

SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 12

TRIBAL TOBACCO OUTLETS AND EXCISE TAX

S.W.S.T. CODE
 Amendment
 New Adoption
Judicial Approved
02-06-82
Council Adopted
05-04-82

12-01-01 TITLE

This law shall be known as the Sisseton-Wahpeton Sioux Tribe Tobacco Outlets and Excise Tax Act.

12-02-01 PURPOSES

The purposes of this Chapter are:

1. To enhance the general well-being of the members of the Sisseton-Wahpeton Sioux Tribe.
2. To promote the economic growth of the Sisseton-Wahpeton Sioux Tribe.
3. To provide operating capital for the Tribal government.
4. To expand the governmental capacity of the Sisseton-Wahpeton Sioux Tribe to meet the needs of its members and others for municipal and other governmental services.
5. To support capital improvements of Tribal facilities.
6. To provide increased consumer service to the members of the Sisseton-Wahpeton Sioux Tribe and others.
7. To educate members of the Sisseton-Wahpeton Sioux Tribe.
8. To regulate the sale of cigarettes and tobacco products on the Lake Traverse Indian Reservation and within Indian Country under the jurisdiction of the Tribe to the extent permitted by laws of the United States.

12-03-01 DEFINITIONS

Words used in this Chapter unless the context otherwise plainly requires, shall mean:

12-03-02 Tribe - the Sisseton-Wahpeton Sioux Tribe.

12-03-03 Council - the Sisseton-Wahpeton Sioux Tribal Council.

12-03-04 Cigarettes - any roll for smoking made wholly or in part of tobacco, 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.

- 12-03-05 Tobacco Products - cigarettes, cigars, smoking tobacco, snuff, chewing tobacco, and other kinds and forms of tobacco prepared in such manner as to be for chewing or smoking.
- 12-03-06 Tobacco Outlet - a retail sales business established and operated by the Sisseton-Wahpeton Sioux Tribe for the purpose of selling tobacco products on trust land within the Lake Traverse Reservation and within Indian Country (as defined in 18 U.S.C. 1151) under the jurisdiction of the Sisseton-Wahpeton Sioux Tribe simultaneously with another business operated by the Tribe or others on the same premises.
- 12-03-07 Manager - a person employed by the Sisseton-Wahpeton Sioux Tribe to manage a tobacco outlet. The manager of a tobacco outlet may be employed simultaneously by the Tribe to manage a tobacco outlet and to manage or otherwise assist in the operation of other Tribal business conducted on the same premises with a tobacco outlet.
- 12-03-08 Retail Selling Price - the ordinary, customary or usual price paid by the consumer for each tobacco product, less the tax levied under 12-07-01 of this Act.
- 12-03-09 Distributor - any person engaged in the business of producing or manufacturing tobacco products, or the Sisseton-Wahpeton Sioux Tribe when it imports tobacco products into Indian Country under its jurisdiction.
- 12-03-10 Consumer - any person who comes into possession of tobacco products within Indian Country under the jurisdiction of the Sisseton-Wahpeton Sioux Tribe for any purpose other than offering them for sale.
- 12-03-11 Person - any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed. The term shall not include the Sisseton-Wahpeton Sioux Tribe.
- 12-03-12 Sale or Sell - to exchange, barter, possess, or traffic in; to solicit or receive an order for; to keep or expose for sale; to deliver for value; to peddle; to possess with intent to sell; to transfer to anyone for sale or resale.
- 12-04-01 **ESTABLISHMENT OF TOBACCO OUTLETS**
The Council may establish one or more tobacco outlets within the Lake Traverse Indian Reservation and within Indian Country under its jurisdiction as the Council in its sole discretion deems necessary to provide adequate service to consumers of cigarettes and tobacco products.
- 12-05-01 **NATURE OF OUTLET**
Each tobacco outlet established pursuant to this Chapter shall be a Tribal tobacco outlet and shall be operated and managed for the Tribe by a manager employed by the Tribe.

