TAX AND REVENUE ADMINISTRATION ORDINANCE
Ordinance # 05-100-08

Article I. Purpose; Findings

1.01. *Purpose.* The purpose of this ordinance is to provide for the raising of additional public revenues by prescribing certain taxes, fees and charges to be paid to the Tribe on certain business activities within the territorial jurisdiction of the Tribe; to provide, incident to the enforcement of the above purposes, for the issuance of licenses to engage in certain business activities; to provide for the assessment and collection of the various taxes imposed by this ordinance; to appropriate the proceeds thereof; and to prescribe penalties for violations of this ordinance.

1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

a. the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to "...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;
2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]" Article IV, Section 7(a).

Article II. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This ordinance is adopted by resolution # 05-1214-687.

a. Resolution # 06-0412-243 - Emergency amendments to affect exemptions for cultural activities.

b. Resolution # 06-0628-449 - Permanent amendments to affect exemptions for cultural activities.

c. Resolution # 06-0830-612 - Emergency amendments regarding non-profit organization exemption.

d. Resolution # 06-1018-724 - permanent adoption of emergency amendments regarding non-profit organization exemption.

e. Resolution #09-0715-195 - adoption of amendments defining "gross receipts" and "complimentary"; amending the "Use of Revenues" Sections; allowing exemptions for certain "qualified fundraising events;" changing the filing period for Little River Casino Resort to monthly; and imposing penalties for allowing unlicensed sellers to operate on Tribal and trust land.

f. Resolution #10-0310-77 - emergency adoption of amendments to exempt retailers subject to Michigan sales tax from also having to pay the Tribal tax.

g. Resolution #11-0706-250 – permanent adoption of amendments to exempt retailers subject to Michigan sales tax from also having to pay the Tribal tax.

2.02. *Amendment.* This ordinance may be amended by the Tribal Council in accordance with the Constitution, the Administrative Procedures Act – Ordinance, and any rules set forth governing amendment of laws of the Little River Band of Ottawa Indians.

2.03. *Severability Clause.* If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

2.04. Repeal. This Ordinance may be repealed in accordance with the Administrative Procedures Act – Ordinance and any rules set forth governing repeal of laws of the Little River Band of Ottawa Indians.

Article III. Definitions

3.01. *Definitions.* For purposes of the taxes covered by this ordinance, certain terms are defined in this Article. The word Ashall@ is always mandatory and not merely advisory.

3.02. *Agreement Area* means the area designated as such in Appendix A to the Tax Agreement.

3.03. *Department of Treasury* means the Michigan Department of Treasury.

3.04. *Gaming Facility* means any entity licensed under Section 9 of the Gaming Ordinance, #02-400-01, and operated under the Tribe's Class III Gaming Compact with the State of Michigan.

3.05. *General Sales Tax Act* means Michigan Compiled Laws section 205.51 et seq., and as that law may from time to time be amended.

3.06. *Governmental Function* means those activities or functions by the Tribe which are similar to those functions customarily performed by State or local units of government including: public safety, welfare and social services, housing and housing services, health services, education, and environmental services. The term also includes the operation of a gaming facility.

3.07. *Gross Receipts* means the total amount for which goods or services is sold or the total amount received for any service rendered, whether paid in money or otherwise. Such total amounts include all of the following:

a. any services that are part of the sale,

b. any amount for which credit is given to the purchaser by the seller, and

c. all receipts, cash, credits and property of any kind received in connection with, or on account of, such goods or services.

d. 'gross receipts' does not include an isolated transaction by a person not licensed, or required to be licensed under this act, in which tangible personal property is offered for sale, sold, transferred, and delivered by the owner.

3.08. *Native American* means, for purposes of this ordinance, a person who is an enrolled member of a federally-recognized Indian tribe.

3.09. *Non-Tribal Member* means an individual who is not an enrolled member of the Tribe or which is not a tribal entity.

3.10. *Person* means a natural person, firm, partnership, joint venture, association, social club, fraternal organization, public or private corporation whether organized for profit or not, company, estate, trust, receiver, syndicate, limited liability company, other business entity, and any government and its political subdivisions.

3.11. *Reservation* means all those lands encompassed by the exterior boundaries of the Manistee Reserve, reserved in Article Second of the Treaty of March 28, 1836 (7 Stat. 491) and Townships 17 and 19 North, Range 16 West, as reserved in Article First, paragraph Sixth of the Treaty of Detroit of July 31, 1855, and all lands now or in the future held in trust by the United States for the benefit of the Tribe.

3.12. *Resident Tribal Member* means an individual who is an enrolled member of the Tribe whose principle place of residence is located within the Reservation or within the agreement area.

3.13. *Seller* means a person operating a hotel, lodging facilities, bar, restaurant, shop or other retail establishment selling or furnishing goods or services to any final consumer, including any gaming enterprise.

3.14. *State* means the State of Michigan.

3.15. *Tax Agreement* means the ATax Agreement Between the Little River Band of Ottawa Indians and the State of Michigan,@ dated December 20, 2002, as ratified by Tribal Council Resolution #03-0205-33, as the same may be amended from time to time.

3.16. *Tax Department* means the division of the Tribe's Accounting Department charged with the implementation and administration of this ordinance.

3.17. *Tax Year* means the calendar year, or the fiscal year ending during which such calendar year, upon the basis of which a tax subject to this ordinance is computed.
3.18. *Taxpayer* means the person liable for a tax under this ordinance, including a retailer acting as a collection agent.
3.19. *Tribe* means the Little River Band of Ottawa Indians. The term Tribe includes all divisions or subdivisions of the Tribal government and business enterprises, including chartered entities, that are wholly owned by the Tribe.
3.20. *Tribal Court* means the Commercial Division of the Tribal Court.
3.21. *Tribal and Trust Lands* means all fee lands owned by the Tribe and lands held in trust by the federal government for the benefit of the Tribe, which are designated as Tribal and trust lands in Appendix A (K-1 through K-5) of the Tax Agreement, as the same may be amended from time to time.
3.22. *Ogema* means the duly elected chief executive officer of the Tribe.
3.23. *Tribal Member* means an individual who is an enrolled member of the Tribe.

Article IV. Lodging and Occupancy Tax

4.01. *Definitions.* For purposes of this Article, the following terms are defined:

a. *Complimentary* means a service or item provided at no cost to a customer. Complimentary does not include items purchased with points or rewards value.

b. *Hotel* means any building regularly used and kept open as such for the feeding and lodging of guest(s).

c. *Gross Occupancy Receipts* means the total amount of money or the value of other consideration charged to any person for lodging at any hotel room, lodging facility and other accommodations, excluding the tax levied by this Article. Gross receipts are deemed to have been received on a daily basis as lodging or accommodations are provided.

d. *Lodging Facility* means any facilities, including a hotel, recreational vehicle (RV) park and campground regularly used and kept open for purpose of providing overnight accommodations to guests for a fee.

e. *Lodging or Accommodations* means the provision to any person of a room or area subject to such person's control and use, which is available for use by the general public, and for which the person makes such use for any portion of a day. The term includes hotel rooms, lodging facilities, meeting rooms, or banquet rooms. Such term does not apply to rental units for which the minimum rental term is at least 30 days.

f. *Room* means any room or rooms of any kind in any part or portion of a hotel or lodging house let out for use or possession for lodging purposes.

4.02. *Imposition; Rate of Tax.*

a. For the privilege of use and occupancy of a room in a hotel or other lodging facilities, including designated RV/camp sites, located on Tribal and trust lands, a tax is hereby levied upon every person for the use and occupancy of any room(s) or lodging facilities, and any occupancy-related services at a rate of six per cent (6%) of the gross occupancy receipts for such services.

b. The tax shall be imposed upon the person to whom the room, goods or services are provided and collected by the seller providing the room, lodging facilities or related services.

