

TITLE 44- CIGARETTE SALES AND TAX CODE

Chapter 44-1 Authority

44-1.01 Authority

The Shoalwater Bay Tribal Council's authority to adopt this Code is found in the Shoalwater Bay Tribal Constitution and in the inherent sovereignty of the Shoalwater Bay Indian Tribe to regulate its own territory and the activities therein.

Chapter 44-2 Purpose

44-2.01 Purpose

- a) The Shoalwater Bay Tribal Council determines that regulation of the sale of cigarettes is essential to the health and welfare of the Shoalwater Bay Indian Tribe and its members.
- b) The Shoalwater Bay Tribal Council determines that a tax base is essential to the Tribe's ability to provide goods and services, and to finance government operations and economic development, for the safety, health and welfare of the Shoalwater Bay Indian Tribe, its members, and those who work on, live on, and visit Shoalwater Bay Tribal Lands.
- c) In the public interest and for the welfare of the Shoalwater Bay Indian Tribe, its employees, the residents of and visitors to Shoalwater Bay Tribal Lands, the Shoalwater Bay Tribal Council, in the exercise of its authority under the Tribal Constitution, declares its purpose by the provisions of this Title to regulate the sale of cigarettes, and to impose, collect, and administer taxes on the retail sale of cigarettes.

Chapter 44-3 Scope; Compliance; Jurisdiction

44-3.01 Scope

This Title shall apply to the full extent of the sovereign jurisdiction of the Shoalwater Bay Indian Tribe upon Shoalwater Bay Tribal Lands.

44-3.02 Compliance

Compliance with this Title hereby is made a condition of entering or residing upon Shoalwater Bay Tribal Lands.

44-3.03 Consent to Jurisdiction

Any person who resides upon Shoalwater Bay Tribal Lands, conducts business on Shoalwater Bay Tribal Lands, engages in a business transaction upon Shoalwater Bay Tribal lands, receives benefits from the Shoalwater Bay Tribal government, including police, fire or emergency services, acts under Tribal authority, or enters upon Shoalwater Bay Tribal lands, shall be deemed to have consented to the following:

- a) To be bound by the terms of this Title;
- b) To the exercise of civil jurisdiction by the Shoalwater Bay Tribal Court in legal actions arising pursuant to this Title; and
- c) To detainment, service of summons and process, and search and seizure, in conjunction with legal actions arising pursuant to this Title.

Chapter 44-4 Definitions

44-4.01 Definitions

The following definitions apply throughout this Title unless otherwise specified or the context clearly indicates otherwise. The term "shall" is always mandatory and is not discretionary.

- a) "Agreement" means the Cigarette Tax Contract between the Shoalwater Bay Indian Tribe and the State of Washington.
- b) "Auditor" means an Auditor selected pursuant to Chapter 44-15 of this Title.
- c) "Carton" or "carton of cigarettes" means, unless otherwise indicated, a carton of two-hundred (200) cigarettes.
- d) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape, and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.
- e) "Court" means the Shoalwater Bay Tribal Court, and includes the Shoalwater Bay Tribal Court of Appeals

- f) "Department" means the state of Washington Department of Revenue.
- g) "Essential government services" means services provided by the Tribe including, but not limited to, administration, public facilities, fire, court, police, health, education, elder care, social services, sewer, water, environmental and land use, transportation, utility services, community development and economic development.
- h) "General fund" means the Shoalwater Bay Indian Tribe general fund.
- i) "Local retail sales tax" means the combined Washington local retail sales taxes applicable in the area in which cigarettes are sold.
- j) "Non-Indian" means an individual who is neither a Shoalwater Bay Tribal member nor a nonmember Indian.
- k) "Nonmember Indian" means an enrolled member of a federally recognized Indian Tribe other than the Shoalwater Bay Indian Tribe.
- l) "Person" means and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity.
- m) "Retail selling price" means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, which price includes the Tribal cigarette tax.
- n) "Self-Certified Tribal Wholesaler" means a wholesaler who is a federally recognized Indian Tribe or a member of such a Tribe, who has certified, by letter to the Department, that it will abide by the terms of the Agreement and this Title; and who has signed a contract with the Tribe requiring the wholesaler to abide by the terms of the Agreement and this Title.
- o) "Self-Certified Wholesaler" means an out-of-state wholesaler who is not a Self-Certified Tribal Wholesaler; who has certified, by letter to the Department, that the wholesaler shall abide by the terms of the Agreement and this Title; and who has signed a contract with the Tribe requiring the wholesaler to abide by the terms of the Agreement and this Title.

