

**Little River Band of Ottawa Indians
Tribal Council**

2608 Government Center Drive
Manistee, MI 49660
(231) 723-8288

Resolution #18-1010-293

Approving Amendments to the Chapter 1 - Tribal Tax Regulations, #R100-08: TRA-01

WHEREAS, the status of the *Gaá Čhíng Ziibi Daáwaa Aniřhinaábek* (Little River Band of Ottawa Indians) as a sovereign and Treaty-making power is confirmed in numerous treaties, from agreements with the initial colonial powers on this land, to various treaties with the United States; and

WHEREAS, the Little River Band of Ottawa Indians (Tribe) is descended from, and is the political successor to, the Grand River Ottawa Bands, signatories of the 1836 Treaty of Washington (7 Stat. 491) with the United States, as reaffirmed by federal law in P.L. 103-324, enacted in 1994; and

WHEREAS, the Tribe adopted a new Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Tribe adopted amendments to the Constitution on April 26, 2004, which became effective upon approval by the Assistant Secretary-Indian Affairs on May 13, 2004; and

WHEREAS, the Tribe adopted amendments to the Constitution on July 11, 2016 which became effective upon approval by the Assistant Secretary-Indian Affairs on August 24, 2016; and

WHEREAS, the legislative powers of the Tribe are vested in the Tribal Council according to Article IV, Section 1 of the Constitution; and

WHEREAS, the Tribal Council is authorized by Article IV, Section 7(a)(1) and (2) to exercise the inherent powers of the Tribe by establishing laws through the enactment of ordinances and adoption of resolutions to govern the conduct of Tribal Members and others within the Tribe's jurisdiction and to promoted, protect and provide for the public health, peace, morals, education and general welfare of the Tribe and its members; and

WHEREAS, the executive powers of the Tribe are vested in the Tribal Ogema according to Article V, Section 1 of the Constitution; and

WHEREAS, the Ogema is authorized by Article V, Section 5(a)(1) to enforce and execute the ordinances, resolutions, and motions adopted by the Tribal Council consistent with the Constitution; and

WHEREAS, the Tribal Council adopted the Administrative Procedures Act, Ordinance #04-100-07, which identifies the processes by which ordinances may be adopted, amended, or repealed; and

WHEREAS, the Tribal Council adopted the Chapter 1. Tribal Tax Regulations, #R100-08:TRA-01; pursuant to the Tax and Revenue Administration Ordinance, Ordinance #05-100-08, Section 11.04; and

WHEREAS, the Tribal Council held a work session on July 9, 2018 on revisions to the Chapter 1. Tribal Tax Regulations, including updating the Tribal Business Tax License process; clarifying Tribal Tax Exemptions; and adding Food and Beverage Licensure Requirements.

WHEREAS, the Tribal Council posted for 30-day comment period those updated revisions on July 18, 2018; and

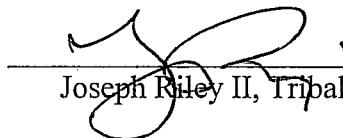
WHEREAS, the Tribal Council held a final work session on September 20, 2018 to review any comments or issues submitted during the 30-day comment period prior to adopting the amendments permanently.

NOW THEREFORE IT IS RESOLVED, that the Tribal Council permanently adopts the following amendments to the Chapter 1. Tribal Tax Regulations, #R100-08:TRA-01.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 7 FOR, 1 AGAINST, 0 ABSTAINING, and 1 ABSENT, at a Regular Session of the Little River Band of Ottawa Indians Tribal Council held on October 10, 2018, at the Little River Band's Lodge in Manistee, Michigan, with a quorum being present for such vote.


Sandra Lewis, Tribal Council Recorder


Joseph Riley II, Tribal Council Speaker

Attest:

Distribution: Council Records Tribal Ogema Tax Department

TAX REGULATIONS
Regulation #R100-08: TRA-01

Chapter 1. Tribal Tax Regulations

Section 1. Authority; Purpose.

