

ELY
SHOSHONE
TAXATION
ORDINANCE

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TAXATION ORDINANCE
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ATTORNEY
LEGAL OPINION

ELY SHOSHONE TRIBE
AUTHORITY
TO
TAX

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MEMORANDUM

TO: Ely Shoshone Tribal Council
FROM: John Fredericks III
DATE: September 1, 2006
RE: Ely Shoshone Tribe's Legal Authority to Tax

INTRODUCTION

This Memorandum sets forth the legal authority of the Ely Shoshone Tribe (hereafter Tribe) to enact and enforce taxes within the Ely Shoshone Reservation. Based on the authorities set forth below, it is our opinion that the Tribe has the authority to tax activities on trust land within the Reservation.

DISCUSSION

The Ely Shoshone Tribe is organized under the Indian Reorganization Act, 25 U.S.C. §§ 461 et seq. and its Constitution and By-laws were approved in 1966. Under the Constitution, the Tribe, through its Tribal Council, retains sovereignty and jurisdiction over all tribal lands. The Tribal Constitution authorizes the Tribal Council to enact ordinances applicable to the Ely Shoshone Tribe, which include tax assessments. See Tribal Constitution, Article VI § 1(g). It is our opinion that the Tribe has jurisdiction to enact and enforce taxes to the extent they are applied to any activities on trust lands within the Ely Shoshone Reservation.¹ The authorities upon which we rely to support this opinion are set forth below.

¹ This opinion is limited to the analysis of the Tribe's authority to tax within Reservation land held in trust. A different analysis must be applied for non-Indian fee land within the Reservation, where Tribal jurisdiction and

As a general rule, Indian Tribes possess sovereign authority over both their members and their territory. Iowa Mutual Insurance Co. v. La Plante, 480 U.S. 9, 14 (1987); U.S. v. Mazurie, 419 U.S. 544, 557 (1975). One of the most important aspects of this sovereignty is the power to tax. Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 137 (1982); Washington v. Confederated Tribes of the Colville Reservation, 447 U.S. 134, 152 (1980) (Colville). Today, tribes retain all of their inherent sovereign powers except to the extent that such powers have been expressly limited or divested by Congress, or limited by necessary implication as a result of the Tribes so-called “dependent” status. Merrion, 455 U.S. at 137. Moreover, federal courts are reluctant to find an implied divestiture of tribal sovereignty: “[A] proper respect both for tribal sovereignty itself and for the plenary authority of Congress in this area cautions that we tread lightly in the absence of clear legislative intent.” Merrion, 455 U.S. at 149, quoting Santa Clara Pueblo v. Martinez, 436 U.S. 49, 60 (1978).

The courts have generally upheld the power of Indian tribes to tax activities on trust land within their reservations and have held that tribal power to tax has not been limited either by Congress or by implication. It is our opinion that this rule applies as well to the Ely Shoshone Tribe Reservation. In the instant situation, it is also clear that Congress has not withdrawn taxation power from the Tribe and the Tribe never gave up its sovereignty by treaty. On the contrary, as discussed below, the Indian Reorganization Act (IRA) of 1934, under which the Tribe has organized, confirms the Tribe’s authority to adopt and enforce taxes.

The power of Indian tribes, as sovereign governmental entities under the federal political system, to impose and collect taxes, extends to non-Indians who engage in economic activity on trust land within the reservation. Merrion, 455 U.S. at 137. Although a tribe cannot impose criminal fines on non-Indians, it can use virtually all the same civil tools and remedies available to the federal and state governments to assist it in the enforcement of its tax system. The United States Supreme Court has addressed the extent of tribal power to tax non-Indians on several recent occasions and has established clearly that non-Indians on Indian lands are subject to tribal taxation.

Although tribes had been taxing non-Indians for almost a century, the question of whether such tribal taxation was valid was not squarely addressed until the early 1980s, first in Colville, and then in Merrion. In Colville, several tribes in the State of Washington enacted ordinances authorizing the operation of tobacco outlets on their reservations. The State of Washington sought to impose its cigarette tax against sales to non-Indians on the reservation, and challenged tribal authority to collect tribal taxes on the same sale. The Supreme Court upheld the tribal taxes, and rejected the state’s argument that federal law had divested tribes of power to tax non-Indians on the reservation. The Court emphasized not only the inherent sovereignty of the tribe to impose the tax, but also the fact that the federal government had historically recognized that tribes retained the power to tax:

authority to tax is limited. See e.g. Montana v. United States, 450 U.S. 544 (1981) and Atkinson Trading Co. v. Shirley, 532 U.S. 645 (2001). It is our understanding that all the lands within the Reservation are held in trust.

The widely held understanding within the federal government has always been that federal law to date has not worked on the divestiture of Indian taxing power. Executive Branch officials have consistently recognized that Indian tribes possess a broad measure of civil jurisdiction over the activities of non-Indians on Indian reservation lands in which the tribes have a significant interest, 17 Op. Atty. Gen. 134 (1881); 7 Op. Atty. Gen. 174 (1855), including jurisdiction to tax, 23 Op. Atty. Gen. 214 (1900); Powers of Indian Tribes, 55 I.D. 14, 46 (1934). According to the Solicitor of the Department of the Interior:

“Chief among the powers of sovereignty recognized as pertaining to an Indian tribe is the power of taxation. Except where Congress has provided otherwise, this power may be exercised over members of the tribe and over nonmembers, so far as such nonmembers may accept privileges of trade, residence, etc., to which taxes may be attached as conditions.” *Ibid.* (emphasis added).

Federal courts also have acknowledged tribal power to tax non-Indians entering the reservation to engage in economic activity. Buster v. Wright, 135 F. 947, 950 (CA8 1905), appeal dismissed, 203 U.S. 599, 51 L.Ed. 334, 27 S.Ct. 777 (1906); Iron Crow v. Ogallala Sioux Tribe, 231 F.2d 89 (CA8 1956); cf. 712 (1904). No federal statute cited to us shows any congressional departure from this view. To the contrary, authority to tax the activities or property of non-Indians taking place or situated on Indian lands, in cases where the tribe has a significant interest in the subject matter, was very probably one of the tribal powers under “existing law” confirmed by § 16 of the Indian Reorganization Act of 1934. 48 Stat. 987, 25 USC § 476 [25 USCS § 476].

Colville, 447 U.S. at 152-153; accord Merrion, 455 U.S. at 149.²

Colville then rejected the argument that the tribe’s power to tax non-Indians had been implicitly divested by the tribe’s dependent status:

Tribal powers are not implicitly divested by virtue of the tribes’ dependent status. This Court has found such a divestiture in cases where the exercise of tribal sovereignty would be inconsistent with the overriding interests of the National Government, as when the tribes seek to engage in foreign relations, alienate their lands to non-Indians without federal consent, or prosecute non-Indians in tribal courts which do not accord the full protections of the Bill of Rights. In the present cases, we can see no overriding federal interest that would necessarily be

² The Court in Merrion also noted that Congress itself has historically recognized that “tribal power to tax is one of the tools necessary to self-government and territorial control.” 455 U.S. at 139-40.

frustrated by tribal taxation. And even if the State's interests were implicated by the tribal taxes, a question we need not decide, it must be remembered that tribal sovereignty is dependent on, and subordinate to, only the Federal Government, not the States.

447 U.S. at 153-54.

Two years after Colville, the Supreme Court decided Merrion, which upheld the Jicarilla Apache Tribe's severance tax on the production of oil and gas on tribal lands. The tribal land at issue had been leased by the Tribe to an oil company, but the leases did not mention the possibility that the Tribe might later enact taxes on the oil and gas production occurring pursuant to the leases. In challenging the tribal tax, the non-Indian oil producers argued that the tribal powers of taxation recognized in Colville derived exclusively from the Tribe's power to exclude persons from their territory or to impose conditions on the entry of persons onto their territory, and that the Tribe had given up the authority to tax by not reserving it in the lease. The Court rejected this argument and ruled that the Tribe's authority did not derive solely from the Tribe's power to exclude non-Indians from tribal lands. Instead, the tribal tax power "derives from the tribe's general authority, as sovereign, to control economic activity within its jurisdiction, and to defray the cost of providing governmental services by requiring contributions from persons or enterprises engaged in economic activities within that jurisdiction." Id. at 137.

Significantly, the Court in Merrion noted the importance of taxation as an essential attribute of Indian sovereignty which enables the tribal government to raise revenues for its essential services. The Court found "nothing exceptional" in requiring the non-Indian lessee "to contribute through taxes to the general cost of tribal government." 455 U.S. 138. The Court agreed that "it simply does not make sense to expect the tribes to carry out municipal functions approved and mandated by Congress without being able to exercise at least minimal taxing powers, whether they take the form of real estate taxes, leasehold taxes, or severance taxes." Id. at 138 n.5 (emphasis added), quoting Merrion v. Jicarilla Apache Tribe, 617 F.2d 537, 550 (10th Cir. 1980) (McKay, J. concurring), aff'd 455 U.S. 130 (1982).

The decision in Merrion was very important in several respects. First, it established definitively that the tribal power to tax is "an essential attribute of Indian sovereignty because it is a necessary instrument of self government and territorial management." 455 U.S. at 137. Moreover, the Court recognized that tribal taxation power "enables a tribal government to raise revenues for its essential services." Id. The power to tax, therefore, does not simply arise because a tribe owns the land, but arises out of a tribe's status as a sovereign government. Thus, while the ownership of the land on which the activity to be taxed is a factor in determining the validity of a tribal tax, the tribe's general interest as sovereign in raising revenues may also validate a particular tribal tax.

Following Colville and Merrion there were a number of federal court decisions upholding tribal authority to tax activities on Indian land. One of those cases involved tribal taxes on reservation property interests and reaffirmed the basic authority to tax on reservation land.

In Kerr-McGee Corp. v. Navajo Tribe of Indians, 731 F.2d 597 (9th Cir. 1984), aff'd 471 U.S. 195 (1985), the Ninth Circuit Court of Appeals upheld the Navajo Tribe's *ad valorem* possessory interest tax, imposed at 3% of the value of any leasehold interest on reservation lands. 731 F.2d 486, 489 (10th Cir. 1983) (upholding the Navajo Tribe's possessory interest tax, noting that "it is apparent from Merrion that Indian taxation of oil and gas leases is a valid exercise of tribal authority"). In affirming the Ninth Circuit's decision in Kerr-McGee, the Supreme Court expressly noted that the "possessory interest tax is measured by the value of leasehold interest in tribal lands." Kerr-McGee Corp. v. Navajo Tribe, 471 U.S. 195, 197 (1985). The Court then reaffirmed the basic holding in Merrion: "In Merrion . . . we held that the power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management." 471 U.S. at 198.

CONCLUSION

In our opinion, the above-cited authorities, in particular Merrion, Colville, and Kerr-McGee, support the conclusion that the Tribe retains the authority to enact and enforce taxes on trust land within the Reservation. The Tribe's authority to tax fits well within the established legal rubric that permits Indian tribes to exercise their sovereignty through taxation. The purpose of the Tribe's taxes is to promote tribal self-sufficiency and expand the Tribe's capability towards self-governance. Under relevant canons of construction established by case law and current federal policy promoting Indian self-determination, we conclude that persons doing business on lands held in trust within the Reservation must abide by and pay the Ely Shoshone Tribe's taxes.



RESOLUTIONS

No. 2003-EST-16 Support of Grant Application

No. 2006-EST-52 Adopting Tax Ordinance

No. 2006-EST-53 Adopting Business License

No. 2006-EST-58 Tax Fund Use Plan

No. 2006-EST-59 Tax Procedural Guidelines

No. 2006-EST-60 Taxation Forms

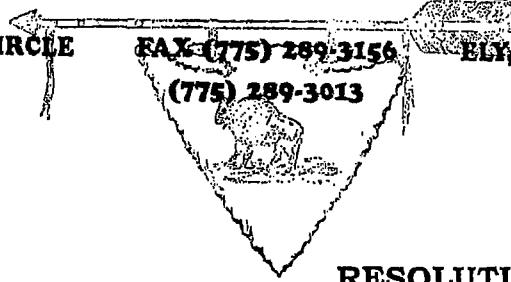
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16 SHOSHONE CIRCLE

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RESOLUTION NO. 2003-EST-16

RESOLUTION OF THE GOVERNING BODY OF THE ELY SHOSHONE TRIBE

WHEREAS, the Ely Shoshone Tribe is an Indian Organization, as defined under the Indian Reorganization Act of June 18, 1934, as amended, to exercise certain rights of home rule and to be responsible for the promotion of economic and social welfare of its tribal membership, and governs its affairs under the Revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999; and

WHEREAS, Economic development is essential for the social and economic development growth of the Ely Shoshone Tribe; and

WHEREAS, has determined that research for development of Tax codes that will be beneficial in building tribal capacity for further tribal self-determination and economic sustainability is needed; and

WHEREAS, community input was encouraged in the development of this grant by providing public meeting and received support of this project; and

WHEREAS, the community will be involved in the implementation of this project; and

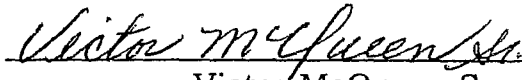
WHEREAS, Ely Shoshone Tribal Council has concluded that most feasible way to approach researching and developing practical Tax Codes, is to apply for funding through the Administration for Native Americans (ANA) Grant program; and

NOW THEREFORE BE IT RESOLVED THAT, the Tribal Council approves and support the attached grant application to ANA for FY2003 and FY 2004, program Announcement: 936120-2003 to assist in funding the development of Tax Codes, and commits to this project by providing both human, physical, and financial resources for the success of the project; and

BE IT FURTHER RESOLVED THAT, Ely Shoshone Tribe authorizes its Chairman or Chairman's duly authorized representative to carry out the full intent of this Resolution.

C-E-R-T-I-F-I-C-A-T-I-O-N

It is hereby certified that the foregoing Resolution of the Ely Shoshone Tribe, composed of 5 members of whom 5 constituting a quorum were present at a Regular meeting held on the **14th day of January, 2003** was adopted by the affirmative vote of **5** For, **0** Against, **0** Abstained; pursuant to the authority contained in the Revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999; and



Victor McQueen Sr.
Tribal Chairperson

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RESOLUTION NO. 2006-EST-52

RESOLUTION OF THE GOVERNING BODY OF THE ELY SHOSHONE TRIBE

WHEREAS, the Ely Shoshone Tribe is a federally recognized Indian Tribe, organized under the Indian Reorganization Act of June 18, 1934, as amended, with the power to exercise certain rights of home rule and to be responsible for the promotion of economic and social welfare of its tribal membership, and governs its affairs under the revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999; and

WHEREAS, in accordance with its Constitution and By-Laws, the Tribe is governed by its Tribal Council; and

WHEREAS, the Tribal Council has the power to adopt laws providing for taxation on the reservation, in order to provide a source of revenue to promote tribal self-government and self-sufficiency, and to use such revenue to help defray the costs of tribal government, and to provide needed services for the benefit of the reservation; and

WHEREAS, the Ely Shoshone Tribal Council and the Tax Planning Committee have reviewed the Ely Shoshone Tribal Taxation Ordinance, a copy of which is attached hereto and incorporated by reference, and found it necessary and appropriate to adopt the Ordinance.

NOW THEREFORE BE IT RESOLVED THAT, the Ely Shoshone Tribal Council hereby adopts and enacts the Ely Shoshone Tribal Taxation ORDINANCE NO. 2006-EST-01, to become effective as of the first day of the month following approval of this Resolution; and

BE IT FURTHER RESOLVED, that the Ely Shoshone Tribal Council shall act as the Ely Shoshone Tax Commission until such time as the Tribal Council deems it necessary to have a separate Tax Commission and appoint the Commissioners pursuant to the Taxation Ordinance; and

BE IT FINALLY RESOLVED, that whichever Tribal Council Member is serving as Tribal Chairperson shall serve as the Tax Director until the Tribal Council deems it necessary to appoint a Tax Director of the Taxation Department.

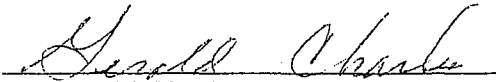
CERTIFICATION

It is hereby certified that the foregoing resolution of the Ely Shoshone Tribe, composed of five (5) members of whom 5 constituting a quorum were present at a **Special Meeting** held on the 14th day of **August 2006**, was adopted by the affirmative vote of 5 **For**, 0 **Against**, 0 **Abstained**; pursuant to the authority contained in the Revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999.



Diana Buckner,
Tribal Chairperson

ATTEST:



Gerald Charles,
Secretary-Treasurer

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RESOLUTION NO. 2006-EST-53

RESOLUTION OF THE GOVERNING BODY
OF THE
ELY SHOSHONE TRIBE

WHEREAS, the Ely Shoshone Tribe is a federally recognized Indian Tribe, organized under the Indian Reorganization Act of June 18, 1934, as amended, with the power to exercise certain rights of home rule and to be responsible for the promotion of economic and social welfare of its tribal membership, and governs its affairs under the revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999; and

WHEREAS, in accordance with its Constitution and By-Laws, the Tribe is governed by its Tribal Council; and

WHEREAS, the Tribal Council has the power to adopt laws providing for taxation on the reservation, in order to provide a source of revenue to promote tribal self-government and self-sufficiency, and to use such revenue to help defray the costs of tribal government, and to provide needed services for the benefit of the reservation; and

WHEREAS, the Ely Shoshone Tribal Council has adopted by Resolution No. 2006-EST-52, and Ordinance No. 2006-EST-01, adopting the Ely Shoshone Tribal Taxation Ordinance.

WHEREAS, the Ely Shoshone Tribal Council and the Tax Planning Committee have reviewed the Ely Shoshone Business License Ordinance, a copy of which is attached hereto and incorporated by reference, and found it necessary and appropriate to adopt the Ordinance.

NOW THEREFORE BE IT RESOLVED THAT, the Ely Shoshone Tribal Council hereby adopts and enacts the Ely Shoshone Tribal Business License Ordinance, **ORDINANCE NO. 2006-EST-02**, to become effective as of the first day of the month following approval of this Resolution; and

CERTIFICATION

It is hereby certified that the foregoing Resolution of the Ely Shoshone Tribe, composed of five (5) members of whom 5 constituting a quorum were present at a **Special Meeting** held on the 14th day of **August, 2006**, was adopted by the affirmative vote of 5 **For**, 0 **Against**, 0 **Abstained**; pursuant to the authority contained in the Revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999.



Diana Buckner,
Tribal Chairperson

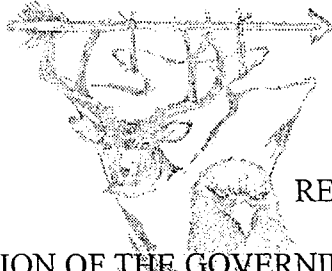
ATTEST:



Gerald Charles,
Secretary-Treasurer

ELY SHOSHONE TRIBE

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RESOLUTION NO. 2006-EST-58

RESOLUTION OF THE GOVERNING BODY OF THE ELY SHOSHONE TRIBE

WHEREAS, the Ely Shoshone Tribe is a federally recognized Indian Tribe, organized under the Indian Reorganization Act of June 18, 1934, as amended, with the power to exercise certain rights of home rule and to be responsible for the promotion of economic and social welfare of its tribal membership, and governs its affairs under the revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999; and

WHEREAS, in accordance with its Constitution and By-Laws, the Tribe is governed by its Tribal Council; and

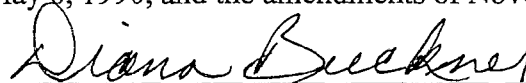
WHEREAS, the Ely Shoshone Tribal Council has adopted by Resolution No. 2006-EST-52, and Ordinance No. 2006-EST-01, adopting the Ely Shoshone Tribal Taxation Ordinance, and

WHEREAS, the Ely Shoshone Tribal Council reviewed the Ely Shoshone Tax Fund Use Plan as adopted by the Tax Planning Committee.

NOW THEREFORE BE IT RESOLVED THAT, the Ely Shoshone Tribal Council hereby adopts the Ely Shoshone Tax Fund Use Plan including application and reporting forms.

CERTIFICATION

It is hereby certified that the foregoing Resolution of the Ely Shoshone Tribe, composed of five (5) members of whom 5 constituting a quorum were present at a **Special Meeting** held on the 24th day of **August, 2006**, was adopted by the affirmative vote of **5 For, 0 Against, 0 Abstained**; pursuant to the authority contained in the Revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999.



Diana Buckner, Tribal Chairperson

ATTEST:


Gerald Charles, Secretary-Treasurer

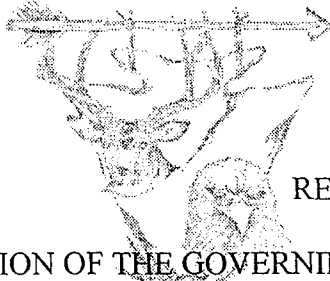
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RESOLUTION NO. 2006-EST-59

RESOLUTION OF THE GOVERNING BODY OF THE ELY SHOSHONE TRIBE

WHEREAS, the Ely Shoshone Tribe is a federally recognized Indian Tribe, organized under the Indian Reorganization Act of June 18, 1934, as amended, with the power to exercise certain rights of home rule and to be responsible for the promotion of economic and social welfare of its tribal membership, and governs its affairs under the revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999; and

WHEREAS, in accordance with its Constitution and By-Laws, the Tribe is governed by its Tribal Council; and

WHEREAS, the Ely Shoshone Tribal Council has adopted by Resolution No. 2006-EST-52, and Ordinance No. 2006-EST-01, adopting the Ely Shoshone Tribal Taxation Ordinance, and

WHEREAS, the Ely Shoshone Tribal Council reviewed the Ely Shoshone Taxation Department Procedural Guidelines as adopted by the Tax Planning Committee.

NOW THEREFORE BE IT RESOLVED THAT, the Ely Shoshone Tribal Council hereby adopts the Ely Shoshone Tax Department Procedural Guidelines including applicable forms and position descriptions.


CERTIFICATION

It is hereby certified that the foregoing Resolution of the Ely Shoshone Tribe, composed of five (5) members of whom 5 constituting a quorum were present at a **Special Meeting** held on the 24th day of **August, 2006**, was adopted by the affirmative vote of **5 For, 0 Against, 0 Abstained**; pursuant to the authority contained in the Revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999.



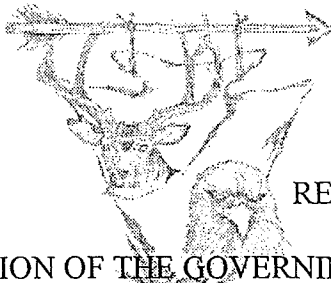
Diana Buckner, Tribal Chairperson

ATTEST:


Gerald Charles, Secretary-Treasurer

ELY SHOSHONE TRIBE

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RESOLUTION NO. 2006-EST-60

RESOLUTION OF THE GOVERNING BODY OF THE ELY SHOSHONE TRIBE

WHEREAS, the Ely Shoshone Tribe is a federally recognized Indian Tribe, organized under the Indian Reorganization Act of June 18, 1934, as amended, with the power to exercise certain rights of home rule and to be responsible for the promotion of economic and social welfare of its tribal membership, and governs its affairs under the revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999; and

WHEREAS, in accordance with its Constitution and By-Laws, the Tribe is governed by its Tribal Council; and

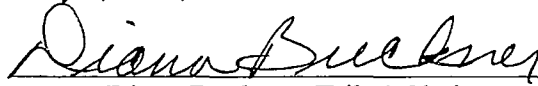
WHEREAS, the Ely Shoshone Tribal Council has adopted by Resolution No. 2006-EST-52, and Ordinance No. 2006-EST-01, adopting the Ely Shoshone Tribal Taxation Ordinance, and

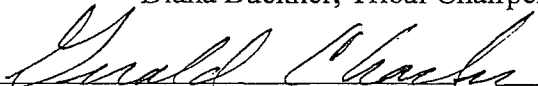
WHEREAS, the Ely Shoshone Tribal Council has reviewed all Taxation forms and licenses as adopted by the Tax Planning Committee.

NOW THEREFORE BE IT RESOLVED THAT, the Ely Shoshone Tribal Council hereby adopts the Ely Shoshone Taxation forms and licenses.

CERTIFICATION

It is hereby certified that the foregoing Resolution of the Ely Shoshone Tribe, composed of five (5) members of whom 5 constituting a quorum were present at a **Special Meeting** held on the 24th day of **August, 2006**, was adopted by the affirmative vote of **5 For, 0 Against, 0 Abstained**; pursuant to the authority contained in the Revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999.


Diana Buckner, Tribal Chairperson

ATTEST: 
Gerald Charles, Secretary-Treasurer

ELY
SHOSHONE
TAX COMMITTEE
BY-LAWS

**Ely Shoshone Tribe
Planning Tax Committee
By Laws
Amended July 12, 2005**

1. Establishment:

The Planning Tax Committee is hereby established as a tribal governmental agency, with the responsibility to review and assess potential taxes that can be collected on the Ely Shoshone Tribal Reservation, and to assist in the development and review of the Tribal Ordinances and Codes.

2. Membership:

- (1) The Planning Tax Committee shall consist of three (3) planning committee members, who may be compensated for their duties, under such terms as shall be agreed to by the Ely Tribal Council.
- (2) One (1) Member of the Ely Shoshone Tribal Council may be eligible to serve as a member of the Planning Tax Committee.
- (3) The Planning Tax Committee will be solicited by posting flyers around the Ely Reservation bulletin boards and other types of solicitation that may be deemed necessary. Appointment to the Planning Committee Planning Tax Committee shall be the responsibility of the Ely Shoshone Tribal Council.
- (4) In appointing members of the Planning Tax Committee, preference shall be given to individuals who have prior experience in tax related matters, including but not limited to administrative experience, experience in property evaluation and knowledge of tribal or other governmental tax structures.
- (5) A Planning Tax Committee Member may be removed from office only for incompetence, dishonesty, neglect, or inability to perform official duties, abuse of powers of office, or other good cause. Removal shall be effectuated by action of the Ely Shoshone Tribal Council after notice and a hearing to determine whether removal is justified.

- (6) The "term" of office of each Planning Tax Committee Member shall be three (3) years. Planning Committee Members shall be eligible for reappointment to serve additional terms. The terms shall be staggered, the first member appointed shall serve one (1) year, the second shall serve two (2) years, and the third member shall serve three (3) years. Thereafter, members appointed shall serve three (3) year terms.
- (7) Should a Planning Tax Committee Member have a direct or indirect personal interest or stake in the outcome of a matter before the Planning Tax Committee, such member shall disqualify himself/herself from any role in deciding that matter.

A temporary, disinterested person shall then be appointed to the Planning Tax Committee by the remaining members. For purposes of this provision, membership in the Tribe or residence on the Reservation shall not constitute a ground for disqualification.

3. **Powers:**

The Planning Tax Committee shall be vested with the following powers:

- (1) To adopt by majority vote such rules and regulations as it deems necessary and proper to implement the Tax Code.
- (2) To recommend to the Tribal Council taxes to be levied on the Reservation.
- (3) To oversee the general assessment with the Tax Code and all rules and regulations promulgated pursuant thereto.
- (4) To work with such employees, consultants and legal counsel as necessary to carry out the day-to-day administration of the Tax Code, and any rules and regulations thereunder.
- (5) To succeed to and carry on all business conducted by the Tribe pursuant to any previous tax ordinances which were previously in effect.

4. **Notices from Planning Tax Committee:**

Unless otherwise provided herein necessary by the Planning Tax Committee.

5. **Meetings:**

Meetings of the Planning Tax Committee will be held once a month to be determined by the Planning Committee at the end of each meeting.

6. **Quorum:**

Quorum must be made up of all three (3) members.

7. **Meeting Minutes:**


All meetings must be recorded by written minutes. All minutes must be approved at each meeting held thereafter.

8. **Officers:**

The Planning Tax Committee will consist of a Chairman, Vice-Chairman and Secretary to be selected by the Tribal Council.


C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned, as Chairperson of the Tribe do hereby certify the Ely Tribal Council is composed of 5 members of whom 4 constituting a quorum were present at a duly held meeting on the 17th day of June, 2005, and that the foregoing Ordinance was duly adopted at such meeting by an affirmative vote of 5 FOR, 0 AGAINST, 0 ABSTENTIONS, pursuant to the authority contained under Article VI Section 1 (m), of the Constitution of the Ely Tribe, and that the said Ordinance ahs not been rescinded nor amended in any form.



Diana Buckner, Chairperson
Ely Tribal Council

ATTEST:



Recording Secretary

ELY

SHOSHONE

TAXATION

BACKGROUND

SUMMARY

ELY SHOSHONE TAXATION ACKNOWLEDGEMENTS

Taxation Planning Committee Members

There have been many persons involved in developing the Ely Shoshone Taxation Ordinance and supporting documents. The original committee was comprised of Laura Rainey-Carpenter, Christine Stones, and Dana McDade. Each person brought to the table years of experience, great ideas, and made informed decisions for the benefit of the Tribe.

Laura Rainey-Carpenter served as Chairperson since her appointment to the Committee in 2003. Her years serving in the Las Vegas Planning Department, experience working for engineers, and ultimately a business owner operating Smoke Signals in Ely, proved to be invaluable. Her dedication to the project brought her to see the Tax Ordinance and supporting documents a reality before her resignation in June 2006.

Christine Stones also served on the Tax Planning Committee since 2003. She brought with her 21 years of experience working with Tribes in the planning and administrative capacity. Her years serving as a Tribal Council member proved to be a great asset to the planning process in developing the Tax Ordinance.

Dana McDade served as an early member expressing an interest to be involved with the future growth and economic development of the Tribe.

Alvin Marques came to the Committee in October, 2004. His self motivation and dependability proved to be a great asset to the Committee and was instrumental in identifying the goals of the tax ordinance, but his term was cut short because, at that time, Tribal Council members could not serve.

Alfreda Walker joined the Committee in July, 2005. She brought with her many years experience serving on a variety of committees in Duckwater. Her input was instrumental in helping to bring the Tax Ordinance to completion.

Taxation Attorney

John Fredericks served as general counsel since 2003. His guidance and research proved to be invaluable throughout the entire planning and development stages.

ANA staff

Gonnie Mendez was the first person to hold the ANA Coordinator/Tax Director position. His organizational skills, experience working on other taxation ordinances, and knowledge of tribal governments proved to be extremely valuable. He was responsible for setting up the Taxation infrastructure; he negotiated the Fuel Tax agreement with the State of Nevada, developed all taxation weekly and monthly reporting forms, established the Taxation by-laws, and created all early ordinances. Before leaving his position, he took the time to provide training to the Finance and Administration staff to ensure the continuation and effective tax accountability. His performance during the early phase of planning, research, and development of the taxation infrastructure allowing the transition to be accomplished by the successor.

I, Delores Manchester, current ANA Coordinator, give my thanks and sincere appreciation to all those who gave their time and dedication in helping to create the Ely Shoshone Tax Ordinance. Their hard work and devotion has resulted in a powerful document that can be relied on to provide a revenue stream for not only tomorrow, but for future generations.

BACKGROUND SUMMARY

On January 14, 2003 the Ely Shoshone Tribal Council adopted Resolution Number 2003-EST-16 supporting a grant application to ANA for Fiscal Year 2003 and Fiscal Year 2004, program announcement: 936120-2003 to assist in funding the development of Tax Codes, and committing to the project by providing both human, physical, and financial resources for the success of the project.

The Ely Shoshone Tribe was successful in being awarded a grant for year one in the amount of \$65,545.00. The Tribe was successful in receiving the second year grant award in the amount of \$76,891.00. Due to a change in personnel and a turn over in Taxation Committee Members, it was necessary for the Tribe to submit a request for a no-cost extension of funds from September 2005 so that they may complete the goals and objectives of the grant.

Felix Cohen, the renowned authority on Indian Law, wrote:

"One of the powers essential to the maintenance of any government is the power to levy taxes. That this power is an inherent attribute of tribal sovereignty which continues unless withdrawn or limited by treaty or by act of Congress is a proposition which has never been successfully disputed."

“To survive, then, a government must have the power to tax. It may use this power in any number of ways or for a variety of purposes or not at all. But to sustain its sovereignty and maintain its strength it must be able to resort to its power to tax.”

The Tax Planning Committee Members knew the importance of their roles and responsibilities. They knew it was imperative that planning, research, and development of Taxation Codes be developed to determine potential taxes that could be collected; administration for the collection of taxes, monitoring the collection and disbursement of taxes, establishing a Tax Use Plan, and ensuring all motor vehicle fuel taxes were paid to the Nevada Department of Motor Vehicles in a timely manner.

The Tax Planning Committee (through a series of meetings and communications with their Taxation Attorney) reached their goal by developing the Ely Shoshone Taxation Ordinance, Business License Ordinance, Tax Fund Use Plan, Fuel Tax Agreement with the State of Nevada, Taxation forms and licenses, and Procedural Guidelines for the Tax Department.

The Tax Planning Committee scheduled an agenda item to present the Taxation Ordinance and all supporting documentation to the Ely Shoshone Tribal Council at their regular meeting on July 11, 2006. A Public Hearing is scheduled to be held to present the Taxation Ordinance and all supporting documentation to the Tribal Community at the Gymnasium on July 27, 2006 to receive input from the Tribal Community. Final approval/acceptance of the Ely Shoshone Tribe Taxation Ordinance, Business License Ordinance, and all supporting documents during the Tribal Council meeting scheduled to be held on August 8, 2006. Final approved copies will be bound and distributed to the following departments:

- Taxation Department – loose leaf copy in binder
- Administration Office – loose leaf copy in binder
- Finance Department – bound copy
- Tribal Court Judge – loose leaf copy in binder and bound copy
- Bound copy available to granting agency
- Bound copy to Kafoury Armstrong, CPA
- Bound copy to Auditor
- Additional copies can be available upon request

PUBLIC
HEARING
PRESENTATION
ON
July 27, 2006

PUBLIC HEARING
ELY SHOSHONE TAX ORDINANCE
AND
SUPPORTING DOCUMENTS
16 Shoshone Circle
Ely, Nevada 89301

July 27, 2006

The Constitution and By-Laws of the Ely Shoshone Tribe, as organized under the Indian Re-Organization Act of June 18, 1934, as amended and approved on April 8, 1966 provides that the Council shall have the power to enact ordinances governing economic affairs and enterprises of the Colony and levying of taxes and the appropriation of available funds for public purposes.

1983 an Ordinance was adopted allowing the Tribe to impose a tobacco excise tax.

In 2003 the Ely Shoshone Tribe was successful in being awarded a grant for year one in the amount of \$65,545. The Tribe was successful in receiving the second year grant award in the amount of \$76,891. Due to a change in personnel and a turn over in Taxation Committee Members, it was necessary for the Tribe to submit a request for a no-cost extension for another year.

The purpose this ordinance was developed is to provide infrastructure to adequately and efficiently collect taxes on the Reservation. This ordinance was not created to charge a tax on residential homes located on the Ely Shoshone Reservation.

The Tax Planning Committee Members knew the importance of their roles and responsibilities. They knew it was imperative that planning, research, and development of Taxation Codes be developed to determine potential taxes that could be collected; administration for the collection of taxes, monitoring the collection and disbursement of taxes, establishing a Tax Use Plan, and ensuring all motor vehicle fuel taxes were paid to the Nevada Department of Motor Vehicles in a timely manner.

The Tax Planning Committee (through a series of meetings and communications with their Taxation Attorney) developed this packet to be used to effectively

collect and disburse taxes. Until more businesses are established on the Reservation, the Tribal Council has made the decision to serve as the Tax Commission; and the Tribal Chairperson serves as the Tax Director and is responsible for the collection of taxes as outlined in the Tax Ordinance and the Policies and Procedures.

Before the Travel Center opened its doors there was an agreement negotiated and approved between the Tribe and the State of Nevada. This agreement allows for the Tribe to charge motor vehicle fuel taxes to non-members, pay the taxes collected to the State, minus 2%. This agreement permits the Tribe to give Native Americans a rebate at the gas pump. The Ordinance for the exemption of Nevada Fuel taxes was adopted in 2004 giving Native Americans a rebate at the gas pump of 33 cents for fuel and 27 cents for diesel.

2004 a Sales and Use Tax Ordinance was adopted allowing the Travel Center to operate until the Taxation Ordinance was developed.

2004 the Liquor Ordinance was adopted.

The Tax Planning Committee worked diligently during the next 2 1/2 years to put together the Tax Ordinance that is being presented tonight (this tax ordinance is still in draft form until the Tribal Council gives a final review and adopts it during the month of August).

We are here this evening to present these draft documents to the Tribal Membership, explain the contents of the ordinances, and document your comments. Input received this evening can be used to improve the documents. We are also here to clarify questions you may have in regards to taxation.

The Tax Ordinance is connected to all existing ordinances that have been enforced for the past several years; and addresses potential taxes that may be collected in future years.

TAX ORDINANCE

Chapter 301-304 of the Tax Ordinances addresses:

General provisions

Establishment of the Tax Commission

Tribal Court jurisdiction

Administrative provisions

Chapter 305 addresses Possessory Interest Tax

This section allows for the imposition of taxes for the use of trust land (permits, contract, easements, right-of-ways, billboards, etc.)

Page 18 lists property which is exempt from taxation.

- Tribally or individually owned land for residences

- Indian arts and crafts made or maintained by Tribal members

The remainder of Chapter 305 addresses the:

- Computation and assessment of Possessory Interest taxes

- Reporting requirements on the required forms

- Use of tax proceeds

Chapter 307 addresses the liquor licenses and taxes

This section connects to the liquor ordinance adopted in 2004

This section allows for the issuing of licenses on the required forms

Chapter 308 addresses the Sales and Use Tax

This section allows for the imposition of sales taxes charged and connects to the Sales and Use Tax Ordinance adopted in 2004

Page 30 (occasional sale) addresses a question asked during a Tax Planning Committee meeting regarding non-tribal persons selling merchandise on the Reservation at special events.

