



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 02-20 Of the SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises, and its agencies by authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and with protecting and managing the lands and treaty resources and rights of the Tribe; and

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

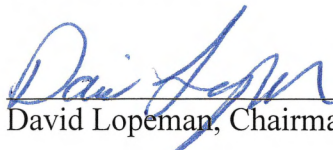
WHEREAS, the Squaxin Island Tribal Council finds that regulation of the sale of cigarettes is essential to the health and welfare of the Squaxin Island Tribe and its members; and

WHEREAS, the Squaxin Island Tribal Council further finds that a tax base is essential to the Tribe's ability to provide goods and services, and to finance government operations and economic development, for the safety, health and welfare of the Squaxin Island Tribe, its members, and those who work on, live on and visit the Tribe's Indian country.

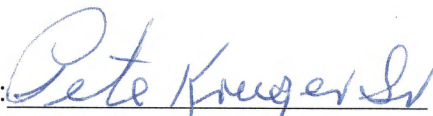
NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Tribal Council hereby adopts the Cigarette Sales and Tax Code (copy attached hereto).

CERTIFICATION

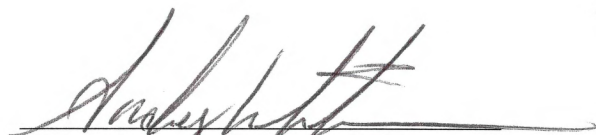
The Squaxin Island Tribal Council does hereby certify that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 14th day of March, 2002 at which time a quorum was present and was passed by a vote of 3 for and 0 against with 0 abstentions.



David Lopeman, Chairman

Attested by: 

Pete Kruger, Sr., Secretary



Andy Whitener, Vice Chairman

Chapter 6.14

CIGARETTE SALES AND TAX CODE

Sections:

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6.14.010 Authority.

The Squaxin Island Tribal Council's authority to adopt the ordinance codified in this title is found in the Squaxin Island Tribal Constitution and in the inherent sovereignty of the Squaxin Island Tribe to regulate its own territory and activities therein.

6.14.020 Purpose.

The Squaxin Island Tribal Council finds that regulation of the sale of cigarettes is essential to the health and welfare of the Squaxin Island Tribe and its members. The Tribal Council further finds that a tax base is essential to the Tribe's ability to provide goods and services, and to finance government operations and economic development, for the safety, health and welfare of the Squaxin Island Tribe, its members, and those who work on, live on, and visit the Tribe's Indian country. Therefore, in the public interest and for the welfare of the people of the Squaxin Island Tribe, its employees, the residents of and visitors to Indian country, the Squaxin Island Tribal Council, in the exercise of its authority under the Tribal Constitution, declares its purpose by the provisions of this chapter to regulate the sale of cigarettes and to impose, collect and administer taxes on the retail sale of cigarettes.

6.14.030 Scope.

- A. Application. This chapter shall apply to the full extent of the sovereign jurisdiction of the Squaxin Island Tribe in Indian country.
- B. Compliance with this chapter 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 Squaxin Island Tribe, shall be deemed thereby to have consented to the following:
 1. To be bound by the terms of this chapter;

2. To the exercise of civil jurisdiction by the Squaxin Island Tribal Court over said person in legal actions arising pursuant to this chapter; and

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

6.14.040 Definitions.

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

“Auditor” means an independent third party auditor selected pursuant to §6.14.100 of this chapter.

“Carton” or “carton of cigarettes” means a carton of two hundred (200) cigarettes.

“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.

“Contract” means the compact entered into by the Squaxin Island Tribe and the state of Washington dated December 10, 2001.

“Court” means the Squaxin Island Tribal Court, and includes the Squaxin Island Tribe Court of Appeals.

“Department” means the state of Washington Department of Revenue.

“Essential government services” means services such as Tribal administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development.

“General fund” means the Squaxin Island Tribe general fund.

“Indian country”, consistent with the meaning given in 18 U.S.C. 1151 means:

- (a) All land within the limits of the Squaxin Island Indian 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
- (b) All Indian allotments or other lands held in trust for a Squaxin Island Tribal member or the Tribe, the Indian titles to which have not been extinguished, including rights of way running through the same.

