

**NISQUALLY INDIAN TRIBE  
TRIBAL CODE  
TITLE 38 – REVENUE AND TAXATION  
(2025 Amendment – Adding Chapter III, Retail Sales and Use Tax)**



**TITLE 38  
REVENUE AND TAXATION**

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**TITLE 38  
REVENUE AND TAXATION**

**CHAPTER I - CIGARETTE REVENUE**

38.01            GENERAL PROVISIONS

38.01.01        Title

This Chapter shall be known as the Nisqually Cigarette Revenue Code.

**HISTORICAL AND STATUTORY NOTES**

1. This section amended in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1976.
2. This Section renamed "General Provisions" from "Tobacco Control" in 2003 formatting amendments to more accurately reflect content of this section.
3. "Code" changed to "Subchapter" throughout this Title in order to maintain consistency with 2003 Tribal Code formatting amendments.
4. "Tobacco" changed to "Cigarette" and "tobacco products" changed to "cigarettes" throughout this Title as amended by Resolution 38-2004.
5. "Subchapter" changed to "chapter" throughout this Title during 2009 reformatting.

38.01.02        Intent

The intent of this Chapter shall be to levy a tax on the sale of cigarettes on the Nisqually Reservation and at any other locations where cigarettes are sold by the Tribe in order to provide revenues for the Nisqually Community Council to use for the general welfare, social, cultural and economic advancement of the Nisqually Indian Community.

**HISTORICAL AND STATUTORY NOTES**

This section amended in 1978 and again in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1976.

38.01.03        Equal Application of Chapter

The provisions of this Chapter shall apply to all persons, Indian or non-Indian, and no person shall be denied the equal protection of the terms of this Chapter.

**HISTORICAL AND STATUTORY NOTES**

1. This section amended in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1976.
2. This subsection moved from end of this Title to this location as part of 2003 formatting amendments.

38.01.04      Definitions

The following definitions apply throughout this Chapter unless otherwise specified or the context clearly indicates otherwise:

- (a) "Auditor" means an independent third party auditor selected pursuant to 38.04.02 of this chapter.
- (b) "Carton" or "carton of cigarettes" means a carton of two hundred (200) cigarettes.
- (c) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.
- (d) "Compact" means the compact entered into by the Nisqually Indian Tribe and the state of Washington dated June 24, 2004.
- (e) "Court" means the Nisqually Indian Tribal Court, and includes the Nisqually Indian Tribe Court of Appeals.
- (f) "Department" means the state of Washington Department of Revenue.
- (g) "Essential government services" means services such as Tribal administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development.
- (h) "General fund" means the Nisqually Indian Tribe general fund.
- (i) "Indian country", consistent with the meaning given in 18 U.S.C. 1151 means:
  - (i) All land within the limits of the Nisqually Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation; and
  - (ii) All Indian allotments or other lands held in trust for a Nisqually Indian Tribal member or the Tribe, the Indian titles to which have not been extinguished, including rights of way running through the same.
- (j) "Local retail sales tax" means the combined Washington local retail sales taxes applicable in the area.

- (k) "Non-Indian" means an individual who is neither a Tribal member nor a nonmember Indian.
- (l) "Nonmember Indian" means an enrolled member of a federally recognized Indian Tribe other than the Nisqually Indian Tribe.
- (m) "Person" means and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity.
- (n) "Retail selling price" means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, which price includes the Tribal cigarette tax.
- (o) "Self-certified tribal wholesaler" means a wholesaler who is a federally recognized Indian Tribe or a member of such a Tribe, who is not required to be licensed under any state law, and who has by letter certified to the Department that it will abide by the terms of the Compact and who has signed a contract with the Tribe requiring it to abide by the terms of the Compact.
- (p) "Self-certified wholesaler" means an out-of-state wholesaler who is not a self-certified tribal wholesaler and who has by letter certified to the Department that it will abide by the terms of the Compact and who has signed a contract with the Tribe requiring it to abide by the terms of the Contract.
- (q) "Nisqually Indian Reservation" or "reservation" means the area recognized as the Nisqually Indian Reservation by the United States Department of the Interior.
- (r) "State" means the state of Washington.
- (s) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. "Tobacco product" does not include cigarettes.
- (t) "Tribal cigarette tax" means the tax or taxes enacted as a provision of Tribal law on the units of cigarettes sold and on the purchase of cigarettes by retail buyers.
- (u) "Tribal Council" means the Nisqually Tribal Council,
- (v) "Tribal member" means an enrolled member of the Nisqually Indian Tribe.

- (w) "Tribal retailer" means a cigarette retailer wholly owned by the Nisqually Indian Tribe and located in Indian country.
- (x) "Tribal tax stamp" means the stamp or stamps that indicate the Nisqually Indian Tribal cigarette tax imposed under the Contract is paid or that identify those cigarettes with respect to which no tax or another Tribal tax is imposed.
- (y) "Tribe" or "Tribal" means or refers to the Nisqually Indian Tribe.
- (z) "Wholesaler" means every person who purchases, sells, or distributes cigarettes for the purpose of resale only.

#### HISTORICAL AND STATUTORY NOTES

1. This section amended in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1976.
2. This section amended by Resolution 38-2004.

### 38.02 TAXATION

#### 38.02.01 Cigarette Tax - Compact with Washington State.

On June 24, 2004, the Tribe entered into a compact with the State of Washington regarding the sale and taxation of cigarettes in Indian Country (the "Compact"). In accordance with the terms of the Compact and during its term:

- (a) The Tribe shall not engage in mail order type sales, such as internet, catalog, and telephone sales, to Washington residents outside of Indian country, unless and until the State and the Tribe have entered into a memorandum of agreement in regard to the taxability of such sales.
- (b) "Tribal retailer" refers to the Rez Mart and the Red Wind Casino.
  - (i) The Tribe will notify the Department thirty days prior to the start up of cigarette sales by any other Tribal retailer.
  - (ii) The Tribe will provide information regarding the status of land upon which any Tribal retailer is located at least 30 days prior to the startup of any new cigarette sales by such retailer.
- (c) Tribal retailers may purchase cigarettes for sale in Indian country only from:
  - (i) Wholesalers or manufacturers licensed to do business in the state of Washington;
  - (ii) Self-certified wholesalers who meet the requirements of Part VI section 2 of the Compact;

- (iii) Self-certified tribal wholesalers who meet the requirements of Part VI section 3 of the Compact; and
  - (iv) The Tribe or its enterprises as a Tribal manufacturer.
- (d) All cigarettes sold by the Tribal retailer shall bear a Tribal tax stamp, including cigarettes subject to the Tribal cigarette tax, the Tribal member cigarette tax, or exempt from either of these taxes. The stamps shall be purchased and affixed in accordance with the terms of the Contract.
- (e) The Nisqually Indian Tribe, or its designee, shall notify the state Department of Revenue 72 hours in advance of all shipments of cigarettes by the self-certified wholesaler or self-certified tribal wholesaler to the Tribe or Tribal retailers. Such notice shall include who is making the shipment (meaning who is the wholesaler), detail regarding both quantity and brand, and the invoice order number.
- (f) No person shall sell or give, or permit to be sold or given, cigarettes to any person under the age of 18. If a violation of this subsection 38.02.01(f) is reported to the Tribe:
- (i) The Tribe shall investigate the allegation; and
  - (ii) When there is probable cause to believe a violation has occurred, cite the individual who is alleged to have made a sale or gift in violation of this subsection 38.02.01(f) for such violation and apply the penalties provided in section 38.04.01.
  - (iii) It shall be no defense to a citation for a violation of this subsection 38.02.01(f) that the purchaser acted, or was believed by the defendant to act, as agent or representative of another.
  - (iv) It shall be a defense to a citation for a violation of this subsection 38.02.01(f) that the person making a sale reasonably relied on officially issued identification that shows the purchaser's age and bears his or her signature and photograph.