This section also sets the tax rate at 7.375 which is consistent with the tax rate set by the State of Nevada and White Pine County

It also addresses the

- Vendor license applications

- Vendor reporting requirements on the required forms, and payment schedule

- Penalties to vendors for the failure to file a return

- Contractors delivering merchandise on the Reservation (such as: A contractor building a department store would be allowed to receive tax exempt status from his vendor, but will pay those taxes to the Tribe).

Chapter 309 addresses Tobacco Tax

This section connects to the Tobacco Tax ordinance adopted 1983

It allows for the application and issuing of tobacco licenses on the required forms

- Setting the fee for Tobacco license at \$150

- Posting the Tobacco license

- Maintenance of records and payment of tobacco taxes

Chapter 312 allows for the gaming tax and license fees

This section provides for the imposition of fees associated with gaming, such as slot machines if they were to be placed on the Reservation

Chapter 320 allows for the exemption from Nevada Fuel taxes for Tribal Members – it also connects to the Motor Vehicle Fuel Tax Ordinance adopted in 2004.

As an appendix to the Taxation Ordinance are Nevada Revised Statutes as they relate to gaming.

BUSINESS LICENSE ORDINANCE

The Business License Ordinance is separate from the Taxation Ordinance, but connects to it. This was developed to clearly spell out procedures and who is specifically exempt from obtaining a business license.

Like the Taxation Ordinance, the Business License Ordinance retains, or strengthens, sovereign immunity and exempts Tribal business from the license fees.

Page 4 – Section 402.004 list businesses exempt from the license fees.

Section 403.003 lists the license fee schedule

Section 404.001 sets out the procedure for obtaining a business license

ELY SHOSHONE TAX FUND USE PLAN

This is only a sample Tax Fund Use Plan that was developed by the Tax Planning Committee. It spells out procedures for the dedication of taxes for services, annual reports, spending policy, department funding requests and their reporting procedures.

The Tax Fund Use Plan sets the framework. The objective is to have a usable format that can be used today or in future years.

SAMPLE FORMS

The Tax Planning Committee developed sample forms that can be used to help implement the Tax Ordinance and Business License Ordinance after they are adopted and enforced.

These forms will contain the code number and resolution number to assist future employees of the Tax Department in making reference to particular code numbers.

TAXATION DEPARTMENT PROCEDURAL GUIDELINES

The ANA Project Abstract/Summary allowed for the Ely Shoshone Tribe to develop a Taxation Department with the necessary staffing to fulfill grant objectives.

Presently there is only one business (Travel Center) located on the Reservation and the Tribal Council has made the decision to act as the Tax Commission, with the Tribal Chairperson to serve as the Tax Director, until such time as the Tribal Council deems it necessary to have a separate Tax Commission and establish a Taxation Department.

Once these Procedural Guidelines are adopted, numerous copies will be made and when a Tax Department is created, there will be guidelines established to assist them.

The Taxation Department Procedural Guidelines to help define the duties of the:

Tribal Judge	Taxation Attorney
Tribal Council	Tax Commission
Tax Director	Tribal Coordinator
Finance Department	Tax Clerk

The draft Taxation Procedural Guidelines provides for:

- General Provisions and office guidelines
- Sample State reporting forms for tracking fuel tax collections, payments, and deposits
- Position announcement and job description for Taxation Director and Clerk

CLOSING REMARKS TRIBAL MEMBERSHIP COMMENTS

All the documents listed above will be presented to the Tribal Council for their consideration and possible adoption during their regular meeting on August 8th.

Comments from the Tribal Membership, or suggested revisions, will be incorporated into the notes of the Hearing, and will be presented to the Tribal Council at that time.

Once these documents have been adopted, copies will be provided to:

- Taxation Department – loose leaf copy in binder
- Administration Office – loose leaf copy in binder
- Finance Department – bound copy
- Tribal Court Judge – loose leaf copy and bound copy
- Bound copy available to granting agency
- Bound copy to Kafoury Armstrong, CPA
- Bound copy to Auditor
- Copy in ANA files
- Additional copies can be available upon request

As with all Tax Planning Committee meeting minutes that have been provided to the Tribal Council, the notes from this hearing will not contain names.

Questions asked the attorney as a result of scenarios played out by the Tax Planning Committee during their meetings.

1. In the event a fireworks stand were to be placed on the Reservation, should there be a Hold Harmless or Liability clause written into the Tax Ordinance, or should the Hold Harmless or Liability clause be written into the business license application form?

Attorney answer – Suggested sale of fireworks that are less dangerous and recommended concurrence with State and White Pine County ordinances. Post a waiver releasing the Tribe of liability.

2. In the event hazardous materials would be stored or parked somewhere within the boundaries of the Reservation, should there be any kind of Hold Harmless or Liability clause written into the Tax Ordinance to cover such a situation?

Attorney answer – Address this matter on an individual basis and list the release of liability in a contract.

3. White Pine County presently has adopted a room tax ordinance (Code No. 4.04) allowing them to charge 9% tax and those taxes are dedicated for the promotion of recreation/tourism. If a hotel or motel were to be placed on the reservation, should there be a clause written into the Draft Tax Ordinance addressing room tax collections?

Attorney answer – Amend the Tax Ordinance to address this tax after a motel or hotel is built.

4. Native American owned business that would include traveling for the company. Would that business be allowed to utilize the tax-exempt status on their purchase of motor vehicle fuel, if so, would employees be allowed to utilize the tax-exempt status?

Attorney answer – Pursuant to NRS 365.110 the tax exempt status applies to enrolled members only.

Tribal Members utilizing a charge account for their business, and they are charging their fuel at the Travel Center counter for both their business and their personal vehicle. Are they still exempt?

Attorney answer – They are allowed to pay the exempt price because they are a Tribal Member.

5. A Tribal member operating a business out of their home that would be providing a service. The service they might provide would only be offering a service off the reservation. Would that business tax their customer off the reservation and does that tax come back to the tribe?

Attorney answer – Services are not taxable

6. What if a home occupation located on the Reservation made merchandise and sold their goods to customers living off the reservation, should they be charging taxes on those goods and would the taxes come back to the tribe?

Attorney answer – Sales tax would need to be collected and turned into the State if sold at an event off the reservation. The attorney revised 320.003 to specifically exempt home businesses by Tribal Members.

7. Persons offering their services or goods during Tribal sponsored events, does that person charge a tax on their goods, and should that tax come back to the Tribe?

Attorney answer – Exempt under occasional sales 308.001.

8. What if a person had pre-manufactured goods and sold them on the reservation at a sale held, or titled, as Native American hand made goods.

Attorney answer – Exempt under occasional sales of 308.001.

9. What about yard sales, does that fall under taxing.

Attorney answer – Yard sales would be exempt from charging and reporting taxes under definition of sales on page 32.

ELY

SHOSHONE
TAXATION
ORDINANCE

PROJECT

ABSTRACT

Project Abstract

PROGRAM ANNOUNCEMENT: 93612-2003	CLOSING DATE: May 2, 2003
APPLICANT NAME: Ely Shoshone Tribe	
LENGTH OF PROPOSED PROJECT: 2 Years	ANA CONTROL NO.:
FEDERAL SHARE REQUESTED (for each Year) 1 st Yr: \$65,545 2 nd Yr: \$64,926	NON-FEDERAL SHARE: 1 st Yr: \$17,380 2 nd Yr: \$ 16,380
PROJECT TITLE: Planning and Development for Taxation Codes and Ordinances	
<p>PROJECT SUMMARY:</p> <p>The purpose of this project is to improve the Ely Shoshone Tribe's governmental and administrative infrastructure through the development of comprehensive Taxation Codes, Ordinances, Tax Court Codes, and Taxation Use Plan.</p> <p>The first year will involve intense research, planning, and training regarding all facets of Taxation including Authority to Tax, and identifying beneficial taxes.</p> <p>The second year will involve the writing and refining of the Taxation Codes, Ordinances, Tax Court Codes, and Taxation Use Plan.</p> <p>The grant funds will allow the Ely Shoshone Tribe to develop a Taxation Department with the necessary staffing to fulfill grant objectives.</p> <p>The benefits include strengthening the governmental and administrative infrastructure resulting in collection of taxes.</p> <p>Long-Term Benefits: Once the infrastructure is established. The Ordinance Codes will permit implementation for tax collection. The Tax Plan use will contain methods for investments of tax revenues to benefit its tribal community. The income derived from the collection of taxes will support existing infrastructure and to assert its sovereignty over Ely Shoshone Tribal Reservation Lands.</p>	

ELY
SHOSHONE
TAXATION
ORDINANCE

ELY SHOSHONE TRIBAL TAX

ORDINANCE NO. 2006-EST-01

**ADOPTED AUGUST 14, 2006
per Resolution No. 2006-EST-52**

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An Ordinance

Governing the imposition of taxes by the Ely Shoshone Tribe of the Ely Shoshone Indian Reservation

**ELY SHOSHONE TRIBAL TAX ORDINANCE
CHAPTER 301 GENERAL PROVISIONS**

301.001 Title. This Ordinance shall be known as the Ely Shoshone Indian Reservation Tax Code. Any prior taxes imposed by the Ely Shoshone Tribe are repealed, provided that this Tax Code shall in no way alter the effect of existing agreements between the Tribe and other persons which provide for the payment of a tribal tax as a part of the agreement.

301.002 Authority. This Ordinance is adopted by the Ely Shoshone Tribal Council pursuant to Article VI, Section 1(g) of the Constitution of the Tribe.

301.003 Policies.

(1) The Ely Shoshone Tribe of Indians has existed as an independent, sovereign nation since time immemorial. Today the Tribe continues to govern the Ely Shoshone Indian Reservation limited only in its authority by its Constitution and By-Laws and the Constitution and laws of the United States.

(2) The Ely Shoshone Tribal Council is the governing body of the Ely Shoshone Tribe in accordance with the authority of its Constitution and By-Laws. The Council is responsible for economic development on the Reservation and seeks to ensure that residents of the Reservation enjoy adequate employment, health care, education opportunities, social services, and other governmental services.

(3) It is the policy of the Tribe to promote economic development on the Reservation. To achieve that goal, the Tribe is adopting a tax scheme conducive to economic development in the private sector, which at the same time ensures that taxpayers who receive governmental services on the Reservation contribute their fair share.

301.004 General Definitions. Except as otherwise provided, the following terms are defined as follows:

(1) **Person.** "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal or nonprofit doing business within the Ely Shoshone Indian Reservation.

(2) **Reservation.** "Reservation" means the Ely Shoshone Indian Reservation, and includes all land located within the exterior boundaries of the Reservation, and all lands held in trust by the United States for the benefit of the Tribe.

(3) **Tax Code.** "Tax Code" means the Ely Shoshone Indian Reservation Tax Code.

(4) **Tax Commission.** "Tax Commission" means the Ely Shoshone Tribal Tax Commission, created pursuant to this Ordinance and charged with carrying out the administrative provisions of this Ordinance.

(5) **Taxpayer.** "Taxpayer" means any person responsible for the payment of taxes under this Ordinance.

(6) **Tribal Court.** "Tribal Court" means the Ely Shoshone Tribal Court, created and governed by Title I and Title II of the Ely Shoshone Law and Order Code.

(7) **Tribal Member.** "Tribal Member" means (a) an individual who is recognized by the Tribe as a member of the Ely Shoshone Tribe, including any corporation, partnership, or other legal entity which is at least 51% owned by the Tribe or a tribal member or members; and (b) legal spouses of, and persons 21 years of age and under who reside in the same household as an individual tribal member who meets the requirements of subsection (a).

(8) **Tribe.** "Tribe" means the Ely Shoshone Tribe of Indians.

CHAPTER 301A CHALLENGES AND APPEALS

301A.001 Limited Waiver of Immunity.

(1) The Tribe hereby consents to be sued in the Tribal Court in civil actions for equitable relief and for such monetary relief as is expressly provided for pursuant to the Tax Code. This consent to suit is strictly limited as provided in this Section. No other private right of action by any person shall be deemed created by the Tax Code. The Tribal Court shall be the sole and exclusive judicial forum vested with subject matter jurisdiction to adjudicate suits brought pursuant to the Tax Code.

(2) The limited waiver of sovereign immunity set forth in this Section shall not apply to any claim for a refund of taxes paid to the Tribe prior to the enactment of this provision, except that the limited waiver shall extend to taxes paid under protest prior to the enactment of this provision.

301A.002 Challenges and Appeals to Validity of Tribal Tax Code; Petition.

(1) Any person desiring to challenge the legal validity of any provision of the Tax Code must first petition the Tax Commission which shall hear and decide the matter in the first instance.

(2) If the petitioner is not satisfied with the determination of the Tax Commission, the petitioner may appeal the decision to the Tribal Court within thirty days of an adverse determination by the Tax Commission. The ruling of the Tribal Court on the appeal shall be final and may not be attacked or appealed in any other forum.

301A.003 Challenges and Appeals Concerning the Assessment, Levy or Collection of Taxes.

(1) Subject to the requirements of Chapter 304, any person desiring to challenge the assessment, levy or collection of taxes, interest or penalties imposed pursuant to the Tax Code must first petition the Tax Commission, and the Tax Commission shall render a decision thereon.

(2) If the petitioner is not satisfied with the determination of the Tax Commission, the petitioner may appeal the decision to the Tribal Court by filing a Notice of Appeal within thirty days of the adverse decision in the Tribal Court pursuant to Chapter 303, as amended, of the Tax Code. The ruling of the Tribal Court on the appeal forum shall be final and may not be attacked or appealed in any other forum.

CHAPTER 302 TAX COMMISSION

302.001 Establishment. The Tax Commission is hereby established as an independent tribal commission. The existing Ely Shoshone Tribal Planning Tax Committee will become the Tax Commission upon adoption of this Tax Code.

302.002 Membership.

(1) The Tax Commission shall consist of three commissioners, who may be compensated for their duties, under such terms as shall be agreed to by the Ely Shoshone Tribal Council.

(2) Members of the Ely Shoshone Tribal Council and the Ely Shoshone Tribal Court Judge shall not be eligible for appointment to the Tax Commission.

(3) The Chairman of the Ely Shoshone Tribal Council shall nominate candidates for the Tax Commission from the pool of applicants responding to the vacancy advertisements promulgated in accordance with Paragraph (7) of this Section. Appointment to the Tax Commission shall be subject to confirmation by the Ely Shoshone Tribal Council.

(4) In appointing members of the Tax Commission, preference shall be given to individuals who have prior experience in tax-related matters, including but not limited to administrative experience, experience in property evaluation, and knowledge of tribal or other governmental tax structures.

(5) A tax commissioner may be removed from office only for incompetence, dishonesty, neglect, or inability to perform official duties, abuse of power of office, or other good cause. Removal shall be effectuated by action of the Tribal Council after notice and a hearing to determine whether removal is justified.

(6) The term of office of each tax commissioner shall be three years. Commissioners shall be eligible for reappointment to serve additional terms. The terms shall be staggered, the first commissioner appointed shall serve one year, the second shall serve two years, and the third commissioner shall serve three years. Thereafter, commissioners appointed shall serve three-year terms.

(7) The Ely Shoshone Tribal Council shall advertise for fifteen (15) days for vacancies that may occur on the Tax Commission. If there are not candidates after fifteen (15) days, the vacancy will be re-advertised for an additional ten (10) days. If a vacancy occurs sixty (60) days or less before a commissioner's term of office has expired, the person appointed shall serve for the remainder of the term of office, and shall be subject to reappointment for an additional term by action of the Tribal Council, without further advertisement of the vacancy. If a vacancy occurs sixty one (61) days or more before a commissioner's term of office has expired, the person appointed shall serve for the remainder of the term of office, and thereafter the position shall be subject to the advertising requirements of this section.

(8) Should a tax commissioner have a direct or indirect personal interest or stake in the outcome of a matter properly before the Tax Commission, such commissioner shall disqualify himself or herself from any role in deciding that matter. A temporary, disinterested person shall then be appointed to the Tax Commission by the remaining commissioners. For purposes of these provisions, membership in the Ely Shoshone Tribe or residence on the Ely Shoshone Indian Reservation shall not constitute a ground for disqualification.

302.003 Powers. The Tax Commission shall be vested with the following powers:

(1) To adopt by majority vote such rules and regulations as it deems necessary and proper to implement the Ely Shoshone Tribal Tax Code.

(2) To recommend to the Tribal Council taxes to be levied by the Tribe.

(3) To oversee the general assessment, levy and collection of taxes in accordance with the Tax Code and all rules and regulations promulgated pursuant thereto.

(4) To employ, subject to approval by the Tribal Council, a director of the tribal tax department, and such other persons as are necessary to carry out the day-to-day administration of the Tax Code, and any rules and regulations thereunder.

(5) To hear and determine in the first instance all challenges to the validity of the Tax Code and its implementing rules and regulations.

(6) To hear and determine in the first instance all disputes by taxpayers concerning the assessment, levy or collection of taxes, penalties or interest imposed pursuant to the Tax Code and its implementing rules and regulations.

(7) To hold hearings and summon and subpoena witnesses to appear and testify upon any subject material to the determination of issues arising under the Tax Code, and to produce relevant books, records and documents relative thereto. The hearings may be held at any place the Tax Commission designates, after not less than 10 days' notice of the time and place of the hearing given in writing to the adverse party. The adverse party shall be entitled, on request made to the Tax Commission, to the issuance of the Tax Commission's subpoena requiring witnesses on behalf of the adverse party to appear and testify at such hearing. The failure of a witness to obey the subpoena of the Tax Commission subjects the witness to the same penalties prescribed by law for failure to obey a subpoena of the Tribal Court.

(8) To succeed to and carry on all business conducted by the Ely Shoshone Tax Committee pursuant to the Tax Code that was previously in effect.

302.004 Notices from Tax Commission, Certified Mail. Unless otherwise provided herein, any notice required to be given by the Tax Commission in this Tax Code shall be by certified mail, return receipt requested.

CHAPTER 303 TRIBAL COURT JURISDICTION

303.001 Jurisdiction. The Ely Shoshone Tribal Court replaces and succeeds the Ely Shoshone Tribal Council as the forum of last resort for adjudicating appeals involving the validity of the Tribal Tax Code and for hearing and finally deciding appeals involving disputes arising thereunder and properly taken pursuant thereto.

303.002 Powers and Limitations of the Ely Shoshone Tribal Court. The Tribal Court shall be vested with the following powers for the purpose of ruling on issues arising under the Tax Code, along with the powers set forth in Title I of the Ely Shoshone Tribe Law and Order Code:

(1) To hear and finally decide all appeals properly taken from the Tax Commission involving challenges to the validity of the Tax Code and its implementing rules and regulations.

(2) To hear and finally decide all appeals properly taken from the determinations of the Tax Commission involving disputes arising under the Tax Code and its implementing rules and regulations.

(3) To hear and finally decide all civil actions brought by the Ely Shoshone Tribe or Tax Commission to enforce the Tax Code.

(4) To issue warrants to effectuate and levy upon property, liens and attachment of assets, both on and off the Ely Shoshone Indian Reservation, to the full extent provided by applicable law.

(5) To issue subpoenas requiring persons within the jurisdiction of the Tribe to appear and give testimony regarding matters related to the Tax Code, and to produce any pertinent books, papers and documents or other tangible items designated therein relevant to the assessment or collection of taxes under the Tax Code, or the administration and enforcement thereof.

(6) To award costs and attorney fees to the prevailing party, in the discretion of the Tribal Court.

(7) No orders shall issue from the Tribal Court restraining or forbidding the assessment, levy or collection of taxes imposed pursuant to the Tribal Tax Code while a suit brought pursuant thereto is pending.

303.003 Tax Prepayment Required Before Protest.

(1) Subject to the provisions of subsection (2), all disputed taxes, penalties and/or interest shall be paid in full before any action may be instituted in the Tribal Court to contest all or any part of such tax payment. Payments made under protest shall be effectuated in accordance with §304.013.

(2) Notwithstanding any provisions to the contrary, the Tribal Court may waive the prepayment requirement of this section if the Tribal Court determines:

(a) That the taxpayer cannot afford to pay the taxes in question, upon a proper showing by the taxpayer, and requiring prepayment will effectively preclude the taxpayer from contesting liability; and

(b) The taxpayer makes a reasonable showing that the decision upholding or requiring payment of the tax in question was erroneous.

(3) If the Tribal Judge waives prepayment of the tax under subsection (2), it may require that the taxpayer post an adequate security bond in lieu of payment.

303.004 Court Appeal Procedures.

(1) Subject to the exhaustion of administrative remedies as provided by this Tax Code, any person, except one who has failed to keep and preserve books, records and invoices as required by §304.004, having paid taxes, penalties or interest as required and feeling aggrieved by the amount of taxes, penalties or interest may appeal to the Tribal Court by filing a Notice of Appeal within the proper time period as provided in Chapter 301A.

(2) In the Notice of Appeal the taxpayer shall set forth the nature of the Tax Commission's decision, the pertinent facts, and the reasons why the Tax Commission's decision should be found erroneous.

(3) The appeal shall be perfected by serving a copy of the Notice of Appeal upon the Tax Commission and by filing the original thereof with proof of service with the Clerk of the Tribal Court. Within ten (10) days after filing the Notice of Appeal, the taxpayer shall file with the Clerk of the Tribal Court a good and sufficient surety bond payable to the Tribe in an amount fixed by the Tribal Court Judge deemed sufficient to pay the Tribe all costs that may be awarded if the appeal of the taxpayer is not sustained.

(4) The proceeding in the Tribal Court on appeal shall be limited to the administrative record introduced before and considered by the Tax Commission, unless good cause exists for allowing new evidence. The standard of review shall be whether the Tax Commission's decision was arbitrary and capricious, or otherwise not in accordance with applicable law. The burden shall rest upon the taxpayer to provide that the tax as paid by him is incorrect, either in whole or in part, and to establish the correct amount of tax. In such proceeding, the taxpayer shall be deemed the appellant and the Tax Commission shall be deemed the appellee. The ruling of the Tribal Court on said appeal shall be final.

CHAPTER 304 ADMINISTRATIVE PROVISIONS

304.001 Application of Chapter. The provisions of this Chapter shall apply with respect to the taxes imposed under this Tax Code.

304.002 Deficient and Delinquent Payments; Penalties and Interest; Limitations.

(1) If upon examination of any returns or from other information obtained by the Tax Commission, it appears that a tax or penalty has been paid in an amount less than that properly due, the Tax Commission shall assess against the taxpayer such additional amount found to be due and shall add thereto interest at the rate of 12% per annum from the date the tax was due until date of payment. The Tax Commission shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within ten days from the date of the notice or within such further time as the Tax Commission may provide. If payment is not received by the Tax Commission by the due

date specified in the notice, or any extension thereof, the Tax Commission shall add a penalty of ten percent (10%) of the amount of the additional tax found due. If the Tax Commission finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, further penalty of 50% of the additional tax found to be due shall be added.

(2) No assessment or correction of an assessment for additional taxes due may be made by the Tax Commission more than four years after the close of the tax year, except (a) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer; or (b) where a taxpayer has executed a written waiver of such limitation.

304.003 Excess Payment; Credit or Refund. If upon receipt of an application by a taxpayer for a refund or for an audit of his records, or upon an examination of the returns or records of any taxpayer, it is determined by the Tax Commission that within the period of assessment of taxes prescribed by §304.007(3), a tax has been paid in excess of that properly due, the excess amount paid within such period, together with interest at a rate of 12% per annum, shall be credited to the taxpayer's account or shall be refunded to the taxpayer at his option; provided, that no interest shall be paid by the Tax Commission unless it is determined that the excess payment was made due to an error or miscalculation by the Tax Commission or its agents. No refund or credit shall be made for taxes paid more than four years prior to the beginning of the calendar year in which the refund application is made or the examination of records is completed.

304.004 Records to be Preserved; Examination.

(1) Every person liable for any tax imposed by this Code shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he, she or it may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by him, her, or it. All relevant books, records, and invoices shall be open for examination at any time by the Tax Commission.

(2) In the case of an off-Reservation person or concern that does not keep the necessary books and records on the Reservation, it shall be sufficient if he, she or it produces on the Reservation such books and records as shall be required by the Tax Commission or permits the examination by an agent authorized or designated by the Tax Commission at the place where such books and records are kept. Any person who fails to comply with the requirements of this section shall be forever barred from questioning, in any court action or proceeding, the correctness of any assessment of taxes made by the Tax Commission based upon any period for which such books, records and invoices have not been so kept and preserved.

(3) Any person claiming a credit or deduction allowed under the terms of this Tax Ordinance shall keep and preserve until the claim has been verified or allowed by the Tax Commission sufficient books, records, and invoices to prove the right to and amount

of such claim for credit or deduction, and no such claim shall be allowed by the Tax Commission unless such books, records, and invoices shall have been kept and preserved.

304.005 Payment – Extension of Time to File Returns.

(1) Payment of the tax may be made by uncertified check under such regulations as the Tax Commission shall prescribe, but, if a check so received is not paid by the bank on which it is drawn, the taxpayer, by whom such check is tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such check had not been tendered.

(2) A return or remittance that is transmitted to the Tax Commission by the United States Mail shall be deemed filed or received on the date shown by the post office cancellation mark stamp upon the envelope containing it.

(3) The Tax Commission, upon the written request of the taxpayer prior to the due date of the return and/or payment, plus any applicable interest, and for good cause shown, may extend the time for making and filing any return, and may grant such reasonable additional time within which to make and file returns as it may deem proper, but any extension granting the taxpayer a reporting date without penalty in excess of thirty days, shall be conditional upon deposit with the Tax Commission of an amount to be determined by the Tax Commission that shall be approximately equal to the estimated tax liability for the reporting period or periods for which the extension is granted. In the case of an extension of more than thirty days, the deposit shall be deposited with the Tribal Treasury and a credit reported to the taxpayer's account, which may be applied to taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where an extension of more than thirty days has been granted.

(4) The Tax Commission shall keep full and accurate records of all funds received and disbursed by it. The Tax Commission shall apply the payment of the taxpayer first against any penalties and interest, and then upon the tax, without regard to any direction of the taxpayer.

(5) The Tax Commission may refuse to accept any return that is not accompanied by a remittance of the tax shown to be due thereon. When such return is not accepted, a taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the procedures and penalties provided in this Chapter.

304.006 Late Payment; Penalties.

(1) If payment of any tax due is not received by the Tax Commission by the last day of the month in which the tax becomes due, there shall be assessed a penalty of 5% of the amount of the tax; if the tax is not received by the last day of the month next succeeding the month in which the due date falls, there shall be assessed a total penalty of 10% of the amount of the tax; and if the tax is not received by the last day of the second

month next succeeding the month in which the due date falls on, there shall be assessed a total penalty of 20% of the amount of tax. No penalty so added shall be less than \$25.00.

(2) If payment of any tax is received within the first ten days of the month next succeeding the month in which the tax is payable, the amount of such payment shall be credited to, and shall be treated for all purposes as having been collected during, the fiscal year that includes the month preceding the month in which such due date falls. This subsection shall not affect the penalty provisions of subsection (1).

(3) Notwithstanding the foregoing, the aggregate of penalties imposed under this Chapter for failure to file a return, late payment of any tax, increase, or penalty, shall not exceed 25% of the tax due or \$50.00, whichever is greater.

304.007 Failure to File Returns; Assessment of Tax by Tax Commission; Penalties.

(1) If any person fails or refuses to make any return or to make available for examination the records required by this Chapter, the Tax Commission shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax; and to that end the Tax Commission may examine the books, records, and papers of any such person and may take evidence, on oath, of any person, relating to the subject of inquiry.

(2) As soon as the Tax Commission procures such facts and information as it is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make a return, it shall proceed to determine and assess against such person the tax and penalties due, but such action shall not deprive such person from appealing to the Tribal Court as provided for in Chapters 301A and 303. To the assessment the Tax Commission shall add the appropriate penalties. The Tax Commission shall notify the taxpayer by certified mail, return receipt requested, of the total amount that shall become due and shall be paid within ten days from the date of such notice.

(3) No assessment or correction of assessment may be made by the Tax Commission more than four years after the close of the tax year, except (1) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (2) where a taxpayer has executed a written waiver of such limitation.

304.008 Waiver or Cancellation of Interest or Penalties.

(1) If the Tax Commission finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the Tax Commission may waive or cancel any interest or penalties imposed under this Chapter with respect to such tax. Inability to pay shall not be considered a circumstance beyond the control of the taxpayer.

304.009 Taxpayer Quitting Business; Liability of Successor.

(1) Whenever any taxpayer quits business, or sells out, exchanges or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable, and such taxpayer shall, within ten days thereafter, make a return and pay the tax due; and any person who becomes a successor to such business shall become liable for the full amount of the tax and withhold from the purchase price sum sufficient to pay any tax due from the taxpayer until such time as the taxpayer shall produce a receipt from the Tax Commission showing payment in full of any tax due or a certificate that no tax is due. If such tax is not paid by the taxpayer within ten days from the date of such sale, exchange or disposal, the purchaser or successor shall become liable for the payment of the full amount of tax, and the payment thereof by such purchaser or successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such purchaser/successor from the taxpayer.

(2) No successor shall be liable for any tax due from the person from whom he has acquired a business or stock of good if he gives written notice to the Tax Commission of such acquisition and no assessment is issued by the Tax Commission within six months of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor.

304.010 Correction of Tax Hearing. Any Person having been issued a notice of additional taxes, delinquent taxes, interest, or penalties assessed by the Tax Commission, may, within twenty days after the issuance of the original notice of the amount thereof or within the period covered by an extension of the due date thereof granted by the Tax Commission, petition the Tax Commission in writing for correction of the amount of the assessment, and for a hearing for examination and review of the assessment. The petition shall set forth the reasons why the correction should be granted and the amount of the tax, interest or penalties, which the petitioner believes to be due. The Tax Commission shall promptly consider the petition and may grant or deny it. If denied, the petitioner shall be notified by certified mail thereof forthwith. If a hearing is granted, the Tax Commission shall fix the time and place therefore and notify the petitioner thereof by mail. After the hearing, the Tax Commission shall make such determination as may appear to be just and lawful and shall send a copy of its determination to the petitioner by certified mail. If no such petition is filed within the twenty-day period, the assessment covered by the notice shall become final.

304.011 Reduction of Tax After Payment; Hearing. Any person, having paid any tax, original assessment, additional assessment, or corrected assessment of any tax, may apply to the Tax Commission within the time limitation for refund provided in this Chapter, or petition in writing for a correction of the amount paid and a hearing for examination and review of the tax liability, in which petition he, she, or it shall set forth the reasons why the hearing should be granted, and the amount in which the tax, interest

or penalty should be refunded. The Tax Commission shall promptly consider the petition, and may grant or deny it. If denied, the petitioner shall be notified by mail thereof forthwith; if a hearing is granted, the Tax Commissioner shall notify the petitioner of its order by mail of the time and place fixed therefore. After the hearing, the Tax Commission shall notify the petitioner of its determination in writing.

304.012 Appeals. Any person, except one who has failed to keep and preserve books, records, and invoices as required in this Chapter, and having paid any taxes, penalties or interest required and feeling aggrieved by the amount of the tax, penalties, or interest may appeal the final determination of the Tax Commission to the Tribal Court as provided in Chapters 301A and 303, as amended, of the Tax Code. The decision of the Tribal Court on the appeal shall be final and may not be attacked or appealed in any other forum.

304.013 Payment Made Under Protest.

(1) If any person feels aggrieved by a tax assessment, penalty or interest imposed pursuant to this Tax Code, such person shall pay the amount of such assessment, penalty, or interest due before the delinquent date and shall at that time give notice, in writing, to the Tax Commission that all or part of such payment is made under protest, and shall in the notice give grounds and reasons for such protest and shall state that a certain part thereof, or that the total sum, is protested. Within ten days of filing the protest notice, the taxpayer shall request a hearing before the Tax Commission, and the Tax Commission shall set the matter for hearing as soon as practicable. Subject to the provisions of Section 303.004(2), no appeal to the Tribal Court of any decision adverse to the taxpayer shall be allowed until such payment is made.

(2) Upon the receipt of any payment made under protest, the Ely Shoshone Finance Department shall deposit such receipts in a separate interest bearing escrow account clearly denominated as such. Funds from this account shall not be expended by the Tribe until a final determination is made that the protest is unwarranted.

(3) Should the aggrieved taxpayer who has paid taxes, penalties, or interest under protest be unsuccessful in challenging all or part thereof, the Ely Shoshone Finance Department shall transfer the sum determined to be properly paid from the escrow account to the Tribe, as provided in §304.016.

(4) The Tax Commission may waive the requirement of payment under protest under the same conditions as set forth in §303.004(a)(b).

304.014 Accounting Period Prescribed. Taxes imposed hereunder, and the returns required therefore, shall be upon a calendar year basis; but, if any taxpayer in transacting his business, keeps books reflecting the same on a basis other than the calendar year, such person may, with the consent of the Tax Commission, make returns, and pay taxes on the basis of the accounting period shown on the books of that person's business.

304.015 Tax Declared Additional. Taxes imposed under the Tax Code shall be in addition to any and all other licenses and fees levied or imposed by the Ely Shoshone Tribe.

304.016 Revenue to Ely Shoshone Tribal Taxation Account. Upon the receipt of any payment made pursuant to the terms of this Tax Code, the Tax Commission shall transmit the same to the Ely Shoshone Finance Department. Upon receipt of such payments, the Finance Department shall deposit them in the Tribe's Taxation Account.

304.017 Closing Agreements Authorized.

(1) The Tax Commission may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax under this Tax Code for any taxable period or periods. Upon approval of such agreement, evidenced by execution thereof by the Tax Commission and the person so agreeing, the agreement shall be final and conclusive as to tax liability or tax immunity covered thereof, and, except upon a showing of fraud or malfeasance or of misrepresentation of material fact;

(2) The case shall not be subject to being reopened as to the matters agreed upon or the agreement modified, by any agent of the Tribe or Tax Commission, or the taxpayer; and in any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund or credit made in accordance therewith shall not be annulled, modified, set aside, or disregarded.

304.018 Seizure and Sale of Personal Property to Satisfy Taxes and Costs: Procedure.

(1) If the person assessed with taxes under this Tax Code neglects or refuses to pay the taxes within 30 days after the demand, the Tax Commission may seize, seal or lock enough of the personal property on the Reservation of the person so neglecting or refusing to pay to satisfy the taxes and costs. The Tax Commission shall take appropriate action to ensure that creditors holding prior perfected security interests are adequately protected.

(2) The Tax Commission shall then post a notice of the seizure, with a description of the property, in at least three public places on the Reservation and in such places off the Reservation as it deems appropriate, publish the notice in a newspaper of general circulation in White Pine County, and shall, at the expiration of five (5) days from the date of posting or publication, whichever occurs last, proceed to sell at a public auction, at the time and place mentioned in the notice, which time shall account for the period for redemption provided for in this subparagraph (5) of this Section, to the highest bidder, for lawful money of the United States, a sufficient quantity of the property to pay the taxes and expenses incurred, together with any penalties, late charges and interest accrued.

(3) Upon payment of the purchase money, the Tax Commission shall deliver to the purchaser the property sold, with a certificate of the sale, a statement of the amount of taxes or assessment and the expenses thereon for which the property was sold, whereupon the title of the property so sold shall vest absolutely in the purchaser. .

(4) The Tax Commission may not enter the taxpayer's private business or personal premises for the purposes of seizing personal property of the taxpayer without first obtaining a distress warrant from the Tribal Court authorizing such entry.

(5) The Taxpayer shall have thirty (30) days after the seizure of property in which to redeem the property seized , by paying the full amount of the tax owed, including any applicable late charges and interest, , plus all costs associated with the seizure and storage of the property to the Tax Commission.

(6) Any Taxpayer whose property is seized pursuant to this Section shall have the right to petition the Tribal Court challenging the legality of the seizure. Upon a proper showing by the taxpayer, the Tribal Court may order temporary, preliminary and/or permanent injunctive relief, preventing the sale of such property until such time as the merits of the Taxpayer's petition are heard and determined. A preliminary hearing shall be held within ten (10) days of the filing of the Taxpayer's petition, at which time the Tribal Court shall determine whether preliminary injunctive relief is warranted.

304.019 Action to Recover Tax.

(1) In addition to any other remedies provided by law for the collection of delinquent taxes, the Tax Commission may bring a civil action in the Tribal Court for the recovery of any tax due.

(2) Where a nonresident of the Reservation, or owner of migratory property, is a defendant in any such action and judgment is recovered against such owner, such judgment becomes a lien on any real property of such owner then or thereafter found within the Reservation, or elsewhere to the extent allowed by law.

304.020 Filing of Abstract or Copy of Judgment with County Recorder; Creation, Duration and Extension of Lien.

(1) If an action is commenced in Tribal Court and a judgment is rendered in favor of the Tax Commission, an abstract of the judgment or a copy may be filed for record with the county recorder of any county.

(2) From the time of the filing, the amount required to be paid, together with interest and penalty set forth, shall constitute a lien upon all the real property on the Reservation owned by the judgment debtor or acquired by the judgment debtor afterwards and before the lien expires. The lien has the effect and priority of a judgment lien and continues for 5 years from the date of the judgment so entered by the county clerk unless sooner released or otherwise discharged.

(3) The lien may, within 5 years from the date of the judgment or within 5 years from the date of the last extension of the lien pursuant to this subsection, be extended by filing for record in the office of the county recorder of any county, an abstract or copy of the judgment, and from the time of filing, the lien is extended to the real property in the county for 5 years, unless sooner released or otherwise discharged.

304.021 Execution: Issuance; Sale. Execution must issue upon the judgment upon request of the Tax Commission in the same manner as execution may issue upon other judgments, and sales must be held under the execution as prescribed by law.

304.022 Recordation of Certificate of Delinquency: Resulting Lien; Duration and Extension.

(1) If any amount required to be paid to the Tribe under this Chapter is not paid when due, the Tax Commission may, within 3 years after the amount is due, file for record in the office of the Tribal Government, and the county recorder for the county in which the property is located, a certificate specifying the amount, interest and penalty due, the name and address as it appears on the records of the Tax Commission of the person liable for the amount due, and the fact that the Tax Commission has complied with all applicable provisions of the Tax Code in the determination of the amount required to be paid.