“Local retail sales tax” means the combined Washington local retail sales taxes applicable in the area.

“NonIndian” means an individual who is neither a Tribal member nor a nonmember Indian.

“Nonmember Indian” means an enrolled member of a federally recognized Indian Tribe other than the Squaxin Island Tribe.

“Person” means and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity.

“Retail selling price” means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, which price includes the Tribal cigarette tax.

“Self-certified 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 the Contract and who has signed a contract with the Tribe requiring it to abide by the terms of the Contract.

“Self-certified wholesaler” means an out-of-state wholesaler who is not a self-certified tribal wholesaler and who has by letter certified to the Department that it will abide by the terms

of the Contract and who has signed a contract with the Tribe requiring it to abide by the terms of the Contract.

“Squaxin Island Indian Reservation” or “reservation” means the area recognized as the Squaxin Island Indian Reservation by the United States Department of the Interior.

“State” means the state of Washington.

“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, fine-cut 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 product” does not include cigarettes.

“Tribal cigarette tax” means the tax or taxes enacted as a provision of Tribal law on the units of cigarettes sold and on the purchase of cigarettes by retail buyers.

“Tribal Council” means the Squaxin Island Tribal Council.

“Tribal member” means an enrolled member of the Squaxin Island Tribe.

“Tribal retailer” means a cigarette retailer wholly owned by the Squaxin Island Tribe and located in Indian country.

“Tribal tax stamp” means the stamp or stamps that indicate the Squaxin Island Tribal cigarette tax imposed under the Contract is paid or that identify those cigarettes with respect to which no tax or another Tribal tax is imposed.

“Tribe” or “Tribal” means or refers to the Squaxin Island Tribe.

“Wholesaler” means every person who purchases, sells, or distributes cigarettes for the purpose of resale only.

6.14.050 Cigarette Tax – Compact with Washington State.

On December 10, 2001, the Tribe entered into a compact with the State of Washington regarding the sale and taxation of cigarettes in Indian Country (the “Contract”). In accordance with the terms of the Contract and during its term:

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. “Tribal retailer” refers to the Kamilche Trading Post and the Little Creek Casino.

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

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

C. 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. Self-certified wholesalers who meet the requirements of Part VI section 2 of the Contract;

3. Self-certified tribal wholesalers who meet the requirements of Part VI section 3 of the Contract; and

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

D. All cigarettes sold by the Tribal retailer shall bear a Tribal 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.

E. The Squaxin Island Tribe, or its designee, shall notify the state Department of Revenue 72 hours in advance of all shipments of cigarettes by the self-certified wholesaler or self-certified tribal wholesaler to the Tribe or Tribal retailers. Such notice shall include who is making the shipment (meaning who is the wholesaler), detail regarding both quantity and brand, and the invoice order number.

F. No person shall sell or give, or permit to be sold or given, cigarettes to any person under the age of 18. If a violation of this subsection 6.40.050(F) 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 6.40.050(F) for such violation and apply the following penalties to the individual:
 - a. Upon a first violation, a fine of \$250.00;
 - b. Upon a second violation within any rolling one-year period, a fine of \$500.00;
 - c. Upon a third violation within any rolling one-year period, a fine of \$750.00;
 - d. Upon a fourth violation within any rolling two-year period, a fine of \$1,000.00; and
 - e. Upon a fifth violation within any rolling two-year period, a fine of \$1,000.00 and termination from employment. Upon the fifth violation within any rolling two-year period, the individual shall no longer be permitted to make cigarette sales in Indian country for a period of no less than one year.
3. It shall be no defense to a citation for a violation of this subsection 6.40.050(F) that the purchaser acted, or was believed by the defendant to act, as agent or representative of another.
4. It shall be a defense to a citation for a violation of this subsection 6.40.050(F) 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.

6.14.060 Cigarette Tax – Levy.

A. Beginning no later than March 31, 2002, the Tribe shall impose taxes, pursuant to the terms of this section, on all sales by Tribal retailers of cigarettes to nonIndian and nonmember Indian purchasers within Indian country.

