

TITLE XIV
CHOCTAW TAX CODE

CHAPTER 1.

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CHAPTER 1. RETAIL SALES

§14-1-1 Administration

- (1) The Choctaw Tax Commission is empowered to administer and delegate the administration of, all taxes of the Mississippi Band of Choctaw Indians and to that end, shall be empowered to adopt substantive and procedural rules and regulation, orders implementing its decisions and rulings, and instructions such as may be necessary to the proper and efficient administration of these laws.
- (2) The Office of the Choctaw Tax Commission shall have day-to-day responsibility for the administration of the Choctaw Tax Code and shall have all powers consistent with its plan of operation.

§14-1-2 Definitions

- (1) The words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them herein.
 - (a) “Code” means and includes all sections and provisions of the Choctaw Tax Code of the Choctaw Tribal Code Title XIV.
 - (b) “Tax Commission” means the Tax Commission of the Mississippi Band of Choctaw Indians. This Commission shall be composed of three (3) Tribal members appointed **or reappointed** by the Chief and concurred in by the Tribal Council, with the Council selecting the Chairman, to serve for four-year terms and charged with the responsibility of administering the Tribal Code. Members may be removed by the Tribal Council for cause.
 - (c) “Commissioner” means the chairman of the Tax Commission.
 - (d) “Reservation Lands” means those defined as Indian Country under the provisions of 18 U.S.C. §1151(a) or (b).
 - (e) “Person” means and includes any individual, firm, entity, copartnership, joint venture, association, corporation, estate, trust or other group or combination acting as a unit, and includes the plural as well as the singular in number. “Person” shall include husband or wife or both where joint benefits are derived from the operation of a business taxed hereunder. “Person” shall also include any Tribal agency or association engaging in a business taxable under the Tribal Code.
 - (f) “Tax Year” or “Taxable Year” means either the calendar year or the taxpayer’s fiscal year.
 - (g) “Taxpayer” means any person liable for or having paid any tax to the Mississippi Band of Choctaw Indians under the provisions of the Tribal Code.

- (h) “Sale” or “Sales” means and includes the barter or exchange of property as well as the sale thereof for money or other consideration and every closed transaction by which the title to taxable property passes shall constitute a taxable event.

“Sale” shall also include the passing of the title to property for a consideration of coupons, trading stamps or by any other means when redemption is subsequent to the original sale by which the coupon, stamp or other obligation was created.

- (i) “Gross Proceeds of Sales” means the value proceeding or accruing from the full sale price of tangible personal property including installation charges, carrying charges or any other addition to the selling price on account of deferred payments by the purchaser, without any deduction for freight, cost of property sold, other expenses or losses, or taxes of any kind. “Gross proceeds of sales,” however, shall not include the value of goods or services given by an employer to its employees when they are part of the compensation of the employees.

Where a trade-in is taken as part payment on tangible personal property sold, “Gross Proceeds of Sales” shall include only the difference between the selling price of the tangible personal property and the amount allowed for a trade-in of property of the same kind. When the trade-in is subsequently sold, the selling price thereof shall be included in “Gross Proceeds of Sales.”

“Gross Proceeds of Sales” shall include the value of any goods, wares, merchandise or property purchased at wholesale or manufactured, which are withdrawn or used from an established business or from the stock in trade for consumption or any other use in the business or by the owner.

- (j) “Gross Income” means the total charges for service or the total receipts (actual or accrued) derived from trades, business or commerce by reason of the investment of capital in the business engaged in, including the sale or rental of tangible personal property, compensation for labor and services performed, and including the receipts from the sales of property retained as toll, without any deduction for rebates, cost of property sold, cost of materials used, labor costs, interest paid, losses, or any expense whatsoever.

“Gross Income” or “Gross Proceeds of Sales,” however, shall not be construed to include the value of goods returned by customers when the total sale price is refunded either in cash or by credit, or cash discounts allowed and taken on sales. Cash discounts shall not include the value of trading stamps given with a sale of property.

- (k) “Tangible Personal Property” means personal property perceptible to the human senses or by chemical analysis as opposed to real property or intangibles, and shall include property sold on an installed basis which may become part of real or personal property.