4.03. *Exemptions from Lodging and Occupancy Tax.* The tax levied by this section shall not apply to:

a. Lodging or accommodations located at the gaming facility which are provided on a complimentary basis. Complimentary does not include items purchased with points or rewards value.

b. Lodging or accommodations for which the Tribe, any other Tribal government(s), a local government, state government or the United States government, including any department or subdivision of those governments makes payment.

c. Lodging or accommodations located at Tribal pow wows or other cultural activities defined by regulation are not subject to the tax imposed by this Article.

d. Lodging or accommodations paid for by a nonprofit school, nonprofit hospital, or nonprofit home for the care and maintenance of children or aged persons operated by an entity of government, a regularly organized church, religious, or fraternal organization, a veteran's organization, or a corporation incorporated under the laws of this state, if the income or benefit from the operation does not inure, in whole or in part, to an individual or private shareholder, directly or indirectly, and if the activities of the entity or agency are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, and benefits of its members or any restricted group.

4.04. *Records of Provision of Exempt Lodging or Accommodations.* The Tribe, Tribal member and Tribal entity sellers shall maintain a record of lodging or accommodations provided on which no tax was collected. Such records shall include the date the lodging or accommodations were provided, the identity of the entity paying for such lodging or accommodations and the tax identification number of the entity.

4.05. *Returns; Payment.*

a. *Returns.* Any person subject to the tax imposed by this Article, shall, on or before the twentieth (20th) day following the end of each calendar quarter, complete a return for the preceding quarter on a form prescribed by the Tax Department showing the amount of gross receipts for the previous quarter, the allowable deductions, and the amount of tax for which he is liable. The taxpayer shall be responsible for maintaining records sufficient to permit the tax department to verify the amount of tax due in accordance with the requirements of Article X.

b. *Payment.* The taxpayer shall transmit the return, together with a remittance for the amount of tax collected, to the Tax Department on or before the twentieth (20th) day of that month following the end of each calendar quarter. The quarterly return shall be signed by the taxpayer or his duly authorized agent and, if applicable, the person and/or firm preparing the return.

c. *Change in Return/Payment Schedule.* The Tax Department may, when necessary to insure payment of the tax or to provide a more efficient administration of this ordinance, may, after notice and comment, adopt regulations requiring the filing of returns and payment of the tax for other than quarterly periods.

4.06. *Lodging and Occupancy Tax Revenues; Distribution.*

a. The Tax Department shall deposit all proceeds from the lodging and occupancy tax to the Tribe's General Fund.

b. *Use of Revenues.* The revenues from the lodging and occupancy tax shall be utilized for the purposes of offsetting the costs of administering this tax, economic development, enterprise debt retirement, enforcement of food/safety codes at tribal enterprises, and other tribal government needs as determined during the annual budget process.

c. Any lodging and occupancy tax revenues subject to the tax sharing formula of the Tax Agreement shall be distributed as provided in Section III(B)(3) of the Tax Agreement.

Article V. Food and Beverage Tax

5.01. *Definitions.* For purposes of this Article, the following terms are defined:

a. *Complimentary* means a service or item provided at no cost to a customer.

Complimentary does not include items purchased with points or rewards value.

b. *Food and Beverage* means Aprepared food intended for immediate consumption@ as that term is defined in Michigan Compiled Laws Section 205.54g, as amended.

5.02. *Imposition; Rate of Tax.*

a. There is levied upon all persons engaged in the business of making sales of food and beverage to the general public from a business premises located on Tribal and trust lands, a tax for the privilege of engaging in that business equal to six percent (6%) of the gross receipts of the business, plus the penalty and interest if applicable as provided by this ordinance, less deductions allowed by this ordinance.

b. The taxpayer may pass the amount of the tax owed on to the person purchasing food and beverage items and include the amount of the tax in the retail or sales price of the food and beverage advertised.

5.03. *Computation of Gross Receipts.* In computing the amount of food and beverage tax levied under this Article, a taxpayer may exclude from the amount of gross receipts and shall not be obliged to collect food and beverage tax on:

a. Food and beverage provided on a complimentary basis. Complimentary does not include items purchased with points or rewards value;

b. Amounts paid as a gratuity or tip and distributed to the employees of such business as a gratuity or tip and not as a wage, when the gratuity or tip is separately identified and itemized on the guest check or billed to the customer;

c. Any cover or minimum charge and all other charges, separately listed on the bill or collected as an admission fee or fixed charge for lodging or accommodations, as defined in Section 4.01(e); and

d. Food and beverage sales to the Tribe, any other Tribal government(s), local government, state government or the United States government, including any department or subdivision of those governments.

e. Food and beverage sales at Tribal pow wows or other cultural activities defined by regulation.

f. Sales of food and beverage, not for resale, to a nonprofit school, nonprofit hospital, or nonprofit home for the care and maintenance of children or aged persons operated by an entity of government, a regularly organized church, religious, or fraternal organization, a veteran's organization, or a corporation incorporated under the laws of this state, if the income or benefit from the operation does not inure, in whole or in part, to an individual or private shareholder, directly or indirectly, and if the activities of the entity or agency are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, and benefits of its members or any restricted group.

g. Sales at retail on which the taxpayer owes a tax under the general sales tax act, M.C.L. 205.51 to 205.78, or the use tax act, M.C.L. 205.91 to 205.111, under the terms of Tax Agreement, so long as the Tax Agreement remains in effect.

5.04. *Returns; Payment; Records.*

a. *Returns.* Any taxpayer subject to the tax imposed by this Article, shall, on or before the twentieth (20th) day following the end of each calendar quarter, complete a return for the preceding quarter on a form prescribed by the Tax Department showing the amount of gross receipts for the previous quarter, the allowable deductions, and the amount of tax for which he is liable. The taxpayer shall be responsible for maintaining records sufficient to permit the tax department to verify the amount of tax due in accordance with the requirements of Article

X.

b. *Payment.* The taxpayer shall transmit the return, together with a remittance for the amount of tax collected, to the Tax Department on or before the twentieth (20th) day of that month following the end of each calendar. The quarterly return shall be signed by the taxpayer or his duly authorized agent and, if applicable, the person and/or firm preparing the return.

c. *Change in Return/Payment Schedule.* The Tax Department may, when necessary to insure payment of the tax or to provide a more efficient administration of this ordinance, may, after notice and comment, adopt regulations requiring the filing of returns and payment of the tax for other than quarterly periods.

d. *Consolidated Returns.* Any person operating two (2) or more businesses located on Tribal and trust lands making sales of food and beverage goods and services shall file a consolidated return covering all such business activities.

5.05. *Distribution of Revenues.*

a. The Tax Department shall deposit all proceeds from the food and beverage Tax to the Tribe's General Fund.

b. *Use of Revenues.* The revenues from the food and beverage tax shall be utilized for the purposes of offsetting the costs of administering this tax, economic development, enterprise debt retirement, enforcement of food/safety codes at tribal enterprises, and other tribal government needs as determined during the annual budget process.

c. Any food and beverage tax revenues subject to the tax sharing formula of the Tax Agreement shall be distributed as provided in Section III(B)(3) of the Tax Agreement.

Article VI. Retail Sales Tax

6.01. *Definitions.*

a. *Sale at Retail* under this ordinance shall have the same meaning as that term has under the State General Sales Tax Act of 1965, as amended, MCL 205.51 et seq.

