

## **Title XXVIII - Cigarette Retailer and Licensing**

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## **Chapter 1. License Applications**

### **Sec. 101. Licenses required.**

No person shall sell cigarettes to Indians within the Reservation unless duly authorized by a license issued in accordance with this ordinance.

### **Sec. 102. Application for license.**

Each person intending to sell cigarettes to Indians within the Reservation shall file an application for an annual license to do so. The application of 1992 must be filed within thirty(30) days after the enactment of this ordinance. Beginning with the 1993 calendar year, all applications must be filed by November 30th of the preceding year.

### **Sec. 103. Contents of applications.**

Information in all applications for licenses shall be certified by the applicant under oath on forms provided by the Tax Commission and shall include the following information, in addition to any other information deemed necessary by the Commission.

- (a) The name and mailing address of the applicant;
- (b) The location of all cigarette retail businesses operated or proposed to be operated by the applicant on the Reservation;
- (c) The number of cartons of cigarettes sold by the applicant to Indians during each of the last twelve full calendar months immediately preceding the application;
- (d) The number of capons of cigarettes which the applicant expects to sell to Indians during the next calendar year;
- (e) Such other information as the Commission shall require.

### **Sec. 104. Fees.**

Each application shall be accompanied by a filing fee of \$25.00.

**Sec. 105. Initial licensing determination by Commission.**

The Commission shall by December 15th of each year make its initial determination on whether to grant or deny each application for license, and, where it determines to grant a license, its initial determination of the amount of cigarettes which that licensed retailer may sell to Indians for the next calendar year. The initial determination shall be delivered to the applicant and to the Tribes. The Commission's initial determination of the amount of cigarettes all licensed retailers, taken together, may sell shall not exceed the total Reservation quota established for that year pursuant to the Tribes' cigarette tax agreement with the State of Montana.

**Sec. 106. Conditions of licenses.**

Any license granted by the Commission shall include:

- (a) The name, mailing address and all business locations on the Reservation where the licensee is authorized to sell cigarettes to Indians;
- (b) The quantity of cigarettes which may be sold by the licensee annually to Indians on the Reservation;
- (c) Provisions requiring that the licensee shall:
  - (i) not collect the Montana cigarette sales tax on any sale to Indians on the Reservation;
  - (ii) collect and pay to a wholesaler the Montana cigarette sales tax on all other sales;
  - (iii) not sell cigarettes at less than the cost to the retailer, except (A) as an isolated transaction not in the usual course of business, or (B) as part of a bona fide clearance sale for the purpose of final liquidation of a business or discontinuing trade in such cigarettes;
  - (iv) keep all records required by Section 112 of this ordinance;
  - (v) notify the Montana State Department of Revenue of each proposed purchase from each wholesaler of a specified quantity cigarettes for resale to Indians.
- (d) A provision that "this license constitutes authorization by the Tribes to sell a portion of the Reservation quota of cigarettes exempt from state taxation established by the Tribes' cigarette tax agreement with the State of Montana. This license shall not be deemed the property right or any other interest other than the limited permission as described by this license."

**Sec. 107. Challenges to initial determination.**

- (a) Any applicant or the Tribes may file a challenge to an initial determination either (i) granting or denying an application, or (ii) setting the amount of cigarettes a licensee may sell to Indians.
- (b) A challenge shall state in writing why the challenger disputes the initial determination, what the challenger believes the appropriate determination should be, and the reasons why. The challenge shall have attached to it as an exhibit any information upon which the challenger intends to rely. The challenge shall be filed with the Tax Commission and a copy shall be served on the Tribes and the applicant.
- (c) During the pendency of a challenge proceeding the initial determination shall be followed.

**Sec. 108. Hearing.**

- (a) As soon as practicable after receiving a challenge filed under Section 107, the Tax

Commission shall review the challenge for adequacy and completeness. If additional information is required, the Commission shall so inform the challenger in writing and provide a reasonable time for the challenger to provide further information. When the Commission believes the challenge is adequate and complete, the Commission shall promptly schedule a hearing on it. The hearing shall not be held more than sixty (60) days after the date the completed challenge was filed. The applicant and the Tribes shall be given not less than ten (10) days notice of the hearing date.

(b) At the hearing, the applicant and the Tribes shall have the right to present oral and written testimony of witnesses under oath, and to be represented by counsel, each at its own expense. The Commission shall have the power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents and other evidence. The Fort Peck Tribal Court shall enforce any subpoena issued by the Commission in the same manner as the Court enforces its own subpoenas. The ordinary rules of evidence shall not apply in any hearing, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfair if admitted, shall be excluded or may be admitted by the Commission only under special conditions or stipulations.

