

**ROSEBUD SIOUX TRIBE
ORDINANCE NO. 2013-03
APPROVING RESOLUTION NO. 2013-121**

Cigarette Excise Tax & Native Brands

Preamble and Scope: The Tribal Council, pursuant to Article IV, Sections 1(h) and 1(m) of the Constitution and By-Laws of the Rosebud Sioux Tribe has the power, "To levy taxes upon members of the Tribe ... and to levy taxes or license fees upon non-members doing business within the reservation," and "To safeguard and promote the peace, safety, morals and general welfare of the tribe by regulating the conduct of trade ... upon the Reservation." The Tribe exercises its sovereign powers by regulating certain conduct and levying a tax on the sale of tobacco within the jurisdiction of the Tribe, and it has determined that assessing a tax on Tribal Tobacco products will assist the Tribe in strengthening its government and providing funds for tribal government operations and services. To that end, on July 11, 2013, the Rosebud Sioux Tribal Council enacted this Rosebud Sioux Tribe Ordinance #2013-03, which is entitled "Cigarette Excise Tax & Native Brands" and amends certain portions of the Rosebud Sioux Tribe Tax Code. The numbering system in this Ordinance tracks the same numbering system as the Rosebud Sioux Tribe Tax Code. Any conflicting provisions found in the RST Tax Code are superseded by this Ordinance.

Sec. 102 Benefits of Tribal Government

Among the benefits provided by the tribal government to tribal members and to non-members residing or conducting business with the Rosebud Reservation are the following: the provision of governmental services, including sewer and water systems, police and fire protection, Tribal Court system of general jurisdiction, the promotion and regulation of economic activities within the Tribe's sovereign jurisdiction; the protection of Reservation lands and resources; road construction, repair and maintenance; education; public health; the development of tribal or other district enterprises; recreation; social services; and land purchase.

Sec. 901 DEFINITIONS. The definitions in Section 201 of the Rosebud Sioux Tribe Tax Code apply to this Ordinance. In addition, in this Ordinance, unless the context otherwise plainly requires:

- (1) "Dealer" or "retailer" means any person other than a distributor or a wholesaler, as defined herein, who is engaged within the Reservation in the business of selling cigarettes at retail.
- (2) "Distributor" means any person engaged within the Reservation in the business of producing or manufacturing cigarettes or importing into the Reservation cigarettes, at least 75% of which are purchased directly from manufacturers thereof.
- (3) "Wholesaler" means any person who purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purposes of bona fide resale to retail dealers or to other persons for the purpose of bona fide resale to retail dealers and any person who services retail outlets, including,

**ROSEBUD SIOUX TRIBE
ORDINANCE NO. 2013-03
APPROVING RESOLUTION NO. 2013-121**

but not limited to, the maintenance of a warehousing facility for the storage and distribution of cigarettes.

- (4) "Licensed distributor" or "licensed wholesaler" means a distributor or wholesaler licensed under the provisions of this Ordinance.
- (5) "Sale" or "sell" shall also include or apply to gifts, exchanges and barter.
- (6) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.
- (7) "Major Brands" means those brands of cigarettes manufactured and sold nationally by non-native commercial enterprises and businesses.
- (8) "Native Brands" means those brands of cigarettes or tobacco products manufactured and sold wholesale by other Indian tribes or their enterprises and are subject to the tribal cigarette tax.
- (9) "State Cigarette Tax" means the state tax imposed on each cigarette, which is expressed in cents per cigarette.
- (10) "Tobacco products" means cigars and other smoking tobacco, snuff and other chewing tobaccos, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. As applied here and unless otherwise indicated, "tobacco products" does not mean Native Brands or Major Brands cigarettes.
- (11) "Tribal cigarette tax" means the tax or taxes enacted as a provision of Rosebud Sioux Tribal law on the units of cigarettes and tobacco products sold and on the purchase of cigarettes by retail buyers.

Sec 902 Cigarette Tax Imposed

(1) A tax is imposed, whether or not a sale occurs, at the following rates on all Major Brands cigarettes held in Tribal Territory for sale by any person:

Class A, on cigarettes weighing not more than three pounds per thousand, seventy-six and one-half mills on each cigarette.

