

**SISSETON-WAHPETON OYATE**

**TAX CODE**

**CHAPTER 67**

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**SISSETON-WAHPETON OYATE**

**CHAPTER 67  
TAX CODE**

**PART I  
GENERAL PROVISIONS**

**67-01-01 Title**

It being necessary to strengthen the government of the Sisseton-Wahpeton Oyate by exercising the specific grant of authority contained in Article VII Powers, Sections 1(g) and 1(h) of the Sisseton-Wahpeton Oyate Constitution to levy and collect taxes, to license and regulate certain conduct within the jurisdiction of the Tribe, to provide financing for the current expenses of the Tribal Government, expand Tribal Government operations and services, educate members of the Tribe, promote economic growth, support capital improvements and increase consumer services, in order for the Tribe to efficiently and effectively exercise its confirmed inherent sovereignty and governmental responsibilities and enhance the general well-being of members of the Tribe and others within the jurisdiction of the Tribe, the Tribe hereby adopts this Chapter 67, the Sisseton-Wahpeton Oyate Tax Code.

**67-01-02 Jurisdiction**

In accordance with Article I of the Sisseton-Wahpeton Oyate Constitution, the Tribal Council hereby affirmatively declares, asserts, and extends the jurisdiction of the Tribe over all areas within the original exterior boundaries of the Lake Traverse Indian Reservation, as described in Article III of the Treaty of February 19, 1867, 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), and all dependent Indian Communities within the original boundaries of the Lake Traverse Indian Reservation as defined by 18 U.S.C. § 1151(b), as well as all dependent Indian Communities otherwise deemed to be Indian Country and subject to jurisdiction of the Sisseton-Wahpeton Oyate.

**67-01-03 Effect of Headings**

Headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any portion of this Tax Code.

**67-01-04 Continuity of Law**

It is hereby declared that the legislative intent of the Sisseton-Wahpeton Oyate Tribal Council is that this Tax Code be construed as amending and revising the present tax law enacted by the Sisseton-Wahpeton Oyate Tribal Council and that enactment of the Sisseton-Wahpeton Oyate

Tax Code of 2012 shall have prospective effect only and shall not affect the validity of any license issued, taxes collected, or tax liability accrued under such prior law.

**67-01-05 Construction**

This Tax Code shall be interpreted and applied in a manner consistent with all other Codes, Laws, Ordinances, Resolutions, and Regulations of the Sisseton-Wahpeton Oyate.

**67-01-06 Amendments**

This Tax Code may be amended only upon an affirmative vote of a majority of the Sisseton-Wahpeton Oyate Tribal Council.

**67-01-07 Severability**

If any clause, sentence, paragraph, section, or part of this Tax Code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgment 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 judgment shall have been rendered.

**CHAPTER 67**  
**TAX CODE**

**PART II**  
**TAX CATEGORIES, RATES AND OTHER PROVISIONS**

**67-02-01 Definitions**

Words used in this Tax Code, unless the context plainly requires otherwise, shall have the meanings ascribed to them in Sections 67-02-01.1 through 67-02-01.18.

67-02-01.1 Alcoholic beverage shall mean any intoxicating liquor, beer, malt beverages, or any wine.

67-02-01.2 Casual sale shall mean:

- A. Sales of tangible property by the owner or the rendering, furnishing or performing of a nonrecurring service by the provider, if at the time of the sale the seller is not engaged for profit in the business of selling tangible personal property or services, such as yard sales and craft sales are exempt; and
- B. The sale of all or substantially all the tangible property or services held, or used by a retailer in the course of the retailer's trade or business, when the retailer sells or otherwise transfers the trade or business to another person who shall engage in a similar trade of business.

67-02-01.3 Customer or Client means someone who pays for a product, goods or services in a business relationship.

67-02-01.4 Gross Receipts means the amount received in money, credits, property, or other consideration from sales at retail transacted within the jurisdiction of the Tribe, without any deduction on account of the cost of materials used, the cost of labor or services purchased, amounts paid for interest or discounts, or any other expenses.

67-02-01.5 Gross Taxable Services means the total amount received in money, credits, property, or other consideration, valued in money, from services rendered, furnished, or performed within the jurisdiction of the Tribe.

67-02-01.6 Person or Taxpayer includes any tribal member business, non-tribal member business, individual, firm, co-partnership, joint venture, association, corporation, municipal corporation, estate, trust, business trust, receiver, or any group or combination acting as a unit, other than the Tribe or one of its political



subdivisions, except where such person or taxpayer is specifically exempted by the Tribal Council or as stated herein Chapter 67.

- 67-02-01.7 Political subdivision means any agency, department or instrumentality created by, or pursuant to, Tribal law for the purpose of discharging some function of Tribal Government, including, but not limited to, districts, school districts, housing authorities or any instrumentality thereof performing functions which are not in competition with the commercial sector; the term excludes tribal businesses and any other business or vendor service that provides a service or product to the public.
- 67-02-01.8 Property used in processing means any tangible property which is intended to become an integral part of other tangible property to be sold ultimately at retail, by means of fabrication, compounding, manufacturing, or germination.
- 67-02-01.9 Retailer includes every person engaged in the business of selling tangible property, taxable services, motor vehicle fuel, alcoholic beverages, cigarettes or tobacco products at retail, or the furnishing of gas, electricity, water and communication service sold at retail with the object of the gain, benefit or advantage, either direct or indirect; provided, however, that when in the opinion of the Vice-Chairman it is necessary for the efficient administration of this Tax Code to regard any salespersons, representatives, truckers, peddlers, or canvassers acting as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from which they obtain the tangible property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, shall be treated as retailers for the purpose of this Tax Code.
- 67-02-01.10 Retailer maintaining a place of business within the jurisdiction of the Tribe shall mean and include any retailer, required to obtain a Tribal business license, having or maintaining within the jurisdiction of the Tribe, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within the jurisdiction of the Tribe under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily.
- 67-02-01.11 Sale means any transfer, exchange, or barter, conditional or otherwise, in any manner whatsoever, for "consideration".
- 67-02-01.12 Sale at retail or retail sale means the sale of tangible property or services to a consumer or to any person for any purpose, or for resale of tangible property used in connection with the performance of a service. "Sale at retail" or "retail sale" shall mean and include, but is not limited to: sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders, for the erection

of buildings or the alteration, repair or improvement of real property, in whatever quantity sold.

- 67-02-01.13 Services means all acts or services rendered, furnished, or performed, except services performed on tangible property delivered outside the jurisdiction of the Tribe, services used in processing tangible property for use in taxable retail sales or services, or services for an employer for a valuable consideration. The tax shall be due and collectable when the service is rendered, furnished, or performed for the ultimate user thereof and is paid for by the customer.
- 67-02-01.14 Resale of tangible property used in connection with the performance of a service means the reconditioning or repairing of tangible property of the type normally sold in the regular course of the retailer's business and which is held for sale.
- 67-02-01.15 User means the immediate recipient of the services who is entitled to exercise a right of power over the product of such services.
- 67-02-01.16 Vice-Chairman means the elected Vice-Chairman of the Sisseton Wahpeton Oyate or his or her delegated representative employed for the administration or enforcement of this Tax Code.
- 67-02-01.17 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), and all dependent Indian communities within the original boundaries of the Lake Traverse Indian Reservation as defined by 18 U.S.C. §1151(b).
- 67-02-01.18 Tax Office means the Tribal Tax Director or his or her delegated representative who shall carry out the day-to-day administration of this Chapter, and shall report directly to the Vice-Chairman.

## **67-02-02 Tangible Property**

There is imposed a minimum of a 5.5% tax or a higher rate as determined by resolution of the Tribal Council upon the gross receipts from all sales of tangible property, consisting of goods, wares, merchandise, propane, building materials and equipment, except as otherwise provided in Part II, sold at retail to consumers within the jurisdiction of the Tribe.

Tangible property includes, but is not limited to, gross receipts from:

- A. The operation or ownership of beverage dispensing machines or any other type of dispensing machine that sells a product to the public such as: soda machines, gum ball machines and candy machines.

- B. The operation or ownership of coin operated mechanical or electronic amusement devices, whether it dispenses prizes or not, including but not limited to: jukeboxes, video games, pinball machines, any type of pool table or game table and any type of game arcade machine.

**67-02-03 Requirement to Comply with Tribal, Federal and State Tax Laws and Mandated Employee Benefits**

Taxpayers, contractors, and Districts are required to comply with all applicable tribal, federal and state tax laws related to employee benefits and maintaining required employee benefits (such as, FICA, Medicare, federal income tax reporting and withholding, and unemployment insurance). Tribal member contractors are liable for all applicable laws. Failure to comply may result in:

- A. Contract termination; and/or
- B. Extradition to proper authorities; and/or
- C. Tribal Court fines of \$100.00 per day per incident.

**67-02-04 Land use tax**

- A. The following definitions apply to this section:

67-02-04.1 Trust Lands means all lands within the original boundaries of the Lake Traverse Reservation that are (a) owned by or held in trust for the Sisseton Wahpeton Oyate; and/or (b) allotments held in trust by the United States for an individual Indian or Indians or owned by an individual Indian or Indians and subject to restriction upon alienation imposed by the United States.

67-02-04.2 Agriculture use means all lands used for grazing, haying or farming or any related activity.

67-02-04.3 Farming means any ground that a crop can be planted in to include hay crops.

67-02-04.4 Hayland means any ground that a Native hay crop can be harvested from.

67-02-04.5 Pasture means any land that has been designated as usable pasture.

67-02-04.6 Lakeshore Frontage means any land that has a boundary of lakeshore frontage and where the land is used for cabin or recreational use.

67-02-04.7 Lessee means the person or persons who have obtained any possessory interest in trust lands or Indian land and the assignees and successors in interest of such a

person or persons. This term does not apply to a sub-lessee where the lessee retains an interest in the leasehold.

67-02-04.8      Taxes assessed means the taxes imposed by this Section shall be as follows:

1. Crop = \$ 0.50 per acre
2. Hayland = \$ 0.25 per acre
3. Pastureland = \$ 0.25 per acre
4. Lakeshore Frontage = \$ 10.00 per front foot

B. The taxes imposed by this land use tax section are due in advance, on or before November 1 of each year or on or before March 1 of each year; as billed by the Tax Office, provided, that no interest or penalty shall be charged when payments are received by the Tax Office within thirty days after the due date. Failure of the lessee to receive a bill from the Tax Office shall in no way relieve the lessee of his or her duty to pay the taxes imposed by this Section.

C. Lessor Not Obligated to Pay Tax

The incidence of the taxes imposed by this Section shall be upon the Lessee, and the Lessor and his or her interest in such Indian lands shall in no respect be liable for payment of the taxes.

D. Payment of Taxes by Sublessees and Others

1. Any sublessee or other person interested in any possessory interest upon which the taxes imposed by this Section are due and unpaid may file a return and pay on behalf of the lessee any taxes due in order to protect his rights in such possessory interest.
2. Upon payment of such taxes, the payor shall be entitled to recover from the lessee the amount of such payment with interest thereon at the rate of 12% per annum, plus any applicable penalties.
3. If the lessee shall make payment of the taxes due after they have been paid by some other person, the person making such payment on behalf of the lessee shall be entitled to a refund of the amount paid.

E. Delinquency as Grounds for Cancellation of Lease

Delinquency in the payment of any taxes imposed by this Section or any interest or penalties imposed for a period of six months shall be ground for cancellation of the lessee's lease. Such cancellation shall not relieve the lessee or his or her obligation to pay any taxes, penalties, or interest, nor shall it relieve the lessee of any of his duties or obligations to the lessor.

- F. All persons, except tribal members of the Sisseton Wahpeton Oyate, shall pay taxes for the privilege of leasing land on the Lake Traverse Reservation through leasing or permitting of Indian lands.
- G. The actual number of acreage subject to tax shall be determined by the Tribal Realty Department for each lease. The determination shall be based on the actual number of acres that are suitable for crop, hayland or pasture land use.

#### **67-02-05      Alcoholic Beverages**

There is imposed a minimum of a 20% tax or a higher rate as determined by resolution of the Tribal Council upon the gross receipts of all sales of alcoholic beverages sold by a retailer or tribal casino licensed by the Tribe to sell authorized alcoholic beverages, at retail within the jurisdiction of the Tribe.

#### **67-02-06      Gas, Electricity, Water and Communication Services**

There is imposed a minimum of a 5% tax or a higher rate as determined by resolution of the Tribal Council upon the gross receipts from the sale, furnishing or service of gas/fuels, electricity, water and communication, and new energy markets services, when sold at retail to consumers or users within the jurisdiction of the Tribe.