- (p) "Shoalwater Bay Tribal Lands" means:
- 1) All land within the limits of the Shoalwater Bay Indian Reservation, notwithstanding the issuance of any patent, and, including rights of way running through the Reservation; and
 - 2) All Indian allotments or other lands held in trust for a Shoalwater Bay Tribal Member or the Tribe, including rights of way running through the same.
- (q) "Shoalwater Bay Indian Reservation" or "Reservation" means the area recognized as the Shoalwater Bay Indian Reservation by the United States Department of the Interior.
- (r) "State" means the state of Washington.
- (s) "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; Cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe otherwise, or both, for chewing and smoking. "Tobacco product" does not include cigarettes.
- t) "Tribal Cigarette Tax" means the tax or taxes enacted as a provision of Tribal law on the units of cigarettes sold, and on the purchase of cigarettes by retail buyers.
- u) "Tribal Council" means the Shoalwater Bay Tribal Council.
- v) "Tribal Member" means an enrolled member of the Shoalwater Bay Indian Tribe.
- w) "Tribal Retailer" means a cigarette retailer wholly owned by the Shoalwater Bay Indian Tribe or wholly owned by an economic instrumentality of the Tribe, or wholly owned by one of the branches or agencies of the Tribe, and located on Shoalwater Bay Tribal Lands.
- x) "Tribally-Licensed Retailer" means a Tribal member who holds a Shoalwater Bay Tribal Cigarette Outlet License, issued by the Tribal Council, to sell cigarettes at retail from a business located on Shoalwater Bay Tribal Lands.

- y) "Tribal Tax Stamp" means the stamp or stamps that indicate the Shoalwater Bay Tribal cigarette tax imposed under the Agreement is paid or that identify those cigarettes with respect to which no tax or another Tribal tax is imposed.
- z) "Tribe" or "Tribal" means or refers to the Shoalwater Bay Indian Tribe.
- (aa) "Wholesaler" means every person who purchases, sells, or distributes cigarettes for the purpose of resale only.

Chapter 44-5 Cigarette Tax - Agreement with Washington State

44-5.01 Intergovernmental Agreement with Washington State

The Tribe has entered into a Cigarette Contract ("the Agreement") with the state of Washington regarding the taxation of cigarettes sold on Shoalwater Bay Tribal Lands.

44-5.02 Incorporation of the Agreement

All terms and conditions of the Agreement are incorporated into this Title as if fully set forth herein.

44-5.03 Prohibition against Certain Sales

- a) Pursuant to the Agreement, mail order type sales, such as internet, catalog, and telephone sales, outside of Shoalwater Bay Tribal Lands are prohibited; unless and until the State and the Tribe have entered into a Memorandum of Agreement in regard to the taxability of such sales.
- b) Only Tribal Retailers and Tribally-Licensed Retailers may engage in cigarette retail sales activities.
- c) Only State-Certified Wholesalers, Self-Certified Wholesalers or the Tribe may engage in wholesale cigarette activities.
- d) Any activity in violation of this Section constitutes a civil infraction pursuant to this Title.
- e) Any person or entity that violates this Section is subject to confiscation of all unstamped cigarettes, and to a minimum fine equal to the amount of the cigarette levy that should have been assessed against such cigarettes

pursuant to Chapter 44-7.

44-5.04 Tribal Retailers; Notice to State Required For New Tribal Retailers.

- (a) "Tribal retailers" include:
 - 1) The Shoalwater Bay Casino;
 - 2) The Shoalwater Bay Gas Station and Mini-Mart.
- b) The Tribe shall notify the Department thirty (30) days before the start up of cigarette sales by any other Tribal Retailer.
- c) The Tribe shall provide information regarding the status of the land upon which any Tribal Retailer is located at least thirty (30) days before to the startup of any new cigarette sales by such retailer.

44-5.05 Tribally-Licensed Retailers; Application

- a) The Tribal Council, in its sole and unreviewable discretion, may issue a Shoalwater Bay Indian Tribe Cigarette Outlet License ("License") authorizing a Shoalwater Bay Tribal Member eighteen (18) years of age or older to engage in retail sale of cigarettes at a specified location within Shoalwater Bay Tribal Lands.
- b) An applicant for a license ("Applicant") is seeking a privilege, and assumes and accepts any and all risk of adverse publicity, notoriety, embarrassment, criticism, or other action or financial loss that may occur in connection with the application process or the public disclosure of information requested.
- c) The Applicant expressly waives any claim for damages that may result from the application process.
- d) The Applicant must submit an application approved by the Tribal Council.
- e) Any misrepresentation or omission made with respect to an application may be grounds for denial of the License.
- f) An applicant need only submit the original application and one (1) set of requested materials.
- g) Express conditions of a License shall include compliance with this Title and the Agreement.

44-5.6 Tribally-Licensed Retailers; Notice to the State

The Tribe shall provide to the Department a list of Tribally-Licensed Retailers, and shall provide the Department with an updated list upon the Tribe's issuance of a License to a Tribally-Licensed Retailer as provided in Section 44-5.04.