- (l) “Installation charges” means and includes the charge for the application of Tangible Personal Property to real or personal property without regard to whether or not it becomes a part of the real property or retains its personal property classification. It shall include, but not be limited to, sales in place of roofing, tile, glass, carpets, drapes, fences, awnings, window air conditioning units, gasoline

pumps, window guards, floor coverings, carports, store fixtures, aluminum and plastic siding, tombstones and similar personal property.

- (m) “Retailer” shall apply to a person making retail sales through vending machines, by maintaining a store or operating as a transient vendor.
- (n) “Retail Sales” shall mean and include all sales of Tangible Personal Property, except those manufactured or custom processed for resale or for further processing.

“Retail Sale” shall include the value of any Tangible Personal Property manufactured or purchased at wholesale which is withdrawn from the business or stock in trade and is used or consumed within the Choctaw Indian Reservation lands in the business or by the owner or by any other person, whether or not in the regular course of business or trade.

“Retail Sale” shall also include a sale invoiced to a retailer but delivered to another person who pays for the merchandise upon taking possession.

- (o) “Business” shall mean and include all activities or acts engaged in (personal or corporate) for benefit or advantage, either direct or indirect, and not exempting sub-activities in connection therewith. Each of such sub-activities shall be considered business engaged in, taxable in the class in which it falls.

“Business” shall include the activity or activities of a person on the performing of a service under contract or agreement with another person when the service performed is taxable under the provisions of the Tribal Code.

- (p) “Doing Business” shall include any person owning personal property located on Choctaw Indian Reservation lands under lease or rental agreement or any person installing personal property on Choctaw Indian Reservation lands.

“Doing Business” shall include any person represented by salesmen taking or soliciting orders to be filled from points outside Choctaw Indian Reservation lands for subsequent delivery of the merchandise or equipment owned or leased by the seller to customers located on Choctaw Indian Reservation lands.

§14-1-3 Selling Tangible Personal Property

Every person engaging within Choctaw Indian Reservation lands in the business of selling any Tangible Personal Property whatsoever is hereby levied, assessed and shall be collected from by the Commissioner a tax equal to two percent (2%) of the gross proceeds of the retail sales of the business until midnight, December 31, 1991, at which time a four percent (4%) tax shall be levied, assessed and collected; until midnight, December 31, 1993, at which time a five percent (5%) tax shall be levied, assessed and collected; until midnight, December 31, 1994, at which time a six percent (6%) tax shall be levied, assessed and collected; and until midnight, December 31, 1995, at which time a seven percent (7%) tax shall be levied, assessed and collected; provided, however, that sales of vehicles and other major equipment shall be taxed at a rate equal to one half of the rate of tax for other sales.

§14-1-4 **Permit to Engage in Business**

- (1) Any person who engages in any business or activity on Choctaw Indian Reservation lands shall be required to first obtain a permit from the Commission to engage in such business or activity. The right to engage in such business or activity shall be conditioned upon the payment of taxes levied by the Mississippi Band of Choctaw Indians under the provisions of the Tribal Code. Permittees shall keep adequate records of such business or activity as required by the Commission. All such books and records of such business shall be subject to inspection and audit by the Commission upon reasonable notice to ensure compliance with the Tribal Code. A one-time fee of twenty-five dollars (\$25.00) shall be required upon application. The Commission may waive this fee for members of The Mississippi Band of Choctaw Indians who make and sell traditional handicrafts fabricated at or near their place of residence or produce grown and sold at or near their place of residence; non-profit organizations for fundraising events; garage sales and other similar type non-recurring sales at the discretion of the Commission. Upon receipt of such permit, the applicant shall be duly licensed to engage in and conduct such business or activity. The permit does not grant a license to solicit in any government owned buildings or on public property. The permit is restricted to a given location or may be issued for selling door to door. Said permit shall continue in force so long as the person to whom it is issued shall continue in the same business at the same location, unless revoked by the Commission for cause.
- (2) The commissioner is hereby authorized to revoke the permit of any person failing to comply with any of the provisions of the Tribal Code, after giving to the person holding such permit ten (10) days' notice of the intention of the commissioner to revoke such license. Unless good cause be shown within said ten (10) days why such permit should not be revoked, the commissioner may revoke such permit; and revocation of such permit, or engaging or continuing to engage in business after such permit is revoked, shall subject such persons to all the penalties imposed by §14-1-6(2).
- (3) Any person liable for the tax who fails to obtain a permit from the Commissioner, or who continues in business after such permit has been revoked or who fails to make his returns for taxation as provided, or who fails to keep adequate records and invoices as provided by §14-1-7, or who fails or refuses to permit inspection of such records, or who fails to pay any taxes due hereunder, shall forfeit his rights to do business on Choctaw Indian Reservation lands until he complies with all the provisions of the Tribal Code, and until he enters into a bond, with sureties, to be approved by the commissioner, in an amount not to exceed twice the amount for all taxes estimated to become due under the Tribal Code by said person for any three (3) month period, conditioned to comply with the provisions of the Tribal Code, and pay all taxes and fines legally due by him.
- (4) If any person is engaged in or continuing, on Choctaw Indian Reservation lands, any business or activity without obtaining a permit, or after such permit has been revoked, or without filing a required bond, or without keeping and allowing inspection of all records required by §14-1-7, or without making a return, or returns, and without paying all taxes due by him hereunder, it shall be the duty of the Commissioner to proceed by injunction to prevent the continuance of said business. Any temporary injunction enjoining the continuance of such business shall be granted without notice by a judge authorized to grant injunctions.