#### HISTORICAL AND STATUTORY NOTES

1. This section created by Resolution 38-2004.

#### 38.02.02 Cigarette Tax - Levy.

- (a) In accordance with Part III of the Compact, the Tribe shall impose taxes, pursuant to the terms of this section, on all sales by Tribal retailers of cigarettes to non-Indian and nonmember Indian purchasers within Indian country.
- (b) The Tribal tax rate shall be as follows:
  - (i) For the first 36 months ("phase-in period"), the tax rate shall equal no less than the sum of an amount equal to 80 percent of the State cigarette tax, which is expressed in cents per cigarette, plus an amount equal to 80

- percent of the state and local retail sales taxes. This phase-in period may be reduced in accordance with subsection 38.02.02(c).
- (ii) No later than 36 months after the initial imposition of tax under this section 38.02.02, and subject to the phase-in period reduction under subsection 38.02.02(c), the Tribal tax rate shall be no less than the sum of an amount equal to 100 percent of the state cigarette tax, which is expressed in cents per cigarette, plus an amount equal to 100 percent of the state and local retail sales taxes.
- (c) If during any quarter the number of cartons of cigarettes, excluding those manufactured by the Nisqually Indian Tribe or its enterprises, that are sold at retail exceeds by at least 10 percent the quarterly average sales during the period beginning on September 1, 2003 and ending February 28, 2004, the 36-month phase-in period shall be reduced by three months. These reductions will be cumulative. The quarterly average sales baseline shall be determined by the Auditor. For the purposes of this provision:
- (i) "Quarter" means a three-month period, each quarter immediately succeeding the next. The first quarter begins the first day of the first month the Tribal cigarette tax is imposed, if the imposition of the tax is on or before the 15<sup>th</sup> of the month, or begins the first day of the second month the Tribal cigarette tax is imposed, if the imposition of the tax is after the 15<sup>th</sup> of the month; and
- (ii) The "quarterly average sales" means the sum of the retail sales made during the two quarters divided by two.
- (d) During the term of the Compact, upon any future increase in the state cigarette tax, state retail sales tax, or local retail sales tax, the Tribal tax on cigarettes shall increase by no less than 100 percent of the increase in the combined state and local tax rates; provided, however, that during the phase-in period the Tribal tax rate shall be set that it is at least equal to 80 percent of the then-current combined state cigarette tax and state and local sales tax.
- (e) During the term of the Compact, upon any future decrease in the state cigarette tax, state retail sales tax, or local retail sales tax, the Tribal tax on cigarettes may decrease to a minimum of no less than 100 percent of the combined state and local tax rates; provided, however, that during the phase-in period the Tribal tax rate shall be set that it is at least equal to 80 percent of the then-current combined state cigarette tax and state and local sales tax.
- (f) The following sales shall not be subject to a general Tribal sales tax levy under other provision of Tribal law:
- (i) All cigarettes manufactured by the Nisqually Indian Tribe or its enterprises in Indian Country;
- (ii) All other cigarettes whenever a Tribal cigarette tax or Tribal member cigarette tax is imposed on those cigarettes during the term of a compact with the state of

Washington.

**HISTORICAL AND STATUTORY NOTES**

1. This section amended in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1976.
2. This section "Taxation" created as part of 2003 formatting amendments to ensure consistency with entire Code and more accurately reflect topical subdivisions of this Title. Subsections renumbered but not changed.
3. This section amended by Resolution 38-2004.

38.02.03 Sales of Cigarettes

- (a) In order to insure the collection of the tax, it is deemed desirable to control the tobacco outlets on the Nisqually Reservation.
- (b) The only purchasers and sellers of cigarettes within the boundaries of the Nisqually Reservation shall be the Rez Mart and the Red Wind Casino.

**HISTORICAL AND STATUTORY NOTES**

1. This section amended by Resolution 38-2004.

38.02.04 Cigarette Tax - Exemptions from - Other Taxes.

The following shall not be subject to the cigarette tax levy:

- (a) Sales of tobacco products;
- (b) Sales of cigarettes to enrolled members of the Nisqually Indian Tribe. However, such sales are subject to a Tribal member cigarette tax, which shall be equal to the tax levied under §38.02.02 on sales to non-Indians and nonmember Indians, except that enrolled members of the Nisqually Tribe shall receive a discount of \$3.50 per carton of cigarettes. The tax revenue from sales to enrolled members of the Nisqually Indian Tribe shall be exempt from the prohibition on subsidization in §38.02.02.
- (c) Sales of cigarettes manufactured by the Nisqually Indian Tribe or its enterprises within Indian country.
- (d) Mail order type sales of cigarettes, such as internet, catalog, and telephone sales, to purchasers outside of Indian country and outside of Washington state.

**HISTORICAL AND STATUTORY NOTES**

1. This section amended in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1976.
2. This section amended by Resolution 38-2004.

38.02.05 Collection - Reporting of

- (a) The Treasurer shall prepare a tax reporting form which shall be used by the seller. The tax reporting form shall include the amount of sales of cigarettes, taxes collected, and such other data as may be required by the Treasurer. The Treasurer may require other business records to verify that the correct amount of taxes were collected and paid.
- (b) The tax reporting form, the supporting records and the tax payment shall be delivered to the Nisqually Tribal Treasurer within thirty (30) days after the end of the calendar quarter.

A penalty of one (1) percent of the amount of taxes incurred in the previous calendar quarter is hereby imposed and shall be collected from the seller(s) for every thirty (30) days of non-compliance with the provisions of this ordinance.

**HISTORICAL AND STATUTORY NOTES**

- 1. This section amended by Resolution 38-2004.

38.02.06 Cigarette Tax - Collection and Payment of

- (a) Every person engaged in retail sales of cigarettes in Indian country who is liable for collecting the Tribal cigarette tax levy or Tribal member cigarette tax levy, shall maintain accurate written records of the purchase, stamping, and retail sales of cigarettes, and shall make such records available for inspection by the Tribal finance officer and/or Auditor retained by the Tribe. Records shall be maintained for no less than three years after the audit is accepted by the appropriate federal oversight agency.
- (b) All applicable taxes shall be paid prior to the sale, distribution, or transfer of possession of any cigarettes. During the term of the Compact, the terms of the Compact regarding the purchase, stamping, transportation and sale of cigarettes shall apply.
- (c) Whenever cigarette taxes are paid by any person other than the consumer, user or possessor, that payment shall be considered a pre-collection of such taxes due. When the tax is prepaid by another, this amount is part of the selling price of the cigarette to the retail purchaser.

