

ENFORCEMENT OF TRIBAL-STATE TAX AGREEMENT
Ordinance #05-100-09

Article I. Purpose; Findings

1.01. *Purpose.* The purpose this Ordinance is to implement and enforce certain provisions of a Tax Agreement between the Tribe and the State of Michigan pertaining to the taxes which are the subject of that Agreement; and to prescribe penalties for violations of this Ordinance, consistent with the Tax Agreement.

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).*

b. The Tribe and the State, acting on a government to government basis, have a mutual interest in seeking to develop a fair and workable understanding regarding the application and administration of certain State taxes and to provide certainty as to jurisdictional issues that may arise between the Tribe and the State regarding those taxes by explicitly addressing and agreeing upon the imposition of and exemptions from those taxes; and

c. The Tribe and the State have, recognizing the sovereign rights of the other, engaged in good faith negotiations in a spirit of cooperation, and in the interests of their respective citizens and members, and voluntarily reached agreement on the terms of a Tax Agreement.

Article II. Adoption; Amendment; Repeal

2.01. *Adoption.* This Ordinance is adopted by resolution #05-1214-686.

2.02. *Amendment.* This Ordinance may be amended by the Tribal Council in accordance with the Constitution 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.

Article III. Definitions.

3.01. *Definitions.* For purposes of this Ordinance, certain terms are defined in this Article. The word “shall” is always mandatory and not merely advisory.

3.02. *Terms Defined in Other Specified Governing Documents.* The terms defined in the Tax and Revenue Ordinance and the Tax Agreement shall apply in this Ordinance.

Article IV. General Provisions

4.01. *Applicability; Incorporation of Tax Agreement into Tribal Law.* The Tribe intends to be bound by the terms of the Tax Agreement and bind Tribal members and Tribal entities to the terms of the Agreement while it is in effect. The terms of the Tax Agreement are incorporated into this ordinance and shall have the force and effect of law.

4.02. The Tax Agreement is intended to define the rights, privileges or immunities which a person may claim pursuant to federal Indian law with respect to the taxes addressed by the Tax Agreement. All persons, including Tribal members and Tribal entities are required to comply with the terms of the Tax Agreement.

4.03. *Application of State Law.* In any case where the Tribe, a Tribal member or Tribal entity has, consistent with the Tax Agreement, a tax liability owed to the State, the determination of such tax liability, and the enforcement of the payment of that liability, shall be made in accordance with State law, except as modified by the terms of the Tax Agreement. State law, including judicial decisions interpreting State law, prescribing the scope and entitlement to exemptions 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 State law, the Tax Agreement shall control.

4.04. *Joint Enforcement; Consent to Entry to the Reservation by the State for Enforcement Purposes.* The Tribe and the State shall jointly enforce the Tax Agreement and applicable State law within the Reservation in accordance with the terms of the Tax Agreement and as provided in this Ordinance.

a. The State shall have the enforcement authority as described in the Tax Agreement within the Reservation, including the authority to commence tax enforcement actions, conduct audits and inspections in accordance with the terms of the Tax Agreement.

b. *State Seizure of Property Held in Violation of Tax Agreement Authorized.* If an authorized State inspection of any retailer(s)' facilities on the Reservation reveals any tobacco products or motor fuel products held in violation of the State Tobacco Products Tax Act, the Motor Fuel Tax Act, or the Motor Carrier Fuel Tax Act, as those acts are modified by the Tax Agreement, the Department of Treasury representatives shall be entitled to seize any such tobacco products or motor fuel and any vehicle, including trailers, in which such product is found, together with associated books and records in accordance with the procedures prescribed in the Tax Agreement.

c. If the State has reason to believe that tobacco or motor fuel products may be transported or stored by the Tribe within the Reservation contrary to the terms of the Tax Agreement, the State may apply to the Tribal Court for a search warrant authorizing inspection of such locations. The Tribal Court shall rule on the search warrant request within twenty-four hours of receiving the application and shall issue the warrant if the Court finds that the State has reasonable cause to believe that tobacco or motor fuel may be stored at the location(s) set forth in the request. If the State is concerned that unlawful product may be removed during the pendency of such an application, the Department of Public Safety shall, upon the request of the State, secure the location or vehicle until the Tribal Court makes its determination.