44-5.7 Purchase of Cigarettes by Tribal Retailers and Tribally-Licensed Retailers

- a) Tribal Retailers and Tribally-Licensed Retailers shall purchase cigarettes for sale within Shoalwater Bay Tribal Lands only from:
 - 1) Wholesalers who meet the requirements of Part 6 of the Agreement; or
 - 2) The Tribe, or its enterprises, as a Tribal manufacturer.
- b) All cigarettes sold by Tribal Retailers and Tribally-Licensed Retailers shall bear a Tribal tax stamp.
- c) The Tribe, or its designee, shall notify the state Department of Revenue seventy-two (72) hours in advance of all shipments of cigarettes by Self-Certified Wholesalers or Self-Certified Tribal Wholesalers to Tribal Retailers or Tribally-Licensed Retailers.
 - 1) Tribal Retailers and Tribally-Licensed Retailers shall notify the Tribe, the SWBCTED Director or the Director's designee, of all cigarette shipments no less than five (5) days in advance of all shipments.
 - 2) Such notice shall include the name of the wholesaler, detail regarding both quantity and brand, and the invoice order number.

Chapter 44-6 Prohibition Against Sales to Minors

44-6.01 Sales to Minors Prohibited

- a) No person shall sell or give, or permit to be sold or given, cigarettes to any person under the age of eighteen (18).
- b) Violation of Subsection 44-6.01 (a) is a civil infraction, subject to the following penalties:

- 1) Upon a first (1st) violation a fine of two-hundred and fifty dollars (\$250);
 - 2) Upon a second (2nd) violation within any rolling one (1) year period, a fine of five-hundred dollars (\$500);
 - 3) Upon a third (3rd) violation within any rolling one (1) year period, a fine of seven-hundred and fifty dollars (\$750);
 - 4) Upon a fourth (4th) violation within any rolling two (2) year period, a fine of one-thousand dollars (\$1,000); and
 - 5) Upon a fifth (5th) violation within any rolling two (2) year period, a fine of one-thousand dollars (\$1,000), and termination from employment or, in the case of a Tribally-Licensed Retailer, revocation of the licensee's Shoalwater Bay Tribe Cigarette Outlet License.
 - 6) If a Shoalwater Bay Tribal Cigarette Outlet License is revoked pursuant to Subsection 44-6.01(b)(5), the Tribe shall refuse to issue a Shoalwater Bay Tribe Cigarette Outlet License to a licensee for a period of one (1) year from the date of the infraction.
- c) It shall not be defense for a violation of Subsection 44-6.01(a) that the purchaser acted, or was believed by the defendant to act, as agent or representative of another.
- d) It shall be a defense to a violation of Subsection 44-6.01(a) that the person making a sale reasonably relied on officially issued identification that shows the purchaser's age and bears the purchaser's signature and photograph.

Chapter 44-7 Levy and Assessment of the Tribal Cigarette Tax

44-7.01 Tribal Cigarette Tax—Levy

Beginning no later than the first (1st) date of the sale of cigarettes by Tribal Retailers or Tribally-Licensed Retailers after the effective date of the Agreement, the Tribe shall impose taxes, pursuant to the terms of this Chapter, on all sales of cigarettes to all persons.

44-7.02 Tribal Cigarette Tax Rate

The Tribal cigarette tax rate shall be as follows:

- a) For the first thirty-six (36) months after the effective date of the Agreement ("phase-in period"), the tax rate shall equal no less than the sum of an amount equal to eighty-percent (80%) of the State cigarette tax that is expressed in cents per cigarette, plus an amount determined pursuant to an agreed-upon formula pursuant to Part 3 of the Agreement in lieu of state and local retail sales taxes.
- b) The phase-in period may be reduced in accordance Section 3.4 of the Agreement.
- c) No later than thirty-six (36) months after the initial effective date of the Agreement, and subject to the phase-in period reduction under Section 3.4 of the Agreement, the Tribal cigarette tax rate shall be no less than the sum of an amount equal to one-hundred percent (100%) of the State cigarette tax that is expressed in cents per cigarette, plus an amount determined pursuant to an agreed-upon formula under Part 3 of the Agreement in lieu of state and local retail sales taxes.
- d) If during any quarter the number of cartons of cigarettes, excluding those manufactured by the Shoalwater Bay Indian Tribe or its enterprises, that are sold at retail exceeds by at least ten percent (10%) the quarterly average sales of the six (6) months preceding the imposition of the Tribal cigarette tax, the thirty-six (36) month phase-in period shall be reduced by three (3) months. These reductions shall be cumulative.
- e) The quarterly average sales baseline shall be determined by the Auditor.
- f) For the purposes of this provision:
 - (1) "Quarter" means a three (3) month period, each quarter immediately succeeding the next. The first (1st) quarter begins the first (1st) day of the first (1st) month the Tribal cigarette tax is imposed, if the imposition of the tax is on or before the fifteenth (15th) of the month, or begins the first (1st) day of the second (2nd) month the Tribal cigarette tax is imposed, if the imposition of the tax is after the (15th) of the month; and
 - (2) The "quarterly average sales" means the sum of the retail sales made during the two (2) quarters divided by two (2).