B. The Tribal tax rate shall be as follows:

1. For the first 36 months (“phase-in period”), the tax rate shall equal no less than the sum of an amount equal to 80 percent of the State cigarette tax, which is expressed in cents per cigarette, plus an amount equal to 80 percent of the state and local retail sales taxes. This phase-in period may be reduced in accordance with subsection 6.14.060(C).

2. No later than 36 months after the initial imposition of tax under this section 6.14.060, and subject to the phase-in period reduction under subsection 6.14.060(C), the Tribal tax rate shall be no less than the sum of an amount equal to 100 percent of the state cigarette tax, which is expressed in cents per cigarette, plus an amount equal to 100 percent of the state and local retail sales taxes.

C. If during any quarter the number of cartons of cigarettes, excluding those manufactured by the Squaxin Island Tribe or its enterprises, that are sold at retail exceeds by at least 10 percent the quarterly average sales of the six months preceding the imposition of the Tribal cigarette tax, the 36-month phase-in period shall be reduced by three months. These

reductions will be cumulative. The quarterly average sales baseline shall be determined by the Auditor. For the purposes of this provision:

1. “Quarter” means a three-month period, each quarter immediately succeeding the next. The first quarter begins the first day of the first month the Tribal cigarette tax is imposed, if the imposition of the tax is on or before the 15th of the month, or begins the first day of the second month the Tribal cigarette tax is imposed, if the imposition of the tax is after the 15th of the month; and

2. The “quarterly average sales” means the sum of the retail sales made during the two quarters divided by two.

D. 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 100 percent of the increase in the combined state and local tax rates; provided, however, that during the phase-in period the Tribal tax rate shall be set that it is at least equal to 80 percent of the then-current combined state cigarette tax and state and local sales tax.

E. 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 100 percent of the combined state and local tax rates; provided, however, that during the phase-in period the Tribal tax rate shall be set that it is at least equal to 80 percent of the then-current combined state cigarette tax and state and local sales tax.

F. The following sales shall not be subject to a general Tribal sales tax levy under other provision of Tribal law:

1. All cigarettes manufactured by the Squaxin Island Tribe or its enterprises in Indian Country;

2. All other cigarettes whenever a Tribal cigarette tax or Tribal member cigarette tax is imposed on those cigarettes during the term of a compact with the state of Washington.

6.14.070 Cigarette Tax – Exemptions from – Other Taxes.

The following shall not be subject to the cigarette tax levy:

A. Sales of tobacco products;

B. Sales of cigarettes to enrolled members of the Squaxin Island Tribe. However, such sales are subject to a Tribal member cigarette tax, which shall be equal to the tax levied under §6.14.060 on sales to nonIndians and nonmember Indians. The tax revenue from sales to enrolled members of the Squaxin Island Tribe shall be exempt from the prohibition on subsidization in §6.14.090.

C. Sales of cigarettes manufactured by the Squaxin Island Tribe or its enterprises within Indian country.

D. Mail order type sales of cigarettes, such as internet, catalog, and telephone sales, to purchasers outside of Indian country and outside of Washington state.

6.14.080 Cigarette Tax – Collection and Payment of.

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 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.

C. Whenever cigarette taxes are paid by any person other than the consumer, user or possessor, that payment shall be considered a pre-collection 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.

6.14.090 Cigarette Tax – Use of Tribal Levy.

A. Tribal cigarette tax revenue 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 co-located with a retail food business, the proceeds cannot be expended to support that business.

1. “Enterprise 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.

2. “Non-enterprise activities” 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 revenue is not subject to the requirements of this section 6.14.090.

6.14.100 Cigarette Tax – Audit.

The Tribe shall retain a third-party independent auditor for the purposes of verifying compliance with the Contract. The Auditor shall perform all work required under Part VIII of the Contract.

6.14.110 Cigarette Tax – Prior Resolutions.

Prior Tribal Council resolutions dealing with the levy of Tribal cigarette taxes are superseded by this chapter.

6.14.120 Cigarette Sales – Permitted.

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

6.14.130 Short Title.

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

6.14.140 Severability.

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