(2) From the time of the filing for record, the amount required to be paid, together with interest and penalty, shall constitute a lien upon all real property on the Reservation owned by the delinquent taxpayer or acquired by him afterwards and before the lien expires. The lien has the effect and priority of a judgment lien and continues for 5 years from the time of the filing of the certificate unless sooner released or otherwise discharged.

(3) The lien may, within 5 years from the date of the filing of the certificate or within 5 years from the date of the last extension of the lien pursuant to this subsection, be extended by filing for record a new certificate in the office of the county recorder of any county, and from the time of filing, the lien is extended to the real property in the county for 5 years, unless sooner released or otherwise discharged.

304.023 Tax Commission May Release or Subordinate Lien. The Tax Commission may at any time release all or any portion of the property subject to any lien provided for in this Chapter from the lien or subordinate the lien to other liens and encumbrances if it determines that the amount, interest and penalties are secured sufficiently by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount, interest and penalties.

304.024 Evidentiary Effect of Certificate of Release or Subordination. A certificate by the Tax Commission to the effect that any property has been released from the lien, or that the lien has been subordinated to other liens and encumbrances, is

conclusive evidence that the property has been released, or that the lien has been subordinated as provided in the certificate.

304.025 Issuance; Effect; Levy and Sale.

(1) At any time within 3 years after any person is delinquent in the payment of any amount required to be paid, or within 3 years after the last recording of an abstract or of a certificate of delinquency the Tax Commission or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the Tribe under this Chapter.

(2) The warrant must be directed to any Tribal or Bureau of Indian Affairs Law Enforcement officer and has the same effect as a writ of execution.

(3) The warrant must be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

304.026 Payment of Delinquent Taxes Before Sale and Institution of Suit; Filing of Tax Receipt.

(1) At any time after a tax becomes due and before the completion of suit, as provided in this Chapter, and before the sale of any property, any delinquent taxpayer may pay to the Tax Commission the taxes assessed against the delinquent taxpayer, together with the penalties and costs provided by law, receiving from the Tax Commission a receipt for the amount paid. In cases where suit has been filed, such receipt shall be filed with the Tribal Court.

(2) After having been paid by any person for the total amount of the taxes, penalties and costs due from such person, the Tax Commission shall not commence or continue the suit authorized by this Chapter against such person or property.

304.027 List of Delinquent Taxes as *Prima Facie* Evidence, Sufficient for Issuance of Distress Warrant.

(1) The delinquent list or a copy thereof certified by the Tax Commission showing unpaid taxes against any person or property shall be *prima facie* evidence in any court to prove:

- (a) The assessment;
- (b) The property assessed;
- (c) The delinquency;
- (d) The amount of taxes due and unpaid; and

(e) That all the forms of law in relation to the assessment and levy of such taxes have been complied with.

(2) The Taxpayer shall be provided a full and fair opportunity to rebut such *prima facie* evidence pursuant to the provisions of this Chapter.

(3) Such delinquent list or certified copy thereof shall be sufficient to authorize the issuance of a distress warrant for the seizure of the delinquent taxpayer's personal property in accordance with §304.018.

304.028 Enforcement of Chapter: Duties of Peace Officers. All peace officers of the Tribe and the Bureau of Indian Affairs are charged with the duty, without further compensation, of assisting in the enforcement of this Chapter.

304.029 Penalty Provisions Not Applicable in Certain Cases. The provisions for the payment of penalties in this Chapter shall not apply in those cases where specific provision has been otherwise made elsewhere in the Tax Code for the payment of penalties.

CHAPTER 305 POSSESSORY INTEREST TAX

305.001 Statement of Purpose. It is the policy of the Ely Shoshone Tribe to provide persons residing, doing business, or working within the jurisdiction of the Tribe with essential governmental services. To finance this governmental policy and to further the policies set forth in §301.003, the Tribe adopts in this Chapter a possessory interest tax, which will provide the Tribe with a portion of the revenues necessary to fund essential governmental services within the Reservation and which will benefit all individuals and businesses on the Reservation.

305.002 Short Title and Application. The tax levied by this Chapter shall be called the "Possessory Interest Tax" and shall be levied on the use of trust land, which includes any interest obtained in a tract of trust land, within the boundaries of the Reservation, whether by lease, permit, contract, easement, right-of-way, deed, or any other agreement which authorizes a person to use that real and personal property for business, profit, or use regardless of whether the Tribe consents to such use or possession, except as otherwise exempted in §§305.004 and 305.014 of this Chapter.

305.003 Definitions.

(1) **Business.** "Business" means any activity engaged in by any person, or caused to be engaged in by any person, with the object of gain, benefit or advantage, either direct or indirect.

(2) **Finance Department.** "Finance Department" shall mean the Ely Shoshone Tribe's Finance Department.

(3) **Regulations.** “Regulations” shall mean any written rules and regulations adopted and administered by the Tax Commission pursuant to this Chapter.

(4) **State.** “State” means the State of Nevada.

(5) **Taxable Year.** The term “Taxable Year” means the calendar year in which taxes are due and payable relative to the calendar year used for basis of assessment. Payment of the tax will be prorated by the number of days within the calendar year that the business was in existence.

(6) **Taxes.** “Tax” or “Taxes” shall mean the tax, and any interest, penalty, or costs, assessed or imposed pursuant to this Chapter.

(7) **Trust land.** “Trust land” means any land located within the Ely Shoshone Indian Reservation which is held in trust by the United States for the Tribe or its members.

(8) **Use Basis.** “Use Basis” means the basis upon which the tax is calculated, utilizing the Net Capitalization of Income method as set forth in §305.007.

(9) **Utility.** “Utility” shall mean any privately or publicly held entity primarily engaged in supplying, transmitting, transporting, or distributing electricity, oil and oil products, gas, natural gas, natural gas products, water, carbon dioxide, liquid hydrocarbons, telephone, telegraph or other communication services, or transportation services including freight services.

(10) **Indian.** “Indian” shall mean an enrolled member of any federally recognized Indian tribe.

305.004 Property Exempt from Taxation. The following shall be exempt from the tax enacted by this Chapter:

(1) Any possessory interest in any Tribally or individually-owned trust or fee land used solely for the purpose of a permanent residence.

(2) Any building, barn, home, storage tank or facility, fence, or other structure of a permanent or semi-permanent nature affixed to or placed upon trust or fee land solely for the purpose of a permanent residence.

(3) Indian arts and crafts made or maintained for sale, whether wholesale or retail, by any Tribal member.

(4) Any lease of trust land for commercial retail purposes, or a business purpose that entails the leasing of a building or building space for the sale of goods or services. This exemption does not include any lease or other agreement for mining purposes, for the construction of billboards, or for telecommunication transmission purposes.

- (5) All other exemptions recognized by federal or tribal law.

305.005 The Tax Cycle. The tax rate and methodology for the Possessory Interest Tax shall remain constant for a two-year tax period, i.e., tax cycle. The initial tax cycle of this Chapter commences with the effective date of this Chapter and terminates on December 31, 2007. Thereafter, the tax cycle shall take a full two-year period ending the last day in December of odd-numbered years.

305.006 Imposition and Rate of Tax. The Possessory Interest Tax set forth herein shall be imposed on the ownership and use of a non-exempt possessory interest on January 1st of each taxable year and shall be assessed at the rate of three percent (3%) of the tax base as determined in accordance with the methodologies utilized in §305.007. The said tax rate may not be escalated by more than the annual rate of inflation as measured by the annual average rate of the Gross Domestic Product (GDP) Price Deflator of the preceding year for the succeeding tax cycles. Upon passage of any determination and resolution changing the tax rate and/or the methodologies, notice shall be given to all taxpayers and shall be published in newspapers of general circulation and posted or published at such places as the Tax Commission designates.

305.007 Computation of Possessory Interest Tax. The possessory interest tax shall be assessed as provided in this Chapter or any method adopted and approved by the Tribal Council and implemented by the Tax Commission. The method reflects a reasonable tax on the use of the possessory interest which is subject to taxation.

- (1) Possessory Interests Subject to Tax.

- (a) Any possessory interest in Trust land on the reservation is subject to the Tax, unless exempted under §§305.004 and 305.014 of this Chapter.

- (2) Date of Assessment. Every possessory interest which is subject to taxation under this Chapter shall be assessed as of the 1st of January of a given calendar year.

- (3) Tax Base. The Tax base of all taxable possessory interests shall be eighty percent (80%) of the use basis thereof as determined by the Tax Commission in the manner described by this section, and such percentage shall be uniformly applied without exception.

- (4) Financial Information. The financial information required for the calculation of the possessory interest tax during the present tax year is that which belongs to the previous tax year. All financial information is subject to audit by the Tax Commission.

- (5) Calculation of Use Basis. The use basis of the possessory interest shall include the dollar value of the trust land covered by the possessory interest and the

capitalized value of net income attributable to the use of the land, as determined pursuant to §305.007(5)(b), and in accordance with forms and worksheets provided by the Tax Commission.

(a) **Statement of Taxpayer.** Every taxpayer holding a non-exempt possessory interest, which is in operational mode or is capable of being in operational mode on the assessment date of any year, shall no later than April 15th of each year prepare, sign, and file with the Tax Commission a statement on forms provided by the Tax Commission, showing:

- (i) The name and address of the taxpayer and the nature of the taxpayer's business.
- (ii) A description of the possessory interest of the taxpayer, including length, width and acreage.
- (iii) The gross operating revenue, the gross operating expenses, and the net income, and other financial information necessary to compute the tax in accordance with this section, including, but not limited to audited financial statements. For the utilities subject to the jurisdiction of the federal regulatory authorities, the information incorporated in their related forms they file with those authorities shall be adequate. For others, the similar information that they file with the state regulatory commissions/ authorities shall suffice.
- (iv) A statement of the amount of the tax due.

(b) The taxpayers shall calculate their possessory interest and tax liabilities in accordance with the capitalization net income method. The amount of the possessory interest tax for all categories shall thus be determined by computing the capitalized value of the net income (exclusive of any non-utility income for utilities) in proportion to the value of the trust land upon which the possessory interest is located, as described in subsection (iii) hereunder. The capitalization rate shall be set at 13% except, when and if the taxpayer demonstrates in writing that a different and higher number is justified. Reasonable expenses to be incurred in producing the proportional annual net income shall be allowed as deductions, in accordance with rules prescribed by the Tax Commission.

- (i) The value of trust land for the purposes of this Sub-paragraph shall be set at \$4,270 per acre; and the said value may not be escalated by more than the annual rate of inflation as measured by the annual average rate of the GDP Price Deflator of the preceding year for the succeeding tax cycles.

305.008 Assessment of Taxes.

(1) The Tax Commission shall be authorized to assess taxes against a taxpayer and such assessments are presumed to be correct.

(2) When it appears that the return filed by the taxpayer does not reflect the tax due under this Chapter, the Tax Commission shall audit the taxpayer for the deficiency, interest, penalties, and costs.

(3) If no return is filed, the Tax Commission is authorized to make an estimate of the tax due, and to assess the taxpayer for that tax, interest, penalties, and costs, subject to the provisions of §305.010.4.

(4) If the taxpayer fails to provide information within its possession or control, which is relevant to an assessment of taxes due, and which it is required to provide under this Chapter, the Tax Commission is authorized to make an estimate of the tax due and to assess the taxpayer unless it is shown by the taxpayer that the estimate, on the basis of the best information available to the Tax Commission, was clearly erroneous.

(5) All taxpayers subject to this possessory interest tax shall remit the taxes due for a calendar year.

305.009 Tax Declaration and Designation of Natural Person. Every entity owing any nonexempt possessory interest on the Reservation shall designate a natural person as the individual empowered by the taxpayer to act on behalf of the taxpayer with respect to all matters involving the possessory interest tax. Said designated natural person shall complete the forms distributed by the Tax Commission and shall provide the information required therein. The Tax Commission shall be notified of the natural person who has been designated to act on behalf of the taxpayer entity.

305.010 Reporting Requirements. Each taxpayer shall comply with the following reporting requirements and such other requirements as are by rules or regulations adopted by the Tax Commission:

(1) **Forms.** The Tax Commission shall provide taxpayers with forms for reporting, calculating and paying the possessory interest tax to the Tribe.

(2) **Reporting Date.** Each Taxpayer shall file its possessory interest tax return and remit payment with the return no later than April 15.

(3) **Extension of Time.** Extensions of time may be requested in accordance with § 304.005.

(4) **Failure to Report; Administrative Valuation.** If a taxpayer fails to file complete possessory interest tax reporting information, or to otherwise provide requested

information or documents within its possession or control which are relevant to an assessment of the possessory interest, tax due under this chapter, the Tax Commission may proceed to assess the tax due based on available information. This assessment shall be binding on the taxpayer unless it shows that the assessment, on the basis of the best information available to the Tax Commission, was clearly erroneous or unless the Tax Commission for other good cause shown relieves the taxpayer from the operation of this subparagraph.

(5) Reporting Requirements of Exempt Persons. No taxpayer or entity shall be required to file possessory interest tax returns for any possessory interest which is exempt under §§305.004, 305.014 and other relevant sections of this Chapter, provided that the Tax Commission may require any taxpayer or entity to provide the information necessary to establish the claimed tax exemption.

(6) Authority of the Tax Commission. The Tax Commission may by form or regulation require any taxpayer to file the information or documents deemed necessary for the proper and efficient administration of the tax.

(7) Administrative Reports. The Tax Commission shall report all possessory interest tax activities and collections to the Tribal Council at least annually.

(8) Amended Returns. Amended returns for assessment may be filed and will be considered for a period of one year from the date of the original report. After one year, all reports will be considered final, except to the extent there has been an underpayment of taxes reported or due, in which case the provisions of § 304.002 shall apply. Any refunds of overpayments as a result of corrected assessment will be paid to the taxpayer.

305.011 Payment of Taxes Due. The assessed tax shall be paid no later than April 15th of each year, unless another due date is specified by the Tax Commission. Any taxes assessed shall be paid by check or money order made payable to the Ely Shoshone Tribe Tax Commission. Payment is timely made if it is postmarked before midnight on the date on which the tax is due or if it is delivered to the Tax Commission by certified mail or in person and a receipt is given before midnight on the due date.

305.012 Extension of Time for Paying Tax, Interest. Taxpayers obtaining an extension of time to make payment must pay interest pursuant to § 304.005(3).

305.013 Lien for Taxes; Lien Against Possessory Interest. The possessory interest tax shall be a lien against the possessory interest of the taxpayer in favor of the Tribe to secure payment of the tax and any penalties and interest that become due. The lien under this section shall arise as of March 1 of the tax year, without notice or demand, and shall be a first lien and superior to any interest in the property. The entire provisions of § 304.018 are applicable herewith.

305.014 Exemptions: Utility Service Lines. To the extent used for purposes of exemption under this section, a possessory interest used to operate a utility service line, utility delivery facility or utility distribution facility shall be exempt from this tax. A possessory interest used to operate utility transmission lines shall be subject to this tax. The Tax Commission is authorized to establish regulations defining service, delivery, distribution and transmission lines and facilities, subject to approval by the Tribal Council.

305.015 Method of Claiming Exemption. Any taxpayer owing both taxable and exempt possessory interests shall file with the Tax Commission a claim for any exemption. The claims for exemption shall be filed on the form provided by the Tax Commission at the time of filing the valuation reports required by § 305.010, and shall be accompanied by a map clearly indicating the specific property for which exemption is claimed. Any taxpayer owing only an exempt possessory interest shall be required to claim such exemptions only at the written request of the Tax Commission.

305.016 Appeal Procedures for Protested Taxes. Any protest to an assessment, a denial of a claim for exemption, a determination of value, or any other matter relating to the possessory interest tax may be raised only in conformity with the provisions of Chapter 304.

305.017 Collection Powers. The Tax Commission, in the name of the Tribe, shall have full power to collect taxes and penalties assessed including the power to file suit in Tribal Court and to execute on any judgment by all appropriate legal remedies including attachment and seizure of the assets of any delinquent taxpayer in accordance with the provisions of Chapter 304.

305.018 Severability. If any part or application of this Chapter is held invalid, the remainder of this Chapter and other Chapters of this Tax Code, or their application to other situations or taxpayers shall not be affected.

305.019 Use of Tax Proceeds. Tax proceeds shall be deposited by the Finance Department in a Special Account, other than the Tribe's General Fund, to be authorized by the Tribal Council for expenditure to defray the costs of providing essential governmental services on the Reservation and for other purposes as determined by the Tribal Council. The Finance Department may execute vouchers against this fund to make refund adjustments, payments of interest, or payments for any purpose which this Chapter may require.

305.020 Effective Date. This Chapter shall be effective on the date determined by the Tribal Council, subject to review by the Secretary.

305.021 Conflict With Other Applicable Law. In the event of a conflict between provisions of this Chapter, and any other provision of applicable law that by its terms is applicable to taxation this Chapter shall supersede and be controlling.

CHAPTER 306 MINERAL SEVERANCE TAX

306.001 Definitions. As used in this Chapter, unless the context otherwise requires:

(1) **Mineral.** "Mineral" means any natural substance deposited in the earth, inorganic or fossil, homogenous in structure, having a definite chemical composition and known crystallization including all fossil bodies or matters dug out of mines or quarries, but not limited to ores, coal, oil and gas, sand, and gravel.

(2) **Sever or Severance.** "Sever" or "Severance" means to separate, remove, or take a mineral or minerals from the earth, whether by means of digging, cutting, mining, drilling, or otherwise.

(3) **Value.** "Value" means the value of a mineral or minerals severed from the earth, measured by the gross proceeds derived from the sale of a mineral or minerals, which shall include all subsidies, rebates or bonuses received from the purchaser or any other person in connection with the sale or transfer of severed minerals. If not sold for money, value shall mean the fair market value of the severed mineral, measured by comparable sales.

(4) **Mines.** "Mines" means an excavation in the earth or similar operation on the Reservation from which minerals are severed from the earth.

306.002 Mineral Severance Tax Imposed, Rate. There is hereby imposed upon all persons who sever minerals from the earth and within the Reservation a Mineral Severance Tax. The rate of tax shall be 2% of the value of the severed minerals regardless of the place of sale or the fact that delivery may be made to points outside the Reservation.

306.003 Duties of Tax Commission.

(1) The Tax Commission shall:

(a) Investigate and determine the amount and value of all mineral severed on the Reservation and assess them as provided herein.

(b) Keep appropriate records of all persons conducting mining and other operations on the Reservation, and who are or may be severing minerals from the earth.

306.004 Annual Statement; Annual List.

(1) Every person operating any mine on the Reservation:

(a) Shall, on or before February 15 of each year, except as provided in paragraph (b), file with the Tax Commission a statement, on a form approved by the Tax Commission, showing the gross receipts received from each mine owned, worked or operated by that person during the calendar year immediately preceding the year in which the statement is filed.

(b) Such person may have up to 30 additional days to file the statement if written application is made to the Tax Commission prior to the due date of the statement and the Tax Commission finds good cause for the extension.

(2) The statement must be verified by the manager, superintendent, secretary, or treasurer of the corporation, or by the owner of the mine or by someone authorized on his behalf, if the owner of the mine is also the operator of the mine.

(3) Each recipient of royalty payments as described in subsection 1 shall annually file with the Tax Commission a list showing each of the lessees responsible for taxes due in connection with the mine or mines included in the statement filed pursuant to subsections 1 and 2.

306.005 Computation of Gross Yield and Net Proceeds.

(1) The Tax Commission shall, from the statement and from all obtainable data, evidence and reports, compute in dollars and cents the value of the severed minerals for the period covered by the statement.

(2) The Tax Commission must include the value of any product of the mine, which was:

(a) Sold;

(b) Exchanged for any thing or service;

(c) Removed from the Reservation in a form ready for use and/or sale;
or

(d) Used in a manufacturing process or in providing a service during the period covered by the statement.

306.006 Tax Commission to Prepare Certificate of Assessment; When Assessments Made and Taxes Due.

(1) When the Tax Commission determines the value of the severed minerals, the Tax Commission shall prepare its certificate of assessment of the severed minerals in triplicate. The Tax Commission shall file one copy of the certificate with the Tribal Secretary, one copy with its own office, and shall send the third copy, by certified mail,

return receipt requested, to the person who is the owner of the mine or operator of the mine, as the case may be.

(2) The certificate of assessment shall set forth the amount and value of the severed mineral(s) and the amount of the tax due. The certificate of assessment must be filed and mailed not later than June 25 immediately following the month during which the statement was filed.

(3) The taxes are due on or before thirty days after the certificate of assessment is mailed. If an appeal of the certification is pending, the person assessed must pay the tax under protest in a timely manner.

306.007 Liens for Taxes on Mines. The tax levied pursuant to this Chapter is hereby made a lien on the mines or mining operations from which ores or minerals are extracted for sale or reduction, and also on all taxpayer's machinery, fixtures, equipment, and stockpiles located at the mining site or elsewhere on the Reservation. The lien attaches on the 1st day of January of each year for the calendar year commencing on that day and may not be removed or satisfied until the taxes are all paid or the title to those mines or mining claims has vested absolutely in a purchaser under sale for those taxes.

306.008 When Tax Becomes Delinquent; Collection of Delinquencies. If the amount of the tax is not paid on or before it is due, it is delinquent and must be collected as other delinquent taxes are collected by law, together with the penalties provided for the collection of delinquent taxes.

306.009 Burden of Proof on Mine Owner to Show Assessment Unjust, Improper or Invalid. In any suit arising concerning the assessment and taxation hereunder, the burden of proof is upon the owner of the mine to show, if he so alleges or contends, that the assessment certified by the Tax Commission is unjust, improper, or otherwise invalid.

306.010 Penalty for False Statements. Any person who verifies under oath to the truthfulness of a statement required by this Chapter that is false in any material respect shall be liable to a civil penalty of not more than 15 % of the tax as determined by the Tax Commission after reasonable notice and hearing.

CHAPTER 307 INTOXICATING LIQUOR: LICENSES AND TAXES

307.001 Definitions. In addition to the definitions contained in this section and in this Code, other terms used herein shall have the definitions given them in Ordinance No. XXV, governing the license and sale of liquor on the Ely Shoshone Reservation.

(1) **Importer.** "Importer" means any person who, in the case of liquors that are brewed, fermented or produced outside the Reservation, is first in possession thereof within the Reservation after completion of the act of importation.

(2) **Original Package.** “Original Package” means any container or receptacle first used for holding liquor, which container or receptacle is sealed.

(3) **Permissible Person.** “Permissible Person” means any duly ordained minister who uses liquor for sacramental purposes, any doctor, apothecary or pharmacist who uses alcohol for or in compounding medicine, or the representative of any school, university, hospital, clinic or industrial concern where liquor is used and needed for industrial purposes or research and not for concocting beverages for drink.

(4) **Retail Liquor Store.** “Retail Liquor Store” means an establishment where beers, wines, and liquors, in original packages or by the drink, are sold to a consumer.

(5) **Supplier.** “Supplier” means, with respect to liquor that is brewed, distilled, fermented, manufactured, produced, or bottled:

(a) Outside the United States, the owner of the liquor when it is first transported into any area under the jurisdiction of the United States Government;
or

(b) Within the United States but outside the Reservation, the brewer, distiller, manufacturer, producer, vintner or bottler of the liquor, or his designated agent.

(6) **Wholesale Dealer or Wholesaler.** “Wholesale Dealer” or “Wholesaler” means a person licensed to sell liquor as it is originally packaged to retail liquor stores or to another licensed wholesaler, but not to sell to the consumer or general public.

307.002 Applicability of Chapter. This Chapter shall not apply to common carriers, while engaged in interstate commerce, which sell or furnish liquor on their trains, buses or airplanes.

307.003 Levy, Collection, and Amount of Excise Tax. Except as otherwise provided in this Chapter, an excise tax is hereby levied and must be collected respecting all liquor, and upon the privilege of importing, possessing, storing, or selling liquor, according to the same rates and classifications imposed under Nevada Statutes, as may be amended from time to time.

307.004 Liquor Sold to Permissible Persons Exempt from Tax. It is hereby declared to be the intent of this Chapter that no excise tax shall be imposed on liquor sold to permissible persons, and the Tax Commission, in computing the excise tax to be paid on liquor, shall make rules for refunds or credits to be allowed to any importer making a satisfactory showing of such sales.

307.005 Importer's Bond; Waiver of Requirement.

(1) Each licensed importer shall furnish a bond to the Tribe conditioned for the payment of all excise taxes due or to become due from him under the provisions of this Chapter. Each bond shall be in a principal sum equal to the greatest excise tax paid by the importer in any quarter of the preceding year, or if such standard is not available, then in a sum required from a licensee operating under conditions deemed comparable by the Tax Commission. In no case shall a bond be for an amount less than \$1,000.00. When cash or a certificate of deposit or investment certificate is used, the amount required shall be rounded off to the next larger integral multiple of \$100.00.

(2) The bond or undertaking shall be acceptable to and approved by the Tax Commission, and a deposit of cash or negotiable United States bonds may be accepted in lieu of an undertaking. The Tax Commission shall deposit all such United States Government bonds and cash deposits with the Finance Department as custodian thereof.

(3) Notwithstanding any other provision of this section, upon application and a satisfactory showing thereof, the Tax Commission may, from time to time, increase or decrease the amount of the required bond, having consideration for the amount of importations made by the importer.

(4) Notwithstanding any other provision of this section, the Tax Commission may waive the requirement of a bond pursuant to this section whenever a licensed importer has maintained a satisfactory record of payment of excise taxes for a period of not less than 5 consecutive years.

307.006 Tax Commission's Rules. The Tax Commission shall make all necessary and convenient rules:

- (1) Prescribing the form of reports and claims made by taxpayers;
- (2) Prescribing the time for making such reports and settlements thereon; and
- (3) Respecting permissible persons as well as other importers.

307.007 Importers and Manufacturers to Pay Tax; Refund or Credit; Discount; Extension of Time for Payment.

(1) For the privilege of importing, possessing, storing or selling liquors, all licensed importers and manufacturers of liquor on the Reservation shall pay the excise tax imposed and established by this Chapter.

(2) If, after the tax is paid on any such liquor, satisfactory evidence is presented to the Tax Commission that the imports have been actually exported and sold outside the Reservation in a manner not in conflict with the law of the place of sale, the Tax Commission shall direct that a refund or credit of the tax so paid be made to the

taxpayer. The taxpayer shall report all such exports and imports, and pay the tax on the imports monthly, on forms and subject to regulations prescribed by the Tax Commission.

(3) The excise tax imposed by this Chapter is due on or before the 20th day of the following month. If all such taxes are paid on or before the 15th day of the following month, a discount in the amount of 3% of the tax must be allowed to the taxpayer. The Tax Commission may, for a good cause, extend for not more than 15 days after the date the tax is due the time for paying the tax if a request for such an extension of time is received by the Tax Commission on or before the date the tax was due. If such an extension is granted, interest accrues from the original date the tax was due.

(4) The Tax Commission shall allow refunds or credits on any shipments lost, stolen or damaged in transit, or damaged or spoiled on the premises. The Tax Commission may require all claims in connection therewith to be sworn to and may make ratable tax adjustments, credits or refunds to effectuate the purpose of this Chapter.

CHAPTER 308 SALES AND USE TAX

308.001 Definitions.

(1) **Business.** "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.

(2) **Tribal Council.** "Tribal Council" means the Ely Shoshone Tribal Council, established pursuant to the Constitution of the Tribe as its governing body.

(3) **Gross Receipts.** "Gross Receipts" means:

(a) The total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(i) The cost of the property sold. However, in accordance with such rules and regulations as the Tax Commission may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale, has reimbursed his vendor for tax which the vendor is required to pay to the State, or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

(ii) The cost of the materials used, labor or service cost, interest paid, losses or any other expenses.

(iii) The cost of transportation of the property prior to its sale to the purchaser.

(b) The total amount of the sale or lease or rental price includes all of the following:

(i) Any services that are part of the sale.

(ii) All receipts, cash, credits and property of any kind.

(iii) Any amount for which credit is allowed by the seller to the purchaser.

(c) Gross Receipts does not include any of the following:

(i) Cash discounts allowed and taken on sales.

(ii) Sale price of property returned by customers when the full sale price is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(iii) The price received for labor or services used in installing or applying the property sold.

(iv) The amount of any tax imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer, excluding however any manufacturer's or importer's excise tax.

(d) For purposes of the sales tax, if retailers establish to the satisfaction of the Tax Commission that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

(4) **In the Jurisdiction of the Tribe.** "In the Jurisdiction of the Tribe" means within the exterior boundaries of the Ely Shoshone Reservation whether held in fee or trust.

(5) **Occasional Sale.** "Occasional sale" includes:

(a) A sale of property not held or used by a seller in the course of an activity for which he is required to hold a seller's permit under tribal law or Nevada law, provided such sale is not one of a series of sales sufficient in

number, scope and character to constitute an activity requiring the holding of a seller's permit.

(b) Any transfer of all or substantially all the property held or used by a person in the course of such an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer.

(c) For the purposes of this section, stockholders, bondholders, partners or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the property of such corporation or other entity.

(6) **Person.** "Person" includes any individual, firm, partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receive, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit, including the Ely Shoshone Tribal Council.

(7) **Purchase.** "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by means whatsoever, of tangible personal property for a consideration.

(a) A transaction whereby the possession of the property is transferred but the seller retains the title as security for the payment of the price is a purchase.

(b) A transfer for consideration of tangible personal property that has been produced, fabricated or printed to the special order of the customer, or of any publication, is also a purchase.

(8) **Retail Sale; Sale at Retail.** "Retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business of tangible personal property. Retail sale or sale at retail includes:

(a) The delivery on the Ely Shoshone Reservation of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for re-delivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business on the Ely Shoshone Reservation, is a retail sale on the Ely Shoshone Reservation by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

(9) **Retailer.** "Retailer" includes:

(a) Every person who makes any retail sale or sales of tangible personal property, and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others;

(b) Every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption; and

(c) Every person making more than two retail sales of tangible personal property during any 12-month period, including sales made in the capacity of assignee(s) for the benefit of creditors, or receiver or trustee in bankruptcy.

(d) When the Tax Commission determines that it is necessary for the efficient administration of this Chapter to regard any salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the Tax Commission may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this Chapter.

(e) A licensed optometrist or physician and surgeon is a consumer, and shall not be considered a retailer within the provisions of this Chapter, with respect to the ophthalmic materials used or furnished by him in the performance of his professional services in the diagnosis, treatment or correction of conditions of the human eye, including the adaptation of lenses or frames for the aid thereof.

(10) **Sale.** "Sale" means and includes any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, or tangible personal property for a consideration.

(a) "Transfer of possession", "lease", or "rental" includes only transactions found by the Tax Commission to be in lieu of transfer of title, exchange or barter.

(b) "Sale" includes:

(i) The producing, fabricating, processing, printing or imprinting of tangible personal property for consideration for consumers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing, or imprinting;

(ii) The furnishing and distributing of tangible personal property for consideration by social clubs and fraternal organizations to their members or others;

(iii) The furnishing, preparing or serving for consideration of food, meals or drinks;

(iv) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; and

(v) A transfer for consideration of the title or possession of tangible personal property that has been produced, fabricated or printed to the special order of the customer, or of any publication.

(11) Sales Price. "Sales price" means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the property sold;

(b) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses; or

(c) The cost of transportation of the property prior to its purchase.

(d) The total amount for which property is sold includes all of the following:

(i) Any services that are a part of the sale; and

(ii) Any amount for which credit is given to the purchaser by the seller.

(e) "Sales price" does not include any of the following:

(i) Cash discounts allowed and taken on sales;

(ii) The amount charged for property returned by customers when the entire amount charged therefore is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned;

(iii) The amount charged for labor or services rendered in installing or applying the property sold; and

(iv) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States

upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(12) Seller. “Seller” includes every person engaged in the business of selling tangible personal property of any kind, the gross receipts from the retail sale of which are required to be included in the measure of the sales tax.

(13) Storage. “Storage” includes any keeping or retention in the Ely Shoshone Reservation for any purpose except sale in the regular course of business or subsequent use solely outside the Reservation of tangible personal property purchased from a retailer.

(14) Storage and Use. “Storage and Use” do not include the keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the Ely Shoshone Reservation for use thereafter solely outside the Ely Shoshone Reservation, or for the purpose of being processed, fabricated or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the Ely Shoshone Reservation and thereafter used solely outside the Ely Shoshone Reservation.

(15) Tangible Personal Property. “Tangible personal property” means personal property that may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses.

(16) Taxpayer. “Taxpayer” means any person liable for the tax under this Chapter.

SALES TAX

308.002 Imposition and Rate. A tax is hereby imposed upon all retail sales at a rate of 7.375 % of the gross receipts received by the retailer from the sale of all tangible personal property sold at retail on the Reservation on or after the effective date of this Code, or at the same rate as may be imposed by Nevada law within White Pine County pursuant to NRS Chapter 372, as amended, whichever rate is higher.

308.003 Method of Collection. The sales tax shall be imposed on the consumer and shall be collected by the retailer from the consumer insofar as it can be done.

308.004 Tax as Debt to Tribe. The tax required to be collected by the retailer constitutes a debt owed by the retailer to the Tribe.

308.005 Advertisement of Assumption or Absorption of Tax by the Retailer Unlawful.

(1) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed

or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.

(2) Any person violating any provision of this section is guilty of a misdemeanor, or shall be subject to a civil fine not to exceed \$5,000.00.

308.006 Tax Must Be Displayed Separately from Price. The Tax Commission may by regulation provide that the amount collected by the retailer from the consumer be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale.

308.007 Application for Permit Required: Form; Contents.

(1) Every Person desiring to engage in or conduct business as a seller within the Reservation must file with the Tax Commission an application for a permit for each place of business.

(2) Every application for a permit must:

(a) Be made upon a form prescribed by the Tax Commission;

(b) Set forth the name under which the applicant transacts or intends to transact business and the location of his, her or its place or places of business; and

(c) Set forth other information that the Tax Commission may require.

(3) The application must be signed by the owner if he or she is natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which must be attached the written evidence of his authority.

308.008 Fee for Permit. At the time of making an application, the applicant must pay to the Tax Commission a permit fee of \$1.00 for each permit.

308.009 Issuance and Display of Permit; Assignability. After compliance with §§308.007 and 308.008 by the applicant, the Tax Commission shall grant and issue to each applicant a separate permit for each place of business within the Reservation. A permit is not assignable, and is valid only for the person in whose name it is issued and for the transaction of business at the place designated on it. It must at all times be conspicuously displayed at the first place for which issued.

308.010 Fee for Reinstatement of Suspended or Revoked Permit. A seller whose permit has been previously suspended or revoked must pay the Tax Commission a fee of \$1.00 for the renewal or issuance of a permit.

308.011 Revocation or Suspension of Permit: Procedure; Limitation on Issuance of New Permit.

(1) Whenever any person fails to comply with any provision or any regulation of the Tax Commission, relating to the sales tax prescribed and adopted under this Chapter, the Tax Commission, after a hearing at which the person was given prior notice of at least 10 days in writing specifying the time and place of the hearing and requiring him, her or it to show cause why his, her or its permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person.

(2) The Tax Commission shall give to the person written notice of the suspension or revocation of any permits.

(3) The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(4) The Tax Commission may not issue a new permit after the revocation of a permit unless it is satisfied that the former holder of the permit will comply with the provisions of this Chapter relating to the sales tax and to all of the regulations of the Tax Commission.

308.012 Presumption of Taxability; Resale Certificate. For the purpose of the proper administration of this Chapter and to prevent evasion of the sales tax, it is presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

308.013 Effect of Resale Certificate. A resale certificate relieves the seller from the burden of proof only if taken in good faith from the person who is engaged in the business of selling tangible personal property and who, at a time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

308.014 Form and Contents of Resale Certificate.

(1) The resale certificate must:

(a) Be signed by and bear the name and address of the purchaser;

(b) Indicate the number of the permit issued to the purchaser; and

(c) Indicate the general character of the tangible personal property sold by the purchaser in the regular course of business.

(2) The resale certificate must be substantially in such form as the Tax Commission may prescribe.

308.015 Liability of Purchaser Giving Resale Certificate. If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the use is taxable to the purchaser as of the time the property is first so used by him, and the sales price of the property to him is the measure of the tax. Only when there is an unsatisfied use tax liability on this basis is the seller liable for sales tax with the respect to the sale of the property to the purchaser. If the sole use of the property other than retention, demonstration or display in the regular course of business is the rental of the property while holding it for sale, the purchaser may elect to include in his gross receipts the amount of the rental charged rather than the sales price of the property to him.

308.016 Improper Use of Resale Certificate; Penalty. Any person who gives a resale certificate for property which he knows at the time of purchase is not to be resold by him in the regular course of business for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction is guilty of a misdemeanor, or shall be subject to a civil fine not to exceed \$5,000.00.

308.017 Resale Certificate: Commingled Fungible Goods. If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

USE TAX

308.018 Imposition and Rate.

(1) An excise tax is hereby imposed on the storage, use or other consumption on the Reservation of tangible personal property purchased from any retailer for storage, use or other consumption on the Reservation at the rate of 7.375 % of the sales price of the property.

(2) The tax is imposed with the respect to all property that was acquired off the Reservation in a transaction that would have been a taxable sale if it had occurred on the Reservation.

308.019 Liability for Tax; Extinguishment of Liability. Every person storing, using or otherwise consuming on the Reservation tangible personal property purchased from a retailer is liable for the tax. A person's liability is not extinguished until the tax has been paid to the Tribe, except that a receipt from a retailer maintaining a place of business on the Reservation or from a retailer who is authorized by the Tax Commission,

under such rules and regulations as it may prescribe, to collect the tax and who is, for the purposes of this Chapter relating to the use tax, regarded as a retailer maintaining a place of business on the Reservation, given to the purchaser pursuant to §308.020 is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

308.020 Collection by Retailer; Purchaser's Receipt. Every retailer maintaining a place of business on the Reservation and making sales of tangible personal property for storage, use or other consumption on the Reservation, not exempted under this Chapter shall, at the time of making sales or, if the storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefore in the manner and form prescribed by the Tax Commission.

308.021 Advertisement of Assumption or Absorption of Tax by Retailer Unlawful.

(1) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.