Class B, on cigarettes weighing more than three pounds per thousand, seventy-six and one-half mills on each cigarette

ROSEBUD SIOUX TRIBE
ORDINANCE NO. 2013-03
APPROVING RESOLUTION NO. 2013-121

(2) There is hereby levied upon the sale of Native Brands cigarettes and Native Brands tobacco products a tax equal to twenty cents (\$0.20) per pack of cigarettes or twenty cents (\$0.20) per ounce for tobacco products ("Tribal cigarette tax") sold exclusive of any rebate at retail outlets to consumers within Tribal Territory.

(3) The Tribal Council may impose, eliminate, raise or lower the tax on Major Brands and Native Brands cigarettes and other tobacco products whenever it considers it necessary to do so, subject to the provisions in Section 202 of the Rosebud Sioux Tribe Tax Code pertaining to the rates for Major Brands cigarettes subject to the Tax Collection Agreement.

(4) Revenue derived from the tax imposed by this Section 902 shall be used for essential governmental services of the Rosebud Sioux Tribe. No portion of the tax levied on Native Brands or other tobacco products shall be remitted to the State of South Dakota.

(5) No sale of cigarettes or any tobacco product shall be made to any person under the age of 18 years old within the boundaries of the Rosebud Sioux Reservation.

(6) In accordance with Section 916 of Ordinance (formerly Section 917 of the RST Tribal Tax Code) the Tribe shall continue to adhere to the tax sharing scheme contained in the Tax Collection Agreement with respect to the collection and sharing of the State Cigarette Tax on Major Brands cigarettes, so long as it remains in effect. Should the Tax Collection Agreement no longer be in effect, any tax imposed on Major Brands shall be remitted to the Tribe.

Sec 903 Unlawful Sales

It shall be unlawful for any distributor to sell, and for any other person to sell, offer for sale, display for sale or possess with intent to sell, any cigarette within the Reservation unless a tax imposed thereon by this Ordinance has been paid and such cigarette or the package containing such cigarette has been stamped to evidence such payment pursuant to regulation issued by the Tax Commission or as otherwise provided in this Ordinance. So long as the agreement referred to in Section 916 of this Ordinance remains in effect, stamps of the State evidencing payment of the tax imposed by Section 902 (1) shall constitute the stamps required by this Section. Any person who shall violate the provisions of this Section shall be subject to a civil penalty of not more than \$100 for the first offense and for each subsequent offense shall be subject to a civil penalty of not less than \$50 nor more than \$500.

Sec 904 License Required of Distributors and Wholesalers

Each person, except a retailer, engaging in the business of selling cigarettes within the Reservation, including any distributor or wholesaler, shall secure license from the Tax Commission, pursuant to regulations issued by it, or as otherwise provided by this Ordinance. Each license issued under this section shall be prominently displayed on the

**ROSEBUD SIOUX TRIBE
ORDINANCE NO. 2013-03
APPROVING RESOLUTION NO. 2013-121**

premises covered by such license. Any person who shall violate the provisions of this section shall be subject to a civil penalty of not less than \$25.00 nor more than \$200.00, and all cigarettes in his possession shall be seized and forfeited to the Tribe. Compliance with this section in no way waives the requirements of Title 16 regarding tribal business licenses.

Sec 905 License Agreement

The agreement referred to in Section 916 may also provide for the issuance of the license required by Section 904 and the collection of fees therefore on behalf of the Tribe by the State. This agreement may provide that the issuance of such licenses and collection of fees therefore shall be substantially in the same manner as conducted by the State with respect to state licenses to sell Major Brands cigarettes under SDCL Ordinance 10-50. Such agreement may further provide for the payment of a fee by the Tribe to the State for the issuance of such licenses and the collection of such license fees. So long as such agreement with the State remains in effect, a license issued by the State of South Dakota in accordance with such agreement shall constitute the license required by Section 904.

Sec 906 Preservation of Records

Every person subject to the payment of the tax levied by Section 902 shall keep such records and file such reports as the Tax Commission may prescribe by regulation, or as otherwise provided by this Ordinance.

Sec 907 Resale of Stamp Prohibited-Penalties for Use or Possession of Counterfeit Stamp-Reuse of Stamp-Penalty.

