Tax Department Administrative Rule 2006-1

Approved: April 25, 2006

TRIBAL TAX TO BE APPLIED BASED UPON DELIVERY DATE

TDAR-06-1. This rule explains the appropriate treatment of sales and service transactions pursuant to the provisions of the Tax and Revenue Administration Ordinance (#05-100-08) where there is a timing difference between the date the item or service is ordered and the date the item is delivered or service is received. This rule pertains to and is limited in its application to the January 1, 2006 implementation of Tribal Taxes.

RESOLUTION #05-1221-715

The Tribal Council, on December 21, 2005, adopted Resolution #05-12210715 which provided relief from the 6% Lodging & Occupancy Tax, Food & Beverage Tax and Admissions Tax until February 1, 2006.

DISCUSSION

Lodging and Occupancy tax is 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.” [Article IV (4.02)(b)]

Food and Beverage tax 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.” [Article V (5.02)(a)]

Retail sales tax is imposed “. . . for the privilege of engaging in the business of making sales at retail within Tribal and trust lands.” [Article VI (6.03)(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.” [Article VI (6.01)(a)]

“Sale at retail” means a transaction by which the ownership of tangible personal property is transferred for consideration, . . .” [MCL 205.51(1)(b); MSA 7.521(1)(b)]

Admissions tax is imposed upon “. . . the person receiving the right or privilege of admission.” [Article VII (7.02)(b)] “The Admissions tax shall be collected by the person providing the place of amusement, entertainment or recreation . . .” [Article VII (7.02)(c)]

The Tax Department of the Little River Band of Ottawa Indians considers the time and place of actual delivery or goods or receipt of services as being prima facie evidence of a taxable transaction. Accordingly, the date of delivery of the goods or receipt of services will determine the appropriate tax rate applicable to the transaction. If delivery is made or services received before February 1, 2006 (January 1, 2006 for retail sales), there is no Tribal tax on the transaction. If delivery is made on or after February 1, 2006 (January 1, 2006 for retail sales), the applicable Tribal tax rate is 6%.
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Exceptions to this “taxable transaction at delivery” rule require advance approval by the Tax Department. Requests for approval should be well documented, and include agreements by the parties as to who bears the risk of loss to the item being purchased should it be destroyed. In the case of services, the agreement must document who bears the risk of loss in the event of unforeseen price changes or cancellations.

Tax Department Administrative Rule 2006-2 provides relief from Tribal taxes for certain sales agreements entered into before the Tax and Revenue Administration Ordinance was adopted by the Tribal Council on December 14, 2006 if the agreement cannot be withdrawn or altered, or contains a fixed price not subject to change or modification of greater than 10%.

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.