d. Tribal officers and other employees of the Tribe shall assist the State, State Police and other State officers and agents as provided in the Tax Agreement.

e. The Tribe hereby consents to entry on to the Reservation, including Tribal lands, by representatives of the State for the following purposes:

1. To take enforcement actions authorized under State law with respect to a non-Tribal member or non-Tribal entity located or doing business within the Reservation; provided that where such non-Tribal member or non-Tribal entity is located or doing business on Tribal or trust lands, the State provides advance notice of the proposed enforcement action to the Department of Public Safety. If the Department of Public Safety is unable or unwilling to promptly assign a Tribal officer to accompany State law enforcement officers, the State's officers may carry out the enforcement action without the participation of a Tribal officer.

2. To conduct inspections (including unannounced inspections) of facilities that have been identified by the Tribe to the State, pursuant to section 7.02 and sections VIII(B)(2)(a)&(b) of the Tax Agreement, as facilities where tobacco products or motor fuel products are sold or stored, as well as vehicles used to transport those products.

3. To carry out certain administrative enforcement actions, specified in section XIII(D)(9)(b) & (10) of the Tax Agreement, provided those administrative enforcement actions are taken jointly with Tribal officers.

f. The Tribal Court shall rule on matters arising under or relating to the Tax Agreement within the

time periods set out in, and in accordance with this Ordinance, the provisions of the Tax Agreement and Article XII of Ordinance, #05-100-03.

4.05. *Tribal Member and Tribal Entity Responsibility.* Each Tribal member and Tribal entity shall be responsible for promptly informing the Enrollment Department or, in the case of Tribal entities, the Tax Department of any change in residence or business address prior to the effective date of such change. Any Tribal member or Tribal entity failing to provide this information in a timely manner shall have no grounds for claiming entitlement to any of the tax exemptions or immunities recognized in this Ordinance or the Tax Agreement.

4.05. *Additional Powers and Responsibilities of Tax Department.*

a. The Tax Officer shall be responsible for providing the State with the information required under sections VIII(B) & (C) and XIII(E)(1) of the Tax Agreement.

b. The Tax Officer shall provide the State with any other information or assistance as may be required under the Tax Agreement.

c. The Tax Department shall inform Tribal members and Tribal entities of the terms of the Tax Agreement including its administrative and enforcement provisions.

d. The Tax Department shall, consistent with Tribal law and the Tax Agreement, assist the State in ascertaining that Tribal members and Tribal entities are fully complying with the terms of the Tax Agreement. Upon request of the State, the Tax Department shall assist the State in the assessment and collection of taxes owed under the terms of the Tax Agreement.

e. In those instances where a question of jurisdiction arises between the State and a Tribal member or Tribal entity, and the Tribe agrees with the State's position that the matter relates to transactions or property outside the Reservation, the Tax Department shall assist the court or tribunal hearing the matter by providing affidavits and/or testimony.

f. If the State notifies the Tax Department that one of the offenses listed below has occurred within the Tribe's jurisdiction, the Tax Officer shall, within 10 business days after notice by the State of the violation, take the following action: for a first offense, give a written warning to the offending party that further noncompliance will result in termination of any Tribally issued license or authorization to operate; for any subsequent offense, commence proceedings to terminate any Tribally issued license or authorization to operate. The offenses that may trigger the above actions are:

1. Possession or sale by a Tribal member or Tribal entity, other than those in which the Tribe has an ownership interest, of cigarettes or other tobacco products which do not bear the appropriate State stamp.

2. Sale by a Tribal member or Tribal entity, other than those in which the Tribe has an ownership interest, of cigarettes or other tobacco products to non-Tribal members where all taxes are not fully included in the price.

3. Possession or sale by a Tribal member or Tribal entity, other than those in which the Tribe has an ownership interest, of motor fuel not acquired or possessed as provided in the Tax Agreement.

