

Budget and Appropriations Regulations
TAX REGULATIONS
Regulation #R100-02:AC-07

Chapter 7. Tobacco Products.

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, and resolution # 04-0324-137 which authorizes implementation of the Tax Agreement.

1-2. *Purpose.* This policy is intended to provide a framework for ensuring that Tribal tobacco products purchase and sale transactions are understood, and accompanying procedures are uniformly applied. Guidelines are placed to support purchasing activities of the Tribe and to create a managed purchasing system.

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.

Section 3. Tobacco Products

3-1. *Licensing of Retailers.* Any Retailer engaged in the Sale of Retail of tobacco products from a location on Tribal and Trust Lands shall obtain a license as may be required by Tribal law.

3-2. *Authorizing Retailers.* Only those Retailers authorized by Tribal Council resolution may purchase tax exempt tobacco products under the Tribe’s tax exempt quota. Licensed Retailers shall be limited to that portion of the tax exempt quota as may be designated by the Tribal Council.

3-3. *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 that license and/or registration, be required to agree to comply with the following requirements:

- a. A Licensed Retailer must purchase all tobacco products from a State-licensed wholesaler approved by the Tribe;
- b. All tobacco products offered for sale by a Licensed Retailer must bear the State tribal stamp;
- c. A Licensed 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. A Licensed Retailer authorized to either: (1) purchase and sell tax free quota tobacco products; or (2) sell tobacco products to Tribal Members without collecting Michigan tobacco products taxes under the “Refund System”, shall be required to maintain 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. A Licensed Retailer shall permit representatives of the State access to the 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 use to transport tobacco products.

3-3. *Purchases Subject to Michigan Tobacco Products Tax.* Unless exempted by the Tax Ordinance and these Regulations, all purchases of tobacco products by Tribal Members within the Reservation shall be subject to the imposition and collection of Michigan tobacco products tax, which shall be added to the price. Retailers operating within Tribal and Trust Lands shall remit tax proceeds and provide 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.

3-4. *Locations at Which Exempt Purchases May be Made.*

a. Tobacco products may be purchased by Tribal Members without payment of Michigan tobacco products tax at the following retail outlet:

1. Odawa Trading Post at Little River Casino Resort through midnight May 31, 2008.

2. Little River Trading Post on and after June 1, 2008.

b. Except as provided in sub-section (a), Tribal Members may not purchase tax exempt tobacco products at any other retail establishment within the Tribe's Reservation.

3-5. *Limits on Purchases of Exempt Tobacco Products by Tribal Members.*

a. Tribal Members may purchase tobacco products from the designated licensed retailer without payment of tobacco products tax, provided the purchase is solely for personal use and not for resale.

b. Tribal Members shall be prohibited from purchasing more than the posted limit of tax-exempt cigarettes during any calendar month. The designated retailer shall include the full amount of Michigan tobacco products tax in the price of all tobacco products sold to Tribal Members in excess of the posted limit during any calendar month.

c. Monthly purchase limits will be adjusted quarterly, by the Tax Department, based on remaining quota tax-exempt cigarettes available. Adjusted purchase limits will be posted at the designated retailer on the first day of each quarter. An additional adjustment may be made and posted on December 1st based on quota tax-exempt cigarettes remaining for the calendar year.

d. Tribal Members are responsible for staying within the monthly purchase limit posted at the designated retailer. Tribal members must keep track of their own tax-exempt purchases.

e. All sales of tobacco products to Tribal Members in excess of the total annual ceiling for tax-exempt tobacco product sales agreed to by the Tribe and the State of Michigan under the Tax Agreement shall include the full amount of the Michigan tobacco products tax.

f. The Tax Department shall audit the records of all Retailers authorized to sell tax-exempt tobacco products to enforce the limits prescribed in these Regulations. Retailers shall be responsible for paying the Michigan tobacco products tax on all sales of tobacco products to Tribal Members above the monthly limits established in these regulations. Tribal Members who purchase tax-exempt cigarettes above the monthly limits established in these regulations will be responsible for paying

the tobacco products tax on excess purchases. Penalty will be assessed on excess purchases.

3-6. Civil Penalties; Remedies.

a. Any person who violates Section 3-5(c) shall be guilty of a civil infraction and shall be subject to a civil penalty of Fifty Dollars (\$50.00). Each transaction by a person which violates Section 3-5(c) shall be treated as a separate offense.

b. Any person who violates Section 3-5(a) by purchasing tax-exempt tobacco products for, or selling tax-exempt tobacco products to, any person not entitled to purchase the same under the terms of the Tax Agreement shall be guilty of a civil infraction and shall be subject to a civil penalty of One Hundred Dollars (\$100.00). Each transaction by a person which violates Section 3-5(b) shall be treated as a separate offense.

c. Any Retailer who knowingly violates Section 3-5(b) shall be guilty of a civil infraction and shall be subject to a civil penalty of One Hundred Dollars (\$100.00). Each transaction shall be treated as a separate offense.

d. 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. Seizure of tobacco products possessed in violation of the Tax Agreement or these regulations;
3. Suspension of a Tribal Member's privilege to purchase tax-exempt tobacco products for up to 1 year.
4. Any disciplinary action taken against a violator as an employee;
5. Wage garnishment and set-off against any funds owed by the Tribe to any Tribal member;
6. License suspension or revocation;
7. Prosecution or other enforcement action under federal or state law or under the provisions of other chapters of the Tribal Code or Regulations.

3-7. Criminal Offenses; Remedies.

a. Any person who commits a knowing or intentional violation of Section 3-5(c) may be charged with a criminal offense punishable by a fine of up to One Thousand Dollars (\$1,000.00) or imprisonment for not more than six months, or both.

b. Any person who violates Section 3-5(a) by selling tax-exempt tobacco products to any person not entitled to purchase the same under the terms of the Tax Agreement may be charged with a criminal offense punishable by a fine of up to Two-Thousand Five Hundred Dollars (\$2,500.00) or imprisonment for not more than six months, or both.

Section 4. Adoption; Amendment; Repeal

4-1. *Adoption.* This Chapter is approved by the Tribal Council on April 14, 2004, by resolution # 04-0414-159 and amended by resolution #04-1110-453, resolution #06-412-238, resolution #07-0411-169, and resolution #08-507-128.

4-2. *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 approved or adopted in the same manner as set forth in section 4-1.

4-3. *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.

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

4-5. *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.

4-6. *Effective Date.* This Regulation shall take effect on April 14, 2004.