

TRIBAL CODE
CHAPTER 43:
TRIBAL TAX CODE

| CONTENTS:

SUBCHAPTER I: GENERAL PROVISIONS

43.101 Purpose.....	43-6
43.102 Authority	43-6
43.103 Interpretation and Relation to Other Laws	43-6
43.104 Severability and Non-Liability	43-6
43.105 Effective Date	43-7
43.106 Definitions	43-7

SUBCHAPTER II: GROSS RECEIPTS TAX

43.201 Imposition of Gross Receipts Tax	43-10
43.202 New Business Exemption	43-10
43.203 Estimated Payments	43-10
43.204 Annual Return	43-10
43.205 Distribution of Tax Proceeds	43-11

SUBCHAPTER III: BUSINESS INCOME TAX

43.301 Imposition of Business Income Tax	43-11
43.302 Amount of Tax	43-11
43.303 Estimated Payments	43-12
43.304 Annual Return	43-12

SUBCHAPTER IV: HOTEL OCCUPANCY TAX

43.401 Imposition of Hotel Occupancy Tax 43-12
43.402 Estimated Payments 43-12
43.403 Annual Return 43-13
43.404 Distribution of Tax Proceeds 43-13

SUBCHAPTER V: CIGARETTE TAXES

43.501 Imposition of Cigarette Taxes 43-13
43.502 Estimated Payments 43-13
43.503 Annual Returns 43-14
43.504 Distribution of Tax Proceeds 43-14

SUBCHAPTER VI: GASOLINE TAX

43.601 Imposition of Gasoline Tax 43-14
43.602 Estimated Payments 43-14
43.603 Annual Return 43-15
43.604 Distribution of Tax Proceeds 43-15

SUBCHAPTER VII: SALES TAX

43.701 Imposition of Sales Tax 43-15
43.702 Deductions from Gross Receipts 43-15
43.703 Monthly Return 43-17
43.704 Annual Return 43-17
43.705 Distribution of Tax Proceeds 43-17

SUBCHAPTER VIII: HOTEL USE TAX

43.801 Imposition of Hotel Use Tax 43-17
43.802 Exempt Use 43-17
43.803 Monthly Return 43-18
43.804 Annual Return 43-18
43.805 Distribution of Tax Proceeds 43-18

SUBCHAPTER IX: FOOD AND BEVERAGE TAX

43.901 Imposition of Food and Beverage Tax 43-19
43.902 Deductions from Gross Receipts 43-19
43.903 Monthly Return 43-19
43.904 Annual Return 43-20
43.905 Distribution of Tax Proceeds 43-20

SUBCHAPTER X: ADMINISTRATION AND ENFORCEMENTS

43.1001 Establishment of Tax Commission 43-20
43.1002 General Powers and Duties of the Tax Commission 43-21
43.1003 Conduct of Tax Commission Business 43-21
43.1004 Annual Report 43-22
43.1005 Appointment of Tax Commissioner 43-22
43.1006 Tax Regulations 43-22
43.1007 Distribution of Tax Proceeds 43-23
43.1008 Duty to Keep and Maintain Records 43-23
43.1009 Tax Deficiencies or Overpayments 43-23
43.1010 Failure or Refusal to File Return or Pay Tax 43-24
43.1011 Assessment of Tax Upon Information Obtained by Tax
Commissioner 43-24
43.1012 Limitation of Actions 43-25

43.1013 Notice of Levy and Conference	43-25
43.1014 Appeal to the Tax Commissioner	43-25
43.1015 Cooperation of Other Tribal Departments and Agencies	43-26
43.1016 Tax Credit or Refund	43-26
43.1017 Violations	43-26
43.1018 Jurisdiction and Procedure	43-27
43.1019 Enforcement	43-28
43.1020 Remedies	43-28

SUBCHAPTER XI: TAX AGREEMENT

43.1101 Applicability	43-29
43.1102 State Law	43-29
43.1103 Principal Place of Residence	43-30
43.1104 Records	43-30
43.1105 Licensure	43-30
43.1106 Income Tax	43-30
43.1107 Motor Fuel and Tobacco Products	43-30

HISTORY NOTE:

Current Ordinance:

Resolution 2003-40, adopted March 25, 2003, adopts Tribal Code Chapter 43: Tribal Tax Code, effective April 1, 2003, and rescinds all earlier Tribal Tax Codes.

Resolution 96-81, adopted May 21, 1996, enacts Tribal Code Chapter 43: Tribal Tax Code, effective immediately.

Amendments:

Tribal Resolution 2017-20, adopted February 7, 2017 amends §43.805, Distribution of Tax Proceeds.

Tribal Resolution 2016-38, adopted February 2, 2016 amends §43.801(1), changing only the tax percentage.

Tribal Resolution 2005-21, adopted February 15, 2005 amends §§43.501 and 43.504 to accurately reflect certain

taxes imposed.

Tribal Resolution 2004-17, adopted February 17, 2004 amends §43.1107 to assist disabled Tribal members, effective March 1, 2004.

Tribal Resolution 2003-46, adopted April 1, 2003 amending §43.501, §43.504 and §43.902

Tribal Resolution 97-37, adopted May 6, 1997 Approval of Tax Commission Bylaws.

Tribal Resolution 97-28, adopted April 14, 1997 amending §43.105 and §43.205.

Tribal Resolution 96-153, adopted December 17, 1996 amending §43.105 and §43.205.

TRIBAL CODE
CHAPTER 43:
TRIBAL TAX CODE

SUBCHAPTER I: GENERAL PROVISIONS

43.101 Purpose.

The purpose of this Chapter is to provide for the taxation of businesses located in Indian Country or Tribal and Trust Lands in order to provide revenues to fund Tribal Internal Services, governmental operations, and programs promoting the health, education, and general welfare of the Tribe and its members and to implement the Tax Agreement.

43.102 Authority.

The authority for this Chapter is Article VII, Section 1 (d), (g), (k), (m) and (n) of the Tribal Constitution and the Indian Tribal Governmental Tax Status Act, 26 U.S.C. §7871.