12-06-01 PURCHASE BY TRIBE

All tobacco products sold within Indian Country under the jurisdiction of the Tribe, shall be purchased wholesale by the Tribe and held for resale at Tribal tobacco outlets only. All tobacco products purchased by the Tribe pursuant hereto shall be purchased with Federally restricted funds.

12-07-01 TAX IMPOSED

There is hereby levied and there shall be collected as hereinafter provided, a tax upon the handling and distribution of cigarettes, and upon the sale, use, consumption and possession of cigarettes by a consumer within Indian Country under the jurisdiction of the Tribe. The tax shall be in the amount of \$.04 per package on each package of cigarettes containing 20 cigarettes or less. If the package contains more than 20 cigarettes, a tax of \$.05 shall be imposed for each 20 cigarettes or fractional part thereof contained therein.

12-07-02 There is hereby levied and there shall be collected as hereinafter provided, a tax upon the handling and distribution of tobacco products other than cigarettes and upon the sale, use, consumption, and possession of tobacco products other than cigarettes by a consumer within the Indian Country under the jurisdiction of the Tribe. The tax shall be in the amount of four percent (4%) of the retail selling price provided that there shall be no tax on the sale of tobacco products other than cigarettes on any sale where the total amount is less than one dollar (\$1.00).

12-07-03 The Council may levy an additional tax upon the handling, distribution, sale, use, consumption, and possession of cigarettes and other tobacco products as it deems desirable.

12-07-04 The excise tax levied hereunder shall be a tax upon the distribution and sale of cigarettes and other tobacco products by the Tribe only, and shall not constitute as assessment or license fees upon members of the Tribe or upon non-members doing business within Indian Country under the jurisdiction of the Tribe.

12-08-01 TOBACCO PRODUCTS FEDERALLY RESTRICTED TRIBAL PROPERTY

The entire stock of tobacco products distributed hereunder shall remain federally restricted tribal property owned and possessed by the Tribe until sale to the ultimate consumer.

12-09-01 STAMPS OR METERING MACHINE IMPRINT USED TO EVIDENCE TAX PAYMENT

The payment of the tax imposed by this Chapter shall be evidenced by the affixing of stamps or by the impression of an imprint by suitable metering machines approved by the Tribal Treasurer, to the packages containing the cigarettes as hereinafter provided.

- 12-10-01 STAMPS SECURED BY TRIBAL TREASURER**
The Tribal Treasurer shall secure stamps, of such design and denomination as he shall prescribe, suitable to be affixed to packages of cigarettes as evidence of the payment of the tax imposed by this Chapter. The Tribal Treasurer shall keep accurate records of all stamps provided to any manager or distributor.
- 12-11-01 RESALE OF STAMPS PROHIBITED. REPOSSESSION OF UNUSED AND CANCELLED STAMPS**
No manager or distributor shall sell or transfer any stamps issued under the provisions of this chapter. The Tribal Treasurer shall repossess any unused, uncanceled stamps under rules and regulations issued pursuant to this Chapter by the Treasurer.
- 12-12-01 USE OR POSSESSION OF COUNTERFEIT STAMPS AS OFFENSES**
Any person who shall fraudulently make or utter or shall forge or counterfeit any stamp prescribed by the Tribal Treasurer under the provisions of this Chapter, 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 counterfeit stamp, or who shall knowingly possess any such false, altered, forged, or counterfeit stamp, or who shall use more than once any stamp provided for and required by this Chapter, for the purpose of evading the tax thereby imposed, shall be guilty of an offense, and upon conviction thereof, shall be imprisoned for a period not to exceed six (6) months, or fined in an amount not to exceed five hundred dollars (\$500.00), or both such fine and imprisonment.
- 12-13-01 USE OF APPROVED METERING MACHINE AUTHORIZED BY THE TREASURER IN LIEU OF STAMPS**
The Tribal Treasurer, if he shall determine that it is practicable to stamp by impression, packages of cigarettes or tobacco products by means of a metering machine, may in lieu of the affixing of stamps as provided by this Chapter, authorize any manager or distributor to use any metering machine approved by him.
- 12-14-01 TRIBAL TREASURER APPOINT ASSISTANTS**
Subject to final approval of the Tribe, the Tribal Treasurer may designate and appoint one or more persons as his agent to provide one or more persons as his agent to provide stamps to a manager or distributor. It shall be the duty of such person to transmit to the Tribal Treasurer a report showing the number of stamps distributed. The report required by this Section shall be transmitted to the Tribal Treasurer on the first and fifteenth day of each calendar month.