- g) During the term of the Agreement, upon any future increase in the state cigarette tax, state retail sales tax, or local retail sales tax, the Tribal tax on cigarettes shall increase by no less than one hundred percent (100%) of the increase in the combined state and local tax rates; *provided, however,* that during the phase-in period the Tribal tax rate shall be set so that it is at least equal to eighty percent (80%) of the then-current combined state cigarette tax and an amount determined pursuant to an agreed-upon formula under Part 3 of the Agreement in lieu of state and local retail sales taxes.
- h) During the term of the Agreement, upon any future decrease in the State cigarette tax, State retail sales tax, or local retail sales tax, the Tribal tax on cigarettes may decrease to a minimum of no less than one-hundred percent (100%) of the combined state and local tax rates; *provided, however,* that during the phase-in period the Tribal tax rate shall be set so that it is at least equal to eighty percent (80%) of the then-current combined state cigarette tax and state and local sales tax, as reflected pursuant to an agreed-upon formula under Part 3 of the Agreement in lieu of State and local retail sales taxes.

44-7.03 Cigarettes Manufactured by the Tribe or a Tribal Enterprise within Shoalwater Bay Tribal Lands

All cigarettes manufactured by the Tribe or its enterprises upon Shoalwater Bay Tribal lands that also are sold within Shoalwater Bay Tribal Lands shall be exempt from the Tribal cigarette tax and from State cigarette taxes and State and local sales and use taxes.

44-7.04 Tobacco Products not Subject to the Tribal Cigarette Tax Levy

Sale of tobacco products shall not be subject to the Tribal cigarette tax levy.

44-7.05 Mail Order Type Sales Outside of Shoalwater Bay Tribal Lands and Outside of Washington State

Mail order type sales of cigarettes, such as Internet, catalog, and telephone sales, to purchasers outside of Indian country and outside of Washington State, shall not be subject to the Tribal cigarette tax levy.

Chapter 44-8 Collection and Payment of Tribal Cigarette Taxes

44-8.01 Stamp Vendor

The Tribe shall contract with a bank or other stamp vendor, satisfactory to both the Tribe and the Department, to distribute Tribal tax stamps.

44-8.02 Contract between the Tribe and the Stamp Vendor

The contract between the Tribe and the Stamp Vendor shall provide that the stamp vendor shall purchase a supply of Tribal tax stamps from the stamp manufacturer, or the Department; and make them available for purchase.

44-8.03 Stamp Vendor Reporting Requirements

- a) The Tribe shall require the Stamp Vendor to provide to the Tribe and the Department timely reports detailing the number of Tribal tax stamps sold, and make its records available for auditing by the Tribe and the Department.
- b) The Tribe's contract with the Stamp Vendor shall specify a process by which the Tribe is assured that all wholesalers who sell cigarettes to Tribal Retailers are paying the applicable Tribal taxes.

44-8.04 Distribution of Tribal Tax Stamps by Stamp Vendor

The Stamp Vendor shall distribute stamps to wholesalers, upon payment of the applicable Tribal taxes by the wholesaler, and remit all collected taxes to the Tribe.

44-8.05 Tribe as a Stamping Wholesaler

- a) If the Tribe elects to act as a stamping wholesaler, the Tribe also shall act as the Stamp Vendor.
- b) In the event the Tribe elects to act as a stamping wholesaler, the Tribe shall institute appropriate segregation of duties and internal controls regarding stamp vending and handling.

44-8.6 Pre-Collection of the Tribal Tax; Inclusion in Sales Price

- a) Whenever cigarette taxes are paid by any person other than the consumer, user, or possessor, that payment shall be considered a pre-collection of such taxes due.
- b) When the tax is prepaid by another, this amount is part of the selling price of the cigarette to the retail purchaser and shall be passed on by the retail purchaser to the consumer.

Chapter 44-09 Requirements for Affixation of Stamps by Wholesalers

44-09.01 Wholesalers Responsible for Affixing Tribal Stamp Taxes

Wholesalers shall be responsible for affixing the Tribal tax stamps to the smallest container of cigarettes that will be sold or distributed by the Tribal Retailer or Tribally-Licensed Retailer.

44.09.02 Tribal Stamp Tax Affixation; Requirements

- a) Stamps shall be affixed so that the stamps may not be removed from the package without destroying the stamp.
- b) Stamps shall be affixed so the stamps readily can be ascertained by inspection to ensure the tax has been paid.
- c) Wholesalers may possess unstamped cigarettes only for as long as is reasonably necessary to affix Tribal tax stamps to the packages for sale.