6.02. *Transactions Excluded from Retail Sales Tax.* The retail sales tax shall not apply to any transaction that is subject to:

a. The lodging and occupancy tax under Article IV.

b. The food and beverage tax under Article V.

c. The admissions tax under Article VII.

6.03. *Imposition and Rate of Tax.*

a. For the privilege of engaging in the business of making sales at retail within Tribal and trust lands, a tax is hereby imposed at a rate of six percent (6%) of the gross receipts of the business, plus penalty and interest if applicable as provided by law, less deductions allowed by Section 6.04.

b. Any person engaged in the business of making sales at retail who is, at the same time, engaged in some other kind of business, occupation or profession that is taxable under any other section of this ordinance or is not taxable under this ordinance, shall keep books to show separately the transactions used in determining the tax levied by this Article.

c. The taxpayer may pass the amount of the tax owed on to the person purchasing the goods and add such amount to the sales price.

6.04. *Deductions from Gross Receipts; Exemptions from Retail Sales Tax.* In computing the amount of tax levied under this act for any quarter, a taxpayer shall exclude from the amount of gross receipts the following sales of tangible personal property:

a. Sales at retail of tangible personal property provided on a complimentary basis. Complimentary does not include items purchased with points or rewards value;

b. Sales at retail of tangible personal property, other than gasoline, diesel fuel, to the Tribe for a governmental function;
c. Sales at retail of tangible personal property to the Tribe, to a Resident Tribal Member, or to a resident tribal member's business or a Tribal entity for a business purpose on Tribal or trust land, provided the Tribal member or a representative of the Tribal entity certifies that the item(s) purchased will be used or consumed entirely at its business location on Tribal or trust lands;
d. Sales at retail of tangible personal property, other than gasoline, diesel fuel, cigarettes and other tobacco products, to a Resident Tribal member for his personal use within the Agreement Area;
e. Sales at retail of passenger vehicles, including automobiles, pick-up trucks, recreational vehicles, motorcycles, recreational water craft, snowmobiles and off-road vehicles to a Resident Tribal Member; and modular and mobile homes to be used as the principal residence of a Resident Tribal Member;
f. Sales at retail of construction materials to a Resident Tribal Member for construction of, or improvement to, his principal residence in the Agreement Area;
g. Sales at retail of equipment, supplies and gear for recreational or subsistence treaty fishing to a resident Tribal member;
h. Sales at retail of vans and buses by the Tribe for use in transporting passengers, within a 25 mile radius, to and from the gaming facility;
i. Sales of equipment, supplies and gear for commercial treaty fishing to the Tribe, a Tribal member or Tribal Entity;
j. Sales at retail of cigarettes and other tobacco products to a resident Tribal member, to the extent such sales are of product that has been purchased without imposition of state tobacco products taxes pursuant to Ordinance #05-100-09, and are sold pursuant to the provisions of that ordinance;
k. Sales at retail of gasoline and diesel fuel to the Tribe or to a resident Tribal member, to the extent such sales are of product that has been purchased without imposition of motor fuels taxes pursuant to Ordinance #05-100-09, and are sold pursuant to the provisions of that ordinance;
l. Sales at retail of construction materials that are purchased, used or acquired in the performance of a contract entered into by the Tribe, a Resident Tribal member, or Tribal Entity for the construction, renovation or improvement to:

1. the principal residence of a resident Tribal member; and
2. Tribal and trust lands; provided that, in the case of construction materials purchased, used or acquired in the performance of a contract for the construction, renovation or improvement to Tribal and trust lands, there is no contractual entitlement for a non-resident Tribal member or a non-Tribal entity to remove the improvement(s);

m. Sales at retail of construction materials to a Tribal entity for construction, renovation or improvement of Tribal and trust lands;
n. Sales at retail of home heating fuels if the product is delivered to:

a. a resident Tribal member's principal residence;
b. land occupied by the Tribe within the Agreement Area that is primarily used in performing a governmental function; and
c. Tribal and trust lands occupied by the Tribe, a Tribal entity or a resident Tribal member;

o. Sales at retail which would be deductible from gross receipts under the State General

Sales Tax Act, as amended, provided that person making the purchase provides the taxpayer with the form used by State taxpayers claiming exemption under one of the provisions in the General Sales Tax Act; and

p. Sales at retail on which the taxpayer owes a tax under the general sales tax act, M.C.L. 205.51 to 205.78, or the use tax act, M.C.L. 205.91 to 205.111, under the terms of Tax Agreement, so long as the Tax Agreement remains in effect.

q. Sales at retail where transaction takes place at Tribal pow wows, qualified fundraising events, or other cultural or charitable activities defined by regulation.

6.05. *Records of Exempt Sales by Sellers.* All sellers, including the Tribe, Tribal member and Tribal entity sellers shall maintain a record of sales excluded from the calculation of gross receipts and on which no tax was collected. Such records shall include the date of the purchase, the name and, if applicable, Tribal identification number of the purchaser, the amount of the purchase and, except for sales of motor fuels, for any item of more than $50.00 or sales of more than $200.00 in the aggregate, a general identification of the items purchased.

6.06. *Returns; Payment.*

a. *Returns.* Any person making sales at retail who operates premises making retail sales to any final consumer on Tribal or trust lands shall, on or before the twentieth (20th) day following the end of each calendar quarter, complete a return for the preceding quarter on a form prescribed by the Tax Department showing the entire amount of gross receipts for his business, the allowable deductions, and the amount of tax for which he is liable. The taxpayer shall be responsible for maintaining records sufficient to permit the tax department to verify the amount of tax due in accordance with the requirements of Article X.

b. *Payment.* The taxpayer shall transmit the return, together with a remittance for the amount of tax collected, to the Tax Department on or before the twentieth (20th) day of the month following each calendar quarter. The quarterly return shall be signed by the taxpayer or his duly authorized agent and, if applicable, the person and/or firm preparing the return.

c. *Change in Return/Payment Schedule.* The Tax Department may, when necessary to insure payment of the tax or to provide a more efficient administration of this ordinance, may, after notice and comment, adopt regulations requiring the filing of returns and payment of the tax for other than quarterly periods.

dc. *Consolidated Returns.* Any person operating two (2) or more businesses located on Tribal and trust lands making sales at retail shall file a consolidated return covering all such business activities.

6.07. *Distribution of Revenues.*

a. The Tax Department shall deposit all proceeds from the sales tax to the Tribe's General Fund.

b. *Use of Revenues.* The revenues from the sales tax shall be utilized for the purposes of offsetting the costs of administering this tax, economic development, enterprise debt retirement, enforcement of food/safety codes at tribal enterprises, and other tribal government needs as determined during the annual budget process.

c. Sales tax Revenues subject to the tax sharing formula of the Tax Agreement shall be distributed as provided in Section III(B)(3) of the Tax Agreement.

Article VII. Admissions Tax

7.01. *Definitions.*

a. *Admissions Charge* means the amount assessed for the right or privilege to have access to a place or location where amusement, entertainment or recreation is provided.

7.02. *Imposition and Rate of Tax.*

a. There is hereby imposed a tax of six percent (6%) on the admission charge to any place of amusement, entertainment or recreation located within Tribal and trust lands.

b. The tax shall be imposed upon the person receiving the right or privilege of admission.

c. The admissions tax shall be collected by the person providing the place of amusement, entertainment or recreation at the time of purchase and the amount of tax may be included in the total charge assessed to the person receiving the right of admission.