No distributor shall sell or transfer any stamps issued under the provision of this Ordinance. Any person who shall fraudulently make or utter or shall forge or counterfeit any stamp prescribed under this Ordinance, or who shall cause or procure the same to be done, or who shall willfully utter, publish, pass or render as true, any false, altered, forged or counterfeited stamp, or who shall knowingly possess any such false, altered, forged or counterfeited stamp, or who shall use more than once any stamp provided for and required by this Ordinance, for the purpose of evading the tax thereby imposed, shall (1) if a member of the Tribe, be guilty of a crime and, upon conviction, be sentenced to labor for a period not to exceed six months, or to a fine not to exceed five hundred dollars, or both such imprisonment and fine, with costs; or (2) if a non-member of the Tribe, be assessed to a civil penalty not to exceed five hundred dollars plus costs, or be temporarily or permanently excluded from the Reservation, or be both so assessed and so excluded.

ROSEBUD SIOUX TRIBE
ORDINANCE NO. 2013-03
APPROVING RESOLUTION NO. 2013-121

Sec 908 Records and Reports Agreement

The agreement referred to in Section 916 may provide for the keeping of records and filing of reports pertaining to taxes imposed pursuant to Section 902(1) under the supervision of the State on behalf of the Tribe in accordance with SDCL Ordinance 10-50. Copies of all reports filed with the State of South Dakota pursuant to such agreement shall also be filed with the Tax Commission. So long as such agreement with the State remains in effect, the records and reports required by the State shall constitute the records and reports required by this Ordinance for the taxes imposed pursuant to Section 902(1).

Sec 909 Display or Possession of Unstamped Cigarettes as Evidence of Intent to Sell

The display or possession, except in original unopened shipping package, container or case, of cigarettes by any dealers unless fully stamped as required by this Ordinance shall constitute prima facie evidence of possession with intent to sell the same.

Sec 910 Enforcement Powers of Tax Commission Personnel-Arrest-Complaint-Seizure of Counterfeit license or Stamp.

The Tax Commission and its duly authorized agents and employees are charged with the duty of enforcing the provisions of this Ordinance and are given the power of peace officers and authorized and empowered to arrest any Tribal member who is a violator of the provisions of this Ordinance, to enter complaint before any court of competent jurisdiction, and to seize without formal warrant and use as evidence any forged, counterfeited, spurious, or altered license or stamp found in possession of any person in violation of this Ordinance.

Sec 911 Unstamped Cigarettes as Contraband-Seizure Without Warrant

Any cigarettes found at any place within the Reservation without stamps affixed thereto as required by this Ordinance, unless such cigarettes shall be in the possession of a licensed distributor or wholesaler in the original unopened shipping package or unless they shall be in a course of transit found outside the Reservation and consigned to a licensed distributor or a licensed wholesaler, are declared to be contraband goods and may be seized by the Tax Commission, its agents, or employees or by any peace officer of the Tribe when directed by the Tax Commission to do so, without a warrant.

Sec 912 Forfeiture of Contraband Cigarettes-Sale by Tax Commission-Proceeds of Sale Purchases to Pay Tax

Any cigarettes seized under the provisions of this Ordinance shall be confiscated and forfeited to the Tribe and the Tax Commission shall sell such confiscated property to a licensed

ROSEBUD SIOUX TRIBE
ORDINANCE NO. 2013-03
APPROVING RESOLUTION NO. 2013-121

dealer or distributor to the best advantage to the Tribe. The proceeds from such sale shall be forthwith remitted to the Tax Commission as part of the income from the enforcement of this Ordinance.

Such sales by the Tribe shall not relieve the purchaser from paying the tax and stamping the articles so sold to him, as in this Ordinance otherwise provided.

Sec 913 Confiscation of Unstamped Cigarettes Not Required if No Intentional Evasion

Nothing in Section 910 or 911 shall be construed to require the Tax Commission to confiscate unstamped cigarettes when it shall have reason to believe that the owner thereof is not willfully or intentionally evading the tax imposed by this Ordinance.

Sec 914 Act of Agent as Act of Principal

For the purpose of this Ordinance, the act or omission of any officer, agent or other person acting for or employed by any person, corporation, association or partnership within the scope of his office, agency or employment shall be deemed to be the act or omission of such person, corporation, association or partnership as well as his own.

Sec 915 Examination of Distributions, Wholesalers' and Dealers' Records by Revenue Agents-Inspection of Premises.

