

**TITLE 30**  
**LUMMI NATION OF CODE LAWS**  
**REVENUE CODE**

Enacted: Resolution 81-110 (11/2/81)  
Resolution 89-46 (3/27/89)  
Resolution 90-90 (7/6/90) (Payroll Tax)  
Resolution 90-91 (7/6/90) (Treaty Fisheries Payroll Tax)  
Resolution 90-92 (7/6/91) (Treaty Fish Buyer's Tax)  
Resolution 91-67 (7/2/91) (Utility Tax)

Amended: Resolution 89-47(4/27/89)  
Resolution 91-68(7/2/91)  
Resolution 91-70 (7/2/91)  
Resolution 92-155 (12/29/92)  
Resolution 92-156 (12/29/92)  
Resolution 92-157 (12/29/92)  
Resolution 92-158 (12/29/92)  
Resolution 93-207 (12/17/93)  
Resolution 93-208 (12/17/93)  
Resolution 95-75 (7/14/95)  
Resolution 96-157 (12/17/96)  
Resolution 97-173 (12/20/97)  
Resolution 97-174 (12/20/97)  
Resolution 98-161 (12/14/98)  
Resolution 99-114 (12/7/99)  
Resolution 2000-127 (11/21/00)  
Resolution 2001-142 (12/4/01)  
Resolution 2002-026 (3/5/2002)  
Resolution 2002-153 (12/16/02)  
Resolution 2003-163 (12/8/03)  
Resolution 2004-157 (11/15/04)  
Resolution 2005-165 (12/29/05)  
Resolution 2006-114 (9/8/06)  
Resolution 2006-157 (12/4/06)



**TITLE 30  
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**TITLE 30  
LUMMI NATION CODE OF LAWS  
REVENUE CODE**

**Chapter 30.01 Administration**

**30.01.010 Department Established**

There is hereby established a department of the tribal government to be known as the revenue department of the Lummi Indian Business Council (Council), of which the chief executive officer shall be known as the revenue director (Director).

**30.01.020 Power and Duties of the Director**

The revenue director shall:

- (a) Assess and collect all taxes.
- (b) Make, adopt, and publish such rules and regulations as he may deem necessary or desirable to carry out the powers and duties imposed upon him or the department by the Council.
- (c) Submit quarterly, or more frequently as required by the Council Treasurer, reports summarizing recent and projected tax collections.
- (d) Recommend to the Council such amendments, changes in and modifications to revenue laws as seem proper and requisite to relieve injustice and irregularities in taxation, and to facilitate the assessment and collection of taxes in the most economical manner.

**30.01.030 Delegation of Powers and Duties**

The Director may delegate any power or duty vested in or transferred to him by law or action of the Council to the assistant director or to any of the Director's subordinates; the Director shall be responsible for the official acts of the officers and employees of the department.

**Chapter 30.02 Tax Review Board**

**30.02.010 Board Established**

There is hereby established the Tax Review Board as an agency of the Lummi Indian

Business Council.

**30.02.020 Board Membership**

Board membership shall be comprised of three members, at least two (2) of whom must be enrolled members of the Lummi Tribe residing upon the Lummi Indian Reservation. Each member shall not be a candidate for nor hold any other public office or trust, and shall not engage in any occupation or business which may interfere with his duty as a member of the board.

**30.02.030 Appointment of Members**

Members are selected, confirmed, and appointed as follows:

- (a) Nomination. The Chairman of the Lummi Indian Business Council will select and nominate an individual qualified under the requirements of paragraph 30.02.020 of this chapter.
- (b) Confirmation. Upon a simple majority vote of a duly called meeting of the Lummi Indian Business Council, the nominee is appointed to serve as a member.
- (c) Three-year term. A member's term of office will be three (3) years, except that
  - (1) in order to establish the staggered expiration of terms among the members, of the first group of appointees, one will be appointed for one year, one for two years, and one for three years; and
  - (2) any appointment which does not begin coincident with this scheme shall be shortened to the time necessary to maintain the pattern of staggered expirations.
- (d) Vacancies, interim appointments. A vacancy on the Board, whether caused by death or incapacity, disqualification, resignation, or removal, will be filled as set forth in this chapter.

### **30.02.040 Quorum**

A majority of the Board shall constitute a quorum for making orders or decisions pertaining to appeals for which it has jurisdiction under chapter 30.03 of the Lummi Code.

### **30.02.050 Findings and Decisions**

The Board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members of the Board and upon being filed with the revenue director, and shall be open to public inspection.

### **30.02.060 Appeals to the Board**

The Board shall have jurisdiction to decide an appeal made by any person having received a notice of denial of the petition or a notice of determination made under chapter 30.03 of the Lummi Code.

### **30.02.070 Examination and Audits**

For the purposes of gathering or confirming facts relevant to an appeal before the Board, the Board may make an inquiry and may proceed

- (a) to examine any books, records, papers, maps, documents, or other data which may be relevant and material to the inquiry;
- (b) to summon the person liable for the tax or required to perform the act, or any officer or employee or agent of the person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for the tax, or any person the board may deem proper, to appear before the Board at the time and place named in the summons and to produce such document or other data, and to give testimony, under oath, as may be relevant or material to the inquiry;
- (c) to take such testimony of any such person, under oath, as may be relevant or material to the inquiry.

## **Chapter 30.03 General Provisions**

### **30.03.010 Administration**

The revenue director is empowered to administer the tax laws of the Lummi Indian Business Council and, to that end, will adopt rules and regulations and provide instructions as may be necessary for the proper and efficient administration of those laws.

### **30.03.020 Definitions**

Subject to additional definitions (if any) contained in the subsequent paragraphs of this chapter and in the other chapters, and unless the context otherwise requires, the following definitions shall apply:

- (a) "Board" means the Tax Review Board as established under chapter 30.02.
- (b) "Chapter" means the regulations of Title 30 of the Lummi Code of Laws.
- (c) "Council" or "Tribal Council" means the Lummi Indian Business Council.
- (d) "Court" means the Lummi Tribal Court.
- (e) "Director" means the director of the Lummi Revenue Department.
- (f) "Fraud" has the same meaning as that established in the interpretation of section 7206 of the United States Internal Revenue Code of 1954, as amended or renumbered.
- (g) "Lummi" means an enrolled member of the Lummi Tribe.
- (h) "Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, association, society, or any group of individuals acting as a unit whether mutual, cooperative, fraternal, not-for-profit, or otherwise and the United States or any instrumentality thereof.
- (i) "Reservation" means all areas lying within the external boundaries of the Lummi Indian Reservation.

- (j) "Tax" means the tax imposed by a chapter.
- (k) "Taxes" means the tax and any interest, penalty, or costs imposed by or assessed under a chapter.
- (l) "Taxpayer" means any person who is liable for taxes imposed or assessed.
- (m) "Tribe" means the Lummi Indian Tribe.

**Chapter 30.03.100 General Rules and Procedures**

**30.03.101 Assistance Agreements**

The Director is authorized to negotiate mutual assessment and collection assistance agreements with any other tax jurisdiction. The agreements so negotiated will come into force only upon ratification by the Lummi Indian Business Council.

**30.03.102 Authority to Abate**

In response to a written request but before any court acquires jurisdiction in the matter, or at any time when an assessment is found to be incorrect, the Director or Board may abate any part of an assessment which it determines was incorrectly, erroneously, or illegally made.

- (a) Form of request. The request must be made in writing to the Office of the Director, state the abatement sought, and must contain a complete statement of the facts relied on, together with any information and documents necessary to present those facts.
- (b) Compromise. Upon the compromise of a liability and according to the terms of the closing agreement formalizing the compromise, the Director or Board will cause the abatement of the appropriate amount of the assessment.
- (c) Public record. Abatements in excess of five hundred dollars (\$500.00) will be recorded in the Office of the Director in a form available for public inspection. The record shall be maintained for a minimum of six (6) years after the date of abatement.

**30.03.103 Closing Agreements**

If at any time after a final assessment of taxes, the Director or Board in good faith is in doubt of the liability of the taxpayer for payment thereof, it may compromise the liability by entering with the taxpayer into a written closing agreement that adequately protects the interests of the Lummi Tribe, provided that the agreement will be subject to approval by the Chairman of the Council and the Tribe's legal counsel.

- (a) Stipulation. Provided that, if entered into after a court acquires jurisdiction over the matter, the closing agreement must be made part of a stipulated order or judgment disposing of the case.
- (b) Security. As a condition for entering into a closing agreement, the Director or Board may require a provision of security for payment of any taxes due according to the terms of the agreement.
- (c) Conclusive. A closing agreement is conclusive as to the liability or nonliability for payment of taxes for the assessment dates or periods referred to in the agreement, except upon a showing of fraud, malfeasance, or misrepresentation, or concealment of a material fact.