If the Tribe has entered into a tax agreement with either the State of South Dakota or North Dakota with respect to gas, electricity, water and communication services, the tax imposed by this section shall be superseded by terms of the agreements, as applicable and designated by the Tribal Council.

#### **67-02-07      Taxable Services**

There is imposed a minimum of a 5.5% tax or a higher rate as determined by resolution of the Tribal Council upon "gross taxable services" from enumerated services rendered, furnished, or performed within the jurisdiction of the Tribe including, but not limited to-

Accounting, check cashing & other cash vendors	Massage salons
Alteration and garment repair	Motor repair
Architect and engineering	Motorcycle, scooter, and bicycle repair
Armored car	Office and business machine repair
Automobile repair	Oilers and lubricators
Barber and beauty	Painting, papering, and interior decorating
Battery, tire and allied	Pipe fitting and plumbing
Boat repair	Parking facilities
Cable television	Pressing, dyeing, and laundering
Campgrounds	Private employment agencies, excluding services
Car wash and wax	for placing a person in employment where the

Carpentry	principal place of employment of that person
Carpet and upholstery cleaning	is to be located outside the jurisdiction of the Tribe
Collection agencies	Rental of tangible property, except mobile homes
Consultants	
Dry cleaning	which are not tangible personal property
Electrical and electronic repair and installation	Roof, shingle, and glass repair
Excavating and grading	Security and detective services
Farm implement repair of all kinds	Service charges of all financial institutions
Flying services	Shoe repair and shoeshine
Fur storage and repair	Storage warehousing of raw agricultural products
Furniture, rug upholstery repair and cleaning	Tanning beds or salons
Garbage removal	Telephone answering service
Golf and country clubs & all commercial recreation, except gaming activities	Termite, bug, roach, and pest eradicators
Gun and camera repair	Test laboratories, except tests on humans
House and building moving	Tin and sheet metal repair
Household appliance, television, and radio repair	Tour bus service
Investment counseling	Tour guides, fishing guides, hunting guides and outfitters, and trail rides
Janitorial and building maintenance or cleaning	Water conditioners and softening
Jewelry and watch repair	Weighing, welding, well drilling
Lawn care, landscaping, tree trimming & removal	Wood preparation
Limousine service	Wrapping, packing and packaging of merchandise other than processed meat, fish fowl, & vegetables
Machine operators	Wrecker and towing
Machine repair of all kinds	

## 67-02-08      **Commercial Occupancy Tax**

There is imposed for the privilege of occupancy a Commercial Occupancy Tax upon every lease of real property, which is used for commercial purposes within the jurisdiction of the Tribe, at a minimum of a 3% tax or a higher rate as determined by resolution of the Tribal Council of the monthly rent charged for such occupancy.

A. The following terms when used in this Section shall mean:

1. Tenant includes any person operating as a lessee, sub-lessee, licensee or concessionaire in occupancy, within the jurisdiction of the Tribe.
2. Landlord includes any person operating as a lessor or sub-lessor with the tenant or sub-tenant in occupancy.
3. Rent includes the amount paid by any tenant for the right or permission to occupy the premises for commercial purposes, and shall include: any amount paid based on a share of profits; payments made by the tenant on behalf of the landlord for property

taxes; water or sewer rents; charges for building services that the tenant could not personally provide independently of the landlord; building services provided pursuant to a lease; and business services; provided, that rent shall not include charges for utility services nor payments made by a tenant for leasehold improvements, repairs or maintenance performed as part of the lease of rental agreement.

4. Commercial purpose includes the carrying on or exercising of any trade, business, profession, vocation, or the business of leasing or renting for a consideration.
- B. The tax is computed on the monthly rent paid for the use or occupancy of land by a tenant or subtenant for commercial purposes.
  - C. Whenever the tenant is also a sub-lessor of the premises, and the sub-tenant occupies or uses the premises for commercial purposes, the tenant's taxable rent is reduced by the amount received from the sub-tenant, with the subtenant responsible for the tax on the amount of rent paid to the sub-lessor.
  - D. On or before the close of each calendar quarter, every landlord shall file a return with the Tax Office, on a form and in accordance with the rules prescribed by the Tax Commission; showing the monthly rent paid during the calendar quarter, which return shall be accompanied by payment of the tax due for the period covered by the return.
  - E. The leasing of renting of dwelling units, lodging facilities and trailer or mobile home spaces, which are intended primarily for leasing or renting to persons who reside in such units, facilities or spaces, as their principal or permanent places of residence, are not subject to the Commercial Occupancy Tax. Principal or permanent place of residence means a unit, facility or space leased or rented to a single tenant thirty (30) or more consecutive days, other than a hotel, motel, dude ranch, resort or campground.
  - F. Upon resolution by the Tribal Council, the application of the Commercial Occupancy Tax to tenants who are members of the Tribe may be waived; provided, that a tribal member who is a landlord shall collect any tax due, in the manner provided above.

#### **67-02-09 Foreign Retailers**

There is imposed a minimum of a 5% tax or a higher rate as determined by resolution of the Tribal Council upon the gross receipts of all retailers not maintaining a place of business within the jurisdiction of the Tribe from all sales of tangible personal property sold at retail to consumers within the jurisdiction of the Tribe that meet any of the following criteria:

- A. Solicit retail sales of tangible property by mail or otherwise, if the solicitations are continuous, regular, or systematic and if the retailer benefits from any banking, financing, debt collection, telecommunications, or marketing activities occurring or benefits from the

location of authorized installation, servicing, or repairs facilities, within the jurisdiction of the Tribe;

- B. Are owned or controlled by the same interests, that own or control a retail business engaged in the same or similar line of business within the jurisdiction of the Tribe; or
- C. Maintain or have a franchise or license operating under the retailer's trade name within the jurisdiction of the Tribe, if the franchisee or licensee is required to collect the tax imposed by Part II.

#### **67-02-10 Hotel Occupancy Tax**

There is imposed a minimum of a 8% tax or a higher rate as determined by resolution of the Tribal Council tax upon every charge for occupancy of a room or suite of rooms in a hotel located within the jurisdiction of the Tribe, which is regularly used and kept open as such for the lodging of guests, including a motel, apartment hotel, resort, or club.

#### **67-02-11 Contractor's Excise Tax**

- A. There is imposed a Contractor's Excise Tax upon the gross receipts of all prime contractors and/or subcontractors engaged in realty improvement contracts, a minimum of a 2% tax or a higher rate as determined by resolution of the Tribal Council including contractors and/or subcontractors furnishing electricity, heat, power, water, natural or artificial gas, or distributing the same for public use by means of transmission lines, gas lines or water pipelines and communications.
- B. Subcontractor's gross receipts are not subject to the tax if they are furnished a valid prime contractor's exemption certificate by the prime contractor for each specific job performed.
  - 1. The Tax Office shall issue a certificate of taxes received by the prime contractors.
  - 2. The certificate shall indicate the prime contractor's valid contractors' business license number and contract number.
  - 3. Any subcontractor who fails to retain a certificate and a record of project designations is considered a prime contractor and is subject to tax under this Section.
- C. Homeowners working on their own homes are not subject to this tax and land developers are subject to the tax.
- D. The Contractor's Excise Tax applies to the total contract price including all labor and materials. Materials include those purchased by the contractor and those purchased by the person who let the contractor or his/her agent use such materials in the building construction.



E. All contractors and subcontractors shall report and pay the Contractor's Excise Tax measured by gross receipts on a cash basis that is, payment shall be made within ten (10) business days of issuance of a construction progress payment or other similar payment to the prime contractor.

F. The following terms when used in this section shall mean:

1. **Prime contractor** means a person(s) [including persons and business entities contracting as a prime contractor or a sub-contractor with the Tribe or a Tribal program whether or not pursuant to a P.L. 93-638 contract], entering into a realty improvement contract or a contract for construction services as enumerated in Division C of the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President.

A person, tribal program or tribal business who is not primarily in the business of making realty improvements and regularly employs persons for the purpose of repairing, maintaining or making realty improvements for his own individual use and who repairs, maintains or make a realty improvement for his own individual use with his regular employees is not a prime contractor and is not liable for the tax herein.

2. **Subcontractor** means a person(s) contracting with a prime contractor to perform all or part of a realty improvement the prime contractor as contracted to perform within the jurisdiction of the Tribe.

3. **Gross receipts** means the amount directly received in money, without any deduction on account of the cost of property sold, the cost of materials used, the cost of services or labor purchased, amounts paid for interest or discounts or any other expense whatsoever, nor may any deduction be allowed for losses.

a. Gross receipts include those materials furnished to the prime contractor or subcontractor by the owner or the lessee of the realty improvement.

b. For the purposes of measuring the contractor's excise tax, gross receipts include the greater of the cost or fair market value of materials used by a contractor or subcontractor in the performance of a contract, regardless of whether the contractor or subcontractor owns or furnishes the materials.

## **67-02-12 Utility Excise Tax**

- A. There is imposed on each public utility and all telecommunications companies a tax of a minimum of .0015 or two hundred and fifty dollars (\$250.00) tax or a higher rate as determined by resolution of the Tribal Council whichever is greater, upon the annual gross

receipts derived by the public utility or telecommunications company from its customers within the jurisdiction of the Tribe during the preceding calendar year.

- B. On June first of each year, each company shall remit the utility excise tax and file with the Tax Office, on forms prescribed by the Tax Commission, the amount of its gross receipts derived from the company's customers within the jurisdiction of the Tribe during the preceding calendar year.
- C. The following terms when used in this section shall mean:
  - 1. **Public utility** means any person operating, maintaining, or controlling equipment or facilities for the purpose of providing gas or electric to or for the public in whole or in part, within the jurisdiction of the Tribe; or
  - 2. **Communications company** means any person, trustee, lessee or receiver owning, operating, managing or controlling in whole or in part, any communications line, satellite television services, and cable television providers system or exchange within the jurisdiction of the Tribe, directly or indirectly, for public use.

## **67-02-13 Manufacturing Excise Tax**

For the privilege of engaging in business, an excise tax is imposed on any person(s) and or entity engaged in manufacturing within the jurisdiction of the Tribe, and is imposed in addition to all other taxes imposed by this Tax Code. The rate of tax imposed on gross receipts of the manufacturing business shall be as determined by resolution of the Tribal Council.

- A. The following terms when used in this Section shall mean:
  - 1. **Manufacturing** means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include construction.
  - 2. **Gross receipts** means the total consideration received for all goods manufactured within the jurisdiction of the Tribe, regardless of the location of the purchaser, without any deduction on account of the cost of materials used, the cost of labor or services purchased, amounts paid for interest or discounts, or any other expenses whatsoever, nor shall any deductions be allowed for losses.
- B. The payment of tax imposed by this subsection shall be due and payable in monthly installments on or before the 15<sup>th</sup> day of the month next succeeding the month in which the tax accrued. On or before the 15<sup>th</sup> day of each month, every person on whom the tax imposed by this subsection is imposed shall file a return with the Tax Office, which shall include the amount of gross receipts subject to the tax and a calculation of tax due for the preceding month, in accordance with the forms and rules prescribed by the Tax Commission and as may be necessary for the proper administration and enforcement of this Tax Code.

## **67-02-14      Tourism Tax**

A.    The following terms when used in this Section shall mean:

67-02-14.1    Campground means but is not limited to any property or premise kept, used, maintained, advertised, or held out to the public to be a place where sites are available for placing of tents, campers, trailers, mobile homes, or other mobile accommodations to transient guest. The following constitute campgrounds: campgrounds, camping cabins, camping resorts, commercial picnic grounds, organizational camps, park units, recreational vehicle parks, trailer parks, and youth camps.

67-02-14.2    Recreational Service means but is not limited to any for profit business establishment that provides leisure or recreational experiences or excursions. The following constitute recreational services: hotel lodging, use of capital improvements, hiking or tour guides, day camps, fishing guides, hunting guides and outfitters, trail rides, and youth camps.

67-02-14.3    Visitor intensive business means but is not limited to any antique shop, book store, candy store, flea market, gift shop, indigenous arts and crafts shop, jewelry, lapidary shop, leather goods shop, marina, novelty shop, pottery shop, rock shop, or souvenir shop.

B.    There is hereby imposed a tourism tax of a minimum of four a percent (4%) or a higher rate as determined by resolution of the Tribal Council on the gross receipts of:

1.    Any business engaged in providing a campground facility to the public;
2.    Any recreational service; and/or
3.    A visitor intensive business.

C.    There is hereby imposed a 4% tourism tax or a higher rate as determined by resolution of the Tribal Council on the gross receipts from all hunting and fishing license fees received by the SWO Natural Resources Department.