43.103 Interpretation and Relation to Other Laws.

(1) In its interpretation and application the provisions of this Chapter shall be held to be minimum requirements and shall be liberally construed in favor of the Tribe, and shall not be deemed a limitation or repeal of any other Tribal power or authority.

(2) Where this Chapter contains provisions that are in conflict with provisions of previously enacted provisions of Tribal law, the provisions of this Chapter shall govern.

(3) Where this Chapter contains provisions that are in conflict with provisions of the Tax Agreement, the provisions of the Tax Agreement shall govern.

43.104 Severability and Non-Liability.

(1) If any section, provision or portion of this Chapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter will remain unaffected.

(2) The Tribe declares that there is no liability on the part of the Tribe, its agencies, agents, or employees for any damages which may occur as a result of reliance upon or conformity with the requirements of this Chapter. The Tribe by adoption of this Chapter does not waive its sovereign immunity in any way.

43.105 Effective Date.

This Chapter shall take effect on April 1, 2003.

43.106 Definitions.

As used in this Chapter:

(1) "Agreement Area" means the area designated as such in Appendix A of the Tax Agreement.

(2) "Board of Directors" means the governing body of the Tribe.

(3) "Business Income of the EDC" means income received by the Sault Ste. Marie Tribe Economic Development Commission from any source except from a Tribal Business, and includes all income from businesses in which the Tribe owns a portion of the equity or a right to participate in the income of the business.

(4) "Complimentary" means the provision of any tangible personal property, service, or room without charge to a Person.

(5) "Food and Beverage" means "Prepared Food Intended for Immediate Consumption," as defined in Michigan Compiled Laws Section 205.54g, as amended.

(6) "General Sales Tax Act" refers to Michigan Compiled Laws Section 205.51. et. seq., as amended.

(7) "Governmental Function" means those activities or functions of the Tribe identified in Section III(A)(1)(b) of the Tax Agreement.

(8) "Gross Receipts" means the total amount of money or the value of other considerations received from selling, renting or leasing property or from performing services. For a business licensed under Tribal Code Chapter 42: Gaming Ordinance, all gaming wins will be deducted for purposes of calculating Gross Receipts.

(9) "Gross Occupancy Receipts" means the total amount of money or the value of other consideration charged to any Person for a Hotel room.

(10) "Hotel" means a building or group of buildings in which the public may obtain accommodations for consideration, excluding accommodations rented for a continuous period of more than 30 days.

(11) "Internal Service" means a program or department of the Tribe which provides support and technical services to governmental programs and Tribal Businesses, and includes these components: human resources, accounting, legal, central purchasing, communications, self-insurance (risk management), and management information systems.

(12) "Licensed Gaming Establishment" means any premises licensed under §42.503 or §42.504 of Tribal Code Chapter 42: Gaming Ordinance.

(13) "Native American" means any natural Person who is subject to federal criminal jurisdiction under the Major Crimes Act, 18 U.S.C. §1153.

(14) "Non-Tribal Member" means an individual who is not an enrolled member of the Tribe.

(15) "Operating Income" means Gross Receipts minus total business related expenses, including the gross receipts tax and other taxes imposed by this Chapter or paid to another taxing authority.

(16) "Person" means any association, partnership, corporation, limited liability company, firm, trust, or other form of business organization as well as an individual.

(17) "Resident Tribal Member" means a Tribal Member whose principal place of residence is located within the Agreement Area.

(18) "Sale at Retail" means the term as defined in the General Sales Tax Act, as amended.

(19) "State" means the State of Michigan.

(20) "Taxable Sale" means a sale that is not exempt under State law as modified by the Tax Agreement.

(21) "Tax Commission" means the entity created by Subchapter X of this Chapter to administer and enforce this Chapter.

(22) "Tax Commissioner" means the Person appointed under Section 43.1005 to administer this Chapter.

(23) "Tax Agreement" means the Tax Agreement entered into between the Tribe and the State on December 20, 2003, which is attached hereto.

(24) "Tax Year" means the calendar year.

(25) "Taxpayer" means any Person liable for a tax under this Chapter.

(26) "Tribal Entity" means an entity, other than a single Resident Tribal Member of an entity wholly owned by the Tribe, that is wholly owned by any combination of the Tribe and its Resident Tribal Members, or is wholly owned by its Resident Tribal Members.

(27) "Tribal Member" means an individual who is an enrolled member of the Tribe.

(28) "Tribal and Trust Lands" means those fee and trust lands designated as such in Appendix K-1 through K-5 of the Tax Agreement.

(29) "Tribal Business" means a business wholly owned by the Tribe, regardless of the form of business organization and regardless of whether it is located on Indian Country.

(30) "Tribal Court" means the Sault Ste. Marie Tribe of Chippewa Indians Tribal Court.

(31) "Indian Country" means:

(a) The Sault Ste. Marie Tribe of Chippewa Indian's reservation and any other lands designated for the Tribe as reservation lands by the Secretary of the Interior;

(b) Land over which the Tribe exercises governmental power that is held in trust by the United States for the benefit of the Tribe or a Tribal Member; or

(c) Any other land considered Indian Country under federal law.

(32) "Tribe" means the Sault Ste. Marie Tribe of Chippewa Indians.

(33) "Use Tax Act" means Michigan Compiled Laws Section 205.91, et. seq., as amended.

SUBCHAPTER II: GROSS RECEIPTS TAX

43.201 Imposition of Gross Receipts Tax.

There is hereby levied a gross receipts tax of 3.60% on the Gross Receipts of every Tribal Business.