**30.03.104 Confidentiality**

Information received by the Director or Board is protected under the following disclosure rules:

- (a) Public Information. Nothing in this paragraph is intended to prevent the publication or disclosure of the names and addresses of registered taxpayers or general information which is otherwise in the public record or generally available to the public upon the making of a reasonable inquiry.
- (b) Non-Disclosure. Information supplied by a person in response to a request, or included in any return or form required to be filed under this chapter, or obtained in the course of an examination, shall not be disclosed to third parties without the consent of the person.
- (c) Lawful Exceptions. It shall be unlawful

for an employee or former employee of the revenue department to reveal to any individual, other than an employee or legal counsel of the tribe, any information contained in the return of any taxpayer or any other information about any taxpayer acquired as a result of his or her employment by the department except:

- (1) to an authorized representative of the taxpayer;
- (2) to an employee of the government of the Lummi Tribe or a member of the Lummi Tribal Council authorized by the director to obtain such information for use in connection with the governmental function of said employee or council member; provided that it shall be unlawful for the employee or council member to reveal said information except as permitted in this paragraph;
- (3) in any administrative or judicial proceeding to enforce any act or collect taxes or in any matter in which the taxpayer has put its own liability for taxes at issue;
- (4) in compliance with an order of any court of competent jurisdiction in which the information sought is material to the inquiry;
- (5) in recording tax liens on the property of a taxpayer or collecting taxes by levy upon the property or rights to property of a taxpayer;
- (6) in statistical releases which do not identify a specific taxpayer or otherwise disclose the information therein as being applicable to any single taxpayer;
- (7) to the extent of revealing whether a taxpayer has made a designation (and, if so, the name and address of that individual) or whether a person is a designee (and, if so, by whom the individual has been designated); and
- (8) to the extent of revealing the amount and basis of unpaid taxes to the purchaser or an intended purchaser of the property or business of the taxpayer.

(d) Contractor. For the purposes of this paragraph an “employee” includes any person whose services the Director or Board has engaged; provided that such person agrees under contract to be bound by the provisions of this paragraph, and may include any contractor with the Lummi Tribe who enters in writing into a binding agreement with the Director or Board.

(e) Fine or penalty. Any employee or council member who violates any of the provisions of this paragraph shall be subject to a fine of fifty dollars (\$50.00) or suspension for thirty (30) days, or both.

(f) Compliance. The Director or Board may further restrict the disclosure of information by ruling and will establish procedures for compliance with this paragraph.

### **30.03.105 Examination and Audits**

For the purpose of an assessment or making a required return where none has been made, or determining the correctness of any return or form, or the liability of any person for taxes, or the liability in law or in equity of any transferee or fiduciary of any person for taxes, or collecting any liability, the Director and/or Board may make an inquiry and may proceed

(a) to examine any books, records, papers, maps, documents, or other data which may be relevant and material to the inquiry;

(b) to summon the person liable for the tax or required to perform the act, or any officer or employee or agent of the person, or any person having possession, custody or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Director or Board may deem proper, to appear before the Director or Board at the time and place named in the summons and to produce such books, records, papers, maps, documents or other data, and to give such testimony, under oath, as may be relevant or material to the inquiry.

(c) to take such testimony of any such person, under oath, as may be relevant or material to

the inquiry.

### **30.03.106 Notice Deemed Effective**

Notice required to be given by the Director or Board may be effectively given to a taxpayer by mailing the notice to the individual last designated by the taxpayer, at the address shown on the designation. The foregoing is not intended to exclude the use of other methods of providing notice, including publication, so long as it comports with due process. Public notice of a lien will be effective as to all property and rights to property of a taxpayer, business or person if the description of the taxpayer, business, or person is sufficient to put a reasonable person on notice to ascertain the existence of a lien on the property.

### **30.03.107 Oaths and Affirmations**

Any agent or employee designated by the Director or Board for that purpose is authorized to administer such oaths or affirmations and to certify such papers as may be necessary under this chapter.

### **30.03.108 Service and Enforcement**

Summons will be served and enforced according to the following provisions:

(a) Service of Summons. The Director or Board will serve a summons by an attested copy delivered by certified mail or in hand to the person to whom it is directed, or left at its last and usual place of abode or business. The certificate of service signed by the person serving the summons will be evidence of the facts it states on a hearing of an application for the enforcement of the summons. When the summons requires the production of books, records, papers, maps, documents, and other data, it will be sufficient if the items are described with a reasonable certainty.

(b) Enforcement of Summons. Whenever any person summoned neglects or refuses to obey the summons, or to produce books, records, papers, maps, documents, or other data, or to give testimony, as required, the Director or Board may impose the sanctions provided by law and may further apply to Tribal Court for such order as it deems proper and not inconsistent with the law for punishment of

contempt, to enforce obedience to the requirements of the summons, and to punish the person for his default or disobedience.

## **Chapter 30.03.200 Assessment and Collection**

### **30.03.201 General Information Authority**

The Director, to the extent he deems practical, will inquire after and concerning all persons owning or having the care and management of any property with respect to which any tax is imposed and all persons who may be liable for any tax of the Lummi Tribe.

### **30.03.202 Information Required by Request**

The Director or the Board may require of any and all persons who are engaged in business activity within the Lummi Reservation, or are otherwise subject to its jurisdiction, such information as the Director or Board may deem relevant and material. Upon a written request and after an adequate opportunity to comply, those persons must provide the information required. Failure to comply with a request for information is subject to the penalties provided.

### **30.03.203 Record Keeping Requirements**

Every person liable for any fee or tax imposed by this chapter or chapters 10.10, 20.05, or 21.04 of the Lummi Code of Laws shall keep and preserve, for a period of five (5) years, suitable records as may be necessary to determine the amount of any tax for which he may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by him. All his books, records, and invoices shall be open for examination at any time by the revenue department. Any person who fails to comply with the requirements of this section shall be forever barred from questioning, in any court action or proceeding, the correctness of any assessment of taxes made by the revenue department based upon any period for which such books, records, and invoices have not been so kept and preserved.

### **30.03.204 Information Included in Returns**

Forms to be filed pursuant to this chapter will be provided by the Director, and the information to be included in or filed with the forms will be prescribed in instructions and other rules. Any filing may be prepared on a clear copy of the official form.

(a) Generally. A form will clearly identify the tax and the assessment date or period (if any) and provide for the name of the taxable property or taxpayer for which it is filed, the calculation of the base on which the tax (if any) is computed, and the disclosure of methods underlying the calculation.

(b) Additional Information. Additional information may be required, sufficient to establish the qualification for any exclusion from or deduction claimed in the base, or to disclose the detail of transactions.

(c) Supplemental Material. Supplemental documents may be required and are permitted. For example, statements filed with any federal, state, or local authority which contain information substantially similar to that required herein may be attached to the form to clarify or support an entry, to disclose a method, to establish a qualification, to provide detail, or as otherwise appropriate. Such statements and other materials must be clearly identified, be referenced to the corresponding entry on the form, and be reconciled to the information therein.

(d) Attachments. Any additional information, supplemental material, or other attachment filed with a form is deemed a part of the form itself.

(e) Signature. Any return, form, or other document which is required to be made or filed under this chapter must be signed and verified by a written declaration made under the penalties set forth in paragraphs 30.03.213 and 30.03.216 of this chapter.

### **30.03.205 Place and Manner of Filing and Payment**

Taxpayers and other persons making filings and payments under this chapter must comply

with the following requirements:

(a) Place and Address. All filings and payments must be delivered to the Office of the Director or be mailed to: Lummi Revenue Department, Office of the Director, 2616 Kwina Road, Bellingham, WA 98226.

(b) Identification. Any payment must be marked with clear identification of the taxpayer, the return or other form, the assessment date or period, and the kind of liability for which the payment is being made.

(c) The Payee. The check or other remittance must be made payable to the order of the Lummi Revenue Department.

(d) Application of Payments. Any payment received by the Director will be applied, first in satisfaction of any penalty, then interest, and lastly the tax due from the taxpayer. The Director will report to the taxpayer the application made and the resulting status of the taxpayer's accounts and will issue a notice of assessment for any unpaid tax or interest.

### **30.03.206 Extension of Time for Filing and Payment**

A taxpayer may file a written request for a one (1) month extension of the time for filing a return, and for any payment due with the return, subject to the requirements of subparagraph (b).

(a) Manner and Time of Request. The request must identify the taxpayer, return, and assessment date or period and include a statement of cause, and must be filed at the place and by the time for filing the return.

(b) Effect of Extension. The time for filing the return will be automatically extended one (1) month. The time for any payment is also extended, provided that the taxpayer pays with the request an amount equal to at least ninety percent (90%) of the tax due with the extended return. The balance of the tax due, and accrued interest, must be paid on the extended date for filing the return.

(c) Additional Extension. In its discretion and for good cause shown, the Director may grant

additional extensions of time for up to three (3) months, on the basis of a similar written request filed before an extended due date. The Director may require the payment of an estimated amount of tax or condition the grant of an extension of time to pay upon the posting of a bond or provision of other security or the creation of a lien.

### **30.03.207 Due Dates and Time Determinations**

The following rules will apply in the determination of dates and time.

(a) Due Dates. Due dates are those stated in the chapter or specified in instructions, forms and notices of the Director. If a due date falls on a Saturday, Sunday, or a legal holiday, then the due date will become the next working day.

(b) Action by mail. When a taxpayer elects to act by mail rather than another manner of delivery, the date of the action is determined by the postmark. For instance, mail postmarked by midnight of the date due is timely made and is deemed made as of that day. If self-metered mail is received within five (5) days, the metered date is deemed to be the postmark.