7.03. *Exemption from Tax.* The admissions tax shall not apply to:

a. An event or location for which no set fee for entry is established, but is instead based on an amount donated by the person seeking admission.

b. Admission provided on a complimentary basis. Complimentary does not include items purchased with points or rewards value.

c. Admission for which the Tribe makes payment.

d. Admission provided to Tribal Elders and admission charges to Tribal pow wows or other cultural activities defined by regulation are not subject to the tax imposed by this Article.

e. Campsite or recreational vehicle site rentals that are subject to the Lodging and Occupancy Tax.

7.04. *Returns; Payment.*

a. *Returns.* Any person who operates any place of amusement, entertainment or recreation on Tribal or trust lands shall, on or before the twentieth (20th) day of the month following each calendar quarter, complete a return for the preceding quarter on a form prescribed by the Tax Department showing the entire amount of all receipts for admissions charges collected for his business, the allowable exemptions, and the amount of tax for which he is liable. The taxpayer shall be responsible for maintaining records sufficient to permit the tax department to verify the amount of tax due in accordance with the requirements of Article X.

b. *Payment.* The taxpayer shall also transmit the return, together with a remittance for the amount of tax, to the Tax Department on or before the twentieth (20th) day of the month following each calendar quarter. The quarterly return shall be signed by the taxpayer or his duly authorized agent and, if applicable, the person and/or firm preparing the return.

c. *Change in Return/Payment Schedule.* The Tax Department may, when necessary to insure payment of the tax or to provide a more efficient administration of this ordinance, may, after notice and comment, adopt regulations requiring the filing of returns and payment of the tax for other than quarterly periods.

7.05. *Distribution of Admissions Tax.*

a. The Tax Department shall deposit all proceeds from the admissions tax in the Tribe's General Fund.

b. *Use of Revenues.* The revenues from the admissions tax shall be utilized for the purposes of offsetting the costs of administering this tax, economic development, enterprise debt retirement, enforcement of food/safety codes at tribal enterprises, and other tribal government needs as determined during the annual budget process. Any admissions tax revenues subject to the tax sharing formula of the Tax Agreement shall be distributed as provided in Section III(B)(3) of the Tax Agreement.

Article VIII. Licensing of Businesses Located within the Reservation and Agreement Area

8.01. *Sellers Wholly-owned by the Tribe, Tribal Members or Combination Thereof.* Any seller, which is wholly owned by the Tribe, Tribal members or the Tribe and Tribal members, which is located within the Reservation or within the Agreement Area shall be required to obtain a Tribal business tax

license from the Tribe on the form prescribed by the Tax Department.

8.02. *Non-Member Sellers.* Any seller, which is owned in whole or in part by one or more non-Tribal members, which is located on Tribal and trust lands shall be required to obtain a Tribal business tax license from the Tribe on the form prescribed by the Tax Department.

8.03. *License Required.*

a. *Sellers Wholly-owned by the Tribe, Tribal Members or Combination Thereof.* Commencing as of October 1, 2005, neither the Tribe, nor any Tribal member or Tribal entity, shall engage in business as a seller within the Reservation or on Tribal and trust lands unless that person obtains a Tribal business tax license from the Tax Department.

b. *Non-Member Sellers.* For sellers owned in whole or in part by non-Tribal members, such sellers shall be prohibited from engaging in business as a seller at a business located on Tribal and trust lands unless such person obtains a Tribal business tax license issued by the Tax Department.

c. Any sellers, including retail businesses owned by the Tribe, Tribal members or any combination thereof, making any sales at retail outside of Tribal and trust lands or outside the Reservation shall obtain such license(s), permit(s) or registration(s) as may be required under applicable provisions of State law.

d. The Tax Department shall develop necessary application forms and procedures for issuing the licenses and permits required under this ordinance. Until such time as the Tax Department develops its own application forms, the Department shall utilize the form issued by the Department of Treasury titled ARegistration for Michigan Taxes@.

e. The Tax Department shall issue a Tribal business tax license to each applicant who is verified as a seller and shall transmit the application form to the State.

f. The Tax Department may consult with the Tribe's Department of Commerce to identify all seller subject to the licensing requirements under this ordinance.

g. A Tribal entity or Tribal government department that authorizes a seller to conduct, operate or facilitate business activity as a seller on Tribal and trust land shall verify that the seller has obtained the requisite license from the Tax Department prior to the event.

8.04. *License Application Contents.* A person applying for a Tribal business tax license shall provide the Tax Department with the following information:

a. Legal name of the business, including any assumed name(s) such business operates under;

b. The legal address, mailing address (if different) and physical address or the location(s) from which such business makes retail sales of goods and services subject this ordinance;

c. Type of business ownership or organization (i.e. sole proprietorship; corporation; limited liability company; partnership);

d. Jurisdiction under whose laws such business entity is organized, if applicable;

e. If such business qualifies as a Tribal entity, copies of the business' charter, articles of incorporation or organization and other information (including, if applicable, stock certificates), verifying the ownership of such business by the Tribe or Tribal members;

f. The name, title, address and telephone/facsimile number of such business entity's registered agent or agent for service of process; and

g. A description of the goods and services sold by such business, including whether such business intends to sell tobacco products or motor fuels.

8.05. *License Renewal.* Sellers licensed under this ordinance shall be required to complete a retailer tax license renewal form annually on a form prescribed by the Tax Department to update any of the information provided in the previous year's license application.

8.06. *Registration of Businesses Selling Tobacco Products or Motor Fuels.* Every businesses selling motor fuels or tobacco products from a business location on Tribal and trust lands shall register with the Tax Department and must also obtain any state license required of retailers selling motor fuels or tobacco products within the State of Michigan. Every seller subject to this registration requirement shall provide the following information to the Tax Department:

a. A copy of such seller's tax license or license application;

b. Whether such seller intends sell gasoline or diesel fuel for exempt purposes, including whether the seller has been authorized to sell tax-exempt motor fuel under the Tax Agreement;

c. Whether such seller will operate tobacco products vending machines and, if so, does the seller supply the tobacco products for its vending machines;

d. Name of such seller's gasoline and tobacco products distributor(s);

e. The location(s) where such seller offers tobacco products or motor fuels for sale, including the location of vending machines (include facility/building floor plans if available);

f. Specific location(s) where such seller stores its inventory of tobacco products and/or motor fuels (include facility/building floor plans if available); and

g. Copy of such seller's Michigan tobacco products and/or motor fuels retail license.

Sellers selling motor fuels or tobacco products shall be required to report any change(s) in the above information within thirty (30) days after the date of the change.

8.07. *Operation without Requisite License.* Any person who engages in the business of sales at retail, or who offers motor fuel or tobacco products for sale, without first obtaining the license and/or registration required by this section, shall be subject to the following:

a. The Tax Department shall issue a notice of noncompliance to the seller, which shall result in the imposition of penalties in the event that the seller fails to apply for the required license and/or registration within five (5) business days of the issuance of the notice.

b. A seller who fails to apply for the required license and/or registration as specified in the notice of noncompliance shall be subject to action in the Tribal Court, initiated by the Tax Department, in which the seller shall be enjoined from conducting, operating or facilitating a business activity which is not licensed and/or authorized by the Tribe.

c. In the event that a Tribal entity or Tribal government department allows a seller to conduct, operate or facilitate business activity as a seller on Tribal and trust land without a Tribal Tax License, a penalty will be assessed on the entity or department responsible for authorizing the activity.

8.08. *Suspension or Termination of Business.* Each seller shall inform the Tax Department on such form as it may prescribe, of any suspension or termination of the seller's business no later than the 15th day of the month succeeding the month in which such suspension or termination shall occur. Receipt of such notice shall cause the Tax Department to terminate the business tax license and/or registration and to so advise the State.