4. In addition to assisting the State, the Tax Department shall enforce the Tax Agreement independently. Such independent enforcement shall include:

A. Seizure from Tribal members and Tribal entities of tobacco products and motor fuel not acquired or possessed in accordance with the terms of the Tax Agreement, and the transfer of the seized product to the State, consistent with applicable provisions of State law. In the event that the product seized and transferred to the State is sold in accordance with State law, the Tribe shall be treated as a "local unit of government for the purpose of sharing the proceeds of the sale as provided at MCL 205.429 or MCL 207.1130.

B. Promulgation of regulations to establish additional Tribal mechanisms to monitor

and enforce Tribal member and Tribal entity compliance with the terms of the Tax Agreement; and
C. Notifying the State of any violations of the Tax Agreement that the Tribe may discover.

Article V. Income Tax

5.01. *Requirement for Filing State Income Tax Return.* Resident Tribal members shall be required to file a State income tax return in the following circumstances:

- a. If such resident Tribal member is required to file a federal income tax return;
- b. If the resident Tribal member earns income from activities conducted outside Tribal and trust lands which do not constitute “non-business income” as defined in section IV(A) of the Tax Agreement;
- c. If the resident Tribal member is owed a refund; or
- d. If such resident Tribal member’s federal adjusted gross income exceeds their exemption allowance.

5.02. *Income Tax Withholding by Employers.* All employers operating on the Reservation, including the Tribe, Tribal entities, and Tribal members, who employ a person who is not a resident Tribal member shall for such persons withhold and remit to the State such amounts and under such procedures as are set forth in the Michigan Income Tax Act, M.C.L. Section 206.1, et seq., as it may from time to time be amended.

5.03. *Reporting of Gaming Winnings.* Each gaming facility shall be required to report to the State gaming winnings in same manner as reported to the federal government

5.04. *Reporting of Gross Receipts or Contract Payments to Professional Performers.* Each gaming facility or other entertainment facility operators conducting business on Tribal and trust lands shall be required to report gross receipts and contract information regarding each professional performer in a manner consistent with reporting practices required by the State for non-Tribal casino operators and/or entertainment facilities.

Article VI. Sales and Use Taxes

6.01. *Limitation on Procedures for Realizing Exemptions or Immunities from State Sales and Use Taxes.* Except as provided in section 6.02, so long as the Tax Agreement remains in effect, neither the Tribe nor any Tribal member or Tribal entity shall be entitled to seek or claim an exemption from any State sales, use, or lodging taxes in any transaction except in accordance with the terms and conditions prescribed in sections IX-XII of the Tax Agreement and section 6.03 of this Ordinance.

6.02. To obtain the benefit of any statutory exemptions available to any taxpayer in the State, the Tribe, Tribal member or Tribal entity shall use the standard procedures and forms used by all taxpayers claiming exemption under a provision of State law. (*See Michigan Department of Treasury, Revenue Administrative Bulletin 2002-15.*)

6.03. *Administrative Procedures for Obtaining Tax Exemptions Provided for in the Tax Agreement.*

a. *Use of Certificates of Exemption by the Tribe.* The Tribe, including the gaming facility and other business enterprises wholly owned by the Tribe, shall use Tribal Certificates of Exemption under section XII(B)(2) of the Tax Agreement. All such certificates shall be issued in accordance with the procedures provided in section XII(c)(1)(E) of the Tax Agreement.

b. *Use of Certifications of Exemption by Tribal Members and Tribal Entities.*

1. The Tribe authorizes Tribal members and Tribal entities to use Tribal Certificates of Exemption under section XII(C)(2) of the Tax Agreement.

2. Resident Tribal members and Tribal entities shall not seek refunds of sales and use taxes paid for purchases described in section XII(C)(1)(a) or section XII(C)(1)(c) of the Tax Agreement.

3. Tribal members’ and Tribal entities’ use of Certificates of Exemption shall be limited to the specific purposes and transactions set forth in sections XII(C)(1)(a) and XII(C)(1)(c) of the Tax Agreement, as described in paragraph (c) of this section.