(c) Computation of Interval. In computing an interval of time and determining the day on which a period of time ends and action is due, the first day is not counted and the actual days, including Saturdays, Sundays and holidays, elapsed are counted.

### **30.03.208 Interest Rates and Application**

Interest is imposed on any unpaid tax.

(a) Duration of Accrual. Interest is computed from the date the tax was first due (without regard to any extension or stay of time) to the date payment is received.

(b) Annual Rate. The rate of interest will be the rate presently in use by the Internal Revenue Service, plus two percent (2%).

(c) Interest on Refunds. Interest will be remitted to a taxpayer on any overpayment of

tax from the date the payment was received to the date a refund is made. The interest will be computed at the rate presently in use by the Internal Revenue Service, less two percent (2%).

### **30.03.209 Designation of Individual**

Each taxpayer must designate and provide the mailing address of a natural person for the purposes of notice, together with such other information as may be required by form and instruction.

(a) More than one tax. A taxpayer obligated to designate under more than one chapter must designate a single individual as the designee for all such chapters.

(b) Joint or Common Undertakings. Participants in a joint or common undertaking, regardless of their ownership or agreement or the form of their organization, must designate one individual, and if one participant is the operating agent or charged with the management of the undertaking, the designation must be made by that participant.

### **30.03.210 Penalties for Failure to File**

If a taxpayer fails to file a return by the time due, a penalty of ten percent (10%) of the tax due for the assessment date or period, but not less than ten dollars (\$10.00) will be assessed against the taxpayer.

(a) Additional penalty. An additional penalty of two percent (2%) of the tax due, but not less than ten dollars (\$10.00), will be assessed for each full month a return is overdue.

(b) Extended return. A return filed on or before an extended date for filing is timely filed.

### **30.03.211 Penalties for Failure to Pay**

A taxpayer failing to pay an amount of tax by the time due will be assessed a penalty of ten percent (10%) of the amount of the underpayment.

(a) Additional penalty. An additional penalty will be assessed of one percent (1%) of the underpayment for each full month payment is overdue.

(b) Extended due date. An amount paid on or before an extended date for payment is timely paid.

### **30.03.213 Penalties for Attempt to Evade or Defeat Tax**

Any owner who is underassessed by reason of incomplete or incorrect information provided, or any taxpayer who understates tax imposed, through negligence or intentional disregard of the rules and regulations (but without the intent to defraud) will be assessed a penalty of two hundred fifty dollars (\$250.00), plus twenty-five percent (25%) of the underpayment of tax.

(a) Fraud penalty. If any part of an underassessment or understatement of tax is shown to be due to fraud, a taxpayer will be assessed a penalty of fifty percent (50%) of the underpayment of tax.

(b) Party to fraud. Any person who assists a taxpayer in the fraud will be subject to a penalty of up to five hundred dollars (\$500.00), plus twenty-five percent (25%) of the underpayment of tax. Any liability arising under this subparagraph shall be assessed and collected as a tax imposed by the chapter.

### **30.03.214 Charges for Administrative Costs**

A taxpayer failing to pay any taxes at the time due may be charged for extraordinary administrative costs incurred in collecting the unpaid amount, including attorney fees and other costs of collection outside the jurisdiction of the Lummi Tribe. These charges will be assessed unless the Director or Board, for good cause shown, relieves the taxpayer from the operation of this paragraph.

(a) Costs. Costs will be limited to direct costs and the out-of-pocket expense incurred in collection efforts beyond the ordinary office functions, duties, and notices for collecting taxes, and the usual legal expenses for obtaining local court judgments.

(b) Cause. A mere mistake, the absence of negligence or of intentional disregard of the regulations, or the presence of substantial

issues of interpretation, especially in the case of a deficiency arising upon examination of a return which was timely filed, and all surrounding facts and circumstances, including the pattern of compliance of the taxpayer, may be given due weight in determining good cause.

(c) Notice. Upon determining any charges for costs, the Director or Board will issue a notice of assessment to the taxpayer.

### **30.03.215 Failure to Comply with Chapter**

Any person obligated to pay a tax, to make a designation, to file a return, to provide information, documents, access thereto or to property, to furnish a surety bond or other security, or to comply with a lawful order of the Director or Board, and failing to do the same in accordance with this chapter, may have his rights to engage in productive activity within the Lummi Indian Reservation suspended until compliance is made.

### **30.03.216 Interference with Administration**

(a) Unlawful acts. It is unlawful for any person

(1) to forcibly, or by bribe, threat or other corrupt practice, obstruct or impede the due administration of any tax; or

(2) to willfully fail to comply with a subpoena duly issued pursuant to this chapter; or

(3) to commit fraud, or knowingly to assist another in the commission of fraud, with the intent to evade or defeat the assessment or collection of any tax, interest, or costs imposed or assessed; or

(4) with knowledge and intent, to falsely verify by written declaration any return, form, or other document.

(b) Indian violator. An Indian who violates any of the provisions of this paragraph shall be guilty of an offense and, upon conviction, shall be ordered to pay a fine not to exceed three hundred sixty dollars (\$360.00) in

accordance with the provisions of Title 5 of the Lummi Code of Laws.

(c) Non-member exclusion. Any non-member of the Lummi Tribe who violates any of the provisions of this paragraph may be excluded from land subject to the jurisdiction of the Lummi Tribe in accordance with the procedures set forth in Title 12 of the Lummi Code of Laws.

(d) Suspension. Any person who violates any provision of this paragraph, or whose employees or agents in the course of their employment or agency violate any provision of this paragraph, may have his rights to engage in productive activity within all or some of the Lummi Indian Reservation suspended, either temporarily or permanently.

#### **30.03.217 Suspension and Fraud Proceedings**

Suspensions and the money penalties for negligence and fraud will be imposed by the Director and upon notice sent to the taxpayer or other person which provides a time, not less than fourteen (14) days after the date of the notice, when the person may appear before the Director to show cause why a suspension or penalty should not be imposed. The Director will issue findings of fact and a recommendation and submit them to the Board. Enforcement or collection is stayed until the conclusion of the appeal to the Board.

#### **30.03.218 Assessment Powers**

The Director and Board are each empowered to determine and assert against a taxpayer liability for tax, interest, or costs in the following circumstances:

(a) Deficient amount of tax. When it appears that a return filed, or a payment made, does not reflect the amount of tax due under this chapter, the Director or Board will issue a notice of assessment of a deficiency, interest, and penalties.

(b) Estimated amount of tax. When no return has been filed, the Director is authorized to estimate the tax due and issue a notice of assessment of the tax, interest, and penalties. The assessment may be redetermined only

through an appeal and upon a showing that it is clearly erroneous.

(c) Failure to provide information. If a taxpayer fails to provide information within its possession or control which is relevant to a determination of any tax due, which is required to be provided under this chapter, the Director is authorized to proceed to determine the value or make an estimate of the tax and issue a binding notice of assessment of the tax, interest, and penalties. The Director will make the estimate on the basis of the best information he finds readily available. Unless for good cause shown he relieves the taxpayer from this subparagraph, the Director's assessment is binding and may be redetermined only through an appeal and upon a showing that the estimate, on the basis of the Director's best information when it was made, was clearly erroneous.

(d) Overpayments. When it appears that a taxpayer has made an overpayment, the Director will issue a notice to determine and remit a refund. A taxpayer may file a claim for refund of an overpayment.

#### **30.03.219 Examination Procedure**

Upon completion of the examination of a taxpayer, the Director will provide the taxpayer with a written statement of findings for any determination which alters a liability for tax, interest, or penalties, and will issue a notice of assessment (or refund) for any amounts due (or overpayment). If no such determination is made, the Director may issue a letter stating that there is no change for the assessment date or period examined.

#### **30.03.220 Notice Requirements**

A notice of assessment (or refund) will require the payment of the amount assessed (or remittance of the refund) by a time not less than thirty (30) days after the date of the notice. The taxpayer must comply with (or accede to) the terms of the notice and, within the time allowed in the notice, may request a redetermination under paragraph 30.03.305 of this chapter. Within the same time, a taxpayer may also seek an informal conference under paragraph 30.03.303 of this code.

(a) Occasions for notice. A notice of assessment may arise from an initial assessment of tax, from an estimate of the tax due when a required return has not been filed, from a deficiency in the amount of tax reported or paid determined upon examination of a declaration, or from an application of interest, penalties, or charges for costs.

(b) Assessment binding. These assessments are binding on the taxpayer according to the terms of the notice.

(c) Overpayment. When it appears that a taxpayer has made an overpayment, the Director will issue a notice to determine and remit a refund.

### **30.03.221 Security for Payments**

Whenever necessary to secure payment of any taxes due or reasonably expected to become due, the Director is authorized to require the taxpayer to furnish an acceptable surety bond in an appropriate amount, payable to the Department and conditioned upon the payment of the taxes therein identified no later than the date on which the liability becomes conclusive, or to furnish other acceptable security in an appropriate amount, and to require the taxpayer to furnish additional security as it becomes necessary.

### **30.03.222 Procedure for Refunds**

Any taxpayer who has made an overpayment may, within one (1) year after the overpayment was made, file a written claim for refund with the Director except that no claim for refund need be filed if the basis thereof has already been established under an abatement or asserted in an appeal under this chapter, and provided that an issue determined in such an appeal may not be reopened by filing a claim for refund.