Chapter 44-10 Prohibition Against Sale of Unstamped Cigarettes

44-10.01 Sale of Unstamped Cigarettes Prohibited

- a) Unless specifically exempted under this Title, all cigarettes sold or intended for sale within Shoalwater Bay Tribal lands shall bear the Tribe's Cigarette Tax Stamp in the manner required pursuant to this Title.
- b) Any person who possesses unstamped cigarettes in violation of this Title with the intent to sell such cigarettes, shall be guilty of an infraction and shall be subject to the following penalties:
 - 1) A fine equal to the amount of the cigarette levy that should have been assessed against such cigarettes pursuant to Chapter 44-7;
 - 2) Forfeiture of all unstamped cigarettes; and
 - 3) If applicable, revocation of the Shoalwater Bay Tribe Cigarette Outlet License for a minimum of three (3) years.

Chapter 44-11 Retailer Compliance Program

44-11.01 Tribal and Tribally-Licensed Retailer Compliance Program; Establishment; Purpose

- a) The Tribe hereby establishes the Tribal and Tribally-Licensed Retailer Compliance Program ("Program").
- b) The purpose of the Program is to monitor compliance with the Tribe's Cigarette Sales and Tax Code and with the Agreement.
- c) The compliance program is designed to monitor and to investigate Tribal and Tribally- Licensed Retailers in regard to:
 - 1) Sales to minors;
 - 2) Sales of unstamped cigarettes;
 - 3) Sales of cigarettes obtained from unauthorized sources; and
 - 4) Sales of exempt cigarettes to ineligible persons.
- d) The Tribe shall provide monitoring, sampling, investigation, reporting, and related activity necessary to carry out the Tribal and Tribally-Licensed Retailer compliance program by the Tribe.
- e) The Tribe shall report violations of 44-10.01(3) and enforcement actions taken pursuant to Tribal law to the Department within thirty (30) days.

Chapter 44-12 Records

44-12.01 Stamp Vendor

- a) The Stamp Vendor shall maintain records and invoices of stamps purchased from the stamp manufacturer, records and invoices of sales of stamps to Licensed Wholesalers, manufacturers, Self-Certified wholesalers, and Self-Certified Tribal Wholesalers.*
- b) All records required to be maintained by the Stamp Vendor shall be made available for inspection and duplication by the Shoalwater Bay Tribal Cigarette Tax Enforcement Department ("SWBCTED"), and the Third (3rd) Party Auditor, pursuant to Chapter 14 of this Title.

44-12.02 Tribal Retailers

- a) Tribal Retailers shall maintain records and invoices of cigarettes purchased from Licensed Wholesalers, Self-Certified Wholesalers, Self-Certified Tribal Wholesalers and Manufacturers; records and invoices of cigarettes sold; cigarette inventory; and records to verify that the retail selling price included the applicable Tribal taxes.
- b) All records required to be maintained by Tribal Retailers shall be made available for inspection and duplication by the SWBCTED, and the Auditor, pursuant to Chapter 14 of this Title.

44-12.03 Tribally-Licensed Retailers

- a) Tribally-Licensed Retailers shall maintain records and invoices of cigarettes purchased from Licensed Wholesalers, Self-Certified Wholesalers, Self-Certified Tribal Wholesalers and Manufacturers; records and invoices of cigarettes sold; cigarette inventory; and additional records necessary to verify that the retail selling price included the applicable Tribal taxes.
- b) All records required to be maintained by Tribally-Licensed Retailers shall be made available for inspection and duplication by the SWBCTED, and the Auditor pursuant to Chapter 14 of this Title.

44-12.04 Tribe

- a) The Tribe shall maintain records necessary to verify that all Tribal tax revenue was used to fund essential government services of the Tribe.
- b) All records required to be maintained by the Tribe shall be made available for inspection and duplication by the SWBCTED and the Auditor, pursuant to Chapter 14 of this Title.

44-12.05 Self-Certified Wholesalers; Self-Certified Tribal Wholesalers

- a) Self-Certified Wholesalers and Self-Certified Tribal Wholesalers shall maintain records and invoices of stamp purchases, records and invoices of sales of stamped cigarettes, stamp inventory, and the stamping process.
- b) All records required to be maintained by Self-Certified Wholesalers and Self-Certified Tribal Wholesalers shall be made available for inspection and duplication by the SWBCTED and the Auditor pursuant to Chapter 14 of this Title.

44-12.6 Wholesalers Licensed by the State

- a) Wholesalers licensed by the State are subject to the requirements as set forth in Title 82 RCW and any rules adopted thereunder, and must maintain adequate records detailing which cigarettes are subject to state tax and which cigarettes are subject to Shoalwater Bay Indian Tribal taxes, as evidenced by the proper stamp and tax rate.
- b) All records required to be maintained by Wholesalers licensed by the State shall be made available for inspection and duplication by the SWBCTED Auditor, pursuant to Chapter 14 of this Title.