(2) Any person who violates this section shall be subject to a civil fine not to exceed \$5,000.00.

308.022 Tax Must Be Displayed Separately from Price. The tax required to be collected by the retailer from the purchaser must be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales.

308.023 Registration of Retailers. Every retailer who sells tangible personal property for storage, use or other consumption on the Reservation shall register with the Tax Commission and give:

(1) The name and address of all agents operating on the Reservation.

(2) The location of all distribution or sales houses or offices or other places of business on the Reservation.

(3) Such other information as the Tax Commission may require.

308.024 Presumption of Purchase of Use; Resale Certificate. For the purpose of the proper administration and to prevent evasion of the use tax and the duty to collect the use tax, it is presumed that tangible personal property sold by any person for delivery on the Reservation is sold for storage, use or other consumption on the Reservation until the contrary is established. The burden of proving the contrary is upon the person who

makes the sale unless that person takes from the purchaser a certificate to the effect that the property is purchased for resale.

308.025 Effect of Resale Certificate. A resale certificate relieves the person selling the property from the burden of proof only if taken in good faith from a person who engaged in the business of selling tangible personal property and who holds the permit provided by this Chapter and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

308.026 Form and Contents of Resale Certificate.

(1) The resale certificate must:

(a) Be signed and bear the name and address of the purchaser;

(b) Indicate the number of the permit issued to the purchaser; and

(c) Indicate the general character of the tangible personal property sold by the purchaser in the regular course of business.

(2) The resale certificate must be substantially in such form as the Tax Commission may prescribe.

308.027 Liability of Purchaser Giving Resale Certificate: Use of Article Bought for Resale. If a purchaser who gives a resale certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used. If the sole use of the property, other than retention, demonstration or display in the regular course of business, is the rental of the property while holding it for sale, the purchaser may elect to pay the tax on the use measured by the amount of the rental charged rather than the sales price of the property to him, her or it.

308.028 Resale Certificate: Commingled Fungible Goods. If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so produced but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

308.029 Presumption of Purchase from Retailer. It is presumed that tangible personal property shipped or brought to the Reservation by the purchaser on or after the

effective date of this Ordinance was purchased from a retailer on or after the effective date of this Ordinance for storage, use or other consumption on the Reservation.

308.030 Presumption of Use: Off-Reservation Delivery.

(1) On and after the effective date of this Ordinance, it is presumed that tangible personal property delivered outside the Reservation to a purchaser known by the retailer to be a resident of the Reservation was purchased from a retailer for storage, use or other consumption on the Reservation and stored, used or otherwise consumed on the Reservation.

(2) This presumption may be controverted by:

(a) A statement in writing, signed by the purchaser of his, her or its authorized representative, and retained by the vendor, that the property was purchased for use at a designated point or points outside the Reservation.

(b) Other evidence satisfactory to the Tax Commission that the property was not purchased for storage, use or other consumption on the Reservation.

308.031 Applicability. Except as otherwise expressly provided by this Tax Code, the sales and use tax imposed by this Chapter shall apply only to the same extent that the sales and use tax applies under the law of Nevada, as evidenced in N.R.S. Chapter 372 inclusive. All exemptions, deductions, credits, etc. granted under Nevada law shall also be granted under this Chapter.

308.032 Exemption for Purchases Subject to Nevada Sales Tax. The provisions of the Use Tax shall not apply to the purchase of property off the Reservation within the State of Nevada, which is subject to the imposition of Nevada's Sales Tax or which is exempt from taxation under Nevada law.

308.033 - 308.049 RESERVED

RETURNS AND PAYMENTS

308.050 Date Tax Due. Except as provided in §308.058, the taxes imposed by this Chapter are payable to the Tax Commission monthly on or before the last day of the month next succeeding each month.

308.051 Return: Time for Filing; Persons Required to File; Signatures.

(1) On or before the last day of the month following each reporting period, a return for the preceding period must be filed with the Tax Commission in such form as the Tax Commission may prescribe.

(2) For purposes of the sales tax, a return must be filed by each seller. For purposes of the use tax, a return must be filed by each retailer maintaining a place of business on the Reservation and by each person purchasing tangible personal property, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax.

(3) Returns must be signed by the person required to file the return or by his, her or its authorized agent but need not be verified by oath.

308.052 Contents of Return.

(1) For the purposes of the sales tax, the return must show the gross receipts of the seller during the preceding reporting period. For purposes of the use tax, in the case of a return filed by a retailer, the return must show the total sales price of the property sold by the retailer, the storage, use or consumption of which property became subject to the use tax during the preceding reporting period.

(2) In the case of a return filed by a purchaser, the return must show the total sales price of the property purchased by the purchaser, the storage, use or consumption of which became subject to the use tax during the preceding reporting period.

(3) The return must also show the amount of the taxes for the period covered by the return and such other information as the Tax Commission deems necessary for the proper administration of this Chapter.

308.053 Reimbursement to Taxpayer for Collection of Tax. The taxpayer shall deduct and withhold from the taxes otherwise due from him 1.5 % of it to reimburse himself for the cost of collecting the tax.

308.054 Delivery of Return; Remittance. The person required to file the return shall deliver the return together with remittance of the amount of the tax due to the Tax Commission.

308.055 Period for Returns.

(1) The reporting and payment period of a taxpayer whose taxable sales do not exceed \$10,000.00 per month is a calendar quarter.

(2) The Tax Commission, if it deems this action necessary in order to insure payment to, or to facilitate the collection by the Tribe of the amount of taxes, may require returns and payment of the amount of taxes for periods other than calendar months or quarters, depending upon the principal place of business of the seller, retailer or purchaser, as the case may be, or for other than monthly or quarterly periods.

308.056 Lease and Rental Receipts: Reporting; Payment. For the purpose of the sales tax, gross receipts from rentals or leases of tangible personal property must be

reported and the tax paid in accordance with such regulations as the Tax Commission may prescribe.

308.057 Affixing and Canceling of Revenue Stamps. The Tax Commission, if it deems it necessary to insure the collection of the taxes, may provide by regulation for the collection of the taxes by the affixing and canceling of revenue stamps and may prescribe the form and method of the affixing and canceling.

308.058 Extension of Time for Filing Return and Paying Tax. The Tax Commission for good cause may extend, not to exceed one month, the time for making any return or paying any amount required to be paid under this Chapter.

308.059 Deferral of Payment.

(1) Payment of the tax on the sale of capital goods for a sales price of \$100,000.00 or more may be deferred without interest in accordance with this section. If the sales price is:

(a) At least \$100,000.00 but less than \$350,000.00, the tax must be paid within 12 months.

(b) At least \$350,000.00 but less than \$600,000.00, the tax must be paid within 24 months.

(c) At least \$600,000.00 but less than \$850,000.00, the tax must be paid within 36 months.

(d) At least \$850,000.00 but less than 1,000,000.00, the tax must be paid within 48 months.

(e) One million dollars or more, the tax must be paid within 60 months. Payment must be made in each month at a rate that is at least sufficient to result in payment of the total obligation within the permitted period.

(2) A person may apply to the Tax Commission for such deferment. If the Tax Commission finds that the applicant is eligible for deferment under Nevada law, N.R.S. §372.397, the Tax Commission shall allow for deferment.

(3) Upon allowance of deferment the Tax Commission shall verify the sale, the price paid and the date of the sale and assign the applicable period for payment of the deferred tax. It may require the security for the payment in an amount that does not exceed the amount of tax deferred.

(4) The Tax Commission shall adopt regulations governing:

(a) The aggregation of related purchases that are made to expand a business, establish a new business, or renovate or replace capital equipment; and

(b) The period within which such purchases may be aggregated.

308.060 Re-Computation of Tax; Determination on Discontinuance of Business.

(1) If the Tax Commission is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the Tribe by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made of the amount due for one or for more than one period.

(2) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in §308.064 as to liability arising out of that business, irrespective of whether the determination is issued before the due date of the liability as otherwise specified in this Chapter.

308.061 Offsetting of Overpayments; Computation of Interest.

(1) In making a determination, the Tax Commission may offset an overpayment for a period, together with interest on the overpayment, against any underpayment of another period, against any penalty, and against the interest on the underpayment.

(2) The interest on any underpayment or overpayment must be computed in the manner set forth under Nevada law, N.R.S. §372.660.

308.062 Disallowance of Interest. If the Tax Commission determines that any overpayment has been made intentionally or by reason of carelessness, it may not allow any interest on it.

308.063 Notice of Tax Commission's Determination; Service by Mail Complete Upon Deposit with United States Postal Service.

(1) The Tax Commission shall give to the retailer or person storing, using or consuming tangible personal property written notice of its determination.

(2) The notice may be served personally or by mail; if by mail, the notice must be addressed to the retailer or person storing, using or consuming tangible personal property at his, her or its address as it appears in the records of the Tax Commission.

(3) In case of service by mail of any notice required by this Chapter, the service is complete at the time of deposit with the United States Postal Service.

308.064 Time Within Which Notice of Determination Must Be Mailed; Consent to Later.

(1) Except in the case of fraud, intent to evade this Chapter or regulations adopted under it, or a failure to make a return, every notice of the determination of a deficiency must be personally served or mailed within 3 years of the last day of the calendar month following the period for which the amount is proposed to be determined or within 3 years after the return is filed, whichever period expires later. In the case of a failure to make a return, every notice of determination must be mailed or personally served within 8 years after the last day of the calendar month following the period for which the amount is proposed to be determined.

(2) If, before the expiration of the time prescribed in this section for the mailing of a notice of determination, the taxpayer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time before the expiration of the agreed upon period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

308.065 Estimation and Computation by Tax Commission; Discontinuance of Business.

(1) If any person fails to make a return, the Tax Commission shall make an estimate of the amount of the gross receipts of the person, or, as the case may be, of the amount of the total sales price of tangible personal property sold or purchased by the person, the storage, use or other consumption of which on the Reservation is subject to the use tax. The estimate must be made for the period or periods in respect to which the person failed to make a return and be based upon any information that is in the Tax Commission's possession or may come into its possession. Upon the basis of that estimate, the Tax Commission shall compute and determine the amount required to be paid to the Tribe, adding to the sum thus arrived at a penalty equal to 10 percent of the sum. One or more determinations may be made for one or for more than one period.

(2) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in §308.064 as to liability arising out of that business, irrespective of whether the determination is issued before the due date of the liability as otherwise specified in this Chapter.

308.066 Offsets: Computation; Interest.

(1) In making a determination, the Tax Commission may offset an overpayment for a period, together with interest on the overpayment, against any underpayment for another period, against any penalty, and against the interest on the underpayment.

(2) The interest on any underpayment or overpayment shall be computed in the manner set forth under Nevada law, N.R.S. §372.660.

308.067 Interest on Amount of Determination. The amount of the determination, exclusive of penalties, bears interest at the rate of 1.5 % per month, or fraction of a month, from the last day of the month following the period for which the amount or any portion of it should have been returned until the date of payment.

308.068 Penalty for a Failure to File Return Resulting from Fraud or Intent to Evade. If the failure of any person to file a return is due to fraud or intent to evade this Chapter or regulations, a penalty of 25 % of the amount required to be paid by the person, exclusive of penalties, must be added to it in addition to the 10 % penalty provided in §308.070(2).

308.069 Notice of Estimate, Determination and Penalty: Service. Promptly after making its determination, the Tax Commission shall give to the person written notice of the estimate, determination and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

308.070 Effectiveness of Redetermination Unless Appealed, Date Upon Which Determined Amount Is Due, Penalties.

(1) Unless the Tax Commission's determination is appealed pursuant to the applicable provisions of this Tax Code, the order or decision of the Tax Commission as to a determination becomes effective after service upon the taxpayer of the notice of estimate and determination pursuant to §308.069. If appealed, the determination becomes final after all appeals are exhausted.

(2) All determinations of amounts of taxes made by the Tax Commission under §§308.060 to 308.070 are due at the time they become effective. If they are not paid when due, a penalty of 10 % of the amount of the determination, exclusive of interest and other penalties, must be added to it.

308.071 Authority of Tax Commission; Amount; Sales; Return of Surplus.

(1) The Tax Commission, whenever it deems it necessary to insure compliance with this Chapter, may require any person subject to the Chapter to place with it such security as the Tax Commission may determine. The Tax Commission shall fix the amount of the security which, except as provided in subsection 2, may not be greater than the estimated average tax due quarterly of persons filing returns for quarterly periods or the estimated average tax due monthly of persons filing for monthly periods, determined in such manner as the Tax Commission deems proper.

(2) In the case of persons who are habitually delinquent in their obligations under this Chapter, the amount of security may not be greater than two times the average

actual tax due quarterly of persons filing returns for quarterly periods or twice the average actual tax due monthly of persons filing returns for monthly periods.

(3) The limitations provided in this section apply regardless of the type of security placed with the Tax Commission.

(4) The amount of the security may be increased or decreased by the Tax Commission subject to the limitations provided in this section.

(5) The Tax Commission may sell the security at public auction if it becomes necessary to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale may be served upon the person who placed the security personally or by mail; if by mail, service must be made in the manner prescribed for service of a notice of a deficiency determination and must be addressed to the person at his address as it appears in the records of the Tax Commission. Security in the form of a bearer bond issued by the United States or the State of Nevada that has a prevailing market price may be sold by the Tax Commission at a private sale at a price not lower than the prevailing market price.

(6) Upon any sale any surplus above the amounts due must be returned to the person who placed the security.

308.072 Evidentiary Effect of Certificate Showing Delinquency. In any proceeding or action commenced to collect delinquent taxes hereunder, a certificate by the Tax Commission showing the delinquency is *prima facie* evidence of the determination of the tax or the amount of the tax, of the delinquency in the amounts set forth, and of the compliance by the Tax Commission with all the provisions of this Chapter in relation to the computation and determination of the amounts.

308.073 Successor or Assignee to Withhold Tax from Purchase Price. If any retailer who is liable for any amount under this Chapter sells out his, her, or its business or stock goods, or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover that amount until the former owner produces a receipt from the Tax Commission showing that it has been paid or a certificate stating that no amount is due.

308.074 Liability of Purchaser for Failure to Withhold Sufficient Amount; Release.

(1) If the purchaser of a business or stock of goods fails to withhold the purchase price as required, he, she or it becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within 60 days after receiving a written request from the purchaser for a certificate, or within 60 days from the date the former owner's records are made available for audit, whichever period expires later, but not later than 90 days after receiving the request, the Tax Commission shall issue the certificate or mail notice to the purchaser at

his address as it appears on the records of the Tax Commission, of the amount that must be paid as a condition of issuing the certificate.

(2) Failure of the Tax Commission to mail the notice releases the purchaser from any further obligation to withhold the purchase price.

(3) The time within which the obligation of a successor may be enforced begins at the time the retailer sells out his business or stock of goods or at the time that the determination against the retailer becomes final, whichever event occurs later.

308.075 Certification of Excess Amount Collected; Credit and Refund; Overpayment of Use Tax by Purchaser.

(1) If the Tax Commission determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Tax Commission shall set forth that fact in its records and certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. The excess amount collected or paid must be credited on any amounts then due from the person under this Chapter, and the balance refunded to the person, or his successors, administrators or executors.

(2) Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefore pursuant to Nevada Law, N.R.S. §§372.185 to 205, inclusive, of the Sales and Use Tax Act, and §§297.020 to 308.030, inclusive, must be credited or refunded by the Tribe to the purchaser.

308.076 Limitations on Claims for Refund or Credit. Except as provided in this Chapter:

(1) No refund may be allowed unless a claim for it is filed with the Tax Commission within 3 years from the last day of the month following the close of the period for which the overpayment was made, or, with respect to determinations made under §§308.060 to 308.070, inclusive, within 6 months after the determinations became final, or within 6 months from the date of overpayment, whichever period expires later.

(2) No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Tax Commission within that period, or unless the credit relates to a period for which a waiver is given pursuant to §308.064.

308.077 Credit or Refund for Use Tax: Reimbursement of Vendor for Sales Tax. No credit or refund of any amount paid pursuant to the use tax imposed under this Chapter may be allowed on the ground that the storage, use or other consumption of the property is exempt under Nevada Law, N.R.S. §372.345, unless the person who paid the

amount reimburses the vendor for the amount of the sales tax imposed upon his vendor with respect to the sale of the property and paid by his vendor to the Tribe.

308.078 Form and Contents of Claim for Credit or Refund. Every claim must be in writing and must state the specific grounds upon which the claim is founded.

308.079 Failure to File Claim Constitutes Waiver. Failure to file a claim within the time prescribed in §308.076 constitutes a waiver of any demand against the Tribe on account of overpayment.

308.080 Service of Notice of Disallowance of Claim. Within 30 days after disallowing any claim in whole or in part, the Tax Commission shall serve notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

308.081 Injunction or Other Process to Prevent Collection of Tax Prohibited. No injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against the Tribe or against any officer of the Tribe to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected.

308.082 Records to be Kept by Sellers, Retailers and Others. Notwithstanding the provisions of §304.004 to the contrary:

(1) Every seller, every retailer, and every person storing, using or otherwise consuming on the Reservation tangible personal property purchased from a retailer shall keep records, receipts, invoices and other pertinent papers in such form as the Tax Commission may require.

(2) Every seller, retailer, or person who files the returns required under this Chapter shall keep the records for not less than 4 years from their making unless the Tax Commission in writing authorizes their destruction at an earlier time.

(3) Every seller, retailer or person who fails to file the returns required under this Chapter shall keep the records for not less than 8 years from their making unless the Tax Commission in writing authorizes their destruction.

308.083 Claim for Refund or Credit Required. No suit or proceeding may be maintained in any Court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been filed, and payment under protest has been made in accordance with the provisions of Chapter 304.

308.084 Examination of Records; Investigation of Business. The Tax Commission, or any person authorized in writing by it, may examine the books, papers, records, and equipment of any person selling tangible personal property or any person liable for the use tax and may investigate the character of the business of the person in

order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

308.085 Reports for Administering Use Tax: Contents. In its administration of the use tax, the Tax Commission may require the filing of reports by a person or class of persons having in his or their possession or custody information relating to sales of tangible personal property, the storage, use or other consumption of which is subject to the tax. The report must:

- (1) Be filed when the Tax Commission requires; and
- (2) Set forth the names and addresses of purchasers of the tangible personal property, the sales price of the property, the date of sale, and such other information as the Tax Commission may require.

308.086 Disclosure of Information Unlawful; Exceptions.

(1) Except as otherwise provided in this section, it is a misdemeanor for any member of the Tax Commission or officer or employee of the Tax Commission to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount of source of income, profits, losses, expenditures or any particular of them, set forth or disclosed in any return, or to permit any return or copy of a return or any book containing any abstract or particulars of it to be seen, copied or examined by any person not connected with the Tax Commission.

(2) The Tax Commission may agree with the governing body of any county, city or town or with any governmental entity for the continuing exchange of information concerning taxpayers.

(3) The Tribal Council may, by general or special order, authorize examination of the records maintained by the Tax Commission under this Chapter by Tax Commissioner officers, by tax officers of the States of Nevada or any other state, by the Federal Government, or by any other person. The information so obtained may not be made public except to the extent and in the manner that the order may authorize that it be made public.

(4) Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amount of any unpaid tax or amounts of tax required to be collected, interest and penalties.

(5) Relevant information may be disclosed as evidence in an appeal by the taxpayer from a determination of tax due.

308.087 Failure to Make Return or Furnish Data. Any Retailer or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the Tax Commission, or who renders a false or fraudulent return shall be subject to a civil fine of not more than \$5,000.00 for each incident.

308.088 False or Fraudulent Return. Any person who makes, renders, signs, or verifies any report who makes any false or fraudulent return, with intent to defeat or evade the determination of an amount due required by law to be made, shall for each offense be fined not less than \$300.00 nor more than \$5,000.00 or be imprisoned for not more than one year in the Tribal jail, or be punished by both fine and imprisonment.

308.089 Tax Account: Remittances; Deposits.

(1) All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid to the Tribe under this Chapter must be paid to the order of the Tribe and delivered to the tribal Finance Department in the form of remittances acceptable to the Finance Department.

(2) The Finance Department shall deposit the payments to the credit of the tax account in the Tribal fund.

308.090 Tax Account: Refunds. The money in the tax account may, upon order of the Tax Commission, be used for refunds under this Chapter.

308.091 Remedies of the Tribe are Cumulative. The remedies of the Tribe provided for in this Chapter are cumulative, and no action taken by the Tax Commission constitutes an election by the Tribe to pursue any remedy to the exclusion of any other remedy for which provision is made in this Chapter.

308.092 Tax Commission's Authority. In all proceedings under this Chapter, the Tax Commission may act for and on behalf of the people of the Tribe.

CHAPTER 309 TOBACCO TAX

309.001 Purpose and Applicability.

(1) The purpose of this chapter is:

- (a) to promote economic growth on the Ely Shoshone Reservation;
- (b) to provide increased services to residents of the Ely Shoshone Reservation;
- (c) to provide funds for the operations of the Ely Shoshone Tribe; and

(d) to regulate the sale of tobacco products on the Ely Shoshone Reservation.

(2) This Chapter is applicable to all sales of tobacco products on the Ely Shoshone Reservation.

309.002 Definitions.

(1) **Cigarette.** "Cigarette" means all rolled tobacco or substitutes therefore, which are wrapped in paper or any paper substitutes other than tobacco.

(2) **Cigarette Vending Machine Operator.** "Cigarette vending machine operator" means any person licensed by the Tribe to sell cigarettes by means of coin-operated machines anywhere on the Ely Shoshone Reservation.

(3) **Consumer.** "Consumer" means any person who comes into possession of cigarettes on the Ely Shoshone Reservation as a final user for any purpose other than offering them for sale as a wholesale or retail dealer.

(4) **Contraband Cigarettes.** "Contraband cigarettes" means any cigarettes exported from or imported onto the Ely Shoshone Reservation by any person in violation of any of the provisions of this Chapter or which are, in any way, held in the possession or constructive possession of any person not authorized under this Chapter to possess or constructively possess these cigarettes.

(5) **Net Profits.** "Net profits" means money remaining from the operation of a tobacco outlet, after deduction of excise tax revenues and of all costs of doing business, as determined by the Ely Shoshone Tribal Council upon consultation with the manager, and including reasonable costs for improvement and expansion. (6)

(6) **Retail Dealer.** "Retail dealer" means any person who offers to sell cigarettes at retail or who is engaged in selling cigarettes at retail.

(7) **Retail Selling Price.** "Retail selling price" means the ordinary, customary or usual price paid by the consumer for each tobacco product, less the excise tax levied by this Chapter.

(8) **Sale and To Sell.** "Sale" and "to sell" means:

(a) To exchange, barter, possess or traffic in;

(b) To solicit or receive an order for;

(c) To keep or expose for sale;

(d) To deliver for value;

- (e) To peddle;
- (f) To possess with intent to sell;
- (g) To transfer to anyone for sale or resale;
- (h) To possess or transport in contravention of the provisions of this Chapter;
- (i) To traffic in for any consideration, promised or obtained directly or indirectly; or
- (j) To procure or allow to be procured for any reason.

(9) Wholesale Dealer. “Wholesale dealer” means:

(a) Any person who brings or causes to be brought onto the Reservation unauthorized cigarettes purchased from the manufacturer or another wholesaler, and who stores, sells or otherwise disposes of them within the Reservation; and

(b) Any person who manufactures or produces cigarettes within the Reservation and who sells or distributes them within the Reservation.

309.003 Authorized Searches for Unauthorized Cigarettes. In order to obtain evidence of any violation of this Chapter, the Tax Commission, its agents, and all tribal peace officers and revenue collecting officers shall have the right of visitation and inspection of any place where they may have reason to believe unauthorized cigarettes are stored, warehoused, or kept for sale. Such visitation and inspection shall be conducted during business hours.

All taxes paid under the provisions of this Chapter are direct taxes upon the consumer and are pre-collected for convenience only. Taxes paid by persons other than the consumer are advances, and shall be added to the selling price of the cigarettes.

309.004 Dealer’s License Required. A person shall not engage in business as a dealer of cigarettes on the Reservation unless he first secures a wholesale or retail cigarette dealer’s license from the Tax Commission.

309.005 Place of Business and Required Inventory for Licensing as Wholesale Dealer.

- (1) Establish and maintain a place of business on the Reservation; and

(2) Keep on hand therein at all times cigarettes of wholesale value of at least \$10,000.00.

309.006 Application for License: Form; Contents; Fee. An application for a cigarette dealer's license shall:

(1) Be made to the Tax Commission on forms prescribed by the Tax Commission;

(2) Include the name and address of the applicant. If the applicant is a partnership, the application shall include the names and addresses of all partners. If the applicant is a corporation, association, or other organization, the application shall include the names and addresses of the president, vice-president, secretary, and managing officer or officers;

(3) Specify the location of the premises for which the license is sought; and

(4) Be accompanied by the required license fee.

309.007 Contents of License. Each cigarette dealer's license issued under this Chapter shall set forth:

(1) The name of the person to whom it was issued. If the license is issued under a fictitious name, the license shall also set forth the name of each of the persons conducting the business under the fictitious name; and

(2) The location, by street and number if possible, of the premises for which the license is issued.

309.008 Signing, Posting, and Transfer of License. Each holder of a cigarette dealer's license shall:

(1) Sign the license or cause an authorized representative to sign it; and

(2) Post the license in a conspicuous place in the premises for which it was issued.

Licenses issued under the provisions of this Chapter are nontransferable, except that upon prior written notice to the Tax Commission the location of the premises for which it was issued may be changed.

309.009 Privileges of Licenses; Prohibited Purchases.

(1) Wholesale cigarette dealers' licenses shall permit the holders thereof to sell cigarettes to retail dealers, or to other licensed wholesale cigarette dealers, or to cigarette vending machine operators anywhere on the Reservation.

309.010 License Fees.

(1) The Tax Commission shall not charge license fees for a retail cigarette dealer's license.

(2) An annual license fee of \$150.00 shall be charged for each wholesale cigarette dealer's license. If any license, other than the renewal of a delinquent license, is issued at any time during the year other than on January 1, the licensee shall pay a proportionate part of the annual license fee.

(3) Wholesale cigarette dealer's license that is canceled for nonpayment of the annual license fee may be renewed at any time by the payment of the fee plus a 5 percent penalty thereon.

309.011 Licensed Wholesale Cigarette Dealer's Bond; Waiver of Requirement.

(1) Except as otherwise provided in this section or unless waived by the Tax Commission, each licensed wholesale cigarette dealer shall furnish a bond to the Tax Commission conditioned for the payment of all excise taxes required to be pre-collected by him under the provisions of this Chapter. Each bond shall be in a principal sum equal to the largest amount of tax pre-collected by the wholesale cigarette dealer in any quarter of the preceding year, or if the information to establish that amount is not available, then in a sum required from a licensee operating under conditions deemed comparable by the Tax Commission. No bond may be for less than \$1,000.00. When cash or a certificate of deposit or investment certificate is used, the amount shall be rounded up to the next larger integral multiple of \$100.00.

(2) The bond or undertaking shall be acceptable to and approved by the Tax Commission, and a deposit of cash or negotiable United States Government bonds may be accepted in lieu of an undertaking. The Tax Commission shall deposit all United States Government bonds and cash deposits with the state treasurer.

(3) Upon application and a satisfactory showing, the Tax Commission may increase or decrease the amount of the required bond, based on the amount of excise tax pre-collected by the wholesale cigarette dealer.

(4) The Tax Commission may waive the requirement of a bond whenever a licensed wholesale cigarette dealer has maintained a satisfactory record of payment of excise taxes for a period of 5 consecutive years.

309.012 Levy, Rate and Collection of Tax. There is hereby levied a tax upon the purchase or possession of cigarettes by a consumer on the Reservation at the rate equal to that imposed under Nevada law, N.R.S. §370, as that Nevada law may be amended from time to time. The tax shall be collected by the Tax Commission under such terms and conditions as the Tax Commission shall prescribe, consistent with the provisions of this

Ordinance, and with the provisions of N.R.S. §370.0751, and any regulations issued thereunder. The tax must be pre-collected by the wholesale or retail dealer, and must be recovered from the consumer by adding the amount of the tax to the selling price.

309.013 Monthly Reports of Dealers.

(1) Each dealer authorized to sell cigarettes on the Reservation shall report to the Tax Commission:

(a) The inventory of all cigarettes in his possession or control at the close of business on the last day of each month;

(b) The total amount and value of all cigarettes sold on, or shipped onto the Reservation by the dealer during the preceding month;

(2) The report shall be made by the 15th day of the month following shipments upon forms to be provided by the Tax Commission; and

(3) The dealer may be allowed 15 additional days to file the report, if the dealer makes prior written application to the Tax Commission and the Tax Commission finds good cause for an extension.

309.014 Suspension of License for Failure to Make Report; Suspension or Revocation of License for Other Violations.

(1) If any dealer in cigarettes upon which a pre-collected or advance tax is required to be paid fails to report to the Tax Commission or its agents on or before the due date, the Tax Commission may suspend his, her, or its license or permit until the report is received and found to be correct.

(2) The Tax Commission may temporarily suspend or permanently revoke the license of any cigarette dealer for violating, or causing or permitting to be violated, any of the provisions of this Chapter.

309.015 Dealer to Maintain and Preserve Records of Cigarettes Received, Sold, or Distributed. Each dealer authorized to sell cigarettes shall maintain records of all cigarettes received, sold or distributed by him. Each dealer shall also obtain and keep receipts, freight bills, invoices and other documents necessary to substantiate those records. Records and documents shall be kept at the dealer's place of business on the Reservation for not less than four years unless the Tax Commission authorizes, in writing, their earlier removal or destruction.

309.016 Audit of Records by Tax Commission. The Tax Commission may audit the records of each dealer authorized to sell cigarettes to determine that the dealer has complied with the provisions of this Chapter.

309.017 Seizure of Contraband Cigarettes by Peace Officers. The Tax Commission, its agents, and all peace officers of the Tribe shall seize any contraband cigarettes found or located on the Reservation.

309.018 Use Tax; Levy; Amount; Exemptions.

(1) Except as provided in subsection 3, a tax is hereby levied and imposed upon the use of cigarettes on the Reservation.

(2) The amount of the use tax shall be equal to that imposed under Nevada law, as amended from time to time.

(3) The use tax does not apply where:

(a) The tribal sales tax has been paid pursuant to Chapter 308.

(b) Tax Exemption is provided for in the Tax Code.

(c) Purchasers have paid the Nevada cigarette tax in connection with purchases made off-Reservation.

309.019 Payment of Use Tax; Reports. Every person using or consuming cigarettes subject to taxation on the use thereof under the provisions of this chapter shall pay such tax and make such reports thereon to the Tax Commission under such regulations as may be prescribed by the Tax Commission.

309.020 Penalty for Delinquent Payment of Use Tax; Interest. If the tax provided for in this chapter is not paid within such time as may be limited for payment thereof by the regulations prescribed by the Tax Commission, the tax shall become delinquent and a penalty of 25 percent shall be added thereto, together with interest at the rate of 1 percent per month until paid.

309.021 Regulations of Tax Commission. The Tax Commission may make all necessary regulations for the administration and enforcement of this Chapter, including:

(1) Necessary regulations for the keeping of records to insure compliance with this Chapter by persons dealing in both taxable and exempt cigarettes; and

(2) Regulations authorizing persons other than dealers to possess unstamped cigarettes.

309.022 - 309.023 RESERVED

OTHER PRODUCTS MADE FROM TOBACCO

309.024 Definitions. As used in ESTC §§309.025 to 309.030, inclusive, unless the context otherwise provides:

(1) **Retail Dealer.** "Retail Dealer" means any person other than a wholesale dealer who is engaged in selling products made from tobacco, other than cigarettes, to customers.

(2) **Sale.** "Sale" means any transfer, exchange, barter, gift, offer for sale, or distribution for consideration of products made from tobacco, other than cigarettes.

(3) **Wholesale Dealer.** "Wholesale dealer" means any person who purchases products made from tobacco, other than cigarettes, directly from the manufacturer or who purchases those products from any other person who purchases them from the manufacturer to sell to retail dealers and who serves retail outlets from an established place of business including, but not limited to, the maintenance of a warehouse for the storage and distribution of those products.

(4) **Wholesale Price.** "Wholesale price" means the established price for which a manufacturer sells a product made from tobacco, other than cigarettes, to a wholesale dealer before any discount or other reduction is made.

309.025 Levy Rate and Collection of Tax; Retention of Portion by Dealer; Penalty.

(1) There is hereby imposed upon the purchase or possession of products made from tobacco, other than cigarettes, by a customer on the Ely Shoshone Reservation a tax at the rate equal to that imposed under Nevada law, N.R.S. Chapter 370, as said law may be amended from time to time.

(2) The provisions of subsection 1 do not apply to those products that are shipped out of the Ely Shoshone Reservation for sale and use outside of the Ely Shoshone Reservation.

309.026 Unlawful Sale of Products on Which Tax Has Not Been Paid. It is unlawful for any person to sell or offer to sell any products made from tobacco, other than cigarettes, on which the tax has not been paid as provided for in the ESTC §309.026.

309.027 Records Required of Wholesale Dealer. The wholesale dealer must procure from each manufacturer itemized invoices of all products made from tobacco, other than cigarettes, purchased from and delivered by that manufacturer. The wholesale dealer must obtain from the manufacturer separate invoices for each purchase made. The

invoice must show the name and address of the manufacturer, the date of the purchase and the wholesale price.

309.028 Records Required of Retail and Wholesale Dealer; Period for Retention.

(1) Every wholesale dealer must keep at his place of business complete and accurate records for that place of business, including copies of all invoices of products made from tobacco, other than cigarettes, which he holds, purchases and delivers or sells on the Ely Shoshone Reservation. All records must be preserved for at least 3 years after the date of purchase or after the date of the last entry made on the record.

(2) Every retail dealer shall keep at his place of business complete and accurate records for that place of business, including copies of all itemized invoices or purchases of such products purchased and delivered from wholesale dealers. The invoices must show the name and address of the wholesale dealer and the date of the purchase. All records must be preserved for 3 years after the date of purchase.

309.029 Credits Allowed.

(1) The Tax Commission shall allow a credit equal to the tax imposed under §309.026 less a discount of 2% for the services rendered in collecting the tax, for products made from tobacco, other than cigarettes, that may no longer be sold. If the products have been purchased and delivered, a credit memo of the manufacturer is required for proof of returned merchandise.

(2) A credit must also be granted for any products made from tobacco, other than cigarettes, shipped from the Ely Shoshone Reservation and destined for retail sale and consumption outside the Ely Shoshone Reservation on which the tax has previously been paid. A duplicate or copy of the invoices is required for proof of the sale outside of the Ely Shoshone Reservation.

309.030 Remittance of Tax; Credit to the Tax Commission.

(1) All amounts of tax required to be paid to the Tax Commission pursuant to ESTC §§309.025 to 309.029, inclusive, must be paid in the form of remittances payable to the Tax Commission.

(2) The Tax Commission shall deposit these payments with the Finance Department for credit to the account for the tax on products made from tobacco, other than cigarettes.

CHAPTERS 310-311 (Reserved)

CHAPTER 312 GAMING TAX AND LICENSE FEES

312.001 General.

(1) As used in 312, unless the context otherwise requires, the words and terms have the meaning ascribed to them under Nevada Law, N.R.S. §463.

(2) No Class II or Class III gaming, as defined in the Indian Gaming Regulatory Act, 25 U.S.C. §2703(7)-(8), shall be conducted by any person on the Reservation unless a license is obtained in accordance with the Tribe's Gaming Ordinance. Any person who obtains a license to conduct Class II or Class III gaming on the Reservation shall, as a condition for keeping such license, comply with the provisions of the Chapter as well as the applicable provisions of the Tribal Tax Code.

GAMING LICENSE FEES AND SLOT MACHINE FEES AND TAXES

312.002 Gaming License Required; Annual Fee for License Based on Number of Games.

(1) In addition to any other gaming license fees provided for in this Chapter, the Tax Commission shall, before a gaming license is issued, charge and collect in advance from each applicant an annual license fee at the same rate on the basis set forth in NRS §463.380, any amendments or additions thereto, or superseding enactments.¹

312.003 Monthly Fee for License Based Upon Gross Revenue; License Issued for Less than Full Month, Underpayment and Overpayments.

(1) In addition to any other license fees imposed by this Chapter, the Tax Commission shall charge and collect from each gaming licensee a gaming license fee based upon all the gross revenue of the licensee at the same rate and on the basis set forth in NRS §463.370,² or any amendments or additions thereto, or superseding enactments.

(2) If the amount of license fees required to be reported and paid pursuant to this section is later determined to be greater or less than the amount actually reported and paid by the licensee, the Tax Commission shall:

(a) Charge and collect the additional license fees determined to be due, with interest thereon until paid; or

¹ Note: NRS §463.380, referred to in §312.002, is appended to this Ordinance.

² Note: NRS §463.370, referred to in §312.003, is appended to this Ordinance.

(b) Refund any overpayment with interest thereon, to the licensee. Interest must be computed at the rate of two (2%) per month from the first day of the first month following either the due date of the additional license fees or the date of overpayment until paid. If the Tax Commission determines that any overpayment has been made intentionally or by reason of carelessness it may not allow any interest on it.

(3) Failure to pay the fees provided for in this section shall be deemed a surrender of the gaming license at the expiration of the period for which the fees are prepaid, as established under subsection (2).

(4) Except as otherwise provided in §312.011, if a licensee ceases operation, the Tax Commission shall:

(a) Charge and collect the additional license fees determined to be due; or

(b) Refund any overpayment, with interest thereon, to the licensee. Interest must be computed at the rate of two percent (2%) per month from the first day of the first month following either the due date of the additional license fees or the date of overpayment until paid. If the Tax Commission determines that any overpayment has been made intentionally or by reason of carelessness it may not allow any interest on it.

312.004 Slot Machines, Counting for Purposes of Administering Quarterly Fee and Annual Taxes and Fees. For the purposes of administering the quarterly license fee imposed by §312.005, the license fees imposed by §§312.006 and 312.009 and the annual tax imposed by §312.008, the Tax Commission shall prescribe by regulation the manner of counting slot machines whose operations are related to one another. The Tax Commission may adopt any method prescribed by the Nevada Gaming Commission.