**HISTORICAL AND STATUTORY NOTES**

- 1. This section amended by Resolution 38-2004.

38.03            TOBACCO TAX FUND

38.03.01        Tobacco Tax Fund Creation

- (a)    The Treasurer of the Nisqually Indian Community shall establish a fund to be called the Tobacco Tax Fund which shall be separately identifiable from all other tribal funds and revenues.
- (b)    Tobacco excise tax revenues shall be deposited in this fund.

**HISTORICAL AND STATUTORY NOTES**

- 1. This section amended in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1976.
- 2. This section "Tobacco Tax Fund" created as part of 2003 formatting amendments to ensure consistency with entire Code and more accurately reflect topical subdivisions of this Title. Subsection 38.03.01 renamed from "Tobacco Tax Fund" to "Tobacco Tax Fund Creation." Other subsections renumbered but not changed.

38.03.02        Uses of the Tobacco Tax Fund

- (a)    Revenues in the amount of fifty percent (50%) of the Tobacco Tax Fund shall be used for expenditures clearly related to any of the following purposes:
  - (i)    Education;
  - (ii)   Economic development;
  - (iii)   Senior Citizens Aid and Supportive Systems 50%;
  - (iv)   Recreation;
  - (v)    Community Center; and
  - (vi)   Funeral Fund.
- (b)    Tribal cigarette tax revenue shall be used only for essential government services, and may not be used to subsidize Tribal cigarette and food retailers. For the purposes of this section, "subsidize" means that proceeds from the Tribal cigarette tax pursuant to the Contract cannot be expended on the enterprise activities of the Tribal retail cigarette business. In addition, where the cigarette business is co-located with a retail food business, the proceeds cannot be expended to support that business.
  - (i)    "Enterprise activities" include paying wages, benefits, bonuses or expenses, related to the maintenance and operation of the retail facility or typically considered to be part of a business' operating expenses and overhead.
  - (ii)   "Non-enterprise activities" include, but are not limited to: government services to provide and maintain infrastructure such as sidewalks, roads, and utilities; services such as fire protection and law enforcement; the costs of administering deductions and exemptions similar to those

available to retailers, wholesalers and others under state law; Tribal administration activities such as tax functions, contracting for health benefits, economic development, natural resources, and the provisions of job services; and distribution of moneys related to trust funds, education, and general assistance.

- (c) Tribal member cigarette tax revenue is not subject to the requirements of this section 38.03.01.

#### HISTORICAL AND STATUTORY NOTES

1. This section amended in 1978 and again in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1 976.
2. This section amended by Resolution 38-2004.

### 38.04            PENALTIES

#### 38.04.01        Violation of Ordinance

Any persons violating the provisions of this Chapter shall be subject to a fine not to exceed two hundred dollars (\$200.00) or a jail sentence not to exceed thirty (30) days or both.

#### HISTORICAL AND STATUTORY NOTES

1. This section amended in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1976. and
2. This section "Penalties" created as part of 2003 formatting amendments to ensure consistency with entire Code more accurately reflect topical subdivisions of this Title. Subsection 38.03.01 renamed from "Tobacco Tax Fund" to "Tobacco Tax Fund Creation." Other subsections renumbered but not changed.

### 38.05            MISCELLANEOUS PROVISIONS

#### 38.05.01        Cigarette Tax - Audit

The Tribe shall retain a third-party independent auditor for the purposes of verifying compliance with the Contract. The Auditor shall perform all work required under Part VIII of the Contract.

#### HISTORICAL AND STATUTORY NOTES

1. This section created by Resolution 38-2004.

38.05.02 Cigarette Tax - Prior Resolutions

Prior Tribal Council resolutions dealing with the levy of Tribal cigarette taxes are superseded by this chapter.

**HISTORICAL AND STATUTORY NOTES**

1. This section created by Resolution 38-2004.

38.05.03 Cigarette Sales - Permitted.

Tribal retailers identified in section 38.02.03 are the only retail businesses authorized to sell cigarettes within Indian country.

**HISTORICAL AND STATUTORY NOTES**

1. This section created by Resolution 38-2004.

38.05.04 Short Title.

This act shall be known and cited as the Nisqually Indian Tribe Cigarette Revenue.

**HISTORICAL AND STATUTORY NOTES**

1. This section created by Resolution 38-2004.

38.05.05 Severability.

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

**HISTORICAL AND STATUTORY NOTES**

1. This section created by Resolution 38-2004.

**TITLE 38  
REVENUE AND TAXATION**

**CHAPTER II - NISQUALLY FUEL SALES AND TAX ORDINANCE**

38.10            GENERAL PROVISIONS

38.10.01        Title

This Ordinance shall be known as the Nisqually Fuel Sales and Tax Ordinance.

38.10.02        Authority

This Ordinance is enacted by the Nisqually Tribal Council, which has the authority to enact laws and ordinances, to impose taxes on all persons and property within the Tribe's jurisdiction, to negotiate and contract with agencies and officers of federal, state, local and tribal governments and to establish business enterprises that promote the economic well being of the Nisqually Tribe and the Nisqually People.

38.10.03        Findings

The Nisqually Tribal Council finds that regulation of the sale of motor vehicle and special fuels is essential to the health and welfare of the Nisqually Indian Tribe and its members. The Tribal Council further finds that tax revenues are essential to the Tribe's ability to provide goods and services, and to finance government operations and economic development for the safety, health and welfare of the Nisqually Indian Tribe, its members and members of the community. The Nisqually Tribal Council finds that there are substantial unmet needs in funding for road construction and maintenance, transportation services, public safety, infrastructure, and governmental programs that serve Tribal members, employees, customers and other community members.

38.10.04        Purpose

In the public interest and for the health and welfare of the Nisqually Indian Tribe, its members and community members, the Nisqually Tribal Council, in exercise of its authority under the Tribal Constitution, declares its purpose by the provisions of this chapter to regulate the sale of motor vehicle fuel and to impose, collect and administer taxes on the retail sale of motor vehicle fuel.

38.10.05        Scope and Jurisdiction

- (a) This Ordinance shall apply to the full extent of the sovereign jurisdiction of the Nisqually Indian Tribe.
- (b) Compliance with this Ordinance is hereby made a condition of the use of any land or premises under the sovereign jurisdiction of the Nisqually Indian Tribe.