- 12-15-01 AFFIXING OF STAMPS BY MANAGER OR DISTRIBUTOR**
Each manager or distributor shall affix or cause to be affixed, in such manner as the Tribal Treasurer may specify in regulations issued pursuant to this Chapter, to each individual package of cigarettes, to cartons containing more than one individual package of three, four, or five cigarettes sold or distributed by him, stamps of the proper denomination, as required by this Chapter. Such stamps must be affixed by a manager or distributor before the cigarettes or other tobacco products are transferred out of the premises of the tobacco outlet of the distributor.
- 12-16-01 AFFIXING OF STAMPS OR IMPRINT BY MANAGER**
Each manager upon opening any shipping package containing any unstamped cigarettes or other tobacco products for purposes of sale or delivery to consumers, shall immediately affix or imprint the tax stamps required by this Chapter.
- 12-17-01 SALE OF UNSTAMPED CIGARETTES OR OTHER TOBACCO PRODUCTS PROHIBITED**
No manager shall sell, and no other person shall sell, offer for sale, display for sale, or possess with intent to sell, any cigarettes which do not bear stamps approved by the Tribal Treasurer as provided by this Chapter, evidencing the payment of the tax imposed by this Chapter.
- 12-17-02** Any person who shall sell, offer for sale, display for sale, or possess with intent to sell, any cigarettes or other tobacco products which do not bear stamps approved by the Tribal Treasurer evidencing the payment of the tax imposed by this Chapter, shall be fined not more than five hundred (\$500.00), or be imprisoned in the Tribal jail for not more than six (6) months, or both.
- 12-18-01 ENFORCEMENT POWERS OF TRIBAL TREASURER**
The Tribal Treasurer and his designated or appointed assistants are charged with the duty of enforcing the provisions of this Chapter, and are given the power of peace officers and authorized and empowered to arrest any violator of the provisions of this Chapter; to enter complaints before any Court of competent jurisdiction; and to seize without formal warrant and use as evidence, any forged, counterfeited, spurious, or altered stamp found in possession of anyone in violation of this Chapter.
- 12-19-01 UNSTAMPED CIGARETTES AND OTHER TOBACCO PRODUCTS AS CONTRABAND**
Any cigarettes or other tobacco products found at any place in Indian Country within the jurisdiction of the Tribe without stamps affixed thereto approved by the Tribal Treasurer as required by this Chapter, unless such cigarettes or other tobacco products shall be in the

possession of a manager in the original unopened shipping packages or unless they shall be in a course of transit from outside of the Indian Country, jurisdiction of the Tribe and consigned to the Tribe are declared to be contraband goods and may be seized by the Tribal Treasurer, his agents, or employees, or by any peace officer of the Tribe, when directed by the Tribal Treasurer to do so, without a warrant.

12-20-01 FORFEITURE OF CONTRABAND CIGARETTES AND OTHER TOBACCO PRODUCTS

Any cigarettes or other tobacco products seized under the provisions of this Chapter shall be confiscated and forfeited to the Tribe, and the Tribal Treasurer shall sell such confiscated property in a tobacco outlet. The proceeds from such sale shall be forthwith remitted to the Tribal Treasurer as part of the income from the enforcement of this Chapter.