D.    Section 67-02-14 C. taxes shall be collected by the SWO Natural Resources Department on hunting and fishing license fees, shall be due and payable in monthly installments on or before the 15<sup>th</sup> day of the month next succeeding the month in which the tax accrued. On or before the 15<sup>th</sup> day of each month, a return shall be filed with the SWO Tax Office which shall include the amount of gross receipts subject to the tax and a calculation of tax due for the preceding month, in accordance with the forms and rules prescribed by the Tax Commission and as may be necessary for the proper administration and enforcement of this Tax Code.

- E. SWO tribal members are exempt from all tourism taxes set forth in this Section 67-02-14 pursuant to Tribal Council Motion No. 55 passed on September 12, 2012 and further implemented by Tribal Council Resolution No. SWO-12-080.
- F. The payment of tax, with the exception of the hunting and fishing license fee tax, imposed by this subsection shall be due and payable in monthly installments on or before the 15<sup>th</sup> day of the month next succeeding the month in which the tax accrued. On or before the 15<sup>th</sup> day of each month, a return shall be filed with the tax remittance to the Tax Office, which shall include the amount of gross receipts subject to the tax and a calculation of tax due for the preceding month, in accordance with the forms and rules prescribed by the Tax Commission and as may be necessary for the proper administration and enforcement of this Tax Code.

## **67-02-15 Meals Tax**

- A. The following terms when used in this Section shall mean:

67-02-15.1 Complimentary food or beverages means any food and/or beverage(s) provided at no cost to a customer by a business entity, including any food and/or beverage(s) purchased with points or reward value.

67-02-15.2 Taxable meal means any prepared food and/or beverages furnished within the jurisdiction of the Tribe by a business and sold to the public. A taxable meal may include prepared items for consumption on or off the premises. The following businesses are subject to the meal tax, including; but, not limited to:

1. Dakota Magic Casino deli bar, restaurant and buffet;
2. Dakota Sioux Casino deli bar, restaurant and buffet;
3. Dakota Connection Casino deli bar and restaurant; and
4. Agency Village C-store restaurant and delicatessen.

67-02-15.3 Taxable meal shall not include the following food or beverages:

1. Fruits, vegetables, candy and similar grocery items sold self-serve for take-out or at farmers market stands;
2. Any food and/or beverages that is a grocery-type item furnished for take-out such as: pies or cakes, bread; milk, whole uncooked pizzas and fully prepared ready to eat sandwiches and other similar items that are pre-packaged for quick sale by a food distributor company;
3. Any food and/or beverages sold by a nonprofit corporation for the purpose of raising funds for use by the nonprofit for the nonprofit charitable purposes;

4. Any food and/or beverages served or furnished by a food stand at a powwow or other public event;
  5. Any food and/or beverages served or furnished by or on the premises of a school;
  6. Any food and/or beverages provided to the elderly by a tribal elderly program; and
  7. Any alcohol beverages that are subject to the tax set forth in Section 67-02-05 Alcoholic Beverages.
- B. There is hereby levied upon all businesses subject to the meals tax a minimum of a 5% tax on the gross receipts or a higher rate as determined by resolution of the Tribal Council.
- C. Computation of Gross Receipts. In computing the amount of food and beverages tax levied under this subsection, a taxpayer may exclude from the amount of gross receipts:
1. Amounts paid as a gratuity or tip and distributed to the employees of such business;
  2. Food and beverage sales to the Tribe, any other Tribal government, local government, state government or the U.S. government;
  3. Meal items sold to Sisseton Wahpeton Oyate tribal members. A current tribal I.D. documenting their membership must be shown to the business at the time of the sale. A point of sale listing for all sale transactions documenting the amount of tax exempt gross receipts is to be kept by the business; and
  4. Complimentary food or beverages.
- D. The payment of tax imposed by this subsection shall be due and payable in monthly installments on or before the 15<sup>th</sup> day of the month next succeeding the month in which the tax accrued. A tax remittance form shall be filed with the tax remittance to the Tax Office, which shall include the amount of gross receipts subject to the tax and a calculation of tax due for the preceding month, in accordance with the forms and rules prescribed by the Tax Commission.

## **67-02-16 Exemptions**

There is hereby specifically exempted from the provisions of Part II and from computation of the amount of tax imposed by it the following:

- A. The gross receipts from sales at retail to the Tribe, or one of its political subdivisions, to the United States, or to any other Indian Tribe; and/or,

B. The gross receipts from casual sales.

**67-02-17 Addition of Tax to Price of Sale of Charge for Services**

Every retailer shall add the tax imposed by Sections 67-02-02 through 67-02-11 to the sale price, service charge or rent, and every customer has the legal incidence and responsibility to pay the tax.

The taxes collected pursuant to Sections 67-02-02 through 67-02-11 by the retailer shall be due and payable in monthly installments on or before the 15<sup>th</sup> day of the month next succeeding the month in which the tax accrued. On or before the 15<sup>th</sup> day of each month, a return with the SWO Tax Office shall be filed which shall include the amount of gross receipts subject to the tax and a calculation of tax due for the preceding month, in accordance with the forms and rules prescribed by the Tax Commission and as may be necessary for the proper administration and enforcement of this Tax Code.

**67-02-18 Severability**

If any clause, sentence, paragraph, section, or part of this Tax Code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgment 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 judgment shall have been rendered.

## CHAPTER 67 TAX CODE

### PART III USE TAX

#### 67-03-01 Definitions

All the other definitions previously provided apply in this Part III with two additional definitions:

67-03-01.1 Use means the value of the materials used in the construction project, including the delivery cost.

67-03-01.2 Purchase price means the amount of money exchanged for a transfer of property ownership.

#### 67-03-02 Tax Imposed

A minimum of 5.5% or a higher rate as determined by resolution of the Tribal Council on the purchase price of the tangible personal property for the purpose of using, storing, distributing, or consuming goods and services within the jurisdiction of the Tribe. Liability for payment of the use tax is not extinguished until the tax has been paid directly to the Tax Office.

#### 67-03-03 Contractors and Subcontractors Taxed on Property Used In Performance of Contract

The contractor or subcontractor shall pay a tax at the rate prescribed in Section 67-03-02, unless such property has been previously subjected to a sales tax by the Tribe and the tax thereon has been paid.

#### 67-03-04 Collection and Remittance of Use Tax

Any contractor or subcontractor who uses, stores, or otherwise consumes any property subject to tax hereunder shall remit and pay to the Tax Office the total tax herein imposed upon all such property on or before the fifteenth (15<sup>th</sup>) of the month following the month in which the contractor or subcontractor uses the property in the construction process. The Use Tax is due on the purchase price, including delivery charges.

#### 67-03-05 Tribe 10% Withholding Tax

Whenever the Tribe, any political subdivision, program or agency of the Tribe, delivering services or programs within the jurisdiction of the Tribe for the benefit of the Tribe or tribal members enters into a contract or subcontract with any person, contractor, or subcontractor, the

Tribe or such entity of the Tribe, shall withhold from the person, contractor or subcontractor ten percent (10%) of the purchase price or overall contract amount.

- A. The sums withheld from the person, contractor or subcontractor shall only be released and paid upon written certification of the Vice-Chairman that all taxes due under Part III have been paid.
- B. In the event that all taxes due under Part III have not been paid, the Vice-Chairman shall collect the taxes due from the sums withheld under this section and shall certify that such sums that may remain after such collections of taxes may be paid to the person, contractor or subcontractor.
- C. When collection of taxes occurs pursuant to the provisions of Part III, a person, contractor or subcontractor shall have no legal or contract claim to receive from any entity the full amount of ten percent (10%) withheld and shall only have a claim to receive such sums as may remain after levy or deduction of taxes due, penalties, fees or fines, change orders, and/or collection of liquidated damages due.

**67-03-06      Receipt as Evidence**

A tax receipt from a retailer given to the purchaser which indicates the sales tax imposed by Part II has been paid in the form of a notation on the sales slip or receipt for the purchase price relieves the purchaser of liability for the use tax.

**67-03-07      Severability**

If any clause, sentence, paragraph, section, or part of this Tax Code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgment 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 judgment shall have been rendered.



**CHAPTER 67  
TAX CODE**

**PART IV  
MOTOR VEHICLE FUEL TAX**

**67-04-01     Definitions**

The definitions contained in Part II shall apply to provisions of Part IV according to their content, except the following words, terms, and phrases when used in Part IV shall have the meanings ascribed to them in Sections 67-04-01.1 through 67-04-01.5.

67-04-01.1     Consumer means any person purchasing motor vehicle fuel within the jurisdiction of the Tribe for use in a motor vehicle licensed for operation upon public roads or highways.

67-04-01.2     Distributor or Wholesale Distributor means a person other than a retailer, who acquires motor vehicle fuel from a supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum or other receptacle to another wholesale distributor or retail dealer; provided, that a person may bring into the jurisdiction of the Tribe an amount not to exceed thirty gallons of motor vehicle fuel in the supply tank or another container directly connected to the motor vehicle without becoming a distributor.

67-04-01.3     Motor vehicle fuel means the following:

- A. All products commonly or commercially known or sold as gasoline, ethyl alcohol, methyl alcohol, and all gasoline blends. These products may include in some quantity casinghead, absorption, natural gasoline, benzol, benzene, naphtha, except that flashing above one hundred degrees Fahrenheit, and Tagliabue closed cup test, which is sold and used only as cleaner's or painter's solvent; and
- B. Any liquid prepared, advertised, offered for sale, or sold for use as commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (American Society of Testing Material Designation D-86) shows not less than ten percent distilled (recovered) below three hundred forty-seven degrees Fahrenheit and not less than ninety-five percent distilled (recovered) below four hundred sixty-four degrees Fahrenheit.

- C. The term does not include liquefied gases which would not exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute.

67-04-01.4 Blends means one or more petroleum products, mixed with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is suitable for the generation of power in an internal combustion engine or motor.

67-04-01.5 Public road or highways means every street, road, drive, highway, or thoroughfare of any kind open to the public and intended or used for its enjoyment and for the passage of motor vehicles.

## **67-04-02 Tax Imposed**

The rate of tax imposed on motor vehicle fuel shall be as determined by resolution of the Tribal Council.

If the Tribe has entered into an agreement with either the State of South Dakota or North Dakota with respect to motor vehicle fuel taxation, the tax imposed by this section shall be superseded by the terms of the agreement, where applicable.

The distributor shall collect and remit the tax imposed by this Part IV on the wholesale distribution of motor vehicle fuel to a retailer, and on direct sales of motor vehicle fuel to consumers or shall collect and remit the tax pursuant to any agreement or compact with either the State of South Dakota or North Dakota, where such agreement has been executed pursuant to a Tribal Council resolution.

The tax imposed by this section does not apply on sale by a distributor to another distributor, on an export, or on a sale to an exempt consumer.

The person required to remit the tax imposed by this Part IV shall pass the tax on to the retailer and to the consumer. A retailer who paid the tax to the distributor shall pass the tax on to the consumer or shall collect and remit the tax pursuant to any agreement or compact with either the State of South Dakota or North Dakota.

All taxes, penalties and interest collected pursuant to this Part IV shall be deposited in a special fund designated for construction, reconstruction, repair and maintenance of tribal roads and cleanup of pollution from petroleum spills from underground storage tanks.

A fixed percentage of the taxes collected pursuant to this Part IV may be transferred to a state government pursuant to tribal-state tax agreement.

## **67-04-03 Monthly Return and Payment of Tax by Distributors**

The tax shall be paid in the first instance by the distributor upon the invoiced gallonage of all motor vehicle fuel placed into any tank or other container for use, sale, or delivery, excluding transportation, to a retailer or consumer within the jurisdiction of the tribe. The distributor shall pass the tax on to the retailer and the retailer shall pass the tax on to the consumer or shall collect and remit the tax pursuant to any agreement or compact with either the State of South Dakota or North Dakota, where such agreement has been executed pursuant to a Tribal Council resolution. The applicable fuel tax rate (s) and terms of the applicable tax agreement or compact shall take precedence over any related terms in Chapter 67, where such agreement has been executed pursuant to a Tribal Council resolution.

All sales or transfers of motor vehicle fuel made by a distributor to retailers or consumers within the jurisdiction of the Tribe shall be accompanied by a transportation bill of lading or a sales invoice which shall be given to the retailer or consumer upon delivery of fuel.

Each distributor shall file a monthly report with the Tax Office no later than the thirtieth (30<sup>th</sup>) day of each calendar month covering motor vehicle fuel sold during the preceding calendar month. The submitted report form(s) shall show the amount of the fuel tax to be remitted to the Tribe.