43.202 New Business Exemption.

Any Tribal Business which begins business operations after (the effective date of this Chapter) January 1, 1997, shall be exempt from the gross receipts tax during the first Tax Year of its operation. Thereafter, the Tribal Business will have a partial exemption from the gross receipts tax in accordance with the following schedule:

Second Tax Year of operation	75% exemption (pay 25% of tax)
Third Tax Year of operation	50% exemption (pay 50% of tax)
Fourth Tax Year of operation	25% exemption (pay 75% of tax)

In the fifth Tax Year of operation and all subsequent Tax Years, the Tribal Business shall pay the full tax. This exemption applies only to start-up businesses and does not apply to a business purchased as a going concern by the Tribe.

43.203 Estimated Payments.

Each Tribal Business shall file a monthly return and make an estimated payment for each calendar month by the 15th day of the succeeding month. The estimated payment for each month shall be for the estimated Gross Receipts for the month or 1/12 of the estimated annual liability. The second and subsequent estimated payments in each Tax Year shall include adjustments, if necessary, to correct underpayments or overpayments from previous monthly payments in the Tax Year to a revised estimate of the annual tax liability.

43.204 Annual Return.

An annual or final return shall be filed with the Tax Commissioner, in the form and content prescribed by the Tax Commission, by April 15 of the succeeding year. Any final liability shall be remitted with the return.

43.205 Distribution of Tax Proceeds.

The proceeds of the gross receipts tax shall be credited to an Internal Services fund account for the funding of the Internal Services. Tax proceeds in excess of amounts budgeted for Internal Services shall be transferred to the general fund. No Internal Service shall charge a Tribal Business for its basic services.

SUBCHAPTER III: BUSINESS INCOME TAX

43.301 Imposition of Business Income Tax.

There is hereby levied a business income tax on income of the following, at the rate contained in Section 43.302:

- (1) The Operating Income of each Tribal Business.
- (2) The Business Income of the EDC.
- (3) The Operating Income of any business located upon Indian Country.

The income described above shall be referred to as "taxable income."

43.302 Amount of Tax.

The amount of the tax imposed by Section 43.301 shall be the sum of:

- (1) 10% of the taxable income between \$50,001 and \$250,000.
- (2) 15% of the taxable income between \$250,001 and \$500,000.
- (3) 20% of the taxable income between \$500,001 and \$750,000.
- (4) 25% of the taxable income between \$750,001 and \$1,000,000.
- (5) 30% of the taxable income in excess of \$1,000,000.

43.303 Estimated Payments.

Each entity described in Section 43.301 shall file a quarterly return and make an estimated payment of its taxable income for each calendar quarter by the 15th day of the month following the end of the quarter; namely, April 15, July 15, October 15, and January 15. The estimated payment for each quarter shall be for the estimated net income for the quarter or 1/4 of the estimated annual liability. The second and subsequent estimated payments in each Tax Year shall include adjustments, if necessary, to correct underpayments or overpayments from previous quarterly payments in the Tax Year to a revised estimate of the annual tax liability.

43.304 Annual Return.

An annual or final return shall be filed with the Tax Commissioner, in the form and content prescribed by the Tax Commission, by April 15 of the succeeding year. Any final liability shall be remitted with the return.

SUBCHAPTER IV: HOTEL OCCUPANCY TAX

43.401 Imposition of Hotel Occupancy Tax.

(1) There is hereby levied a hotel occupancy tax of 3% of the Gross Occupancy Receipts of every Tribal Business operating a Hotel outside of Indian Country.

(2) The Taxpayer shall not pass the hotel occupancy tax on to the Person who purchases the room.

43.402 Monthly Return.

The Taxpayer shall file a monthly return with the Tax Commissioner by the 15th day of the succeeding month. The monthly return shall be filed on a form prescribed by the Tax Commissioner. The Taxpayer shall remit payment for the hotel occupancy tax owed with the return. The monthly return shall be signed by an authorized signatory of the Taxpayer.

43.403 Annual Return.

The Taxpayer shall file an annual return with the Tax Commissioner by April 15th of the succeeding year. The annual return shall be filed on a form prescribed by the Tax Commissioner. The Taxpayer shall remit any final liability for the hotel occupancy tax with the return. The annual return shall be signed by an authorized signatory of the Taxpayer.

43.404 Distribution of Tax Proceeds.

The Tax Commission shall remit all Hotel occupancy tax proceeds to the Tribe, and the Tribe shall transfer such tax proceeds into the general fund.

SUBCHAPTER V: CIGARETTE TAXES

43.501 Imposition of Cigarette Taxes.

(1) There is hereby levied a cigarette tax of 4 cents per pack or 40 cents per carton on the Midjim Stores for every sale of cigarettes.

(2) The Taxpayer shall not pass the cigarette tax on to the Person who purchases the cigarettes.

(3) There is hereby levied a cigarette administrative tax equivalent to 25% of the state tax exemption for cigarettes provided by the Tax Agreement upon the sale of cigarettes to Tribal Members at the Midjim Stores or a Licensed Gaming Establishment located within Indian Country.

(4) The Midjim Stores and the Licensed Gaming Establishment shall collect the cigarette administrative tax from the Tribal Member who purchases the cigarettes.

43.502 Monthly Return.

The Taxpayer shall file monthly returns with the Tax Commissioner by the 15th day of the succeeding month. The monthly returns shall be filed on forms prescribed by the Tax Commissioner. The Taxpayer shall remit payment for the cigarette tax and cigarette administrative tax owed with the returns. The monthly returns shall be signed by an authorized signatory of the Taxpayer.

43.503 Annual Return.

The Taxpayer shall file annual returns with the Tax Commissioner by April 15th of the succeeding year. The annual returns shall be filed on forms prescribed by the Tax Commissioner. The Taxpayer shall remit any final liability for the cigarette tax and cigarette administrative tax with the returns. All annual returns shall be signed by an authorized signatory of the Taxpayer.

43.504 Distribution of Tax Proceeds.

(1) The Tax Commission shall remit all cigarette tax proceeds to the Tribe, and the Tribe shall transfer the tax proceeds into the general fund.