(a) Government action. If an overpayment arises from an action of a Tribal, federal, or state agency, or any court other than in an appeal under this chapter, wherein the action changes the factual basis upon which the tax was determined and paid, the time for filing a claim for refund will be one (1) year from the date of such action.

(b) Amended Return. A claim may take the form of an amended return for the period for which the overpayment was made. The return must contain a clear statement of the amount of the refund being claimed and the facts or other basis for determining an overpayment.

(c) Offset. For some overpayments, through mathematical error or other mistake, or a verifiable change of facts, such as under subparagraph (a), a taxpayer may offset against the tax due for a current period. Forms to support and calculate such an offset will be provided and must accompany the return, together with a statement of the mistake or change of facts which gave rise to the overpayment.

(d) Appeal. The Director will determine overpayments and claims for refunds according to his procedures. If a claim is denied in whole or part, the taxpayer may appeal pursuant to paragraph 30.03.305 of this code. Appeals from the final action of the Board on a claim for refund may be made only to the Lummi Tribal Court.

(e) Determination. If the Director or Board determines, either on a claim for refund under this paragraph or in an appeal on a claim or from an assessment, that the taxpayer has made an overpayment, and no appeal is taken, the Director shall refund the overpayment and applicable interest to the taxpayer.

(f) Order of Court. Where the action of the Director or Board on a claim for refund under this paragraph, or in the appeal on the claim or from an assessment, is then appealed, the Director shall make a refund of the overpayment determined by the order in that appeal, plus the applicable interest.

(g) Application to unpaid taxes. Provided, that if the taxpayer entitled to a refund owes unpaid taxes, the refund shall be offset and reduced by such unpaid amounts.

(h) Prohibition against any other manner of refund. No refund of or credit for taxes paid shall be made or allowed to any persons by any court or agency other than as provided in this paragraph.

### **30.03.223 Collection Powers**

The Director has full power to collect any taxes assessed, including the power to attach and seize, in accordance with the provisions of this code, the assets of a taxpayer or any property subject to lien, and any other powers available to the Lummi Tribe for collection of debts owed it.

(a) Suit or enforcement. The Director and/or Board may request the legal counsel of the Council to bring suit or other enforcement proceedings in any court of competent jurisdiction.

(b) No waiver or counterclaim. Provided, that bringing of suit or an enforcement proceeding shall not constitute a waiver of sovereign immunity, and further provided, that the Director or Board shall never be compelled to assert a claim for taxes in litigation by way of counterclaim or otherwise.

### **30.03.224 Delinquent Liabilities**

All taxes, interest, and penalties assessed are a debt due and owing the Lummi Nation from the taxpayer or other person. If an assessment is not paid when due, the Director may, in addition to the remedies under this chapter, maintain an action for himself against the delinquent party for the collection of the liability, costs, and other lawful charges thereon. In such action, the Director will have the benefit of all the laws which provide remedies against property or rights to property, real or personal, of the person liable for the assessment.

### **30.03.225 Demand for Collection**

A notice of assessment requires the collection of the amount by the date stated therein, and, any amount of taxes which are reported in a return filed by a taxpayer and not paid by the due date are collectible as of that date without further notice. Absent a stay granted pursuant to this code, the amount stated in the notice or the reported amount not paid is a delinquent liability and will be subject to a demand for payment issued to the delinquent taxpayer to commence collection action.

### **30.03.226 Statute of Limitations**

Assessment and collection of the taxes

imposed by this chapter must proceed within the periods of limitation established under the circumstances set forth below.

(a) Return filed. Any unpaid tax as may be determined must be assessed within six (6) years after the return was filed.

(b) Fraudulent filing. If a false, fraudulent return was filed with the intent to evade tax, no period of limitation will apply.

(c) No return filed. Where no return has been filed, no period of limitation applies.

(d) Action for Collection. Any action in a court or by levy for the collection of a tax must begin within six (6) years of the time the assessment was made by the Commission.

(e) Interest and costs. These periods of limitation will apply in a corresponding manner to assessment and collection of related interest and costs.

(f) Suspension of limitations. The running of any period of limitation is suspended during any time that the Director is barred from assessment or collection. The period of limitation is suspended during

(1) the duration of a prohibition by any court;

(2) the duration of any appeal to or from a determination of the Director or Board;

(3) any duration agreed to between a taxpayer and the Director or Board.

## **Chapter 30.03.300 Administrative and Judicial Appeal**

### **30.03.301 Prohibition of Suits**

No suit to restrain the assessment and collection of the tax imposed by this chapter shall be initiated in any court by any person, whether or not such person is the one on whom such taxes were assessed.

### **30.03.302 Administrative Appeal**

Appeal from assessments and denials of refund must be made first to the Director and

then to the Board according to the procedures in paragraph 30.03.304. Appeals from final actions of the Board, including but not limited necessarily to assessments, denials of refund, and a suspension order, shall be made only to the Lummi Tribal Court.

### **30.03.303 Informal Conference**

Upon a notice of assessment (or denial of refund) a taxpayer may request an informal conference with the Director to consider the basis for an abatement or to clarify issues which may form the basis of an appeal under this chapter.

### **30.03.304 Procedure for Hearing**

The Director may permit or require one or more levels of review by his employees or delegates and will provide for a hearing before him, but the decision or recommendation of the Director will be binding only to the extent adopted by the Board as a final decision. The failure to proceed to the next level of review required under this paragraph shall constitute a waiver of any further appeal.

### **20.03.305 Time and Manner of Appeal**

The formal conference with the Director and hearing before the Board are administrative procedures for seeking an abatement, or for the review and redetermination of an assessment (or denial of refund).

(a) Conditions precedent. A conference with the Director to review an assessment (or denial of refund) may proceed upon the receipt by the Director of a written request from the taxpayer within thirty (30) days after the date of a notice of assessment (or denial of refund).

(b) Request for a formal conference. A taxpayer's request for a formal conference must identify the notice, declare the redetermination sought, and include a complete statement of the facts relied on. The Director, after an initial inquiry, may deny the request for conference and direct the taxpayer to proceed to a hearing before the Board.

(c) Stay of collection. Upon a proper request for and grant of a formal conference with the Director or a hearing before the Board,

payment on the notice will be stayed until a time not more than thirty (30) days after issuance of a final administrative decision.

(d) Conduct of conference. The Director may confer with the taxpayer by phone or in person, or may require the submission of additional written material, and will issue a written Conference Decision. If the result sought is denied in whole or in part, the decision will state the basis for the denial.

(e) Request for further hearing. Within thirty (30) days after issuance of the decision, the taxpayer may request that the matters in dispute be submitted for a hearing to the Board. Such request must be in writing.

(f) Finality of decision. If no appeal is made within the time allowed, the decision last rendered is final and is not subject to any appeal before succeeding administrative levels or in any court.

### **30.03.306 Appeal to the Court**

Upon a final action of the Board, the taxpayer may then appeal to the Lummi Tribal Court.

(a) Payment required. No appeal may be taken or will proceed before the Court until the payment of the taxes assessed or determined by the Board has first been made.

(b) Time for appeal. The request for appeal must be filed with the Court within thirty (30) days after issuance of the Board's order.

### **30.03.307 Jurisdiction of Courts**

The Courts of the Lummi Tribe are vested with jurisdiction

(a) over any and all persons subject to this chapter;

(b) to hear and determine any challenge to the validity of this chapter, either generally or as applied to any person, provided that the regulations governing appeals are complied with;

(c) review of Board actions in the Court shall be on the record made in the Board and not de novo, and shall be limited to the

determination whether the action of the Board was not supported by the evidence, or was arbitrary, capricious, an abuse of discretion, beyond its authority, or otherwise contrary to applicable tribal or federal law;

(d) except that, where an affirmation of the Board's action would suspend a right of an appellant to engage in productive activity within the Lummi Indian Reservation, the appellant shall on request be entitled to a hearing de novo on any material question of fact.

The Court shall be empowered to affirm, reverse, or modify a Board action, or to remand the matter to the Board for further action, and it may stay the effect of an order suspending a right to engage in productive activity, pending the appeal.

### **30.03.308 Transcripts of Appeal Proceedings**

Copies of all written documents, evidence, and other material submitted to the Director, Board, or Court as well as transcripts of the proceedings before the Director, Board, or Court will be provided by the Director to the taxpayer, if requested, to facilitate the taxpayer's further appeals.

## **Chapter 30.04 Business Activities Tax**

### **30.04.010 Preamble**

The operation of a business on the Lummi Indian Reservation is a privilege which has significant and substantial effects on Reservation life. A healthy business climate on the Reservation is an important aspect of economic growth and self-sufficiency for the Lummi Tribe and the Reservation community. At the same time, businesses require both general and specific services from the Tribal government. The Reservation is a unique environment that can and does contribute to the profitability of a business. It is only fair that businesses pay a fair share of the cost of governing the Reservation. Essential tribal revenues must be raised and businesses must be regulated for the general public good. Since the time of the signing of the Treaty of Point Elliott and before, the federal government through its executive, legislative

and judicial branches has recognized the inherent right of the Lummi Indian Reservation. It is with these principles in mind that the Lummi Indian Business Council enacts this chapter of the Lummi Revenue Code.

