

SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 51

USE TAX ACT

BE IT ENACTED BY THE SISSETON-WAHPETON SIOUX TRIBAL COUNCIL to provide revenue for social and economic advancement of its members, by exercising its inherent authority to tax under Section 1 (G), and Section 1 (H) of the constitution.

51-01-01 SHORT TITLE OF CHAPTER

This Chapter is known and may be cited as the "Use Tax Act of 1984".

51-02-01 DEFINITION OF TERMS

The following words, terms, and phrases when used in this Chapter shall have meanings ascribed to them in this section:

51-02-02 Contract - means and includes any activity engaged in by any person or caused to be engaged in by him/her with the object of gain benefit or advantage either direct or indirect.

51-02-03 Person - includes any individual, firm, co-partnership, joint adventure, association, corporation, municipal corporation, trust, business trust, receiver or any group or combination acting as a unit and the plural as well as the singular in number.

51-02-04 Purchase Price - means the total amount for which the property is sold, including services such as labor cost, that are part of the sale. Valued in money, whether paid in money or other wise and includes any amount for which credit is given to the purchaser by the seller without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses or any other expenses whatsoever, provided that cash discount allowed and taken on sales shall not be included, nor shall the sales price include the amount for labor or service rendered in installing, applying, remodeling, or repairing property sold when such labor or service is incidental to the selling of such tangible personal property.

51-02-05 Storage - means and includes any keeping or retention within the jurisdiction of this tribe for any purpose except sale in the regular course of business.

- 51-02-06 Tangible Personal Property - means tangible goods, wares and merchandise, propane, fuel, electrical power and telephone, when furnished or delivered by any person, contractor or subcontractor to the Tribe, any political subdivision, program or agency of the Tribe or to or on behalf of any federal agency delivering services or programs within the original exterior boundaries of the Lake Traverse Indian Reservation for the benefit of the Tribe or tribal members.
- 51-02-07 Treasurer - means the elected Treasurer of the Sisseton-Wahpeton Sioux Tribe or any duly authorized and appointed assistant, deputies or agents of said Treasurer charged with the administration or enforcement of this Chapter
- 51-02-08 Tribe - means the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse in North Dakota and South Dakota.
- 51-02-09 Use - means and includes the exercise or right or power of tangible personal property incidental to the ownership of that property, except that it shall not include the sale of that property in the regular course of business.
- 51-02-10 Within the Jurisdiction of the Tribe - shall mean and include all areas within the original exterior boundaries of the Lake Traverse Indian Reservation that are held by the United States in trust for the Tribe or any Individual Indian, all other lands owned by the Tribe or any Individual Indian, all allotments covered by 18 U.S.C. 1151 (c), all areas that are part of the Tribe's dependent Indian community covered by 18 U.S.C. 1151 (b).
- 51-03-01 **Tax on Tangible Personal Property**
An excise tax is hereby imposed on the privilege of the use, storage, and consumption, within the jurisdiction of the Sisseton-Wahpeton Sioux Tribe, of tangible personal property purchased on or after February 10, 1984, at the rate of five percent (5%) of the purchase price of said property.
- 51-04-01 **Limitation of the Imposition of Tax.**
The tax provided by Section 51-03-01 shall be imposed on the use, storage and consumption by contractors and subcontractors, of tangible personal property used, stored and consumed within the jurisdiction of the Tribe.
- 51-05-01 **Tax Imposed on Person Using Property**
The tax provided by Section 51-03-01 is hereby imposed upon every person using, storing, or otherwise consuming such property within the jurisdiction of the Tribe until such tax has been paid directly to the Treasurer as hereinafter provided.

1. Schedule for the Collection of Tax.

The following schedule is hereby adopted as the basis for collection of the tax imposed by the Chapter from the users subject to the tax imposed by this Chapter:

\$.01 to	\$.09	-	.00
.10 to	.29	-	.01
.30 to	.49	-	.02
.50 to	.69	-	.03
.70 to	.89	-	.04
.90 to	1.09	-	.05

and on each additional dollar or fraction thereof an increment in the tax according to this schedule.