(2) The Midjim Stores and the Licensed Gaming Establishment shall retain the cigarette administrative tax proceeds equivalent to 12.5% of the state tax exemption for cigarettes provided by the Tax Agreement as non-operating income. The Tax Commission shall remit the remaining balance of the cigarette administrative tax proceeds to the Tribe to fund the smoking cessation program to the extent needed for the current year budget with any surplus to fund other health center programs as directed by the Tribe.

SUBCHAPTER VI: GASOLINE TAX

43.601 Imposition of Gasoline Tax.

(1) There is hereby levied a gasoline tax of 4 cents per gallon on the Midjim Stores for every sale of gasoline.

(2) The Taxpayer shall not pass the gasoline tax on to the Person who purchases the gasoline.

43.602 Monthly Return.

The Taxpayer shall file a monthly return with the Tax Commissioner by the 15th day of the succeeding month. The monthly return shall be filed on a form prescribed by the Tax Commissioner. The Taxpayer shall remit payment for the gasoline tax owed with the return. The monthly return shall be signed by an authorized signatory of the Taxpayer.

43.603 Annual Return.

The Taxpayer shall file an annual return with the Tax Commissioner by April 15th of the succeeding year. The annual return shall be filed on a form prescribed by the Tax Commissioner. The Taxpayer shall remit any final liability for the gasoline tax with the return. The annual return shall be signed by an authorized signatory of the Taxpayer.

43.604 Distribution of Tax Proceeds.

The Tax Commission shall remit all gasoline tax proceeds to the Tribe, and the Tribe shall transfer such tax proceeds into the general fund.

SUBCHAPTER VII: SALES TAX

43.701 Imposition of Sales Tax.

(1) There is hereby levied a sales tax of 6% of the Gross Receipts, plus interest and penalty, if applicable, and less deductions allowed by this Subchapter, on every Tribal, Tribal Member and Tribal Entity business that makes sales at retail within Tribal and Trust Lands.

(2) A Tribal, Tribal Member or Tribal Entity business that makes sales at retail on Tribal and Trust Lands that is at the same time engaged in some other kind of business, occupation, or profession not taxable under this Subchapter shall keep books to show separately the transactions used in determining the tax levied hereunder.

(3) The Taxpayer may pass the sales tax on to the Person who makes the retail purchase.

(4) The sales tax shall not apply to taxable sales covered under Subchapter IX.

43.702 Deductions from Gross Receipts.

In computing the amount of the sales tax levied under this Subchapter, a Taxpayer shall exclude from the amount of Gross Receipts and shall not collect the sales tax on the following:

(1) tangible personal property provided on a Complimentary basis, provided the Tribal, Tribal Member or Tribal Entity business pays to the Tax Commission the percentage of the sales tax

owed under the tax sharing provisions of the Tax Agreement, if the Sale at Retail is a Taxable Sale.

(2) Sale at Retail of gasoline, diesel fuel, cigarettes and other tobacco products to a Resident Tribal Member;

(3) Sale at Retail of tangible personal property, other than gasoline, diesel, cigarettes and other tobacco products, to a Resident Tribal Member for his business use exclusively within Tribal and Trust Lands;

(4) Sale at Retail of tangible personal property, other than gasoline, diesel, cigarettes and other tobacco products, to a Resident Tribal Member for his personal use exclusively within the Agreement Area;

(5) Sale at Retail of passenger vehicles, including automobiles, pick-up trucks, recreational vehicles, motorcycles, recreational watercraft, snowmobiles and off-road vehicles; modular and mobile homes; construction materials; equipment, supplies and gear for recreational, subsistence or commercial treaty fishing to a Resident Tribal Member, provided the sale satisfies the exemption requirements of the Tax Agreement;

(6) Sale at Retail of equipment, supplies and gear for commercial treaty fishing to a Tribal Member, provided the sale satisfies the exemption requirements of the Tax Agreement;

(7) Sale at Retail of tangible personal property to a Tribal Entity for its use exclusively within Tribal and Trust Lands;

(8) Sale at Retail of construction materials and gear for commercial treaty fishing to a Tribal Entity, provided the sale satisfies the exemption requirements of the Tax Agreement;

(9) Sale at Retail of gasoline and diesel fuel to the Tribe;

(10) Sale at Retail of tangible personal property, other than gasoline and diesel fuel, to the Tribe for its use exclusively within Tribal and Trust Lands, as long as it provides an exemption certificate and letter of authorization;

(11) Sale at Retail of tangible personal property, other than gasoline and diesel fuel, to the Tribe that it will primarily use (95% or more) in performing a Governmental Function, as long as it provides an exemption certificate and letter of authorization; and

(12) Sale at Retail which are deductible from gross proceeds under the General Sales Tax Act, as amended, provided that the Person making the purchase provides the Taxpayer with a copy of the form used by those claiming exemption under the provisions of the General Sales Tax Act.

43.703 Monthly Return.

The Taxpayer shall file a monthly return with the Tax Commissioner by the 15th day of the succeeding month. The monthly return shall be filed on a form prescribed by the Tax Commissioner, which shall include the amount of the Gross Receipts, allowable deductions and the sales tax owed. The Taxpayer shall remit payment for the sales tax owed with the return. The monthly return shall be signed by an authorized signatory of the Taxpayer.

43.704 Annual Return.

The Taxpayer shall file an annual return with the Tax Commissioner by April 15th of the succeeding year. The annual return shall be filed on a form prescribed by the Tax Commissioner. The Taxpayer shall remit any final liability for the sales tax with the return. The annual return shall be signed by an authorized signatory of the Taxpayer.

43.705 Distribution of Tax Proceeds.

The sales tax proceeds shall be consolidated quarterly, and the percentage of the proceeds from the sales tax retained by the Tribe under the Tax Agreement shall be transferred into the general fund.

SUBCHAPTER VIII: HOTEL USE TAX

43.801 Imposition of Hotel Use Tax.

(1) There is hereby levied a hotel use tax of 12% of the Gross Occupancy Receipts on every Person who uses or occupies a room furnished by a Hotel located on Tribal and Trust Lands.