### **30.04.020 Repeals Chapter 30.01**

The provisions of chapter 30.01 [Refers to former numbering format] Business Tax of the Lummi Code approved November 4, 1981 under Resolution 81-110, are herewith repealed and replaced by the provisions of this chapter.

### **30.04.030 Definitions**

For the purpose of this chapter, and unless otherwise required by the context, the following definitions shall apply:

(a) "Person" is used interchangeably in this code with the word "company" and means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

(b) "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly. It does not include not-for-profit activities.

(c) "Personal Service Business" means the activity of providing labor or information for a fee directly to purchasers but operating without the overhead expenses of an office or other place of business separate from that of those purchasing the service.

(d) "Engaging in Business" means commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

(e) “Gross Sales” or “Gross Receipts” means the value proceeding or accruing from the sales of tangible personal property and/or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery cost, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(f) “Sale” means any transfer of the ownership of, title to, or possession of property for valuable consideration. It includes renting or leasing, conditional sale contracts, leases with options to purchase, and any contract under which possession of property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not. A casual or isolated sale means a sale made by a person who is not engaged in the business of selling the type of property involved.

(g) “Payroll” means the total value of all compensation paid to employees for services rendered the company in the performance of its regular business. Compensation paid to contractors or persons performing services or supplying goods on contract and upon whom any tax imposed by this section is separately imposed is not to be regarded as payroll compensation.

(h) “Enrolled member of the Lummi Tribe” means any individual recognized by the Lummi Indian Business Council and United States Department of the Interior, Bureau of Indian Affairs as qualified for membership and listed on their respective membership rolls as a Lummi Indian.

(i) “Tax Year” or Taxable Year” means either the calendar year, or the taxpayer’s fiscal year when permission is obtained from the revenue department to use a fiscal year in lieu of the calendar year.

**30.04.040 Business Licenses Required**

No person shall engage in business on the Lummi Indian Reservation unless he shall

have first obtained and have currently in force a business license issued by the Lummi Indian Tribe. The fees and types of licenses and other procedures relating to licenses shall be as set out in Title 24 of the Lummi Code of Laws. Provided, however, that no such license shall be issued to any person who at the time of the requested issuance shall owe to the tribe any taxes imposed by this title. All persons desiring to do business on the reservation shall appoint an individual to act as a registered agent for the business for the purpose of service of process for any action arising out of the conduct of that business.

**30.04.050 Tax Imposed**

There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities within the Lummi Indian Reservation.

**30.04.060 Rate**

The rate of tax imposed by this chapter on persons engaging in a business, other than a personal services business as defined by this chapter, shall be dependent upon the percentage of the total payroll paid to enrolled members of the Lummi Tribe as follows:

<b>% of Payroll to Lummis</b>	<b>Tax Rate</b>
Less than 25%	3.0% of the gross sales of the business
Greater than 25% & less than or equal to 50%	2.5% of the gross sales of the business
Greater than 50% & less than or equal to 75%	2.0% of the gross sales of the business
Greater than 75%	1.5% of the gross sales of the business

The rate of tax imposed by this chapter on persons engaging in a personal services business shall be three percent (3%) of the gross sales of the business for businesses owned by other than Lummi tribal members and two percent (2%) of the gross sales of the business for a business owned by a Lummi tribal member.

**30.04.070 Exemptions**

(a) This chapter shall not apply to the

following business activities if persons so engaged are taxed or specifically made exempt from taxes under other provisions of the Lummi Code.

(1) Fishing: where the initial sale of fish and seafoods are taxed under Title 10.10 of the Lummi Code of Laws.

(2) Agriculture: where the privilege of growing or producing agricultural products is taxed under chapter 30.07 of this Title.

(3) Forestry: where the privilege of harvesting forest products is taxed under chapter 30.08 of this Title.

(4) Public Utilities: where the business of providing utility services is taxed under chapter 30.08 of this Title

(5) Real Estate Sales: where such sales are taxable upon and paid by the seller under the provisions of chapter 30.09 of this Title. This however, shall not be construed to allow a deduction of income received as commissions from the sale of real estate or as fees, handling charges, discounts, interest or similar financial charges resulting from, or relating to real estate transactions.

(6) Lummi Indian Arts and Crafts: where members of the Lummi Indian Tribe engage in the business of making or selling traditional Indian Arts and Crafts. They shall be exempt from this tax for that portion of their business activities attributable to such Arts and crafts.

(b) Persons whose gross income from the business is less than one thousand dollars (\$1,000.00) per month shall be exempt from any tax imposed by this chapter; provided, that persons engaging in a personal service business shall not enjoy this exemption; provided further, that where one person engages in more than one business activity and the combined measures of the taxable base applicable to such businesses equal or exceed one thousand dollars (\$1,000.00) per month, no exemption or deduction from the amount of tax is allowed by this section.

Any person claiming exemption under the provisions of this section may be required to file returns even though no tax may be due.

#### **30.04.080 Tax Part of Operating Overhead**

Any tax imposed by this chapter is not to be construed as a tax upon the purchasers or customers of the persons in business, but shall constitute a part of the operating overhead for such persons.

#### **30.04.090 Submitting Forms and Payments of Taxes**

All persons shall file a completed questionnaire at the time of application for a business license as required by Title 24 of the Lummi Code of Laws. This questionnaire will provide the Director with such information as he finds necessary to fairly and completely administer this section and shall include, but is not limited to, questions concerning ownership of the business, products of the business, annual income, annual payroll, number and type of employees.

Within fifteen (15) days following the end of each calendar quarter every person engaging in business or licensed to engage in business within the Lummi Indian Reservation shall complete and file with the revenue officer, on such forms as provided by the tribe, a statement regarding the previous three (3) months business activity. This statement shall be signed by the person responsible to conduct the company's official business attesting to the accuracy of the statement. All taxes for which the person is liable under the provisions of this chapter must also be paid in full to the Director before the fifteenth day following the end of the quarter.

#### **30.04.100 Administration**

All of the General Provisions of chapter 30.03 shall have full force and application with respect to taxes imposed under the provisions of this chapter.

#### **30.04.110 Disposition of Revenues**

All taxes collected pursuant to this chapter shall be paid over to the General Treasury of the Lummi Indian Business Council and be

subject to the distribution by the Council in accordance with its usual appropriation procedures for essential governmental and social services; provided, however, that the following tribal programs shall have priority in funding in the percentages set out in this paragraph upon demonstration of need and past performance in the normal tribal budgetary appropriation process:

- (a) to the Lummi Planning Department in an amount of forty percent (40%) of the total tax received;
- (b) to the Lummi Education Department in an amount of fifteen percent (15%) of the total tax received;
- (c) to the Lummi police, fire, and court systems in an amount of ten percent (10%) of the total tax received;
- (d) to the Lummi Economic Development Office in an amount of ten percent (10%) of the total tax received;
- (e) to other needs as designated by the Council.

### **Chapter 30.05 Payroll Tax**

#### **30.05.010 Legislative Intent and Findings**

This code is enacted pursuant to the inherent sovereign powers of the Lummi Nation and such other powers as have been delegated to, vested in, or confirmed in the Nation through the actions of the federal government. Among other sources, it is based upon the federal policy of self-determination for Indian tribes and the government-to-government relationship between the tribes and the federal government.

The Lummi Indian Business Council finds that it is necessary to raise revenues for the provision of essential governmental services in order to fulfill its obligations to the people of the Lummi Tribe and the Lummi Reservation. Those obligations and services include, but are not limited to, the provision, in whole or in part, of public health and safety services such as police, fisheries enforcement,

fire protection, environmental health concerns, sewage collection, treatment and disposal, provision for safe drinking water, litter and garbage control and disposal, environmental protection, maintenance of a court system for the resolution of civil disputes and criminal actions, and traffic safety and road improvement and maintenance services.

In addition, the Tribe provides social welfare services such as child welfare services, a broad range of educational programs from pre-school through college level, economic aid to the impoverished or disadvantaged, mental health and emotional counseling, employment training and job placement services, housing programs, cemetery benefits, and other social services. The Tribe also provides recreational amenities and facilities such as athletic fields, a gymnasium, meeting rooms, and parks, as well as supporting cultural and religious events and activities.

The Tribe furthers the economic development of the Reservation and the tribe by attracting business employment opportunities to the Reservation, by providing direct employment, and by defending and enhancing tribal fishing and other resource rights both on and off the reservation.

The Tribe has been able to obtain numerous federal and state grants, low interest loans, and other programs which have been of great benefit to the reservation community. The full cost of these needed and beneficial programs is not covered by the programs themselves, however, and it is necessary for the Tribe to raise revenues locally to continue to provide services. The Lummi Indian Business Council finds that the entire reservation community, both Indian and non-Indian, whether residing or employed on the Reservation, benefits from these activities directly as participants or direct beneficiaries and because the tribal activities supplement or replace other governmental programs and relieve other units of government from the full burden of these programs. It is appropriate, therefore, that a portion of the costs of these services be borne by the residents of the Reservation and those persons employed on the Reservation.