- (c) Any person who resides, conducts business, engages in a business transaction, receives benefits from the Tribal government, including police, fire or emergency services, acts under Tribal authority, or enters the lands under the jurisdiction of the Nisqually Indian Tribe, shall be deemed to have consented to the following:
  - (i) to be bound by the terms of this Ordinance; and
  - (ii) to the exercise of civil jurisdiction by the Nisqually Tribal Court over said person in legal actions arising pursuant to this Ordinance; and
  - (iii) to detention, service of summons and process, and search and seizure, in conjunction with legal actions arising pursuant to this Ordinance.

#### 38.10.06 Sovereign Immunity Preserved

Nothing in this Ordinance is intended or shall be construed as a waiver of the sovereign immunity, rights, powers or privileges of the Nisqually Indian Tribe.

#### 38.10.07 Definitions

- (a) "Court" means the Nisqually Tribal Court.
- (b) "Essential Governmental Services" means services that the Nisqually Indian Tribe provides to its members, community members and visitors in order to fulfill its governmental responsibilities.
- (c) "Indian Country," consistent with the meaning given in 18 U.S.C. §1151, means:
  - (i) All land within the limits of the Nisqually Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; and
  - (ii) All Indian allotments or other lands held in trust for a Nisqually Tribal Member or the Tribe, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
- (d) "Motor Vehicle Fuel" means and includes all fuels normally sold for use in a motor vehicle or motorboat, including gasoline and diesel products.
- (e) "Non-Indian" means an individual who is neither a Tribal Member nor a nonmember Indian.
- (f) "Nonmember Indian" means an enrolled member of a federally recognized Indian Tribe other than the Nisqually Indian Tribe.

- (g) "Person" means and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity.
- (h) "Nisqually Indian Reservation" or "Reservation" means the area recognized as the Nisqually Indian Reservation by the United States Department of the Interior.
- (i) "State" means the State of Washington.
- (j) "State Motor Vehicle Fuel Tax" means the Washington State Motor Vehicle Fuel Tax.
- (k) "Tribal Council" means the Nisqually Indian Tribal Council.
- (l) "Tribal Member" means an enrolled member of the Nisqually Indian Tribe.
- (m) "Tribal Retailer" means a fuel retailer wholly owned by the Nisqually Tribe and located in Indian Country.
- (n) "Tribe" or "Tribal" means or refers to the Nisqually Indian Tribe.

## 38.11 SALES AND TAXATION

### 38.11.01 Tribal Sales Permitted

Only Tribal Retailers are authorized to make sales of Motor Vehicle Fuel to the ultimate consumer within the Reservation.

### 38.11.02 State Compliance Required

Tribal Retailers, businesses and Tribal Members are required to purchase only fuel on which the State fuel tax has been paid, and purchase fuel only from persons or companies operating lawfully in accordance with State law.

### 38.11.03 Fuel Tax Assessed

- (a) The Tribe shall impose taxes on all sales by Tribal Retailers of Motor Vehicle Fuel within the Reservation commensurate with the rate imposed by the State. The Tribal tax shall be the amount of any credit or exemption the Tribe obtains from the State tax by agreement.
- (b) Sales of Motor Vehicle Fuel shall not be subject to a general Tribal sales tax rate under other provision of Tribal law.

38.11.04 Sales to Nisqually Tribal Members

- (a) Sales made to Nisqually Tribal Members may be made at a reduced price of thirty one (31) cents per gallon or such other rate to be made at the discretion of the Tribal Council.
- (b) Sales made to Nisqually Tribal Members at a discount must be recorded as such by Tribal Retailers.

38.11.05 No Reduction of Price

Tribal Retailers may not pass on to the retail customer the State tax included in the price of fuel and use the amounts of tax remitted or refunded to the Tribe pursuant to an agreement with the State to reduce the price at which fuel is sold from the Tribal Retailer's outlet.

38.11.06 Non-Compliance with Ordinance

Any person, including Tribal Retailers, who makes sales of fuel in violation of any provision of this Ordinance shall be subject to civil action pursuant to the Nisqually Rules of Civil Procedure.

38.12 TAX COLLECTION AND USE

38.12.01 Collection and Payment of Tax

Every Tribal Retailer is liable for collecting the Tribal Fuel Tax. The Tribal Retailer shall maintain accurate written records for the purchase and retail sales of Motor Vehicle Fuel, and shall make such records available for inspection by the Tribal Chief Financial Officer and/or third party auditor retained by the Tribe. Records shall be maintained for no less than three years after the audit is accepted by the appropriate oversight agency.

38.12.02 Use of Fuel Tax by Tribe

Fuel tax proceeds retained by the Tribe or amounts equivalent thereto shall be expended upon planning, construction, and maintenance of roads, bridges, boat ramps; transit services and facilities; transportation planning; police services; and other highway-related purposes.

38.13.01 Severability

In the event that any section or provision of this Code is held invalid, it is the intent of the Tribal Council that the remaining sections or provisions of this Code shall continue in full force and effect.

**TITLE 38  
REVENUE AND TAXATION**

**CHAPTER III – RETAIL SALES TAX; USE TAX**

**38.30 GENERAL PROVISIONS**

**38.30.01 Purpose**

The purpose of this Chapter is to regulate the retail sale and use of tangible personal property, certain services and other products on Reservation lands and to raise revenues to fund Tribal government operations.

**38.30.02 Definitions**

Unless the context specifically indicates otherwise, the meaning of terms used in this Chapter shall be as set forth below in this Section:

- ~~(1) "Buyer," "purchaser," and "consumer" include, without limiting the scope hereof, every person accepting a sale at retail or retail sale from a seller, whether as agent, broker or principal.~~
- (2) "Casual or isolated sales or uses" means a sale or use made by a person who is not regularly engaged in the business of selling the type of property involved, such as garage sales. "Casual or isolated sales or uses" includes sales or uses of food, art, fireworks and other items by a Tribal Member who has never been issued a business license by the Tribal Financial Services Office under Section 38.31.04 in connection with such sales or uses.
- (3) "City" or "municipal corporation" means Lacey, Washington, Olympia, Washington or any other city within whose geographic boundaries the Reservation lands on which the activity subject to a Tribal tax under this Chapter occurs.
- (4) "Council" or "Tribal Council" means the Nisqually Tribal Council.
- (5) "County" means Thurston County, Washington, Pierce County, Washington or any other county within whose geographic boundaries the Reservation lands on which the activity subject to a Tribal tax under this Chapter occurs.
- (6) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.
- (7) "Doing business" means engaging in any activity with the object of gain, benefit, advantage or other return, whether direct or indirect, immediate or future, tangible or

intangible, or economic or non-economic; Provided That, "doing business" does not include casual or isolated sales or uses.