(2) The hotel use tax shall be imposed upon the Person who purchases the room. The Hotel shall collect the hotel use tax from such Person.

43.802 Exempt Rooms.

A Person operating a Hotel on Tribal and Trust Lands shall not collect the hotel use tax on the following:

(1) any room provided on a Complimentary basis, provided the Hotel is owned by the Tribe, and the Hotel is located within a one-quarter mile radius of a Licensed Gaming Establishment located on Tribal and Trust Lands;

(2) any room which is paid for by the Tribe; or

(3) any room which is exempted under Use Tax Act, provided that the Person making the purchase provides the Person operating the Hotel with a copy of the form used by those claiming exemption under the provisions of the Use Tax Act.

43.803 Monthly Return.

The Taxpayer shall file a monthly return with the Tax Commissioner by the 15th day of the succeeding month. The monthly return shall be filed on a form prescribed by the Tax Commissioner. The Taxpayer shall remit payment for the hotel use tax owed with the return. The monthly return shall be signed by an authorized signatory of the Taxpayer.

43.804 Annual Return.

The Taxpayer shall file an annual return with the Tax Commissioner by April 15th of the succeeding year. The annual return shall be filed on a form prescribed by the Tax Commissioner. The Taxpayer shall remit any final liability for the hotel use tax with the return. The annual return shall be signed by an authorized signatory of the Taxpayer.

43.805 Distribution of Tax Proceeds.

The Tax Commission shall remit to the Tribe all hotel use tax proceeds from Hotels owned by the Tribe which are located within a one-quarter mile radius of a Licensed Gaming Establishment located on Tribal and Trust Lands, and the Tribe shall transfer such tax proceeds into the general fund. The Tax Commission shall remit to the Tribe all hotel use tax proceeds from Hotels which are not owned by the Tribe or are not located within a one quarter mile radius of a Licensed Gaming Establishment located on Tribal and Trust Lands, and the Tribe shall consolidate such proceeds quarterly, and the percentage of the proceeds retained by the Tribe under the Tax Agreement shall be transferred into the general fund. Of the total tax proceeds transferred to the general fund under this section, five cents out of every 12 cents (5/12) shall be earmarked to enhance educational and cultural purposes, to be dispersed evenly among the Five Units.

SUBCHAPTER IX: FOOD AND BEVERAGE TAX

43.901 Imposition of Food and Beverage Tax.

(1) There is hereby levied a Food and Beverage tax of 6% of the Food and Beverage Gross Receipts, plus interest and penalty, if applicable, and less deductions allowed by this Subchapter, on every Licensed Gaming Establishment that sells Food and Beverage on Tribal and Trust Lands.

(2) The Taxpayer may pass the Food and Beverage tax on to the Person who purchases the Food and Beverage.

(3) The Food and Beverage tax shall not apply to taxable sales covered under Subchapter VII.

(4) The Food and Beverage tax shall not apply to the Midjim Stores.

43.902 Deductions from Gross Receipts.

In computing the amount of the Food and Beverage tax levied under this Subchapter, a Taxpayer shall exclude from the amount of Food and Beverage Gross Receipts and shall not collect the Food and Beverage tax on the following:

(1) Food and Beverage provided on a complimentary basis; or

(2) Food and Beverage sales to the Tribe; or

(3) Food and Beverage sales to any Person which are exempted under the General Sales Tax Act, provided that the Person making the purchase provides the Licensed Gaming Establishment a copy of the form used by those claiming exemption under the provision of the General Sales Tax Act.

43.903 Monthly Return.

The Taxpayer shall file a monthly return with the Tax Commissioner by the 15th day of the succeeding month. The monthly return shall be filed on a form prescribed by the Tax Commissioner.

The monthly return shall be signed by an authorized signatory of the Taxpayer.

43.904 Annual Return.

The Taxpayer shall file an annual return with the Tax Commissioner by April 15th of the succeeding year. The annual return shall be filed on a form prescribed by the Tax Commissioner. The annual return shall be signed by an authorized signatory of the Taxpayer.

43.905 Distribution of Tax Proceeds.

The Food and Beverage tax proceeds from sales at a Licensed Gaming Establishment located on Tribal and Trust Lands shall be retained by the Licensed Gaming Establishment as non-operating income.

SUBCHAPTER X: ADMINISTRATION AND ENFORCEMENT

43.1001 Establishment of Tax Commission.

(1) The Tax Commission is hereby established. The Tax Commission shall consist of three (3) commissioners appointed by a majority vote of the Board of Directors. At least one commissioner shall also be a member of the Board of Directors.

(2) A commissioner shall serve for three years and may be removed from office prior to the expiration of that term only for cause by a vote of an absolute majority of the Board of Directors following a hearing.

(3) The first commissioners shall be appointed by the Board of Directors as follows: one shall be appointed to a full three year term, one to a two year term, and one to a one year term. Thereafter, all successive appointments shall be for a term of three years.

(4) Vacancies shall be filled within thirty days by the Board of Director for the balance of the term.

(5) The principal office of the Tax Commission shall be maintained in Sault Ste. Marie, Michigan.

43.1002 General Powers and Duties of the Tax Commission.

The Tax Commission shall have the powers and duties granted or imposed by this Chapter, which shall include the following:

- (1) To administer the application and enforcement of this Chapter.
- (2) To make recommendations to the Board of Directors regarding amendments to this Chapter.
- (3) To demand access to and inspect, examine and audit all papers, books and records of all Persons and entities subject to taxation under this Chapter, and require verification of any matter affecting the taxation of such Person or entity or the enforcement of this Chapter.
- (4) To conduct hearings authorized by this Chapter and to issue subpoenas and compel the attendance of witnesses, to administer oaths and to require testimony under oath at any such hearing. Any Person making false oath in any matter before the Tax Commission is guilty of perjury. Any process or notice may be served in the manner provided for service of process and notices in a civil action in Tribal Court. The Tax Commission may pay transportation and other expenses of witnesses as it may deem reasonable and proper.
- (5) To propose regulations as authorized by this Chapter.
- (6) To meet at least quarterly with the Tax Commissioner.
- (7) To receive and investigate complaints of violations of this Chapter or of its rules, and to refer for prosecution the results of any such investigation.
- (8) To keep and maintain such files and records as deemed necessary.
- (9) To take other action necessary and incidental to the enumerated powers and duties.