The requirement to file a monthly report and pay the tribal tax is met where the Tribe has entered into a tax agreement or compact with either the State of South Dakota or North Dakota and a monthly reporting form and the Tribal tax is paid as directed by the Tribal Council.

When the thirtieth (30<sup>th</sup>) day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier before midnight of the due date.

The distributor must file the return in accordance with the forms and rules prescribed by the Tax Commission. The return must contain the information as required by the Tax Commission including:

- A. A detailed schedule of motor vehicle fuel purchased, imported and exported;
- B. A detailed schedule of motor vehicle fuel sold to any person, tribal program or other government agency eligible to purchase motor vehicle fuel without the tax imposed by the Part IV;
- C. A detailed schedule of motor vehicle fuel sold for resale, including a list of persons who purchased such fuel;
- D. The total number of gallons of motor vehicle fuel sold subject to the tax imposed by this Part IV; and

- E. The return must be signed by the distributor to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury.

Each distributor shall pay the tax due at the same time as the filing due date of the tax return.

#### **67-04-04 Business License Required**

It shall be unlawful for any person to act as a distributor within the jurisdiction of the Tribe, unless such distributor obtains a Tribal Business License issued by the Vice-Chairman.

#### **67-04-05 Records Required for a Period of Three Years**

Each retailer selling motor vehicle fuel at retail within the jurisdiction of the Tribe shall maintain and keep for a period of three years, records of all transactions together with invoices, delivery tickets, bills of lading, and such other records reasonably required by the Vice-Chairman. The records are open to inspection by the Tax Commission, Vice-Chairman or Tribal Executives during normal business hours.

#### **67-04-06 Refunds**

- A. The SWO Tax Office shall collect all necessary data and documentation from the tribal programs and submit the necessary forms to obtain a refund from the Internal Revenue Service for federal fuel tax paid for fuel that is purchased by the Tribe and put into tribal vehicles.
- B. A retailer who has lost motor vehicle fuel due to a casualty loss or theft exceeding one hundred gallons, on which the fuel tax imposed by this Part IV has been paid, shall be refunded the amount of tax on the lost gallons, based on proof of loss as required by the Vice-Chairman. The claim for refund must be filed within thirty (30) days after the loss is discovered, unless the Vice-Chairman grants an extension of time for cause.
- C. A distributor may apply for and obtain a refund for taxes paid the Tribe on any gallons of motor vehicle fuel sold to a party who fails to pay the distributor for the product and the taxes owed to the Tribe. Application for this refund shall be made within sixty (60) days of the occurrence of the delinquency. Upon application, all unpaid taxes of the delinquent party become due and owing. The application for refund may include all taxes credited to the delinquent party since the occurrence of the delinquency. To qualify for a refund, the distributor shall supply the Vice-Chairman sufficient evidence and testimony to enforce any tax collection action by the Vice-Chairman. Upon application of this refund, the Vice-Chairman may make an assessment and take collection action against the purchaser of the fuel in accordance with the provisions of Part VII. The distributor is only eligible for a refund for the taxes not paid by a customer once every three (3) years. The distributor is

responsible for the tax on all sales to a delinquent purchaser that take place after the application for a refund is made and is not eligible for further refunds.

- D. Any person who buys and uses motor vehicle fuel for a qualifying purpose other than use in motor vehicles or motorboats, and who paid the tax directly or indirectly through the amount of the tax being included in the price of the motor vehicle fuel, or otherwise, may obtain a refund of the tax paid upon filing with the Tax Office a claim for refund in the form and manner prescribed by the Tax Commission, and containing the information the Tax Commission shall require. By signing any such claim which is false or fraudulent, the applicant shall be subject to the penalties provided in this Chapter 67 for knowingly making a false claim. The claim shall set forth the total amount of motor vehicle fuel so purchased and used by the applicant other than in motor vehicles or motor boats, and shall state when and for what purpose it was used. When a claim contains an error in computation or preparation, the Tax Office is authorized to adjust the claim in accordance with the evidence shown on the claim or other information available to the Tax Office. The Tax Office, on being satisfied that the claimant is entitled to the payments, shall transmit it to the Vice-Chairman for approval.
- E. Motor vehicle fuel bought and used for a “qualifying purpose” means motor vehicle fuel used in carrying on a trade or business, used on a farm or ranch situated within the jurisdiction of the Tribe, and used for an agricultural purpose. Motor vehicle fuel shall be treated as used for agricultural purposes only if used by the applicant in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including, but not limited to, the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, on a farm or ranch of which the applicant is the owner, tenant, or operator.

#### **67-04-07 Compliance**

Program managers shall be responsible for submitting the fuel receipts and fuel logs on a monthly basis. The receipts and logs are due in the SWO Tax Office before the end of the month for the previous month's purchase transactions by tribal programs for fuel put into tribal vehicles. Failure to comply with this section shall result in progressive disciplinary action.

#### **67-04-08 Tax Collection Allowance**

Any distributor who properly remits tax under this Part IV shall be entitled to deduct and withhold from the amount of tax which would otherwise be due one and one-half percent to reimburse the distributor for the expense incurred on behalf of the Tribe in collecting and remitting motor vehicle fuel taxes, and for loss from evaporation, handling, spillage and shrinkage. This provision does not apply to additional tax assessed during an audit. This allowance is permitted contingent and only if the distributor files all required fuel tax reports and remits the taxes due before the due date for the report and taxes.

**67-04-09      Inventory Gains**

The Vice-Chairman may allow a tax credit to a distributor for actual inventory losses due to a casualty loss or theft exceeding one hundred gallons, based on proof of loss as required by the Vice-Chairman. The distributor must notify the Vice-Chairman in writing of the loss within thirty (30) days after the loss is discovered or the claim for credit is barred, unless the Vice-Chairman grants an extension of time for cause.

**67-04-10      Disposition of Proceeds of Tax**

The money received by the Tax Office from the motor vehicle fuel taxes imposed by Part IV, after deducting the cost of administration and collection authorized by the Tribal Council appropriation only, shall be credited to a motor vehicle fuel tax fund and used solely for snow removal and the construction, improvement, maintenance and repair of roads, bridges and highways, and subject to such other provisions and restrictions as provided by Tribal Law.

**67-04-11      Severability**

If any clause, sentence, paragraph, section, or part of this Tax Code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgment 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 judgment shall have been rendered.

## **CHAPTER 67 TAX CODE**

### **PART V CIGARETTE AND TOBACCO PRODUCTS EXCISE TAX**

#### **67-05-01 Definitions**

Definitions contained in Part II shall apply to provisions of Part V according to their content, except the following words, terms, and phrases when used in Part V shall have the meanings ascribed to them in Sections 67-05-01.1 through 67-05-01.7.

- 67-05-01.1 Cigarettes shall mean any roll for smoking made wholly or in part of tobacco, irrespective of the tobacco being flavored, adulterated, or mixed with other ingredients, 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.
- 67-05-01.2 Distributing shall mean any person who purchases unstamped cigarettes or other tobacco products directly from the manufacturer thereof and stores, sells or otherwise disposes of the same within the jurisdiction of the Tribe, including the Tribe when it imports tobacco products into its jurisdiction. Cigarette distributor also includes any person who manufactures or produces, or causes to be manufactured or produced cigarettes or other tobacco products, and sells, stores, or distributes the same within the jurisdiction of the Tribe.
- 67-05-01.3 Manager shall mean a person employed by the Tribe to manage a tobacco outlet or person acting as a representative for a retail business or individual licensed to do business as a retailer on the Lake Traverse Reservation.
- 67-05-01.4 Tobacco Outlet shall mean a retail sales business established and operated by a business or individual licensed to do business on the Lake Traverse Reservation and the Sisseton-Wahpeton Oyate for the purpose of selling tobacco products within the jurisdiction of the Tribe, including tobacco outlets that are operated simultaneously with another business established by the Tribe or other business conducted on the same premises as the tobacco outlet.
- 67-05-01.5 Tobacco Products shall mean cigars, snuff, chewing tobacco, and any other products made up or composed of tobacco in whole or in part, except cigarettes.
- 67-05-01.6 Retail Selling Price shall mean the ordinary, customary or usual price paid by the consumer for each tobacco product, less the tax levied under Part V.

**67-05-02 Tax Imposed**

- A. A tax is imposed at a rate as determined by resolution of the Tribal Council. The final consumer or retail customer shall have the legal incidence to pay the tax.
- B. Wholesale tax on all tobacco products

In addition to the cigarette tax imposed by this Section, there is imposed, whether or not a sale occurs, a tax upon all tobacco products brought onto to trust lands within the original boundaries of the Lake Traverse Reservation and upon any person engaged in business as a licensed distributor or licensed wholesaler thereof, who shall pass the tax forward to the final consumer or retail customer who shall have the legal incidence to pay the tax at a rate as determined by resolution of the Tribal Council.

Such tax shall be imposed at the time the distributor or wholesaler brings or causes to be brought onto trust lands within the original boundaries of the Lake Traverse Reservation tobacco products for sale; make, manufactures, or fabricates tobacco products within the original boundaries of the Lake Traverse Reservation for sale on the Lake Traverse Reservation; or ships or transports tobacco products to dealers on the Lake Traverse Reservation to be sold by those dealers.

**67-05-03 Additional Tax**

The Tribal Council may levy an additional tax upon the handling, distribution, sale, use, consumption, and possession of cigarettes and other tobacco products as it deems necessary.

**67-05-04 Stamps or Metering Machine Imprint Used to Evidence Tax Payment**

The payment of tax imposed by Part V shall be evidenced by the affixing of stamps or by the impression of an imprint by suitable metering machines approved by the Tribal Vice-Chairman, to the packages containing the cigarettes as hereinafter provided.

**67-05-05 Addition of Tax to Retail Selling Price**

The amount of the tax imposed by Section 67-05-02 shall be added to the retail selling price of every package of cigarettes sold by a tobacco outlet within the jurisdiction of the Tribe.

The amount of the tax imposed by Section 67-05-02 shall be added to the retail selling price of every tobacco product sold by a tobacco outlet within the jurisdiction of the Tribe.

**67-05-06 Manager Responsible for Collection and Remittance of Tax**



The manager shall be responsible for the collection of the excise tax imposed by Part V from every purchaser of cigarettes and tobacco products. The tax collected pursuant to Part V shall be remitted by the manager to the Tax Office in a manner and at intervals prescribed by the Tax Commission or the Tribal Council.

**67-05-07      Monthly Returns by Managers**

On or before the thirtieth (30<sup>th</sup>) day of each month every manager shall render to the Tax Office a verified report of all sales and deliveries on forms prescribed by the Tax Commission, showing the quantity sold or delivered to the tobacco outlet during the preceding month and the amount of stamps on hand at the end of the reporting period and such other information as the Vice-Chairman require.

**67-05-08      Manager Hiring Authority**

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

**67-05-09      Establishment of Tobacco Outlets**

The Tribal Council may establish one or more tobacco outlets within the jurisdiction of the Tribe as the Council in its sole discretion deems necessary to provide adequate service to consumers of cigarettes and tobacco products.

**67-05-10      Nature of Outlet**

Each tobacco outlet established pursuant to Section 67-05-09 shall be a Tribal tobacco outlet and shall be operated and managed for the Tribe by a manager employed by the Tribe.

**67-05-11      Tobacco Products Federally Restricted Tribal Property**

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

**67-05-12      Stamps Secured by Tribal Vice-Chairman**

The Tribal Vice-Chairman shall secure stamps, of such design and denomination as she/he shall prescribe, suitable to be affixed to packages of cigarettes as evidence of the payment of the tax imposed by Part V. The Tribal Vice-Chairman shall keep accurate records of all stamps provided to any manager or distributor.

**67-05-13      Resale of Stamps Prohibited**

No manager or distributor shall sell or transfer any stamps issued under the provision of Part V. The Tribal Vice-Chairman shall repossess any unused, uncanceled stamps under rules and regulations issued pursuant to Part V by the Vice-Chairman.

**67-05-14      Use or Possession of Counterfeit Stamps as Offenses**

Any person who shall fraudulently make or shall forge or counterfeit any stamp prescribed by the Vice-Chairman under the provisions of Part V, or who shall cause or procure the same to be done, or who shall willfully publish, pass or render as true, any false, altered, forged, or counterfeit stamp, or who shall use more than once any stamp provided for and required by **Part V**, for the purpose of evading the tax hereby imposed, shall be guilty of a Class One (1) Misdemeanor.