51-06-01 CONTRACTORS AND SUBCONTRACTORS TAXED ON PROPERTY USED IN PERFORMANCE OF CONTRACT

Where a contractor or subcontractor uses tangible personal property in the performance of a contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the time of the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to pay the sales or use tax, such contractor or subcontractor shall pay a tax at the rate prescribed in Section 51-03-01, unless such property has been previously subjected to a sales or use tax by the Tribe and the tax thereon has been paid.

51-07-01 EXEMPTION OF PROPERTY SUBJECT TO SALES TAX

The use within the jurisdiction of the Tribe of tangible personal property, the gross receipts from the sale of which are to be included in the measure of the sales tax imposed by Chapter 10, and any amendments made or which may hereafter be made thereto, is hereby specifically exempted from the tax imposed by this Chapter.

51-08-01 CONSTITUTIONAL EXEMPTIONS FROM TAX

The use within the Tribe of tangible personal property, the storage, use, or other consumption of which this Tribe is prohibited from taxing under the Constitution or laws of the United States of America, or under the Constitution of this Tribe, is hereby specifically exempted from the tax imposed by this Chapter.

51-09-01 COLLECTION OF TAX, SURETY BOND FILED BY CONTRACTOR OR SUBCONTRACTOR

The treasurer may, when in his/her judgement it is necessary and advisable to do so in order to ensure the collection of the tax levied under this chapter, authorize any person subject to such tax, to file with him/her a bond issued by

a surety company approved by the Treasurer, in such amount as the Treasurer may fix, to secure the payment of any tax or penalties due or which may become due from such person.

51-10-01 SECURITIES DEPOSITED BY CONTRACTOR OR SUBCONTRACTOR IN LIEU OF BOND

In lieu of such bond, securities approved by the Treasurer, in such amount as he/she may prescribe, may be deposited with him/her, which securities shall be kept in the custody of the Treasurer and may be sold by him/her at a public or private sale, without notice to the depositor thereof, if it becomes necessary to do so in order to recover any tax or penalties due under this Chapter shall be returned to the person who deposited the securities.

51-11-01 CONTRACTOR AND SUBCONTRACTOR PAYMENTS OF TAX DUE

Any contractor or subcontractor who use, stores, or otherwise consumes any property subject to tax hereunder shall pay to the Treasurer the total tax herein imposed upon all such property by the completion of performance of any contract or subcontract, or any extension thereof, or within one year after the commencement of any contract or subcontract term, whichever period is shorter.

51-12-01 COLLECTION OF TAX. TRIBE AND FEDERAL AGENCY 10% WITHHOLDING TAX

Whenever the Tribe, any political subdivision, program or agency of the Tribe, or any federal agency delivering services or programs within the original exterior boundaries of the Lake Traverse Indian Reservation for the benefit of the Tribe or tribal members enters into a contract or subcontract with any person, contractor, subcontractor, the Tribe, such entity of the Tribe, and such federal agency shall withhold from the person, contractor or subcontractor ten percent (10%) of the purchase price. The sums withheld from the person, contractor, or subcontractor shall only be released and paid upon written certification of the Treasurer that all taxes due under this Chapter have been paid. In the event that all taxes due under this Chapter have not been paid, the Treasurer shall collect the taxes due from the sums withheld under this section and shall certify that such sums that may remain after such collection of taxes may be paid to the person, contractor, or subcontractor. When collection of taxes occurs pursuant to the provisions of this section, a person, contractor or subcontractor shall have no legal or contract claim to receive from any entity the full amount of the ten percent (10%) withheld and shall only have a claim to receive such sums as may remain after deduction of taxes due.

51-13-01 CREDIT FOR SALES OR USE TAX PAID TO ANOTHER TRIBE OR TO A STATE. RECIPROCAL GRANT OR CREDIT REQUIRED

The amount of any tax imposed with the respect to tangible property shall be rendered by the amount of any sales or use tax previously paid by the taxpayer with respect to the property on accounts of liability to another Tribe or a state or the political subdivisions thereof to the extent that such tax equals or exceeds the rate of the tax in this Tribe. If the sales or use tax of the other tribe or of a state is less than the tax of this tribe, the taxpayer shall be subject to the payment of the balance to this Tribe. No credit shall be given under this section for the taxes paid on tangible personal property subject to the credit of this section in another tribe or a state or the political subdivisions thereof if that tribe or state does not reciprocally grant a credit for the taxes paid on similar tangible personal property in this tribe.