(c) The Chairman of the Tribal Executive Board may appoint a person to represent the interest of the Tribes and present the case for the Tribes at the hearing. The representative shall have all the same rights at the hearing as the applicant.

(d) The hearing shall be on the record, with all testimony taken under oath, and a permanent record shall be made by tape recorder or stenographic means.

(e) The Commission's decision on the challenge shall either be issued in writing, or orally on the record at the hearing.

#### **Sec. 109. Revocation, suspension or alteration of licenses.**

(a) The Commission may alter the quantity of cigarettes any licensed retailer is authorized to sell to Indians in any year, after giving at least fifteen (15) days prior notice to the retailer and the Tribes of a hearing set for that purpose. The hearing shall be conducted pursuant to the procedures provided in Section 108.

(b) The Commission may revoke or suspend for a set period of time a license for failure of licensed retailer to comply with the terms and conditions of a license, any provision of this ordinance, or with any order or decision of the Commission, after giving at least thirty (30) days prior notice to the retailer and the Tribes of a hearing set for that purpose. The hearing shall be conducted pursuant to the procedures provided in Section 108.

#### **Sec. 110. Appeals.**

(a) The Fort Peck Tribal Court of Appeals shall have exclusive jurisdiction to hear appeals from final decisions of the Commission issued pursuant to Sections 108(e) or 109.

(b) Any party may appeal any final decision under Sections 108(e) or 109 within thirty (30) days after the decision by filing a notice of appeals with the Tax Commission, and serving a copy on each other party. Thereafter, the Tax Commission shall promptly file the full record of the proceeding, including the notice of appeal, with the Court of Appeals.

(c) The Court of Appeals shall hear the appeal in the same manner as it hears civil cases from the Fort Peck Tribal Court in which petition for review is granted. In all appeals, the Court shall give proper deference to the administrative expertise of the Commission. The Court of Appeals shall not set aside, modify or remand any determination by the Commission unless it finds that the

determination is arbitrary and capricious, unsupported by substantial evidence or contrary to law. The Court of Appeals shall issue a written decision on all appeals, which decision shall be final.

(d) The Court of Appeals may, in its discretion, award costs and attorneys' fees to the Tribes against any applicant whose appeal was frivolous, malicious, or in bad faith.

**Sec. 111. Finality of decisions.**

Any final finding or determination of the Tax Commission pursuant to Sections 108 or 109 which is not timely appealed, and any final determination of the Court of Appeals in a proceeding pursuant to Section 110 shall be final and binding in any other proceeding against or by the same person, and shall not be open to question in any other suit.

**Sec. 112. Enforcement and recordkeeping.**

(a) Each licensed retailer shall keep a record of the name of each Indian who purchases cigarettes, and the amount and date of each such purchase. Such records shall be retained for at least six (6) years beyond the date of purchase.

(b) The Tribes may, for the purposes of preparing for a proceeding under this ordinance or otherwise implementing or enforcing the provisions of this ordinance, inspect property, examine and require the production of pertinent records, books, information, or evidence, and require the presence and testimony under oath of any person within the jurisdiction of the Tribes.

(c) If any person fails upon request to testify, or to provide information or documents, the Tax Commission may seek and obtain a subpoena or other order from the Fort Peck Tribal Court compelling the testimony or production of the information or documents.

**Sec. 113. Prohibited acts.**

(a) No person shall sell cigarettes to any Indian on the Reservation free of the Montana cigarette sales tax unless licensed to do so pursuant to this ordinance.

(b) No person shall sell cigarettes to any non-Indian on the Reservation without collecting the Montana cigarette sales tax.

(c) No person shall make any false oath or statement in any application for license issued under this ordinance.

**Sec. 114. Civil remedies.**

(a) The Tribes may file suit in any court of competent jurisdiction to enjoin or restrain any act in violation of any provision of this ordinance or a condition of any license issued pursuant to this ordinance. If such a suit is filed in Tribal Court, that court shall proceed expeditiously both to determine it and to consider any petition for temporary injunctive relief sought by the Tribes.

(b) Any non-Indian who violates the provision of this ordinance may be excluded from the Fort Peck Reservation or may have his/her right to do business on the Reservation suspended for a period of time or revoked by order of the Tribal Executive Board or by the Tax Commission.

**Sec. 115. Criminal offenses.**

Any Indian who violates subsections 113(a), (b) or (c) of this ordinance shall be guilty of a Class A misdemeanor.