§14-1-5 Exemptions

- (1) The Mississippi Band of Choctaw Indians' Tribal government and all of its entities shall be exempt from retail sales tax on Choctaw Indian Reservation lands when such sales are billed directly to and payment therefore is made directly by the Tribal government, its departments and entities.
- (2) Sales of traditional Choctaw handicrafts fabricated at or near place of residence shall be exempt from all retail tax collections on Choctaw Indian Reservation lands. Traditional Choctaw or Native American handicrafts are subject to sales tax when resold by anyone other than the original seller or maker, at the discretion of the Commission.
- (3) Sales at all food concessions and souvenir concessions and all sales of handicrafts taking place during the seven (7)-day week of the four (4)-day annual Choctaw Indian Fair shall be exempt from all retail tax collection on Choctaw Indian Reservation lands.
- (4) Sales of items paid for by food stamps and sales of tobacco products shall be exempt from all retail tax collection on Choctaw Indian Reservation lands.
- (5) The Choctaw sales tax shall not apply to the following:
 - (a) the contract price or compensation received for constructing, building, erecting, repairing or adding to any building, electrical system, air conditioning system, heating system or any other improvement or structure which is used for or primarily in connection with a residence or dwelling place for human beings. Such residences shall include homes, apartment buildings, condominiums, mobile homes, summer cottages, fishing and hunting camp buildings and similar buildings;
 - (b) income from storage and handling of perishable goods by a public storage warehouse;
 - (c) federal retailers excise tax, or other federal taxes levied;
 - (d) newspapers and periodicals;
 - (e) sales of coffins, caskets and other materials used in the preparation of human bodies for burial;
 - (f) sales to governmental entities that are exempted under Mississippi law and are paid by governmental warrants or other strictly governmental payment processes, not cash, personal checks or personal credit cards;
 - (g) sales of goods used in a manufacturing process or for resale if the entity holds a valid Tribal tax exemption certificate or certificate number and the entity is located on land over which the Tribe has jurisdiction;
 - (h) sales of Tangible Personal Property for immediate export to a foreign country;

- (i) the gross proceeds from the sales of automobiles, trucks, truck-tractors, semi-trailers, trailers, boats, travel trailers, motorcycles and all-terrain cycles;
 - (j) sales of Tangible Personal Property to non-profit organizations, recognized as such by the Choctaw Tax Commission, the State of Mississippi, or the U.S. Internal Revenue Service;
 - (k) the gross proceeds of retail sales of drugs and medicines prescribed or furnished by a licensed physician and dispensed or prescription filled by a registered pharmacist in accordance with law;
 - (l) the gross proceeds of retail sales of food and drink for human consumption made through vending machines serviced by full line vendors from and not connected with other taxable businesses;
 - (m) the gross proceeds of sales of motor fuel;
 - (n) self-service, coin-operated laundries, but not the non-food vendor machines therein; and
 - (o) income received by Tribal members from the sale of baked goods, breakfast, luncheon or dinner plates, part-time mechanic work, yards sales and lawn mowing for charitable purposes, fundraisers or occasional income incidental to their incomes.
- (6) The Tax Commission shall honor tax exemptions granted in the Mississippi Code and specific exemptions granted by the Tribal Council.
 - (7) The Tax Commission has the right to assess and collect sales tax on any and all business activities not specifically excluded from tax herein.