1-1. *Authority.* In accordance with Tribal Council Resolution #03-0205-33, which ratified the Tax Agreement between the Tribe and the State of Michigan, Resolution #04-0324-137, which authorized the implementation of the Tax Agreement, and Resolution #05-1214-687, which authorized adoption of the Tax and Revenue Administration Ordinance, Ordinance # 05-100-08.

1-2. *Purpose.* This Regulation 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 and Revenue Administration 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. Unless defined elsewhere, terms defined in this Chapter are defined for the purposes of all tax regulations.

2-2. *Cultural Activities* means, including but not limited to, the 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* means 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.* Sellers engaging in business within tribal and trust lands shall be required to obtain the appropriate tax license. In addition, any seller wholly-owned by the Tribe, Tribal members, or combination thereof located within the reservation or within the agreement area shall be required to register with the Tax Department for the appropriate tax license.

3-2. *Securing the Proper Tax 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 prior to beginning business, on the form prescribed by the Tax Department.

3-3. *Tribal Business Tax License*. Sellers who do business on tribal and trust lands or within the agreement area shall register with the Tax Department using the Tribal Business Tax License Registration form (TD811) or the Temporary Tribal Business Tax License Registration form (TD812).

- a. *Tribal Business Tax Registration form* (TD811). Sellers who intend to do business on a regular basis throughout the year shall register with the Tax Department using this form. Sellers shall submit this form at least six (6) weeks prior to the expected start of business date.
- b. *Temporary Tribal Business Tax Registration form* (TD812). Sellers who intend to do business on an irregular basis shall register with the Tax Department using this form. Sellers shall submit this form at least two (2) weeks prior to the expected issue date.

3-4. *Waiver of Licensing Requirement*. Tribal and tribal member-owned businesses not located on tribal and trust lands may request a waiver in writing from the Tax Department of the tribal business tax license requirement.

3-5. *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 of the Tax and Revenue Administration Ordinance.

3-6. *Expiration of License*. Unless a temporary tribal tax license is issued, every tribal tax license shall expire on the thirty-first (31st) day of December of that year and shall be renewed by furnishing such information as the Tax Department may require. Persons selling at retail at more than one (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.

3-7. *Transfer of License*. A license is not transferable and a new license shall be secured immediately whenever there is a change of ownership of the business. If the new owner fails to apply for a license, that person may be subject 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 or a renewal license to an applicant for noncompliance and/or until delinquent tribal taxes are paid.

Section 4. Tribal Tax Exemptions.

4-1. *Qualified Fundraising Event*. Sales where the transaction takes place at a qualified fundraising event pursuant to this Regulation shall be exempt from Tribal tax. This tax exemption applies to the Tribal tax only. Sellers are still subject to any applicable Michigan taxes per the Michigan General Sales Tax Act, M.C.L. 205.51 to 205.78 or the Michigan Use Tax Act, M.C.L. 205.91 to 205.111.

4-2. *Tribal Tax Exemption Application* (TD815). In addition to registering for a Tribal tax license,

qualified sellers may apply for an exemption from Tribal tax with the Tax Department using the Tribal Tax Exemption Application (TD815).

Section 5. Food and Beverage Licensure Requirements.

5-1. *Food and Beverage Sales.* Sales of prepared food for immediate consumption are subject to the Tribe's Food and Beverage Tax under the Tax and Revenue Administration Ordinance. If the food or beverages are purchased from a Tribal entity, caterer, or other preparer and the Tribal tax or retail sales tax is paid on the purchase at that time, then there is no further tax obligation on the food or beverages.

5-2. *Food Service License.* Unless sellers meet the exemption standards in subsection 5.3 of this Section, sellers that intend to serve or provide food to the public on Tribal and Trust lands are required to obtain a State of Michigan Food Service License and maintain compliance in accordance with the State of Michigan's Food Law Act of 92 of 2000, as amended.

5-3. *Cottage Food Operation.* Sellers that meet the standards of a "cottage food operation" and maintain compliance in accordance with the Michigan's Cottage Food Law, PA 113 of 2010, as amended, shall be exempt from additional food and safety licensing and inspection requirements, including a State of Michigan Food Service License.

Section 6. Filing.

6-1. *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.

