this tax may be enforced by action in any court of competent jurisdiction and failure to account for and pay the tax by any retailer shall be cause for revocation of any license of such establishment or applicable to the premises thereof, in addition to any other penalty provided in this Article.

Section 20-5118. Severability.

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

Section 20-5119. Effective Date.

This Article shall take effect upon approval of its provisions by the Tribal Council of the Colorado River Indian Tribes. The tax imposed under this Article shall apply to all assessment dates and periods beginning on or after the effective date.

Section 20-5120. Application to the Tribes.

The provisions of this Article shall also apply to the Tribes including any governmental entity or enterprise of the Tribes. For purposes of this Article, the Tribes, including any governmental entity or enterprise of the Tribes, if applicable, shall be included in the definition of "retailer."

Section 20-5121. Nondiscrimination.

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

ARTICLE VI. UTILITY BUSINESS ACTIVITY TAX

CHAPTER 1. GENERAL PROVISIONS

Section 20-6101. General Purpose.

The Colorado River Indian Tribes has a significant interest in protecting the health, safety and general welfare of its members, the residents within the boundaries of the Colorado River Indian Reservation and those persons and businesses doing business on and/or visiting the Reservation. The purpose of the Utility Business Activity Tax is to regulate and monitor the privilege of providing utility and other services within the boundaries of the Reservation and to raise revenues to fund health, safety, and general welfare programs and services provided to residents of and visitors to the Reservation.

Section 20-6102. Definitions.

For purposes of this Article, whenever any of the following words, terms or definitions is used herein, they shall have the meaning ascribed to them in this Article:

- (1) "Consumer" means any person who receives services from a utility retailer or comes into possession of property from a utility retailer by means of a sale of such property.
- (2) "Gross Receipts" means the full selling price billed by a utility for the retail sale of utility services.
- (3) "Person" means any natural person, trustee, court appointed representative, syndicate, association, partnership, firm, club, company, corporation, business trust, institution, agency, government corporation, municipal corporation, district or other political subdivision, contractor, supplier, vendor, vendee, operator, user or owner, or any officers, agents, employees or other representative, acting either for himself or herself or for any other person in any capacity, or any other entity recognized by law as the subject of rights and duties. For purposes of this Article, "person" shall include the United States of American and any agencies or employees therefore. The masculine, feminine, singular or plural is included in any circumstance.
- (4) "Property" means all tangible personal property of every kind and description. For the purpose of this Article, the term "property" includes any natural or artificial gas, electricity, water, telephone, television, waste, or any other utility service by utility retail companies to subscribers or users within lands subject to the jurisdiction of the Tribes, including transmission of messages, whether local or long distance, or services and rental charges having any connection with the transmission of any messages.
- (5) "Retailer" means any person who in the ordinary course of business sells any property to another, such sale described as a "retail" sale, so as to entitle such person or persons to all or a portion of the net receipts from the sale thereof, and includes all businesses operating within lands subject to the jurisdiction of the Tribes regardless of whether they are

required to obtain a tribal business license pursuant to the Business and Professions Code, Article I.

- (6) "Sale" or "sales" means all sales, barter, trades, exchanges, or other transfer or ownership for value of property or utility service from a utility retailer to any person no matter how characterized, except wholesale sales. A sale is deemed to have occurred at the time consumers are billed for the retailer's actual or promised delivery of goods or services to the consumer.
- (7) "Utility" means any person operating, for hire or sale, a plant, equipment, or system for the provision of utility services.
- (8) "Utility services" means:
 - (1) the distribution of water;
 - (2) the collection or processing of sewerage system products;
 - (3) the pick-up, transfer, storage, treatment, or disposal of waste;
 - (4) the transmission of telephone, telegraph, or any other electronic signals used for communication;
 - (5) the distribution of television signals via a community television antenna or cable system; and
 - (6) the distribution of electricity, natural, artificial, or mixed gas, propane, liquefied petroleum gas, heating oil, or other energy sources; but the term shall not include the provision nor distribution of firewood; nor shall it include the provision or distribution of gasoline or diesel fuels clearly intended for use by the final consumer in motor vehicles or boats.
- (9) "Waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include material collected primarily for recycling or salvage.
- (10) "Wholesale sale" means a sale of utility services to a utility for resale by that utility.

Section 20 6103. Imposition of Tax.

There is hereby levied and imposed on each utility that makes a sale within lands subject to the jurisdiction of the Colorado River Indian Tribes a business privilege tax.

Section 20 6104. Rates of Tax.

The tax rates imposed under this Article shall be established by the Tribal Council of the

Colorado River Indian Tribes and shall be no more than three percent (3%) of the utility's gross receipts generated from retail sales within lands subject to the jurisdiction of the Colorado River Indian Tribes.

Section 20-6105. Tax is Not an Additional Tax.

The tax herein levied and imposed shall be exclusive of all other taxes. Any other taxes imposed by the Tribal Council shall not be applied to utility retail sales.

Section 20-6106. Exemptions.

The tax imposed under this Article does not apply to sales at "wholesale" to a retailer.

Section 20-6107. Legal Incidence; Liability for Collection.

- (1) The legal incidence of this tax is on every utility retailer engaged in the sale of property as defined in this Article within lands subject to the jurisdiction of the Colorado River Indian Tribes.
- (2) Each utility retailer operating within lands subject to the jurisdiction of the Colorado River Indian Tribes shall have the duty to account for and remit the tax imposed herein to the Tribes based on the sale or charge made in selling property to each consumer.

Section 20-6108. Collection of Tax.