4. Tribal members and Tribal entities shall be required to follow the procedures prescribed in paragraph c of this section in the use of Tribal Certificates of Exemption.

c. *Use of Certificates of Exemption by Resident Tribal Members.* Resident Tribal members may only use Tribal Certificates of Exemption to purchase the following described items, or for the following purposes:

1. To purchase passenger vehicles, recreational water craft, snowmobiles, and off-road vehicles; provided such items are purchased for non-commercial, personal use and are principally garaged, berthed or stored within the Agreement Area;

2. To purchase modular homes or mobile homes to be used by the resident Tribal member as his/her principal residence within the Agreement Area;

3. For materials that are purchased, used or acquired by:

A. the resident Tribal member or by

B. a contractor in the performance of a contract entered into by the resident Tribal member,

for the construction, renovation or improvement of such resident Tribal member's principal residence within the Agreement Area;

4. For materials that are purchased, used or acquired by:

A. the resident Tribal member or by

B. a contractor in the performance of a contract entered into by the resident Tribal member,

for the construction, renovation or improvement of Tribal and trust lands for business purposes; provided there is no contractual entitlement for a non-resident Tribal member or Tribal entity to remove the improvement;

5. To purchase tangible personal property to be used in connection with Tribally-licensed recreational, subsistence or commercial fishing activities; provided such purchase, except for tangible personal property purchased by licensed commercial fishermen for use in connection with commercial fishing activities, occurs within the Agreement Area.

d. *Use of Certificates of Exemption by Tribal Entities.* Tribal entities may only use Tribal Certificates of Exemption to purchase the following described items, or for the following purposes:

1. For materials that are purchased, used or acquired by:

A. the resident Tribal member or by

B. a contractor in the performance of a contract entered into by the resident Tribal member,

for the construction, renovation or improvement of Tribal and Trust Lands for business purposes; provided there is no contractual entitlement for a non-resident Tribal member or Tribal entity to remove the improvement;

2. To purchase tangible personal property to be used in connection with Tribally-licensed commercial fishing activities.

e. *Use of Certificates of Exemption by All Tribal Members.* Tribal members, regardless of residence within the Agreement Area, may only use Tribal Certificates of Exemption to purchase tangible personal property to be used in connection with Tribally-licensed commercial fishing activities.

f. *Purchases from Retailers Owned by the Tribe, Tribal Members or Tribal Entities Located within the Agreement Area.* Nothing shall prohibit resident Tribal members from purchasing tangible personal property exempt from Michigan sales or use tax from any Tribal, Tribal member or Tribal entity retailer located within the Agreement Area provided that:

1. In the case of purchases by resident Tribal members, the tangible personal property purchased is for the resident Tribal members personal use at his primary residence within the Agreement Area;

2. In the case of purchases by Tribal member or Tribal entity for business purposes, the Tribal member or Tribal entity certifies that the tangible personal property purchased will be used or consumed:

A. entirely on Tribal and Trust Lands; or

B. in connection with treaty regulated commercial fishing activities.

Retailers shall be responsible for keeping records of exempt purchases in accordance with the requirements of section 6.05.

g. *Procedures for Use of Tribal Certificates of Exemption by Tribal Members and Tribal Entities.*

1. *Issuance of Tribal Certificate of Exemption.* A resident Tribal member or Tribal entity shall submit to the Tax Department, a signed "Resident Tribal Member/Tribal Entity Claim" form indicating the Tribal member's or Tribal entity's name, address, items to be purchased, including identification numbers for vehicles and mobile homes, and, in the case of a resident Tribal member, his or her identification number and a certification that the resident Tribal member resides within the Agreement Area.

2. In those instances where a Tribal Certificate of Exemption is requested for materials to be used or acquired by a contractor, the requesting Tribal member or Tribal entity shall also include a signed statement from the contractor stating the location at which materials will be affixed to real estate, the date that the work is to be done, and an estimate as to the amount to be paid for materials.

3. Upon verifying the information provided in the claim and determining that the claim is consistent with the terms of the Tax Agreement, the authorized Tribal representative shall complete and sign a Tribal Certificate of Exemption authorizing the resident Tribal member's or Tribal entity's exempt purchase. The certificate shall indicate the name of the requester, the items to be purchased including identification numbers for vehicles and mobile homes and, for resident Tribal members, the resident Tribal member's identification number.