**67-05-15      Use of Approved Metering Machine Authorized by the Vice-Chairman in Lieu of Stamps**

The Tribal Vice-Chairman, if he/she shall determine that it is practicable to stamp by impression, packages of cigarettes or tobacco products by means of a metering machine may, in lieu of the affixing of stamps as provided by Part V, authorize any manager or distributor to use any metering machine approved by him/her.

**67-05-16      Affixing of Stamps by Manager or Distributor**

Each manager or distributor shall affix or cause to be affixed, in such manner as the Tribal Vice-Chairman may specify in regulations issued pursuant to Part V, to each individual package of cigarettes, to cartons containing more than one individual package or three, four, or five cigarettes sold or distributed by her/him, stamps of the proper denomination, as required by **Part V**. Such stamps must be affixed by a manager or distributor before the cigarettes or other tobacco products are transferred out of the premises of the tobacco outlet or from the distributor's possession.

**67-05-17      Affixing of Stamps or Imprint by Manager**

Each manager upon opening any shipping package containing any unstamped cigarettes or other tobacco products for purposes of sale or delivery to consumers, shall immediately affix or imprint the tax stamp required by Part V.

**67-05-18      Sale of Unstamped Cigarettes and Tobacco Products Prohibited**

- A. No manager shall sell, offer for sale, display for sale, or possess with intent to sell, any cigarettes or tobacco products within the jurisdiction of the Tribe which do not bear stamps approved by the Tribal Vice-Chairman as provided by Part V, evidencing the payment of the tax imposed by Part V.
- B. Any manager who shall sell, offer for sale, display for sale, or possess with intent to sell, any cigarette or tobacco products within the jurisdiction of the Tribe which do not bear

stamps approved by the Tribal Vice-Chairman evidencing the payment of the tax imposed by Part V, shall be guilty of a Class One (1) Misdemeanor.

**67-05-19 Enforcement Powers of the Tribal Vice-Chairman**

The Vice-Chairman is charged with the duty of enforcing the provisions of Part V, and is given the power of peace officers and authorized and empowered to arrest any violator of the provisions of this Tax Code; enter complaints before any Court of competent jurisdiction; and to seize without formal warrant and use as evidence, any forged, counterfeited, spurious, or altered stamp found in possession of anyone in violation of this Tax Code.

**67-05-20 Unstamped Cigarettes and Tobacco Products as Contraband**

Any cigarettes or tobacco products found at any place within the jurisdiction of the Tribe without stamps affixed thereto approved by the Vice-Chairman as required by Part V, unless such cigarettes or other tobacco products shall be in the possession of a manager in the original unopened shipping packages or unless they shall be in a course of transit from outside of the jurisdiction of the Tribe and consigned to the Tribe, are declared to be contraband goods and may be seized by the Vice-Chairman, his/her agents, or employees, or by any peace officer of the Tribe, when directed by the Vice-Chairman to do so, without a warrant.

**67-05-21 Forfeiture of Contraband Cigarettes and other Tobacco Product**

Any cigarettes or tobacco products seized under the provisions of Part V shall be confiscated and forfeited to the Tribe, and the Vice-Chairman shall sell such confiscated property in the tobacco outlet. The proceeds from such sale shall be remitted to the Tribal Vice-Chairman and included as income for the enforcement of Part V.

**67-05-22 Tax Agreements with the State of South Dakota or North Dakota**

The requirement to file a monthly report and pay the tribal tax is met where the Tribe has entered into a tax agreement or compact with either the State of South Dakota or North Dakota and a monthly reporting form and the Tribal tax is paid as stated in the tax agreement. The submitted report form(s) shall show the amount of the cigarette and other tobacco tax to be remitted and due to the Tribe.

The applicable cigarette and other tobacco tax rate (s) and terms of the applicable tax agreement or compact shall take precedence over any related terms in Chapter 67, where such agreement has been executed pursuant to a Tribal Council resolution.

**67-05-23 Restricted Sales to Minors**

A tobacco outlet may not sell any tobacco products to any person under the age of eighteen (18) years.

**Severability**

If any clause, sentence, paragraph, section, or part of this Tax Code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgment 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 judgment shall have been rendered.

**CHAPTER 67**  
**TAX CODE**

**PART VI**  
**AD VALOREM POSSESSORY INTEREST TAX**

**67-06-01      Definitions**

Words used in Section VI, unless the context plainly requires otherwise, shall have the meaning ascribed to them in Sections 67-06-01.1 through 67-06-01.4.

67-06-01.1      Ad Valorem Value shall mean the fair market value of the possessory interest subject to taxation.

67-06-01.2      Possessory Interest shall mean any interest in real property obtained under a lease, permit, easement, or right-of-way granted by the Tribe or issued by the BIA on behalf of the Tribe.

67-06-01.3      Real Property includes the land itself, all buildings, structures, and improvements or other fixtures on it. A building or structure shall include the building or structure itself, together with all improvements or fixtures annexed to the building or structure, which are integrated with and of permanent benefit to the building or structure, regardless of the present use of the building, and which can not be removed without substantial damage to itself or to the building or structure; provided however:

- A. That real property shall not include tools, implements, machinery, and equipment attached to or installed in real property for use in the business or production activity conducted thereon, regardless of size, weight or method of attachment; and
- B. That real property shall not include tools, implements, machinery, equipment, poles, lines, cables, wires, conduit, and station connections which are part of a telephone communications system, regardless of attachment to or installation in real property and regardless of size, weight, or method of attachment or installation.

67-06-01.4      Taxpayer shall mean any individual, firm, partnership, joint venture, association, corporation, municipal corporation, estate, trust, business trust, receiver, or any group or combination acting as a unit having ownership rights in any real property located within the jurisdiction of the Tribe.

**67-06-02      Tax Imposed**

The Possessory Interest Tax shall be assessed at the annual rate of three percent (3%) of the ad valorem value of a taxpayer's possessory interest as determined and computed in accordance with Part VI.

- A. The rate of tax shall remain the same as herein established unless modified by the Tribal Council.
- B. The ad valorem value of a possessory interest shall be computed by methods, as adopted in regulations promulgated by the Vice-Chairman, which accurately reflect the fair market value of the possessory interest subject to taxation.
- C. All possessory interests subject to the ad valorem tax shall be assessed annually on the assessment date, to be determined by the Vice-Chairman. Taxes assessed shall constitute a lien in favor of the Tribe.
- D. The tax imposed by this Part shall be billed in two installments payable upon receipt, one-half ( $\frac{1}{2}$ ) being due by April 30<sup>th</sup> of each year, and the other one-half ( $\frac{1}{2}$ ) being due by October 30<sup>th</sup> of the same year for taxes assessed for the previous calendar year.

**67-06-03 Exemption**

There is hereby exempted from the tax imposed by Section 67-06-02 all possessory interests in real property owned by the Tribe, a political subdivision of the Tribe, a tribal member, or a non-profit entity.

**67-06-04 Distribution of Declaration of Interest Form**

The Tax Office shall provide taxpayers a Declaration of Interest Form for reporting all possessory interests for purposes of valuation and assessment of tax due no later than March 1 of the current year for which the taxes are due.

**67-06-05 Waiver of Application to Tribal Members**

Upon resolution by the Tribal Council, the application of the ad valorem taxes to possessory interests of tribal members may be waived.

**67-06-06 Severability**

If any clause, sentence, paragraph, section, or part of this Tax Code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgment 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 judgment shall have been rendered.

## **CHAPTER 67 TAX CODE**

### **PART VII PROVISIONS APPLICABLE TO ALL TAXES IMPOSED BY THIS CODE**

#### **67-07-01      Disposition of Proceeds of Taxes**

The Vice-Chairman shall establish a tax revenue account for the Tribe. Except for motor fuel taxes which shall be allocated as provided in Section 67-04-09, the money received by the Tax Office from the taxes imposed by this Tax Code shall be credited by the Vice-Chairman to the tax revenue account of the Tribe to be used in the provision of tribal governmental services, including, but not limited to:

- A. Public health, housing, and education;
- B. Law enforcement and fire protection;
- C. Water, sewage, and garbage disposal;
- D. Operation of central government, including functions of grantsmanship and Tribal planning;
- E. Operation of the Tribal court;
- F. Cultural development, maintenance of Tribal traditions;
- G. Development of Tribal enterprises, recreational facilities and opportunities, and land acquisition; and/or
- H. Operations of the Revenue Department and Tax Commission Office.

The Tribal Vice-Chairman, will make recommendations to the Tribal Council and the percent of tax proceeds allocated to each of the above categories shall be determined by the Tribal Council.

#### **67-07-02      Sovereign Immunity of Tribe**

Without the express consent of the Tribe pursuant to appropriate action of the Tribal Council, a manager employed by the Tribe or one of its political subdivisions shall not be authorized to waive the sovereign immunity of the Tribe from suit, nor shall such manager be authorized to create any liability or utilize any credit on behalf of the Tribe. Any written consent and action by the Tribal Council relating to the sovereign immunity of the Tribe shall specify in detail the scope of a manager's authority. Such authority shall be limited by the Tribal Council in duration and scope.

Any action taken by a manager related to sovereign immunity, pursuant to authority vested in the manager by the Tribal Council shall be in writing, related to a specific and expressly identified transaction, and limited to the particular transaction. Any written statement of a manager concerning the Tribe's sovereign immunity shall be approved by the Tribal Council before it shall have any binding effect on the Tribe.

**67-07-03      Suits against the Tax Commission**

- A. The Tax Commission, as a governmental agency of the Tribe, its Commissioner, and employees shall be immune from any suit in law or equity while performing their lawful duties within the scope of the authority delegated to them, provided, that any person against who the Tax Commission has assessed taxes, penalties, or interest and who has paid under written protest any taxes, penalties, or interest may bring an action in the Tribal Court after exhaustion of administrative remedies, to enjoin the Tax Commission from collecting any taxes, penalties, or interest assessed, or for the recovery of any taxes, penalties, or interest paid under written protest which the Tribal Court finally determines to have been wrongfully assessed or collected.
- B. Any authorized suit against the Tax Commission must be commenced by filing a petition in the Tribal Court within thirty (30) days of the date administrative remedies have been deemed exhausted in accordance with Section 67-08-07.
- C. In no event shall the court be authorized to award or order the payment of damages or to fashion any remedy except to enjoin the collection or order the return of the amount of the taxes, penalties, or interest in controversy unless an additional remedy is specifically provided by this Tax Code.
- D. All amounts found to be wrongfully collected and refundable shall earn simple interest at a rate set by rulemaking as provided herein, to be calculated post-judgment only from and after the date of judgment, until refunded.

**67-07-04      Constitutional Exemptions from Tax**

There are hereby specifically exempted from the provisions of this Tax Code, and from the computation of the amount of the tax imposed by it, persons or transactions which this Tribe is prohibited from taxing under the Constitution and the laws of the United States or under the Constitution, By-Laws and Codes of Law of the Tribe.

**67-07-05      Adoption of Regulations**

No rule or regulation ascribed by the Tax Commission shall be effective until and unless such rule or regulation is deemed by the Vice-Chairman as necessary to the efficient administration and enforcement of this Tax Code, and a certified copy of said rule or regulation bears the attesting signature of the Tribal Secretary and provided in writing to the Tax Commission.

**67-07-06      Determination of Tax in Absence of Return**

If a return is required by this Tax Code, or if a return when filed is incorrect or insufficient and the tax payer fails to file a corrected or sufficient return within twenty days (20) after the same is required by notice from the Tax Director, the Tax Director shall determine the amount of tax due



from such information as the Tax Office may be able to obtain and, if necessary, may estimate the tax on the basis of external indices, such as stock on hand, rentals paid by the person, or other factors. The Tax Director shall give notice of such determination to the person liable for the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed shall, within thirty (30) days after giving of notice of such determination; apply to the Tribal Court for a hearing requesting a Tribal Court review of the Tax Director's determination

**67-07-07 Tax Director's Certificate as Prima Facie Evidence of Failure to File Return or Pay Tax**

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

**67-07-08 Credit or Refund of Erroneous Overpayment**

If it shall appear that an amount of tax, penalty, or interest has been paid which was not due under the provisions of this Tax Code, 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 Tax Code from the taxpayer who made the erroneous payment, or such amount shall be refunded to such person by the Tax Director.

A claim for credit or refund, as provided above, shall be filed with the Tax Office within one year after such erroneous payment was made or said claim shall be forever barred.

**67-07-09 Refunds Established by Administrative or Court Proceedings**

Whenever any taxpayer shall establish in administrative or Tribal Court proceedings that they are entitled to a refund of any taxes, penalties, or interest previously paid, the Tax Director shall immediately cause a certified copy of the order and transcript of any administrative action, or judgment of the Tribal Court to be filed with the Tribal Council.