Article IX. Collection and Remittance

9.01. *Seller as Collection Agents.* All sellers located on Tribal and trust lands, who are subject to the taxes levied in this ordinance, are collection agents and are responsible for collecting and remitting taxes imposed under this ordinance.

9.02. Each collection agent is responsible for uncollected taxes and is therefore a taxpayer.

9.03. Each collection agent must file periodic returns as provided by the Tax Department.

Article X. Record Keeping; Financial Standards

10.01. Every collection agent shall maintain financial records relating to such taxes for a period of at least four (4) years from the date that a return is filed. All such records shall be subject to audit by the Tribe and its agents.
10.02. A person liable for any tax imposed under this ordinance shall keep accurate and complete beginning and annual inventory and purchase records or additions to inventory, complete daily sales records, receipts, invoices, bills of lading, and all pertinent documents in a form the tax department requires. If an exemption from tax is claimed for any of the exemptions or deductions allowed under this ordinance, a record shall be kept of the name and address of the person to whom the sale is made, the date of the sale, the article purchased, the type of exemption claimed, the amount of the sale, and, if that person has a sales tax license, the sales tax license number.
10.03. If the taxpayer fails to file a return or to maintain or preserve proper records as prescribed in this section, or the department has reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due, the tax department may assess the amount of the tax due from the taxpayer based on information that is available or that may become available to the tax department. That assessment is considered prima facie correct for the purpose of this act and the burden of proof of refuting the assessment is upon the taxpayer.

Article XI. Tax Department

11.01. *Creation of Tax Department.*

a. There is created within the Executive Branch of the Tribe a Tax Department, which shall be responsible for overseeing the administration, implementation and enforcement of this ordinance.

b. A Tax Officer shall be responsible for the day-to-day management of the affairs of the Tax Department and shall perform the specific duties imposed by this and other ordinances adopted by the Tribal Council. The Tax Officer shall not have any personal interest in any entity taxed under any Tribal ordinance.

11.02. *General Powers and Duties of the Tax Department.* The Tax Department shall have the powers and duties granted or imposed by this Section, which shall include the following:

a. To administer the application and enforcement of Tribal tax ordinances.

b. To collect and distribute tax revenues obtained by the Tribe under applicable tax ordinances.

c. To assist Tribal members, Tribal entities and other taxpayers in their efforts to comply with the provisions of applicable Tribal tax ordinances.

d. To prescribe such forms as it determines reasonable and necessary to be used by taxpayers under applicable Tribal tax ordinances.

e. To make recommendations to the Tribal Council regarding amendments to this ordinance or other ordinances relating to Tribal taxes or other revenues.

f. To assess tax deficiencies, penalties and interest against taxpayers, and conduct such actions as it determines necessary to recoup such deficient amounts.

g. To demand access to and inspect, examine and audit all papers, books and records of all taxpayers and persons subject to taxation under Tribal tax ordinances, and require verification of any matter affecting the tax liabilities and applicable licensing or registration of such taxpayer or person or the enforcement of applicable Tribal tax ordinances ordinance.

h. To conduct hearings authorized by this ordinance and to issue subpoenas and compel the attendance of witnesses, to administer oaths and to require testimony under oath at any such hearing. Any person making false oath in any matter before the Tax Officer is guilty of perjury. Any process or notice may be served in the manner provided for service of process and notices in a civil action in Tribal Court.

i. To maintain records of all taxpayer documents required by applicable Tribal tax ordinances and to determine the appropriate custodian of such documents and the time period for which such documents must be maintained.

j. To prescribe such procedures as it deems reasonable and necessary to maintain the confidentiality of Taxpayer information in its possession, including the forms to be used by taxpayers.

k. To cooperate and consult with representatives of other tax jurisdictions in the enforcement of each jurisdiction's respective taxing authority and to enforce compliance with any agreements with such jurisdictions.

l. To issue written interpretation decisions of Tribal tax ordinances upon the request of any taxpayer, to identify such decisions as are general in application and to disseminate decisions of general application.

m. To initiate civil enforcement proceedings in the Tribal Court for violations of Tribal tax ordinances.

n. To meet at least quarterly with the Chief Financial Officer and the Ogema for the purpose of reporting on compliance with this Tribal tax ordinances tax regulations, tax revenues collected to date and the status of investigative and enforcement actions commenced.

o. To receive and investigate complaints of violations of this ordinance or regulations promulgated under this ordinance, and to refer for prosecution the results of any such investigation.

n. To carry out such actions as are reasonable and necessary to administer and enforce this ordinance and other Tribal tax ordinances.

11.03 *Annual Report.* The Tax Officer shall make an annual report to the Ogema and the Tribal Council by May 15 of the following year. The report shall include a summary of all tax revenues collected as provided in this ordinance, all investigative actions completed during the year and recommendations for any changes in Tribal tax ordinances or the administration thereof.

11.04. *Tax Regulations.* The Tax Officer shall, from time to time, propose for adoption, amendment, or repeal such regulations, consistent with the policy, objects and purposes of this ordinance, as it may deem necessary or desirable in the public interest in carrying out the duties of the Tax Department as defined by this ordinance. Regulations shall be submitted to the Tribal Council for review and adoption by resolution. The tax regulations may include the following:

a. The form and manner in which taxpayers keep records, books and accounts.

b. The manner and method of collection of delinquent taxes.

c. Requirements concerning payment by a taxpayer of all or a portion of the costs of investigation of that taxpayer.

d. Procedures for all hearings conducted by the Tax Department.

e. Protection of the due process rights of taxpayers and all individuals subject to the enforcement of this ordinance by the Tax Department.

f. Procedures for proposing rules by the Tax Department.

11.05. *Distribution of Tax Proceeds.* The proceeds of each tax imposed by this ordinance shall be distributed by the Tax Officer in accordance with the provisions of the Article imposing the tax. If no provision for distribution is made, tax proceeds shall be distributed to the General Fund of the Tribe.

11.06. *Tax Deficiencies or Overpayments.*

a. If it appears, either from examination of the tax return or from the examination authorized by Section 11.08, that the taxpayer has not satisfied its liability under this ordinance, the tax shall be determined by the Tax Officer, and the taxpayer shall be notified of the determination. If the amount paid exceeds the correct amount of the tax, the excess shall be credited against a subsequent tax unless a refund is requested by the taxpayer.

b. If the amount paid is less than the amount which should have been paid, the deficiency, together with interest at the rate of 1% per month from the time when the tax was due, shall become due and payable after notice as provided in this section.

c. If any part of the deficiency is due to negligence or intentional disregard of this ordinance or the rules of the Tax Department, but without intent to defraud, there shall be added as a penalty 10% of the total amount of the deficiency, together with interest on the penalty as provided in sub. b.

d. If any part of the deficiency is due to a fraudulent intent to evade the tax, then there shall be added as a penalty 100% of the deficiency, together with interest on the penalty as provided in sub. b.

11.07. *Failure or Refusal to File Return or Pay Tax.*

a. If a taxpayer fails or refuses to file a return or pay the tax as required by this ordinance, the Tax Officer as soon as possible shall assess the tax against the taxpayer and shall notify the taxpayer of the amount as provided in this ordinance.

b. In the case of failure or refusal to file a return or pay the tax required by this ordinance, within the time prescribed by this ordinance, there shall be added a penalty of 5% of the tax for each month or fraction of a month during which the failure continues, to a maximum of 100%. In addition to the penalty, there shall be added interest at the rate of 1% per month on the amount of tax from the time the tax was due until the date of payment.

c. When a tax return is filed or remittance is paid after the time specified by this ordinance and it is shown to the satisfaction of the Tax Officer that the failure was due to reasonable cause and not to willful neglect, the penalty may be waived.