Members of the tribe exercising the tribe's

treaty-reserved fishing rights have borne a high percentage of the cost of these programs because the only substantial existing tribal tax has been on the individual exercise of that right. The Lummi Indian Business Council finds it appropriate that tribal fishermen continue to bear a substantial portion of the costs of tribal government, given the economic benefits of the treaty fishery, but also desires to distribute the tax burden more equitably among those benefiting. The Lummi Indian Business Council therefore enacts the following tax on compensation paid to Reservation employees.

### **30.05.020 Definitions**

The following terms used in this code shall have the following respective meanings unless otherwise required by the context.

(a) “Compensation” means the gross salaries, wages, or other sums paid for personal services of whatever kind and in whatever form paid by an employer, including without limitation, the United States of America and the Lummi Indian Business Council, to an employee; including any amounts that might be deducted or withheld by the employer for payment to others on the employee’s behalf; excluding any amount paid by the employer as a contribution to the employee’s medical, dental, or optical, accident or health plans or employer contributions to an employee’s qualified pension plan when such amounts are not paid directly to the employee.

(b) “Contract employee” means a person doing business and under contract, either explicit or implied, with a separate reservation employer for: 1) a period exceeding seven days for 2) personal services valued at one thousand dollars (\$1,000) or greater in any calendar quarter, and where the reservation employer directly controls or directs the actions of the contract employee or provides substantially all of the contract employee’s operating requirements, such as equipment, office space, telephone or secretarial services, or other items and assistance relevant and necessary to the contract employee’s fulfillment of his obligations to the reservation employer. The term shall not apply to contractors or professional consultants who

provide essentially all of their own resources to accomplish a task without specific direction from a reservation employer, irrespective of their being compensated on a lump sum, hourly, or other basis, and who are otherwise subject to the tribal business licensing and business taxing requirements.

(c) “Doing business” means engaging in any occupation which consists in whole or in part, in the rendering of personal services by an employee in exchange for compensation.

(d) “Employee” means any person receiving compensation for personal services rendered within the exterior boundaries of the Lummi Indian Reservation who, under the common law rules applicable to the employer-employee relationship, has the status of an employee and shall also include contract employees.

(e) “Person” means an individual or natural person, whether or not such individual is a member of the Lummi Indian Tribe.

(f) “Qualified Pension Plan” has the same meaning as given to it by the U.S. Internal Revenue Service except that it shall also include an employee’s Individual Retirement Plan, as defined by the Internal Revenue Service.

(g) “Reservation employer” means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, tribal, federal, state, or other local government or any agency thereof, private or municipal corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise who maintain a place of business within the Lummi Indian Reservation.

### **30.05.030 Imposition of Tax**

There is imposed on and there shall be collected from each employee of a reservation employer a tax equal to two per cent (2%) of the compensation paid by the reservation employer to the employee.

### **30.05.040 Payroll Deductions**

Each reservation employer shall, unless otherwise prohibited by law, deduct from the compensation of each of its employees at regular pay periods an amount computed by multiplying the amount of compensation otherwise due with respect to such pay period by two percent (2%) all for the purpose of paying over such deducted amounts to the tribe.

### **30.05.050 Report by Employer**

Each reservation employer shall by April 30 of every year file with the tribe a statement listing all employees of such employer during the quarter year January 1 to March 31, together with a statement of the total compensation paid to such employees during that quarter and together with such other information regarding the employees and the employer as the tribe shall require. A statement containing the same information relevant to succeeding periods shall be filed by July 31 for the period April 1 to June 30, by October 31 for the period July 1 to September 30, and by January 3 for the period October 1 to December 31. This statement shall be made on the proper form as made available by the tribe and signed by the person responsible to conduct the reservation employer's official business attesting to the accuracy of the statement.

### **30.05.060 Payment by Employer**

Each reservation employer subject to the payroll deduction provision of this code shall accompany the filing of the statement required herein with a payment of the amount of tax due. If for any reason a reservation employer fails to submit the required statement within the required reporting period he shall not be relieved of his obligation to submit the taxes due under this code on or before the due date provided herein.

### **30.05.070 Report and Payment by Employee**

Each employee who is subject to the tax levied by this code but whose reservation employer is not subject to the payroll deduction requirements of this code shall submit to the tribe a statement showing the total compensation paid by reservation

employers to the employee during the preceding calendar quarter and pay to the tribe the amount of tax due for the preceding quarter year. The required statement shall be filed and the required tax paid on or before the same dates as required of reservation employers under this code.

### **30.05.080 Tax Held in Trust; Non-Payment of the Tax**

The tax required by this code to be collected by the reservation employer shall be deemed to be held in trust by the reservation employer for the use and benefit of the tribe until paid to the tribe. A reservation employer's failure to deduct the tax levied by this code from each of its employees' compensation shall not relieve the reservation employer from its obligation to remit the tax to the tribe, unless the reservation employer is specifically prohibited by law from making the required deductions. If a reservation employer fails to remit to the tribe the tax collected from employees under this code or fails to deduct the required tax from an employee's compensation, the reservation employer shall be personally liable to the tribe for the amount of the tax not paid to the tribe.

If an employee has properly paid the tax due under this code, through a payroll deduction or otherwise, to a reservation employer, but the reservation employer has failed to pay the taxes collected from the employee to the tribe, the employee shall not be held responsible for the reservation employer's nonpayment to the tribe of the taxes paid by the employee. However, the employee shall be held responsible for any taxes due the tribe that were collected by the reservation employer but were subsequently rebated to the employee by the reservation employer.

Where an employee has failed to pay to the reservation employer the tax imposed by this code and the reservation employer has not paid the amount of the tax to the tribe, the tribe may in its discretion, proceed directly against the employee for collection of the tax.

### **30.05.090 Cost of Collection Actions**

In any action brought to enforce the provisions of this code or to collect any sums due, the

tribe shall be entitled to its actual costs and reasonable attorney fees incurred in bringing the action. Any judgment entered shall bear interest at the rate of twelve percent (12%) per year until paid.

### **30.05.100 Interest on Late Payments**

If any sum payable under this code is not paid to the tribe by the date specified, there shall be added to the unpaid sum, interest at the rate of twelve percent (12%) per year.

### **30.05.110 Treaty Fishing Employees Exempted**

Each employee of a commercial fisherman subject to the tribe's tax on treaty fishing income shall be exempt from the provisions of this code if the employee's compensation is based solely on the value of fish caught and sold to fish buyers licensed by the tribe and if the tribal tax imposed on the sale of such fish is properly deducted from the fishermen's income.

### **30.05.120 Low Wage Earners Exempted**

Each employee earning compensation at a rate less than six dollars (\$6.00) per hour or less than or equal to the federal minimum wage, whichever is greater, and whose compensation is computed on an hourly basis, shall be exempt from the tax imposed by this code. Reservation employers shall not deduct the tax imposed under this code from the compensation of their employees qualifying for this exemption, but they shall report the compensation paid to exempt employees and all other information requested in the periodic statements required from reservation employers under this code.

### **30.05.130 Effective Dates**

This code shall become effective on January 1, 1993, and shall expire at midnight December 31, 1993, unless, after review by the council prior to that date, the code is extended for a period to be specified by subsequent action of the council.

[Editor's Note: This tax was extended by Resolution 93-208 (12/16/93), Resolution 95-75 (7/14/95), Resolution 96-157 (12/17/96), Resolution 97-173 (12/20/97), Resolution 98-

161 (12/14/98), Resolution 99-114 (12/7/99), Resolution 2000-127 (11/21/00), Resolution 2001-142 (12/4/01), Resolution 2002-153 (12/16/02), and Resolution 2003-163 (12/8/03)].

### **30.05.140 Severability**

If any paragraph, section, or provision of this code shall be declared invalid for any reason, that paragraph, section, or provision shall be severed from the remainder of this code and the validity of the remainder of this code shall not be affected by such decision.

### **30.05.150 Codification**

The provisions of this code are deemed to be a part of the Tribal Revenue Code and shall be renumbered so as to be consistent with that code.

## **Chapter 30.06 Utility Business Activity Tax**

### **30.06.010 Legislative Intent and Findings**

This code is enacted pursuant to the inherent sovereign powers of the Lummi Indian Tribe and such other powers as have been delegated to, vested in, or confirmed in the Tribe through the actions of the federal government. Among other sources, it is based upon the federal policy of self-determination for Indian tribes and the government-to-government relationship between the tribes and the federal government.

The Lummi Indian Business Council finds that it is necessary to raise revenues for the provision of essential governmental services in order to fulfill its obligations to the people of the Lummi Tribe and the Lummi Reservation. Those obligations and services include, but are not limited to, the provision, in whole or in part, of public health and safety services such as police, fisheries enforcement, fire protection, environmental health concerns, sewage collection, treatment and disposal, provision for safe drinking water, litter and garbage control and disposal, environmental protection, maintenance of a court system for the resolution of civil disputes and criminal actions, and traffic safety and road improvement and maintenance services.

In addition, the Tribe provides social welfare services such as child welfare services, a broad range of educational programs from pre-school through college level, economic aid to the impoverished or disadvantaged, mental health and emotional counseling, employment training and job placement services, housing programs, cemetery benefits, and other social services. The Tribe also provides recreational amenities and facilities such as athletic fields, a gymnasium, meeting rooms, and parks, as well as supporting cultural and religious events and activities.

