

TITLE 11. COMMERCE

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Chapter 11.1

TOBACCO

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11.1.1. Title. This chapter shall be known as the “Suquamish Tobacco Ordinance.” (Ord. 2A (part), passed Jan. 8, 1977; amended by Res. 85-043 (part), passed June 3, 1985; renumbered with amendments by Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.2. Definitions. As used in this chapter, the following words and phrases shall each have the designated meaning unless a different meaning is expressly provided or the context is clearly indicated.

(a) “Auditor” means an independent third party auditor or an internal tribal auditor pursuant to §11.1.17 of this chapter.

(b) “Allocation” means the number of cigarettes available to be sold to Indians free of all taxes. It is based on a formula that includes consumption data and tribal service area population.

(c) “Carton” or “carton of cigarettes” means, unless otherwise indicated, a carton of two hundred (200) cigarettes.

(d) “Cigarette” shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(e) “Compact” means the Cigarette Tax Compact entered into by the Suquamish Tribe and the State of Washington.

(f) “Court” means the Suquamish Tribal Court.

(g) “Department” means the Washington State Department of Revenue.

(h) “Direct business activities” include paying wages, benefits, bonuses, or expenses related to the maintenance and operation of the retail facility or typically considered to be part of a business’s operating expenses and overhead.

(i) “Essential government services” means services provided by the Tribe including but not limited to administration; public facilities; fire, police, health, education, elder care, and social services; sewer, water, environmental, and land use services; transportation; utility services; community development; and economic development.

(j) “General fund” means the Suquamish Tribe’s general fund.

(k) "Indian country," consistent with the meaning given in 18 USC Section 1151, includes:

(1) All land within the exterior boundaries of the Port Madison Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights of way running through the reservation; and

(2) All Indian allotments or other lands held in trust for a Suquamish tribal member or the Tribe or otherwise subject to a restriction against alienation imposed by the United States, the Indian titles to which have not been extinguished, including rights of way running through the same.

(l) "Local retail sales tax" means the combined Washington local retail sales and use taxes applicable in the area.

(m) "Non-Indian" means an individual who is neither a Suquamish tribal member nor a nonmember Indian.

(n) "Nonmember Indian" means an enrolled member of a federally recognized Indian tribe other than the Suquamish Tribe.

(o) "Persons" means any non-Indian, nonmember Indian, or tribal member and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity.

(p) "Port Madison Indian Reservation" or "reservation" means the geographic area recognized as the Port Madison Indian Reservation by the United States Department of the Interior.

(q) "Retail selling price" means the price paid by the consumer for each cigarette or package or carton of cigarettes, which price includes the tribal cigarette tax.

(r) "Self-certified tribal wholesaler" means a wholesaler who is a federally recognized Indian tribe or a member of such a tribe.

(s) "Self-certified wholesaler" means an out-of-state wholesaler who is not a self-certified tribal wholesaler.

(t) "State" means the State of Washington.

(u) "State and local retail sales and use taxes" means taxes levied by the state or by local units of government and expressed as a percentage of the sales price, which includes the state cigarette tax, of a unit of cigarettes.

(v) "State cigarette tax" means the state tax imposed on each cigarette, which is expressed in cents per cigarette.

(w) "State taxes" in this chapter only means a combination of the "state cigarette tax" and the "state and local retail sales and use taxes."

(x) "Tobacco products" shall mean cigarettes; cigars; cheroots; stogies; periques; granulated, plug-cut, crimp-cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish, plug, and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing, or smoking in a pipe or otherwise, or both for chewing and smoking.

(y) "Tribe" or "tribal" means or refers to the Suquamish Tribe.

(z) "Tribal cigarette tax" means the tax or taxes enacted as a provision of tribal ordinance on the units of cigarettes sold, expressed in cents per cigarette, and on the sales of cigarettes to retail buyers, expressed in terms of a percentage of the sales price of the unit of cigarettes.

(aa) "Tribal Council" means the Suquamish Tribal Council.