312.005 Quarterly Fee for License for Restricted Operation. Before a gaming license is issued to an applicant for a restricted operation, the Tax Commission shall charge and collect from him for each slot machine for each quarter year a license fee to be determined at the same rate and on the basis set forth in NRS §463.373,³ any amendments or additions thereto, or superseding enactments.

312.006 Quarterly Fee for License for Non-Restricted Operation. In addition to any other gaming license fees provided for in this Chapter, before a gaming license is issued to an applicant for a non-restricted operation, the Tax Commission shall charge and collect from the applicant a license fee to be determined at the same rate and on the

³ Note: NRS §463.373, referred to in §312.005, is appended to this Ordinance.

basis set forth in NRS §463.375,⁴ any amendments or additions thereto, or superseding enactments.

312.007 Quarterly Fee for License Based on Number of Games Operated. In addition to any other gaming license fees provided for this Chapter, the Tax Commission shall, before a gaming license is issued, charge and collect from each applicant a quarterly license fee to be determined based upon the number of games operated at the same rate and on the basis set forth in NRS §463.383,⁵ any amendments or additions thereto, or superseding enactments.

312.008 Annual Tax Upon Slot Machines: Imposition; Collection; Report and Use of Receipts. In addition to any other license fees and taxes imposed by this Chapter, there is hereby imposed upon each slot machine operated on the Reservation an annual tax to be determined at the same rate and on the basis set forth in NRS §463.385,⁶ any amendments or additions thereto, or superseding enactments. If a slot machine is replaced by another, the replacement is not considered a different slot machine for the purposes of imposing this tax.

312.009 Annual Fee for License for Operator of Slot Machine Route. In addition to any other license fees imposed by this Chapter, the Tax Commission shall, before a gaming license is issued to an operator of a slot machine route, charge and collect from each applicant an annual license fee to be determined at the same rate and on the basis set forth in NRS §463.3855,⁷ any amendments or addition thereto, or superseding enactments.

312.010 Fee from Licensee Who Concludes Gaming Operation Based on Value of Collectible Credit Instruments Held by Licensee; Calculation, and Collection. Except as otherwise provided in §312.011, the Tax Commission shall charge and collect from a licensee who concludes a gaming operation, a fee to be determined at the same rate and on the basis set forth in NRS §463.3857,⁸ any amendments or additions thereto, or superseding enactments.

312.011 Credit for Prepaid Fees for License Upon Transfer of Corporate Gaming Operations. Except as otherwise expressly provided by this Tax Code, any credit for prepaid fees for a license created from transfer of corporate gaming operations,

⁴ Note: NRS §463.375, referred to in §312.006, is appended to this Ordinance.

⁵ Note: NRS §463.383, referred to in §312.007, is appended to this Ordinance.

⁶ Note: NRS §463.385, referred to in §312.008, is appended to this Ordinance.

⁷ Note: NRS §463.3855, referred to in §312.009, is appended to this Ordinance.

⁸ Note: NRS §463.3857, referred to in §312.010, is appended to this Ordinance.

for the purposes of §312.003 and §§312.005 to 312.010, inclusive, shall only apply to the same extent that such credits apply under the law of Nevada as evidenced in NRS §463.386.⁹

312.012 Quarterly Fee. In addition to any other license fee imposed in this Chapter, the Tax Commission shall, before a gaming license is issued to any person desiring to conduct, operate or carry on any gambling game, slot machine or any game of chance, collect a quarterly fee to be determined at the same rate and on the basis set forth in NRS §463.390,¹⁰ any amendments or additions thereto, or superseding regulations.

CHAPTERS 313-319 RESERVED

CHAPTER 320 EXEMPTIONS

320.001 Exemptions Under State Law.

(1) All persons who qualify as being exempt from taxation under Nevada state law shall be exempt from taxation under this Ordinance.

320.002 Exemption from Nevada Fuel Taxes.

(1) Tribal members are exempt from the payment of Nevada taxes on motor vehicle fuel sold within the boundaries of the Ely Shoshone Reservation, which include any tax or assessment on gasoline, and/or diesel fuel, or other products to which Nevada's taxes on motor vehicle fuel may apply. This exemption also applies to vehicles which are owned or used by the Tribal government.

(a) Children who are old enough to operate off-road vehicles, such as motorcycles, go-carts, ATV's are eligible to use the tax exemption for these off-road vehicles.

(b) An enrolled member of the Tribe who uses someone else's vehicle for their own personal use is eligible to use the tax exemption.

(c) An enrolled member of the Tribe who is being transported by a non-member for a doctor's appointment, emergency or other personal use is eligible to use the tax exemption.

(d) Anyone abusing §320.002 (1)(a), (b), or (c) will be subject to a civil fine not to exceed \$5,000.00

⁹ Note: NRS §463.386, referred to in §312.011, is appended to this Ordinance.

¹⁰ Note: NRS §463.390, referred to in §312.012, is Appended to this Ordinance.

(2) The fuel tax exemption shall be implemented in accordance with the provisions of an Intergovernmental Agreement between the Tribe and the State of Nevada.

(3) When purchasing any motor vehicle fuel on the Ely Shoshone Reservation, it is the responsibility of each tribal member or tribal employee or official to present his or her Tribal Enrollment Card or tax exempt slide card to the sales clerk or cashier at the time of sale.

(4) Any retailer selling motor vehicle fuel on the Ely Shoshone Reservation has the right to refuse a tax exemption at the time of sale without proper identification and proper presentation of a Tribal Enrollment Card or tax exempt slide card.

(5) It is unlawful for any person to claim an exemption who is not legally entitled to do so under this Chapter. It is also unlawful for any tribal member to knowingly:

(a) Purchase motor vehicle fuel and claim an exemption for another person when that person is not entitled to an exemption;

(b) Allow any person who is not a legally authorized user to use his or her Tribal Enrollment Card or tax exempt card to claim an exemption at the time of sale; and

(c) For children to use their tax exempt status for the benefit of their parents or others.

(6) Any business located on the Ely Shoshone Reservation that sells motor vehicle fuel shall report persons improperly using their tax exempt status or slide card for the purchase of fuel.

(7) A person who violates the provisions of this Chapter may be fined up to \$500.00 and lose tax exempt fuel privileges.

(8) Any tribal member who is refused a tax exemption must, in order to receive the exemption, appeal to the Tax Commission. A retailer will not be held responsible for problems if they are not addressed first with the Tax Commission. If the Tax Commission determines that the aggrieved person was entitled to the exemption, the credit may be awarded retroactively. The decision of the Tax Commission shall be final.

(9) In cases where the Tax Commission determines that an exemption was improperly withheld, the Tax Commission shall submit fuel tax refund applications to the Nevada Department of Transportation or other appropriate agency. Such application may be submitted on a quarterly basis. Upon the receipt of the refunds from the State, the Tax Commission shall remit the refunds to the consumer entitled thereto, provided that the retailer has paid the State fuel tax.

320.003 Home-Based Small Businesses.

(1) Persons who operate small businesses from their residences for the purpose of selling tangible personal property are exempt from the payment or collection of taxes under this Ordinance.

CHAPTER 321 CREDIT FOR STATE TAXES; APPORTIONMENT

321.001 Legislative Declarations and Policy.

(1) The Tribal Council finds that the imposition of state taxes upon transactions conducted within the Reservation is inconsistent with federal and tribal goals of promoting tribal economic development and self-sufficiency, and also infringes upon the Tribe's right to establish tax policy on the Reservation and to decide for itself the extent to which commerce will be taxed on the Reservation.

(2) The Tribal Council finds that the specter of dual tribal and state taxation frustrates economic development of the Reservation, and unduly burdens Reservation commerce. It is the policy of the Tribal Council to avoid dual taxation, through the use of a tax credit.

321.002 Credit for State Taxes.

(1) There is granted to all taxpayers on the Reservation a credit against any taxes paid pursuant to this Title, for the amount of any identical or similar state taxes paid by the taxpayer during the same tax period. This credit does not apply to utility companies or railroads subject to the Possessory Interest Tax. The credit does apply to lessees of tribal trust land for economic development projects who are subject to the Possessory Interest Tax.

(2) The taxpayer seeking the credit shall submit proof of payment of state taxes on his, her or its tribal tax return, showing the amount paid and the tax period for which the state tax was paid. Upon receipt of sufficient proof by the Tax Commission, the Tax Commission shall reduce the taxpayer's tribal tax liability by the amount of state taxes paid by the taxpayer.

321.003 State Taxation Not Approved. Nothing in this chapter shall be deemed to constitute acquiescence, in or approval of, any authority of Nevada to tax Reservation transactions.

321.004 Apportionment. The taxes imposed pursuant to this Ordinance and pursuant to Nevada law may, upon the agreement of the Tribe and Nevada, be apportioned between the Tribe and the State to reflect the amount of services each sovereign provides for the taxpayers or for the Reservation, or according to any equitable formula agreed to by the Tribe and Nevada.

CHAPTER 322 RULES AND REGULATIONS

322.001 Authorization. The Tax Commission shall have the power to make all necessary rules and regulations and prescribe all necessary forms or other requirements, not inconsistent with the provisions of this Ordinance, for the purpose of making the administration of this Title effective.

322.002 Apportionment of Assistants or Agents. The Tax Commission may appoint auditors, accountants, assessors, inspectors, deputies, clerks and such other assistants or agents as it may deem necessary to enforce its powers and perform its duties under this Title.

CHAPTER 323 MISCELLANEOUS PROVISIONS

323.001 Severability. If any provision of this Ordinance or its application to any person or circumstances is held invalid, the ruling shall not affect other provisions of this Ordinance or applications that can be given effect without the invalid provision or application; to this end the provisions of this Ordinance are declared to be severable.

323.002 Effective Date. The Ordinance shall become effective on the first day of the month immediately following its enactment.

ADOPTED August 14, 2006, per Resolution No. 2006-EST-52

**APPENDIX
NEVADA REVISED STATUTES**

NRS §463.380 Annual Fee for state license based on number of games operated.

1. In addition to any other state gaming license fees provided for in this Chapter, the Commission shall, before issuing a state gaming license, charge and collect in advance from each applicant a license fee to be determined on the following basis:

Those establishments operating or to operate one game, the sum of \$100.

Those establishments operating or to operate two games, the sum of \$200.

Those establishments operating or to operate three games, the sum of \$400.

Those establishments operating or to operate four games, the sum of \$750.

Those establishments operating or to operate five games, the sum of \$1,750.

Those establishments operating or to operate six or seven games, the sum of \$3,000.

Those establishments operating or to operate 8, 9 or 10 games, the sum of \$6,000.

Those establishments operating or to operate 11, 12 or 13 games, the sum of \$650 for each game so operating or to operate.

Those establishments operating or to operate 14, 15 or 16 games, the sum of \$1,000 for each game so operating or to operate.

Those establishments operating or to operate more than 16 games, the sum of \$1,000 for each game to and including 16 games and the sum of \$200 for each game in excess of 16 games so operating or to operate.

2. In computing the number of games operated or to be operated by an applicant under this section, a license authorizing the receiving of bets or wagers on races held at a track which uses the pari-mutuel system of wagering located outside the State of Nevada, or on sporting events by any system or method of wagering other than the system known as the pari-mutuel method of wagering, shall be deemed a game within the meaning of this section.

3. All licenses must be issued for the calendar year beginning January 1 and expiring December 31. If the operation of the licensee is continuing, the Commission shall charge and collect the fee prescribed in subsection 1 on or before December 31 for the ensuing calendar year. If the operation is new or has been temporarily closed with the approval of the board, the Commission shall prorate the license fee on a monthly basis. If any licensee desires to enlarge his operations during the calendar year, he must, after his application is approved, be charged the full annual fees for the number of games for which he desires a license under this section, and is entitled to credit thereon for the

annual fee he may have previously paid under this section for the same calendar year for a lesser number of games.

4. Card games, that is, stud or draw poker, bridge, whist, solo, low ball, and panguingue for money, and slot machines, when not utilized as an adjunct to or a unit of any banking, percentage or mechanical device or machine, are not gambling games under the provisions of this section.

5. All games operated or conducted in one room or a group of rooms in the same or a contiguous building are considered one operation under this section, and the license to be paid must be determined on the aggregate number of games in each room or group of rooms in the same or a contiguous building.

6. Except as otherwise provided in this section and NRS §463.386, the amount of the fee specified in subsection 1 must not be prorated. [Part 10ee:99:1931; added 1947, 734; A 1949, 114; 1955, 760]-(NRS A 1957, 783; 1959, 453; 1965, 1035; 1967, 171, 675, 887; 1969, 189; 1975, 690; 1979, 1016; 1981, 1093; 1987, 632, 2261)

NRS 463.370 Monthly fee for state license based upon gross revenue; license issued for less than full month; Underpayment and Overpayments; cessation of operation; offset of certain losses.

1. Except as otherwise provided in NRS §463.373, the commission shall charge and collect from each licensee a license fee based upon all the gross revenue of the licensee as follows:

(a) Three percent of all the gross revenue of the licensee which does not exceed \$50,000 per calendar month;

(b) Four percent of all the gross revenue of the licensee which exceeds \$50,000 per calendar month and does not exceed \$134,000 per calendar month; and

(c) Six and one-quarter percent of all the gross revenue of the licensee, which exceeds \$134,000 per calendar month.

2. Unless the licensee has been operating for less than a full calendar month, the Commission shall charge and collect the fee prescribed in subsection 1, based upon the gross revenue for the preceding calendar month, on or before the 24th day of the following month. Except for the fee based on the first full month of operation, the fee is an estimated payment of the license fee for the third month following the month whose gross revenue is used as its basis.

3. When a licensee has been operating for less than a full calendar month, the Commission shall charge and collect the fee prescribed in subsection 1, based on the gross revenue received during that month, on or before the 24th day of the following calendar month of operation. After the first full calendar month of operation, the commission shall charge and collect the fee based on the gross revenue received during that month, on or before the 24th day of the following calendar month. The payment of the fee due for the first full calendar month of operation must be accompanied by the payment of a fee equal to three times the fee for the first full calendar month. This additional amount is an estimated payment of the license fees for the next three calendar months. Thereafter, each license fee must be paid in the manner described in subsection

2. Any deposit held by the Commission on July 1, 1969, must be treated as an advance estimated payment.

4. All revenue received from any game or gaming device that is operated on the premises of a licensee, regardless of whether any portion of the revenue is shared with any other person, must be attributed to the licensee for the purposes of this section and counted as part of the gross revenue of the licensee. Any other person, including, without limitation, an operator of an inter-casino linked system, who is authorized to receive a share of the revenue from any game, gaming device or inter-casino linked system that is operated on the premises of a licensee is liable to the licensee for that person's proportionate share of the license fees paid pursuant to this section and shall remit or credit the full proportionate share to the licensee on or before the 24th day of each calendar month. The proportionate share of an operator of an inter-casino linked system must be based on all compensation and other consideration received by the operator of the inter-casino linked system, including, without limitation, amounts that accrue to the meter of the primary progressive jackpot of the inter-casino linked system and amounts that fund the reserves of such a jackpot, subject to all appropriate adjustments for deductions, credits, offsets and exclusions that the licensee is entitled to take or receive pursuant to the provisions of this chapter. A licensee is not liable to any other person authorized to receive a share of the licensee's revenue from any game, gaming device or inter-casino linked system that is operated on the premises of the licensee for that person's proportionate share of the license fees to be remitted or credited to the licensee by that person pursuant to this section.

5. An operator of an inter-casino linked system shall not enter into any agreement or arrangement with a licensee that provides for the operator of the inter-casino linked system to be liable to the licensee for less than its full proportionate share of the license fees paid by the licensee pursuant to this section, whether accomplished through a rebate, refund, charge-back or otherwise.

6. Any person required to pay a fee pursuant to this section shall file with the Commission, on or before the 24th day of each calendar month, a report showing the amount of all gross revenue received during the preceding calendar month. Each report must be accompanied by:

- (a) The fee due based on the revenue of the month covered by the report; and
- (b) An adjustment for the difference between the estimated fee previously paid for the month covered by the report, if any, and the fee due for the actual gross revenue earned in that month. If the adjustment is less than zero, a credit must be applied to the estimated fee due with that report.

7. If the amount of license fees required to be reported and paid pursuant to this section is later determined to be greater or less than the amount actually reported and paid, the Commission shall:

- (a) Charge and collect the additional license fees determined to be due, with interest thereon until paid; or
- (b) Refund any overpayment to the person entitled thereto pursuant to this chapter, with interest thereon.

Interest pursuant to paragraph (a) must be computed at the rate prescribed in NRS 17.130 from the first day of the first month following the due date of the additional license fees until paid. Interest pursuant to paragraph (b) must be computed at one-half the rate

prescribed in NRS 17.130 from the first day of the first month following the date of overpayment until paid.

8. Failure to pay the fees provided for in this section shall be deemed a surrender of the license at the expiration of the period for which the estimated payment of fees has been made, as established in subsection 2.

9. Except as otherwise provided in NRS 463.386, the amount of the fee prescribed in subsection 1 must not be prorated.

10. Except as otherwise provided in NRS 463.386, if a licensee ceases operation, the Commission shall:

(a) Charge and collect the additional license fees determined to be due with interest computed pursuant to paragraph (a) of subsection 7; or

(b) Refund any overpayment to the licensee with interest computed pursuant to paragraph (b) of subsection 7, based upon the gross revenue of the licensee during the last 3 months immediately preceding the cessation of operation, or portions of those last 3 months.

11. If in any month, the amount of gross revenue is less than zero, the licensee may offset the loss against gross revenue in succeeding months until the loss has been fully offset.

12. If in any month, the amount of the license fee due is less than zero, the licensee is entitled to receive a credit against any license fees due in succeeding months until the credit has been fully offset. [Part 10e:99:1931; added 1945, 492; A 1947, 734; 1949, 114; 1955, 760]-(NRS a 1959, 452; 1965, 1034; 1967, 180, 674, 821, 886, 1082; 1969, 187, 403, 824; 1975, 689, 1143; 1981, 569, 1089; 1983, 216; 1987, 546, 548; 1989, 1158; 1991, 675, 932; 1993, 312; 1995, 204, 759, 763; 1999, 954; 2001, 3086; 2003, 20th Special Session, 209)

NRS 463.373 Quarterly fee for state license for restricted operation.

1. Before issuing a state gaming license to an applicant for a restricted operation, the Commission shall charge and collect from him for each slot machine for each quarter year:

(a) A license fee of \$81 for each slot machine if he will have at least 1 but not more than 5 slot machines.

(b) A license fee of \$405 plus \$141 for each slot machine in excess of 5 if he will have at least 6 but not more than 15 slot machines.

2. The Commission shall charge and collect the fee prescribed in subsection 1:

(a) On or before the last day of the last month in a calendar quarter, for the ensuing calendar quarter, from a licensee whose operation is continuing.

(b) In advance from a licensee who begins operation or puts additional slot machines into play during a calendar quarter.

3. Except as otherwise provided in NRS 463.386, no proration of the fee prescribed in subsection 1 may be allowed for any reason.

4. The operator of the location where slot machines are situated shall pay the fee prescribed in subsection 1 upon the total number of slot machines situated in that location, whether or not the machines are owned by one or more licensee-owners.

(Added to NRS by 1967, 818; A 1969, 188; 1973, 389; 1981, 570, 571, 1091; 1983, 1336; 1987, 1860; 1993, 1444; 2003, 20th Special Session, 211)

NRS 463.375 Quarterly Fee for state license for Non-restricted operation.

1. In addition to any other state gaming license fees provided for in this chapter, before issuing a state gaming license to an applicant for a non-restricted operation, the Commission shall charge and collect from the applicant a license fee of \$80 for each slot machine for each calendar year.
2. The Commission shall charge and collect the fee prescribed in subsection 1, at the rate of \$20 for each slot machine for each calendar quarter:
 - (a) On or before the last day of the last month in a calendar quarter, for the ensuing calendar quarter, from a licensee whose operation is continuing.
 - (b) In advance from a licensee who begins operation or puts additional slot machines into play during a calendar quarter.
3. Except as provided in NRS 463.386, no proration of the quarterly amount prescribed in subsection 2 may be allowed for any reason.
4. The operator of the location where slot machines are situated shall pay the fee prescribed in subsection 1 upon the total number of slot machines situated in that location, whether the machines are owned by one or more licensee-owners.
5. Any other person, including, without limitation, an operator of an inter-casino linked system, who is authorized to receive a share of the revenue from any slot machine that is operated on the premises of a licensee is liable to the licensee for that person's proportionate share of the license fees paid by the licensee pursuant to this section and shall remit or credit the full proportionate share to the licensee on or before the dates set forth in subsection 2. A licensee is not liable to any other person authorized to receive a share of the licensee's revenue from any slot machine that is operated on the premises of a licensee for that person's proportionate share of the license fees to be remitted or credited to the licensee by that person pursuant to this section.

(Added to NRS by 1967, 883; A 1969, 189; 1973, 390; 1981, 571, 1092; 1999, 956)

NRS 463.383 Quarterly Fee for state license based on number of games operated.

1. In addition to any other state gaming license fees provided for in this chapter, the commission shall, before issuing a state gaming license, charge and collect from each applicant a quarterly license fee to be determined on the basis of the following annual rates:
 - (a) From establishments operating or to operate 10 games or less:
 - Those establishments operating or to operate one game, the sum of \$50.
 - Those establishments operating or to operate two games, the sum of \$100.
 - Those establishments operating or to operate three games, the sum of \$200.
 - Those establishments operating or to operate four games, the sum of \$375.
 - Those establishments operating or to operate five games, the sum of \$875.
 - Those establishments operating or to operate six or seven games, the sum of \$1,500.
 - Those establishments operating or to operate 8, 9 or 10 games, the sum of \$3,000.

- (b) From establishments operating or to operate more than 10 games:
 - (1) For each game up to and including 16 games, the sum of \$500.
 - (2) For each game from 17 to 35 games, inclusive, the sum of \$4,800.
 - (3) For each game from 27 to 35 games, inclusive, the sum of \$2,800.
 - (4) For each game more than 35 games, the sum of \$100.
- 2. The commission shall charge and collect the fee prescribed in subsection 1, at the rate of one-fourth of the prescribed annual rate for each calendar quarter:
 - (a) On or before the last day of the last month in a calendar quarter, for the ensuing calendar quarter from a licensee whose operation is continuing.
 - (b) In advance from a licensee who begins operation or puts additional games into play during a calendar quarter.
- 3. Except as otherwise provided in NRS 463.386, no proration of the quarterly amount prescribed in subsection 2 may be allowed for any reason.
- 4. In computing the number of games operated or to be operated by an applicant under this section, a license authorizing the receiving of bets or wagers on races held at a track which uses the pari-mutuel system of wagering located outside the State of Nevada or on sporting events by any system or method of wagering other than the system known as the pari-mutuel method of wagering, shall be deemed a game within the meaning of this section.
- 5. Card games, that is, stud or draw poker, bridge, whist, solo, low ball, and panguingue for money, and slot machines, when not utilized as an adjunct to or a unit of any banking, percentage or mechanic device or machine, are not gambling games under the provisions of this section.
- 6. All games operated or conducted in one room or group of rooms in the same or a contiguous building are considered one operation and the license to be paid must be determined on the aggregate number of games in each room or group of rooms in the same or a contiguous building.
(Added to NRS by 1967, 883; A 1969, 191; 197, 390; 1975, 691; 1979, 1018; 1981, 1094; 1987, 633)

NRS 463.385 Annual excise tax upon slot machines: Imposition; collection; proportionate share of operator of inter-casino linked system and other persons; deposit and use of receipts.

- 1. In addition to any other license fees and taxes imposed by this chapter, there is hereby imposed upon each slot machine operated in this state an annual excise tax of \$250. If a slot machine is replaced by another, the replacement is not considered a different slot machine for the purpose of imposing this tax.
- 2. The Commission shall:
 - (a) Collect the tax annually on or before June 30, as a condition precedent to the issuance of a state gaming license to operate any slot machine for the ensuing fiscal year beginning July 1, from a licensee whose operation is continuing.
 - (b) Collect the tax in advance from a licensee who begins operation or puts additional slot machines into play during the fiscal year, prorated monthly after July 31.
 - (c) Include the proceeds of the tax in its reports of state gaming taxes collected.

3. Any other person, including, without limitation, an operator of an inter-casino linked system, who is authorized to receive a share of the revenue from any slot machine that is operated on the premises of a licensee is liable to the licensee for that person's proportionate share of the license fees paid by the licensee pursuant to this section and shall remit or credit the full proportionate share to the licensee on or before the dates set forth in subsection 2. A licensee is not liable to any other person authorized to receive a share of the licensee's revenue from any slot machine that is operated on the premises of a licensee for that person's proportionate share of the license fees to be remitted or credited to the licensee by that person pursuant to this section.

4. The Commission shall pay over the tax as collected to the State Treasurer to be deposited to the credit of the State Distributive School Account in the State General Fund, and the Capital construction Fund for Higher Education and the Special Capital Construction Fund for Higher Education, which are hereby created in the State Treasury as special revenue funds, in the amounts and to be expended only for the purposes specified in this section.

5. During each fiscal year the State Treasurer shall deposit the tax paid over to him by the Commission as follows:

- (a) The first \$5,000,000 of the tax in the Capital Construction Fund for Higher Education;
- (b) Twenty percent of the tax in the Special Capital Construction Fund for Higher Education; and
- (c) The remainder of the tax in the State Distributive School Account in the State General Fund.

6. There is hereby appropriated from the balance in the Special Capital Construction Fund for Higher Education on July 31 of each year the amount necessary to pay the principal and interest due in that fiscal year on the bonds issued pursuant to section 5 of chapter 679, Statutes of Nevada 1979, as amended by chapter 585, Statutes of Nevada 1981, at page 1251, the bonds authorized to be issued by section 2 of chapter 643, Statutes of Nevada 1987, at page 1503, the bonds authorized to be issued by section 2 of chapter 614, Statutes of Nevada 1989, at page 1377, the bonds authorized to be issued by section 2 of chapter 718, Statutes of Nevada 1991, at page 2382, and the bonds authorized to be issued by section 2 of chapter 629, Statutes of Nevada 1997, at page 3106,. If in any year the balance in that fund is not sufficient for this purpose, the remainder necessary is hereby appropriated on July 31 from the capital construction fund for higher education. The balance remaining unappropriated in the Capital Construction Fund for Higher Education on August 1 of each year and all amounts received thereafter during the fiscal year must be transferred to the State General Fund for the support of higher education. If bonds described in this subsection are refunded and if the amount required to pay the principal of and interest on the refunding bonds in any fiscal year during the term of the bonds is less than the amount that would have been required in the same fiscal year to pay the principal of and the interest on the original bonds if they had not been refunded, there is appropriated to the University and Community College System of Nevada an amount sufficient to pay the principal of and interest on the original bonds, as if they had not been refunded. The amount required to pay the principal of and interest on the refunding bonds must be used for that purpose from the amount appropriated. The amount equal to the saving realized in that fiscal year from the

refunding must be used by the University and Community College System of Nevada to defray, in whole or in part, the expenses of operation and maintenance of the facilities acquired in part with the proceeds of the original bonds.

7. After the requirements of subsection 6 have been met for each fiscal year, when specific projects are authorized by the Legislature, money in the Capital Construction Fund for Higher Education and the Special Capital Construction Fund for Higher Education must be transferred by the State Controller and the State Treasurer to the State Public Works Board for the construction of capital improvement projects for the University and Community College System of Nevada, including but not limited to, capital improvement projects for the community colleges of the University and Community College System of Nevada. As used in this subsection, "construction" includes, but is not limited to, planning, designing, acquiring and developing a site, construction, reconstruction, furnishing, equipping, replacing, repairing, rehabilitating, expanding and remodeling. Any money remaining in either fund at the end of a fiscal year does not revert to the state general fund but remains in those funds for authorized expenditure.

8. The money deposited in the Sate Distributive School Account in the State General Fund under this section must be apportioned as provided in NRS 387.030 among the several school districts and charter schools of the State at the times and in the manner provided by law.

9. The board of regents at the University of Nevada may use any money in the Capital Construction Fund for Higher Education and the Special capital Construction Fund for Higher Education for the payment of interest and amortization of principal on bonds and other securities, whether issued before, on or after July 1, 1979, to defray in whole or in part the costs of any capital project authorized by the Legislature.

(Added to NRS by 1967, 874;A 1971, 168; 1973, 909; 1975, 692; 1977, 1033; 1979, 1738, 1739; 1983, 515, 516, 1364, 1365; 1987, 423, 1501, 1504; 1989, 314, 1375; 1991, 1911, 2380; 1993, 407, 584; 1997, 3104; 1999, 957, 1423, 3320)

NRS 463.3855 Annual Fee for state license for operator of slot machine route or inter-casino linked system.

1. In addition to any other state license fees imposed by this chapter, the commission shall, before issuing a state gaming license to an operator of a slot machine route or an operator of an inter-casino linked system, charge and collect from him an annual license fee of \$500.

2. Each such license must be issued for a calendar year beginning January 1 and ending December 31. If the operation of the licensee is continuing, the commission shall charge and collect the fee on or before December 31 for the ensuing calendar year.

3. Except as otherwise provided in NRS 463.386, the fee to be charged and collected under this section is the full annual fee, without regard to the date of application for or issuance of the license.

(Added to NRS by 1983, 1332; A 1995, 761)

NRS 463.3857 Fees from licensee who concludes gaming operation; Final fee based on total outstanding value of collectible credit instruments; monthly fee based on all

compensation received in payment of credit instrument; calculation and collection of monthly fee; security required for payment of fee.

1. Except as otherwise provided in NRS 463.386, the Commission shall charge and collect from each licensee who concludes a gaming operation:
 - (a) A fee, to be included on the final tax return at the close of operation and derived from application of the rates and monetary limits set forth in NRS 463.370, based on the total outstanding value of collectible credit instruments received as a result of that gaming operation which are held by the licensee and remain unpaid on the last tax day; or
 - (b) A monthly fee on all cash or other compensation received by the licensee or any affiliate of the licensee in payment of any credit instrument received as a result of that gaming operation which is held by the licensee or any affiliate of the licensee and remains unpaid on the last tax day.
2. The monthly fee must be:
 - (a) Calculated by applying to the amount of cash or other compensation received in payment of a credit instrument during the month at a rate derived from the application of the rates and monetary limits set forth in NRS 463.370 to the licensee's experience in receiving payment of credit instruments before concluding gaming operations; and
 - (b) Collected and refunded pursuant to the regulations adopted by the Commission.
3. To secure payment of the monthly fee, the licensee must make a cash deposit or post and maintain a surety bond or other acceptable form of security with the commission in an amount determined by applying the rate derived pursuant to paragraph (a) of subsection 2 to the value of all collectible credit instruments.
4. As used in this section:
 - (a) "Last tax day" means the last day for which a licensee is legally obligated to pay the fees imposed pursuant to NRS 463.370.
 - (b) "Value of all collectible credit instruments" means the amount of cash or other compensation the licensee may reasonably expect to receive in payment of unpaid credit instruments after conclusion of his gaming operation, taking into account all relevant factors.

(Added to NRS by 1989, 2058; A 1993, 7; 1997, 3502)

NRS 463.386 Credit for prepaid fees for license upon transfer of corporate gaming operations.

1. If the Commission approves the issuance of a license for gaming operations at the same location, or locations if the license is for the operation of a slot machine route, within 30 days following a change described in subsection 2, for the purposes of NRS 463.370 and 463.373 to 463.3855, inclusive, the gaming license shall be deemed transferred and the previously licensed operation shall be deemed a continuing operation.
2. Credit must be granted for prepaid license fees as described in subsection 1 if:

- (a) The securities of a corporate gaming licensee are or become publicly held or publicly traded and the gaming operations of that corporation are transferred to a wholly owned subsidiary corporation;
- (b) A corporate gaming licensee is merged with another corporation which is the surviving entity and at least 80 percent of the surviving entity is owned by shareholders of the former licensee;
- (c) A corporate gaming licensee is dissolved, and the parent corporation of the dissolved corporation or a subsidiary corporation of the parent corporation, at least 80 percent of which is owned by the parent corporation, becomes the gaming licensee;
- (d) A corporate gaming licensee or a gaming licensee which is a partnership or limited partnership is reorganized pursuant to a plan of reorganization approved by the Commission, and a limited partnership or limited-liability company is the surviving entity;
- (e) The assets of a gaming licensee who is a sole proprietorship are transferred to:
 - (1) A corporation and at least 80 percent of the stock of the corporation is held by the former sole proprietor; or
 - (2) A limited-liability company and at least 80 percent of the interests in the limited-liability company are held by the former sole proprietor;
- (f) A corporate gaming licensee is dissolved and the assets of the gaming establishment are transferred to:
 - (1) A sole proprietorship in which the sole proprietor owned at least 80 percent of the stock of the former corporation; or
 - (2) A limited-liability company in which at least 80 percent of the interests are owned by a person who owned at least 80 percent of the stock of the former corporation;
- (g) A licensed gaming partnership or limited partnership is dissolved and the assets of the gaming establishment are transferred to a sole proprietorship in which the sole proprietor owned at least 80 percent of the former partnership or limited partnership interests;
- (h) The assets of a gaming licensee who is a sole proprietorship are transferred to a partnership or limited partnership in which at least 80 percent of the ownership of the partnership or limited partnership interests are held by the former sole proprietor;
- (i) A licensed gaming partnership, limited partnership or limited-liability company is dissolved and the assets of the gaming establishment are transferred to a corporation, at least 80 percent of the stock of which is held by persons who held interests in the former partnership, limited partnership or limited-liability company;
- (j) A licensed gaming partnership or limited partnership is dissolved or reorganized and the assets of the gaming establishment are transferred to a partnership, limited partnership or limited liability company, at least 80 percent of the ownership of which is held by the former partnership interests; or
- (k) A trustee, receiver, assignee for the benefit of a creditor or a fiduciary is approved to continue the operation of a licensed establishment and the

commission deems the operation to continue pursuant to the existing license of the establishment.

3. Except as otherwise provided in this section, no credit or refund of fees or taxes may be made because a gaming establishment ceases operation.

(Added to NRS by 1973, 389; A 1975, 693; 1979, 1528, 1740; 1981, 1095; 1983, 1337; 1991, 534, 1011; 1993, 2001)

NRS 463.390 Quarterly fee for county license; penalty for late payment.

1. Any natural person, firm, association, corporation, partnership, limited partnership or limited liability company desiring to conduct, operate or carry on any gambling game, slot machine or any game of chance must, upon proper application to the sheriff if there is no county license department or to that department of the county wherein, it is proposed that the slot machine, game or games be conducted or operated, be issued a license for each particular device or game or slot machine under the following conditions and regulations:

(a) The natural person, firm, association, corporation, partnership, limited partnership or limited liability company so apply must furnish a complete description of the particular room and premises which the applicant desires to carry on or conduct the slot machine, device or game, together with the location of the building, its street number, if any, and any other information by which it may be definitely and readily located and recognized.

(b) The applicant must state definitely the particular type of slot machine or the particular game or device which the applicant desires to carry on or conduct in the room and premises, and the slot machine, game or device must be specifically described in and entered upon the license.

(c) Card games, that is, stud and draw poker, bridge, whist, solo, and panguingue for money, must be licensed independently of other games mentioned in this section, regardless of locality or population, at the rate of \$25 per table per month, payable at the time of the application prorated to the end of the calendar quarter during which the application is made, and thereafter payable 3 months in advance.

(d) A license fee of \$50 per month, payable at the time of the application prorated to the end of the calendar quarter during which the application is made, and thereafter payable for 3 months in advance, must be paid to the sheriff or county license department for each license issued for a game or device except for slot machines and games otherwise provided for in this section. For each money slot machine the license fee is \$10 per month, payable at the time of the application prorated to the end of the calendar quarter during which the application is made, and thereafter payable for 3 months in advance. When a combination of units are operated by one handle, the license fee is \$10 per month, payable at the time of the application prorated to the end of the calendar quarter during which the application is made, and thereafter payable for 3 months in advance, for each unit paying in identical denominations operated thereby.

(e) The license entitles the holder to carry on or operate the specific slot machine, game or device for which the license is issued in the particular room and

premises described therein, but not any other slot machine, game or device than that specified therein, or the specified slot machine, game or device in any other place than the room and premises so described, for a period of 3 months next succeeding the date of issuance of the license.

2. The licensee is entitled to operate two or more slot machines, games or devices in the same room by paying the license fee provided for in this section for each slot machine, game or device and otherwise complying with the terms of this section.

3. Except as otherwise provided in subsection 4 or NRS 463.400, any person failing to pay any license fees due to a county at the times respectively provided in this chapter must pay in addition to the license fees a penalty of not less than \$50 or 25 percent of the amount due, whichever is the greater, but not more than \$1,000 if the fees are less than 10 days late and in no case more than \$5,000. The penalty must be collected as are other charges, license fees and penalties under this chapter.

4. A county may waive all or part of any penalty due pursuant to subsection 3 if the board of county commissioners issues a written finding that the license fees were not paid in a timely manner as a result of circumstances beyond the licensee's control.

5. Where the operator of a slot machine route is contractually responsible for the payment of license fees for a particular establishment that holds a restricted license, the operator is also responsible for the payment of any penalties imposed for late payment of those license fees. In such a case, the owner of the establishment is not responsible for the payment of any penalties so imposed.

