

Budget and Appropriations Regulations
TAX REGULATIONS
Regulation #R100-08: TRA-01

Chapter 1. Tribal Tax Regulations

Section 1. Authority; Purpose

1-1. *Authority.* In accordance with resolution #03-0205-33 which ratified the Tax Agreement between the Tribe and the State of Michigan, resolution #04-0324-137 which authorizes implementation of the Tax Agreement, resolution #05-1214-687 which authorizes adoption of the Tax and Revenue Administration Ordinance, which was amended by resolution #06-0628-449 and resolution #06-1018-724.

1-2. *Purpose.* This policy is intended to provide a framework for ensuring that the Tax and Revenue Administration Ordinance is understood, and accompanying procedures are uniformly applied. Guidelines are placed to aid in the administration of the tax ordinance.

Section 2. Definitions

2-1. *General.* For purposes of this regulation, certain terms are defined in this section. The word shall is always mandatory and not merely advisory.

2-2. *Definitions.* “Cultural activities” including, but not limited to, Traditional Jiingtamok (Pow Wow) and annual language camp. To be designated as a “cultural activity” for tax purposes, an organization must apply, in writing, to the Tax Department for a determination.

2-3. “Qualified fundraising event” includes activities conducted by the Tribe, a Tribal entity, Tribal member or group of Tribal members to raise money for a charitable cause. To be considered a qualified fundraising event, all proceeds from the event must be donated to the stated charitable cause and the income or benefit from the operation does not inure, in whole or in part, to the individual group holding the fundraiser.

Section 3. Tribal tax licenses.

3-1. *Licensing of sellers.* A tribal tax license shall be obtained by every seller engaging in business within tribal and trust lands. In addition, any seller wholly-owned by the Tribe, Tribal members or combination thereof, which is located within the reservation or within the agreement area, shall be required to register, with the tax department, for a tribal tax license.

3-2. *Securing proper license.* A person shall not engage or continue in a business taxable under the Tax and Revenue Administration Ordinance without securing a license, regardless of the amount of sales or the manner of obtaining goods for sale. An application for a license shall be made to the tax department of the Little River Band of Ottawa Indians before or at the time of beginning business, on the form prescribed by the department.

(a) Sellers that sell at a limited number of specific events being held on tribal and trust lands may register with a Concessionaire’s Tribal Tax Registration form (ACC812).

(b) Sellers who regularly and consistently do business on tribal and trust lands shall register with a Registration for Tribal Taxes form (ACC811).

3-3. *Waiver of licensing requirement.* Tribal and tribal member-owned businesses that are not subject to taxes under the Tribal Tax Ordinance may request a waiver from the tribal business tax license requirement if they:

(a) are not located on tribal and trust lands, and;

(b) request a waiver, in writing, from the tax department

3-4. *Displaying license.* All licenses shall be displayed in full view on the licensed premises. Penalties for failure to secure a license or for remaining in business without a valid tribal tax license are prescribed by Article VIII of the Tax and Revenue Administration Ordinance.

3-5. *Expiration of license.* Every tribal tax license expires on December 31 each year and shall be renewed by furnishing such information as the department may require. Regardless of the date a license is issued, it expires on the following December 31. Persons selling at retail at more than 1 location or place of business shall obtain a license for each location. If a valid license is lost or destroyed, it may be replaced without charge by notifying the tax department.

3-6. *Denial for delinquent taxes.* The tax department reserves the right to deny a renewal license to an applicant until delinquent tribal taxes are paid.

3-7. *Transfer of licenses.* A license is not transferable and a new license shall be secured immediately whenever there is a change of ownership of the business. For example, if a partner is added or dropped, or if a corporation is formed or dissolved, this constitutes a change of ownership necessitating application in the name of the new ownership. If the new owner fails to apply for a license, that person may be subjected to penalty for operating without a valid tribal tax license.

3-8. *Denial of license.* The tax department reserves the right to deny a license to an applicant if the department considers the applicant to be the agent or representative of a principal required to be licensed and responsible for filing the tribal tax returns.