(bb) "Tribal member" means an enrolled member of the Suquamish Tribe. For purposes of this chapter, a member of another federally recognized tribe who is the spouse of an enrolled Suquamish Tribal member shall be treated the same as an enrolled member of the Suquamish Tribe.

(cc) "Tribal retailer" means a cigarette and/or other tobacco product retailer wholly owned by the Suquamish Tribe or owned and/or operated by one of its branches or agencies, or a business wholly owned and operated by a tribal member who has been granted a tribal tobacco seller's license by the Tribe within the Port Madison Indian Reservation.

(dd) "Tribal tobacco seller's license" means upon application and review, a license granted by the Tribal Council or by a licensing commission established by the Tribal Council for the sole purpose of retail sales of cigarettes and/or other tobacco products. (Ord. 2A (part), passed Jan. 8, 1977; amended by Res. 85-043 (part), passed June 3, 1985; amended by Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.3. Establishment of Tobacco Outlets. The Tribal Council or a tribal government branch and agency delegated such authority may establish one or more tobacco outlets within the Port Madison Indian Reservation as the Tribal Council in its sole discretion deems necessary to provide adequate service to consumers of cigarettes and tobacco products. (Ord. 2A (part), passed Jan. 8, 1977; amended by Res. 85-043 (part), passed June 3, 1985; amended by Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.4. Establishment of Tribal Cigarette Retailer Licensing Commission. The Tribal Council may establish a tribal licensing commission to license all persons required to have a license under this chapter. (Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.5. Application for Tribal Tobacco Seller's License. An application for a tribal tobacco seller's license shall be submitted to the Tribal Council or its licensing commission by a business, wholly owned by the Suquamish Tribe or owned and/or operated by one of its branches or agencies, or a tribal member who seeks to sell tobacco products in Indian county. An application form shall be made available by the Tribal Council or its licensing commission. The application shall, at a minimum, state the name and address of the applicant and shall be signed by the applicant under oath. The Tribal Council or its licensing commission may charge a reasonable application fee for the filing of an application. (Ord. 2A (part), passed Jan. 8, 1977: amended by Res. 85-043 (part), passed June 3, 1985; amended by Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.6. Tribal Tobacco Seller's License. Upon receipt of an application, the Tribal Council or licensing commission may grant an applicant a tribal tobacco seller's license for a five-year period which shall entitle the operator to establish and maintain one (1) tobacco outlet on the Port Madison Indian Reservation.

As a condition to granting a tobacco seller's license, the applicant must consent to comply with those terms of the Cigarette Compact that are applicable to tribal retailers.

The Tribal Council or its licensing commission may establish a license fee to be paid by each successful applicant for a tribal tobacco seller's license. The Tribal Council or its designee may waive such fee for licenses issued to any tribal retailer wholly owned and operated by the Suquamish Tribe. The license shall be renewable in such manner as the Tribal Council or its licensing commission shall prescribe. All licenses issued pursuant to this chapter shall be nontransferable. (Ord. 2A (part), passed Jan. 8, 1977: amended by Res. 85-043 (part), passed June 3, 1985; amended by Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.7. Trader's License. Within thirty (30) days after receipt of a tribal tobacco seller's license, all tribal licensees must apply to the Superintendent of the Western Washington Indian Agency for and obtain a federal Indian trader's license. Failure of an operator to possess a federal Indian trader's license shall be grounds for revocation of the tribal tobacco seller's license. (Ord. 2A (part), passed Jan. 8, 1977: amended by Res. 85-043 (part), passed June 3, 1985; amended by Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.8. Cigarette Tax Compact with Washington State. Tribal retailers and wholesalers who sell cigarettes must comply with the Cigarette Tax Compact between the Suquamish Tribe and the State of Washington. Failure of a tribal licensee to comply with the Compact shall be grounds for revocation of the tribal tobacco seller's license. In accordance with the terms of the Compact:

(a) Tribal retailers are restricted to purchasing wholesale cigarettes only from wholesalers that meet all requirements pursuant to Part VI of the Compact and §11.1.13 of this chapter.