43.1003 Conduct of Tax Commission Business.

(1) The Tax Commission shall select annually from its membership a chairperson, who shall preside over Tax Commission meetings and hearings and shall have the power to convene special meetings of the Tax Commission. The chairperson shall be entitled to vote on any matter.

(2) The Tax Commission shall hold regular meetings at least quarterly. Regular meetings shall be open to the general membership of the Tribe. Meetings shall be conducted in accordance

with bylaws adopted by the Tax Commission and approved by the Board of Directors.

(3) A quorum shall consist of three commissioners. All decisions shall be made by a majority vote of the commissioners attending the meeting, provided a quorum is present, unless otherwise provided in this Chapter.

(4) Matters dealing with personnel, enforcement, particular Taxpayers, or other confidential matters shall be conducted in executive session and shall not be open to the public.

(5) A special meeting may be convened by the chairperson of the Tax Commission upon 48 hours written notice, but if the chairperson determines that a bona fide emergency exists, the special meeting may be conducted by telephone. The commissioners by unanimous consent may waive the notice requirement.

(6) The Tax Commission shall cause a record of all proceedings at its meetings to be made and kept. The minutes of every meeting shall be sent to the Secretary of the Board of Directors.

43.1004 Annual Report.

The Commission shall make an annual report to the Board of Directors by May 15 of the following year. The report shall include a summary of all tax revenues collected as provided in this Chapter and all investigative actions completed during the year.

43.1005 Appointment of Tax Commissioner.

The Board of Directors, with the advice and consent of the Tax Commission, shall appoint a Tax Commissioner who shall be responsible for the day-to-day management of the affairs of the Tax Commission and the administration of this Chapter and shall perform the specific duties imposed by this Chapter. The Tax Commissioner shall not have any personal interest in any entity taxed under this Chapter. The Tax Commissioner shall be appointed for a three-year term, subject to the pleasure of the Board of Directors.

43.1006 Tax Regulations.

The Tax Commission shall, from time to time, propose for adoption, amendment, or repeal such regulations, consistent with the policy, objects and purposes of this Chapter, as it may deem necessary or desirable in the public interest in carrying out the duties of the Tax Commission as defined by this Chapter. Commission regulations shall be submitted to the Board of Directors for review and adoption by resolution. The tax regulations may include the following:

- (1) The forms to be used by Taxpayers.
- (2) The form and manner, in which Taxpayers keep records, books and accounts.
- (3) The manner and method of collection of delinquent taxes.
- (4) Requirements concerning payment by a Taxpayer of all or a portion of the costs of investigation of that Taxpayer.
- (5) Procedures for all hearings conducted by the Tax Commission.
- (6) Protection of the due process rights of Taxpayers and all individuals subject to the enforcement of this Chapter by the Tax Commission.
- (7) Procedures for proposing rules by the Tax Commission.

43.1007 Distribution of Tax Proceeds.

The proceeds of each tax imposed by this Chapter shall be distributed by the Tax Commission in accordance with the provisions of the Subchapter imposing the tax. If no provision for distribution is made, tax proceeds shall be distributed to the general fund or account of the Tribe.

43.1008 Duty to Keep and Maintain Records.

A Person liable for any tax imposed by this Chapter shall keep and maintain accurate records in such form as to make it possible to determine the tax due under this Chapter.

43.1009 Tax Deficiencies or Overpayments.

(1) If it appears, either from examination of the tax return or from the examination authorized by Section 43.1012, that the Taxpayer has not satisfied its liability under this Chapter, the tax shall be determined by the Tax Commissioner, and the Taxpayer shall be notified of the determination. If the amount paid exceeds the correct amount of the tax, the excess shall be credited against a subsequent tax unless a refund is requested by the Taxpayer.

(2) If the amount paid is less than the amount which should have been paid, the deficiency, together with interest at the rate of 1% per month from the time when the tax was due, shall become due and payable after notice as provided in this Subchapter. This provision applies to estimated tax returns as well as annual returns.

(3) If any part of the deficiency is due to negligence or intentional disregard of this Chapter or the rules of the Tax Commission, but without intent to defraud, there shall be added as a penalty 10% of the total amount of the deficiency, together with interest on the penalty as provided in sub. (2).

(4) If any part of the deficiency is due to a fraudulent intent to evade the tax, then there shall be added as a penalty 100% of the deficiency, together with interest on the penalty as provided in sub. (2).

43.1010 Failure or Refusal to File Return or Pay Tax.

(1) If a Person fails or refuses to file a return or pay the tax as required by this Chapter, the Tax Commissioner as soon as possible shall assess the tax against the Taxpayer and shall notify the Taxpayer of the amount as provided in this Chapter.

(2) In the case of failure or refusal to file a return or pay the tax required by this Chapter, within the time prescribed by this Chapter, there shall be added a penalty of 5% of the tax for each month or fraction of a month during which the failure continues, to a maximum of 100%. In addition to the penalty, there shall be added interest at the rate of 1% per month on the amount of tax from the time the tax was due until the date of payment.

(3) When a tax return is filed or remittance is paid after the time specified by this Chapter and it is shown to the satisfaction of the Tax Commissioner that the failure was due to reasonable cause and not to willful neglect, the penalty may be waived.