§14-1-6 Assessment of Tax by Commissioner

- (1) Any person permitted by the Commissioner to engage in business on Choctaw Indian Reservation lands shall pay the retail tax as computed on gross proceeds of sales of the business. Such taxes shall be paid to the Commissioner on a monthly basis due within twenty (20) days of the last day of the preceding month for sales in the preceding month. All sales taxes collected shall be submitted to the commissioner with a sworn statement by the taxpayer attesting to their authenticity.
- (2) Any taxpayer failing to comply with the provision of the Tribal Code shall be subject to a maximum fine of five hundred dollars (\$500.00) and/or the revoking of his business permit, which would result in the business being evicted from Chocaw Indian Reservation lands. Should a permit be revoked under this provision it can not be renewed for one (1) year from the date of its rescision unless all taxes and fines due have been paid to the Commissioner and the Commission approves a bond as set forth in §14-1-4(3).
- (3) If adequate records of the gross income or gross proceeds of sales are not maintained or invoices preserved as provided herein, or if an audit of the records of a taxpayer, or any return filed by him, or any other information discloses that taxes are due and unpaid, the

Commissioner shall make assessments of taxes, damages and interest from any information available, which shall be prima facie correct. The Commissioner shall give notice to the taxpayer of such assessments and demand payment of the tax, damages and interest within ten (10) days from date of delivery of the notice. Such notice shall be sent by certified or registered mail or delivered by an agent of the Commissioner either to the taxpayer or someone of suitable age and discretion at the taxpayer's residence or place of business.

- (4) If the taxpayer shall fail or refuse to comply with the notice of assessment, or shall fail to petition for a hearing, the Commissioner shall proceed as provided in §14-1-11.

§14-1-7 Taxpayers Must Keep Records

- (1) It shall be the duty of every person taxable under the Tribal Code to keep and preserve for a period of three (3) years adequate records of the gross income, gross receipts or gross proceeds of sales of the business, including all invoices of merchandise purchased, all bank statements and canceled checks, and all other books or accounts as may be necessary to determine the amount of tax for which he is liable. Said records shall be adequate in substance to conform with the provisions of the Tribal Code and the regulations promulgated by the Commissioner. All records shall be open for examination at any time during normal business hours by the Commissioner or his duly authorized agent.
- (2) The records provided for in this section shall be kept at the taxpayer's principal place of business on Choctaw Indian Reservation lands, and failure to keep and allow examination of such records shall subject the taxpayer to all the penalties of §14-1-6(2).

§14-1-8 Rights of Taxpayer to Appeal

If any taxpayer feels aggrieved by an assessment for taxes made upon him for any month by the Commissioner, he may apply to the Commission by petition, in writing, within ten (10) days after notice is mailed to him, for a hearing and a correction of the amount of the tax assessed upon him by the Commissioner, in which petition he shall set forth the reasons such hearing should be granted and the amount in which such tax should be reduced. The Commission shall promptly consider the petition, grant the hearing, and notify the petitioner of the time and place fixed for the hearing. After the hearing, the Commission may make such order in the matter as may appear to it just and lawful, and shall furnish a copy of the order to the petitioner. If the Commission orders the payment of the tax, the taxpayer shall pay the tax, damages and interest, if any, within ten (10) days after the order is issued. Interest shall accrue on the delinquent tax at the rate of one and one-half percent per month or part of a month from and after the expiration of the ten (10)-day period if not paid by that time.

§14-1-9 Recovery of Improper Taxes

- (1) Any person improperly charged with any tax imposed by the Tribal Code and required to pay the same, may recover the amount paid together with interest in any proper action or suit against the Commissioner for the amount paid into the Tribal treasury. The Tribal Court shall have sole jurisdiction on any action to recover any tax improperly collected by the Commissioner and paid into the Tribal treasury.