- (8) "Extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement.
- (9) "NTC" or "Code" means and refers to the Nisqually Tribal Code.
- (10) "Person" means, every natural person or individual; receiver; administrator; court-appointed representative; executor; assignee; trustee in bankruptcy; trust; estate; firm; partnership; copartnership; joint venture; club; firm; company; joint stock company; business trust; institution; corporation; limited liability company; syndicate; association; society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise; government-created or government-authorized district (including, but not limited to, school districts, fire protection districts, port districts, public utility districts, water-sewer districts and park districts); government-created or government-authorized corporation (including, but not limited to, municipal corporations); county; city; town; and state, and all political subdivisions and instrumentalities thereof, irrespective of the nature of the activities engaged in or functions performed.
- (11) "RCW" means and refers to the Revised Code of Washington.
- (12) "Reservation" means all lands within the exterior boundaries of the Nisqually Indian Reservation, as well as all lands outside the exterior boundaries of the Nisqually Indian Reservation that are held in trust or restricted fee status by the United States for the Tribe or its Tribal Members or otherwise come within the definition of Indian Country set forth in 18 U.S.C. §1151.
- (13) "Retail sale" or "sale at retail" or "sale" means anything defined as a "sale" in RCW 82.04.040 or a "retail sale" in RCW 82.04.050.
- (14) "Sale at wholesale" and "wholesale" have the meanings set forth in chapter 82.04 RCW.
- (15) "Seller" or "retailer" means every person making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal.
- (16) (a) "Selling price" includes "sales price" or "purchase price." "Sales price" or "purchase price" means the total amount of consideration, except separately stated

trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, services or anything else defined as a "retail sale" in subsection (13) hereinabove are sold, leased, or rented, valued in money, whether received in money or otherwise. (b) "Selling price" or "sales price" does not include: Discounts, including cash or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale; interest, financing, and carrying charges from credit extended on the sale of tangible personal property, extended warranties, services or anything else defined as a "retail sale" in subsection (13) hereinabove, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and any Tribal taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; (c) "Selling price" or "sales price" includes consideration received by the seller from a third party if: (i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale; (ii) The seller has an obligation to pass the price reduction or discount through to the purchaser; (iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and (iv) One of the following criteria in this subsection (16)(c)(iv) is met: (A) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented; (B) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount, however a "preferred customer" card that is available to any patron does not constitute membership in such a group; or (C) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(17) "State" means the State of Washington; State governmental agencies, departments, commissions, committees and boards; State government-created or State government-authorized corporations (including, but not limited to, municipal corporations) and State government-created or State government-authorized districts (including, but not limited to, school districts, fire protection districts, port districts, public utility districts, water-sewer districts and park districts); and all political and other subdivisions, units or instrumentalities of the State government (including, but not limited to, cities, counties and towns).

(18) "Tangible personal property" or "property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software. "Tangible personal property" or "property" excludes "marijuana products," as defined in NTC §30.01.02(10).

- (19) "Taxpayer" means any person who is liable for a tax imposed or assessed under this Chapter.
- (20) "Tribal Business Entity" means a corporation that is organized under Title 9 of the Code and any other business entity or enterprise that is wholly-owned by the Tribe or by an entity that is wholly-owned by the Tribe.
- (21) "Tribal Council" means the Nisqually Tribal Council.
- (22) "Tribal Court" or "Court" means the Nisqually Tribal Court and, where the context requires, the Tribal Court of Appeals.
- (23) "Tribal Member" means an enrolled member of the Nisqually Indian Tribe, as well as a business entity or enterprise that is wholly-owned by an enrolled member(s) of the Tribe.
- (24) "Tribe" or "Tribal" means or refers to the Nisqually Indian Tribe, its various governmental agencies, departments, commissions, committees, boards and other governmental subdivisions.
- (25) "Use," "used," "using" or "put to use" have their ordinary meaning, and mean:
- (A) With respect to tangible personal property, the first act within the Reservation by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within the Reservation;
  - (B) With respect to a service that is defined in RCW 82.04.050(2)(a), the first act within the Reservation after the service has been performed by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within the Reservation; and
  - (C) With respect to an extended warranty, the first act within the Reservation after the extended warranty has been acquired by which the taxpayer takes or assumes dominion or control over the article of tangible personal property to which the extended warranty applies, and includes installation, storage, withdrawal from storage, distribution or any other act preparatory to subsequent actual use or consumption of the article within the Reservation.

### 38.30.03 Rules of Construction for Definitions

- (1) Some of the NTC definitions in Section 38.30.02 define one or more terms by utilizing RCW definitions. The following rules of construction shall apply to all such RCW definitions, as well as to all use of or reference to RCW sections within this Chapter:
  - (A) References therein, express or implied, to the State; to the governmental powers of the State (including, but not limited to, licensing or other regulatory authority, taxing authority, enforcement authority and judicial authority); and/or to a State body of law or portion thereof such as, for example, the Washington Uniform Commercial Code (excluding in all cases the mere reference to a different and specific RCW definition for the purpose of incorporating such different and specific RCW definition within the subject RCW definition); (i) shall all have no legal force or effect, (ii) are all deemed deleted from the RCW definition and (iii) to the extent that the Tribal government has a corresponding entity or subdivision, exercises corresponding governmental powers and/or has a corresponding body of law, are deemed replaced with same within the RCW definition.
  - (B) References therein, express or implied, to an off-Reservation locale shall have no legal force or effect, are deemed deleted and are hereby replaced with references to the Reservation.
  - (C) References therein, express or implied, to the fee ownership in real property shall have no legal force or effect, are deemed deleted and are hereby replaced with references to leasehold, subleasehold or other non-fee ownership in real property as applicable.
  - (D) Unless otherwise expressly provided by the Tribal Council, whenever a specific NTC definition utilizes a RCW definition, the reference to the RCW definition shall be to such RCW definition as the RCW definition may be thereafter amended from time-to-time.
- (2) The utilization of RCW definitions within NTC definitions, as well as all use of or reference to RCW sections within this Chapter, is not intended and shall not be construed to in any way enlarge or otherwise modify the jurisdiction of the State or to diminish or otherwise modify the jurisdiction of the Tribe.

### 38.30.04 Tribal Court Jurisdiction

The Nisqually Tribal Court is vested with jurisdiction to hear and determine all judicial actions arising under or relating to this Chapter.

### **38.30.05 Sovereign Immunity of the Nisqually Indian Tribe**

Nothing in this Chapter constitutes, or shall be construed to constitute, a waiver of the sovereign immunity of the Tribe, or of the Tribe's agencies, departments, commissions, committees, subdivisions, officers, officials, employees, agents and/or other Tribal components and personnel.

### **38.30.06 Remedies**

Exercise by the Tribe of any rights or remedies provided by the Code shall not exclude recourse by the Tribe to any other rights or remedies provided by other applicable law.

### **38.30.07 Severability**

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the ruling shall not affect other provisions of this Chapter or applications which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

## **38.31 RETAIL SALES TAX; BUSINESS LICENSE; RESALE CERTIFICATE**

### **38.31.01 Imposition of Tribal Retail Sales Tax**

- (1) There is hereby levied and imposed a tax upon each retail sale of tangible personal property, extended warranties and anything else (including certain services) the sale of which is included within the NTC §38.30.02(13) definition of retail sale, that occurs within the Reservation. The tax due is computed by multiplying the total gross retail sales receipts for the monthly taxable period by the tax rate. Payment of the tax shall be made by the retailer to the Tribe as required by Section 38.31.03.
- (2) The retail sales tax rate shall be equal to one hundred percent (100%) of the combined State and local sales tax rate (i) for the subject county, when the retail sale is within Reservation lands that exist within the geographic boundaries of a county but not a city and (ii) for the subject city, when the retail sale is within Reservation lands that exist within the geographic boundaries of a city. Should there be any future increases or decreases in the applicable combined State and local sales tax rate, the Tribal retail sales tax rate shall automatically and concurrently increase or decrease by a corresponding amount so that the Tribal tax rate remains equal to the combined State and local tax rate at all times.