43.1011 Assessment of Tax upon Information Obtained by Tax Commissioner.

(1) If a Taxpayer fails or refuses to make a return, either in whole or in part, or if the Tax Commissioner has reason to believe that any return made does not supply sufficient information for an accurate determination of the tax due, the Tax Commissioner may obtain information upon which to base an assessment of the tax. The Tax Commissioner or an authorized agent may examine the books, records and papers and audit the accounts of any Taxpayer or any other records pertaining to the tax. As soon as possible after procuring the information as may be found to be available, the Tax Commissioner shall assess the tax determined to be due and shall notify the Taxpayer of the amount of the assessment and the specific reasons for it.

(2) The assessment by the Tax Commissioner shall be final as to any Taxpayer except as may otherwise be determined under the provisions of Section 43.1013.

(3) If a Taxpayer fails to file a return or to keep and maintain proper, accurate, and complete

records as prescribed by this Chapter, the Tax Commissioner may assess, upon the information as is available or may come into the possession of the Tax Commissioner, the amount of the tax due from the Taxpayer. The assessment after notice and conference as provided in this Chapter shall be deemed to be prima facie correct for the purpose of this Chapter and the burden of proof of refuting it shall be upon the Taxpayer.

43.1012 Limitation of Actions.

A tax deficiency, interest or penalty shall not be assessed for any year after the expiration of three years after the date set for the filing of the annual return for each year or the date the return was filed, whichever is later. If a Taxpayer fraudulently conceals any liability for the tax or any part of the tax, the Tax Commissioner within two years of the discovery of the fraud shall assess the tax with interest and penalties as provided in this Chapter, computed from the date on which the tax liability originally accrued, and the tax, penalties and interest shall become due and payable after notice as provided in this Chapter. The limitation period will be suspended during the pendency of any hearing or other legal proceedings concerning the deficiency, upon the consent in writing of the Taxpayer, and for any taxable year for which a return is not filed.

43.1013 Notice of Levy and Conference.

(1) In carrying out the provisions of this Chapter, the Tax Commissioner after determining the amount of tax due from a Taxpayer shall give written notice to the Taxpayer intent to levy the tax. The Taxpayer may request an informal conference with the Tax Commissioner on the question of liability for the assessment if the request is made within 20 days of receipt of the notice. Upon receipt of a request for conference the Tax Commissioner shall set a time and place for the conference and shall give the Taxpayer reasonable notice of the conference.

(2) The Taxpayer may appear or be represented before the Tax Commissioner and may present testimony and argument. After the conference the Tax Commissioner shall render a decision in writing setting forth its conclusions and by order may levy any tax, interest and penalty found to be due and payable.

43.1014 Appeal to the Tax Commission.

A Taxpayer aggrieved by any determination of tax liability made by the Tax Commissioner may appeal to the Tax Commission as provided in rules promulgated by the Tax Commission. Such an appeal must be filed within 30 days of receipt of the notice of intent to levy tax or, if a conference with the Tax Commissioner was requested, of receipt of the order following the conference. The decision of the Tax Commission is final.

43.1015 Cooperation of Other Tribal Departments and Agencies.

The Tax Commissioner may utilize the services, information or records of any other department or agency of the Tribe in the performance of duties under this Chapter, and other departments or agencies of the Tribe shall furnish the services, information or records upon the request of the Tax Commissioner.

43.1016 Tax Credit or Refund.

(1) The Tax Commissioner shall credit or refund all overpayments of taxes, all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that are found unjustly assessed or excessive in amount, or wrongfully collected.

(2) A Taxpayer who claims to have paid a tax which was not due under this Chapter may, on or before the expiration of four years after the date set for the filing of the annual or final return for the year or the date the tax was paid, whichever is later, petition the Tax Commissioner in writing to refund the amount so paid. If the annual return reflects an overpayment or credit in excess of the tax, the declaration on the return constitutes a claim for refund. If the Tax Commissioner agrees that the Taxpayer's claim is valid, the amount of the overpayment, at the request of the Taxpayer, shall be refunded to the Taxpayer or credited against any current or subsequent tax liability. If the Taxpayer disagrees with the Tax Commissioner's conclusion on the matter, the Taxpayer may appeal the matter to the Tax Commission within 30 days after receipt of notice of the Tax Commissioner's decision.

(3) Interest at the rate of 1% per month shall be added to a refund 45 days after the due date or date the return is filed, whichever is later.

43.1017 Violations.

It shall be unlawful and a violation of this Chapter for any Person to:

(1) Fail or refuse to make a return required by the Chapter, within the time specified in this Chapter, or make, aid, abet, or assist another in making a false or fraudulent return or false Statement in a return required by this Chapter with intent to defraud the Tribe or to evade the payment of the tax, or any part of the tax, imposed by this Chapter.

(2) Aid, abet, or assist another in an attempt to evade the payment of the tax, or any part of the tax, imposed by this Chapter.

(3) Make or permit to be made for himself or for any business or association any false return or a false Statement in a return, either in whole or in part, required by this Chapter.

(4) Make, aid, abet, or assist another in making a false or fraudulent certification to the Tribal Tax Office that his principal place of residence is located within the Agreement Area with the intent to defraud the State or to evade the payment of a tax, or any part of a tax, covered by the Tax Agreement.

(5) Obtain, aid, abet, or assist another in obtaining a false or fraudulent sales tax exemption under Section 43.702 with the intent to defraud the Tribe or to evade the payment of a tax, or any part of the tax, levied under Subchapter VII.

(6) Obtain, aid, abet, or assist another in obtaining a false or fraudulent sales tax or use tax refund from the State to which he is not eligible for under the Tax Agreement with the intent to defraud the State or to evade the payment of the sales tax or use tax, or any part of the sales tax or use tax.

(7) Knowingly provide, or aid, abet, or assist another in providing to a Non-Tribal Member for consideration cigarettes, other tobacco products, diesel fuel, or gasoline purchased tax exempt from the Tribe.

(8) Knowingly possess or sell cigarettes or other tobacco products which do not bear the appropriate State stamp.

(9) Violate any other provision of the Tax Agreement, this Chapter or of tax regulations promulgated in accordance with this Chapter.