Upon receipt of such order and transcript, or judgment of the Tribal Court, the Tribal Council shall appropriate to the Vice-Chairman such amounts, as may be necessary to pay such refund, from otherwise unappropriated money in the tax revenue account. The Tax Director shall thereafter issue a refund to the taxpayer.

When it appears reasonably certain, in the discretionary judgment of the Vice-Chairman, that the taxpayer to whom a refund is due will incur further tax liability within the next twelve months after such refund is due in an amount in excess of such refund, the Vice-Chairman may credit the amount of such refund, with lawful interest, against the future liability of the taxpayer, provided, that any amounts not used within twelve months shall be refunded at the request of the taxpayer.

**67-07-10 Return and Investigations Confidential**

- A. The following terms used in this section of Part VII, unless the context plainly requires otherwise, shall mean:
1. Return information means any information collected, prepared or received by the Tax Office which relates to a return, including the nature or amount of a taxpayer's income, receipts, deductions, net worth, tax liability, or deficiencies, or any part of any written determination or background file documents relating to such information. The term does not include data in a form which can not be associated with or otherwise identify, directly or indirectly, a particular taxpayer; and
  2. Return means all tax returns, tax reports or claims for refund which are filed with the Tax Office.
- B. All return information received by the Tax Office or Tax Commission pursuant to this Tax Code, or from any investigation conducted under the provision of Part VII, shall be confidential, and shall be used only as necessary to enforce the provisions of this Tax Code. It shall be unlawful for any employee or officer employed by the Tax Office or under the supervision of the Vice-Chairman or Tax Commission to divulge any return information in any manner, except in accordance with a proper judicial order or as otherwise provided by Tribal Law, and such officer or employee who divulges such information in violation of this provision shall be subject to immediate dismissal.
- C. Returns and Return Information may be disclosed to the following:
1. The taxpayer who is required to submit the information to the Tax Office, or the taxpayer's designee appointed in writing; and,
  2. Officers, employees or legal representatives of the Tax Office or Tax Commission, but only to the extent necessary to carry out their official duties.

**67-07-11 Business License Required**

It shall be unlawful for any retailer, distributor, wholesaler or other persons subject to this Tax Code to engage in, pursue or transact any business within the jurisdiction of the Tribe without obtaining a license issued by the Tax Director, pursuant to Chapter 53.

**67-07-12 Revocation of Authority to do Business**

Whenever any retailer, licensee, or person fails to comply with any of the provisions of this Tax Code or any orders, rules or regulations prescribed and adopted under this Tax Code, the Tax Director may, upon notice and hearing as provided in Chapter 53, take action to revoke the authority of such retailer, licensee or person to do business within the jurisdiction of the Tribe.

**67-07-13 Reinstatement of Authority to do Business**

The authority to do business within the jurisdiction of the Tribe which has been revoked shall not be reinstated by the Vice-Chairman until all of the tax due the Tribe has been paid. Reinstatement of the authority to do business within the jurisdiction of the Tribe shall be authorized at the discretion of the Vice-Chairman.

**67-07-14      Penalty for Continuation of Business after Revocation of Authority**

Any retailer, licensee, or person who continues to do business after his\her authority to do has been revoked shall be fined up to one thousand dollars (\$1,000.00) as pursuant to the Tax Ordinance. Any such retailer, licensee, or person shall also be subject to forcible closure and removal from the jurisdiction of the Tribe, depending on the severity of the violations(s) of this Tax Code.

**67-07-15      Penalty and Interest Added for Delinquency in Payment of Tax**

Any person subject to tax under this Tax Code 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. Interest shall be charged at the rate of one and one-half percent (1.5%) per month to the date of actual payment on the deficiency and penalty.

**67-07-16      Records Required**

It shall be the duty of every manager, retailer or person required to make a return and pay tax under this Tax Code, unless stated otherwise, to preserve such records of the gross proceeds of sales as the Tax Ordinance may require and it shall be the duty of every retailer to preserve for a period of three years all invoices and other records of goods, wares, or merchandise for resale and of services provided. All books, invoices, and other records shall be open to examination at any time by the Tax Office or her/his duly authorized agents and shall be made available within the jurisdiction of the Tribe for such examination upon reasonable notice to investigate the character of the business, in order to determine the amount due under the provisions of this Tax Code.

**67-07-17      Civil Action**

In the 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 an action of debt brought in Tribal Court in accordance with Tribal Court procedures. The remedy of removal from the jurisdiction of the Tribe is also applicable when the authority of a person to do business within the said jurisdiction has been revoked by the Tax Director.

**67-07-18      Severability**

If any clause, sentence, paragraph, section, or part of this Tax Code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgment 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 judgment shall have been rendered.

**CHAPTER 67**  
**TAX CODE**

**PART VIII**  
**TAX COMMISSION AND ADMINISTRATIVE APPEALS**

**67-08-01      Creation of the Tax Commission**

There is hereby created a Sisseton-Wahpeton Oyate Tax Commission, which shall consist of one member from each of the seven (7) districts, and which shall exercise that inherent sovereign authority of the Tribe delegated to it by this Chapter 67, together with those powers residing in the Office of the Vice-Chairman delegated to it by this Chapter 67 or by regulations promulgated by the Vice-Chairman. The Tax Commission shall be and hereby is deemed to be an agency of the Tribe, protected by and enjoying all privileges and immunities of the Tribe, whether articulated in this Tax Code or otherwise existing at law. The Tax Commission shall at all times be subordinate to and operate at the direction of the Vice-Chairman and the Tribal Council.

**67-08-02      Term for Commissioners**

Commissioners shall serve a term of four (4) years from the date of appointment.

**67-08-03      Appointment of the Tax Director**

The Tax Director shall report directly to the Vice-Chairman, and shall be the person responsible for oversight of staff, coordinating meetings of the Tax Commission, serving as a liaison between the Tax Commission and the Vice-Chairman, and all other matters necessary to effectively fulfill the duties and responsibilities of the Commission, all as further defined in this Tax Code.

**67-08-04      General Powers of the Tax Commission**

The Tax Commission shall carry out its duties to promote the general welfare of the members of the Sisseton-Wahpeton Oyate. The powers and responsibilities of the Tax Commission include:

- A. Taking action on issues or concerns addressed by three separate districts;
- B. Keep all the respective district informed of changes in the tax laws and related issues that affect the districts;
- C. Generate discussion and recommendations from the districts, through the districts' tax commission representative, so as to better serve the concerns of all the Sisseton Wahpeton Oyate; and

- D. Provide guidance to the Tax Director on tax issues in order to better service the welfare of the Sisseton Wahpeton Oyate.

**67-08-05 Rulemaking Authority**

- A. The Tax Commission shall have the authority to prescribe, promulgate, and enforce written rules and regulations consistent with this Tax Code to provide for its internal operational procedures.
- B. The Tax Commission shall have the authority by rule to adopt and promulgate a schedule of fees and charges for services rendered.

**67-08-06 Administrative Appeals**

Any taxpayer against whom the Compliance Officer has assessed taxes, penalties, or interest pursuant to any tax law of the Tribe, and who has paid under written protest any taxes, penalties, or interest assessed by the Compliance Officer who believes those taxes, penalties, or interest to be wrongfully assessed or collected, may appeal in writing for a hearing before the Tribal Court.

**67-08-07 Finality of Assessment**

- A. If any taxpayer against whom the Tax Office has assessed taxes, penalties, or interest pursuant to any tax law of the Tribe fails to file an administrative appeal pursuant to Section 67-08-5 and the rules and regulations prescribed by the Tax Commission within 30 days of the date any taxes, penalties or interest assessed by the Tax Office are paid under written protest, then the assessment, without further action of the Tax Office, shall become final.
- B. In all instances where the assessment of taxes, penalties or interest has become final, the Clerk of Court shall enter same upon the judgment docketed in the same manner as provided for civil judgments. The remedies provided in this paragraph shall be in addition to other remedies provided by the Tribal Council.

**67-08-08 Collection of Taxes**

The Compliance Officer is hereby authorized to bring any necessary action in any appropriate Court for the collection of any taxes, penalties or interest assessed and unpaid. Such action shall be civil in nature and all penalties and interest shall be in the form of civil damages for non-payment. Any civil remedies, including but not limited to garnishment, attachment, and execution, shall be available for the collection of any monies due the Sisseton-Wahpeton Oyate. The Compliance Officer may request the Tax Commission attorney, or in the case of a conflict, any attorney employed by the Sisseton-Wahpeton Oyate, to bring any necessary action for the collection of any taxes, penalties, or interest assessed and unpaid with the approval of the Tribal Council. The amount of any tax imposed by this Code shall be assessed by the Vice-chairman within three (3) years after the date any return was to be filed, or if payable by stamp, anytime

after such tax became due. No proceeding may be brought by the Tax Commission without a timely assessment, unless the taxpayer has filed a false return, no return, or has attempted to evade taxes owed, under which circumstances an assessment may be brought at anytime.

**67-08-09 Severability**

If any clause, sentence, paragraph, section, or part of this Tax Code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgment 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 judgment shall have been rendered.

**CHAPTER 67  
TAX CODE**

**PART IX  
GAMING TAX**

**67-09-01      Definitions**

Definitions contained in Part II shall apply to provisions of Part IX according to their content, except the following words, terms, and phrases when used in this Part IX shall have the meanings ascribed to them in Section 61-09-01.1 through 67-09-01.4.

- 67-09-01.1      Gambling game means any game played with cards, dice, equipment, or any mechanical electromechanical or electronic device or machine for money, property, checks, credit, or any representative value.
- 67-09-01.2      Gaming establishment means a licensed enterprise or casino where gaming takes place pursuant to the Tribal-State Compacts.
- 67-09-01.3      Gross Revenue means the total amount received in money, credits, property, or other consideration, valued in money, less amounts paid out at, or paid for, prizes without any deduction on account of the cost of labor or services purchased, cost of materials used, amounts paid for interest or discounts, or any other expenses whatsoever, nor shall any deductions be allowed for capital losses. "Gross revenue" shall mean all income from whatever source derived including, but not limited to, the following items:
- A.    Income generated from any gambling game.
  - B.    Gross receipts from the retail sale of products and services of any kind or nature to customers.
  - C.    Compensation for services.
  - D.    Interest.
  - E.    Rents.
  - F.    Royalties.
  - G.    Dividends.
- 67-09-01.4      Property includes every form of property, real, personal, tangible, or intangible, and every interest therein.

**67-09-02      Gaming Tax Imposed**



There is hereby imposed a gaming tax on the gross revenue of gaming establishments operated within the jurisdiction of the Tribe to provide financing for Tribal Government operations and services enumerated under Section 67-07-01.

**67-09-03      Waiver of Tax Permitted**

The tax imposed by this Part may be waived at the discretion of the Tribal Council for a term to be determined by the Tribal Council.

**67-09-04      Rate of Tax**

The rate of tax imposed on the gross revenue of gaming establishments to be determined by the Tribal Council.

**67-09-05      Returns and Payment of Tax**

Not later than fifteen (15) days following the end of or the gaming report to Tribal Council each month, each gaming establishment shall make a return and remittance of tax due for the period covered by the return to the Tax Office on forms prescribed and furnished by the Tax Office.

**67-09-06      Severability**

If any clause, sentence, paragraph, section, or part of this Tax Code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgment 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 judgment shall have been rendered.

**CHAPTER 67**  
**TAX CODE**

**PART X**  
**CALORIC SWEETENED BEVERAGE AND ENERGY DRINK TAX ORDINANCE**

**67-10-01      The following findings support the passage of the Caloric Sweetened Beverage and Energy Drink Tax Ordinance:**

- A.    The prevalence of obesity in the United States has increased dramatically over the past 30 years. From the 1960s to the late 1970s, the prevalence was relatively constant, with about 15 percent of the population classified as obese. After the 1970s, these rates began to climb. Although no group has escaped the epidemic, low income and communities of color are disproportionately affected.
- B.    The rate of children who are overweight has also increased dramatically in recent decades. After being relatively constant from the 1960s to the 1970s, the prevalence of overweight children has more than quadrupled among children between 6 and 11 years of age and nearly tripled among those between 12 and 19 years of age.
- C.    The obesity epidemic is of particular concern because obesity increases the risk of diabetes, heart disease, and certain types of cancer, arthritis, asthma, and breathing problems. Depending on their level of obesity, from 60 percent to over 80 percent of obese adults have type 2 diabetes, high blood cholesterol, high blood pressure, or other related conditions.
- D.    Type 2 diabetes, previously only seen among adults, is now increasing among children. Research shows that overweight children have a much greater chance of being obese as adults, with all the health risks that entails.
- E.    There is overwhelming evidence of the link between obesity and the consumption of sweetened beverages, such as soft drinks and energy drinks.
- F.    According to nutritional experts, sweetened beverages, such as soft drinks, energy drinks, offer little or no nutritional value, but massive quantities of added sugars. A 20-ounce bottle of soda contains the equivalent of approximately 16 teaspoons of sugar. Yet, the American Heart Association recommends that Americans consume no more than five to nine teaspoons of sugar per day.
- G.    Research shows that almost one-half of the extra calories Americans have been consuming since the 1970s could come from soda, with the average American drinking nearly 50 gallons of sweetened beverages a year, the equivalent of 39 pounds of extra sugar every year.
- H.    Sugary drinks are a unique contributor to excess caloric consumption. A large body of research shows that calories from sugary drinks do not satisfy hunger the way calories

from solid food or fat or protein-containing beverages such as those containing milk and plant-based proteins. As a result, sugary beverages tend to add to the calories people consume rather than replace them.