### **38.31.02 Tax Separate from Sales Price**

- (1) The retail sales tax may be stated by the retailer separately from the sales price in a sales invoice or other instrument of sale. If not stated separately on the sales invoice

or other instrument of sale, then the tax shall be accounted for separately in the records of the transaction by the retailer.

- (2) A seller may advertise the price as including the tax or that the seller is paying the tax, subject to the following conditions:
  - (A) Unless the advertised price is one in a listed series, the words "tax included" are stated immediately following the advertised price and in print size at least half as large as the advertised price;
  - (B) If the advertised prices are listed in a series, the words "tax included in all prices" are placed conspicuously at the head of the list and in the same print size as the advertised prices;
  - (C) If a price is advertised as "tax included," the price listed on any price tag shall be shown in the same manner; and
  - (D) All advertised prices and the words "tax included" are stated in the same medium, be it oral or visual, and if oral, in substantially the same inflection and volume.
- (3) For purposes of determining the tax payable by the retailer, it shall be presumed that the sales price quoted in any price list, sales document, contract or other agreement between the parties does not include the retail sales tax imposed by this Chapter; Provided that, if the retailer advertises the sales price as including the tax or that the retailer is paying the tax, the advertised price shall not be considered the sales price.
- (4) If a sale is consummated by trade, barter or exchange for anything other than money, the tax shall be computed at the fair market value of the property sold.

### **38.31.03 Remittance of Tax; Filing of Return; Records**

- (1) The retail sales tax imposed in this Chapter must be paid by the buyer to the seller. Each seller must collect from the buyer the full amount of the tax payable in respect to each taxable sale.
- (2) The retail sales tax required by this Chapter, to be collected by the seller, is deemed to be held in trust by the seller until paid to the Tribe. Any seller who appropriates or converts the tax collected to the seller's own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this Chapter commits a Class I offense under Title 10 of the Code.
- (3) Except as otherwise provided in this Section, if any seller fails to collect the retail sales tax imposed in this Chapter or, having collected the tax, fails to pay it to the Tribe in the manner prescribed by this Chapter, whether such failure is the result of

the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is, nevertheless, personally liable to the Tribe for the amount of the tax.

- (4) Sellers are not relieved from personal liability for the amount of the tax unless they maintain proper records of exempt or nontaxable transactions and provide them to the Tribe when requested.
- (5) Sellers are not relieved from personal liability for the amount of tax if they fraudulently fail to collect the tax or if they solicit purchasers to participate in an unlawful claim of exemption.
- (6) Sellers are not relieved from personal liability for the amount of tax if they accept an exemption certificate from a purchaser claiming an entity-based exemption if: (a) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller within the Reservation; and (b) The Tribe provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available within the Reservation.
- (7) (a) Sellers are relieved from personal liability for the amount of tax if they obtain a fully completed exemption certificate. (b) If the seller has not obtained an exemption certificate, the seller may, within thirty days, or a longer period as may be provided by rule of the Tribe, subsequent to a request for substantiation by the Tribe, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith. (c) Sellers are relieved from personal liability for the amount of tax if they obtain a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship.
- (8) The amount of tax, until paid by the buyer to the seller or to the Tribe, constitutes a debt from the buyer to the seller. Any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this Chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this Chapter commits a Class I offense under Title 10 of the Code.
- (9) Where a buyer has failed to pay to the seller the tax imposed by this Chapter and the seller has not paid the amount of the tax to the Tribe, the Tribe may, in its discretion, proceed directly against the buyer for collection of the tax. If the Tribe proceeds directly against the buyer for collection of the tax as authorized in this subsection, the Tribe may add a penalty of ten percent of the unpaid tax to the amount of the tax due for failure of the buyer to pay the tax to the seller, regardless of when the tax may be collected by the Tribe.
- (10) Within this Section, unless the context clearly requires otherwise, "exemption certificate" means documentation furnished by a buyer to a seller to claim an exemption from sales tax. An exemption certificate includes a resale certificate or

other documentation authorized in Section 38.31.07 furnished by a buyer to a seller to substantiate a wholesale sale.

- (11) Retailers shall remit to the Tribe all sales taxes imposed by this Chapter on a monthly basis, no later than the twenty-fifth (25<sup>th</sup>) day of the calendar month following the subject monthly tax period. With said remittance, retailers shall file monthly tax returns showing tax receipts received during each monthly period on forms prescribed by the Tribe. All filings and payments must be delivered or mailed to: Nisqually Indian Tribe, Financial Services Office, 4820 She-Nah-Num Drive SE, Olympia, WA 98513. Sellers shall compute the tax due under this Chapter by carrying the computation to the third decimal place and rounding to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. Sellers may elect to compute the tax due on a transaction on an item or an invoice basis.
- (12) The retailer shall maintain accurate written records of all sales and shall make such records available for inspection by the Tribe and/or the Tribe's third party auditor. Said records shall be maintained by the retailer for no less than five (5) years following the year in which the sale occurred.

#### **38.31.04 Business License**

- (1) Retailers maintaining a physical presence on the Reservation for the purpose of doing business within the Reservation on the effective date of this Chapter shall complete and file with the Tribe an application for a Tribal business license within thirty (30) days after the effective date of this Chapter. Provided That, Tribal Members and Tribal Business Entities need not so complete and file said application until directed to do so in writing by the Tribe. The Tribe shall assign a business license number to each retailer that shall be used as the taxpayer identification number upon approval of the retailer's Tribal business license application. All Tribal business licenses shall be issued by the Tribe's Financial Services Office.
- (2) A Tribal business license shall be valid for a period of five (5) years. The fee for the initial issuance of a Tribal business license, as well as the renewal fee, shall be equal to one hundred dollars (\$100). Said fee is due and payable at the time application is made and shall be nonrefundable in all circumstances. Tribal Business Entities and Tribal Members are exempt from the Tribal business license fee.
- (3) A separate business license for each place of business within the Reservation is required. A license is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated on it. It must at all times be conspicuously displayed at the place for which issued.
- (4) The Tribe may revoke or suspend a Tribal business license for any violation of this Chapter upon providing the license holder with notice and an opportunity to be heard.