Chapter 44-13 Use of Tribal Cigarette Tax Revenue

44-13.01 Cigarette Tax—Use of Tribal Levy

- a) Tribal cigarette tax revenue shall be used only for essential government services, and may not be used to subsidize Tribal cigarette retailers.
- b) For the purposes of this Chapter, "subsidize" means that proceeds from the Tribal cigarette tax pursuant to the Agreement cannot be expended on the enterprise activities of the Tribal retail cigarette business.
- c) Where the cigarette business is located within the same facility as a retail food business, the proceeds cannot be expended to support the retail food business.

44-13.02 Tribal Retail Cigarette Enterprise Activities

"Tribal Retail Cigarette Enterprise Activities" include paying wages, benefits, bonuses, or expenses related to the maintenance and operation of the retail facility or typically considered to be part of a business' operating expenses and overhead.

44-13.03 Non-Enterprise Activities

Non-Enterprise Activities include, but are not limited to: government services to provide and maintain infrastructure, such as sidewalks, roads, and utilities; governmental administrative services; general governmental services, such as, accounting, human resources, planning, legal; services such as fire protection and law enforcement; the costs of administering deductions and exemptions similar to those available to retailers, wholesalers and others under state law; providing or contracting for health benefits, economic development, natural resource

protection and enhancement; the provision of job services; and distribution of moneys related to trust funds, education, and general assistance.

Chapter 44-14 Cigarette Tax—Audit

44-14.01 Audit

- (a) Pursuant to Part 8 of the Agreement, the Tribe will retain, at its own expense, an independent third party Auditor or, alternatively, may use its own internal Auditor to verify its compliance with this Contract.
- b) The Auditor shall be a certified public accountant licensed by the state of Washington.
- c) The Auditor shall perform all work required under Part 8 of the Agreement

Chapter 44-15 Shoalwater Bay Tribal Cigarette Tax Enforcement Department

44-15.01 Establishment of the Shoalwater Bay Tribal Cigarette Tax Enforcement Department

- a) The Tribe hereby establishes the Shoalwater Bay Cigarette Tax Enforcement Department ("SWBCTED").
- b) The SWBCTED is authorized and empowered to ensure compliance with this Title and with the Agreement.
- c) The Tribal Council shall appoint a Director ("Director") for the SWBCTED.
- d) Upon authorization of the Tribal Council, the SWBCTED Director may employ agents to assist in the enforcement of this Title and the Agreement.
- e) The Director, and any duly authorized SWBCTED agents, shall hold a limited commission, issued by the Tribal Council, to enforce the Code and the Agreement including the issuance of citations based upon commission of infractions set forth in this Title.

44-15.02 Inspections

- a) The Director, or the Director's authorized representative, upon presentation of appropriate credentials, reasonably may inspect and investigate locations within Shoalwater Bay Tribal Lands upon which cigarette operations are occurring to determine whether:

- 1) Persons engaged in activities regulated under this Title properly are licensed;
- 2) Cigarette sales are conducted pursuant to the requirements of this Title;
- 3) Cigarettes properly are stamped pursuant to the requirements of this Title; and
- 4) Records properly are being maintained pursuant to requirements of this Title.

Chapter 44-16 Penalties

44-16.01 Tribally-Licensed Retailers; Cease and Desist Orders

- a) If the Director determines that a Tribally-Licensed Retailer's failure to comply with any provision of this Code, the Agreement, or any provision of the Shoalwater Bay Tribal Law and Order Code, poses a direct and immediate threat to the peace, safety, morals, or general welfare of persons residing upon Shoalwater Bay Tribal Lands, or constitutes a willful violation of this Code or the Agreement, the Director shall issue an order commanding the Tribally-Licensed Retailer immediately to cease and desist any and all cigarette sales.
- b) Any employee of a Tribally-Licensed Retailer who is served by the Director with a cease and desist order is deemed to be an agent of the Tribally-Licensed Retailer, and issuance of the cease and desist order to the employee is notice to the Tribally Licensed Retailer.
- c) If the Director personally serves upon an employee a cease and desist order, the Director, within four (4) working days, shall send a copy of the cease and desist order, by certified mail, to the holder of the Shoalwater Bay Tribe Cigarette Outlet License.
- d) The Tribally-Licensed Retailer shall cease and desist operation immediately upon service of the cease and desist order.
- e) Within fifteen (15) days of the issuance of the cease and desist order, the Tribally Licensed Retailer may request, in writing, an expedited appeal hearing before the Shoalwater Bay Tribal Court, which hearing shall be held no later than forty-eight (48) hours, excluding weekends and holidays, from the time of submission of the Notice of Appeal and Request for Expedited Hearing to the Tribal Court.

- f) The filing of a Notice of Appeal and Request for an Expedited Hearing shall not stay the effect of the Cease and Desist Order.
- g) Cease and desist orders shall be adjudicated as Notices of Infraction pursuant to Chapter 44-16, hereof.
- h) If the Director reasonably determines that a person is selling cigarettes without a Shoalwater Bay Tribe Cigarette Outlet License, the Director shall issue a cease and desist order pursuant to this Chapter.