43.1018 Jurisdiction, Procedure and Penalties.

(1) Jurisdiction is hereby conferred upon the Tribal Court over criminal and civil enforcement actions for violations of Section 43.1017.

(2) A violation committed by a Native American shall constitute a crime, and proceedings shall be governed by Tribal Code Chapters 71 and 72.

(3) A violation committed by a Person who is not a Native American shall constitute a civil infraction subject to a civil remedial money penalty, civil forfeiture of property, or both. Proceedings shall be governed by Chapter Seven of the Law and Order Code and by Tribal Code Chapter 84: Civil Remedial Forfeiture Code.

(4) Jurisdiction is hereby conferred upon the Tribal Court for enforcement actions brought by

the State in accordance with the provisions of §XIII of the Tax Agreement. In any such action, the determination of the tax liability owed to the State by the Tribe, Tribal Members and Tribal Entities pursuant to the Tax Agreement and the enforcement of the payment of any such liability, shall be made in accordance with State law, except as modified by the terms of the Tax Agreement. In addition, State law, including judicial decisions interpreting State law, prescribing the scope and entitlement to exemptions or deductions other than those recognized in the Tax Agreement shall govern the determination of tax liability. To the extent that the provisions of the Tax Agreement differ from those of the otherwise applicable State law, the Tax Agreement shall control.

43.1019 Enforcement.

(1) The provisions of this Subchapter shall be enforced by Tribal law enforcement officers, and by anyone authorized or deputized to enforce this Chapter or Tribal law generally by ordinance or resolution of the Board of Directors.

(2) The Tax Commission shall have the authority to authorize special agents to perform services reasonably necessary to conduct investigations within the scope of the Tax Commission authority or to monitor and assure compliance with the provisions of this Chapter. When acting as a special agent, a Person shall be accorded the privileges and protections of a Tribal law enforcement officer. The activities of special agents shall be under the supervision and the direction of the Tax Commissioner, unless otherwise determined by the Tax Commission. Nothing in this subsection shall limit the normal law enforcement functions of any special agent, nor of other Tribal law enforcement officers.

(3) The Tribe and the State shall jointly enforce the Tax Agreement and applicable State law within Indian Country in accordance with the terms of the Tax Agreement. The State shall have the enforcement authority as described in the Tax Agreement within Indian Country, including the authority to commence tax enforcement actions, conduct audits and inspections in accordance with the terms of the Tax Agreement. The Tribe hereby consents to entry on Indian Country by representatives of the State for the sole purpose of exercising the enforcement authority in accordance with the terms of the Tax Agreement.

43.1020 Remedies.

(1) A violation of Section 43.1017 by a Native American shall be punishable by a fine of up to Five Thousand Dollars (\$5,000.00) or imprisonment for not more than one year, or both.

(2) A violation of Section 43.1017 by a Person who is not a Native American shall be remedied by the imposition of a civil penalty of not more than Five Thousand Dollars (\$5,000.00).

(3) In addition to the remedies in sub. (1) or (2), any property used in the commission of any

violation may be forfeited as provided in Tribal Code Ch. 84: Civil Remedial Forfeiture Code. Any vehicle used in transporting a violator to or from the location of the violation shall be deemed to have been used in the commission of such violation.

(4) In addition to the remedies in sub. (1) or (2), any tobacco product and motor fuel not acquired or possessed by a Tribal Member or Tribal Entity in accordance with the terms of the Tax Agreement may be seized and transferred to the State consistent with applicable provisions of State law.

(5) The remedies in this section are not intended to be exclusive, but shall be in addition to and independent of:

- (a) any applicable contractual remedy;
- (b) any disciplinary action taken against a violator as an employee;
- (c) any prosecution or other enforcement action under federal or State law or under the provisions of any other chapter of the Tribal Code, including a prosecution for perjury for false Statements on a tax return

SUBCHAPTER XI: TAX AGREEMENT

43.1101 Applicability.

The Tribe and the State intend to be bound by the terms of the Tax Agreement while it is in effect. In addition, all Tribal Members and Tribal Entities are required to comply with the terms of the Tax Agreement. Further, all other Persons, including Non-Tribal Members operating within Indian Country, are required to comply with the terms of the Tax Agreement. The terms of the Tax Agreement are incorporated into this Subchapter.

43.1102 State Law.

(1) Tribal Members and Tribal Entities shall be subject to State law for the taxes that are covered by the Tax Agreement, except as modified by the Tax Agreement. State law refers to presently enacted and subsequently amended law.

(2) To the extent that there is a conflict between a provision of State law and the Tax Agreement, the Tax Agreement shall control.

43.1103 Principal Place of Residence.

Resident Tribal Members shall notify the Tribal Tax Office in writing prior to moving their principal place of residence.

43.1104 Records.

(1) Tribal Members and Tribal Entities shall maintain records, including retention of original receipts, sufficient to substantiate claims for exemptions or refunds claimed under the Tax Agreement.

(2) Tribal Members and Tribal Entities shall separately maintain records for items upon which an exemption or refund is claimed on the basis that transaction occurred in and the use is exclusively in tribal trust lands or the Agreement Area.

43.1105 Licensure.

Tribal Members and Tribal Entities that operate a business shall comply with all State licensure provisions for the taxes that are covered by the Tax Agreement.

43.1106 Income Tax.

(1) Tribal Member and Tribal Entity employers located in the Agreement Area shall withhold and remit to the State income tax from all employees who are not Resident Tribal Members.

(2) Resident Tribal Members shall file a State tax return if they owe State income tax, are due a refund, their federal adjusted gross income exceeds their exemption allowance, or a federal return is required.

43.1107 Motor Fuel and Tobacco Products.

(1) Tribal Members shall only purchase tax exempt cigarettes, other tobacco products, diesel fuel, or gasoline from the Tribe for their own use; provided however, Tribal members who are authorized in writing by the Tribal Tax Office may purchase such tax exempt products for disabled Tribal members.

(2) Tribal Members shall not possess cigarettes or other tobacco products which do not bear the appropriate State stamp.