51-14-01 INTEREST CHARGE FOR DELINQUENCY IN RETURNS OR PAYMENTS

Any person failing to pay any tax or amount requires to be paid by this Chapter within the time required by this Chapter, shall be subject to an interest charge of two percent (2%) on the amount due if the same shall not be paid within fifteen days and if delinquent and unpaid thereafter an amount of eight percent (8%) per year or part thereof until the same is paid. Such interest charge shall be paid to the Treasurer and disposed of in the same manner as other receipts under this Chapter. Unpaid interest charges may be enforced in the same manner as the tax imposed by this Chapter.

51-15-01 DETERMINATION OF AMOUNT OF TAX IN ABSENCE OF RETURN. NOTICE TO PERSON FAILING TO MAKE RETURN

When any person subject to tax fails to make payment as required, the Treasurer, after notice to such person and hearing thereon, shall determine the amount of such tax according to his/her best judgment and information, which amount so fixed shall be prima facie correct and such person having failed to make the payment shall be notified by ordinary mail of the Treasurer's determination, from which he/she may appeal within ten days to the Tribal Court.

51-16-01 TREASURER'S CERTIFICATE AS PRIMA FACIE EVIDENCE OF FAILURE TO FILE RETURN OR PAY TAX

The certificate of the Treasurer to the effect that a tax or amount required to be paid by this Chapter has not been paid, shall be prima facie evidence thereof.

51-17-01 RECORDS MAINTAINED BY USERS. EXAMINATION AND INVESTIGATION BY TREASURER. ACCESS TO RECORDS

Every person using, storing, or otherwise consuming within the jurisdiction of the Tribe tangible personal property purchased on or after February 10, 1984, shall keep such records, receipts, invoices, and other pertinent papers as the Treasurer shall require, in such form as the Treasurer shall require. The Treasurer and any of his/her duly authorized agents are hereby authorized to examine the books, papers, and records of any person liable for the tax imposed by this Chapter, and investigate the character of the business of any such person in order to ascertain and determine the amount due under the provisions of this Chapter. Any such books, papers, and records shall be made available within the jurisdiction of the Tribe for such examination upon reasonable notice when the Treasurer shall deem it advisable and shall order. Such books, papers, and records shall be preserved for a period of three years unless the Treasurer, in writing, authorized their destruction or disposal at an earlier date.

51-18-01 RETURN AND INVESTIGATIONS CONFIDENTIAL. UNAUTHORIZED DISCLOSURE OF INFORMATION AS MISDEMEANOR. PENALTY

All information received by the Treasurer pursuant to this chapter, or from any investigation conducted under the provisions of this chapter, shall be confidential, except for official purposes, and it shall be unlawful for any officer or employee under the supervision of or employed by the Treasurer to divulge any such information in any manner, except in accordance with a proper judicial order or as otherwise provided by law. Any such officer or employee who divulges any such information in any manner, except in accordance with a proper judicial order or as otherwise provided by law, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than one hundred dollars (\$100.00) nor more than three hundred and sixty dollars (\$360.00), or be imprisoned in the Tribal jail for not less than one nor more than six months, or by both such fine and imprisonment, in the discretion of the Court.

51-19-01 REVOCATION OF USER'S AUTHORITY TO DO BUSINESS

Whenever any person using, storing, or otherwise consuming within the jurisdiction of the Tribe tangible personal property purchased on or after February 10, 1984, fails to comply with any of the provisions of this Chapter or any orders, rules or regulations of the Treasurer prescribed and adopted under this Chapter, the Treasurer may, upon notice and hearing as hereinafter provided, by order revoke the authority of such person to do business within the jurisdiction of the Tribe.

51-20-01 NOTICE AND HEARING ON REVOCATION OF AUTHORITY TO DO BUSINESS
No order authorized in Section 51-19-01 shall be made until the user is given the opportunity to be heard and show cause why such order should not be made, and shall be given five days notice of the time, place and purpose of such hearing. Such notice shall be served in the manner provided for service of summons in civil actions.