12-21-01 MONTHLY REPORTS BY MANAGERS

On or before the fifteenth day of each month, each manager shall render to the Tribal Treasurer a verified report of all sales and deliveries on forms prescribed by the Treasurer, showing the quantity of cigarettes and other tobacco products sold or delivered to the tobacco outlet during such period of time and the amount of stamps on hand at the end of the reporting period and such other information as the Treasurer shall require.

12-22-01 MANAGER RESPONSIBLE FOR COLLECTION AND REMITTANCE OF EXCISE TAX

The manager shall be responsible for the collection of the excise tax imposed by this Chapter from every purchaser of tobacco products. The taxes collected pursuant to this Chapter shall be remitted by the manager to the Tribal Treasurer in a manner and at intervals prescribed by the Council.

12-23-01 MANAGER HIRING AUTHORITY

Subject to the final approval of the Tribe, a manager shall have authority to employ such persons as he deems necessary to efficiently operate a tobacco outlet.

12-24-01 DISPOSITION OF PROCEEDS OF TAX

The money received by the Tribal Treasurer from the tax imposed by this Chapter shall be credited to the special account of the Tribe to be used in the provision of Tribal government services which shall be limited to:

1. Police and fire protection;

2. Operation of the Tribal Court;
3. Road construction, repair, and maintenance;
4. Water, sewage, and garbage disposal;
5. Education;
6. Public health;
7. Development of Tribal enterprises;
8. Recreation; and
9. Other appropriate government functions.

12-25-01 SOVEREIGN IMMUNITY OF THE TRIBE

Without the express written consent of the Tribe, pursuant to appropriate action by the Council, a manager or distributor shall not be authorized to waive the sovereign immunity of the Tribe from suit, nor shall a manager or distributor be authorized to create any liability on behalf of the Tribe or to utilize Tribal credit. Any such written consent and action by the Council in duration and scope. Any action taken by a manager or distributor pursuant to authority vested in him by the Council under this Section shall be in writing, shall be related to a specific and expressly identified transaction. Any written statement of a manager or distributor relating to the sovereign immunity of the Tribe or the creation of a Tribal liability shall be approved by the Council of the Tribe before it shall have any binding effect on the Tribe.

12-26-01 RESTRICTED SALES TO NON-INDIANS

A tobacco outlet may not sell more than six (6) cartons nor more than \$30.00 of other tobacco products per sale to a non-Indian.

12-27-01 RESTRICTED SALES TO MINORS

A tobacco outlet may not sell any tobacco products to any person under the age of sixteen (16) years.

12-28-01 UNAUTHORIZED SALES OF TOBACCO PRODUCTS

The sale of the or tobacco products by any person within the jurisdiction of the Tribe and within Indian Country under the jurisdiction of the Tribe is prohibited.

12-29-01 TRANSACTIONS CONSTITUTIONALLY EXEMPT FROM TAXATION

Nothing contained in this Chapter shall be construed to impose a tax on any transaction, the taxation of which by this Tribe is prohibited by the Constitution of the Tribe or by the Constitution of the United States.

12-30-01 CIVIL ACTIONS

The Tribe may bring a civil action against any manager or distributor or other person to enforce compliance with this Chapter. Such action shall be brought in accordance with Tribal or other applicable law. Such action shall include a cause of action to recover taxes owed and not paid to the Tribe in accordance with the provisions of this Act.

12-31-01 VIOLATIONS - PENALTIES

Except as otherwise provided in this Act, any person violating the provisions of this Act shall be guilty of an offense and be subject to a fine of not more than five hundred dollars (\$500.00). The Tribe's law enforcement officers are empowered to enforce the provisions of this Act.

12-32-01 ADOPTION OF REGULATIONS

The Tribal Treasurer is authorized to promulgate regulations consistent with the provisions of this Chapter which are necessary to the efficient administration of the tobacco excise laws of tobacco outlets.

12-33-01 EFFECTIVE DATE

This Act shall become effective on December 1, 1978.

12-34-01 SEVERABILITY

If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgement shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgement shall have been rendered.

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