[2.99:1931; A 1939, 95; 1931 NRS §3392,911 + [Part 10ee:99:1931; added 1947, 734; A 1949, 114; 1955, 760] – (NRS A 1959, 454; 1967, 1037, 1373; 1969, 192; 1979, 739, 1405; 1991, 617; 1993, 2002)

ELY

SHOSHONE

BUSINESS

LICENSE

ORDINANCE

ELY SHOSHONE TRIBE

16 SHOSHONE CIRCLE

FAX (775) 289-3156

ELY, NEVADA 89301

(775) 289-3013

RESOLUTION NO. 2006-EST-53

RESOLUTION OF THE GOVERNING BODY
OF THE
ELY SHOSHONE TRIBE

WHEREAS, the Ely Shoshone Tribe is a federally recognized Indian Tribe, organized under the Indian Reorganization Act of June 18, 1934, as amended, with the power to exercise certain rights of home rule and to be responsible for the promotion of economic and social welfare of its tribal membership, and governs its affairs under the revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999; and

WHEREAS, in accordance with its Constitution and By-Laws, the Tribe is governed by its Tribal Council; and

WHEREAS, the Tribal Council has the power to adopt laws providing for taxation on the reservation, in order to provide a source of revenue to promote tribal self-government and self-sufficiency, and to use such revenue to help defray the costs of tribal government, and to provide needed services for the benefit of the reservation; and

WHEREAS, the Ely Shoshone Tribal Council has adopted by Resolution No. 2006-EST-52, and Ordinance No. 2006-EST-01, adopting the Ely Shoshone Tribal Taxation Ordinance.

WHEREAS, the Ely Shoshone Tribal Council and the Tax Planning Committee have reviewed the Ely Shoshone Business License Ordinance, a copy of which is attached hereto and incorporated by reference, and found it necessary and appropriate to adopt the Ordinance.


NOW THEREFORE BE IT RESOLVED THAT, the Ely Shoshone Tribal Council hereby adopts and enacts the Ely Shoshone Tribal Business License Ordinance, ORDINANCE NO. 2006-EST-02, to become effective as of the first day of the month following approval of this Resolution; and

CERTIFICATION

It is hereby certified that the foregoing Resolution of the Ely Shoshone Tribe, composed of five (5) members of whom 5 constituting a quorum were present at a **Special Meeting** held on the 14th day of **August, 2006**, was adopted by the affirmative vote of 5 **For**, 0 **Against**, 0 **Abstained**; pursuant to the authority contained in the Revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999.



Diana Buckner, •
Tribal Chairperson

ATTEST: 

Gerald Charles,
Secretary-Treasurer

ELY SHOSHONE TRIBAL

BUSINESS LICENSE

ORDINANCE NO. 2006-EST-02

APPROVED: August 14, 2006
per Resolution No. 2006-EST-53

**ELY SHOSHONE TRIBE
LAW AND ORDER CODE
TRIBAL BUSINESS LICENSE**

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**ELY SHOSHONE TRIBE
LAW AND ORDER CODE**

ORDINANCE 2006-EST-02

Governing the imposition of business licenses by the Ely Shoshone Tribe of the Ely Shoshone Indian Reservation.

**ELY SHOSHONE TRIBAL BUSINESS LICENSE
GENERAL PROVISIONS**

401.001 Title. This Ordinance shall be known as the Ely Shoshone Tribal Business License Code. Any prior business license codes imposed by the Ely Shoshone Tribe are repealed.

401.002 Authority. This Ordinance is adopted by the Ely Shoshone Tribal Council pursuant to Article VI, Section 1(g) of the Constitution of the Tribe.

401.003 Policies.

- (1) The Ely Shoshone Tribe of Indians has existed as an independent, sovereign nation since time immemorial. Today the Tribe continues to govern the Ely Shoshone Indian Reservation limited only in its authority by its Constitution and By-Laws and the Constitution and laws of the United States.
- (2) The Ely Shoshone Tribal Council is the governing body of the Ely Shoshone Tribe in accordance with the authority of its Constitution and By-Laws. The Council is responsible for economic development on the Reservation and seeks to ensure that residents of the Reservation enjoy adequate employment, health care, education opportunities, social services, and other governmental services.
- (3) It is the policy of the Tribe to promote economic development on the Reservation. To achieve that goal, the Tribe is adopting a business license scheme to identify and regulate all applicable persons and entities doing business on the Reservation.
- (4) The Ely Shoshone Tribe has a primary interest in regulating the conduct of business and trade on the Ely Shoshone Indian Reservation. It is therefore appropriate that all persons who exercise the privilege of engaging in business on the Ely Shoshone Indian Reservation register and obtain a business license from the Ely Shoshone Tribe.

402 GENERAL PROVISIONS

402.001 Definitions. As used in this Tribal Business License Code, the following definitions shall apply except as otherwise provided. The following terms are defined as follows:

- (1) “Business” means any activity engaged in by any person, or caused to be engaged in by any person, with the object of gain, benefit, or advantage, either direct or indirect.
- (2) “Tribal Council” means the Ely Shoshone Tribal Council, established as the governing body of the Tribe pursuant to the Constitution and By-Laws of the Ely Shoshone Tribe.
- (3) “Business License Department” or “License Department” means the Tribal Council, unless and until the Tribal Council establishes a separate business License Department by separate resolution or by amendment to this Ordinance.
- (4) “Business Licensee” or “Licensee” means any person or entity that is subject to the provisions of the Tribal Business License Code.
- (5) “Code” means the Ely Shoshone Tribal Business License Code.
- (6) “Engaging in Business” or “Business Activity” means commencing, conducting, or continuing in business, and relates to a person who is involved in trade or commerce inclusive of service activities regardless of whether they are, or are intended to be, for profit. It shall also include the sale of real or personal property on the Ely Shoshone Indian Reservation by a person generally engaged in such business whether within or outside the exterior boundaries of the Ely Shoshone Indian Reservation which are under the jurisdiction of the Tribe, and other such land without such boundaries as may hereafter be added thereto under any law of the United States of America, except as otherwise provided by law.
- (7) “Indian” means an individual who is an enrolled member of a federally recognized Indian Tribe.
- (8) “Indian Tribe” means any Indian or Alaska Native tribe, band, village, community, or pueblo recognized by the United States Department of the Interior as eligible for services.
- (9) “Person means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, association, society, political entity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise who are or may become subject to this act, provided that the term does not include:
 - (a) The government of the Ely Shoshone Tribe and any governmental entities of the Tribe, or the Federal or State Government and their respective agencies; or

- (b) Any of the above-listed forms of business entities that are wholly owned and operated by the Ely Shoshone Tribe or the Federal or State Government.
- (10) "Real Property" means all lands or interests in land including all mines, quarries, and minerals in and under the land, and all rights and privileges thereunto appertaining; and permanent improvements.
- (11) "Personal property" means everything which is subject to ownership and which is not included within the term of "real property". "Personal property" includes machinery, equipment, and other articles related to a commercial or industrial operation, which are either affixed or not affixed to the real property for proper utilization of such articles.
- (12) "Improvements" mean all structures, buildings, fences, and water rights erected upon or affixed to land, whether or not title to such land has been acquired.
- (13) "Reservation" means the territory within the boundaries of the Ely Shoshone Indian Reservation, all lands outside and inside the exterior boundaries of the Reservation which are under the jurisdiction of the Tribe, and such other lands without such boundaries as may hereafter be added thereto under any law of the United States of America, except as otherwise provided by law.
- (14) "Tribal Member" means an individual who is an enrolled member of the Ely Shoshone Tribe.
- (15) "Tribe" means the Ely Shoshone Tribe.

402.002 Tribal Council to Set All License Fees

All License Fees shall be set by the Tribal Council, only after consideration of the recommendations of the Business License Department and shall be expressly set in this Code.

402.003 Sovereign Immunity

The Ely Shoshone Tribe and all its constituent parts, subordinate organizations, boards, and committees, including the Business License Department, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived by the Tribe or the United States Congress. This Business License Code shall not be construed in any way as a waiver of the Tribe's sovereign immunity, except as specifically stated herein.

402.004 Businesses Exempt From License Fees

The following types of businesses shall be exempt from the license requirements as set by this Code:

- (a) Businesses whose primary activity is to utilize federal trust land for farming and agricultural purposes;
- (b) All non-profit, charitable institutions or organizations which engage in business activity in order to raise funds for social, educational, religious or other purposes that are for the benefit of the community;
- (c) All businesses that are 50% or more Tribal member owned and controlled; and
- (d) All other exemptions recognized by federal law and statutes.

403 BUSINESS LICENSE

403.001 Business License Required

No person shall engage in or carry on any trade, commerce, profession, or business activity of any sort on the Reservation until a business license is obtained, except as exempt under 402.004.

403.002 Business License Term

- (a) A Business License shall be good for the calendar year wherein it is granted. All business licenses shall be renewed on or before January 1st of each year and shall expire on December 31st of the same calendar year. The license fee as established by 403.003 shall accompany the application for a business license.
- (b) A Business License application form may be obtained during regular business hours at the Business License Department (Taxation Department) of the Ely Shoshone Tribe, Ely, Nevada 89301. The license required to be obtained under this Code shall be in addition to all other licenses, fees, permits, contracts, leases and grants required by Tribal and Federal law, unless stated specifically otherwise.

403.003 License Fee Schedule

The fee schedule for Business Licenses is as follows:

1.	Manufacturing & Processing	\$25.00
2.	Mining	25.00
3.	Service	25.00
4.	Construction	25.00
5.	Transportation	25.00

6.	Communications	25.00
7.	Utility	25.00
8.	Real Estate Agencies	25.00
9.	Gas or Similar Leases/per well	25.00
10.	Peddler's License (per day)	10.00
11.	Vendors	25.00
12.	Any other type of business not listed above	25.00
13.	Temporary (Quarterly or 3 months)	15.00

404 LICENSE APPLICATION

404.001 License Application Procedures

- (1) Within ten (10) working days after receipt of a completed application, other required documentation and fee as provided in 403.003, the Business License Department may issue to the applicant a license to engage in business activity for which the entity has been licensed.

- (2) Notwithstanding subsection 1 of this section, no license shall be granted to any licensee until it has presented proof to the Business License Department that it has complied with all Tribal requirements established as conditions of commencing business on the Reservation, including, but not limited to, the following:
 - (a) Pursuant to the Ely Shoshone Tribe's contract and employment preference ordinance;
 - (b) If and when the Tribe adopts a Land Use Ordinance, evidence that the person is in compliance with that Ordinance and has obtained such permits and approvals required by the Ordinance; and
 - (c) Evidence that the person has complied with the Tribe's Environmental Department requirements and the requirements of the Indian Health Service and Bureau of Indian Affairs, if applicable.

- (3) Notwithstanding subsection 1 of this section, where the Business License Department has reason to believe that a person applying for or possessing a license intends to commence or continue an activity that presents a danger to the health, safety, welfare, or morals of the residents of the Reservation, the Business License Department shall provide the said person with a written notice setting out the reasons it believes that the person presents such danger and noticing the date for hearing on the matter; said hearing to be held not later than ten (10) working days after delivery of the said notice. At the said hearing, the person shall be given an opportunity to demonstrate that its business activity does not present a danger to the health, safety, welfare, or morals of the residents of the Reservation. The Business License Department shall establish necessary procedures for said hearing to provide due process. If the Business License Department finds that a

danger does exist, it shall notify said person in writing, stating the reasons for it's finding, and shall deny or revoke the person's Business License. The person may appeal the Business License Department's decision to the Ely Shoshone Tribal Council, if a separate Business License Department exists. The Tribal Council's decision shall be final.

404.002 Forms Required

- (1) Prior to engaging in any business, all person(s) shall file with the Business License Department the necessary completed forms as required by this Code, including but not limited to a Business License Application and a Routing List.
- (2) Prior to engaging in any business on the Reservation, all persons shall have in their possession (a) a Certificate of Registration; and (b) a Business License duly issued by the Ely Shoshone Tribe.

404.003 Display of License

All persons shall display the issued Business License in a conspicuous place at the business location listed on the Business License or Certificate of Registration.

405 PENALTY AND ENFORCEMENT AND APPEAL

405.001 Transacting Business Without a License

- (1) Any person doing business on the Reservation who fails to obtain a Business License or fails to renew a Business License as provided in this Code shall, in addition to being required to immediately obtain such a Business License and pay the requested fee, be fined \$50.00 per day for each day it operates on the Reservation without a license, unless good cause is shown to the Business License Department as to why such a license had not been obtained in a timely manner.
- (2) If the Business License Department becomes aware that a person conducts business on the Reservation without a license, it shall deliver written notice to and informing the person that he operates on the Reservation in violation of this Code and that he shall, within two (2) working days, obtain such a license and pay such fee and fines as are indicated in the letter of notice. However, where the Business License Department has reason to believe that the health, safety, welfare, or morals of the residents of the Reservation are endangered by the continuation of such business activity, the Business License Department may order such business to cease all business activity until it has obtained a license. Such order may be appealed in accordance with the procedure set forth in § 404.001(3).
- (3) Upon notice from the Business License Department, pursuant to the provisions of this Code, said person(s) shall immediately cease to conduct business on the Reservation until a Business License has been obtained and all fees and penalties

applicable thereto have been paid. If the person fails to comply, the Business License Department shall petition the Tribal Court to hold an expedited hearing on the matter. If the person fails to appear or fails to show good cause, the Tribal Court shall issue appropriate relief, including, but not limited to, an injunction and/or order to cease doing business.

- (4) Any entity doing business on the Reservation without a Business License who fails to obtain a license within the time period required by the Business License Department as provided in this section, or any person whose license to do business has been revoked by any court or agency of competent jurisdiction pursuant to any provision of this Code, shall immediately cease to conduct business on the Reservation; provided, that upon a showing of good cause, the Tribal Court may grant the entity a reasonable period of time during which to conclude its business, if the business does not endanger the health, safety, welfare, or morals of residents of the Reservation. Where notice to cease business is issued by the Tribal Court, notice shall be hand delivered to the business or forwarded by certified mail, return receipt requested.

405.002 Exclusion

- (1) If any person doing business on the Reservation who has been directed by the Tribal Court to cease doing business on the Reservation, either pursuant to this Code or any other Tribal Code, fails to comply, then the Business License Department shall petition the Tribal Court for, or the Court on its own motion shall issue, a show cause order as to why the said business shall not be excluded from the Reservation. The Tribal Court shall hold a hearing upon the matter as soon as possible. If the person fails to appear or fails to show good cause, the Tribal Court shall order the Tribal Police to take appropriate actions.
- (2) In conjunction with subsection (1) of this section, where the person(s) engaging in business are not members of the Ely Shoshone Tribe, the Tribal Court shall order the police to physically remove all person(s) operating the business from the Reservation along with any personal property that can be removed without causing permanent damage to it. For property that cannot be removed, such as a building, the Tribal Court shall order, and the police shall implement, the incapacitation of said property by padlocking or other means so that it can no longer be used to carry out the business.

405.003 Violation of Code

The Tribe, through the Business License Department, may file a civil action to enforce the provisions of this Code against any person(s) doing business in violation of this Code and/or in violation of any court orders related to this Code for civil contempt or other relief, and all real and personal property used in the conduct of the said business may be impounded, padlocked, or otherwise incapacitated so that it cannot be used to carry out any further business on the Reservation.

405.004 Revocation of License

A Business License issued under this Code may be revoked after notice and hearing before the Tribal Court for any of the following reasons:

- (a) Fraud, misrepresentation, or incorrect statement contained in the application for Business License or other documents submitted to obtain a Business License;
- (b) Violations of this Code or any other Tribal Code or regulation;
- (c) Conducting business in an unlawful manner or in a manner which endangers the health, safety, welfare, or morals of residents of the Reservation.

405.005 Recovery of Property

A person may recover all such property incapacitated or impounded under this Code by paying to the Tribe the costs incurred by the Tribe in carrying out any legal proceedings, and a civil fine not to exceed \$300.00 per day for each day that passes since the person was ordered by the Tribal Court to obtain a Tribal Business License or to otherwise comply with this Code.

405.006 Reinstatement of License

- (1) Any person excluded, incapacitated or prohibited from doing business on the Reservation may be granted a new Business License to engage in business activity on the Reservation if:
 - (a) No less than six months have passed since the date of the exclusion or incapacitation order; and/or
 - (b) The person has paid all costs incurred by the Tribe in carrying out the exclusion or incapacitation order, and has paid such civil fines as the Tribal Court deems appropriate, but not to exceed \$50,000.00;
- (2) Notwithstanding subsection (1) of this section, the Business License Department may, for good cause, deny such licensee a new license, may attach such conditions as it deems appropriate upon granting a license, or may waive or mitigate the provisions of subsection (1) of this section.

406 SEVERABILITY, EFFECTIVE DATE AND AMENDMENTS

406.001 Severability

If any provision or section of this Code is held invalid, whether in general or in a particular case this shall not effect any other provision, and to this end the provisions of the Code shall be severable.

406.002 Conflict with Other Applicable Law

In the event of a conflict between the provisions of this Code and any other provisions of applicable law that by its terms is applicable to business licensing, this Code shall supercede and be controlling, unless specifically stated otherwise. This Code shall supercede and replace any prior Codes adopted by the Tribe that specifically address business licenses.

406.003 Effective Date

This Code shall be effective on the date of its adoption by the Tribal Council.

406.004 Amendments

This Code may be amended by Resolution passed by the Tribal Council in accordance with the Tribe's Constitution and By-Laws. The Business License Department shall notify persons doing business of any amendment(s) in the manner considered appropriate by the Business License Department.

ELY SHOSHONE TRIBE – BUSINESS REGISTRATION FORM

Taxation Ordinance 308.007 and 308.023 – Business License Ordinance 403.001

Please print or type the information requested below and file with the Ely Shoshone Tribe Taxation Department.

Corporate/Business Name _____ Tax I.D. No. or Social Security No. _____

Corporate/Business Address _____ Phone Number _____

Corporate/Business Mailing Address _____

Address of Business Operations Corporate/Business/Registered agent

Type of Corporation/Business Entity:

- Sole Proprietor Sole Corporation Association Partnership Limited Liability Corporation

NAME - TITLE - ADDRESS OF OWNER(S), PARTNERS, CORPORATE OFFICERS, etc.

NAME	ADDRESS	PHONE	SS#
NAME	ADDRESS	PHONE	SS#

Describe the nature of your business/corporation: _____

- BUSINESS/CORPORATION TYPE: Annual \$ _____
 Temporary \$ _____ (3 months)
 Peddler Permit \$ _____ (1 day)

- CHECK ONE: Ely Shoshone Tribal Member
 Native American
 Non-Native American

REASON FOR FILING APPLICATION:

- Original Change in partners Location change
 Mailing address change Add a location Name change
 Reinstatement Update file Other (explain)

I/WE HEREBY CERTIFY that the information provided on this application is true and complete to the best of my/our knowledge. I further hereby certify that I have read the application procedures and criteria as described in the Ely Shoshone Tribal Tax Ordinance, and do hereby submit to the Jurisdiction provided for therein and shall abide by all applicable laws.

Signature Owner/Officer/Partner _____ Date _____

Signature Owner/Officer/Partner _____ Date _____

Authorizing Signature-Business License Department _____ Date of Approval _____

FOR OFFICE USE ONLY:

Received by: _____ Amount Received: _____ CK/MO# _____ Permit # _____
Filing Fee \$1.00 pursuant to Tax Code 308.008
File: TaxBusinessApp

ELY SHOSHONE TRIBE

16 Shoshone Circle
Ely, Nevada 89301
775-289-3013
775-289-4133

BUSINESS LICENSE

The below named person or firm, having paid the license fee, is hereby granted a license to do business as stated below on the Ely Shoshone Reservation, ~~Ely, Nevada~~ subject to the provisions of Resolution No. 2006-EST-_____, of the Ely Shoshone Tribal Business License Code.

NAME OF BUSINESS: _____

NAME OF PROPRIETOR: _____

LOCATION OF BUSINESS: _____

LICENSE PERIOD BEGINNING: _____ ENDING: _____

Chairperson, Ely Shoshone Tribe

Date

This License is not transferable
File: TaxAndBusinessLicense

Resolution No. 2006-EST-_____, Adopted _____, 2006

ELY
SHOSHONE
TRIBE
TAX
EXEMPT
STATUS



KENNY C. GUINN
Governor

DAVID P. PURSELL
Executive Director

STATE OF NEVADA
DEPARTMENT OF TAXATION

1950 E. College Parkway
Suite 115
Carson City, Nevada 89706-7821

Phone: (775) 887-4820 • Fax: (775) 887-5981

In-State Toll Free: 800-882-0800

COPY

LAS VEGAS OFFICE

Grant Sawyer Office Building
Suite 1300
888 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300
Fax: (702) 486-2373

RENO OFFICE

4800 Kietzke Lane
Building D, Suite 203
Reno, Nevada 89502
Phone: (775) 886-1298
Fax: (775) 886-1303

April 23, 1999

THIS LETTER HAS NO EXPIRATION DATE

ELY SHOSHONE TRIBE
16 SHOSHONE CIRCLE
ELY NV 89301

RECEIVED

APR 28 1999

ELY SHOSHONE TRIBE

Pursuant to NRS 372.325 and related statutes, ELY SHOSHONE TRIBE has been granted sales/use tax exempt status. Direct purchases of tangible personal property made by ELY SHOSHONE TRIBE are exempt from sales/use tax. Fraudulent use of this exemption letter is a violation of Nevada law.

Vendors selling tangible personal property to ELY SHOSHONE TRIBE are authorized to sell to them tax exempt. The vendor shall account for the exempt sale on its sales/use tax return under exemptions. For audit purposes, a vendor may use a copy of this letter to document the transaction as tax exempt. However, documentation adequate to prove the purchase was made by a governmental entity is acceptable.

This letter only applies to Nevada sales/use tax and does not provide exemption from any other tax.

Any vendor having questions concerning the use of this sales/use tax exemption letter may contact the Department at one of the district offices listed above.

Sincerely,

Larry L. Scott, Chief
Revenue Division

Tax ID# 942398696



KENNY C. GUINN
Governor

BARBARA SMITH CAMPBELL
Chair, Nevada Tax Commission

CHARLES E. CHINNOCK
Executive Director

STATE OF NEVADA
DEPARTMENT OF TAXATION

1550 E. College Parkway
Suite 115
Carson City, Nevada 89706-7921

Phone: (775) 687-4820 • Fax: (775) 687-5981

In-State Toll Free: 800-992-0900

LAS VEGAS OFFICE
Grant Sawyer Office Building
Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300
Fax: (702) 486-2373

RENO OFFICE
4600 Kietzke Lane
Building O, Suite 263
Reno, Nevada 89502
Phone: (775) 688-1295
Fax: (775) 688-1303

August 1, 2003

ACCOUNT NUMBER: RCE-004-871
THIS LETTER HAS NO EXPIRATION DATE

ELY SHOSHONE TRIBE
16 SHOSHONE CIR
ELY NV 89301

Pursuant to NRS 372.325 and related statutes, ELY SHOSHONE TRIBE has been granted sales/use tax exempt status. Direct purchases of tangible personal property made by ELY SHOSHONE TRIBE are exempt from sales/use tax under the conditions explained below. Fraudulent use of this exemption letter is a violation of Nevada law.

Vendors selling tangible personal property to ELY SHOSHONE TRIBE are authorized to sell to them tax exempt under certain circumstances. However, **this letter is only valid when used by the tribal government to purchase tangible personal property delivered onto the reservation in accordance with NRS 372.335.** Additionally, **this exemption status cannot be transferred to individual tribal members or anyone else for their personal use.**

The vendor shall account for the exempt sale on its sales/use tax return under exemptions. For audit purposes, a vendor may use a copy of this letter to document the transaction as tax exempt. Documentation adequate to prove this purchase was made by the tribal government is needed. Accordingly, use of this letter for other than its official capacity is inappropriate. Misuse of this organization's exemption letter may result in its revocation by the Department.

This letter only applies to Nevada sales/use tax and does not provide exemption from any other tax.

Any vendor having questions concerning the use of this sales/use tax exemption letter may contact the Department at one of the district offices listed above.

Sincerely,

A handwritten signature in black ink, appearing to read "Dino DiCianno".

Dino DiCianno
Deputy Director

ELY
SHOSHONE
TRIBE
TAX FUND
USE PLAN

ELY SHOSHONE TRIBE

16 SHOSHONE CIRCLE

FAX (775) 289-3156

ELY, NEVADA 89301

(775) 289-3013

RESOLUTION NO. 2006-EST-58

RESOLUTION OF THE GOVERNING BODY
OF THE
ELY SHOSHONE TRIBE

WHEREAS, the Ely Shoshone Tribe is a federally recognized Indian Tribe, organized under the Indian Reorganization Act of June 18, 1934, as amended, with the power to exercise certain rights of home rule and to be responsible for the promotion of economic and social welfare of its tribal membership, and governs its affairs under the revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999; and

WHEREAS, in accordance with its Constitution and By-Laws, the Tribe is governed by its Tribal Council; and

WHEREAS, the Ely Shoshone Tribal Council has adopted by Resolution No. 2006-EST-52, and Ordinance No. 2006-EST-01, adopting the Ely Shoshone Tribal Taxation Ordinance, and

WHEREAS, the Ely Shoshone Tribal Council has reviewed the Ely Shoshone Tax Fund Use Plan as adopted by the Tax Planning Committee.

NOW THEREFORE BE IT RESOLVED THAT, the Ely Shoshone Tribal Council hereby adopts the Ely Shoshone Tax Fund Use Plan including application and reporting forms.

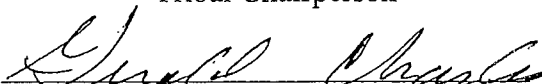
CERTIFICATION

It is hereby certified that the foregoing Resolution of the Ely Shoshone Tribe, composed of five (5) members of whom 5 constituting a quorum were present at a **Special Meeting** held on the **14th** day of **August, 2006**, was adopted by the affirmative vote of **5 For, 0 Against, 0 Abstained**; pursuant to the authority contained in the Revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999.



Diana Buckner,
Tribal Chairperson

ATTEST:



Gerald Charles, Secretary-Treasurer

Ely Shoshone Tribe

#16 Shoshone Circle

Ely, Nevada 89301

TAX FUND USE PLAN

**Prepared by the
Ely Shoshone
Tax Planning Committee**

For

**Ely Shoshone Tribal Council
Tribal Members
2006**

ELY SHOSHONE TAX FUND USE PLAN

INTRODUCTION

This manual serves to represent the full-circle of development of the Tribe's tax structure. In accordance with the Ely Shoshone Tax Code 301.003, it is the policy of the Tribe to promote Social Economic Development. To achieve that goal, the Tribe is adopting a tax scheme conducive to economic development and has adopted the following procedures in dedicating taxes collected to ensure residents of the Reservation and that taxpayers are served by this effort.

TAX FUNDS

All tax funds are to be used as outlined in the approved Tax Fund Use Plan. All expenditures of tax funds must be approved by the Tax Director and the Taxation Commission.

DEDICATION OF TAXES FOR SERVICES

The Ely Shoshone Tribe often develops projects and new departments, the Tax Commission feels the absolute need to dedicate the tax dollars to be used for the purposes intended as outlined in the Plan. The Plan is effective from January 1, 2006 through December 31, 2006. Funds not expended in this time period will become and remain in the Tax Bank Account. The Ely Shoshone Tax Commission reserves the right to change the dollars allocated under the Plan when necessary for budgetary concerns, subject to final approval by the Tribal Council.

ANNUAL REPORTS

The Tax Commission shall be responsible to the tax payers and tribal members for the development and circulation of annual reports. The annual reports shall show the revenue collected on each tax from January 1, through December 31, of the preceding year. The annual report shall include the revenues collected, show the liabilities and any changes, if any, to the Tax Ordinance.

TRIBAL SPENDING POLICY

No tax revenues shall be spent in the year in which they are collected. Tax revenues shall be allocated and spent during the year immediately following the year in which they are collected. Any unexpended tax revenue for such year shall carry over into the following year.

FUNDING REQUESTS & REPORTING PROCEDURES

Applicants requesting tax funds shall submit their funding request and their budget justification on the required tax funding appropriation form. All recipients shall submit a year-end written report to the Tax Commission explaining how the tax grant funds were spent.

SALES TAX AND TOBACCO EXCISE TAX

The Tribal Sales Tax at a rate of 7.375% shall be dedicated in the following manner:

1.	Administration – Professional Services, legal fees	\$ 10,000.00
	Enrollment – Professional Services, legal fees	10,000.00
2.	Education – Carpet	3,000.00
	Education – Scholarship	5,000.00
	Education – Reading for Points Incentive	1,000.00
3.	Emergency Response	-0-
4.	Parks and Recreation	-0-
5.	Judicial	-0-
6.	Law Enforcement – OJP Tribal Resource grant match	8,000.00
7.	Infrastructure – Pine Street/Heritage Drive (surveying Road, electricity, water, sewer, and dirt work	200,000.00
8.	Capital Improvement	-0-
9.	Elders Programs – wage supplement, assistant, & nutritional Supplies	10,000.00
10.	Grant Match – ANA Law and Order Codes and HUD Health Center	38,000.00
11.	Economic Development – rental storage units	15,000.00
12.	Youth Intervention – vehicle	30,000.00
13.	Gymnasium flooring	20,000.00
14.	Maintenance – snow removal equipment	30,000.00
15.	Community activities	5,000.00
16.	Environmental Protection	5,000.00
	TOTAL REQUESTS	\$390,000.00

The Sales Tax breakdown will be subject to revision or adjustments for the following reasons:

- a) Rate increase in sales tax
- b) Completion of intended projects
- c) Financial need analysis
- d) Other – as deemed necessary by the Tax Commission and Tribal Council
- e) Consistent with the Ely Shoshone Tribe’s Comprehensive Economic Development Plan (CEDS)

FUEL TAX

The 2% for collecting and handling motor vehicle fuel tax shall be dedicated in the following manner:

1. Taxation Department budget – attorney, signs, office supplies \$ 7,000.00

POSSESSORY INTEREST TAX

The Possessory Interest Tax at a rate of 3% shall be dedicated in the following manner:

Does not apply at this time.

MINERAL SEVERANCE TAX

The Mineral Severance Tax at a rate of 2% shall be dedicated in the following manner:

Does not apply at this time.

GAMING FEES

The gaming revenues and rental fees shall be dedicated in the following manner:

Does not apply at this time.

RENTAL OR TRANSIENT LODGING

The Transient Lodging (room tax) shall be dedicated in the following manner:

Does not apply at this time.

BUSINESS/VENDOR LICENSE FEES

The Business or Vendor License Fees shall be dedicated in the following manner.

**ELY SHOSHONE
TAX FUND USE PLAN APPROPRIATION FORM**

APPLICATION FOR TAX USE

Pursuant to the Ely Shoshone Tax Fund Use Plan adopted by Resolution No. 2006-EST _____ applicants requesting tax funds shall submit their funding request and budget justification on the required "Tax funding appropriation form". All recipients shall submit a year-end written report to the Tax Commission explaining how the funds were spent.

Department requesting tax funds _____

Amount of Request	Budget Line Item	Justification – attached additional page if needed

Applicant Signature

Date submitted

Tax Director Approval

Date Approved

File: TaxFundingAppropriationForm

**ELY SHOSHONE
TAX FUND USE PLAN REPORTING FORM**

Pursuant to the Ely Shoshone Tax Fund Use Plan adopted by Resolution No. 2006-EST _____ applicants requesting tax funds shall submit their funding request and their budget justification on the required tax funding appropriation form. All recipients shall submit a year-end written report to the Tax Commission explaining how the tax grant funds were spent.

Department submitting expenditure report: _____

Total amount requested: _____ Total amount granted: _____

Total amount spent: _____ Amount returned to Tax Department: _____

Budget Line Item: _____

Below please provide a written report for all expenditures:

Signature of person completing this report

Date submitted

Tax Director Approval

Date approved

ELY
SHOSHONE
TRIBE

ORDINANCE NO. VII-83
(TOBACCO EXCISE TAX)

ORDINANCE NO. 2004-EST-02
(SALES & USE TAX)

ORDINANCE 2004-EST-03
(EXEMPTION FROM NV. FUEL TAXES)

ORDINANCE NO. 2004-EST-04
(LIQUOR ORDINANCE)

Ely Colony Council

6 SHOSHONE CIRCLE

702-289-3013

ELY, NEVADA 89301

<<< ORDINANCE OF THE° >>>

<<<< GOVERNING BODY >>>>

<<<<< OF THE >>>>

<<<< ELY COLONY COUNCIL >>>>

<<<< Ely, Nevada >>>>

<<<< ORDINANCE NO. VII-83 >>>>

WHEREAS;

Article VI, Section 1 (e) (f) of the Constitution and ByLaws of the Ely Indian Colony provides that the Ely Colony Council shall have the power to enact ordinances governing economic affairs and enterprises of the Colony and levying of taxes and the appropriation of available Colony funds for public purposes.

NOW THEREFORE BE IT ENACTED;

by the Ely Colony Council, in council assembled, that ORDINANCE NO. VI is rescinded by the enactment of this ORDINANCE NO. VII-83.

BE IT FURTHER ENACTED;

by the Ely Colony Council that the operations of the Ely Colony Smoke Shop shall be governed by the following regulations, supplemental to those provided in the Constitution and ByLaws of the tribe:

<<< TOBACCO TAXATION >>>

<<<< ORDINANCE NO. VII-83 >>>>

I. TOBACCO EXCISE TAX

Purpose and Applicability-

(a) The purpose:

(1) to promote economic growth on the Ely Indian Colony;

(2) to provide increased services to residents of the Ely Indian Colony;

(3) to provide funds for the Ely Colony Tribal Operations;

(4) to regulate the sale of tobacco products on the Ely Indian Colony.

(b) This Ordinance is applicable to all sales of tobacco products on the Ely Indian Colony.

II. DEFINITIONS

(a) cigarettes - all rolled tobacco or substitutes therefore, which are wrapped in paper or any paper substitute other than tobacco.

(b) consumer - any person who is not a wholesale dealer or retail dealer who comes into possession of cigarettes within the Ely Indian Colony for any purpose other than offering them for sale.

(c) manager - a member of the Ely Indian Colony employed by the Colony to manage a Tribal tobacco outlet.

(d) net profits - money remaining from the operation of a tobacco outlet, after deduction of excise tax revenues and of all costs of doing business, as determined by the Ely Colony Council upon consultation with the manager, and including reasonable costs for improvement and expansion.

(e) person - one or more individuals, or any firm, association, partnership or corporation. The term shall not include the tribe.

(f) retail selling price - the ordinary, customary or usual price paid by the consumer for each tobacco product, less the excise tax levied by this Ordinance.

(g) sale or to sell - any of the following:

(1) to exchange, barter, possess or traffic in.

(2) to solicit or receive an order for,

(3) to keep or expose for sale,

(4) to deliver for value,

(5) to peddle,

(6) to possess with intent to sell,

(7) to transfer to anyone for sale or resale.

(h) tobacco outlet - Community retail sales business selling tobacco products on trust land within the Ely Indian Colony.

(i) tobacco products - cigarettes, cigars, smoking tobacco, snuff, chewing tobacco, and other kinds of forms of tobacco prepared in such manner as to be suitable for chewing or smoking.

III. EXCISE TAX IMPOSED

(a) There is hereby levied and there shall be collected as hereinafter provided, a tax upon the purchase or possession of cigarettes by a consumer within the Ely Indian Colony. This tax shall be in the amount of ~~\$.15~~^{80¢} per package on each package of cigarettes containing 20 cigarettes or less. If the package contains more than 20 cigarettes, a tax of \$.15 shall be charged for each 20 cigarettes contained therein.

(b) There is hereby levied and there shall be collected as hereinafter provided, a tax upon the purchase or possession of all tobacco products, other than cigarettes, by a consumer within the Ely Indian Colony. This tax shall be in the amount of 10% of the retail selling price.

(c) The Ely Colony Council may change the amount of the tax upon the purchase, use, consumption, handling, possession, or distribution of cigarettes and other tobacco products as it deems desirable.

(d) The excise tax levied hereunder shall be added to the retail selling price of tobacco products sold to the consumer.

IV. RESPONSIBILITY FOR COLLECTION OF THE EXCISE TAX

It shall be the responsibility of the manager to collect the tobacco excise tax from every purchaser of tobacco products.

VI. REMITTANCE OF TAXES TO THE ELY COLONY COUNCIL

The taxes collected pursuant to this Ordinance shall be remitted to the Ely Colony Council according to a schedule which shall be established by the Ely Colony Council.

VII. REQUIRED RECORDS

The manager shall keep written records of the following:

- (a) the number of packages of cigarettes or other tobacco products he/she receives,
- (b) the number of packages of cigarettes or other tobacco products sold to consumers,
- (c) the amount of excise taxes collected, and,
- (d) other duties hereby described by the manager's job description.

VIII. AUDIT

All records required to be kept by this Ordinance shall be open to inspection and audit by the Ely Colony Council, at reasonable times and places, to insure compliance with this Ordinance.

IX. USE OF NET PROFITS AND EXCISE TAX REVENUES

(a) All net profits derived from the operation of a tobacco outlet shall be the property of the Ely Colony Council. These profits, as well as the excise tax revenues collected pursuant to this Ordinance shall be used for the benefit of the Ely Colony's Tribal organizations as deemed appropriate by the Ely Colony Council.

(b) All excise tax revenues shall be appropriated to provide Ely Colony Council governmental services, including but not limited to:

- (1) Police and fire protection,
- (2) Road construction, repair and maintenance,
- (3) Water, sewage, and garbage disposal,
- (4) Education of children,
- (5) Public Health,
- (6) Development of tribal enterprises which employ tribal members,
- (7) Public recreation, and,
- (8) Other essential tribal services.

(c) Net profits may be appropriated by the Ely Colony Council for governmental services or for any other purpose consistent with the promotion of the Community interests, such as investment purposes.

X. DUTIES AND RESPONSIBILITIES OF TOBACCO OUTLET

(a) A manager shall be directly responsible to the Ely Colony Council for the efficient and profitable operation of a tobacco outlet.

(b) Without the express written consent of the Ely Colony Council a manager shall not be authorized to waive the sovereign immunity of the Colony from suit, nor shall such manager be authorized to create any liability on behalf of the Colony or to utilize tribal credit. Any such written consent by the Ely Colony Council shall specify in detail the scope of a manager's authority. Any such authority shall be limited in duration and in scope to the maximum possible extent.

Any action taken by a manager pursuant to authority derived under this section shall be in writing, shall be an express term of the transaction at hand, and shall be limited to that transaction. Whenever possible, the Ely Colony Council shall approve in final form the language of any such provision.