### **38.31.05 Presumption of Taxability; Resale Certificate**

- (1) It is presumed that all gross receipts are subject to the retail sales tax until the contrary is established. The burden of proving that a transaction is not a sale at retail is on the seller unless he takes from the purchaser a certificate to the effect that the property is purchased for resale and such purchaser holds a valid and effective business license issued by the Tribe.
- (2) If a buyer normally is engaged in both consuming and reselling certain types of personal property, the retail sale of which is taxable under this Chapter, and the buyer is not able to determine at the time of purchase whether the particular property acquired will be consumed or resold, the buyer may use a reseller permit or other documentation authorized by the Tribe for the entire purchase if the buyer principally resells the property according to the general nature of the buyer's business and holds a valid and effective business license issued by the Tribe. The buyer must account for the value of any articles purchased with a reseller permit or other documentation authorized by the Tribe that is used by the buyer and remit the deferred sales tax on the property to the Tribe.
- (3) A buyer who pays a tax on all purchases and subsequently resells property or services at retail, without intervening use by the buyer, must collect the tax from the purchaser as otherwise provided by law and is entitled to a deduction on the buyer's tax return equal to the cost to the buyer of the property or service resold upon which retail sales tax has been paid. The deduction is allowed only if the taxpayer keeps and preserves records that include the names of the persons from whom the property or services were purchased, the date of the purchase, the type of property or services, the amount of the purchase, and the tax that was paid.
- (4) The Tribe may provide by rule for the refund or credit of retail sales tax paid by a buyer for purchases that are later resold without intervening use by the buyer or for purchases that would otherwise have met the definition of wholesale sale if the buyer had provided the seller with a reseller permit or other documentation as authorized by the Tribe.
- (5) Nothing in this section may be construed to authorize a deduction or credit in respect to the purchase of services if the services are not of a type that can be sold at wholesale under the definition of wholesale sale in RCW 82.04.060.

### **38.31.06 Effect of Resale Certificate**

A resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who holds a valid and effective business license issued by the Tribe, who is engaged in the business of selling tangible personal property and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

### **38.31.07 Form and Contents of Resale Certificate**

- (1) The resale certificate must:
  - (A) Be signed by and bear the name and address of the purchaser;
  - (B) Indicate the number of the business license issued to the purchaser; and
  - (C) Indicate the general character of the tangible personal property or other products sold by the purchaser in the regular course of business.
- (2) The resale certificate must be substantially in such form as the Tribe may prescribe.

### **38.31.08 Liability of Purchaser Giving Resale Certificate**

If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the use is taxable to the purchaser as of the time the property is first so used by him, and the sales price of the property to him is the measure of the tax. Only when there is an unsatisfied use tax liability on this basis is the seller liable for sales tax with respect to the sale of the property to the purchaser. If the sole use of the property other than retention, demonstration or display in the regular course of business is the rental of the property while holding it for sale, the purchaser may elect to include in his gross receipts the amount of the rental charged rather than the sales price of the property to him.

### **38.31.09 Improper Use of Resale Certificate; Penalty**

Any person who gives a resale certificate for property, which he knows at the time of purchase is not to be resold by him in the regular course of business, for the purpose of evading payment to the seller of the amount of the retail sales tax applicable to the transaction commits a Class I offense under Title 10 of the Code.

### **38.31.10 Resale Certificate; Commingled Fungible Goods**

If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

### **38.31.11 Late Payment Penalty; Late Payment Interest**

If any taxpayer shall fail to make payment of the retail sales tax imposed by this Section 38.31 or of the use tax imposed by Section 38.32 when due, late payment penalties and late payment

interest shall accrue on any delinquencies in the same amounts and at the same rates as would be applicable in the State if the retail sales or uses had occurred outside Reservation lands.

## **38.32 USE TAX**

### **38.32.01 Imposition and Rate**

- (1) A tax is hereby imposed on the use on the Reservation of tangible personal property; services defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c), excluding services defined as a retail sale in RCW 82.04.050 (6)(c) that are provided free of charge; and extended warranties. The rate of said tax shall be equal to one hundred percent (100%) of the combined State and local use tax rate (i) for the subject county, when the Reservation lands on which such use is made exist within the geographic boundaries of a county but not a city and (ii) for the subject city, when the Reservation lands on which such use is made exist within the geographic boundaries of a city. Should there be any future increases or decreases in the applicable combined State and local use tax rate, the Tribal use tax rate shall automatically and concurrently increase or decrease by a corresponding amount so that the Tribal tax rate remains equal to the applicable combined State and local tax rate at all times.
- (2) The tax amount to be collected under this Section 38.32 is an amount equal to the purchase price multiplied by the rate in effect for the use tax under Section 38.32.01(1). The tax under this Section 38.32 does not apply to any use if, in respect to such use, the seller was subject to and paid a retail sales tax collection obligation under Section 38.31.
- (3) Every person who engages within the Reservation in the business of acting as an independent selling agent for persons who do not hold a valid business license, and who receives compensation by reason of sales of tangible personal property, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c), of his or her principals for use within the Reservation, must, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price under this Section, and for that purpose is deemed a retailer as defined in this Chapter.
- (4) The tax required to be collected by this Section is deemed to be held in trust by the retailer until paid to the Tribe. Any retailer who appropriates or converts the tax collected to the retailer's own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date commits a Class I offense under Title 10 of the Code. If any seller fails to collect the tax herein imposed, or having collected the tax fails to pay the same to the Tribe in the manner prescribed, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is nevertheless personally liable to the Tribe for the amount of such tax.

- (5) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this Section commits a Class I offense under Title 10 of the Code.

### **38.32.02 Extinguishment of Liability**

A person's liability for the tax imposed by this Section 38.32 is not extinguished until the tax has been paid to the Tribe, except that a receipt from a retailer who is authorized by the Tribe, under such rules or regulations as it may prescribe, to collect the tax and who is, for the purposes of the Tribal use tax, regarded as a retailer maintaining a place of business on the Reservation, given to the purchaser pursuant to any such Tribal rules or regulations is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

### **38.32.03 Tax Payment and Return**

All use taxes levied under Section 38.32.01 shall be remitted to the Tribe on a monthly basis, no later than the twenty-fifth (25<sup>th</sup>) day of the calendar month following the subject monthly tax period. A return must be filed with the remittance by each person. Said remittance and filing shall be in accordance with Section 38.31.03(11).

## **38.33 EXEMPTIONS**

### **38.33.01 Exemptions from Tribal Retail Sales and Use Tax**

- (1) The following shall not be subject to the Tribal retail sales or use tax:
- (A) All sales or use of property subject to Tribal taxation pursuant to Chapter I of this Title 38, namely "cigarettes" as defined in Section 38.01.04(c), as well as all sales of property exempt from Tribal taxation under Chapter I of this Title 38 pursuant to Section 38.02.04(b), (c) and (d).
  - (B) All sales or use of property subject to Tribal taxation pursuant to Chapter II of this Title 38, namely "motor vehicle fuel" as defined in Section 38.10.07(d).
  - (C) All sales or use of "liquor," as such term is defined in Title 29 of the Code, on which Washington State retail sales or use tax has been paid in full by the holder of a State-issued liquor license or on which no State retail sales or use tax would be due if the transaction had occurred outside Reservation lands.
  - (D) All sales or use of property subject to Tribal taxation pursuant to Title 30 (Commercial Marijuana Activity), namely "marijuana products" as defined in Section 30.01.02(10), as well as all sales of property exempt from Tribal taxation under Title 30 pursuant to Section 30.02.01(5) and (6).