44-16.02 Infractions

- a) Any violation of this Title shall constitute a civil infraction.
- b) The Director may issue a Notice of Infraction if the Director reasonably believes that a person has committed an infraction under this Title.

44-16.03 Sovereign Immunity; Tribal Retailer Employees

- a) All Tribal Retailers shall act in conformity with the requirements of this Title and the requirements of the Agreement.
- b) Any person employed by the Tribe to work for or manage a Tribal Retail Establishment is directed to comply with the requirements of this Title and the requirements of the Agreement.
- c) Any person employed by the Tribe to work for or manage a Tribal Retail Establishment who does not comply with the requirements of this Title, or with the requirements of the Agreement, hereby is determined to not be acting within his official capacity or within the scope of the employee's authority.
 - 1) The Sovereign Immunity of the Tribe shall not extend to a person employed by the Tribe to work for or manage a Tribal Retail Establishment when such person does not act within their official capacity or within the scope of their authority.
 - 2) The SWBCTED is authorized to issue a notice of infraction to any person employed by the Tribe to work for or manage a Tribal Retail Establishment who violates any provision of this Title.
- d) With the limited exception specifically set forth in this Section, nothing in this Title shall in any way act to waive the Tribe's sovereign immunity.

44-16.04 Infractions; Issuance

- a) The Director shall serve a Notice of Infraction issued under this Section:
 - 1) By personal service upon the person who has committed the infraction; or
 - 2) By certified mail directed to the person who has committed the infraction.

- b) If the Director personally serves a Notice of Infraction upon an employee, the Director, within fourteen (14) days, shall send a copy of the Notice of Infraction by certified mail to the Manager of the Tribal Retail Establishment or to the holder of the Shoalwater Bay Tribe Cigarette Outlet License.

44-16.05 Infractions; Form

- a) The form of a Notice of Infraction issued under this Code shall include the following:
 - 1) A statement that the Notice represents a determination that the person has committed an infraction named in the notice, and that the determination shall be final unless contested as provided in this Title;
 - 2) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;
 - 3) A statement of the specific violation that necessitated issuance of the infraction;
 - 4) A statement of the penalty involved if the infraction is established;
 - 5) A statement of the options provided in this Title for responding to the Notice and the procedures necessary to exercise those options;
 - 6) A statement that, at any hearing to contest the Notice of Infraction, the Director has the burden of proving, by a preponderance of the evidence, that the person committed the infraction;
 - 7) A statement notifying the person that they may subpoena witnesses, including the Director;
 - 8) A statement that the person who the Director has served with the Notice of Infraction shall sign, that the person promises to respond to

the Notice of Infraction in one (1) of the ways provided in this Title;

- 9) A statement that refusal to sign the infraction, as directed in Subsection 44-16-05 (8), does not affect the validity of the infraction nor deprive the Shoalwater Bay Tribal Court of personal and subject matter jurisdiction to adjudicate the infraction; and
 - 10) A statement that a licensee's failure to respond to a Notice of Infraction shall result in a determination that the infraction was committed and shall result in the assessment of the penalty set forth in the infraction.
- b) Unless contested in accordance with this Title, the Notice of Infraction represents a determination that the infraction was committed.

Chapter 44-17 Responses and Appeals

44-17.01 Response To Notice of Infraction

- a) A person who is issued a Notice of Infraction shall respond within twenty (20) days of the date of issuance of the Notice of Infraction.
- b) If the person named in the Notice of Infraction does not elect to contest the Notice of Infraction, the licensee shall pay to the Shoalwater Bay Tribe, by check or money order, the amount of the penalty prescribed for the infraction.
- c) If the Director receives a response that does not contest the Notice of Infraction, but that includes payment of the appropriate penalty, the Director shall make the appropriate entry in the records and close the matter.
- d) If the person named in the Notice of Infraction elects to contest the Notice of Infraction, the person shall respond by filing a Notice of Appeal to the Shoalwater Bay Tribal Court specifying the grounds for the appeal.
- e) If any person issued a Notice of Infraction fails to respond within twenty (20) days of the issuance of the infraction, the person shall be deemed to have admitted to committing the infraction and shall be liable for the penalty set forth in the Notice of Infraction.

44.17.02 Appeal Procedure

- a) A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without a jury.

- b) The Court may consider the Notice of Infraction and any other written report made under oath and submitted by the Director that was the basis for the issuance of the notice, in lieu of the Director's personal appearance at the hearing.
- c) An attorney may represent the Director.
- d) The person may subpoena witnesses, including the Director, and has the right to present evidence and examine witnesses present in Court.
- e) The burden of proof is upon the Director to establish the commission of the infraction by a preponderance of the evidence.
- f) After consideration of the evidence and argument, the Court shall determine whether the person committed the infraction.
- g) Where it is not established that the infraction was committed, the Court shall issue an order dismissing the Notice.
- h) Where it is established that the person committed an infraction, the Court shall issue an appropriate order.
 - 1) The final order shall include findings showing that:
 - A) The Tribal Court has jurisdiction over the subject matter and the parties; and
 - B) The judgment was consistent with the Law and Order Code of the Tribe.
- i) A decision by the Tribal Court on the appeal shall be final and unreviewable.
 - 1) If, after final determination by the Shoalwater Bay Tribal Court that a person has committed the infraction, the person fails to pay a monetary penalty within thirty (30) days, the person shall be subject to contempt of court.