- (2) The Tribal court may, if it be of the opinion from all the evidence that the assessment is incorrect or in part invalid, determine the amount of tax due and shall decide all questions both as to legality and the amount of the tax, and enter judgment therefore.

§14-1-10 Tax A Lien

- (1) The tax imposed by the Tribal Code shall be a lien upon the property of any person subject to the provisions hereunder who shall sell out his business or stock of goods, or shall quit business and such person shall be required to make out the return provided for under §14-1-6(1), within ten (10) days after the date he sold out his business or stock of goods, or quit business and pay the tax imposed by the Tribal Code. The purchaser or transferee in business shall be required to withhold sufficient of the purchase money to cover the amount of any taxes, damages and interest due until such time as the former owner shall produce a receipt from the Commissioner showing that such liability has been paid, or a certificate that no taxes are due. In the event the former owner shall fail to pay any taxes, damages or interest due to the Tribe within the time allowed, the successor in business shall pay such taxes, damages and interest to the Commissioner upon demand. If the purchaser or transferee of a business or stock of goods shall fail to withhold purchase money as provided and the taxes, damages and interest shall be due and unpaid after the ten (10) day period allowed, he shall be personally liable for the payment of the taxes, damages and interest of the former owner, and the property sold or transferred may be proceeded against by the Commissioner in the hands of the purchaser or transferee as though no sale or transfer had been made.
- (2) Where premises are equipped with permanent fixtures so that no other commodity than that sold by the owner of the premises can be sold or handled there at, and the nature of the commodity sold is such that an amount thereof sufficient to cover the tax accrued for three (3) months is not kept on hand at all times, and such premises are leased or rented by the owner to persons who do not pay all taxes accrued on account of the business conducted on such premises when due, then such place of business, including fixtures used in such business, shall be liable to seizure and sale under a warrant issued by the Commissioner, when the taxes accrued upon the premises become due and unpaid.

§14-1-11 Enrolling a Judgment

- (1) If any person liable for the payment of sales taxes, damages or interest fails, or refuses to pay same after receiving the notice and demand as provided in §14-1-6(3), and if such person has not filed a petition as provided in §14-1-8, the Commissioner may file a notice of a Tax A Lien for such sales taxes, damages and interest with the Tribal Court Clerk, which shall be enrolled as a judgment on the judgment roll.
- (2) Such judgment shall be the equivalent of any enrolled judgment of the court and shall serve as authority for the issuance of writs of execution, writs of attachment, writs of garnishment or other remedial writs. The commissioner may issue warrants for collection of sales taxes from such judgments, in lieu of the issuance of any remedial writ by the tribal court clerk.
- (3) The Commissioner is hereby authorized to pay the clerk's fee for enrolling the notice of Tax A Lien out of funds appropriated by the Tribal Council to defray expenses of the Commission.

§14-1-12 Tribal Tax Fund

All taxes collected by the Commissioner shall be deposited into a separate general tax fund of the Tribal government. The Tribal Council shall approve operating budgets for disbursements from the tax fund.

§14-1-13 Effective Date

The Tribal Code shall become effective at midnight, December 31, 1990. The revised code shall become effective immediate upon adoption by the Tribal Council and notification by the Commissioner to the taxpayer(s).

§14-1-14 Miscellaneous Businesses

Upon every person engaging or continuing in any business there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross income of the business, unless otherwise exempted herein.

§14-1-15 Renting and Leasing

Income from renting or leasing Tangible Personal Property used within Tribal land shall be taxed at the same rates as sales of the same property.

§14-1-16 Amusement Tax

Any amusement or event where admission is charged shall collect and remit to the Choctaw Tax Commission a sales tax equal to seven percent (7%) of the gross income received as admission. This tax may be waived in writing at the discretion of the Commission for any event or amusement operated by a religious, charitable or educational organization, or by a non-profit civic club or fraternal organization when the net proceeds of such admissions do not inure to anyone or more individuals within such organizations and are to be used solely for religious, charitable, educational or civic purposes; or to defray the normal operating expenses of such organization. Subcontractors of such events, such as the carnival and ride operators at the Choctaw Indian Fair, are subject to the sales tax. Also exempt are any admissions or fees charged by any Tribally-owned and operated swimming pools operated for non-commercial community use.