(b) All cigarettes in the possession of or sold by a tribal retailer shall bear a cigarette stamp as set forth in Part V of the Compact and §11.1.15 of this chapter. (Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.9. Tribal Cigarette Tax — Levy. Beginning on the effective date of this chapter and except during the tax phase-in period as provided in §11.1.9(a) below, the Tribe shall impose on all persons and shall maintain in effect a tribal cigarette tax on the retail sale of cigarettes equal to one hundred percent (100%) of the state taxes.

(a) For the first thirty-six (36) months after the effective date of this chapter (the “phase-in period”), the Tribe shall impose, maintain in effect, and collect a tribal cigarette tax on retail sales of cigarettes equal to eighty percent (80%) of the state taxes on all cigarette sales by the tribal retailers to all persons who purchase cigarettes within Indian country. The thirty-six (36) month phase-in period will be reduced by three (3) months if during any quarter, the number of cartons of cigarettes, excluding those manufactured by the Tribe or its branches or agencies, that are sold at retail exceeds by at least ten percent (10%) the quarterly average sales of the twelve-month period, as specified in this section. The quarterly average sales baseline shall be determined by the auditor using sales at the casino and convenience stores for the six (6) months immediately preceding the imposition of the tax. The auditor shall notify the Tribe and the department when the retail sales for any quarter exceed the baseline by at least ten percent (10%). These reductions will be cumulative. For purposes of this provision:

(1) “Quarter” means a three-month period, each quarter immediately succeeding the next. The first quarter begins the first day of the first month the tribal cigarette tax is imposed, if the imposition of the tax is on or before the fifteenth of the month, or begins the first day of the second month the tribal cigarette tax is imposed, if the imposition of the tax is after the fifteenth of the month; and

(2) The “quarterly average sales” means the sum of the retail sales made during the two quarters divided by two.

(b) Upon any future increase in the state cigarette tax during the term of this Compact, the tribal tax on cigarettes shall increase by no less than one hundred percent (100%) of the increase in the state taxes, except during the phase-in period when the tribal tax rate shall increase by no less than eighty percent (80%) of the increase in the state taxes.

(c) Upon any future decrease in the state cigarette tax, state retail sales tax, or local retail sales tax during the term of the Compact, the tribal tax on cigarettes may decrease to a minimum of no less than one hundred percent (100%) of the decrease in

the combined state taxes except during the phase-in period when the tribal tax rate shall decrease by no less than eighty percent (80%) of the decrease in the state taxes.

(d) The Tribe shall notify tribal retailers at least twenty (20) days prior to the effective date of the time frame of the phase-in taxation rate and of any increases or decreases in the tribal cigarette tax as a result of any increases or decreases of the state tax. (Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.10. Tribal Cigarette Tax — Exemption from Taxes. The following shall not be subject to the tribal cigarette tax under the Compact:

(a) Sales of cigarettes manufactured by the Tribe or its agent within Indian country.

(b) The tax revenue from cigarette sales to tribal members shall be exempt from all provisions of the Compact. (Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.11. Cigarette Tax — Collection and Payment. (a) Every tribal retailer engaged in retail sales of cigarettes in Indian country who is liable for collecting the tribal cigarette tax shall maintain accurate written records of the purchase, stamping, and retail sales of cigarettes and shall make such records available for inspection by the tribal Finance Department and any auditor retained by the Tribe. Records shall be maintained for no less than three (3) years after the audit is accepted by the appropriate oversight agency.

(b) All applicable taxes shall be paid prior to the sale, distribution, or transfer of possession of any cigarettes.

(c) Whenever cigarette taxes are paid by any person other than the consumer, user, or possessor, that payment shall be considered a precollection of such taxes due. When the tax is prepaid by another, this amount shall be deemed to be part of the retail selling price of the cigarette to the retail purchaser. (Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.12. Tribal Cigarette Tax — Use of Tribal Tax Revenues. Tax revenue retained by the Tribe shall be used for essential government services. Use of tax revenue for subsidization of cigarette and food retailers is prohibited. "Subsidize" means that proceeds from the tribal cigarette tax cannot be expended on the direct business activities of the tribal retail cigarette business. Where the cigarette business is collocated with a retail food business, the proceeds cannot be expended on the direct business activities of the tribal retail cigarette business. (Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.13. Tribal Wholesale Purchase, Ownership, and Distribution of Tobacco Products. The Tribe or a branch or agency of the Tribe shall acquire all cigarette products at wholesale purchase prices for delivery to the Port Madison Indian Reservation. All

tobacco acquisitions shall be under the authority and sovereignty of the Suquamish Tribe.