4. *Use of Tribal Certificate of Exemption.* If a Tribal Certificate of Exemption is issued to a resident Tribal member or Tribal entity, the resident Tribal member or Tribal entity shall present the Tribal Certificate of Exemption, together with the Letter of Authorization, to the vendor or contractor at the point of purchase. In those instances where the Tribal Certificate of Exemption is for the purchase of material to be affixed to real property by a contractor, the statement from the contractor stating the location at which materials will be affixed to real property, the date that the work is to be done, and estimate as to the amount to be paid for materials shall also be submitted.

h. *Refund of Sales and Use Taxes Paid by Tribal Entities or Tribal Members on the Purchase of Tangible Personal Property for Business Use.* Except as may be specifically provided in paragraphs (c)(4) & (5), (d), (e) or (f) of this subsection, in any case in which a resident Tribal member or Tribal entity purchases any tangible personal property for use in connection with any business or commercial activities, such resident Tribal member or Tribal entity may only obtain the benefit of an exemption or immunity from State sales or use taxes by filing a refund using a "Resident Tribal Member/Tribal Entity Sales Tax and Use Tax Refund Request" form, as provided in section XII(C)(1)(b) and (d) of the Tax Agreement.

i. *Resident Tribal Member; Tribal Entity Exemption Sales and Use Taxes on Sale of Electricity, Natural or Artificial Gas, Home Heating Fuels and Telecommunications and Internet Services.*

1. Sales of electricity, natural gas or artificial gas, home heating fuels and all transmission and distribution charges are exempt from both the sales tax and use tax if the product is delivered to:

A. Tribal and trust lands to the extent that the land is occupied by the Tribe, a Tribal entity or a Tribal member; or

B. a resident Tribal member's principal residence located within the Agreement Area.

2. In addition, telephone (intrastate and interstate), telegraph leased wire, internet, cable, and other similar communications rendered to and paid for by the Tribe, a Tribal entity, or resident Tribal member are exempt from both the sales tax and use tax if the service is rendered to:

A. Tribal and trust lands to the extent that the land is occupied by a Tribal entity or a Tribal member;

B. a resident Tribal member's principal residence located within the Agreement Area.

j. *Refund of All Other State Sales and Use Taxes Paid by Resident Tribal Members.* Except as provided in paragraphs (c)(1)-(3), (f) and (h) of this section, resident Tribal members shall be required to apply for an annual refund in order recover State sales and use taxes paid on certain tangible personal property purchased for personal use utilizing the Refund Table prescribed in section XII(C)(3) of the Tax Agreement.

6.04. *Collection and Payment of State Sales and Use Tax by Tribe, Tribal Member and Tribal Entity Retailers.* The Tribe, Tribal members and Tribal entities operating as retailers anywhere in the State outside of Tribal and trust lands shall collect and remit State sales tax and State use tax to the State in accordance with State procedures generally applicable to retail sellers, except that no State sales tax or use tax need be collected or remitted on sales to the Tribe, a resident Tribal member or Tribal entity within the Agreement Area.

6.05. *Records of Exempt Sales by Tribe, Tribal Member and Tribal Entity Retailers.* The Tribe, Tribal member and Tribal entity retailers shall maintain a record of exempt sales on which no tax was collected. Such records shall include the date of the purchase, the name and 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. *Records of Exempt Purchases by the Tribe, Tribal Members and Tribal Entities.*

a. The Tribe shall maintain copies of all Tribal Certificates of Exemption used to make exempt purchases tangible personal property.

b. Tribal members and Tribal entities shall be required to maintain copies of all Tribal Certificates of Exemption used to make exempt purchases of tangible personal property. In addition, resident Tribal members and Tribal entities must maintain documentation, i.e. shipping documents, to substantiate where the transaction took place.

6.07. *Non-Tribal Retailers Operating within the Agreement Area.* The State shall have the authority to impose State sales or use tax on all non-Tribal retailers, non-Tribal member retailers, and non-Tribal entity retailers within the Agreement Area including retailers operating on Tribal and trust lands, on all sales including those to the Tribe, Tribal members, or Tribal entities unless a valid exemption certificate is presented at the time of sale. Provided that imposition of the tax at the retail level shall not preclude the Tribe, a resident Tribal member or a Tribal entity from obtaining the an exemption authorized by the Tax Agreement by use of the Tax Table or other refund mechanism provided for in this Ordinance and section XII of the Tax Agreement.