- (E) All sales or use of property which occur within a "Compact Covered Area" (as such term is defined in Article IV, Section 3, of the Tax Sharing Compact between the Tribe and the State dated on or about June 30, 2021) and for which retail sales or use tax has been paid to the State in accordance with the terms of said Tax Sharing Compact.
  - (F) All sales of property to a Tribal Member or to a Tribal Business Entity, and all uses of property by a Tribal Member or by a Tribal Business Entity.
  - (G) All sales of property to the Tribe and all uses of property by the Tribe.
- (2) The following also shall not be subject to the Tribal retail sales or use tax:
- (A) Sales or use of prepared food from automatic food dispensing or non-alcoholic beverage vending machines that dispense items in sealed containers.
  - (B) Sales or use of prepared food sold by persons primarily engaged in an activity or business other than the sale of prepared food items, such as churches, grade schools, junior high schools or high schools; institutional living establishments, including dormitories, senior citizen centers, residential care facilities and hospitals; and not-for-profit organizations who may, from time to time, provide prepared food items without holding themselves out as retailers of such items.
  - (C) Sales or use of prepared food that qualify as food exempt under the Federal Food Stamp Act purchased with any coupon, stamp, type of certificate, authorization card, cash or check issued in lieu of a coupon, or access device, including an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food Stamp Act of 1977.
  - (D) Sales of property at wholesale to a retailer that is intended to be resold by the retailer to a consumer.
  - (E) Casual or isolated sales or uses, as defined in Section 38.30.02(2).
  - (F) Sales directly to the federal, a state or a tribal government, or to any department or agency thereof.
  - (G) Sales or use of newspapers, whether by publishers or others. "Newspaper" means a publication of general circulation and general interest bearing a title, issued regularly at stated intervals of at least once every two weeks, and formed of printed paper sheets without substantial binding, including school newspapers, regardless of the frequency of publication, where such newspapers are distributed regularly to a paid subscription list. Magazines, periodicals, and all publications other than newspapers are subject to the retail sales or use tax.

- (H) Sales or use of legend drugs for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailments of humans when sold to hospitals, doctors, dentists, or any other medical practitioner, as well as to patients. "Legend drugs" are those drugs which may not be legally dispensed under applicable law without a prescription.
- (I) Sales or use of nonlegend drugs, nutrition products including dietary supplements or dietary adjuncts, medicines, prescription lenses, or other substances, when dispensed by a licensed dispensary pursuant to a written prescription issued by a medical practitioner for diagnosis, cure, mitigation, treatment, or prevention of disease or other ailments in humans.
- (J) Sales or use of laboratory reagents and other diagnostic substances when used as part of a test prescribed to diagnose disease in humans.
- (K) Sales or use of property used for the administration of drugs prescribed to a patient, including needles and tubing, when used for the administration of drugs prescribed to a patient, and catheters, infusion pumps, syringes, and similar items when used for the delivery of prescription drugs.
- (L) Sales or use of prosthetic devices, orthotic devices prescribed by physicians, osteopaths, or chiropractors, and ostomic items. "Prosthetic devices" are artificial substitutes which generally replace missing parts of the human body, such as a limb, bone, joint, eye, tooth or other organ or part thereof, and materials which become ingredients or components of prostheses. "Orthotic devices" are apparatus designed to activate or supplement a weakened or atrophied limb or function including braces, collars, casts, splints, and other similar apparatus as well as parts thereof, but do not include durable medical equipment such as wheelchairs, crutches, walkers, and canes nor consumable supplies such as embolism stockings, arch pads, belts, support bandages, and the like, whether prescribed or not. "Ostomic items" are medical supplies used by colostomy, ileostomy, and urostomy patients, including bags, tapes, tubes, adhesives, deodorants, soaps, jellies, creams, germicides, and sundry related supplies.
- (M) Sales or use of medically prescribed oxygen when sold to an individual having a prescription for use in the medical treatment of that individual.
- (N) Sales or use of anesthesia gases, medical gases, contrast media, or irrigation solutions when these items are used under a physician's order as part of a medical treatment for a specific patient.
- (O) Sales or use of property by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States

Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code.

- (P) Sales or use of parts that replace an existing part, or which are essential to maintain the working condition, of a piece of qualifying farm machinery and equipment; installing replacement parts for qualifying farm machinery and equipment; and repairing qualifying farm machinery and equipment. "Qualifying farm machinery and equipment" includes machinery and equipment used primarily for growing, raising, or producing agricultural products including farm tractors and other farm implements.
- (Q) Sales or use of objects related to a traditional or cultural activity to any members of federally-recognized tribes whose cultural practices are within Coast Salish culture, including, but not limited to: arts and crafts, music, language, materials, tools and foods; items used for hunting, fishing and gathering; items used for traditional games; and items used in spiritual or religious practice and all other objects related to cultural preservation and conservation.
- (R) Sales of tangible personal property, services and other products not otherwise set forth in this Section 38.33.01 that would be exempt from Washington State and local retail sales tax if the sale occurred outside Reservation lands and within the geographic boundaries of the county or city within which such Reservation lands are located.
- (S) Use of tangible personal property, services and other products not otherwise set forth in this Section 38.33.01 that would be exempt from Washington State and local use tax if the use occurred outside Reservation lands and within the geographic boundaries of the county or city within which such Reservation lands are located.

### **38.34 PAYMENT ON TERMINATION OF BUSINESS AND SUCCESSOR'S LIABILITY**

#### **38.34.01 Successor or Assignee to Withhold Tax from Purchase Price**

If any retailer who is liable for any amount under this Chapter sells out the retailer's on-Reservation business or stock of goods, or quits the business, that retailer's successors or assigns shall withhold a sufficient amount of the purchase price to satisfy all Tribal tax amounts due until the former owner produces a receipt from the Tribe showing that the taxes have been paid in full or a certificate stating that no amount is due has been issued by the Tribe.

#### **38.34.02 Liability of Purchaser for Failure to Withhold Sufficient Amount; Release**

- (1) If the purchaser of an on-Reservation business or stock of goods fails to withhold the amount as required in Section 38.34.01, the purchaser becomes personally liable for the payment of the amount required to be withheld by him to the extent of the

purchase price, valued in money. Within 60 days after receiving a written request from the purchaser for a certificate, or within 60 days from the date the former owner's records are made available for audit, whichever period expires later, but not later than 90 days after receiving the request, the Tribe shall either issue the certificate or mail a notice to the purchaser of the amount that must be paid as a condition of issuing the certificate.

- (2) Failure of the Tribe to timely mail the notice releases the purchaser from any further obligation to withhold the amount from the purchase price.
- (3) The time within which the obligation of a successor may be enforced begins at the time the retailer sells out his business or stock of goods.