- I. It is the intent of the Sisseton Wahpeton Oyate Tribal Council that the enactment of the Caloric Sweetened Beverage and Energy Drink Tax Ordinance shall diminish the human and economic costs of obesity and dental disease among the Sisseton Wahpeton Oyate community members. This act is intended to discourage excessive consumption of sweetened beverages by increasing the price of these products. There is hereby imposed a Caloric Sweetened – Energy Drink Beverage Tax on every retailer for the privilege of distributing bottled sweetened beverages and energy drink products sold at the SWO tribal stores or in vending machines, calculated at 6% or higher rate as determined by resolution of the Tribal Council of the total gross cost of the product paid by the ultimate consumer. The tax is to be passed down to the ultimate consumer/purchaser of the caloric sweetened – energy drink product.

**67-10-02 For purposes of this part:**

- A. “Beverage dispensing machine” means a device that mixes concentrate with any one or more other ingredients and dispenses the resulting mixture into an open container as a ready-to-drink beverage. The specific product name of all sweetened beverages subject to the caloric sweetened beverage and energy drink tax ordinance shall be included on a list of specific product names maintained by the SWO Tax Office.
- B. “Beverage container” means any closed or sealed container regardless of size or shape, including, without limitation, those made of glass, metal, paper, plastic, or any other material or combination of materials.
- C. “Caloric sweetened beverage” means a sweetened beverage contained in a beverage container. The specific product name of all bottled sweetened beverages subject to the caloric sweetened beverage and energy drink tax ordinance shall be included on a list of specific product names maintained by the SWO Tax Office.
- D. “Caloric” means a substance that adds calories to the diet of a person who consumes that substance.
- E. “Caloric sweetener” means any caloric substance suitable for human consumption that humans perceive as sweet and includes, without limitation, sucrose, fructose, including high fructose corn sweetener, glucose, other sugars, and fruit juice concentrates.
- F. “Concentrate” means a syrup, powder, or base product that is used for mixing, compounding, or making sweetened beverages in a beverage dispensing machine. For purposes of this part, “concentrate” does not include any of the following:
  1. Any product that is solely used in preparing coffee or tea.

2. Any product for consumption by infants and which is commonly referred to as "infant formula."
  3. Any product for use for weight reduction.
  4. Milk or milk products.
  5. Any frozen concentrate or freeze-dried concentrate to which only water is added to produce a sweetened beverage containing more than 50 percent natural fruit juice or more than 50 percent natural vegetable juice or more than 50 percent combined natural fruit juice and natural vegetable juice.
  6. Any product to which no caloric sweeteners have been added.
- G. "Consumer" means a person who purchases a bottled sweetened beverage or concentrate for a purpose other than resale in the ordinary course of business.
- H. "Milk" means natural liquid milk, regardless of animal source or butterfat content, natural milk concentrate, whether or not reconstituted, regardless of animal source, plant source, or butterfat content, or dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content.
- I. "Natural fruit juice" means the original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution of natural fruit juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural fruit juice.
- J. "Natural vegetable juice" means the original liquid resulting from the pressing of vegetables, the liquid resulting from the reconstitution of natural vegetable juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural vegetable juice.
- K. "Person" means an individual, trust, firm, joint stock company, business concern, business trust, receiver, trustee, syndicate, social club, fraternal organization, estate, corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association or any other group or combination acting as a unit. "Person" also includes any city, county, city and county, district, commission, the state, or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.
- L. "Retail sale" means the sale of caloric sweetened – energy drink beverages to a consumer.
- M. "Retailer" means any person or Sisseton Wahpeton Oyate tribal business entity or organization who sells a caloric sweetened – energy drink beverage(s) to a consumer, whether or not that person is also a distributor as defined in this section.
- N. "Sale" means the transfer of title or possession for consideration in any manner or by any means whatever.
- O. "Simple syrup" means a mixture of sugar and water.
- P. "Sweetened beverage" means any sweetened nonalcoholic beverage sold for human consumption that has caloric sweeteners and contains more than 25 calories per 12

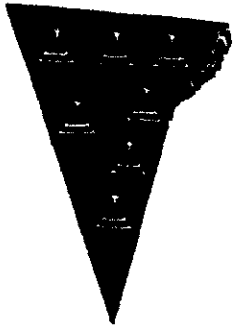
ounces, including, but not limited to, the following: soda water, ginger ale, root beer, all beverages commonly referred to as cola, lime, lemon, lemon-lime, and other flavored beverages, including any fruit or vegetable beverage containing less than 50 percent natural fruit juice or natural vegetable juice or combined natural fruit juice and natural vegetable juice, and all other drinks and beverages commonly referred to as “soda,” “soda pop,” “soft drinks,” “sports drinks,” “energy drinks,” “juice drinks,” “ice teas,” and “vitamin fortified waters.” The specific product name of all bottled sweetened beverages subject to the caloric sweetened beverage and energy drink tax ordinance shall be included on a list of specific product names maintained by the SWO Tax Office.

**“Sweetened beverage” does not include any of the following:**

1. Any product sold in liquid form for consumption by infants, which is commonly referred to as “infant formula” or any product whose purpose is infant rehydration.
  2. Any product sold in liquid form for use for weight reduction.
  3. Water, to which no caloric sweeteners have been added.
  4. Milk or milk products.
  5. Medical food.
  6. Any sweetened beverage containing 50 percent or more of natural fruit juice or natural vegetable juice or combined natural fruit juice and natural vegetable juice.
- Q. “Syrup” means the liquid mixture of ingredients used in making, mixing, or compounding sweetened beverages using one or more other ingredients including, without limitation, water, ice, a powder, simple syrup, fruits, vegetables, fruit juice, vegetable juice, or carbonation or other gas.

**67-10-03      Payment of Tax**

The payment of the caloric sweetener – energy drink tax imposed by this subsection shall be due and payable in monthly installments on or before the 15<sup>th</sup> day of the month next succeeding the month in which the tax accrued. A tax remittance form shall be filed with the tax remittance to the Tax Office, which shall include the amount of gross receipts subject to the tax and a calculation of tax due for the preceding month, in accordance with the forms and rules prescribed by the Tax Commission.



# **Sisseton-Wahpeton Oyate**

**LAKE TRAVERSE RESERVATION**

**P.O. Box 509**

**100 Veterans Memorial Drive**

**Agency Village, South Dakota 57262-0509**

**Phone: (605) 698-3911**

## **TRIBAL COUNCIL RESOLUTION NO. SWO-12-101**

### **Amendments to SWO Tax Code Chapter 67 Section 67-02-14 Tourism Tax**

**WHEREAS,** The Sisseton-Wahpeton Oyate is organized under a Constitution and By-laws adopted by the members of the Tribe on August 1-2, 1966, and approved by the Commissioner of Indian Affairs on August 25, 1966, and last amended effective November 15, 2006; and,

**WHEREAS,** The Constitution ARTICLE III, Section 1, states that, the Sisseton-Wahpeton Oyate shall be governed by a Council, and ARTICLE VII, Section 1, states that, the Council shall have the following powers: (a) to represent the Tribe in all negotiations with Federal, State and local governments; (b) to acquire, own, use, manage, lease and otherwise encumber and to dispose of Tribal property, both real and personal, wherever situated; (c) to engage in any business that will further the economic development of the Tribe and its Members, and to use Tribal funds or other resources for such purposes; (d) to make rules governing the relationship of the members of the Tribe, to Tribal property, and to one another as members of the Tribe; (f) to deposit Tribal funds to the credit of the Tribe, without limitations of the amount in any account; (g) to take any action by ordinance, resolution, or otherwise which are reasonably necessary through committees, boards, agents or otherwise, to carry into effect the for-going purposes; (h) to promote public health, education, charity and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate; (i) adopt resolutions regulating the procedures of the Tribal Council, its officials and committees in the conduct of Tribal Affairs; and,

**WHEREAS,** July 1, 2012 is the effective date of implementation of Section 67-02-14 Tourism Tax.

**NOW, THEREFORE BE IT RESOLVED,** that the collection of the Tourism Tax required by Section 67-02-14 is waived until January 1, 2013 for all individuals, including SWO Tribal Members and Non-Indian individuals; and,

**FINALLY, BE IT RESOLVED,** that all other provisions stated in Section 67-02-14 Tourism Tax remain unchanged other than as stated herein.

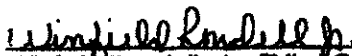
## CERTIFICATION

We, the Undersigned duly elected Tribal Chairman and Tribal Secretary of the Sisseton-Wahpeton Oyate Tribal Council, do hereby certify that the above resolution was duly adopted by the Sisseton-Wahpeton Oyate Tribal Council, which is composed of 10 members (representing a total of 15 Tribal Council weighted votes and two Executive Committee votes for a total of 17 votes) of whom 10 constituting a quorum, were present at a Tribal Council meeting, duly noticed, called, convened and held at the TiWakan Tio Tipi, Agency Village, South Dakota, November 14, 2012, by a vote of 9 for, 2 opposed, 0 abstained, 6 absent from vote, 1 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 14<sup>th</sup> day of November 2012.

  
Robert Shepherd, Tribal Chairman  
Sisseton-Wahpeton Oyate

ATTEST:

  
Winfield Rondell, Jr., Tribal Secretary  
Sisseton-Wahpeton Oyate

cc: SWO Legal Counsel  
SWO Tax Office



**WEIGHTED VOTE ON MOTION NO. 67:** 12 For: Lynn DuBois (2); Marc Beaudreau (3); Joyce Country (2); Francis Crawford (2); Louis Johnson (1); Tribal Vice-Chairman (1); Tribal Secretary (1). 5 Opposed: Kevin Roberts (3); Jerome Renville, Sr. (2). 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.  
**MOTION PASSED.**

**MOTION NO. 68:** made by Louis Johnson, second by Lynn DuBois, question by Joyce Country, to approve the Sisseton-Wahpeton Housing Authority (SWHA) report, as presented by Executive Director Floyd Kirk, Jr.

**WEIGHTED VOTE ON MOTION NO. 68:** 17 For: Kevin Roberts (3); Lynn DuBois (2); Jerome Renville, Sr. (2); Marc Beaudreau (3); Joyce Country (2); Francis Crawford (2); Louis Johnson (1); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.  
**MOTION PASSED.**

**MOTION NO. 69:** made by Jerome Renville, Sr., second by Lynn DuBois, question by Joyce Country, to approve the draft resolution, "Amendments to SWO Tax Code Chapter 67 – Section 67-02-14 Tourism Tax", as presented by Tax Director Brenda Bellonger, Esq.

**WEIGHTED VOTE ON MOTION NO. 69:** 9 For: Lynn DuBois (2); Jerome Renville, Sr. (2); Joyce Country (2); Louis Johnson (1); Tribal Vice-Chairman (1); Tribal Secretary (1). 2 Opposed: Francis Crawford (2). 0 Abstained. 6 Absent From Vote: Kevin Roberts (3); Marc Beaudreau (3). 1 Not Voting: Tribal Chairman.  
**MOTION PASSED.**  
**Resolution No. SWO-12-101**

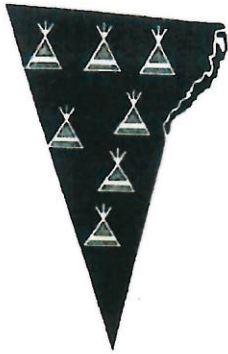
**MOTION NO. 70:** made by Kevin Roberts, second by Lynn DuBois, question by Joyce Country, to have Tribal Chairman Robert Shepherd write a letter to South Dakota Governor Dennis Daugaard regarding tax concerns of the Long Hollow construction project.