Article VII. Tobacco Products

7.01. *Licensing of Retailers.* Any retailer engaged in the sale of retail of tobacco products from a location on Tribal and trust lands shall obtain such license and/or registration as may be required by Tribal law.

7.02. *Conditions Applicable to Retailers Licensed to Sell Tobacco Products.* Any retailer licensed to engage in the sale at retail of tobacco products shall, as a condition of obtaining such license and/or registration, be required to agree to comply with the following requirements:

a. Such retailer must purchase all tobacco products from a State-licensed wholesaler approved by the

Tribe;

- b. All tobacco products offered for sale by such retailer must bear the State Tribal stamp;
- c. Such retailer must agree to maintain such books and records as would be required under State law for retailers licensed by the State to engage in the sale at retail of tobacco products;
- d. Any retailer authorized to either:
 - 1. purchase and sell tax free quota tobacco products; or
 - 2. sell tobacco products to Tribal members without collecting State tobacco products taxes under the "Refund System",

shall be required to maintain such records of its purchases and, where applicable, sales of tax free tobacco products as required under section XI(A)(3) and XI(B)(3) of the Tax Agreement; and

e. Such retailer shall be required to permit representatives of the State access to such retailer's premises for the purpose of conducting inspections, including unannounced inspections, of facilities, including vending machines, where tobacco products are sold and stored, as well as any vehicles used to transport tobacco products.

7.03. *Purchases Subject to Michigan Tobacco Products Tax.* All purchases of tobacco products by Tribal members within the Reservation shall be subject to the imposition and collection of State tobacco products tax, which shall be added to the price, unless exempted by *Budget and Appropriations Regulations, Chapter 7, Tobacco Products*. Retailers operating within Tribal and trust lands shall remit such tax proceeds and provide such information as required under the provisions of the Tobacco Products Tax Act, MCL Section 205.421 et seq., as it may be amended from time to time.

7.04. *Locations at Which Exempt Purchases May be Made.* The Tax Department shall designate the retailer(s) and the location of the retailer(s)' business within the Reservation or on Tribal lands at which purchases of tobacco products which are exempt from payment of State tobacco products tax may be made.

7.05. *Authorized Retailer Purchases of Tobacco Products for Exempt Sales.* Any retailer authorized to sell tobacco products without collecting State tobacco products tax shall purchase such products solely from the State-licensed wholesaler selected by the Tribe. The Tax Department shall further specify the amount of tobacco products which the retailer may acquire for tax-exempt resale.

7.06. Tribal members may purchase tobacco products from an authorized retailer without payment of tobacco products tax, provided such purchase is solely for personal use and not for resale. Exempt purchase shall be documented as required by the Tax Agreement.

7.07. No retailer licensed by the Tribe may act as a wholesaler, secondary wholesaler, or unclassified acquirer of tobacco products unless so licensed by the State.

Article VIII. Motor Fuels

8.01. *Licensing of Retailers.* Any retailer engaged in the sale of retail of motor fuels from a location on Tribal and trust lands shall obtain such license and/or registration as may be required by Tribal law.

8.02. *Conditions Applicable to Retailers Licensed to Sell Motor Fuels.* Any retailer licensed to engage in the sale at retail of motor fuels shall, as a condition of obtaining such license and/or registration, be required to agree to comply with the following requirements:

- a. Such retailer must purchase all motor fuels products from a State-licensed wholesaler approved by the Tribe;
- b. Such retailer must agree to maintain such books and records as would be required under State law for retailers licensed by the State to engage in the sale at retail of motor fuels;
- c. Any retailer authorized to either:
 - 1. purchase and sell tax free quota motor fuels; or
 - 2. sell motor fuels to the Tribe, Tribal entities or Tribal members without collecting State motor fuels taxes under the "Refund System",

shall be required to maintain such records of its purchases and, where applicable, sales of tax free

motor fuels as required under section X(A)(3) and X(B)(3) of the Tax Agreement; and

d. Such retailer shall be required to permit representatives of the State access to such retailer's premises for the purpose of conducting inspections, including unannounced inspections, of facilities where motor fuels are sold and stored, as well as any vehicles use to transport motor fuels.