Section 4. Filing.

4-1. *Filing period.* Tax returns with remittance of the tax due shall be remitted to the Tax Department on or before the twentieth (20th) day of the month following the end of each calendar quarter.

4-2. *Change in Return/Payment Schedule.* The Tax Department, under authority granted in Ordinance 05-100-08, may require the filing of returns and payment of the tax for other than quarterly periods to provide more efficient administration of the Tax Ordinance for any business required to be licensed under the Tax and Revenue Administration Ordinance. A taxpayer may request a more frequent filing period if desired.

4-3. *Annual filing period.* Tax returns with remittance of tax due shall be remitted to the Tax Department on or before the (20th) day of January of the year following the end of the calendar year for taxpayers with a total tax liability of less than \$1,000 for a calendar year (January – December).

4-4. *Quarterly filing period.* Tax returns with remittance of the tax due shall be remitted to the Tax Department on or before the twentieth (20th) day of the month following the end of each calendar quarter for taxpayers with a total tax liability of \$1,000 - \$4,000 for a calendar year (January – December).

4-5. *Monthly filing period.* Monthly tax returns with remittance of the tax due shall be remitted to the Tax Department on or before the twentieth (20th) day of the following month for taxpayers with a total tax liability greater than \$4,000 for a calendar year (January – December).

Section 5. Records.

5-1. *Right to examine.* The tax department, through its tax officer and other employees, may examine the books, records and papers of any person liable for payment of the lodging and

occupancy, food and beverage, retail sales, and admissions taxes. It may issue a subpoena requiring any person to appear for examination and produce any books, records or papers within the scope of the inquiry.

5-2. *Duty to keep records.* It is the duty of every person engaging in any business subject to the tribal tax to keep and preserve suitable and adequate records of his business to enable such person, as well as the tribe, to determine the correct amount of the tax for which he is liable.

5-3. *Absence of records.* Failure to produce and keep records for the purpose of examination by the tax department will be considered willful noncompliance with the tribal tax ordinance and subject to its penalties. In the absence of sufficient records the tax department may determine the amount of tax due the tribe by using any information available whether obtained at the taxpayer's place of business or from any other sources, and assess the taxpayer for any deficiencies, plus penalties.

5-4. *Required records.* Licensees are required to keep complete and accurate daily records of all sales, whether for cash or credit, bartered or traded, irrespective of whether the seller regards the receipts from the sales as taxable or exempt. The taxpayer is also required to keep a complete and accurate record of beginning and ending inventories, purchase records, daily sales records, receipts, invoices, bills of lading and all other pertinent documents pertaining to the business.

5-5. *Records required for exempt sales.* If the seller claims exemption on certain sales, it shall be required that he will keep a record of the name and address of the person to whom the sale is made, the date of the sale, the article purchased, the amount of the exemption and the use to be made of the article sold. If exemption is claimed by reason of a sale for resale, the taxpayer shall obtain the sales tax license number of the purchaser. If exemption is claimed for a non-profit entity, the taxpayer shall obtain a copy of the purchaser's 501(C)(3) or (4) letter from the Internal Revenue Service. A Certificate of Exemption from Tribal Tax (Form ACC819) may be used to document exemption claims.

5-6. *Additional record keeping requirements.* Records and files shall be kept on the premises of the place of business and maintained in a legible manner. They shall also be kept clean and as much as possible free from deterioration. All invoices, sales slips, bank statements and canceled checks should be kept in chronological order so as to be balanced with the records to which they pertain.

Section 6. Delinquent taxes.

6-1. *Assessment.* If a taxpayer fails or refuses to file a return or pay the tax, within the time prescribed by the tax ordinance, the tax department will assess the tax and notify the taxpayer of the amount due.

6-2. *Penalty.* 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%.

6-3. *Interest.* 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.

Section 7. Investigation costs.