**WEIGHTED VOTE ON MOTION NO. 70:** 17 For: Kevin Roberts (3); Lynn DuBois (2); Jerome Renville, Sr. (2); Marc Beaudreau (3); Joyce Country (2); Francis Crawford (2); Louis Johnson (1); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.  
**MOTION PASSED.**

**MOTION NO. 71:** made by Francis Crawford, second by Louis Johnson, question by Lynn DuBois, to approve the Tax Office report, as presented by Tax Director Brenda Bellonger, Esq.

**WEIGHTED VOTE ON MOTION NO. 71:** 17 For: Kevin Roberts (3); Lynn DuBois (2); Jerome Renville, Sr. (2); Marc Beaudreau (3); Joyce Country (2); Francis Crawford (2); Louis Johnson (1); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.  
**MOTION PASSED.**





# Sisseton-Wahpeton Oyate

LAKE TRAVERSE RESERVATION  
P.O. Box 509  
12554 BIA Hwy. 711  
Agency Village, South Dakota 57262  
Phone: (605) 698-3911

## TRIBAL COUNCIL RESOLUTION NO. SWO-16-136-A

### Increase SWO Sales Tax to 5.5%

• **WHEREAS,** The Sisseton-Wahpeton Oyate is organized under a Constitution and By-laws adopted by the members of the Tribe on August 1-2, 1966, and approved by the Commissioner of Indian Affairs on August 25, 1966, and last amended effective November 15, 2006; and

**WHEREAS,** The Constitution ARTICLE III, Section 1, states that, the Sisseton-Wahpeton Oyate shall be governed by a Council, and ARTICLE VII, Section 1, states that, the Council shall have the following powers: (a) to represent the Tribe in all negotiations with Federal, State and local governments; (b) to acquire, own, use, manage, lease and otherwise encumber and to dispose of Tribal property, both real and personal, wherever situated; (c) to engage in any business that will further the economic development of the Tribe and its Members, and to use Tribal funds or other resources for such purposes; (d) to make rules governing the relationship of the members of the Tribe, to Tribal property, and to one another as members of the Tribe; (e) to hire employees and agents, including legal counsel, directly or as independent contractors, and to compensate them for their services; (f) to deposit Tribal funds to the credit of the Tribe, without limitations of the amount in any account; (g) to take any action by ordinance, resolution, or otherwise which are reasonably necessary through committees, boards, agents or otherwise, to carry into effect the for-going purposes; (h) to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate; (i) adopt resolutions regulating the procedures of the Tribal Council, its officials and committees in the conduct of Tribal Affairs; and

**WHEREAS,** On July 28, 2016, the Tax Commission by motion approved an increase in the tribal sales tax rate from 5% to 5.5% effective August 1, 2016 upon 1.) the gross receipts from all sales of tangible property as stated in Section 67-02-02 Tangible Property and 2.) all gross taxable services as stated in Section 6-02-07 Taxable Services; and

**WHEREAS,** On November 30, 2016, the Tribal Council by Motion No. 8 approved the tribal sales tax increase from 5% to 5.5% with an immediate effective date; and

**WHEREAS,** The adoption of the increase in the tribal sales tax will result in additional tax revenue needed to meet critical tribal program funding needs.

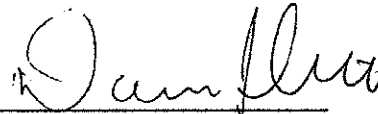
**NOW, THEREFORE BE IT RESOLVED,** that the Tribal Council of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation hereby approves the increase in the tribal sales tax rate as shown on Attachment A; and

**FINALLY, BE IT RESOLVED**, that the effective date of the increase in the tribal sales tax shall be April 1, 2017.

### CERTIFICATION

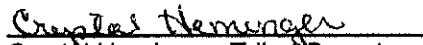
*We, the Undersigned duly elected Tribal Chairman and Tribal Secretary of the Sisseton-Wahpeton Oyate Tribal Council, do hereby certify that the above resolution was duly adopted by the Sisseton-Wahpeton Oyate Tribal Council, which is composed of 10 members (representing a total of 15 Tribal Council weighted votes and two Executive Committee votes for a total of 17 votes) of whom 10 constituting a quorum, were present at a Tribal Council meeting, duly noticed, called, convened and held at the TiWakan Tio Tipi, Agency Village, South Dakota, March 7, 2017, by a vote of 17 for, 0 opposed, 0 abstained, 0 absent from vote, 1 not voting, and that said Resolution has not been rescinded or amended in any way.*

Dated this 7<sup>th</sup> day of March 2017.



David Flute, Tribal Chairman  
Sisseton-Wahpeton Oyate

ATTEST:

  
Crystal Heminger, Tribal Secretary  
Sisseton-Wahpeton Oyate



**CHAPTER 67  
TAX CODE**

**PART II  
TAX CATEGORIES, RATES AND OTHER PROVISIONS**

*The sales tax rate of 5% was increased to 5.5% by Tribal Council as shown below:*

**67-02-02      Tangible Property**

There is imposed a minimum of a **5.5 %** tax or a higher rate as determined by resolution of the Tribal Council upon the gross receipts from all sales of tangible property, consisting of goods, wares, merchandise, propane, building materials and equipment, except as otherwise provided in Part II, sold at retail to consumers within the jurisdiction of the Tribe.

Tangible property includes, but is not limited to, gross receipts from:

- A. The operation or ownership of beverage dispensing machines or any other type of dispensing machine that sells a product to the public such as: soda machines, gum ball machines and candy machines.
- B. The operation or ownership of coin operated mechanical or electronic amusement devices, whether it dispenses prizes or not, including but not limited to: jukeboxes, video games, pinball machines, any type of pool table or game table and any type of game arcade machine.

**67-02-07      Taxable Services**

There is imposed a minimum of a **5.5%** tax or a higher rate as determined by resolution of the Tribal Council upon “gross taxable services” from enumerated services rendered, furnished, or performed within the jurisdiction of the Tribe including, but not limited to-

**CHAPTER 67  
TAX CODE**

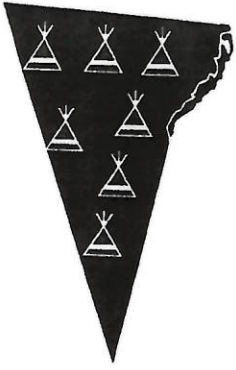
**PART III  
USE TAX**

*The use tax rate of 5% was increased to 5.5% by Tribal Council as shown below:*

**67-03-02      Tax Imposed**

A minimum of 5.5% or a higher rate as determined by resolution of the Tribal Council on the purchase price of the tangible personal property for the purpose of using, storing, distributing, or consuming goods and services within the jurisdiction of the Tribe. Liability for payment of the use tax is not extinguished until the tax has been paid directly to the Tax Office.





# Sisseton-Wahpeton Oyate

LAKE TRAVERSE RESERVATION  
P.O. Box 509  
12554 BIA Hwy. 711  
Agency Village, South Dakota 57262  
Phone: (605) 698-3911

Tribal Council  
Approved

JAN 09 2019

Sisseton Wahpeton Oyate

*Myma Thompson*  
Tribal Secretary

## REGULAR TRIBAL COUNCIL MEETING

Tuesday, December 4, 2018, 9:00 AM

TiWakan Tio Tipi Council Chambers

### TRIBAL COUNCIL MEMBERS PRESENT:

BIG COULEE:	Floyd DeCoteau
BUFFALO LAKE:	Arnold White Jr.
ENEMY SWIM:	Lois Owens
HEIPA/VEBLEN:	Winfield Rondell Jr.
LAKE TRAVERSE:	Francis Crawford
LONG HOLLOW:	Justin Chanku
OLD AGENCY:	Milton Owen

**TRIBAL EXECUTIVES PRESENT:** Tribal Vice-Chairman Floyd Kirk Jr. and Tribal Secretary Edmund Johnson Jr.

**TRIBAL EXECUTIVES ABSENT:** Tribal Chairman David Flute (medical)

**CALL TO ORDER:** Tribal Vice-Chairman Floyd Kirk Jr. called the meeting to order at 9:11 AM with two (2) Executives and seven (7) Council members from seven (7) Districts answering Roll Call. Opening Prayer for the Enemy Swim District said by Old Agency Tribal Council Member Milton Owen.

**MOTION NO. 1:** made by Winfield Rondell Jr., second by Lois Owens, question by Floyd DeCoteau, to approve the Agenda of the Day for the December 4, 2018 Tribal Council Meeting, with additions.

**WEIGHTED VOTE ON MOTION NO. 1:** 16 For: Lois Owens (3); Milton Owen (2); Winfield Rondell Jr. (3); Floyd DeCoteau (2); Francis Crawford (2); Justin Chanku (2); Arnold White Jr. (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Vice-Chairman.

**MOTION PASSED.**

**MOTION NO. 2:** made by Winfield Rondell Jr., second by Milton Owen, question by Floyd Kirk Jr., to approve the Regular Tribal Council Meeting Minutes of Tuesday, November 6, 2018.

**WEIGHTED VOTE ON MOTION NO. 2:** 16 For: Lois Owens (3); Milton Owen (2); Winfield Rondell Jr. (3); Floyd DeCoteau (2); Francis Crawford (2); Justin Chanku (2); Arnold White Jr. (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Vice-Chairman.

**MOTION PASSED.**

BIG COULEE • BUFFALO LAKE • ENEMY SWIM • HEIPA/VEBLEN • LAKE TRAVERSE • LONG HOLLOW • OLD AGENCY

**WEIGHTED VOTE ON MOTION NO. 33:** 16 For: Lois Owens (3); Milton Owen (2); Winfield Rondell Jr. (3); Floyd DeCoteau (2); Francis Crawford (2); Justin Chanku (2); Arnold White Jr. (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Vice-Chairman.

**MOTION PASSED.**

**Resolution No. SWO-18-113**

**MOTION NO. 34:** made by Winfield Rondell Jr., second by Arnold White Jr., question by Floyd DeCoteau, to adopt Chapter 67 – Part X – Caloric Sweetened Beverage and Energy Drink Tax Ordinance, into the SWO Codes of Law, effective January 1, 2019, as presented by the Judicial Committee.

**WEIGHTED VOTE ON MOTION NO. 34:** 10 For: Milton Owen (2); Floyd DeCoteau (2); Winfield Rondell Jr. (3); Francis Crawford (2); Arnold White Jr. (1). 0 Opposed. 3 Abstained: Lois Owens (3). 3 Absent From Vote: Justin Chanku (2); Tribal Secretary (1). 1 Not Voting: Tribal Vice-Chairman.

**MOTION PASSED.**

**MOTION NO. 35:** made by Francis Crawford, second by Lois Owens, question by Floyd DeCoteau, to go into Executive Session to discuss a personnel issue, at 1:20pm.

**WEIGHTED VOTE ON MOTION NO. 35:** 13 For: Lois Owens (3); Milton Owen (2); Winfield Rondell Jr. (3); Floyd DeCoteau (2); Francis Crawford (2); Arnold White Jr. (1). 0 Opposed. 0 Abstained. 3 Absent From Vote: Justin Chanku (2); Tribal Secretary (1). 1 Not Voting: Tribal Vice-Chairman.

**MOTION PASSED.**

**MOTION NO. 36:** made by Winfield Rondell Jr., second by Lois Owens, question by Floyd DeCoteau, to come out of Executive Session, at 1:43pm.

**WEIGHTED VOTE ON MOTION NO. 36:** 15 For: Lois Owens (3); Milton Owen (2); Winfield Rondell Jr. (3); Floyd DeCoteau (2); Francis Crawford (2); Arnold White Jr. (1); Justin Chanku (2). 0 Opposed. 0 Abstained. 1 Absent From Vote: Tribal Secretary (1). 1 Not Voting: Tribal Vice-Chairman.

**MOTION PASSED.**

**MOTION NO. 37:** made by Francis Crawford, second by Winfield Rondell Jr., question by Floyd DeCoteau, to amend the Memorandum of Agreement with Roberts County for Adult and Juvenile Detention Services, to reflect the new rate of \$60/day, and to authorize Tribal Chairman David Flute to execute the revised Agreement, as presented by Tribal Attorney Debra Flute.

**WEIGHTED VOTE ON MOTION NO. 37:** 16 For: Lois Owens (3); Milton Owen (2); Winfield Rondell Jr. (3); Floyd DeCoteau (2); Francis Crawford (2); Justin Chanku (2); Arnold White Jr. (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Vice-Chairman.

**MOTION PASSED.**