11.08. *Assessment of Tax Upon Information Obtained by Tax Officer.*

a. If a taxpayer fails or refuses to make a return, either in whole or in part, or if the Tax Officer has reason to believe that any return made does not supply sufficient information for an accurate determination of the tax due, the Tax Officer may obtain information upon which to base an assessment of the tax. The Tax Officer or an authorized agent of the Tax Department may examine the books, records and papers and audit the accounts of any taxpayer or any other records pertaining to the tax. As soon as possible after procuring the information as may be found to be available, the Tax Officer shall assess the tax determined to be due and shall notify the taxpayer of the amount of the assessment and the specific reasons for it.

b. The assessment by the Tax Officer shall be final as to any taxpayer except as may otherwise be determined under the provisions of Section 11.10.

c. If a taxpayer fails to file a return or to keep and maintain proper, accurate, and complete records as prescribed by this ordinance, the Tax Officer may assess, upon the information as is available or may come into the possession of the Tax Officer, the amount of the tax due from the taxpayer. The assessment after notice and conference as provided in this ordinance shall be deemed to be prima facie correct for the purpose of this ordinance and the burden of proof of refuting it shall be upon the taxpayer.

11.09. *Limitation of Actions.* A tax deficiency, interest or penalty shall not be assessed for any year after the expiration of four (4) years after the date set for the filing of the annual return for each year or the date the return was filed, whichever is later. If a taxpayer fraudulently conceals any liability for the tax or any part of the tax, the Tax Department within two years of the discovery of the fraud shall assess the tax with interest and penalties as provided in this section, computed from the date on which the tax liability originally accrued, and the tax, penalties and interest shall become due and payable after notice as provided in this section. The limitation period will be suspended during the pendency of any hearing or other legal proceedings concerning the deficiency, upon the consent in

writing of the taxpayer, and for any taxable year for which a return is not filed.

11.10. *Notice of Levy and Informal Conference.*

a. In carrying out the provisions of this ordinance, the Tax Department after determining the amount of tax due from a taxpayer shall give written notice to the taxpayer intent to levy the tax.

b. The taxpayer may request an informal conference with the Internal Audit Department on the question of liability for the assessment if the request is made within 20 days of receipt of the notice of intent to levy. Upon receipt of a request for conference the Internal Audit Department shall set a time and place for the conference and shall give the taxpayer reasonable notice of the conference.

c. The taxpayer may appear or be represented before the Internal Audit Department and may present testimony and argument. After the conference the Internal Audit Department shall render a decision in writing setting forth its conclusions and by order may levy any tax, interest and penalty found to be due and payable.

11.11. *Appeal to the Commercial Division of the Tribal Court.* A taxpayer aggrieved by any determination of tax liability made by the Tax Officer or the Internal Audit Department may appeal to the Tribal Court. Such appeal must be filed within 30 days of receipt of the notice of intent to levy tax or, if an informal conference was requested, within 30 days of receipt of the order following the conference.

11.12. *Cooperation of Other Tribal Departments and Agencies.* The Tax Officer may utilize the services, information or records of any other department or agency of the Tribe in the performance of duties under this ordinance, and other departments or agencies of the Tribe shall furnish the services, information or records upon the request of the Tax Officer.

11.13. *Tax Credit or Refund.*

a. The Tax Officer shall credit or refund all overpayments of taxes, all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that are found unjustly assessed or excessive in amount, or wrongfully collected.

b. A taxpayer who claims to have paid a tax which was not due under this ordinance may, on or before the expiration of four (4) years after the date set for the filing of the annual or final return for the year or the date the tax was paid, whichever is later, petition the Tax Officer in writing to refund the amount so paid. If the annual return reflects an overpayment or credit in excess of the tax, the declaration on the return constitutes a claim for refund. If the Tax Officer agrees that the taxpayer's claim is valid, the amount of the overpayment, at the request of the taxpayer, shall be refunded to the taxpayer or credited against any current or subsequent tax liability. If the taxpayer disagrees with the Tax Officer's conclusion on the matter, the taxpayer may appeal the matter to the Tribal Court within 30 days after receipt of notice of the Tax Officer's decision.

c. Interest at the rate of 1% per month shall be added to a refund 45 days after the due date or date the return is filed, whichever is later.

11.14. *Violations.* It shall be unlawful and a violation of this ordinance for any person to:

a. Fail or refuse to make a return required by the ordinance, within the time specified in this ordinance, or make, aid, abet, or assist another in making a false or fraudulent return or false statement in a return required by this ordinance with intent to defraud the Tribe or to evade the payment of the tax, or any part of the tax, imposed by this ordinance.

b. Aid, abet, or assist another in an attempt to evade the payment of the tax, or any part of the tax, imposed by this ordinance.

c. Make or permit to be made for himself or for any business or association any false return or a false statement in a return, either in whole or in part, required by this ordinance.

d. Make, aid, abet, or assist another in making a false or fraudulent certification to the Tax Department that his principal place of residence is located within the Agreement Area with the intent to defraud the Tribe or to evade the payment of a tax, or any part of a tax, under any applicable Tribal tax ordinance.

e. Obtain, aid, abet, or assist another in obtaining a false or fraudulent sales tax exemption under section 6.04 with the intent to defraud the Tribe or to evade the payment of a tax, or any part of the tax, levied under Article VI.

f. Obtain, aid, abet, or assist another in obtaining a false or fraudulent sales tax or use tax refund from the State to which he is not eligible for under the Tax Agreement with the intent to defraud the State or to evade the payment of the sales tax or use tax, or any part of the sales tax or use tax.

g. Knowingly provide, or aid, abet, or assist another in providing to a non-Tribal member for consideration cigarettes, other tobacco products, diesel fuel, or gasoline purchased tax exempt from the Tribe.

h. Knowingly possess or sell cigarettes or other tobacco products which do not bear the appropriate State stamp.

i. Violate any other provision of this ordinance or of tax regulations promulgated in accordance with this ordinance.

11.15. *Nature of Violations.*

a. A violation under section 11.14 by a Native American shall constitute a crime.

b. A violation under section 11.14 by a person who is not a Native American shall constitute a civil infraction subject to a civil remedial money penalty, civil forfeiture of property, or both.

c. Nothing in this section shall preclude the Tax Department from treating a violation by a Native American as a civil infraction.

11.16. *Penalties; Remedies.*

a. A violation of Section 11.14 by a Native American shall be punishable by a fine of up to five thousand dollars ($5,000.00) or imprisonment for not more than one year, or both. b. A violation of Section 11.14 by a person who is not a Native American shall be remedied by the imposition of a civil penalty of not more than five thousand dollars ($5,000.00).

c. In addition to the remedies in sub. (a) or (b), any property used in the commission of any violation may be forfeited. Any vehicle used in transporting a violator to or from the location of the violation shall be deemed to have been used in the commission of such violation.

d. In addition to the remedies in sub. (a) or (b), any tobacco product and motor fuel not acquired or possessed by a Tribal member or Tribal entity in accordance with applicable Tribal law (including the terms of the Tax Agreement) may be seized and subject to forfeiture as provided in Section 12.09 of this Ordinance or Section 10.03 of Ordinance #05-100-09.

e. The remedies in this section are not intended to be exclusive, but shall be in addition to and independent of:

1. any applicable contractual remedy;
2. any disciplinary action taken against a violator as an employee;
3. wage garnishment and set-off against any funds owed by the Tribe to any Tribal member;
4. prosecution or other enforcement action under federal or State law or under the provisions of any other chapter of the Tribal Code, including a prosecution for perjury for false statements on a tax return.