(a) All tobacco products sold or distributed by tribally owned retail businesses or tribal members' licensees shall acquire their tobacco products from the Tribe or its authorized branch or agency.

(b) The Tribe or its authorized branch or agency shall purchase wholesale cigarettes only from the following four wholesalers.

(1) Wholesalers or manufacturers licensed to do business in the state who are subject to the requirements as set forth in Title 82 RCW and any rules adopted thereunder and must maintain adequate records detailing which cigarettes are subject to state tax and which cigarettes are subject to the tribal cigarette tax.

(2) Self-certified non-Indian wholesalers who are not licensed to do business within the state and who are not required by state law to be licensed, but who have agreed to comply with the provisions of the Compact by certified letter to the department that they will and can meet the terms of the Compact. The out-of-state self-certified wholesaler must be licensed to do business as a cigarette wholesaler within the jurisdiction where it has its main business office.

(3) Self-certified tribal wholesalers who are not licensed to do business within the state or any other state and who are not required by state law to be licensed but who are in compliance with §11.1.8 of this chapter.

(4) The Tribe or a tribally authorized branch or agency, as its own manufacturer and/or wholesaler of tribally manufactured cigarettes. (Ord. 2A (part), passed Jan. 8, 1977; amended by Res. 85-043 (part), passed June 3, 1985; amended by Res. 96-054 (part), passed May 14, 1996; amended by Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.14. Delivery of Cigarettes to the Tribal Retailer Outside of Indian County.

Cigarettes bearing the tax stamp pursuant to §11.1.15 of this chapter or cigarettes purchased by the Tribe for stamping may be delivered or transferred within or outside Indian country by a wholesaler to a tribal retailer provided that invoices identifying the delivery as Suquamish Tribal cigarettes accompany the delivery and that the carrier complies with all notification requirements of the Compact. Commercial carriers may make deliveries. (Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.15. Cigarette Tax Stamp Required. All cigarettes sold by tribal retailers shall bear either a Suquamish Tribe tax stamp or a Washington State Tribal Compact stamp. (Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.16. Affixation of Tax Stamps by Cigarette Wholesalers. (a) Beginning on the effective date of this chapter, the Tribe or its branches or agencies will affix stamps to the unstamped floor inventory of cigarettes in its possession or arrange for a licensed wholesaler to stamp such inventory.

(b) Wholesalers or the Tribe shall be responsible for affixing the tax stamps to the smallest container of cigarettes that will be sold or distributed by the tribal retailer. Stamps shall be affixed so that the stamps may not be removed from the package without destroying the stamp. Stamps shall be affixed so that they may be readily viewed by inspectors.

(c) Wholesalers may only possess unstamped cigarettes for as long as is reasonably necessary to affix tax stamps to the packages for sale or to ship to the Tribe. (Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.17. Cigarette Tax — Audit. The Tribe shall retain a third-party independent auditor or use an internal auditor for the purpose of verifying tribal compliance with the Compact and for performing all work required under Part VIII of the Compact. (Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.18. Cigarette Tax — Prior Resolutions. Any prior Tribal Council resolutions pertaining to cigarette taxes are superseded by this amendment. (Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.19. Restricted Sales. The Tribal Council may restrict sales of cigarettes and other tobacco products as it deems necessary to tribal interests. (Ord. 2A (part), passed Jan. 8, 1977; amended by Res. 85-043 (part), passed June 3, 1985)