7-1. *Location of records.* Any person not having his principal place of business on the reservation but maintaining within tribal and trust land a hotel, lodging facility, bar, restaurant, shop or other retail establishment selling or furnishing goods or services to any final consumer is required to keep complete records showing all sales made within tribal and trust lands. If such records are not located in the reservation or agreement area, then the seller must defray the

additional expense incurred by the tribe in making an audit at the off-reservation location of the seller. Sellers desiring to follow the latter method must make suitable arrangements with the tax department.

7-2. *Warrant costs.*

Section 8. Billing and appeals process.

8-1. *Notification of tax liability.* Prior to assessing a tax, the tax department may contact a taxpayer by sending a letter (Letter of Inquiry Form ACC816) which indicates type and amount of tax owed, why it is owed, and the options a taxpayer has to resolve the situation. If the taxpayer disagrees with the letter, he/she should respond to the tax department as directed in the letter. If the taxpayer does not respond or pay the amount shown due on the letter of inquiry within 30 days, the tax department will issue an intent to assess. If a tax deficiency is the result of an audit or a return filed without payment, a Letter of Inquiry is not sent. The taxpayer will receive an Intent to Assess instead.

8-2. *Intent to assess.* The Intent to Assess (Form ACC817) indicates the tax, penalty and interest due as well as the taxpayer's appeal rights. The taxpayer has 20 days to appeal the intent to assess by requesting an informal conference with the Internal Audit Department or 30 days to appeal to the commercial division of the Tribal Court. If the taxpayer does not request a conference, appeal to Tribal Court, or pay the amount due in 30 days, the tax department will issue a final assessment.

8-3. *Final assessment.* Once a Final Bill for Taxes Due (Form ACC818) is received, the taxpayer must pay the amount billed or appeal to the Tribal Court within 35 days. Payment of the undisputed amount is required at the time of appeal.

Section 9. Taxpayer rights.

9-1. *Taxpayer bill of rights.* Persons subject to tribal tax under the Tax and Revenue Administration Ordinance are entitled to prompt, fair and courteous service from the tax department. Until such time as the tax department develops its own regulations regarding taxpayer rights, the department shall utilize the Michigan Taxpayer Bill of Rights (MAC R205.1001-R205.1013).

Section 10. Procedures for proposing rules by the tax department.

10-1. *Tax Department Administrative Rules.* To promote uniform application of tribal tax laws throughout the tribe's tax jurisdiction, the tax department will issue tax department administrative rules (TDAR) to provide information and guidance to taxpayers. A tax department administrative rule states the official position of the tax department and may be relied on by taxpayers in situations where the facts, circumstances and issues presented are substantially similar to those set forth in the rule. A taxpayer must consider the effects of subsequent legislation, regulations, court decisions and rules when relying on a tax department administrative rule.

10-2. *When to issue administrative rule.* A tax department administrative rule may be issued when general clarification or interpretation questions occur regarding the tax ordinance.

10-3. *Request for administrative rule.* A tax department administrative rule can be requested when a taxpayer has an interpretation question regarding general tax policies. Requests for an administrative rule must be in writing and addressed to the tax department.

Section 11. Adoption; Amendment; Repeal

11-1. *Adoption.* This Chapter is approved by the Tribal Council on December 20, 2006, by resolution #06- 1220-851 and amended by resolution #08-507-127.

11-2. *Amendment.* This regulation may be amended by the Tax Department in accordance with the Constitution and any rules set forth governing amendment of regulation of the Little River Band of Ottawa Indians. Provided that, any amendments must be approved or adopted in the same manner as set forth in section 11-1.

11-3. *Severability Clause.* If any provision of this regulation or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are severable.

11-4. *Compliance.* In regards to compliance with this regulation, substantial compliance with the spirit of this regulation rather than complete compliance is acceptable.

11-5. *Sovereign Immunity.* Nothing in this Regulation shall provide or be interpreted to provide a waiver of sovereign immunity from suit of the Tribe or any of its governmental officers and/or agents.

11-6. *Effective Date.* This Regulation shall take effect immediately upon approval by Tribal Council.