11.17. *Enforcement.*

a. The provisions of this ordinance shall be enforced by Tribal law enforcement officers, and by anyone authorized or deputized to enforce this ordinance by Tribal law or resolution of the

Tribal Council.

b. Upon the recommendation of the Tax Officer, the Ogema shall have the authority to authorize special agents to perform services reasonably necessary to conduct investigations within the scope of the Tax Department authority or to monitor and assure compliance with the provisions of this ordinance. When acting as a special agent, a person shall be accorded the privileges and protections of a Tribal law enforcement officer. The activities of special agents shall be under the supervision and the direction of the Tax Officer. Nothing in this subsection shall limit the normal law enforcement functions of any special agent, nor of other Tribal law enforcement officers.

Article XII. Commercial Division of the Tribal Court; Proceedings; Tax Ordinance Enforcement

12.01. *Jurisdiction of the Commercial Division.* The Tribal Court shall have the following jurisdiction:

a. Appeals of Tax Department enforcement actions, determinations of tax deficiencies and/or denials of requests for refunds.

b. Review of enforcement actions taken by the Tax Department without a prior hearing.

c. Suits brought by the Tax Department against a taxpayer to:

1. Collect taxes, interest and penalties owed the Tribe under applicable Tribal tax ordinances;
2. Compel production of books and records, to compel the appearance or testimony of an individual, or to undertake an audit;
3. Prohibit the continuation of sales at retail or other business activity by person who does not possess the license or registration required by this ordinance;
4. Civil or criminal enforcement proceedings alleging a violation of applicable Tribal tax ordinances;

c. To issue a search warrant for any location within the Tribal and trust lands and any lands owned by the Tribe, a Tribal member or Tribal entity that is located within the exterior boundaries of the Reservation upon a showing by the Tax Department or the State that it has reasonable cause to believe that tobacco products or motor fuel may be stored at such location contrary to applicable Tribal tax ordinances.

d. Suits brought by the State of Michigan against the Tribe under the terms of the Tax Agreement to:

1. Compel arbitration; or
2. Enforce the terms of an arbitration award.

e. Suits brought by the State of Michigan under the terms of the Tax Agreement against a Tribal member or Tribal entity located on the Reservation to:

1. Enforce the judgment or order of a Michigan State Court affecting the person or property of such Tribal member or Tribal entity; or
2. Compel production of books and records, to compel the appearance and/or testimony of an individual, or to undertake an audit.

f. Suits brought by a Tribal member or Tribal entity against the State of Michigan pursuant to the Tax Agreement to:

1. Review an enforcement action taken by the Tax Department or State without a prior hearing; or
2. Challenge a final tax assessment or denial of a refund.

g. Enforcement actions brought by the State in accordance with the provisions of ' XIII of the Tax Agreement. In any such action, the determination of the tax liability owed to the State by

the Tribe, Tribal members and Tribal entities pursuant to the Tax Agreement and the enforcement of the payment of any such liability, shall be made in accordance with State law, except as modified by the terms of the Tax Agreement. In addition, State law, including judicial decisions interpreting State law, prescribing the scope and entitlement to exemptions or deductions other than those recognized in the Tax Agreement shall govern the determination of tax liability. To the extent that the provisions of the Tax Agreement differ from those of the otherwise applicable State law, the Tax Agreement shall control.

12.02. *Action to Compel Compliance with Tax Investigation.* Upon a showing by the Tax Officer that a taxpayer subject to this ordinance has failed or refused to comply with a request to produce books and records, or to appear or give testimony, or to participate in an audit, the Tribal Court may issue an order requiring compliance with the requested action. Such order shall be issued as follows:

a. *Hearing.* The Tribal Court shall conduct a hearing on the State's petition for such order within 10 business days of the date the taxpayer is served by the State.

b. *Order Issuance.* The Tribal Court shall issue its decision and order within 14 business days of the date of service of the petition on the taxpayer.

c. *Taxpayer Failure to Comply with Tribal Court Order.* In the event that a Tribal member or Tribal entity fails or refuses to comply with an order of the Tribal Court issued under subsec. (b), the order shall be enforced by Tribal law enforcement officers with the assistance of State law enforcement officers.

In any action in which the Tax Officer files an action to compel compliance with a tax investigation against a Tribal member or Tribal entity to enforce the terms of the Tax Agreement, the Tribal Court Division shall proceed in accordance with the procedure prescribed in Section 12.03.

12.03. *Procedure to Compel Production; Submit to Audit Requested by State Pursuant to Tax Agreement.* Upon a showing by the State that a Tribal member or Tribal entity has failed or refused to comply with a request to produce books and records, or to appear or give testimony, or to participate in an audit, the Tribal Court may issue an order requiring compliance with the requested action. Such order shall be issued as follows:

a. *Hearing.* The Tribal Court shall conduct a hearing on the State's petition for such order within 10 business days of the date the taxpayer is served by the State.

b. *Court's Findings.* The Tribal Court shall grant the State's petition and order taxpayer compliance when the evidence demonstrates that:

1. The taxpayer is a Tribal member or a Tribal entity;
2. The taxpayer and/or the taxpayer's property is located on the Reservation;
3. The State's request to the taxpayer relates to one or more of the taxes subject to the Tax Agreement; and
4. The State's request to the taxpayer is consistent with relevant Michigan law and the provisions of the Tax Agreement.

c. *Order Issuance.* The Tribal Court shall issue its decision and order within 14 business days of the date of service of the petition on the taxpayer.

d. *Taxpayer Failure to Comply with Tribal Court Order.* In the event that a Tribal member or Tribal entity fails or refuses to comply with an order of the Tribal Court issued under subsec. (c), the order shall be enforced by Tribal law enforcement officers with the assistance of State law enforcement officers.

12.04. *Procedure for Petition for Hearing after Enforcement Action.* In the event that property of a taxpayer, which is located on the Reservation is inspected or seized by the Tax Department or by Tribal law enforcement officers without first obtaining an order or hearing in the Tribal Court, the taxpayer may seek review of such action by the Tribal Court by filing a petition within seven (7) days of the action's occurrence. In any instance in which a taxpayer seeks review of an enforcement

action taken jointly by the Tax Department or Tribal law enforcement officers to enforce the terms of the Tax Agreement, the Tribal Court shall in accordance with the procedure prescribed in Section 12.04a.

12.04a. *Procedure for Petition for Hearing after Enforcement Action taken Jointly by Tribal and State Law Enforcement Officers.* In the event that property of a Tribal member or Tribal entity, which is located on the Reservation is inspected or seized jointly by Tribal and State law enforcement officers without first obtaining an order or hearing in the Tribal Court, the Tribal member or Tribal entity may seek review of such action by the Tribal Court by filing a petition within seven (7) days of the action's occurrence. The Tribal Court shall conduct a hearing and issue its decision within 14 business days of the filing of the petition, and shall affirm the action if it finds:

a. The taxpayer is a Tribal member or Tribal entity;

b. The taxpayer and/or property inspected and/or seized is located on the Reservation;

c. The enforcement action(s) taken pertain to one or more of the taxes subject to the Tax Agreement; and

d. The enforcement action(s) were taken in compliance with relevant Michigan law and the provisions of the Tax Agreement.