8.03. *Purchases Subject to Michigan Motor Fuels Taxes.* All purchases of motor fuels by the Tribe, Tribal members or Tribal entities within the Reservation shall be subject to the imposition and collection of State gasoline and diesel fuel taxes, which shall be added to the price, unless exempted by this Ordinance. Retailers operating within Tribal and trust lands shall remit such tax proceeds and provide such information as required under the provisions of the Motor Fuel Tax Act, MCL Section 207.1001 et seq., and the Motor Carrier Fuel Tax Act, MCL Section 207.211 et seq., as each may be amended from time to time.

8.04. *Locations at Which Exempt Purchases May be Made.* The Tax Department shall designate the retailer(s) and the location of the retailer(s)' business within the Reservation or on Tribal lands at which purchases of motor fuel which are exempt from payment of State motor fuel taxes may be made.

8.05. *Authorized Retailer Purchases of Motor Fuels for Exempt Sales.* Any retailer authorized to sell motor fuels without collecting State motor fuels taxes shall purchase such products solely from the State-licensed wholesaler selected by the Tribe. The Tax Department shall further specify the amount of gasoline and diesel fuel which the retailer may acquire for tax-exempt resale.

8.06. The Tribe, Tribal entities and Tribal members may purchase gasoline and motor fuels from an authorized retailer without payment of motor fuels taxes. Exempt purchase shall be documented as required by the Tax Agreement.

Article IX. Single Business Tax

9.01. Any Taxpayer, including a Tribe (SBT), Tribal member (SBT) or Tribal entity (SBT), as those terms are defined in the Tax Agreement, claiming exemption from Michigan Single Business tax shall prepare and file the SBT annual return Form C-8000. Taxpayers shall be entitled to claim exemption from Michigan Single Business Tax as provided in section VII and 'IX(C) of the Tax Agreement.

Article X. Violations; Penalties

10.01. In addition to the violations set forth in section 11.14 of Ordinance, #03-100-03, it shall be unlawful and a violation of this Ordinance for any person to:

a. Make, aid, abet, or assist another in making a false or fraudulent certification to the Tax Department that his place of business or principal place of residence is located within the Tribal and trust lands or within the Agreement Area, in either case with the intent to defraud the State or to evade the payment of a tax, or any part of a tax, covered by the Tax Agreement.

b. Make, aid, abet or assist another in making a false certification to the Tax Department that he is purchasing an item for his personal use or, in the case of items purchased for business or commercial uses, that he is purchasing an item for use solely within Tribal and trust lands.

c. Make, aid, abet or assist another in the use of a Tribal Certificate of Exemption or a Resident Tribal Member/Tribal Entity Sales Tax and Use Tax Refund form in violation of this Ordinance or the Tax Agreement.

d. Obtain, aid, abet, or assist another in obtaining a false or fraudulent sales tax exemption with the intent to defraud the Tribe or to evade the payment of a tax, or any part of the tax, levied under this Tribal law.

e. 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 Tribe or the State or to evade the payment of the sales tax or use tax, or any part of the sales tax or use tax.

f. 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 by,

from or through the Tribe, unless all taxes are fully included in the price.

g. Knowingly possess or sell, or aid, abet, or assist another in possessing or selling, cigarettes or other tobacco products which do not bear the appropriate State stamp.

h. Knowingly possess or sell, or aid, abet, or assist another in possessing or selling, diesel fuel or gasoline purchased tax-exempt by, from or through the Tribe that was not acquired or possessed as provided in the Tax Agreement.

i. Knowingly sell at any location outside the Agreement Area any motor fuel or tobacco products purchased tax-exempt from the Tribe.

j. Violate any other provision of the Tax Agreement, this Ordinance or regulations promulgated in accordance with this Ordinance.

10.02. *Nature of Violations.*

a. A violation under section 10.01 by a Native American shall constitute a crime.

b. A violation under section 10.01 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.

10.03. *Penalties; Remedies.*

a. A violation of section 10.01 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 10.01 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 the terms of the Tax Agreement shall be seized and possession of the seized product transferred to the State, consistent with applicable provisions of State law.

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.