

Title 17 – Tax
Chapter 3 – Retail Sales Tax

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Legislative History

Enacted:

Ordinance 302 Amending STC 17, Chapter 3 and Ordinance No. 185 (2/23/12); BIA (2/28/12).

Ordinance 185 Ordinance Regulating Taxation and Repealing and Superseding Ordinance Nos. 50, 85-11-53 & App. A, 114, 126, 128 & 140 (9/30/03), BIA (10/8/03).

Repealed:

Ordinance 114 Retail Food and Beverage Tax Ordinance (2/28/96), BIA (3/28/96).

17-03.010 Title.

This Chapter shall be referred to as the “Swinomish Retail Sales Tax Code.”

[History] Ord. 302 (2/23/12); Ord. 185 (9/30/03); Ord. 114 (2/28/96).

17-03.020 Purpose and Scope.

The purpose of this Chapter is to assess and collect a tax on retail sales sold by the Gaming Enterprise, the Tribally-owned gas stations, the Tribally-owned RV Park, and the Swinomish Fish Company.

[History] Ord. 302 (2/23/12); Ord. 185 (9/30/03); Ord. 114 (2/28/96).

17-03.025 Authority.

This Chapter is enacted pursuant to authority provided Article VI, Section 1(h) and (l) of the Swinomish Constitution, as amended and pursuant to the inherent sovereign powers of the Swinomish Indian Tribal Community.

[History] Ord. 302 (2/23/12); Ord. 185 (9/30/03); Ord. 114 (2/28/96).

17-03.030 Findings.

The Swinomish Indian Senate finds that:

- (A) The power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management. It 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. Taxation is of vital importance to the Tribe's economy and political integrity, and to the health, welfare and economic well-being of its members and the Reservation community.
- (B) Among the benefits provided by the tribal government to tribal members and to non-members residing, visiting or conducting business upon the Reservation are the following: the provision of governmental services, including public sewage collection systems, water systems to provide safe drinking water and fire protection, tribal roads, solid waste collection, and social services and education programs; the maintenance of public health, safety, and law and order, including tribal police, fisheries enforcement, hazardous emergency response, environmental protection, comprehensive land use planning and regulation, and the provision of a Tribal Court system with general jurisdiction for the resolution of civil disputes and limited jurisdiction for the prosecution of criminal actions; the protection of Reservation lands and resources; the provision of public recreational amenities and facilities such as athletic fields, a gymnasium, meeting rooms, parks, and tribally owned tidelands; the support of cultural and religious events and activities; the promotion and regulation of Reservation businesses and economic development; and the provision of employment to both members and non-members of the Tribe.
- (C) The Tribe has been able to obtain numerous federal and state grants, low interest loans, and other programs that have, in part, financed the provision of public services and benefits to the Reservation community. The full cost of these needed and beneficial programs and services are not covered by the programs, themselves, however, and it is necessary for the Tribe to raise supplemental revenues locally to continue to provide these essential public services.
- (D) The entire Reservation community, both tribal members and non-members, whether visiting, residing, employed or otherwise doing business on the Reservation, benefits

from these tribal governmental services and programs directly and because the tribal services and programs supplement or replace other governmental programs and relieve other units of government from the full burden of these programs.

- (E) It is appropriate, therefore, that a portion of the costs of these essential government services be borne by persons engaged in or benefiting from residential, business or recreational activities on the Reservation, who thereby benefit from governmental services provided by the Tribe.
- (F) Additionally, the Tribe makes contributions to local fire and police agencies to defray a portion of the cost of fire protection, emergency medical services, and law enforcement assistance, where necessary, on the Reservation. Revenues are needed by the Tribe to fund such contributions.
- (G) In the 1970s, the Tribe designated the north end of the Reservation as a center of its economic development: the North End Economic Zone. The Tribe has since constructed a bingo hall, a Class III casino, bars, a restaurant, a RV park and a gas station/convenience store, and roads connecting these enterprises as well as parking lots for its customers. The Tribe is in the final stages of constructing a destination lodge and restaurant in the hopes of attracting additional customers to its casino and bingo hall and gas station/convenience store.
- (H) The value of the businesses in the North End Economic Zone is generated in part by their location; in part by their physical attraction and convenience; in part by their facilities including restaurants, bars, gift shops, gas station, convenience store, gaming area; and in part by the skill of its management in designing and operating the businesses as well as in maintaining its facilities—all of which was made possible by the efforts of the Tribe, the Swinomish Development Authority, and the Gaming Enterprise Management Board.
- (I) These economic enterprises of the Tribe are supported by and benefit from numerous programs and services provided by the Tribe as described above in subsection B above.

[History] Ord. 302 (2/23/12);

17-03.040 Definitions.

- (A) For the purposes of this Chapter, the following words and phrases have the following meanings, unless explicitly stated otherwise:
 - (1) **"Buyer"** means, without limiting the scope hereof, every person who receives goods or services from a seller in exchange for a promise to deliver to the seller, or for the actual delivery to the seller, of money or other goods or services of value to the seller.