(c) As remuneration for operating and managing a tobacco outlet, a manager shall be entitled to a reasonable salary as fixed by the Ely Colony Council.

(d) The Ely Colony Council shall maintain liability insurance upon the premises of the tobacco outlet in the sum of at least \$10,000.00.

XI. RESTRICTED SALES TO MINORS

A manager may not sell any tobacco products to any person under the age of 18 years unless written consent is provided by adult.

XII. CIVIL ACTIONS


The Ely Colony Council may bring a civil action against any manager or other person to enforce compliance with this Ordinance. Such action shall be brought in accordance with the procedures set forth with the applicable civil procedures.

XIII. POWER TO ADOPT REGULATIONS

The Ely Colony Council shall have the power to adopt any regulations which are necessary to the efficient administration of the tobacco excise tax laws and tobacco outlets, as long as such regulations are not in conflict with the provisions of NRS 370.060 Regulations/Ruling No. 9.

C E R T I F I C A T I O N

certify that the Ely Colony Council is composed of five (5) members
whom 4 constituting a quorum, were present at a Special Meeting
by called, noticed and convened, and held this 28TH day of OCTOBER,
33, and that the foregoing Ordinance was enacted by a vote of 4
; 0 AGAINST; 0 ABSTAINED, pursuant to authority contained in
Article VI, section 1 (e), (f), of the Constitution and By-Laws of
Ely Colony Council.


Wesley Allison
Chairman
Ely colony council

re d:

Artintendent
Eastern Nevada Agency

ELY SHOSHONE TRIBE

16 SHOSHONE CIRCLE

FAX (775) 289-3156

ELY, NEVADA 89301

(775) 289-3013

RESOLUTION NO.: 2003-EST-48

RESOLUTION OF THE GOVERNING BODY OF THE ELY SHOSHONE TRIBE

WHEREAS, the Ely Shoshone Tribe is an Indian Organization, as defined under the Indian Reorganization Act of June 18, 1934, as amended, to exercise certain rights of home rule and to be responsible for the promotion of economic and social welfare of its tribal membership, and governs its affairs under the Tribal Constitution of April 19, 2002 and its amendments; and

WHEREAS, the Ely Shoshone Tribal Council operates a tribal enterprise namely, Ely Shoshone Smokeshop whereby selling cigarettes; and

WHEREAS, with the passage of SB8, the Nevada Cigarette Excise Tax increase of 80 cents per package shall be enforced by the Tribe effective July 22, 2003; and

WHEREAS, cigarette tax imposed by the Tribe is at a rate equal to or greater than the state rate; and

NOW THEREFORE, BE IT HEREBY RESOLVED,
that we the Ely Shoshone Tribal Council hereby enforces the cigarette tax to reflect the increase.

CERTIFICATION

It is hereby certified that the foregoing resolution of the Ely Shoshone Tribal Council, composed of 5 members of whom 5 constituting a quorum were present at a Regular Meeting, duly held on the 12th day of August, 2003, was adopted by the affirmative vote of: 5 -FOR; 0 -AGAINST; 0 -ABSTAINED, pursuant to tribal sovereign and concurrent authority of the Treaty of Ruby Valley (1863), and the April 19, 2002, Constitution of the Ely Shoshone Tribe, as amended.



Diana Buckner, Chairperson

ORDINANCE OF THE
GOVERNING BODY
OF THE
ELY SHOSHONE TRIBE
ELY, NEVADA

ORDINANCE NO. 2004-EST-02

BE IT ENACTED BY THE ELY SHOSHONE TRIBE, AS FOLLOWS:

That in accordance with Article VI Section 1, m, of the Constitution and Bylaws of the Ely Shoshone Tribe, as organized under the Indian Re-Organization Act of June 18, 1934, (49 Stat. 984), as amended and approved on April 8, 1966, that this Ordinance shall be known as the "Ely Shoshone Tribe Sales and Use Tax Ordinance" shall be effective upon passage.

ELY SHOSHONE TRIBE SALES AND USE TAXES

A. Purpose and Availability:

1. The purpose:

- A. To promote economic growth within the Ely Reservation Jurisdiction;
- B. To provide increased services to residents of the Ely Reservation;
- C. To provide funds for the Ely Tribal Operations;
- D. To regulate the sale of products on the Land within the Ely Reservation.

2. This Ordinance is applicable to all sales of products on the Ely Reservation which hereafter will be under the jurisdiction of the Ely Tribal Council.

B. Definitions:

- 1. Business: Business includes any activity engaged in by any person or caused to be engaged in him with the object of gain, benefit or advantage, either direct or indirect.
- 2. Gross Receipts: Gross Receipts means the total amount on the sale or lease or rental price, as the case may be, of the retail sale of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

- A. The cost of the property sold, However, in accordance with such rules and regulations as the Ely Tribal Council may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose other than for resale, has reimbursed his vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.
 - B. The cost of the materials used, labor or service cost, interest paid, losses or any other expense.
 - C. The cost of transportation of the property prior to its sale to the purchaser.
3. The total amount of the sale or lease or rental price includes all of the following:
- A. Any service that are part of the sale.
 - B. All receipts, cash, credits and property of any kind.
 - C. Any amount for which credit is allowed by the seller to the purchaser.
4. "Gross Receipts" does not include any of the following:
- A. Cash discounts allowed and taken on sales.
 - B. Sale price of property returned by customers when the full price is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.
 - C. The price received for labor or services used in installing or applying the property sold.
 - D. The amount of any tax (not including, however any manufacturer's or importers excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

5. For the purpose of the sales tax, if the retailers establish to the satisfaction of the Ely Tribal Council that the sales tax has been added to the total amount of the sale, the price shall be deemed to be the amount received exclusive of the tax imposed.

C. "In the Jurisdiction of the Tribe":

1. Means within the exterior boundaries of the Ely Reservation within these limits whether held in fee or trust.

D. "Occasional Sale" included:

- A. A sale of property not held or used by a seller in the course of an activity for which he is required to top hold of a sellers permit, provided such sale in not one of a series of sales sufficient in number, scope and character to constitute an activity required by holding of a sellers permit.
- B. Any transfer of all or substantially all the property held or used by a person in the course of such an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer.
- C. For the purpose of this section, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the property of such corporation or other entity.

E. "Person":

1. "Person" includes any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit, including the Ely Tribal Council.

F. "Purchase":

1. "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.
2. A transaction whereby the possession of the property is transferred but the seller retains the title as security for the payment of the price is a purchase.

3. A transfer for a consideration of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of any publication, is also a purchase.

G. "Retail Sale"; "Sale at Retail":

1. "Retail Sale" or "Sale at Retail" means a sale for any purpose other than the resale in the regular course of business of tangible personal property.
2. The delivery in the Territory of the Ely Tribe of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer, pursuant to a retail sale made by a retailer not engaged in business in the Ely Tribe's Territory, is a retail sale in the Ely Tribe's territory by the person making the delivery: He shall include the retail selling price of the property in his gross receipts.

H. "Retailer":

1. "Retailer" includes"
 - A. Every seller who makes any retail sale or sales of tangible personal property, and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.
 - B. Every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption.
 - C. Every person making more than two retail sales of tangible personal property during a twelve month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy.
2. When the Ely Tribal Council determines that it is necessary for efficient administration of this title to regard any salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, or employers, the Ely Tribal Council may so regard them and may regard the dealers, distributors, supervisors or employers, as retailers for purpose of this title.

3. A licensed optometrist or physician or surgeon is a consumer of, and shall not be considered, a retailer within the provisions of this title, with respect to the ophthalmic materials used for or furnished by him in the performance of his professional services in the diagnosis, treatment or correction of the human eye, including the adaptation of lenses or frames for the aid of thereof.

I. "Sale":

1. "Sale means and includes any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for consideration.
2. "Transfer of Possession", "Lease", or "Rental" includes, only transactions found by the Ely Tribal Council to be in lieu of a transfer of title, exchange or barter.
3. "Sale" includes:
 - A. The producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly, the materials used in producing, fabricating, processing, printing or imprinting.
 - B. The furnishing and distributing of tangible property for a consideration by social clubs and fraternal organizations to their members or others.
 - C. The furnishing, preparing, or serving for a consideration of food, meal or drinks.
 - D. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.
 - E. A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated or printed to the special order of the consumer, or of any publication.

J. "Sale Price":

1. "Sales Price" means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:
 - A. The cost of property sold.

- B. The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.
- C. The amount charged for labor or services rendered installing or applying to the property sold.
- D. The amount of any tax (not including however any manufactures or importers excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or consumer.

K. "Seller":

- 1. "Seller" includes every person engaged in the business of selling tangible personal property of a kind, the gross receipts from the retail sale of which are required to be, included in the measure of the sales tax.

L. "Storage":

- 1. "Storage" includes any keeping or retention in the Ely Tribe's territory for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

M. "Storage and Use": Exclusion

- 1. "Storage" and "Use" do not include the keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside of the Ely Tribal Council's Territory for use thereafter solely outside the Ely Tribe's Territory or for the purpose of being processed, fabricated or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside the Ely Tribe's Territory and thereafter used solely outside the Ely Tribe's territory.

N. "Tangible Personal Property":

- 1. "Tangible Personal Property" means personal property which may be seen, weighed, measured, felt or touched, or which is any other manner perceptible to the senses.

O. "Ely Tribal Council":

- 1. "Ely Tribal Council" means the governing body that has the executive and legislative powers of the Ely Reservation shall be vested in a tribal council known as the Ely Tribal Council.

P. "Taxpayer":

1. "Taxpayer" means any person liable for the tax under this title.

Q. Imposition and rate of sales tax:

1. Imposition and rate of sales tax is for the privilege of selling tangible personal property at retail as tax is hereby imposed upon all retailers at a current rate of percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the Territory of the Ely Tribe on or after the date this title is adopted.

R. Method of collection of sales tax:

1. The tax hereby, imposed shall be collected by the retailer from the consumer insofar as it can be done.

S. Assumption, absorption of tax by retailer; unlawful advertising:

1. It is unlawful for any retailer to advertise or hold out of state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.

T. Separate display of tax from list, other price:

1. The Ely Tribal Council may provide the amount collected by the retailer from the consumer in reimbursement of the tax be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale.

U. Civil Actions:


1. The Ely Tribal Council may bring a civil action against any person to enforce compliance with this title. Such action shall be brought in accordance with the applicable Civil Procedures. The Tribal Court shall have exclusive jurisdiction over any action arising from the imposition of the sales and use taxes.

V. Power to adopt regulations:

1. The Ely Tribal Council shall have the power to set the rate of percent of Sales and Use Tax and adopt any regulations which are necessary to the efficient administration of the Ely Tribe sales tax as long as such regulations are not in conflict with the provisions of this title.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned, as Chairperson of the Ely Tribe do hereby certify that the Ely Tribal Council is composed of 5 members of whom 4 constituting a quorum were present at a duly held meeting on the 13th day of January , 2004, and that the foregoing Ordinance was duly adopted at such meeting by an affirmative vote of 4 FOR, 0 ,AGAINST, 0 ABSTENTIONS pursuant to the authority contained under Article VI, Section 1 (m), of the Constitution of the Ely Tribe, and that the said Ordinance has not been rescinded nor amended in any form.


Diana Buckner, Chairperson
Ely Tribal Council

ATTEST:


Recording Secretary

ORDINANCE OF THE
GOVERNING BODY
OF THE
ELY SHOSHONE TRIBE
ELY, NEVADA

ORDINANCE NO. 2004-EST-03

AMENDED August 9, 2005

BE IT ENACTED BY THE ELY SHOSHONE TRIBE, AS FOLLOWS:

That in accordance with Article VI, m, of the Constitution and Bylaws of the Ely Shoshone Tribe, as organized under the Indian Re-Organization Act of June 18, 1934. (49 Stat. 984), as amended and approved on April 8, 1966, that this Ordinance shall be known as the "Ely Shoshone Tribe Fuel Tax Ordinance" and shall be effective upon passage.

SECTION 1. EXEMPTION FROM NEVADA FUEL TAXES

- A. Tribal members are exempt from the payment of Nevada taxes on motor vehicle fuel sold within the boundaries of the Ely Reservation, which include any tax or assessment on gasoline, and/or diesel fuel, or other products to which Nevada's taxes on motor vehicle fuel may apply. This exemption also applies to vehicles which are owned or used by the Tribal government.
1. Children 16 years or older who operate off road vehicles, such as Motor Cycles, Go Carts, ATV's, etc. are eligible to use the tax exemption for these off road vehicles.
 2. An enrolled member that uses someone else's vehicle for their own personal use, if their vehicle is not available is eligible to use the tax exemption.
 3. An enrolled member that is having a non-member transport them to a doctor appointment, emergency or other personal use is eligible to use the tax exemption.
 4. Anyone abusing A. 1, thru A. 3, above, will be subject to Section t. C, of this ordinance.
- B. As used in this Ordinance, the term "tribal member" is and will be defined by Tribal Resolution and or Tax Code, which ever is appropriate. The Tribe is hereby authorized to incorporate the definition of Tribal member contained in the Nevada Regulations, Chapters 365 v& 366 of the Nevada Administrative Code.

- C. The Tribal Council shall have the authority to implement and enforce the terms of this Ordinance and to do all things required hereunder.

SECTION 2. IMPLEMENTING THE FUEL TAX EXEMPTION

- A. The tax exemption shall be provided by either of the following methods:
- (1) Any retailer seller of fuel on Reservation lands who has prepaid Nevada taxes at the time of the fuel was purchased from a wholesale seller, for resale on Reservation lands, shall give tribal members a credit at the time of a retail purchase. The credit shall be provided by deducting the amount of Nevada fuel taxes from the purchase price and the retailer may thereafter seek a refund in accordance with Section 4 of this ordinance.
 - (2) A retail seller may, at the time of purchase from the wholesaler, purchase the fuel at a price which does not include the Nevada tax on a certain percentage of the fuel sold, which percentage must first be agreed to by the Tribal Council and the State of Nevada. The Tribe may enter into an intergovernmental agreement with State of Nevada to put this provision into effect.

SECTION 3. PROCEDURE FOR OBTAINING REFUND

- A. Any retailer seeking a refund pursuant to Section 3. a (1) must apply to the Tribal Council within the time designated by Tribal Council and submit the following:
- (1) A receipt for every fuel purchased for which a credit has been given, which must include the following information:
 - (a) The retailer's place of business on the Reservation.
 - (b) The Price per gallon of fuel sold.
 - (c) The dollar amount.
 - (d) The number of gallons.
 - (e) The rate of exemption.
 - (f) The dollar amount of exemption
 - (g) The date of each transaction.
 - (h) The Tribal enrollment number of States Tax Exempt number for each transaction.
 - (i) The signature of sales clerk/cashier and the signature of the purchaser.
 - (2) A statement of the total amount of the refund sought by the retailer, based upon the receipts provided.
- B. Each business selling motor vehicle fuel on the Reservation shall keep an accurate record of every gallon sold to Tribal members and to Tribal vehicles for a period of at

least two years from the date of sale. The Tribes Finance Department shall oversee the administration of fuel tax exemptions and requests for reimbursement or refunds made hereunder.

- C. Tribal membership must be verified before a credit may be given under Section 3. a(1). Tribal membership may be verified by a Tribal enrollment card, or by tax exempt slide cards, which the Tribal Council may issue to tribal members and their spouses. The Tribes Finance Department shall keep a written record of all tax exempt record of all tax exempt cards issued. The Tribes Silver Sage Travel Center Management must verify that a person meets the definition of Tribal member under their Resolution or Tax Code which ever is appropriate, before it issues a tax exempt card. The Tribal Council may also issue tax exempt cards to employees or officials of the Tribe who are authorized to drive vehicles owned or used by the Tribe upon proper verification that the person is so authorized. Such cards may only be used to receive exemptions for fuel purchased for a Tribal owned vehicle.

SECTION 4. RESPONSIBILITY OF TRIBAL MEMBERS

- A. When purchasing any motor vehicle fuel on the Ely Reservation, it is the responsibility of each tribal member or tribal employee or official to present his or her Tribal Enrollment Card or tax exempt slide card to the sales clerk or cashier at the time of sale.
- B. Any retailer selling motor vehicle fuel on the Ely Reservation has the right to refuse a tax exemption at the time of sale without proper identification and proper presentation of an Enrollment Card or tax exempt slide card.

SECTION 5. ABUSE OR IMPROPER USE OF FUEL EXEMPTION PROGRAM

- A. It is unlawful for any person to claim an exemption who is not legally entitled to do so under this Ordinance. It is also unlawful for any tribal member to knowingly: (1) purchase motor vehicle fuel and claim an exemption for another person when that person is not entitled to an exemption; (2) allow any person who is not a legally authorized user to use his/her Tribal Enrollment or tax exempt card to claim an exemption at the time of sale, suspected to be forged or intended for unlawful use; and (3) for children from the age of 1-16 to be used for their tax exemption status for their parents or other.
- B. Any business located on the Ely Reservation who sells motor vehicle fuel shall report names and/or cards being improperly used in their business establishment to the Tribal Council.
- C. A person who violates the provisions of this section may be fined up to \$500.00 and is subject to a loss of privileges.

SECTION 6. AUTHORITY TO TAX:

- A. The Tribal Council is authorized to implement and administer the provisions of this Ordinance, and to adopt such rules as are necessary to carry out the terms and intent of this Ordinance.
- B. Any Tribal member who is refused a tax exemption must, in order to receive the exemption, appeal to the Tribal Council. A retailer will not be held responsible for problems if they are not addressed first with the Silver Sage Travel Center Management. If Silver Sage Travel Center Management determines that the aggrieved person was entitled to the exemption, the credit may be awarded retroactively. The decision of the Tribal Council shall be final.

SECTION 7. SUBMISSION OF REFUND REQUESTS TO STATE

- A. In cases where an exemption is given to Section 3. a (1) of this Ordinance, and upon proper verification pursuant to Section 4., the Finance Department shall submit fuel tax refund applications to the Nevada Department of Transportation or other appropriate agency. Such applications may be submitted on a quarterly basis. Upon the receipt of the refunds from the state, the Tribe's Finance Department shall remit the refunds to the retailer entitled to thereto, provided that the retailer has paid the state fuel tax.
- B. The Tribal Council may adopt a rule which allows a retailer to submit refund requests directly to the State of Nevada.

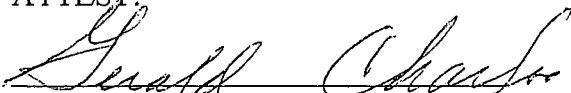
C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned, as Chairperson of the Tribe do hereby certify that the Ely Tribal Council is composed of 5 members of who 5 constituting a quorum were present at a duly held meeting on the 9th day of August, 2005, and that the foregoing Ordinance was duly adopted at such meeting by an affirmative vote of 5 FOR, 0 AGAINST, 0 ABSTENTIONS, pursuant to the authority contained under Article VI, Section 1(m), of the Constitution of the Ely Tribe, and that the said Ordinance has not been rescinded nor amended in any form.



Diana Buckner, Chairperson
Ely Tribal Council

ATTEST:


Recording Secretary

ORDINANCE OF THE
GOVERNING BODY
OF THE
ELY SHOSHONE TRIBE
ELY, NEVADA

ORDINANCE NO. 2004-EST-04

NOW, THEREFORE, be it enacted by the Ely Shoshone Tribal Council of the Ely Shoshone Tribe of Nevada, that pursuant to the authority vested by Article VI, Section 1 (m) of the Constitution and By Laws of the Ely Shoshone Tribe, that the introduction possession, use and consumption of alcoholic beverages shall be lawful within the exterior boundaries of those lands in the State of Nevada under the territorial jurisdiction the Ely Shoshone Tribe. Provided that such introduction, possession, use and consumption shall be in accordance with the following:

SECTION 1. Title.

This Ordinance shall be known as the Ely Shoshone Tribe Liquor Ordinance.

SECTION 2: Findings.

The Tribal Council of the Ely Shoshone Tribe finds that:

- (a) It shall be unlawful to sell alcoholic beverages by the bottle, drink, can or other package within the exterior boundaries of those lands of the State of Nevada under the territorial jurisdiction of the Ely Shoshone Tribe, without first obtaining a valid license issued by the Ely Shoshone Tribal Council.
- (b) Such Tribal License will authorize the holder thereof to sell alcoholic beverages at retail in cans, bottles or other packages, or by the drink for consumption on the premises or within a defined area.
- (c) Such Tribal License shall set forth the location and description of the building and premises or defined area where such sales may be made and for which said License is issued.
- (d) No such License shall be issued without the approval of the Ely Shoshone Tribal Council, upon the territory of which the proposed alcoholic beverage business is seeking to be licensed.
- (e) No such License shall be transferred without the prior consent of the Ely Shoshone Tribal Council.

- (f) The different categories of Licenses and the License fee schedules shall be established annually by the Ely Shoshone Tribal Council by a duly passed resolution.
- (g) Any such License fee collected by the Ely Shoshone Tribal Council shall be non-refundable to the alcoholic beverage business that has been Licensed.
- (h) It shall be unlawful to use or consume any alcoholic beverage in a motor vehicle while such vehicle is being driven.
- (i) It shall be unlawful to possess any open bottle, can, package or container of alcoholic beverage in the passenger compartment of a motor vehicle when such vehicle is being driven.
- (j) It shall be unlawful for any person inebriated by the influence of alcoholic beverages, to possess, use or consume alcoholic beverages.
- (k) It shall be unlawful for any person to furnish any alcoholic beverage to any person under the age of twenty-one (21) years of age or to leave or to deposit any alcoholic beverages with the intent that the alcoholic beverages shall be procured by any person under the age of twenty-one (21) years of age.
- (m) It shall be unlawful for any person under the age of twenty-one (21) years of age to possess, use or consume alcoholic beverages.
- (n) It shall be lawful for any person the age of nineteen (19) years of age to sell alcoholic beverages while under the presence of a person twenty-one years of age, at a Licensed place of business or event.

SECTION 3: Violation of Ordinance.

Any Indian who violates any of the provisions of this ordinance shall be deemed guilty of an offense and upon conviction thereof shall be punished by a fine of not more than \$300.00 or by imprisonment of not more than sixty (60) days or both, such fines and imprisonment provided however, that any person under the age of eighteen (18) years may, in the discretion of the judge, be treated as a juvenile and have the charge(s) disposed of pursuant to applicable juvenile law and procedures.

- (a) When any provision of this ordinance is violated by a non-Indian, he or she shall be referred to the State and/or Federal authorities for prosecution under applicable law.

- (b) Any licensee violating any provision of this ordinance may have said License suspended or revoked by the Ely Shoshone Tribal Council provided that the Licensee is given a written notice of the proposed suspension or revocation and afforded an opportunity for a hearing.
- (c) Depending on the severity of the violation, a Licensee is subject to License suspension up to 3 years.
- (e) A Licensee that has had their License suspended for more than three (3) times, will not be eligible to be Licensed indefinitely.

SECTION 4: Repeal.

All ordinances, resolutions or acts that have previously been enacted by the Ely Shoshone Tribal Council which are in conflict with any provision of this ordinance, are hereby repealed.

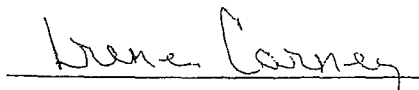
C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned, as Chairperson of the Ely Tribe do hereby certify that the Ely Tribal Council is composed of 5 members of whom 4 constituting a quorum were present at a duly held meeting on the 13th day of January, 2004, and that the foregoing Ordinance was duly adopted at such meeting by an affirmative vote of 4 FOR, 0 ,AGAINST, 0, ABSTENTIONS pursuant to the authority contained under Article VI, Section 1 (m), of the Constitution of the Ely Tribe, and that the said Ordinance has not been rescinded nor amended in any form.



Diana Buckner, Chairperson
Ely Tribal Council

ATTEST:


Recording Secretary

ELY
SHOSHONE
TRIBE
FUEL TAX
AGREEMENT

FUEL TAX AGREEMENT BETWEEN THE ELY SHOSHONE TRIBE AND THE STATE OF NEVADA

THIS AGREEMENT is made and entered into on this 14th day of November, 2003 by and between the Ely Shoshone Tribe of Nevada, hereinafter referred to as the "Tribe" and the State of Nevada, Department of Motor Vehicles, hereinafter referred to as "Department".

The Tribe is recognized by the Federal Government as having a government-to-government relationship to the United States.

The Ely Shoshone Tribal Council is the duly authorized governing body and is empowered to enter into this Agreement by Article VI, Section 1(a), of the Constitution of the Ely Shoshone Tribe.

The State of Nevada is authorized pursuant to NRS 365.110, NRS 366.110, NAC 365 and NAC 366 to enter into agreements with Tribal Governments with respect to taxes on motor fuels, special fuels, aviation fuels or fuel for jet or turbine powered aircraft. The Department is charged with collecting the tax and shall notify the Tribe of any changes or amendments to these statutes, that the Department believes, may impact this Agreement.

THE TRIBE AND THE DEPARTMENT AGREE AS FOLLOWS:

Purpose:

The purpose of this Agreement is to insure the collection of fuel taxes in a fair and equitable manner.

Government-to-Government Cooperation:

The State of Nevada and the Tribe shall cooperate within:

1. The Tribe's laws with respect to the taxation and regulation of Tribal Members and businesses that sell or deliver motor fuel, special fuel, aviation fuel or fuel for jet or turbine powered aircraft on lands where the Tribe exercises governmental jurisdiction;
2. The State's laws, rules and regulations respecting the imposition and collection of its fuel taxes from all persons, except as provided under this Agreement, and the terms of this Agreement.

Taxable Sales:

The Tribe and the Department agree that the motor fuels, special fuels, aviation fuels or fuel for jet or turbine-powered aircraft, sold at a retail outlet operating under Tribal jurisdiction, to Non-Members, shall be subject to the appropriate taxes as provided under the authority of Nevada Revised Statutes Chapters 365, 366, 373 and the regulations issued thereunder. The definitions contained in NAC 365 and NAC 366 is incorporated herein by reference.

Administration and Collection of Taxes:

1. ON RESERVATION SALES

The Department and the Tribe agree that no State fuel taxes shall be collected by any fuel vendor delivering motor fuels, special fuels, aviation fuels, and fuel for jet or turbine powered aircraft delivered to any retail outlet within the Tribe's jurisdiction. The Department agrees to issue a Certificate of Exemption permitting the motor fuel vendors to deliver fuel without requiring the motor fuel vendors to collect the fuel taxes from the retail outlets. The retail outlets within the Tribe's jurisdiction shall collect the applicable State fuel taxes on all sales to Non-Members. Within 30 days of the end of each calendar quarter, the Tribe shall pay to the State the taxes collected by the retail outlets on all types of fuel sales to Non-Members, minus a dollar amount calculated as 2% of the total number of gallons of all fuel sold during the quarter by the retail outlets with the Tribe's jurisdiction.

The Tribe shall send to the State within twenty (20) days after the end of each month a report of all fuel delivered to each retail outlet within the Tribe's jurisdiction during the previous month. This monthly report shall state the date of each delivery, the number of gallons of each type of fuel delivered and the name of the fuel wholesaler making each delivery.

The Tribe agrees to maintain a record of all sales to Non-Members from the retail outlets within the Tribe's jurisdiction for a period of no less than three years. The State shall have the right to conduct an audit of these records provided that it gives at least fifteen (15) days prior written notice to the Tribe of its intent to conduct an audit.

2. OFF RESERVATION PURCHASES

The Tribe shall keep a log of all diesel and other special fuels purchased for its governmental functions and purposes from any source in Nevada not located within the Tribe's jurisdiction. This log shall contain backup documentation of all such fuel purchased including, but not by way of limitation, purchase invoices, store receipts, open account purchases, credit card invoices, and records of reimbursement to tribal employees for cash purchases for Tribal use of vehicles. Within thirty (30) days of the conclusion of each calendar quarter, the Tribe shall provide to the State the Tribe's fuel consumption log for the previous quarter. Upon request, the Tribe shall provide the State copies of any requested backup documentation for the log for the quarter (and supporting documentation if requested by the Department of Motor Vehicles), the State shall issue a refund to the Tribe for all taxes paid by the Tribe for such fuels. The Tribe shall maintain such logs, records and documentation for a period of three (3) years. The State shall have the right to conduct an audit of these records provided that it gives at least fifteen (15) days prior written notice to the Tribe of its intent to conduct an audit.

Term and Termination:

The Agreement shall have perpetual existence but may be voluntarily terminated, with or without cause, by either party upon providing the other party ninety (90) days prior notice in writing by certified mail addressed to the following:

Chairperson
Ely Shoshone Tribe
16 Shoshone Circle
Ely, Nevada 89301

Department of Motor Vehicles
555 Wright Way
Carson City, Nevada 89711

Any notices issued by either party to the other under this Agreement shall be issued in the same manner as set forth above.

In the event of termination, the Tribe shall pay to the State the State fuel taxes collected by the retail outlets within the Tribe's jurisdiction up to the date of termination, minus any applicable administration fee. Any notices issued by either party to the other under this Agreement shall be issued in the same manner as set forth above

Reservation of Rights:

Notwithstanding anything to the contrary, the parties to this Agreement reserve all of their statutory and inherent rights and nothing in this Agreement waives their respective sovereignty, or immunity from suit. Nothing in this Agreement alters, or is intended to alter, existing law defining the scope of civil jurisdiction or taxation within Indian Country. Nothing in this Agreement is intended to alter or prejudice, nor shall be used to alter or prejudice, the rights or jurisdiction of either party under existing law or in future disputes or litigation.

Future Agreements and Amendments:

This Agreement contains all of the provisions agreed to by the parties and no amendments to the Agreement are valid unless agreed to in writing by the Chairperson of the Tribe and the Director of the Department of Motor Vehicles.

Dispute Resolution:

Neither the Tribe, nor the State, nor officers acting on either government's behalf may petition any court to enforce this Agreement unless:

- a. The dispute resolution process described in paragraphs (1) and (2) has been followed in good faith to completion without successful resolution, or unless:
- b. The other party fails to enter into the dispute resolution process or terminates the process before its completion.

Should a dispute arise between the Tribe and the State upon an issue of compliance with this Agreement by either government, or by their respective officers, employees or agents, the Tribe and State shall attempt to resolve the dispute through the following dispute resolution process:

- (1) Either party may invoke the dispute process by notifying the other, in writing, of its intent to do so. The notice shall set out the issues in dispute and the notifying party's position on each issue.
- (2) The first stage of the process shall include a face-to-face meeting between representatives of the two governments to attempt to resolve the dispute by negotiation. The meeting shall be convened within 30 days of the date of the written notice described in Paragraph (1). The representatives of each government shall come to the meeting with the authority to settle the dispute.
- (3) After completion of the process in (1) and (2), either party may terminate this Agreement in the manner described in the paragraph "Term and Termination".

Implementation:

The State and the Tribe, not less than one year after the execution of this Agreement, shall confer on a government-to-government basis, to evaluate the effectiveness of this Agreement and to mutually agree upon solutions to any problems that may have arisen.

Should any third party, in an action brought against the Tribe, or the State or their respective agencies, officials, employees, or agents, and alleging that either the State or the Tribe lacks authority to enter into this Agreement or to adopt or enforce the laws described in this Agreement, the State or the Tribe, as the case may be, shall appear in the action and defend its authority.

This Agreement addresses only the taxation and regulation of motor vehicle fuel, special fuel, aviation fuel, or fuel used in jet or turbine powered aircraft and shall not be construed as affecting any other area of Tribal or State taxation or regulation.

Severability:


If a court of competent jurisdiction holds any provision of this Agreement, or its application to any person or factual circumstance, invalid, the invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application and to this end, the provisions of this Agreement are severable.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed on the day and in the year first written above.

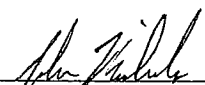
ELY SHOSHONE TRIBE

STATE OF NEVADA
Department of Motor Vehicles

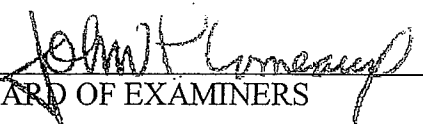

Tribal Council Chairperson


Administrator, Compliance Enforcement Division

APPROVED AS TO FORM:
Bryan Sandoval
Attorney General

BY:  11/18/2003
Deputy Attorney General

STATE OF NEVADA
DEPARTMENT OF MOTOR VEHICLES
 12-1-03
Chief, Administrative Services Division


BOARD OF EXAMINERS

APPROVED ON:

12-8-03
DATE

ELY
SHOSHONE
TRIBE
TAXATION
FORMS

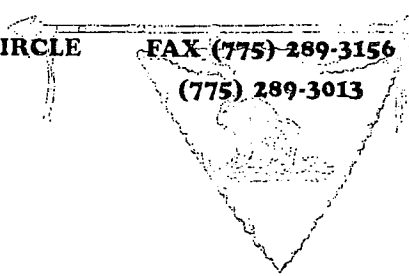
ELY SHOSHONE TRIBE

16 SHOSHONE CIRCLE

FAX (775) 289-3156

ELY, NEVADA 89301

(775) 289-3013



RESOLUTION NO. 2006-EST-60

RESOLUTION OF THE GOVERNING BODY
OF THE
ELY SHOSHONE TRIBE

WHEREAS, the Ely Shoshone Tribe is a federally recognized Indian Tribe, organized under the Indian Reorganization Act of June 18, 1934, as amended, with the power to exercise certain rights of home rule and to be responsible for the promotion of economic and social welfare of its tribal membership, and governs its affairs under the revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999; and

WHEREAS, in accordance with its Constitution and By-Laws, the Tribe is governed by its Tribal Council; and


WHEREAS, the Ely Shoshone Tribal Council has adopted by Resolution No. 2006-EST-52, and Ordinance No. 2006-EST-01, adopting the Ely Shoshone Tribal Taxation Ordinance, and

WHEREAS, the Ely Shoshone Tribal Council has reviewed all Taxation forms and licenses as adopted by the Tax Planning Committee.


NOW THEREFORE BE IT RESOLVED THAT, the Ely Shoshone Tribal Council hereby adopts the Ely Shoshone Taxation forms and licenses.

CERTIFICATION

It is hereby certified that the foregoing Resolution of the Ely Shoshone Tribe, composed of five (5) members of whom 5 constituting a quorum were present at a **Special Meeting** held on the **14th** day of **August, 2006**, was adopted by the affirmative vote of **5 For, 0 Against, 0 Abstained**; pursuant to the authority contained in the Revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999.



Diana Buckner,
Tribal Chairperson

ATTEST: 

Gerald Charles, Secretary-Treasurer

ELY SHOSHONE TRIBE

16 Shoshone Circle
Ely, Nevada 89301
775-289-3013
775-289-4133

BUSINESS LICENSE

The below named person or firm, having paid the license fee, is hereby granted a license to do business as stated below on the Ely Shoshone Reservation, subject to the provisions of Resolution No. 2006-EST-52, of the Ely Shoshone Tribal Tax Ordinance.

NAME OF BUSINESS: _____

NAME OF PROPRIETOR: _____

LOCATION OF BUSINESS: _____

LICENSE PERIOD BEGINNING: _____ ENDING: _____

Chairperson, Ely Shoshone Tribe

Date

This License is not transferable
File: TaxAndBusinessLicense

Ordinance No. 2006-EST-01 & 02
Resolution No. 2006-EST-52 & 53 Adopted August 14, 2006

ELY SHOSHONE TRIBE

16 SHOSHONE CIRCLE

FAX (775) 289-3156

ELY, NEVADA 89301

(775) 289-3013

BUSINESS LICENSE

BUSINESS LICENSE REQUIRED

No person shall engage in or carry on any trade, commerce, profession, or business activity of any sort on the Reservation until a business license is obtained.

Per Ely Shoshone Tribal Ordinance, the purpose of the Tribal Business License Code is to administer, regulate, enforce, and monitor all businesses operating within the jurisdiction of the Tribe.

The Tribe proposes to enforce this Ordinance by regulating the conduct of business and trade on the reservation, therefore all persons exercising the privilege of engaging in business on the reservation shall register and obtain a Business License pursuant to Taxation Ordinance, section 208.007 and section 308.023; and Business License Ordinance, section 401.001 and section 403.001.

To obtain a Business License, or if you require further assistance, you may contact the Tax Director at:

Ely Shoshone Tribe
Tax Director
#16 Shoshone Circle
Ely, Nevada 89301
(775) 289-3013
(775) 289-4133

ELY SHOSHONE TRIBE

16 SHOSHONE CIRCLE

FAX (775) 289-3156

ELY, NEVADA 89301

(775) 289-3013

**(Insert this clause into the Instructions to Bidders for all
Tribal Construction Contracts)**

TRIBAL SALES AND USE TAX

The Ely Shoshone Tribe has in effect a Sales and Use Tax imposed at the same rate as is currently imposed by the State of Nevada in White Pine County on all parts, materials, and fixtures used in construction projects on this Reservation. The Nevada Department of Revenue has ruled that the State Sales Tax does not apply to materials and fixtures used in the project when delivered directly to the Ely Shoshone Tribe (Reservation).

In order to assess the Tribal Sales and Use Tax, all partial payment requests submitted by the Contractor must include invoices showing the total cost of materials or other taxable property covered by the request. Under Tribal Sales Tax regulation, if invoices are not provided, the Tribal taxing authority can estimate the tax on the best information available to it.

PROVISIONS

The Contractor, and all Subcontractors shall be subject to and shall pay the Tribal Sales and Use Tax as per the Ely Shoshone Tribal Tax Code, Chapter 308 on all materials, parts, supplies, equipment and equipment leases used on the Reservation. The Use Tax does not include labor. Unless otherwise agreed in writing by both parties, all materials, supplies, equipment and other property purchased off the Reservation and used in the construction project shall be delivered on the Reservation, and shall be subject to the Tribe's Sales and Use Tax. In the event the Contractor or Subcontractor is required to pay State Sales Taxes, the Tribe reserves the right to make all purchases of materials, parts, supplies, equipment and other property directly, and to resell the property to the Subcontractor or Contractor.

