

Title 14

CIGARETTE SALES AND TAX CODE

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Chapter 14.01

General Provisions

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Section 14.01.01 Title

This Title shall be known as the Jamestown S' Klallam Tribe Cigarette Sales and Tax Code.

Section 14.01.02 Scope

- A. Application. This Title shall apply to the full extent of the sovereign jurisdiction of the Tribe in Indian Country;
- B. Compliance. Compliance with this Title is hereby made a condition of the use of any land or premises in Indian Country;
- C. Deemed to Consent. Any person, who resides, conducts business, engages in a business transaction, receives benefits from the Tribal Government, including police, fire or emergency services, acts under Tribal authority, or enters the Indian Country under the jurisdiction of the Tribe, shall be deemed thereby to have consented to the following:
 - 1. To be bound by the terms of this Title;
 - 2. To the exercise of civil jurisdiction by the Tribal Court over said person in legal actions arising pursuant to this Title; and

3. To detainment, service of summons and process, and search and seizure, in conjunction with legal actions arising pursuant to this Title.

Chapter 14.02

Definitions

Section 14.02.01 Definitions

The following definitions apply throughout this Title, unless otherwise specified, or the context clearly indicates otherwise:

- A. "Auditor" means an independent third-party auditor selected pursuant to Part VIII (8) Section 1 (i) of the Contract;
- B. "Carton" or "carton of cigarettes" means, unless otherwise indicated, a carton of two hundred (200) cigarettes;
- C. "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state;
- D. "Contract" means this agreement or compact entered into by the State and the Tribe;
- E. "Department" means the Washington State Department of Revenue;
- F. "Essential government services" means services provided by the Tribe such as administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, land acquisition, transportation, utility services, and economic development;
- G. "Indian Country," consistent with the meaning given in 18 U.S.C. § 1151, means:
 - 1. All land within the limits of the Jamestown S' Klallam Reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights of way running through the Reservation; and
 - 2. All Indian allotments or other lands held in trust for a Tribal member or the Tribe, the Indian titles to which have not been extinguished, including rights of way running through the same;
- H. "Liquor Control Board" is an agency of the State with a mission to prevent the misuse of alcohol and tobacco through education, enforcement, and controlled distribution;
- I. "Local retail sales tax" means the combined State and local retail sales taxes applicable in the area;
- J. "Non-Indian" means an individual who is neither a Tribal member nor a non-member Indian;
- K. "Non-member Indian" means an enrolled member of a federally recognized Indian Tribe other than the Jamestown S' Klallam Tribe;
- L. "Parties to the agreement" or "parties" means the Tribe and the State;

- M. "Retail selling price" means the ordinary, customary, or usual price paid by the consumer for each package or carton of cigarettes, which price includes the Tribal cigarette tax;
- N. "Selfcertified Tribal wholesaler" means a wholesaler who is a federally recognized Indian Tribe or a member of such a Tribe, who is not required to be licensed under any state law, and who has by letter certified to the Department that it will abide by the terms of this Contract and who has signed an agreement with the Tribe requiring it to abide by the terms of this Contract;
- O. "Selfcertified wholesaler" means an outofstate wholesaler who is not a selfcertified tribal wholesaler and who has by letter certified to the Department that it will abide by the terms of this Contract and who has signed a contract with the Tribe requiring it to abide by the terms of this Contract;
- P. "State Cigarette Tax" means the state tax imposed on each cigarette, which is expressed in cents per cigarette;
- Q. "State and Local Retail Sales and Use Taxes" are self-defined and are expressed as a percentage of the sales price (which sales price includes the State Cigarette Tax) of a unit of cigarettes;
- R. "State Taxes" in this Title only, means a combination of the "State Cigarette Tax," and the "State and Local Retail Sales and Use Taxes;"
- S. "Jamestown S' Klallam Reservation" or "Reservation" means the area recognized as the Jamestown S' Klallam Reservation by the United States Department of the Interior;
- T. "State" means the State of Washington;
- U. "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, Cavendish, plug and twist tobacco, finecut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. "Tobacco products" does not include cigarettes;
- V. "Tribal member" means an enrolled member of the Tribe;
- W. "Tribal retailer" means a cigarette retailer wholly owned by the Tribe and located in Indian country;
- X. "Tribal Cigarette Tax" means the tax or taxes enacted as a provision of this Title on the units of cigarettes sold, expressed in cents per cigarette (the "Unit Tax"), and on the sales of cigarettes to retail buyers, expressed in terms of a percentage of the sales price of the unit of cigarettes (the "Sales Tax");
- Y. "Tribal tax stamp" means the stamp or stamps that indicate the taxes imposed under this Contract have been paid or that identify those cigarettes with respect to which no tax or another Tribal tax is imposed; initially the State Cigarette Tax Stamp will be used by the Tribe;
- Z. "Tribe" or "Tribal" means or refers to the Jamestown S' Klallam Tribe, a federally recognized Tribe; and
- AA. "Wholesaler" means every person who purchases, sells, or distributes cigarettes for the purpose of resale only.