The Tribe furthers the economic development of the Reservation and the tribe by attracting business employment opportunities to the Reservation, by providing direct employment, and by defending and enhancing tribal fishing and other resource rights both on and off the reservation.

The Tribe has been able to obtain numerous federal and state grants, low interest loans, and other programs which have been of great benefit to the reservation community. The full cost of these needed and beneficial programs is not covered by the programs, themselves, however, and it is necessary for the Tribe to raise revenues locally to continue to provide services. The Lummi Indian Business Council finds that the entire reservation community, both Indian and non-Indian, whether residing, employed, or otherwise doing business on the Reservation, benefits from these activities directly as participants or direct beneficiaries and because the tribal activities supplement or replace other governmental programs and relieve other units of government from the full burden of these programs. It is appropriate, therefore, that a portion of the costs of these services be borne by the residents of the Reservation and those persons employed or otherwise doing business on the Reservation.

Members of the tribe exercising the tribe's treaty-reserved fishing rights have born a high percentage of the cost of these programs because the only substantial existing tribal tax has been on the individual exercise of that right. The Lummi Indian Business Council finds it appropriate that tribal fishermen continue to bear a substantial portion of the cost of tribal government, given the economic

benefits of the treaty fishery, but also desires to distribute the tax burden more equitably among those benefiting. The Lummi Indian Business Council therefore enacts the following tax on the business activity of utility providers.

### **30.06.020 Definitions**

Wherever in this code, unless a different meaning is clearly intended by the context:

(a) "Buyer" means, without limiting the scope hereof, every person who receives goods or services from a seller in exchange for a promise to deliver to the seller, or for the actual delivery to the seller, of money or other goods or services of value to the seller;

(b) "Cash Discount" means a deduction from the invoice price of goods or a charge for services which is allowed if the bill is paid on or before a specified date;

(c) "Gross Receipts" means the full amount billed by a utility for the retail sale of goods or services;

(d) "Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club company, joint stock company, business trust, tribal, state, or other local government or any agency thereof, private or municipal corporation, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise;

(e) "Retail Sale" means every sale of services or tangible personal property to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof,

(1) the provision of telephone, telegraph, or other communication services;

(2) the provision of electricity, natural gas, or other energy sources;

(3) the provision of water or water distribution or sewer collection and/or disposal services;

(4) the provision of refuse collection and/or disposal services;

(5) the provision of cable or community antennae television signal distribution services;

(6) the provision of transportation services;

(7) the sale, lease, or rental of any personal property by a utility to a buyer;

(f) "Sale" means any provision of services or the transfer of ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "retail sale". It includes renting or leasing, conditional sales contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price;

(g) "Seller" means every person making retail sales to a buyer;

(h) "Selling Price" means the consideration, whether money, credits, rights, or other property, expressed in the terms of money paid or delivered by a buyer to a seller, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expenses whatsoever paid or accrued and without any deduction on account of losses, but shall not include the amount of cash discount actually taken by a buyer;

(i) "Utility" means any person operating, for hire or sale, a plant, equipment, or system for:

(1) the distribution of water;

(2) the collection or processing of sewerage system products;

(3) the pick-up, transfer, storage, treatment, or disposal of waste;

(4) the transmission of telephone, telegraph, or any other electronic signals used in a

communication business;

(5) the distribution of television signals via a community television antenna or cable system;

(6) the distribution of electricity, natural, artificial, or mixed gas, furnace oils, or other energy sources, but the term shall not include the provision or distribution of firewood, nor shall it include the provision or distribution of gasoline or diesel fuels clearly intended for use by the final consumer in motor vehicles or boats;

(7) the conveyance of persons or property on a regularly scheduled basis, including those transportation systems operating primarily outside the Reservation but regularly loading or unloading passengers or cargo at a fixed terminal or station within or appurtenant to the Reservation, but excluding regular mail or parcel delivery services;

(j) "Waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include material collected primarily for recycling or salvage.

### **30.06.030 Imposition of Gross Receipts Tax**

(a) There is imposed on and there shall be collected from each utility doing business within the Lummi Reservation a business privilege tax equal to five percent (5%) of the utility's gross receipts generated from retail sales within the reservation.

(b) The tax imposed under this code shall apply to successive retail sales of the same property or services.

### **30.06.040 Timing of Sales**

For the purposes of this code, a sale is deemed to have occurred at the time buyers are billed for the seller's actual or promised delivery of goods or services to the buyer.

### **30.06.050 Payment of Taxes and Reporting**

All persons required to pay the tax imposed

herein shall file within thirty (30) days following the end of each calendar quarter a statement of that person's retail sales made within the Reservation during that quarter. Such forms shall be filed following the end of each calendar quarter even if no taxes imposed under this code are due. This statement shall be made on the proper form as made available by the tribe and signed by the person responsible to conduct the utility's official business attesting to the accuracy of the statement. Full payment of any taxes due under this code must accompany the statement and be received by the close of business of the last working day of the month following the end of the quarter for which the taxes were imposed.

#### **30.06.060 Cost of Collection Actions**

In any action brought to enforce the provisions of this code or to collect any sums due, the tribe shall be entitled to its actual costs and reasonable attorney fees incurred in bringing the action. Any judgment entered shall bear interest at the rate of twelve percent (12%) per year until paid.

#### **30.06.070 Interest on Late Payments**

If any sum payable under this code is not paid to the tribe by the date specified, there shall be added to the unpaid sum, interest at the rate of twelve per cent (12%) per year.

#### **30.06.080 Effective Dates**

This code shall become effective on January 1, 1993, and shall expire at midnight December 31, 1993, unless after review by the council prior to that date, the code is extended for a period to be specified by subsequent action of the council.

[Editor's Note: This tax was extended by Resolution 93-208 (12/16/93), Resolution 95-75 (7/14/95), Resolution 96-157 (12/17/96), Resolution 97-173 (12/20/97), Resolution 98-161 (12/14/98), Resolution 99-114 (12/7/99), Resolution 2000-127 (11/21/00), Resolution 2001-142 (12/4/01), Resolution 2002-153 (12/16/02), and Resolution 2003-163 (12/8/03)].

#### **30.06.090 Severability**

If any paragraph, section, or provision of this

code shall be declared invalid for any reason, that paragraph, section, or provision shall be severed from the remainder of this code and the validity of the remainder of this code shall not be affected by such decision.

#### **30.06.100 Codification**

The provisions of this code are deemed to be a part of the Tribal Revenue Code and shall be renumbered so as to be consistent with that Code.

#### **Chapter 30.07 Reserved for Agriculture Production Tax**

[Editor's Note: This section was provided for by Resolution 89-47 on April 27, 1989. No further implementing legislation was enacted so this section remains reserved.]

#### **Chapter 30.08 Reserved for Forest Excise Tax**

[Editor's Note: This section was provided for by Resolution 89-47 on April 27, 1989. No further implementing legislation was enacted so this section remains reserved.]

#### **Chapter 30.09 Reserved for Real Estate Transfer Excise Tax**

[Editor's Note: This section was provided for by Resolution 89-47 on April 27, 1989. No further implementing legislation was enacted so this section remains reserved.]

#### **Chapter 30.10 Automobile Excise Tax**

##### **30.10.010 Tax Imposed**

A fee of fifty percent (50%) of the state excise tax per vehicle shall be charged to tribal members who wish to obtain tribal certificates of enrollment in order to avoid paying the state excise tax.

##### **30.10.020 Effective Date**

This fee shall take effect beginning at 12:01 a.m. October 31, 1980, and continue unless and until removed by resolution of the Lummi Indian Business Council.

## Chapter 30.11 Treaty Fish Buyers' Tax

### **30.11.010 Legislative Intent and Findings**

This code is enacted pursuant to the inherent sovereign powers of the Lummi Indian Tribe and such other powers as have been delegated to, vested in, or confirmed in the Tribe through the actions of the federal government. Among other sources, it is based upon the federal policy of self-determination for Indian tribes and government-to-government relationship between the tribes and the federal government.

The Lummi Indian Business Council finds that it is necessary to raise revenues for the provision of essential governmental services in order to fulfill its obligations to the people of the Lummi Tribe and the Lummi Reservation. Those obligations and services include, but are not limited to, the provision, in whole or in part, of public health and safety services such as police, fisheries enforcement, fire protection, environmental health concerns, sewage collection, treatment and disposal, provision for safe drinking water, litter and garbage control and disposal, environmental protection, maintenance of a court system for the resolution of civil disputes and criminal actions, and traffic safety and road improvement and maintenance services.

In addition, the Tribe provides social welfare services such as child welfare services, a broad range of educational programs from pre-school through college level, economic aid to the impoverished or disadvantaged, mental health and emotional counseling, employment training and job placement services, housing programs, cemetery benefits and other social services. The Tribe also provides recreational amenities and facilities such as athletic fields, a gymnasium, meeting rooms, and parks as well as supporting cultural and religious events and activities.

The Tribe furthers the economic development of the Reservation, the tribe, and surrounding communities by attracting business employment opportunities, by providing direct employment, and by defending and enhancing tribal fishing and other resource rights both on

and off the reservation.