For further information on the Sales and Use Tax, please contact:

Ely Shoshone Tribe
Tax Director
#16 Shoshone Circle
Ely, Nevada 89301
(775) 289-3013

Ely Shoshone Tribal Sales and Use Tax

Contract Clause

Language for Contractors for
Payment of Tribal Sales and Use Tax

(Insert this clause into all Tribal Construction Contracts)

The Contractor shall pay the Tribal Sales and Use Tax for all parts, supplies, and materials purchased under this contract for use on the Reservation (Tax Ordinance, Chapter 308). In order to ensure that no state tax is imposed on such purchases, the Contractor shall require that all parts, supplies, and materials it purchases are delivered to the Ely Shoshone Tribe (Reservation) prior to purchase. If it fails to arrange such delivery, the Contractor shall remain liable for the tribal tax, and shall obtain a refund of any taxes it has wrongfully paid to the state. The Contractor shall ensure that all Subcontractors and material suppliers it employs are subject to the same obligations to collect and pay the Tribal Sales and Use Tax and to take delivery of or deliver all parts, supplies, and materials on the Reservation. To ensure that each Subcontractor hired pursuant to this contract meets these same obligations, the Contractor shall:

1. Notify each Subcontractor or Supplier it hires pursuant to this contract in writing, prior to or simultaneously with the signing of the subcontract or purchase order, of the Subcontractor or Supplier's obligations to (1) require delivery of all parts, supplies, and materials it purchases to the Reservation prior to purchases, and (2) pay the Tribal Sales and Use Tax instead of the state sales and use tax.
2. Compile a list of the Subcontractors and Suppliers the Contractor anticipates hiring pursuant to this contract and furnish the list to the Tribe's Tax Director within ten days after this contract becomes final. The list will (1) include the name and address of each Subcontractor the General Contractor has hired or anticipates hiring, (2) describe the Subcontractor or Supplier's obligations, and (3) estimate the types and quantities of materials the Subcontractor is expected to purchase. The Contractor shall amend the list if and when any new Subcontractors or Suppliers are hired. The Contractor shall mail the list and amendments to:

Ely Shoshone Tribal Tax Department
Tax Director
#16 Shoshone Circle
Ely, Nevada 89301
(775) 289-3013

3. Use its best efforts in good faith to ensure that the intent of this clause is met, i.e., to ensure the collections of the Tribal Sales and Use Tax for all parts, supplies, and material purchases under this contract.

Date

SAMPLE

So and So
Address
City and State

To Whom it May Concern,

We have been informed from _____ that he is purchasing furniture/electronics/etc. from your company. _____ resides within the boundaries of the Ely Shoshone Tribal Reservation at _____, Ely, Nevada.

The Ely Shoshone Tribe has jurisdiction over all transactions occurring within the exterior boundaries of the Ely Shoshone Reservation (Taxation Ordinance #308.001 Section (4). This includes delivery and sale of property under Chapter 308 of the Ely Shoshone Tribal Taxation Ordinance.

Under the Ely Shoshone Tribal Taxation Ordinance (Chapter 308), the sale is exempt from the sales tax. As such you are not responsible for the collection and remittance of the sales tax pursuant to NRS 374.800 and NRS 374.805.

If you have any questions or concerns, feel free to call the Ely Shoshone Tax Director at 775-289-3013.

Sincerely,

Tax Director

CC: File
Person requesting exemption

**ELY SHOSHONE
TAX FUND USE PLAN APPROPRIATION FORM**

APPLICATION FOR TAX USE

Pursuant to the Ely Shoshone Tax Fund Use Plan adopted by Resolution No. 2006-EST _____ applicants requesting tax funds shall submit their funding request and budget justification on the required "Tax funding appropriation form". All recipients shall submit a year-end written report to the Tax Commission explaining how the funds were spent.

Department requesting tax funds _____

Amount of Request	Budget Line Item	Justification – attached additional page if needed

Applicant Signature

Date submitted

Tax Director Approval

Date Approved

File: TaxFundingAppropriationForm

**ELY SHOSHONE
TAX FUND USE PLAN REPORTING FORM**

Pursuant to the Ely Shoshone Tax Fund Use Plan adopted by Resolution No. 2006-EST _____ applicants requesting tax funds shall submit their funding request and their budget justification on the required tax funding appropriation form. All recipients shall submit a year-end written report to the Tax Commission explaining how the tax grant funds were spent.

Department submitting expenditure report: _____

Total amount requested: _____ Total amount granted: _____

Total amount spent: _____ Amount returned to Tax Department: _____

Budget Line Item: _____

Below please provide a written report for all expenditures:

Signature of person completing this report

Date submitted

Tax Director Approval

Date approved

**ELY SHOSHONE TRIBE
LIQUOR LICENSE APPLICATION**

Pursuant to Ely Shoshone Tribe Liquor Ordinance No. 2004-EST-04, Section 2, (a) through (n);
the undersigned hereby applies for a Liquor License for: _____

Business or Organization: _____

Name of Event: _____

Location of Event: _____

Commencing on the _____ day of _____, 20____, through the _____
day of _____, 20____. Total number of days _____.

Amount of License: \$ _____.

Under penalties of perjury, the undersigned declares that he/she is the applicant/authorized agent
of the applicant in the foregoing application for license and knows the contents thereof; that
those items contained in the application are true of his/her own knowledge except as to those
matters stated on information and belief and as to such matters he/she believes it to be true.

Signature of Applicant/Authorized Agent

Mailing Address

City State Zip Code

APPROVED/DECLINED BY:

Chairperson

Date Approved/Declined

Ordinance No. 2004-EST-04

Resolution No. 2004-EST-38 (Adopted 05/13/2004)

File: TaxLiquorApplication

ELY SHOSHONE TRIBE

LIQUOR LICENSE NO. _____

LOCATION: _____

BUSINESS / SPECIAL EVENT: _____

FOR THE PERIOD BEGINNING: _____ **ENDING:** _____

The above business having paid the Ely Shoshone Tribal Council/Ely Shoshone Taxation Commission the following fee is hereby licensed to sell liquor/beer/wine at said location for the period enumerated above subject to all conditions provided by the **Ely Shoshone Ordinance No. 2004-EST-04**, which relates to said business.

Class(es) of License	_____	Amount:	_____
	_____		_____
	_____		_____

Description of the Premises: _____

Chairperson, Ely Shoshone Tribe

Date

ELY SHOSHONE TRIBE TAX COMMISSION
Possessory Interest Tax, Taxation Ordinance, Chapter 305
January 1, 20__ to December 31, 20__

FORM NO. 101

1. Name of Taxpayer _____
Mailing address _____
City _____ State _____ Zip _____
Tax ID or Social Security No. _____
Phone Number _____ Fax Number _____

2. **Filing Status**
 Association Corporation Partnership
 Limited Liability Sole Proprietor Joint Venture
 Other (specify) _____

3. **Nature of Activity**
 Billboards Telecommunications Railroad
 Mining Utility Other (specify) _____

Calculation of Taxes Due

4.	<u>Land Value (Attached Schedule A)</u>	_____
5.	<u>Net Income (Attached Schedule B)</u>	_____
6.	<u>Capitalized Rate (205.007 (5)(B) at 13%</u>	_____
7.	<u>Capitalized Value of Net Income (line 5 divided by line 6)</u>	_____
8.	<u>Total Assessed Value</u>	_____
9.	<u>Tax Base: Proportion of the Assessed Value</u>	_____
10.	<u>Tax Rate (205.006) at 3.0%</u>	_____
11.	<u>Tax Due the Ely Shoshone Tribe (include interest from any extension and attach calculations 204.005(3))</u>	_____
12.	<u>Tax Credit from Tax Estimates (attach calculations)</u>	_____
13.	<u>Net Tax Due (if amt of line 11 is larger than line 12)</u>	_____
14.	<u>Net Refund (if amt of line 12 is larger than line 11)</u>	_____

I declare that I have examined this return and the accompanying schedules and statements, and to the best of my knowledge and belief, these are true, correct, and complete. Declaration of preparer (other than the taxpayer), is based on all information of which preparer has any knowledge.

Signature

Date

Your Occupation

Signature

Date

ELY SHOSHONE TRIBE TAX COMMISSION
Possessory Interest Tax, Tax Ordinance, Chapter 305
January 1, 20__ to December 31, 20__

SCHEDULE B

Net Income or Loss to Facility

1. Name of Taxpayer _____
Mailing Address _____
City _____ State _____ Zip _____
Tax ID or Social Security No. _____
Phone Number _____ Fax Number _____

2. **Filing Status**
 Association Corporation Partnership
 Limited Liability Sole Proprietor Joint Venture
 Other (specify) _____

3. **Nature of Activity**
 Billboards Telecommunications
 Mining Utility Railroad

Income to Facility

4. Gross Operating Income _____
5. Gross Operating Expenses _____
6. Other Expenses _____
7. Net Income Including Non-Utility Income _____
8. Non-Utility Income _____
9. Net Income Excluding non-Utility Income for the
Utility System at Large (line 7 minus line 8) _____
10. Land Value (line 12 of Schedule A) _____
11. Proportion of Utility Net Income (line 13 of Schedule A) _____
12. Net Income Excluding Non-Utility Income
For the Ely Shoshone Tribe _____
13. Recapture Value @ 10% of the Land Value (line 12 of Schedule A) _____
14. Net Income of Facility (line 12 minus line 13) _____

NOTE: Transfer Line (14) of Schedule B to Line (5) of Form 101

DEPARTMENT
OF TAXATION

TAX COMMISSION

#16 Shoshone Circle
Ely, Nevada 89301

**ELY SHOSHONE TRIBE
SALES TAX PERMIT**

Pursuant to an application duly filed and payment of prescribed fees, the below named is hereby granted permits subject to provisions of the Ely Shoshone Tribal Tax Ordinance to engage in business as a seller of tangible personal property as defined by the tax code. This permit is valid until cancelled, revoked or suspended for cause as provided by law.

Sales Tax Permit No. _____ Date Issued _____

THIS PERMIT IS NOT TRANSFERABLE

File:TaxSalesPermit

POST IN CONSPICUOUS PLACE

Tax Ordinance Code #308.009

NOTICE

Tribal Business License Required

**Ely Shoshone Tax Ordinance
And
Tribal Tax Laws
are in effect when doing business
within the boundaries
of the Ely Shoshone Reservation
for more information call
775-289-3013
or 775-289-4133**

TRANSIENT LODGING TAX RETURN

Ely Shoshone Tribe
Taxation Department
#16 Shoshone Circle
Ely, Nevada 89301

This return is due quarterly or annually
On the 15th day of the end of the reporting period.

NAME OF BUSINESS _____

MAILING ADDRESS _____

ADDRESS OF LODGING FACILITY _____

A
Gross Sales:

B
Lodging Tax

C
Total

Signature of Tax Payer or Authorized Agent

Title Phone Number _____

MINERAL SEVERANCE TAX RETURN

Ely Shoshone Tribe

Tax Commission
16 Shoshone Circle
Ely, Nevada 89301

Period: _____	Year: _____
---------------	-------------

Name: _____

Show changes in address or ownership
on lines below and date of change.

Firm Name: _____

Street Address: _____

City, State, Zip: _____

_____ Date: _____

MINERAL SEVERANCE TAX

Minerals Sold _____
Gross Weight _____
Gross Sales/Value _____
Exemptions _____
Taxable Amount _____
Rate _____
Tax Due _____

Minerals Extracted _____
Gross Weight _____
Gross Sales/Value _____
Exemptions _____
Taxable Amount _____
Rate _____
Tax Due _____

Total Tax Due _____
Penalty _____
Total Payment Enclosed _____

Signature: _____

Phone: _____

Date: _____

AVOID PENALTIES: Returns due 30th of month following taxable period.
Taxpayer must file return even if no tax is due.

**ELY SHOSHONE TRIBE
TOBACCO LICENSE APPLICATION**

Pursuant to Ely Shoshone Tribe Tax Ordinance, Section 309.005, subsection (1) through (4); the undersigned hereby applies for a Tobacco License for: _____

Business or Organization: _____

Name of Event: _____

Location of Event: _____

Commencing on the ____ day of _____, 20 ____, through the _____

Day of _____, 20 ____. Total number of days _____ or annual permit

Amount of License: \$ _____

Under penalties of perjury, the undersigned declares that he/she is the applicant/authorized agent of the application in the foregoing application for license and knows the contents thereof; that those items contained in the application are true of his/her own knowledge except as to those matters stated on information and belief and as to such matters he/she believes is to be true.

Signature of Applicant/Authorized Agent

Mailing Address

City State Zip Code

APPROVED/DECLINED BY:

Chairperson

Date Approved/Declined

Ordinance No. 2006-EST-01
Resolution No. 2006-EST-52 (Adopted August 14, 2006)

ELY SHOSHONE TRIBE

TOBACCO LICENSE NO. _____

LOCATION: _____

BUSINESS/SPECIAL EVENT: _____

FOR THE PERIOD BEGINNING: _____ **ENDING:** _____

The above business having paid the Ely Shoshone Tribal Council/Ely Shoshone Taxation Commission the following fee is hereby licensed to sell tobacco at said location for the period enumerated above subject to all conditions provided by the **Ely Shoshone Ordinance No. 2006-EST-01, Chapter 309**

Class(es) of License _____ Amount: _____

Description of the Premises: _____

Chairperson, Ely Shoshone Tribe

Date

ELY

SHOSHONE

TRIBE

TAXATION DEPARTMENT

PROCEDURAL

GUIDELINES

INCLUDING JOB DESCRIPTIONS

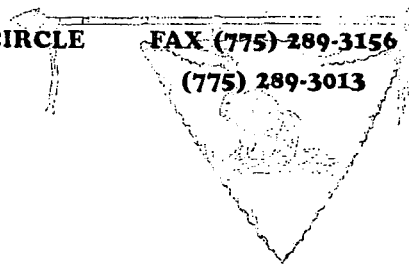
ELY SHOSHONE TRIBE

16 SHOSHONE CIRCLE

FAX (775) 289-3156

ELY, NEVADA 89301

(775) 289-3013



RESOLUTION NO. 2006-EST-59

RESOLUTION OF THE GOVERNING BODY
OF THE
ELY SHOSHONE TRIBE

WHEREAS, the Ely Shoshone Tribe is a federally recognized Indian Tribe, organized under the Indian Reorganization Act of June 18, 1934, as amended, with the power to exercise certain rights of home rule and to be responsible for the promotion of economic and social welfare of its tribal membership, and governs its affairs under the revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999; and

WHEREAS, in accordance with its Constitution and By-Laws, the Tribe is governed by its Tribal Council; and

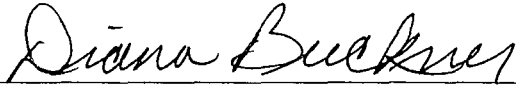
WHEREAS, the Ely Shoshone Tribal Council has adopted by Resolution No. 2006-EST-52, and Ordinance No. 2006-EST-01, adopting the Ely Shoshone Tribal Taxation Ordinance, and

WHEREAS, the Ely Shoshone Tribal Council has reviewed the Ely Shoshone Taxation Department Procedural Guidelines as adopted by the Tax Planning Committee.

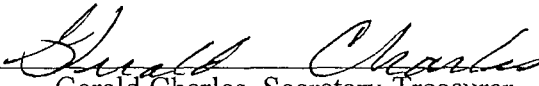
NOW THEREFORE BE IT RESOLVED THAT, the Ely Shoshone Tribal Council hereby adopts the Ely Shoshone Tax Department Procedural Guidelines including applicable forms and position descriptions.

CERTIFICATION

It is hereby certified that the foregoing Resolution of the Ely Shoshone Tribe, composed of five (5) members of whom 5 constituting a quorum were present at a **Special Meeting** held on the 14th day of **August, 2006**, was adopted by the affirmative vote of **5 For, 0 Against, 0 Abstained**; pursuant to the authority contained in the Revised Tribal Constitution of May 8, 1990, and the amendments of November 3, 1999.



Diana Buckner,
Tribal Chairperson

ATTEST: 
Gerald Charles, Secretary-Treasurer

ELY SHOSHONE TRIBE
TAXATION DEPARTMENT
Procedural Guidelines

Developed for the purpose of properly overseeing the Ely Shoshone Taxation Ordinance and the implementation through the procedures and guidelines set forth.

Written in June 2006 by the Ely Shoshone Taxation Department, the Taxation Ordinances are subject to revisions as needed to keep updated information current to the Tribe and Taxpayers.

ELY SHOSHONE TAXATION DEPARTMENT

The Ely Shoshone Taxation Department is located on the Ely Shoshone Indian Reservation, in Ely, Nevada at the Administration Office located at:

Ely Shoshone Tribe/Taxation Department
#16 Shoshone Circle
Ely, Nevada 89301
Phone: (775) 289-3013 or
Phone: (775) 289-4133
FAX Number: (775) 289-3557

The Ely Shoshone Taxation Department may consist of one or more of the following:

One full-time Tax Director
And/or one full-time Tax Clerk
And/or one part-time Tax Director
And/or one part-time Tax Clerk
Three appointed Tax Commissioners
One Tax Judge

The Ely Shoshone Taxation Department has been created for the purpose of administering and implementing the Ely Shoshone Taxation Ordinance No. 2006-EST-01 adopted by Resolution No. 2006-EST-52.

The Tribal Judge is responsible for the adjudication of the Tribal Taxation Ordinance violations.

The Taxation Attorney is responsible for addressing any requested revisions, and to troubleshoot compliance issues. He/she will also be responsible to research and mitigate any potential problems that may occur regarding taxation challenges.

The Ely Shoshone Tribal Council is the policy setting body of the Tribe and has general oversight responsibility for the financial stability of the Tribal Government. They are

responsible for approving budgets and modifications, hearing of appeals, overseeing of the Ely Shoshone Taxation Department personnel, appointment of Tax Commission, and selection of Taxation Department personnel.

The Tax Commission shall consist of the Tribal Council until such time as the Tribal Council deems it necessary to have a separate Tax Commission responsible to ensure the appropriate collection and disbursement of all taxes collected in the Ely Shoshone Tribal Reservation. They will be responsible to work with the Tax Attorney, Tax Director/Tax Clerk, and the Ely Shoshone Tribal Council to initiate and/or conform to State and County percentage of taxes to be collected for Fuel, Sales and Use, Excise, Possessory, Mineral, Licensing, and approve/disapprove all Business Licenses within the Reservation boundaries. The Tax Commission shall meet at least every quarter to keep up on any new updates in the Taxation Ordinances and Taxation Department in accordance with the Taxation By-Laws and the Ely Shoshone Taxation Ordinance. It will also be the primary responsibility of the Tax Commission to review some of the below listed reports to ensure their accuracy and to ensure all reports are prepared to auditor's satisfaction:

- Fuel Tax Rebate Adjustment report
- Nevada Department of Motor Vehicles Quarterly fuel tax report
- Fuel Delivery Monthly report
- Fuel Rebate Deposits/Fuel Rebate Money Market Account report
- Excise and Sales Tax Deposits/Money Market Account report
- Fuel Rebate Deposits
- Gas and Diesel Rebate reports
- Quarterly Fuel Rebate reports
- Quarterly Rebate Deposits
- Weekly Excise and Sales Tax Deposits
- Review annual tax budget
- Allocate funds for the Tax Use Plan annually

The Tribal Council Chairperson shall serve as the Tax Director until the Tribal Council deems it necessary to fill the position of Tax Director.

The Tax Director assumes primary responsibility for implementation of procedures and regulations governing the Tribal Taxation Ordinances. Tax Director is responsible for handling all financial matters pertaining to his/her department. The Tax Director conducts, implements, and controls day to day operations of the Taxation Department in completing daily, weekly and monthly reports as detailed in the attached sample forms (see attached sample forms). The Tax Director will also be responsible for implementing instructions as directed by the Tax Commission (see attached detailed sample job description). Some of the duties will include, but not be limited to the items listed below:

- Prepares tax budget

- Maintains accurate expenditures of funds
- Prepares monthly reports to Tax Commission and Tribal Council
- Prepares and verifies eligible fuel tax exempt persons
- Maintains records suitable for annual audit
- Prepares Tax Use Plan on an annual basis
- Receives and reports requests for tax use funds
- Receives and processes business/vendor applications
- Issues business licenses
- Receives/processes/issues liquor licenses
- Receives/processes/issues tobacco licenses
- Monitors compliance and possible abuse of fuel tax exempt status
- Addresses and responds to all tax questions and correspondence
- Ensures the below listed reports are completed accurately:
 - a. Fuel Tax Rebate Adjustment report
 - b. Nevada Department of Motor Vehicles quarter report
 - c. Fuel Delivery Monthly report
 - d. Fuel Rebate Deposits/Money Market Account report
 - e. Excise and Sales Tax Deposit/Money Market Account report
 - f. Fuel Rebate Deposit report
 - g. Gas and Diesel Rebate report
 - h. Quarterly Fuel Rebate report
 - i. Weekly Excise and Sales Tax Deposit report

The Tribal Coordinator is the chief operating officer of the Tribe and provides overall direction to the staff to assure that all Tribal Council policies are followed. He/she will provide administrative services for the Taxation Department, some of the services will include but are not limited to:

- Monitoring fund expenditures to prevent over-expenditure of funds
- Reviewing budgets and monthly reports
- Acting as liaison between the Ely Shoshone Tribal Council and the Taxation Department.

The Finance Department accounts for all Taxation resources to assure disbursements comply with federal regulations, Tribal procedures, and Council directives. Other duties will include but not limited to:

- Being responsible to ensure all financial reports are completed accurately
- Preparation of monthly spreadsheets
- Processing of payroll
- Processing of payment to vendors
- Accurate tracking of tax collection records (Fuel Tax reports, Sales & Use Tax reports, and Excise Tax reporting processes)
- Banking deposits and withdrawals

- Submitting payment to the State of Nevada for fuel taxes collected
- Distribution of funds as directed
- Any other financial matters that may be completed and processed in a timely manner.

The Tax Clerk position will be created as the need arises (see attached sample job description). Some of the duties will consist of, but will not be limited to the following:

- Work under the direct supervision of the Taxation Director
- Assist in the implementation of procedures for the collection of various Tribal taxes
- Assist with fees that are currently being assessed and imposed on the day to day operations
- Assist with receiving and processing business/vendor applications
- Assist with receiving and issuing liquor and tobacco licenses

GENERAL PROVISIONS

Process for payment by mail:

1. Application forms may be picked up (or request to be mailed) at the Ely Shoshone Taxation Department located at:
#16 Shoshone Circle
Ely, Nevada 89301
or by calling (775) 289-3013 or (775) 289-4133
2. Mail payments to: Ely Shoshone Taxation Department
#16 Shoshone Circle
Ely, Nevada 89301
3. All payments must be accompanied by the tax return.
4. All partial payments should be approved by the Tax Director and accompanied by the tax return.
5. Make check or money order payable to the Ely Shoshone Tribe/Tax Department.
6. Tax return must be dated and signed by business owner or representative of the Business, or President of the Corporation or delegated representative of the Company.
7. Cash payments being made in person to the Taxation Director or Tax Commission, must be accompanied by the tax return. A written receipt will be provided to the taxpayer for "Proof of payment" at the time of payment.
8. Any business or individual requesting information or a balance of their account must do so in writing to the Taxation Director or Tax Commission or in person at the Taxation Office.



MOTOR CARRIER DIVISION
 555 WRIGHT WAY
 CARSON CITY, NEVADA 89711
 (775) 684-4711
 www.dmvnv.com

ELY SHOSHONE TRIBE
 QUARTERLY FUEL TAX REPORT

ACCOUNT NUMBER: **15105**
 NAME: **ELY SHOSHONE TRIBE**
 ADDRESS: **16 SHOSHONE CIRCLE**
 CITY/STATE/ZIP: **ELY NV 89301**
 EMAIL ADDRESS: **Gonnie@WPIS.Net**
 TO CANCEL, ATTACH YOUR AGREEMENT AND INDICATE CANCELLATION DATE:

TAX RETURNS ARE DELINQUENT IF NOT POSTMARKED
 BY THE LAST DAY OF THE MONTH FOLLOWING THE
 REPORTING PERIOD.
 QUARTERLY TAX REPORT FOR : _____

() CHECK HERE IF THIS IS AN AMENDED RETURN

FUEL TAX RATES: **GASOLINE/GASOHOL = \$0.23** **DIESEL = \$0.27**
WHITE PINE COUNTY = \$0.10

1	2	3	4	5	6	7
Gasoline/Gasohol	Gallons	Tax Rate	Tax Collected	Admin Fee Formula	Less Admin Fee	Total Gasoline Tax Due
Total Gasoline Sales	0	0.33	\$0.00	2% of Total Gals sold	\$0.00	\$0.00
Total Tribal Sales		0	0.00		0.00	0.00
Taxable State		0.23	0.00		0.00	0.00
Taxable White Pine County	0	0.10	0.00		0.00	0.00
Diesel	Gallons	Tax Rate	Tax Collected	Admin Fee	Less Admin Fee	Total Diesel Tax Due
Total Diesel Sales		0.27	\$0.00	2% of Total Gals sold	\$0.00	\$0.00
Total Tribal Sales		0	0.00		0.00	0.00
Taxable Non-Tribal		0.27	\$0.00		0.00	\$0.00

Enter information in Yellow Fields Only.

3. TOTAL TAX COLLECTED ON NON-TRIBAL GALLONS (Column 4 Gasoline & Diesel) \$0.00

4. LESS TOTAL ADMINISTRATION FEE (2% of total sales in gallons expressed as dollars if filed timely) \$0.00

5. TAX DUE (Tax collected less administrative fees) = \$0.00

6. PENALTY (10 Percent of line 3) \$0.00
 (if filed after the delinquent date)

7. INTEREST (1 Percent per month of line 3) \$0.00
 (if filed after the delinquent date)

8. TOTAL DUE (ADD lines 5 through 7) \$0.00

Under penalties of perjury, I/We, the undersigned, declare that the tribal sales shown above were purchased and used by Native American Indians.
 All fuel sold to Non-tribal members is included and tax due, less administrative fees on such sales, have been remitted by the Ely Shoshone Tribe to the Department of Motor Vehicles. I have examined this return and to the best of my knowledge and belief, it is correct and complete.

PREPARER'S SIGNATURE _____ Phone Number _____
 Printed Name and Title _____ FAX Number _____
 Date: _____

FOR OFFICIAL USE ONLY

Account # _____ Initials _____
 \$ RCVD: _____ Postmark _____
 CONTROL # _____ Penalty _____

MONTHLY EXCISE & SALES TAX DEPOSITS

REPORT TO : FILE

DATE OF REPORT: **MAY THRU DECEMBER 2004**

DATE OF DEPOSIT	PERIOD OF DEP.	EXCISE TAX	SALES TAX	TOTAL DEPOSIT
JAN 18-FEB 1, 2005	JANUARY 1-31, 2005			\$ -
FEB 15-MAR 1, 2005	FEBRUARY 1-28, 2005			\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
TOTAL		\$ -	\$ -	\$ -

WEEKLY EXCISE & SALES TAX DEPOSITS
DECEMBER 2004

REPORT TO: FILE
REPORT DATE: JANUARY 3, 2005

DATE OF DEPOSIT	PERIOD OF DEP.	EXCISE TAX	SALES TAX	TOTAL DEPOSIT
DECEMBER 6, 2004	DECEMBER 1-5, 2004			\$ -
DECEMBER 16, 2004	DECEMBER 6-12, 2004			\$ -
DECEMBER 21, 2004	DECEMBER 13-19, 2004			\$ -
DECEMBER 27, 2004	DECEMBER 20-26, 2004			\$ -
JANUARY 1, 2005	DECEMBER 27-31, 2004			\$ -
TOTAL		\$ -	\$ -	\$ -

FUEL DELIVERY MONTHLY REPORT

REPORT TO: Department of Motor Vehicles

DATE OF REPORT: January 1 thru January 31, 2005

FUEL WHOLESALER: Overland Petroleum/DATS Trucking, 321 North Old Hwy. 91 Hurricane, Utah 84737

QUARTER: 1st

DATE OF DELIVERY	UNLEADED GALLONS	PREMIUM GALLONS	DIESEL GALLONS	TOTAL GALLONS
1/3/2005				
1/7/2005				
1/8/2005				
1/10/2005				
1/13/2005				
1/15/2005				
1/17/2005		2,019		
1/20/2005		1,000		
1/22/2005				
1/24/2005				
1/27/2005		3,100		
1/29/2005				
1/30/2005				
TOTAL GALLONS				

ELY SHOSHONE TRIBE
FUEL REBATE DEPOSITS
FUEL REBATE MONEY MARKET ACCOUNT
FOR PERIOD: 5/1/04 THRU 9/30/04

STARTING BALANCE \$ _____

EXISTING AMOUNT _____
Amount in account before 5/1/04, if any

INTEREST EARNED _____

AMOUNT DEPOSITED _____

AMOUNT WITHDRAWN _____

BALANCE _____

SUBMITTED BY: _____ DATE: _____

PREPARED BY: _____ DATE: _____
FINANCE DEPARTMENT

ELY SHOSHONE TRIBE
EXCISE AND SALES TAX DEPOSITS
EXCISE TAX MONEY MARKET ACCOUNT
FOR PERIOD: 5/1/04 THRU 9/30/04

STARTING BALANCE \$ _____

EXISTING AMOUNT _____
Amount in account before 5/1/04, if any.

INTEREST EARNED _____

AMOUNT DEPOSITED _____

AMOUNT WITHDRAWN _____

BALANCE _____

SUBMITTED BY: _____ DATE: _____

PREPARED BY: _____ DATE: _____
FINANCE DEPARTMENT

FUEL REBATE DEPOSITS

QUARTERLY REBATE DEPOSITS

REPORT TO : FILE
DATE OF REPORT: JULY THRU SEPTEMBER 2004
3RD

DATE SUBMITTED	PERIOD SUBMITTED	WEEKLY DEPOSIT
JULY 14, 2004	JULY 1-11, 2004	\$
JULY 19, 2004	JULY 12-18, 2004	\$
JULY 27, 2004	JULY 19-25, 2004	\$
AUGUST 3, 2004	JULY 26-31, 2004	\$
AUGUST 9, 2004	AUGUST 1-8, 2004	\$
AUGUST 17, 2004	AUGUST 9-15, 2004	\$
AUGUST 25, 2004	AUGUST 16-22, 2004	\$
SEPTEMBER 2, 2004	AUGUST 23-31, 2004	\$
SEPTEMBER 8, 2004	SEPTEMBER 1-5, 2004	\$
SEPTEMBER 22, 2004	SEPTEMBER 6-12, 2004	\$
SEPTEMBER 24, 2004	SEPTEMBER 13-19, 2004	\$
OCTOBER 4, 2004	SEPTEMBER 20-30, 2004	\$
TOTAL QUARTERLY		\$

POSITION ANNOUNCEMENT

TITLE: Taxation Director

HOURLY WAGE: \$14.00

OPENING DATE: October 14, 2003

CLOSING DATE: October 28, 2003

DEFINITION:

Under the direct supervision of the Ely Shoshone Tribal Council, the incumbent will research types of Taxes that can potentially be collected, and Develop Tax Ordinances and Codes with the assistance of Experienced Tax Attorney, community, and Taxation Planning Committee. The position is funded for approximately a two-year period and administered under a grant from the Administration for Native Americans (ANA), U.S. Department of Health and Human Resources.

The incumbent will be responsible to Administer the ANA Grant according to grant regulations and guidelines to insure grant budget, project goals, and the objective workplan schedule are maintained and fulfilled.

DUTIES AND RESPONSIBILITIES:

- Assumes primary responsibility for research to identify Tax Authority for the Ely Shoshone Tribe by researching and understanding Tribal Constitution, Ordinances, Due Process, Indian Civil Rights, State Laws, etc.
- Coordinate negotiations with the State of Nevada regarding taxes.
- Assumes primary responsibility to develop Taxation Ordinances and Codes along with procedures for collection of various Tribal Taxes and fees to be assessed and imposed on activities and property interests within the Reservation boundaries.
- Coordinates, establishes and facilitates Taxation Planning Committee meetings.
- Develops and drafts, with the Taxation Attorney, proposed rules and regulations deemed necessary for the proper and efficient administration of Tribal tax laws, for submission and review to the Taxation Planning Committee, and for final approval by the Tribal Council.
- Develops, implements, and maintains filing and accounting systems for orderly compilation of all Tribal tax and fee reporting, payment, and collection enforcement documentation and data, in both hard copy back up format and computer format.
- Coordinate and participates in intensive in-house training relative to inherent Tribal taxing authority and substantive and procedural aspects of all Tribal tax laws.

- Maintain on-going communication with the Tribal Council, Finance Department, Tribal Coordinator, and Planning Department on all aspects of tax development.
- Coordinate and conduct community meetings for input concerning Taxation matters, and educate and inform community and the taxpayer about the roles and responsibilities of the Taxation Department.
- Develops a structure to determine revenue to generate through Collection of Taxes.
- Responsible for facilitating decisions and keeping the project continuing to accomplish the overall objectives.
- Publish Annual Reports for the public.
- Develop monthly and annual revenue and expenditure reports for the Tax Commission and the Tribal Council.
- Responsible for written monthly reports to the Ely Shoshone Tribal Council.
- Responsible for the management of the grant project budget and reports.
- Perform all administrative requirements of the grant including reporting on grant activities and monitoring compliance with grant guidelines.

QUALIFICATIONS:

- Thorough knowledge of computer operations; Word Processing, and ability to type 50 wpm accurately, as the individual will be required to produce all documents associated with carrying out the duties of the grant.
- Knowledge of modern office practices and procedures. Ability to effectively operate modern office equipment associated with duties.
- Knowledge and understanding of governmental financial procedures and methods with the ability to understand financial statements as check point to tax revenue and expenditures.
- Demonstrated communication skills for group activities including expressing ideas effectively, seeking and respecting the opinions of others, active listening, and willingness to share ideas.
- Ability to properly and accurately research, access, acquire and disseminate information or resources pertinent to the overall intent of the program goals.
- Excellent interpersonal skills, including tact, flexibility, diplomacy with Tribal Community, Consultants and co-workers.
- Time management and organizational skills sufficient to organize work, set and maintain priorities, meet deadlines, and meet quality and quantity standards.

- Knowledge of English language grammar, syntax, spelling, and punctuation sufficient to perform all tasks.
- Demonstrated ability to improve processes by assessing procedures, seeking information and opinions, developing and implementing changes as appropriate.
- Skill in developing and assessing budgetary needs for outreach and training.
- Must be self-motivated, energetic, ambitious, and the ability to keep the project moving regardless of many obstacles.
- Must be willing to travel and work flexible hours.
- Must have own transportation and a valid Nevada Driver's License.
- Must be alcohol and drug free at five years, and no felony convictions.

PREFERRED EXPERIENCE AND TRAINING:

Must be a High School graduate. Must possess a minimum of three (3) years, post-secondary education in the areas of either accounting, bookkeeping, or taxation. Must possess a minimum of three (3) years experience in the field administration, bookkeeping, or taxation.

TO APPLY: Resumes are accepted only as a supplement to the Ely Shoshone Tribe employment application. Application can be obtained from Ely Shoshone Tribe Administration Office in Ely, Nevada, by writing to or stopping by Ely Shoshone Tribe, 16 Shoshone Circle, Ely, Nevada 89301. Telephone number: (775) 289-3013.

Preference will be given to qualified Indian candidates in accordance with the Indian Preference Act (Title 25, U.S. Code, Section 472 and 473). However, the Ely Shoshone Tribe is an equal opportunity employer and all qualified applications will be considered in accordance with the provisions of Section 703(1) of Title VII of the Civil Rights Acts of 1964, amended in 1990.

POSITION ANNOUNCEMENT

TITLE: Taxation Clerk

HOURLY WAGE:

OPENING DATE:

CLOSING DATE:

DEFINITION:

Tax Clerk will be a support person to the Taxation Director, program activities will be monitored by Tribal Administrator.

DUTIES AND RESPONSIBILITIES:

- Assist in implementation of procedures for collection of various Tribal taxes and fees currently being assessed and imposed on activities and property interests within Reservation boundaries, in addition to any and all new Tribal taxes and fees which may be so assessed and imposed in the future.
- Assist in proper implementation and full enforcement of all Tribal statutory and regulatory laws governing the assessment and imposition of taxes and fees.
- Assist in development and implementation of and maintains filing and accounting systems for orderly compilation of all Tribal tax and fee reporting, payment and collection enforcement documentation and data, in both hard copy back up format and computer format.
- Participates, shortly after commencement of employment, in intensive in-house training relative to inherent Tribal taxing authority and substantive and procedural aspects of all Tribal tax laws.
- Corresponds, both verbally and in writing, with all individuals and entities who currently are or become subject to the imposition of Tribal taxes and fees.
- Performs all general secretarial and clerical tasks inherent in functioning of Tribal Tax Department, until such time, as Department is fully staffed.
- Perform other duties as assigned.

QUALIFICATIONS:

- A minimum of two (2) years, post secondary education in the areas of either accounting, bookkeeping, or taxation, or a minimum of two (2) years experience in the above referenced fields of employment.
- Ability to communicate effectively, both verbally and in writing, with officials and other representatives of business.
- Ability to develop and maintain positive and effective working relationship with individuals and entities subject to Tribal taxation.
- Ability to adequately perform duties and responsibilities with a minimum of supervision.
- The position requires a person trained and experienced in property appraisals and familiar with assessment and equalization procedures and techniques.
- Shall be responsible for maintaining an accounting system which includes a special category of accounts designated as non-current accounts.

PREFERRED EXPERIENCE AND TRAINING:

Must be a High School graduate. May possess a minimum of two (2) years, post secondary education in the areas of either accounting, bookkeeping, or taxation. Must possess a minimum of two (2) years experience in the field of administration, bookkeeping, or taxation.

TO APPLY:

Resumes are accepted only as a supplement to the Ely Shoshone Tribe employment application. Application can be obtained from Ely Shoshone Tribe Administration Office in Ely, Nevada, by writing to or stopping by Ely Shoshone Tribe, 16 Shoshone Circle, Ely, Nevada 89301. Telephone number: (775) 289-3013.

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END