The Tax Commission and its authorized employees or agents may examine the books, papers and records of any distributor, wholesaler or dealer within the Reservation for the purpose of determining whether the tax imposed by this Ordinance has been fully paid, and may investigate and examine the stock of cigarettes in or upon any premises where such cigarettes are possessed, stored or sold, for the purpose of determining whether the provisions of this Ordinance are being obeyed. The Tax Commission or its employees or agents shall have the right and authority to make such inspections and examinations at any time during ordinary business hours or as otherwise provided in Section 306, and it or they shall have the further authority to inspect at such times the premises and all desks, safes, vaults and other fixtures and furniture contained in or upon such premises for the purpose of ascertaining whether cigarettes are held or possessed in violation of this Ordinance.

Sec 916 Cigarette Tax Collection Agreement with State

The Tax Commission, pursuant to Section 306(10), may enter into an agreement with the Department of Revenue of the State to provide for the collection of tax imposed by Section 902(1) of this Ordinance on behalf of the Tribe by such Department and for the affixing of stamps of the State evidencing the payment of such tax. Such agreement may provide that the collection of the tax and the affixing of stamps shall be substantially in the same manner as

ROSEBUD SIOUX TRIBE
ORDINANCE NO. 2013-03
APPROVING RESOLUTION NO. 2013-121

conducted by the State with respect to state cigarette taxes under SDCL Ordinance 10-50. The agreement also may provide for the retention by the State of a collection fee not to exceed 1% of the total taxes collected pursuant to such agreement, and for the retention by the State of an additional portion of such taxes collected, in lieu of the collection of taxes under SDCL 10-50 on activities with the Reservation, as agreed upon the Tax Commission and the Department. So long as such agreement remains in effect, stamps of the State evidencing payment of the tax imposed by Section 902(1) of this Ordinance shall constitute the stamps required by Section 903 of this Ordinance.

Sec 917 Wholesale tax on all tobacco products

In addition to the tax imposed by section 902(1), there is imposed, whether or not a sale occurs, a tax upon all wholesale tobacco products in this reservation and upon any person engaged in business as a licensed distributor or licensed wholesaler thereof, at the rate of thirty five percent of the wholesale purchase price of such tobacco products. Such tax shall be imposed at the time the distributor or wholesaler brings or causes to be brought into this reservation tobacco products for sale; makes, manufactures, or fabricates tobacco products in this reservation for sale in this reservation or ships or transports tobacco products to dealers in this reservation to be sold by those dealers. For the purpose of this Ordinance, wholesale purchase price is the price for which a manufacturer sells tobacco products to a licensed distributor or licensed wholesaler exclusive of all discount or other reduction.

Sec 918 Distribution and wholesalers to sell only to dealer-Remittance of tax by dealer-Violation as crime.

Tobacco products may be sold by licensed distributors and licensed wholesalers only to dealers. Dealers who buy or receive tobacco products from persons other than licensed distributors or licensed wholesalers must pay the tax imposed on Section 917. However, the dealer may elect to report and remit the tax on the cost price of the tobacco products to the dealer rather than on the wholesaler purchase price. A violation of this section is a class 1 Crime.

Sec 919 Deadline for reporting and remitting wholesale tobacco tax-Penalty-Credit or refund for destroyed or unfit tobacco.

On or before the fifteenth day of each calendar month, each person required to pay the tax imposed by Section 917 shall report on forms prescribed by the Tax Commission, the amount and type of tobacco products manufactured or brought into this reservation during the month preceding the month in which the report is made, the source of those tobacco products, and the wholesale purchase price of those tobacco products. The person shall remit the tax due on those tobacco products with the filing of the form. Any person who fails to timely file the form and pay the tax in this section may be subject to penalty and interest as

ROSEBUD SIOUX TRIBE
ORDINANCE NO. 2013-03
APPROVING RESOLUTION NO. 2013-121

prescribed in Section 602. Any person seeking to recover overpayment of the tax imposed by section 917, may do so in the manner prescribed in section 401 as prescribed in Title 1, Ordinance 4. If any taxpayer destroys tobacco products upon which the tax imposed by section 917 has been paid because of unfitness for sale, a credit or refund in the amount of the tax paid on those products shall be granted as prescribed in this section for the overpayment of tax.