- (2) **"Cash Discount"** means a deduction from the invoice price of goods or charge for services that is allowed if the bill is paid on or before a specified date.
- (3) **"Gaming Enterprise"** means the subordinate economic enterprise and subdivision of the Swinomish Indian Tribal Community tribal government established by STC Title 16 Chapter 5 – Swinomish Gaming Enterprise.
- (4) **"Local retail sales tax"** means the combined Washington local retail sales taxes applicable in the area.
- (5) **"Retail selling price"** means the ordinary, customary, or usual price paid by the consumer for the item which price does not include the Tribal retail sales tax.
- (6) **"Retail Sale"** means for purposes of this Chapter:
 - (a) A retail sale consisting solely of the sale of tangible personal property shall be deemed to have occurred at the retail outlet at or from which delivery is made to the consumer.
 - (b) A retail sale consisting essentially of the performance of personal business or professional services shall be deemed to have occurred at the place at which such services were primarily performed;
- (7) **"RV Park"** means the trailer camp or recreational vehicle park associated with the Gaming Enterprise.
- (8) **"Sale"** means for the purposes of this Chapter any provision of services or the transfer of ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a **"retail sale."** It includes renting or leasing, conditional sales contracts, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price.
- (9) **"Seller"** means the person making a retail sale to a buyer.
- (10) **"Selling Price"** means the consideration, whether money, credits, rights, or other property, expressed in the terms of money paid or delivered by a buyer to a seller, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expenses whatsoever paid or accrued by the seller and without any deduction on account of losses; but shall not include itemized taxes paid by the buyer and the amount of cash discount actually taken by a buyer.

- (11) **"State"** means the state of Washington.
- (12) **"State retail sales tax"** means the Washington retail sales tax.
- (13) **"Swinomish Development Authority"** means the governmental subdivision of the Swinomish Indian Tribal Community of the Swinomish Indian Reservation, and the instrumentality created, entirely owned and controlled by the Swinomish Indian Tribal Community.
- (14) **"Swinomish Fish Plant"** means the governmental instrumentality of the Tribe chartered by STC Title 2 Chapter 9 – Charter of the Swinomish Fish Company.
- (15) **"Tribe"** means the Swinomish Indian Tribal Community.

(B) All other words and phrases shall have their ordinary and customary meanings.

[History] Ord. 302 (2/23/12); Ord. 185 (9/30/03).

17-03.050 Tax Imposed.

- (A) There is levied and there shall be collected a tax on each retail sale by
 - (1) the Gaming Enterprise;
 - (2) the Tribally- owned gas stations;
 - (3) the Tribally-owned RV Park; and
 - (4) the Swinomish Fish Company

in an amount equal to one hundred (100) percent of the state and local retail sales taxes.

(B) Should there be any future increase or decrease in the state and local retail sales taxes, the Tribal retail sales tax shall increase or decrease by no less than one hundred (100) percent of the increase or decrease in the combined state and local tax rates.

[History] Ord. 302 (2/23/12); Ord. 185 (9/30/03); Ord. 114 (2/28/96).

17-03.055 Tax Separate from Sales Price

- (A) The tax required by this Chapter to be collected by the seller may be stated separately from the selling price in any sales invoice or other instrument of sale. If not stated separately on the sales invoice or other instrument of sale, then the tax shall be accounted for separately in the records of the transaction by the seller.

- (B) For purposes of determining the tax due from the buyer to the seller and from the seller to the Tribal Treasurer, it shall be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this Chapter, but if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price shall not be considered the selling price.

[History] Ord. 302 (2/23/12).

17-03.060 Exempt Sales.

The tax levied in Section 17-03.050 shall not apply to the following items and transactions:

- (A) Prepackaged food products;
- (B) The retail value of foods and beverages given to customers or employees without charge as “complementaries;”
- (C) All cigarettes and tobacco products;
- (D) Gum and candy;
- (E) Motor vehicle fuel;
- (F) Distilled spirits, wine and beer sold in their original containers;
- (G) Newspapers; and
- (H) Products sold from vending machines.

[History] Ord. 302 (2/23/12); Ord. 185 (9/30/03); Ord. 114 (2/28/96).

17-03.065 Payment of Taxes.

The tax hereby imposed shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with this Chapter.

[History] Ord. 302 (2/23/12);

17-03.070 Collection and Remittance of Taxes.

- (A) Taxes shall be collected by the seller and remitted monthly to the Tribal Treasurer.

- (B) The seller shall maintain accurate written records of the retail sales, and shall make such records available for inspection by the Tribe's Treasurer and/or third party auditor retained by the Tribe. Records shall be maintained for no less than three years after the audit.

[History] Ord. 302 (2/23/12); Ord. 185 (9/30/03); Ord. 114 (2/28/96).

17-03.080 Penalties for Late Filing or Late Payment.

For returns and payments that are not received by the Tribal Treasurer when due, a penalty will be assessed for each month or part of a month the returns or payments are delinquent in an amount equal to two percent (2%) of the taxes due.

[History] Ord. 185 (9/30/03); Ord. 114 (2/28/96).

17-03.090 Repealer.

Ordinance No. 114 is hereby repealed.

[History] Ord. 185 (9/30/03).

17-03.100 Severability.

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

[History] Ord. 302 (2/23/12);

17-03.110 Effective Date.

This Chapter shall be effective upon approval by the Secretary of the Interior or the Secretary's designee.

[History] Ord. 185 (9/30/03); Ord. 114 (2/28/96).