44-17.03 Infraction Penalty

- a) For all violations of this Title for which a specific penalty is not established, the Director shall assess a monetary penalty of five-hundred dollars (\$500) upon a person found to have committed an infraction under this Title.

- b) The Director shall deposit monetary penalties collected under this Title in the general fund.

Chapter 44-18 Miscellaneous

44.18.01 Cigarette Tax - Prior Resolutions

This Title shall supersede all previous Tribal Council resolutions dealing with the levy of Tribal cigarette taxes.

44-18.02 Cigarette Sales -Permitted

Tribal Retailers and Tribally-Licensed Retailers are the only retail businesses authorized to sell cigarettes within Shoalwater Bay Tribal Lands.

44-18.03 Prohibition Against Resale

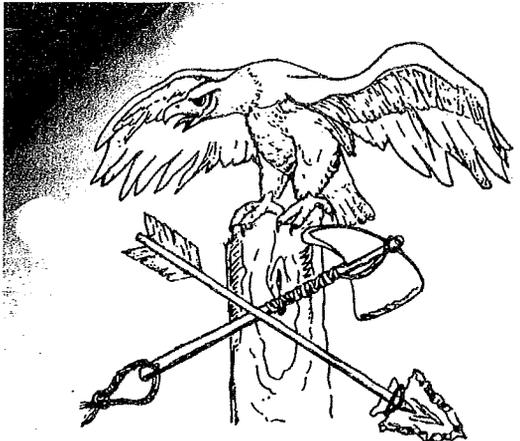
- a) Consumers shall not purchase for resale any cigarettes sold by Tribal Retailers and Tribally-Licensed Retailers.
- b) Tribal Retailers and Tribally-Licensed Retailers shall post a notice advising that cigarettes may not be purchased for resale.
- c) Any person who violates, or conspires to violate, this Section shall be guilty of an infraction punishable by a one-thousand dollar (\$1000) fine, confiscation of all cigarettes purchased for resale, and, if applicable, a three (3) year revocation of any Shoalwater Bay Indian Tribe Cigarette Outlet License.

44-18.04 Short Title

This act shall be known and cited as the Shoalwater Bay Tribal Cigarette Sales and Tax Code.

44-18.05 Severability

If any provision of this Title, or its application to any person or circumstance is held invalid, the remainder of the Title, or the application of the provision to other persons or circumstances, is not affected.



SHOALWATER BAY INDIAN TRIBE

P.O. Box 130 • Tokeland, Washington 98590
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SHOALWATER BAY INDIAN TRIBE RESOLUTION NO. 01-22-10-05

RESOLVED BY THE SHOALWATER BAY INDIAN TRIBE AS FOLLOWS:

WHEREAS, the Shoalwater Bay Tribe ("Tribe") is a federally recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and,

WHEREAS, the Shoalwater Bay Tribal Council ("Tribal Council") is the governing body of the Tribe in accordance with the Constitution of the Shoalwater Bay Indian Tribe; and,

WHEREAS, under the Constitution of the Shoalwater Bay Indian Tribe, the Tribal Council is authorized to enact laws to protect the health, safety and welfare of the tribe and its members; and,

WHEREAS, the Tribal Council is empowered to take all actions necessary for the exercise of powers delegated or vested in the Tribal Council pursuant to the Constitution of the Shoalwater Bay Indian Tribe; and,

WHEREAS, the Tribal Council has reviewed the proposed Shoalwater Bay Cigarette Tax Code and concludes that the enactment of the Code will protect the health, safety and welfare of the Tribe and its members and will also effectuate the Tribe's inherent sovereign power to tax transactions that occur with in the Tribe's lands;

WHEREAS, the Tribal Council finds that proposed Cigarette Tax, effectuated by the Code, will increase tax revenue to assist the Tribe in providing essential governmental services to its members;

NOW THEREFORE BE IT RESOLVED THAT, the Tribal Council hereby enacts the attached Shoalwater Bay Cigarette Tax Code.

CERTIFICATION January 2010

The Shoalwater Bay Tribal Council on the 21 day of ~~November 2009~~, enacted the above Resolution, by vote of 5 for, 0 against, 0 abstained, and 0 absent, under authority contained in Article VI of the Constitution of the Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation.

Attest:


LYNN CLARK
Tribal Secretary


Charlene Nelson
Tribal Chairperson