12.05. *Taxpayer Appeal of Final Tax Determination by Tax Department.*

a. Where the Tax Department has issued a final tax assessment to, or denied a tax refund claimed by, a taxpayer, the taxpayer may appeal such final tax assessment or denial of tax refund by the Tax Department within 35 days of the issuance of the Tax Officer's decision. The Tribal Court shall conduct a hearing on the appeal, which shall be limited to the following issues:

1. The Tax Department decision is in violation of this ordinance;
2. The Tax Department decision is in violation of the Tax Agreement, provided the Tax Agreement is still in effect; or
3. The Tax Department decision is in violation of other laws of the Tribe.

b. The Tribal Court shall rule within one (1) year of the date on which the appeal was filed.

c. The Tribal Court shall apply substantive Tribal law, including this ordinance and Ordinance #05-100-09 in such proceedings. In the absence of controlling Tribal laws relating to practice and procedure, the Tribal Court may apply Michigan law relative to the practices and procedures of a case in the Michigan Court of Claims.

12.05a. *Tribal Member or Tribal Entity Appeal of Final Tax Determination by State.* Where State has issued a final tax assessment to, or denied a tax refund claimed by, a Tribal member or Tribal entity, the Tribal member or Tribal entity may appeal such final tax assessment or denial of tax refund by the State within 35 days of the issuance of the State's decision without prepayment of the contested portion of the tax, penalty or interest; provided that the appeal filed by the Tribal member or Tribal entity alleges all of the following:

a. The Tribal member's primary residence within the Reservation or, in the case of a Tribal entity, such Tribal entity is located and does business wholly within the Reservation;

b. The tax at issue is imposed on income, business activity, transactions or privileges which were realized, occurred or exercised wholly within the Reservation; and

c. The appeal is based on one of the following grounds:

1. The State's decision is unlawful under Michigan law, as may be modified by the Tax Agreement; or
2. The State's decision is unlawful under the Michigan Constitution, the United States Constitution, or federal law, but excluding federal Indian law where such law is the sole basis of the appeal.

d. The Tribal Court shall rule within one (1) year of the date on which the appeal was filed.

e. The Tribal Court shall apply Michigan law relative to the practices and procedures of a case in the Michigan Court of Claims.

12.06. *Collection Actions by Tax Department.* An action filed by the Tax Department to collect a tax, interest and penalty owned by a taxpayer under the provisions of this ordinance shall be adjudicated under the general provisions of this ordinance.

12.07. *Reimbursement Actions by Tribe.* Action for reimbursement may be filed by the Tax Department against a Tribal member or Tribal entity under the following circumstances:

a. The defendant was issued a certificate of exemption from payment of Michigan sales or use tax by the Tribe pursuant to Section 6.03 of Ordinance #05-100-09; and

b. The defendant utilized such certificate of exemption to purchase tangible personal property without payment of Michigan sales or use tax; and

c. Either:

1. The Tax Department has determined that the defendant, or the particular transaction engaged in by the defendant, was ineligible for such exemption; or

2. There is a final determination of liability by the State, as provided in Section XII(F) of the Tax Agreement, that the defendant, or the particular transaction engaged in by the defendant, was ineligible for such exemption; and

d. In the case of a final determination by the State, as provided in subsec. (c)(2), the Tribe was required under the Tax Agreement to pay the State the amount of tax and interest owed on that purchase.

12.08. *Violation of Tribal Business Tax License Requirements.*

a. *Cease and Desist.* An action for injunctive relief may be filed by the Tax Department against a Taxpayer who engages in the business of making sales at retail without a current Tribal Business Tax License and, if applicable, a current tobacco products/motor fuels retailer registration, in violation of Article VIII. Upon the filing of a request for injunctive relief, the Tribal Court shall immediately issue an order to show cause to the respondent Taxpayer, which shall be personally served. A hearing shall be conducted not more than five (5) business days from the date of issuance of the show cause order. Respondent's failure to appear shall not preclude the Tribal Court from granting the requested relief. Upon a showing at such hearing that the respondent is engaged in sales activities requiring a license or registration, and that the respondent is not currently licensed by the Tax Department, the Tribal Court shall issue an order compelling respondent to cease and desist such activities until such time as respondent obtains the requisite license and/or registration. Such order must be personally served. Respondent's failure or refusal to comply with the cease and desist order shall constitute contempt, punishable under section 11.16 of this ordinance, and/or by forfeiture under subpar. (b) of this subsection.

b In addition to such other penalties contained in this ordinance, if the respondent fails or refuses to comply with the cease and desist order, the Tribal Court may declare forfeited to the Tribe any tangible personal property offered for sale by respondent. Such forfeiture shall only be affected upon a petition for forfeiture filed by the Tax Department, identifying the property and its location. An order to show cause and order to seize the identified property shall immediately issue, together with a notice of hearing on the petition to be held not more than five (5) business days after the order to show cause is executed. At the hearing, the respondent shall forfeit the property unless a current sales and use tax license and, if applicable, tobacco products/motor fuels retailer registration is presented to the Tribal Court.

12.09. *Seizure of Motor Fuel; Tobacco Products.* Upon the filing of an affidavit from the Tax Department that there is probable cause that a Tribal member or Tribal member located on the Reservation or, a non-Tribal member located on Tribal and trust lands, is in possession of motor

fuels or tobacco products in violation of applicable Tribal law (including the Tax Agreement), the Tribal Court shall issue an order of seizure of such property. Provided the Tax Agreement is still in effect, the Tribal Court shall further require that such property shall be transferred to the State for disposition if the motor fuels or tobacco products were possessed in violation of the Tax Agreement. An appeal of the seizure order may be made under the procedures provided in sections 12.04 and 12.04a of this ordinance.

12.10. *Enforcement of State Court Order.* Upon the filing of a petition by the State, the Tribal Court shall enforce the provisions of the Michigan State Court order or judgment against the person or property of a Tribal member or Tribal entity located on the Reservation, provided the standards in Tribal Court Rule, Chapter 1 and Michigan Court Rule 2.615 are met. The Tribal Court shall issue a written decision on the petition for enforcement of the State Court order or judgment within 14 business days of the date on which the petition is filed. An order of the Tribal Court to enforce the State Court order or judgment shall be enforced by Tribal law enforcement officers if requested by the State.

12.11. *Procedure for Arbitration Action Against the Tribe.* So long as the limited waiver of immunity granted by the Tribe pursuant to Section I.G.1. of the Tax Agreement remains in effect, the State may file a written petition for an order compelling arbitration against the Tribe. Such petition must include specific allegations verifying that all prerequisites to the initiation of arbitration under the Tax Agreement have been met, and that the Tribe has failed to agree to such arbitration. Upon such showing, the Tribal Court shall issue an order compelling the Tribe to participate in arbitration as provided in the Tax Agreement, within 14 business days of the date of the filing of the action by the State. In the event the Tribal Court fails to issue such an order within the time period specified, the case shall be moot and the State may proceed to seek a remedy in another forum as provided in the Tax Agreement.

12.12. *Procedure for Enforcement of Arbitration Award Against the Tribe.* So long as the limited waiver of immunity granted by the Tribe pursuant to Section I.G.1. of the Tax Agreement remains in effect, the State may file a written petition for enforcement of an arbitration award with the Tribal Court. A certified copy of the arbitration award and decision must be attached to such petition. Upon such a showing, the Tribal Court shall issue an order compelling the Tribe to pay the amount specified in the award, within 14 business days of the date of the filing of the action. In the event the Tribal Court fails to issue such an order within the time period specified, the case shall be moot and the State may proceed to seek a remedy in another forum as provided in the Tax Agreement.

CERTIFICATION

I, Janine Sam, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Tax and Revenue Administration Ordinance adopted by the Tribal Council on July 6, 2011.

[Seal]