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2013-121**

WHEREAS, the Rosebud Sioux Tribe is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of 1934 and all pertinent amendments thereof; and

WHEREAS, the Tribal Council in accordance with Article IV, Section 1 (h) of the Constitution and By-Laws of the Rosebud Sioux Tribe has the power, *inter alia*, "To levy taxes upon members of the Tribe... and to levy taxes or license fees upon non-members doing business within the reservation"; and

WHEREAS, the Tribal Council, pursuant to Article IV, Section 1(m) of the Constitution and Bylaws, has the power "To safeguard and promote the peace, safety, morals and general welfare of the tribe by regulating the conduct of trade ... upon the Reservation"; and

WHEREAS, the Tribe seeks to exercise its sovereign powers by regulating certain conduct and levying a tax on the sale of tobacco within the jurisdiction of the Tribe; and

WHEREAS, the Tribe has determined that assessing a tax on tobacco products will assist the Tribe in strengthening its government and providing funds for tribal government operations and services for the benefit of tribal members and non-members residing or conducting business within the Rosebud Reservation, including but not limited to: sewer and water systems, police and fire protection, tribal court system of general jurisdiction, the promotion and regulation of economic activities within the Tribe's sovereign jurisdiction; the protection of Reservation lands and resources; road construction, repair, and maintenance; education; public health; the development of tribal or other district enterprises; recreation; social services; and land purchase; and

WHEREAS, the Tribal Council desires to enact a Tribal Tobacco Tax in furtherance of its duty to promote the general welfare of the Tribe and regulate commerce with its members; now

THEREFORE BE IT RESOLVED that the Rosebud Sioux Tribe hereby enacts the attached Rosebud Sioux Tribe Ordinance #2013-03, which is entitled "Cigarette Excise Tax & Native Brands" and amends certain portions of the Rosebud Sioux Tribe Tax Code; and

BE IT FURTHER RESOLVED that the provisions in the attached Ordinance track the same numbering system as the Rosebud Sioux Tribe Tax Code and, once enacted, any conflicting provisions found in the RST Tax Code are superseded by this Ordinance; and

BE IT FURTHER RESOLVED that in accordance with Section 902 of the attached Ordinance, the Tribal Council hereby levies a tax equal to twenty (20) cents (\$.20) per pack of cigarettes sold, exclusive of any rebate, upon the sale of Tribal Tobacco by a Tribal Wholesaler for Sales within the exterior boundaries of the Rosebud Sioux Reservation; and

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2013-121**

BE IT FURTHER RESOLVED that in accordance with Sections 312 and 903 of the attached Ordinance, all Tribal Tobacco products are required to have the Tribal Tax Stamp affixed to them; and

BE IT FURTHER RESOLVED that the tax imposed by the attached Ordinance shall not apply to sales to persons, customers, retailers or other wholesalers who intend to sell the product outside the exterior boundaries of the Reservation; and

BE IT FURTHER RESOLVED that the impact of the tax levied by the attached Ordinance is declared to be on the Tribal Wholesaler; and

BE IT FURTHER RESOLVED that the Tribal Wholesaler shall collect the applicable taxes when selling to a Tribal Retailer or other persons intending to resell the tobacco products within the exterior boundaries of the Reservation; and

BE IT FURTHER RESOLVED that every Tribal Wholesaler is required to purchase all applicable tax stamps from the Tribe or its designee, and the Tribe or its designee shall sell the applicable tax stamps to the Tribal Wholesaler at the applicable rate set in the attached Ordinance; and

BE IT FURTHER RESOLVED that this tax applies to all sales of Tribal Tobacco effective as of the date this resolution is adopted by the Tribal Council; and

BE IT FURTHER RESOLVED that this resolution and the attached Ordinance is intended to have the full force of tribal law; and

BE IT FINALLY RESOLVED that the RST Tax Commission or its designee is hereby authorized to take all actions necessary to implement the Tribal Tobacco Tax effective immediately.

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

This is to certify that the above Resolution No. 2013-121 was duly passed by the Rosebud Sioux Tribal Council for a First Reading on July 11, 2013, by a vote of fifteen (15) in favor, zero (0) opposed and zero (0) not voting. A second reading was held on August 29, 2013 and approved by a roll call vote of fifteen (15) yes, zero (0) no, zero (0) abstain, four (4) absent and (1) vacancy. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:

Linda L. Marshall, Secretary
Rosebud Sioux Tribe

Cyril Scott, President
Rosebud Sioux Tribe