Chapter 14.03

Cigarette Tax

Section 14.03.01 Cigarette Tax Compact with Washington State.

This Title authorizes the Tribe to enter into a contract with the State of Washington regarding the sale and taxation of cigarettes in Indian Country (the "Contract") setting forth the following terms and conditions:

A. The Tribe shall not engage in mail order type sales, such as internet, catalog, and telephone sales, to Washington residents outside of Indian Country, unless and until the State and the Tribe have entered into a memorandum of agreement in regard to the taxability of such sales;

B. The Tribe may engage in mail order type sales of cigarettes, such as internet, catalog, and telephone sales, to purchasers outside of Indian Country and outside of Washington State;

C. "Tribal retailer" refers to the 7 Cedars Casino. Further:

1. The Tribe will notify the Department thirty (30) days prior to the start up of cigarette sales by any other Tribal retailer; and

2. The Tribe will provide information regarding the status of land upon which any Tribal retailer is located at least thirty (30) days prior to the startup of any new cigarette sales by such retailer;

D. Tribal retailers may purchase cigarettes for sale in Indian Country only from:

1. Wholesalers or manufacturers licensed to do business in the State of Washington;

2. Selfcertified wholesalers who meet the requirements of Part VI (6) section 2 (ii) of the Contract;

3. Selfcertified Tribal wholesalers who meet the requirements of Part VI (6) section 3 (iii) of the Contract; and

4. The Tribe or its enterprises as a Tribal manufacturer;

E. All cigarettes sold by the Tribal retailer shall bear a tax stamp, including cigarettes subject to the Tribal cigarette tax, the Tribal member cigarette tax, or exempt from either of these taxes. The stamps shall be purchased and affixed in accordance with the terms of the Contract;

F. The Tribe, or its designee, shall notify the State Department of Revenue seventy-two (72) hours in advance of all shipments of cigarettes by the selfcertified wholesaler or selfcertified Tribal wholesaler to the Tribe or Tribal retailers. Such notice shall include who is making the shipment (meaning who is the wholesaler), details regarding both quantity and brand, and the invoice order number;

G. No person shall sell or give, or permit to be sold or given, cigarettes to any person under the age of eighteen (18). If a violation of this subsection is reported to the Tribe:

1. The Tribe shall investigate the allegation; and

2. When there is probable cause to believe a violation has occurred, cite the individual who is alleged to have made a sale or gift in violation of this subsection for such violation and apply the following penalties to the individual:

a. Upon a first violation, a fine of two hundred fifty dollars (\$250.00);

- b. Upon a second violation within any rolling one (1) year period, a fine of five hundred dollars (\$500.00);
 - c. Upon a third violation within any rolling one (1) year period, a fine of seven hundred fifty dollars (\$750.00);
 - d. Upon a fourth violation within any rolling two (2) year period, a fine of one thousand dollars (\$1,000.00); and
 - e. Upon a fifth violation within any rolling two (2) year period, a fine of one thousand dollars (\$1,000.00) and termination from employment. Upon the fifth violation within any rolling two (2) year period, the individual shall no longer be permitted to make cigarette sales in Indian Country for a period of no less than one (1) year;
3. It shall be no defense to a citation for a violation of this subsection that the purchaser acted, or was believed by the defendant to act, as agent or representative of another; and
4. It shall be a defense to a citation for a violation of this subsection that the person making a sale reasonably relied on officially issued identification that shows the purchaser's age and bears his or her signature and photograph.

Chapter 14.04

Cigarette Tax – Levy

Section 14.04.01 Cigarette Tax Levy

- A. Beginning no later than the date provided for in the Contract, the Tribe shall impose taxes, pursuant to the terms of this Title, on all sales by Tribal retailers of cigarettes to non-Indian and non-member Indian purchasers within Indian Country;
- B. The Tribal tax rate shall be no less than the sum of an amount equal to one-hundred percent (100%) of the state cigarette tax, which is expressed in cents per cigarette, plus an amount equal to one-hundred percent (100%) of the state and local retail sales taxes;
- C. During the term of the Contract, upon any future increase in the state cigarette tax, state retail sales tax, or local retail sales tax, the Tribal tax on cigarettes shall increase by no less than one-hundred percent (100%) of the increase in the combined state and local tax rates;
- D. During the term of the Contract, upon any future decrease in the state cigarette tax, state retail sales tax, or local retail sales tax, the Tribal tax on cigarettes may decrease to a minimum of no less than one-hundred percent (100%) of the combined state and local tax rates; and
- E. For the sale of all cigarettes manufactured by the Tribe or its enterprises in Indian Country, the Tribal Council shall determine, by an amendment to this Title, which Tribal taxes, if any, shall apply to those sales. All such sales are not subject to the provisions of the Contract with the State.

