

Approved by: _____ Date: _____

Tax Department Administrative Rule 2007-1

Approved: October 16, 2007

RETAIL SALES TAX – WATER

TDAR-07-1. This rule explains the appropriate retail sales tax treatment of sales of water to residential customers residing at Aki Maadiziwin.

BACKGROUND

Article VI of the Tax and Revenue Administration Ordinance imposes a retail sales tax, at the rate of 6% of gross receipts, for the privilege of engaging in the business of making sales at retail within Tribal and trust lands. A sale at retail is defined as the transfer of ownership of tangible personal property.

Although the Tax and Revenue Administration Ordinance does not include a deduction for water, there is a deduction from retail sales tax for, “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” (6.04o).

DISCUSSION

Michigan’s General Sales Tax Act (MCL 205.54d) states, “*The following are exempt from the tax under this act: . . .*” at §(d) “*The sale of water through water mains, the sale of water delivered in bulk tanks in quantities of not less than 500 gallons, or the sale of bottled water.*”

Further, MCL 205.53 § Sec 3. (1) states, “. . . *if a person engages or continues in a business for which a privilege tax is imposed by this act, the person shall, under rules the department prescribes, apply for and obtain from the department a license to engage in and to conduct that business for the current tax year.*” This differs from the Tribal Tax Ordinance which states, “*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*” (8.01).

IMPLICATION FOR TRIBAL TAX

The Tax and Revenue Administration Ordinance does not include an exemption for water. However through § 6.04(o.), it follows that the state exemption carries over to Tribal retail sales tax. The Tax Department agrees that the sale of water through water mains, bulk tanks in quantities of not less than 500 gallons, and the sale of bottled water is exempt from Tribal retail sales tax as long as the state exemption applies.

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Additionally, the Tax Department recognizes that municipal water departments are not required to register for a state retail sales tax license when they do not sell tangible personal property subject to sales tax, nor are they required to solicit exemption claims from residential customers. Therefore, it is determined that a Tribal Tax License is not required for the sale of water through water mains, bulk tanks in quantities of not less than 500 gallons, and the sale of bottled water at retail*.

*Note: The sale of bottled water at a food and beverage establishment is subject to the Food and Beverage Tax under Ordinance #05-100-08.

FOR ADDITIONAL INFORMATION:

Questions can be addressed by calling (231) 398-6874, or writing:

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All pertinent facts must accompany any request for a ruling.