51-21-01 REINSTATEMENT OF AUTHORITY TO DO BUSINESS
The authority of a user which has been cancelled or revoked as provided in Section 51-19-01 and Section 51-20-01 shall not be reinstated by the Treasurer until all of the use tax due the Tribe has been paid. Reinstatement of the authority of a user to do business with the Tribe shall be authorized in the discretion of the Treasurer.

51-22-01 PENALTY FOR CONTINUATION OF BUSINESS AFTER REVOCATION OF AUTHORITY
Any person who shall continue to do business after his/her authority to do so has been cancelled or revoked, as provided in any action of this Chapter, shall pay a penalty of not less than one hundred dollars (\$100.00) nor more than three hundred and sixty dollars (\$360.00), to be recovered by an action brought by the Treasurer. Any such person shall also be subject to forcible closure and removal from the jurisdiction of the Tribe.

51-23-01 APPEAL FROM TREASURER TO TRIBAL COURT. NOTICE OF APPEAL. HEARING DE NOVO
An appeal from any decision of the Treasurer may be taken by a taxpayer to the Tribal Court. Unless otherwise provided, notice of appeal must be filed within thirty days after notice of the decision of the Treasurer. All appeals shall be heard by the court de novo.

51-24-01 JEOPARDY ASSESSMENT OF USE TAX. LIEN AND DISTRESS WARRANT. BOND TO PAY TAX
If the Treasurer believes that the collection of taxes will be jeopardized by delay, he/she may immediately make an assessment of the estimated tax and penalty, and make payment thereof from the taxpayer. If such payment is not made, a lien may be filed and a distress warrant issued. The Treasurer shall be permitted to accept a bond from the taxpayer to satisfy collection until the amount of tax legally due shall be determined and paid.

51-25-01 TAX LIEN ON PROPERTY OF TAXPAYER
Whenever any taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or in addition to such tax, together with the costs that may accrue in addition thereto, shall be a lien in favor of the Tribe upon all property and rights to property, whether real or personal belonging to said taxpayer.

51-26-01 INDEX OF TAX LIENS MAINTAINED BY CLERK OF COURTS. CONTENTS
The Clerk of Courts shall prepare and keep in his/her office a book to be known as "index of tax liens", so ruled to show in appropriate columns the following data, under the names of taxpayers, arranged alphabetically:

1. the name of the taxpayer;
2. the name "Sisseton-Wahpeton Sioux Tribe" as claimant;
3. time notice of lien was received;
4. date of notice;
5. amount of lien then due; and
6. when satisfied.

51-27-01 NOTICE OF LIEN FILED WITH CLERK OF COURTS

In order to preserve the lien provided by Section 51-25-01 against subsequent mortgages, purchasers, or judgment creditors for value and without notice of the lien, on any property situated within the jurisdiction of the Tribe, the Treasurer shall file with the Clerk of Courts, a notice of said lien, signed by the Treasurer or his/her deputy and in such form as he shall elect, but containing the information prescribed in Section 51-26-01 for the Clerk of Court's index.

51-28-01 ENDORSEMENT AND PRESERVATION OF NOTICE OF LIEN INDEXING AND RECORDING

The Clerk of Courts shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall forthwith record said lien, and said lien shall be effective from the time of the indexing thereof.

51-29-01 RECORDING OF SATISFACTION OF TAX IN LIEN RECORD

Upon payment of a tax as to which the Treasurer has filed notice with the Clerk of Courts, the Treasurer shall forthwith file with the Clerk of Courts a satisfaction of said tax and the Clerk of Courts shall enter said satisfaction on the notice on file in his/her office and indicate said fact on the index aforesaid.

51-30-01 DISTRESS WARRANT ON PROPERTY SUBJECT TO LIEN. SEIZURE AND SALE OF PROPERTY. COMPENSATION OF CHIEF OF POLICE

After a notice of lien has been filed as provided in Section 51-27-01, the Treasurer may at any time issue a distress warrant and deliver said warrant to the chief of police. Immediately upon receipt of the warrant, the chief of police shall proceed to collect the tax by seizure and sale of personal property within the jurisdiction of the Tribe and shall remit the tax so collected to the Treasurer. For such services, the chief of police shall not be compensated.