Chapter 14.05

Cigarette Tax - Exemptions from Other Taxes

Section 14.05.01 Cigarette Tax Exemptions from Other Taxes

The Tribal Cigarette Tax is composed of a Unit Tax and a Sales Tax. The following sales shall not be subject to the Unit Tax:

- A. Sales of tobacco products;

The following sales shall not be subject to the Sales Tax:

- A. Sales of tobacco products; and
- B. Sales of cigarettes to enrolled members of the Tribe. However, such sales are subject to the Unit Tax. The Unit Tax revenue from sales to enrolled members of the Tribe shall be exempt from the prohibition on subsidization in the Contract;

The Tribal Council may, by amendment to this Title, determine the extent to which any taxes, whether Unit or Sales, shall apply in the following circumstances:

- A. Sales of cigarettes manufactured by the Tribe or its enterprises within Indian Country; and
- B. Mail order type sales of cigarettes, such as internet, catalog, and telephone sales, to purchasers outside of Indian Country and outside of Washington State.

Chapter 14.06

Cigarette Tax - Collection and Payment

Section 14.06.01 Cigarette Tax Collection and Payment

- A. Every person engaged in retail sales of cigarettes in Indian country who is liable for collecting the Tribal cigarette tax levy or Tribal member cigarette tax levy, shall maintain accurate written records of the purchase, stamping, and retail sales of cigarettes, and shall make such records available for inspection by the Tribal finance officer and/or Auditor retained by the Tribe. Records shall be maintained for no less than three (3) years after the audit is accepted by the appropriate federal oversight agency;
- B. All applicable taxes shall be paid prior to the sale, distribution, or transfer of possession of any cigarettes. During the term of the Contract, the terms of the Contract regarding the purchase, stamping, transportation and sale of cigarettes shall apply; and
- C. Whenever cigarette taxes are paid by any person other than the consumer, user or possessor, that payment shall be considered a precollection of such taxes due. When the tax is prepaid by another, this amount is part of the selling price of the cigarette to the retail purchaser.

Chapter 14.07

Cigarette Tax - Use of Tribal Levy

Section 14.07.01 Cigarette Tax Use of Tribal Levy

A. Tribal cigarette tax revenues shall be used only for essential government services, and may not be used to subsidize Tribal cigarette and food retailers. For the purposes of this section, "subsidize" means that proceeds from the Tribal cigarette tax pursuant to the Contract cannot be expended on the enterprise activities of the Tribal retail cigarette business. In addition, where the cigarette business is colocated with a retail food business, the proceeds cannot be expended to support that business:

1. "Direct business activities" include paying wages, benefits, bonuses or expenses, related to the maintenance and operation of the retail facility or typically considered to be part of a business' operating expenses and overhead; and

2. "Essential government services" include, but are not limited to: government services to provide and maintain infrastructure such as sidewalks, roads, and utilities; services such as fire protection and law enforcement; the costs of administering deductions and exemptions similar to those available to retailers, wholesalers and others under state law; Tribal administration activities such as tax functions, contracting for health benefits, economic development, natural resources, and the provision of job services; and distribution of moneys related to trust funds, education, and general assistance;

B. Tribal member cigarette tax revenues (both Unit and Sales Taxes) are not subject to the requirements of this section.

Chapter 14.08

Cigarette Tax – Audit

Section 14.08.01 Cigarette Tax Audit

The Tribe shall retain a thirdparty independent auditor for the purposes of verifying compliance with the Contract. The Auditor shall perform all work required under Part VIII (8) of the Contract.

Chapter 14.09

Cigarette Tax - Prior Resolutions

Section 14.09.01 Cigarette Tax Prior Resolutions

Prior Tribal Council resolutions, if any, dealing with the levy of Tribal cigarette taxes are superseded by this Title.

Chapter 14.10

Cigarette Sales - Permitted

Sections:

14.10.01 Cigarette Sales - Permitted

Section 14.10.01 Cigarette Sales - Permitted

Tribal retailers are the only retail businesses authorized to sell cigarettes within Indian Country.

Chapter 14.11

Miscellaneous

Sections:

14.11.01 Short Title

14.11.02 Severability

Section 14.11.01 Short Title

This act shall be known and cited as the Cigarette Sales and Tax Code.

Section 14.11.02 Severability

If any provision of this Title, or its application to any person or circumstance is held invalid, the remainder of the Title, or the application of the provision to other persons or circumstances, will not be affected.

Chapter 14.12

Codification of Title

Section 14.12.01 Date of Codification

The Cigarette Sales and Tax Ordinance was approved on November 19, 2002 with Resolution #43-02 and codified as a Title on November 8, 2005 with Resolution #38-05.