6-2. *Change in Return/Payment Schedule.* For any business required to be licensed under the Tax and Revenue Administration Ordinance, the Tax Department may require the filing of returns and payment of the tax for other than quarterly periods. A taxpayer may also request a more frequent filing period if desired.

6-3. *Annual Filing Period.* Tax returns with remittance of tax due shall be remitted to the Tax Department on or before the twentieth (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).

6-4. *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 to \$4,000 for a calendar year (January – December).

6-5. *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 7. Records.

7-1. 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 any taxes governed by the Tax and Revenue Administration Ordinance. The Tax Department may issue a subpoena requiring any person to appear for examination and produce any books, records, or papers within the scope of the inquiry.

7-2. Duty to Keep Records. It is the duty of every person and/or business subject to a tribal tax, to keep and preserve suitable and adequate records of its business, to enable such person/business, as well as the Tribe, to determine the correct amount of the tax for which it is liable.

7-3. Absence of Records. Failure to produce and keep records for the purpose of examination by the Tax Department shall be considered willful noncompliance with the Tax and Revenue Administration 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.

7-4. Required Records. Sellers 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.

7-5. Records Required for Exempt Sales. If the seller claims exemption on certain sales, it shall be required that he or she 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 purchasers 501(C)(3) or (4) letter from the Internal Revenue Service. A Certificate of Exemption from Tribal Tax (Form TD900) may be used to document exemption claims.

7-6. 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 8. Delinquent Taxes.

8-1. Assessment. If a taxpayer fails or refuses to file a return or pay the tax, within the time prescribed by the Tax and Revenue Administration Ordinance, the Tax Department will assess the tax and notify the taxpayer of the amount due.

8-2. *Penalty.* There shall be an added penalty of five percent (5%) of the tax for each month or fraction of a month during which the failure continues, to a maximum of 100%.

8-3. *Interest.* In addition to the penalty, there shall be added interest at the rate of one percent (1%) per month on the amount of tax from the time the tax was due until the date of payment.

Section 9. Investigation Costs.

9-1. *Location of Records.* Any person not having his or her 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 pay 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.

Section 10. Billing and Appeals Process.

10-1. *Notification of Tax Liability.* Prior to assessing a tax, the Tax Department may contact a taxpayer by sending a Letter of Inquiry (Letter of Inquiry Form TD552), which indicates the 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 or 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 thirty (30) days from the date of the letter, 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, the taxpayer will receive an Intent to Assess as described Section 8-2.

10-2. *Intent to Assess.* The Intent to Assess (Form TD552) indicates the tax, penalty, and interest due as well as the taxpayer's appeal rights. The taxpayer has twenty (20) days to appeal the Intent to Assess by requesting an informal conference with the Internal Audit Department or thirty (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 thirty (30) days, the Tax Department will issue a final assessment.

10-3. *Final Assessment.* Once a Final Bill for Taxes Due (Form TD552) 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 11. Taxpayer Rights.

11-1. *Taxpayer Bill of Rights.* Persons subject to a 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 (Michigan Administrative

Code R205.1001-R205.1013).

Section 12. Tax Department Administrative Rules.

12-1. *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 TDAR 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 TDAR.

12-2. *When to Issue Administrative Rule.* A TDAR may be issued when general clarification or interpretation questions occur regarding a Tribal tax policy and/or law.

12-3. *Request for Administrative Rule.* A TDAR can be requested when a taxpayer has an interpretation question regarding general Tribal tax policies and/or laws. Requests for a TDAR must be in writing and addressed to the Tax Department.

Section 13. Adoption; Amendment; Repeal.

13-1. *Adoption.* This Chapter is approved by the Tribal Council on December 20, 2006, by adoption of Resolution #06- 1220-851.

13-2. *Amendment.* This regulation may be amended by the Tax Department in accordance with the Constitution and any rules set forth governing amendments of regulations 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.

13-3. *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.

13-4. *Compliance.* In regards to compliance with this regulation, substantial compliance with the spirit of this regulation rather than complete compliance is acceptable.

13-5. *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.

13-6. *Effective Date.* This Regulation shall take effect immediately upon approval by Tribal Council.