51-31-01 ENDORSEMENT AND RETURN OF UNCOLLECTIBLE DISTRESS WARRANT
When the chief of police is unable to find property of the taxpayer which may be seized and sold, he shall within thirty days after the receipt of the warrant, endorse upon the face of the warrant the word "uncollectible" and return the warrant to the Treasurer.

51-32-01 PERSONAL LIABILITY OF CHIEF OF POLICE FOR FAILURE TO EXECUTE DISTRESS WARRANT
Failure or refusal of the chief of police to attempt to execute a distress warrant when requested to do so, shall make the chief of police personally liable for the delinquent tax, and said tax may be recovered in an action brought against him and his sureties by the Treasurer.

51-33-01 PENALTY ADDED FOR DELINQUENCY IN PAYMENT OF TAX
Any person subject to tax under this Chapter who fails to pay such tax within the time prescribed shall be subject to a penalty of ten percent (10%) of the tax for the first year of delinquency or part thereof and six percent (6%) for each additional year or part thereof.

51-34-01 CIVIL ACTION FOR COLLECTION OF TAX AND PENALTY EXEMPTIONS RESTRICTED TO THOSE MADE ABSOLUTE. INJUNCTION AGAINST ENGAGING IN BUSINESS
In any case of failure to pay the tax, any interest thereon, or penalty due, the amount of such tax, interest or penalty shall constitute a debt due to the Tribe and may be collected in action of debt brought by the Treasurer in the Tribal Court. No exemptions from an execution of a judgement so obtained shall be permitted except those made absolute by the exemption statutes of this Tribe. The remedy of removal from the jurisdiction of the Tribe is also applicable where the authority of a person to do business within said jurisdiction has been cancelled or revoked by the Treasurer.

51-35-01 VIOLATION OF REQUIREMENTS AS MISDEMEANOR. PENALTY
Any person engaged in the business of using tangible personal property within the jurisdiction of the Tribe, and who is subject to the tax imposed by this Chapter, who fails to make and furnish any return by this Chapter required to be made, or who shall make the return required but shall fail to pay the tax or any part thereof when due, or to keep books and records as required herein, or who willfully violates any rule or regulation of the Treasurer or his/her agents for the purpose of examination, his/her books and records as required herein, or refuses to furnish other data required by the Treasurer shall be guilty of a misdemeanor and upon conviction thereof, be subject to a fine not to exceed one hundred (\$100.00) for each offense, or to imprisonment not to exceed thirty days, or both such fine and imprisonment in the discretion of the Court.

- 51-36-01 INTENT TO EVADE AS FELONY. PENALTY**
 Any person subject to the tax imposed by this Chapter who attempts to defeat or evade the tax imposed by this Chapter shall be guilty of a felony and shall, for each such offense be fined not to exceed five hundred dollars (\$500.00) or to be imprisoned not to exceed six months, or to be subject to both such fine and imprisonment in the discretion of the Court.
- 51-37-01 ENFORCEMENT AND ADMINISTRATION BY TREASURER**
 The Treasurer is hereby charged with the administration and enforcement of the provisions of this Chapter.
- 51-38-01 RULES AND REGULATIONS FOR ADMINISTRATION**
 The Treasurer shall have the power to adopt and promulgate rules and regulation for the administration and enforcement of this Chapter.
- 51-39-01 REVENUE CREDITED TO TAX REVENUE ACCOUNT**
 All Revenue arising under the operation of this Chapter shall immediately be turned over to the Treasurer and by him/her credited to the tax revenue account of the Tribe.
- 51-40-01 CREDIT OR REFUND OF ERRONEOUS OVERPAYMENT. TIME ALLOWED FOR ASSERTING CLAIM**
 If it shall appear that an amount of tax, penalty, or interest has been paid which was not due under the provisions of this Chapter, whether as the result of a mistake of fact or an error of law, then such amount shall be credited against any tax due or to become due, under this Chapter from the person who made the erroneous payment, or such amount shall be refunded to such person by the Treasurer, provided that claim for credit or refund as above provided shall be filed with the Treasurer within three years after such erroneous payment was made or said claim shall be forever barred.
- 51-41-01 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.

S. W. S. T. C. D.:

Amendment

New Adoption

Judicial Approved

2-24-88

Council Adopted

3-01-88