Each utility retailer operating within lands subject to the jurisdiction of the Colorado River Indian Tribes shall have the duty to pay the tax imposed on all property sold to consumers, whether the consumer pays by cash or credit, and shall account for the tax imposed herein. Each utility retailer shall maintain accurate written records of all sales to consumers, whether the consumer pays by cash or credit, and shall make such records available for inspection by the Tribes. The utility retailer is solely responsible for paying the tax to the Tribes and shall be liable for the payment of the tax to the Tribes, regardless of whether any additional fee is actually collected from the consumer.

Section 20-6109. Payment of Tax.

Payment of the tax shall be made at the time the tax return is due.

Section 20-6110. Administration.

All provisions of the Taxation Code, Article I, shall apply to this Article.

Section 20-6111. Filing of Applications.

All utility retailers intending to conduct business within lands subject to the jurisdiction of the Colorado River Indian Tribes shall complete and file with the Department of Revenue and

Finance an application for a tribal business license prior to conducting business. All utility retailers conducting business within lands subject to the jurisdiction of the Colorado River Indian Tribes shall complete and file with the Department an application for a tribal business license on a form prescribed by the Department of Revenue and Finance within thirty (30) days of conducting business. Utility retailers conducting business within lands subject to the jurisdiction of the Colorado River Indian Tribes on the effective date of this Article shall complete and file an application for a tribal business license within thirty (30) days of the effective date of this Article. The Department shall assign a taxpayer identification number upon approval of the applicant's tribal business license.

Section 20-6112. Filing of Return.

All utility retailers shall pay to the Department of Revenue and Finance all taxes collected under this Article. Each utility retailer operating on lands subject to the jurisdiction of the Tribes shall file monthly tax returns showing tax receipts received during each monthly period on forms prescribed by the Department. The tax return shall be filed before the last day of the calendar month next succeeding the month for which the tax return is made and shall be accompanied by payment of all taxes due and owing for the month covered by said tax return.

Section 20-6113. Records.

All utility retailers shall keep, maintain and preserve complete and accurate books, records and accounts showing the gross income from the sale of or charge made for the furnishing of utility services for each day and shall make available such books, records, and accounts to the Director of the Department of Revenue and Finance for examination for those periods of time prescribed in Article I, Chapter 8 of the Taxation Code.

Section 20-6114. Failure to Pay Tax.

Taxes not remitted to the Department of Revenue and Finance by a utility retailer on or before the due date are delinquent.

Section 20-6115. Violations; Additional Penalties.

Any utility retailer who violates, disobeys, omits, neglects or refuses to comply with, or resists or opposes the enforcement of any of the provisions of this Article, may be assessed a penalty of not less than Seventy-Five Dollars (\$75.00) nor more than Five Thousand Dollars (\$5,000.00) for the first violation, and not less than One Hundred Fifty Dollars (\$150.00), nor more than Five Thousand Dollars (\$5,000.00) for the second violation, and not less than Three Hundred Dollars (\$300.00) nor more than Five Thousand (\$5,000.00) for the third violation, and not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) for the fourth and each subsequent violation, or five (5) times the amount of the tax imposed, if any, whichever is higher, for the second and each subsequent violation. A separate and distinct violation shall be regarded as committed each day said utility retailer shall continue any such violation or permits any such violation to exist after notification thereof. The penalties imposed under this Article shall be in addition to the tax and in addition to those penalties, if any, imposed under Article I,

Chapter 7 of the Taxation Code.

Section 20-6116. Promulgation of Regulations.

The Director shall have the power to promulgate regulations for the enforcement of the provisions of this Article and the collection of revenues hereunder.

Section 20-6117. Failure to Remit; Licensing.

Collection and payment of this tax may be enforced by action in any court of competent jurisdiction and failure to account for and pay the tax by any retailer shall be cause for revocation of a business license, if any, in addition to any other penalty provided in this Article.

Section 20-6118. Severability.

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

Section 20-6119. Effective Date.

This Article shall take effect upon approval of its provisions by the Tribal Council of the Colorado River Indian Tribes. The tax imposed under this Article shall apply to all assessment dates and periods beginning on or after the effective date.

Section 20-6120. Application to the Tribes.

The provisions of this Article shall also apply to the Tribes including any governmental entity or enterprise of the Tribes. For purposes of this Article, the Tribes, including any governmental entity or enterprise of the Tribes, if applicable, shall be included in the definition of "retailer" or "utility."

Section 20-6121. Nondiscrimination.

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

The foregoing Ordinance was enacted on March 12, 2004, duly approved by a vote of 4 for and 3 against, and 0 abstaining, by the Tribal Council of the Colorado River Indian Tribes ("Tribes"), pursuant to authority vested in it by Article VI of the Constitution of the Tribes, ratified by the Tribes on March 1, 1975, pursuant to Section 16 of the Act of June 18, 1934 (25 U.S.C. Section 476). Ordinance 04-01 was amended by Ordinance No. ____ enacted on _____ duly approved by a vote of ___ for and ___ against, and ___ abstaining, by the Tribal Council of the Colorado River Indian Tribes ("Tribes"), pursuant to authority vested in it by Article VI of the Constitution of the Tribes, ratified by the Tribes on March 1, 1975, pursuant to Section 16 of the Act of June 18, 1934 (25 U.S.C. Section 476).

COLORADO RIVER INDIAN TRIBES

COLORADO RIVER TRIBAL COUNCIL

Daniel Eddy, Jr.
Chairman, Tribal Council

Sylvia Homer
Secretary, Tribal Council