11.1.20. Restricted Sales to Minors. A tribal retailer shall not sell any tobacco products to any person under the age of eighteen (18) years. (Ord. 2A (part), passed Jan. 8, 1977; amended by Res. 85-043 (part), passed June 3, 1985; amended by Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.21. Other Business by Tribal Retailer. A tribal retailer may conduct another business simultaneously with managing a tobacco outlet. The other business may be conducted on the same premises, and the tribal retailer shall not be required to maintain separate books of account for the other business. (Ord. 2A (part), passed Jan. 8, 1977; amended by Res. 85-043 (part), passed June 3, 1985; amended by Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.22. Sovereign Immunity, Liability, and Credit. Nothing in this chapter nor any operations under this chapter shall waive the sovereign immunity of the Tribe from suit. Tribal retailers shall not attempt or be authorized to waive the sovereign immunity of the Tribe from suit, nor shall such tribal retailer attempt or be authorized to create any liability on behalf of the Tribe or to utilize tribal credit except as may be authorized under a tribal enterprise charter. A violation of this section is a civil violation and may be

cause for the imposition of fines and/or the temporary or permanent revocation of the tribal tobacco seller's license. (Ord. 2A (part), passed Jan. 8, 1977: amended by Res. 85-043 (part), passed June 3, 1985; amended by Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.23. Operating without Authority. No person shall operate a tobacco outlet or engage in any commerce involving tobacco products on the Port Madison Indian Reservation except in accordance with this chapter. (Ord. 2A (part), passed Jan. 8, 1977: amended by Res. 85-043 (part), passed June 3, 1985)

11.1.24. Violation and Penalties. (a) The Tribal Court shall have jurisdiction over any violation of this chapter and the authority to issue an order directing tribal law enforcement officers to seize all tobacco products, from wherever purchased and by whomever owned, from any person operating in violation of this chapter.

(b) The tribal prosecutor or other attorney shall file a petition with the Suquamish Tribal Court to serve notice upon any person whom the Tribe has probable cause to believe has violated this chapter. Such notice shall state the reason for the order and shall name a time within not less than five (5) days, unless an emergency exists, when the person shall appear before the Suquamish Tribal Court for a show cause hearing.

(c) Any court order directing the seizure of tobacco products under this section shall be accompanied by a notice for a show cause hearing to occur within five (5) court days after such seizure, at which time the person shall be given the opportunity to present evidence in defense of his or her activities.

(d) If the Tribal Court determines, by a preponderance of the evidence, that such person has violated this chapter, the judge shall impose the following penalties in addition to the forfeiture of tobacco products described above.

(1) The amount of the civil penalty shall be two hundred fifty dollars (\$250) for the first violation.

(2) The amount of the civil penalty shall be five hundred dollars (\$500) for a second violation within two (2) years of the first violation.

(3) The amount of the civil penalty shall be seven hundred fifty dollars (\$750) for a third violation within two (2) years of the initial violation and may result in permanent revocation of the person's tribal tobacco seller's license. (Ord. 2A (part), passed Jan. 8, 1977: amended by Res. 85-043 (part), passed June 3, 1985; amended by Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.25. Recovery of Taxes Owed. The Tribe shall have a cause of action in Tribal Court to recover any taxes owed by a tribal retailer and not paid to the Tribe in accordance with this chapter or any ordinance. (Ord. 2A (part), passed Jan. 8, 1977:

amended by Res. 85-043 (part), passed June 3, 1985; amended by Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.26. Inspections by Tribal Authorities. The Tribe, through its internal auditor or an independent auditor, shall have the right to inspect the premises and records of any tribal retailer to determine compliance with this chapter. Notice of such inspection need not be given, and interference with or obstruction of such an inspection by a tribal retailer, his or her agent, or employee shall be deemed a violation of this chapter and subject to penalty pursuant to §11.1.24 of this chapter. (Ord. 2A (part), passed Jan. 8, 1977: amended by Res. 85-043 (part), passed June 3, 1985; amended by Res. 2005-027 (part), passed Feb. 14, 2005)

11.1.27. Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances is not affected. (Ord. 2A (part), passed Jan. 8, 1977: amended by Res. 85-043 (part), passed June 3, 1985)