The Tribe directly benefits seafood companies who rely upon tribally caught fish to provide the product they need to sell fish in the world markets. Fish companies each year purchase an average of \$10,000,000.00 of seafood from Lummi tribal fishermen. The efforts of the tribe to protect its historical fishing rights, to provide for sound fisheries management, and to enhance the fisheries have directly benefited seafood companies who rely upon tribally caught fish. The Tribe finds it to be reasonable and proper for these seafood companies who benefit from doing business with the tribe and its members to contribute to the costs of regulating and enhancing the fishery and providing other social and economic development services that make a viable fishery possible. The Lummi Indian Business Council therefore enacts the following tax on the privilege of purchasing fish from the tribe and its members.

### **30.11.120 Definitions**

Wherever in this code, unless a different meaning is clearly intended by the context

(a) "Buyer" means, without limiting the scope hereof, every person who receives fish or fish products from a seller in exchange for a promise to deliver to the seller, or for the actual delivery to the seller, of money or other goods or services of value to the seller;

(b) "Gross Purchases" means the value, expressed in monetary terms, of the total compensation paid by a buyer to an enrolled Lummi fisherman in exchange for fish and fish products sold to the buyer;

(c) "Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, tribal, state, or other local government or any agency thereof, private or municipal corporation, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise;

(d) "Processed" means the preparation of

whole, fresh seafoods into various products or for resale as other than whole fish. A finfish or shellfish is deemed to have been processed if it has been gutted, headed, cooked, removed from its shell, or in some other manner substantially altered from its live or whole form by the active efforts of human labor;

(e) "Qualifying Tribal Member" means any enrolled member of the Lummi Tribe or any spouse or child of an enrolled Lummi Tribal member;

(f) "Sale" means the transfer of ownership of, title to, or possession of fish or fish products caught by an enrolled member of the Lummi Indian Tribe in exchange for a valuable consideration;

(g) "Seller" means an enrolled member of the Lummi Indian Tribe exercising treaty reserved fishing rights and making sales of harvested fish or fish products to a buyer;

(h) "Purchase Price" means the consideration, whether money, credits, rights, or other property, expressed in the terms of money paid or delivered by a buyer to a seller, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expenses whatsoever paid or accrued and without any deduction on account of losses.

### **30.11.030 Imposition of Treaty Fish Buyers' Tax**

There is imposed on and there shall be collected from each buyer a business activity tax equal to one percent (1%) for 1993 and one-half percent (1/2%) for 1994. Provided, however, that the reduction of the tax from 1% to 1/2% for 1994 is contingent upon the collection of the outstanding fish buyers' taxes for the 1993 buying season.

### **30.11.040 Processing Rebate**

A buyer shall be eligible for a rebate of two-thirds of the tax due and timely paid as required herein for all fish taxed under this code and processed within the Lummi Indian Reservation. To claim this rebate a buyer must provide a statement on the form provided

by the tribe identifying the source of the fish processed and where those fish were processed and such other information as the tribe shall require.

### **30.11.050 Employment Rebate**

If a buyer employs ten (10) or more qualifying tribal members the buyer shall be eligible for a rebate of one-sixth of the total tax due and timely paid under this code. If a buyer employs twenty (20) or more qualifying tribal members the buyer shall be eligible for a rebate of one-third of the total tax due and timely paid under this code. Each qualifying tribal member must be employed by the buyer a minimum of 1,200 hours in the calendar year for which the rebate is being claimed. A qualifying tribal member may be claimed by a buyer for rebate purposes only once during each calendar year. A buyer must submit a tax rebate claim on the form provided by the tribe together with his timely submitted and fully paid tax payment.

### **30.11.060 Rebate Requirements and Limitations**

A buyer will be eligible for a rebate of taxes due under this code only if all tribal tax and licensing requirements are fully met in a timely manner. In no event will the cumulative total of all rebates to a buyer under this code for each calendar year exceed the total tax due and paid by that buyer under this code for the same calendar year.

### **30.11.070 Payment of Taxes**

Within ten (10) days following the end of each month all buyers required to pay the tax imposed herein shall pay all taxes due and shall file a statement of that buyer's purchases of fish and fish products from enrolled members of the Lummi Tribe during that month together with such other information as the tribe shall require. Each buyer shall submit a properly completed form following each month in which a treaty fishery is open to Lummi fishermen even if the buyer has not made any purchases that are subject to the tax requirements of this code. This statement shall be made on the proper form as made available by the tribe and signed by the person responsible to conduct the buyer's official business attesting to the accuracy of the

statement.

### **30.11.080 Licensing and Bonding Requirements**

Each buyer must be licensed by the tribe to buy fish in accordance with the requirements of Section 10.08 of the Lummi Code of Laws. To ensure compliance with the provisions of this tax code each buyer shall be required to provide the tribe with a cash deposit, surety bond, or other security acceptable to the tribe's Treasurer equal to the surety required for the buyer to obtain a tribal fish buyer's license. The same bond or cash deposit may be used to satisfy the surety requirements for the tribal fish buyer license and the fish buyer tax if the surety agreement provided by the buyer states that it may be used to secure the full and timely payment of all tribal taxes that may become due and payable by the buyer.

### **39.11.090 Cost of Collection Actions**

In any action brought to enforce the provisions of this code or to collect any sums due, the tribe shall be entitled to its actual costs and reasonable attorney fees incurred in bringing the action. Any judgment entered shall bear interest at the rate of one and one-half percent (1.5%) per month until paid.

### **30.11.100 Interest on Late Payments**

If any sum payable under this code is not paid to the tribe by the date specified, there shall be added to the unpaid sum interest at the rate of one and one-half percent (1.5%) per month.

### **30.11.110 Effective Dates**

This code shall become effective on January 1, 1993, and shall expire at midnight December 31, 1993, unless, after review by the council prior to that date, the code is extended for a period to be specified by subsequent action of the council.

[Editor's Note: This tax was extended by Resolution 93-208 (12/16/93), Resolution 95-75 (7/14/95), Resolution 96-157 (12/17/96), Resolution 97-173 (12/20/97), Resolution 98-161 (12/14/98), Resolution 99-114 (12/7/99), Resolution 2000-127 (11/21/00), Resolution 2001-142 (12/4/01), Resolution 2002-153 (12/16/02), and Resolution 2003-163 (12/8/03)]

### **30.11.120 Severability**

If any paragraph, section, or provision of this code shall be declared invalid for any reason, that paragraph, section, or provision shall be severed from the remainder of this code and the validity of the remainder of this code shall not be affected by such decision.

### **30.11.130 Codification**

The provisions of this code are deemed to be a part of the Tribal Revenue Code and shall be renumbered so as to be consistent with that Code.

## **Chapter 30.12 Treaty Fisheries Payroll Tax Code**

### **30.12.010 Legislative Intent and Findings**

This code is enacted pursuant to the inherent sovereign powers of the Lummi Indian Tribe and such other powers as have been delegated to, vested in, or confirmed in the Tribe through the actions of the federal government. Among other sources, it is based upon the federal policy of self-determination for Indian tribes and the government-to-government relationship between the tribes and the federal government.

The Lummi Indian Business Council finds that it is necessary to raise revenues for the provision of essential governmental services in order to fulfill its obligations to the people of the Lummi Tribe and the Lummi Reservation. Those obligations and services include, but are not limited to, the provision, in whole or in part, of public health and safety services such as police, fisheries enforcement, fire protection, environmental health concerns, sewage collection, treatment and disposal, provision for safe drinking water, litter and garbage control and disposal, environmental protection, maintenance of a court system for the resolution of civil disputes and criminal actions, and traffic safety and road improvement and maintenance services.

In addition, the Tribe provides social welfare services such as child welfare services, a broad range of educational programs from pre-school through college level, economic

aid to the impoverished or disadvantaged, mental health and emotional counseling, employment training and job placement services, housing programs, cemetery benefits, and other social services. The Tribe also provides recreational amenities and facilities such as athletic fields, a gymnasium, meeting rooms, and parks as well as supporting cultural and religious events and activities.

The Tribe furthers the economic development of the Reservation and the tribe by attracting business employment opportunities to the Reservation, by providing direct employment, and by defending and enhancing tribal fishing and other resource rights both on and off the reservation.

The Tribe has been able to obtain numerous federal and state grants, low interest loans, and other programs which have been of great benefit to the reservation community. The full cost of these needed and beneficial programs is not covered by the programs themselves, however, and it is necessary for the Tribe to raise revenues locally to continue to provide services. The Lummi Indian Business Council finds that the entire reservation community is benefited and has enacted a series of revenue measures designed to spread the cost of providing these services as equitably as possible among those most capable of contributing.

Indians enrolled in fishing treaty tribes of the northwest and employed in a treaty fishing related activity by the tribe or a tribal member directly benefit from actions taken by the tribe to prevent the federal government from imposing taxes on individual income earned from treaty fishing activities. The tribe finds that prior to the passage of Public Law 100-647, its employees in fisheries related activities on average paid eight percent (8%) to twelve percent (12%) of their annual gross income to the federal government as income taxes. The tribe finds it fair and appropriate that those directly benefiting from the tribe's actions to protect treaty Indians from federal taxation should help pay the costs associated with tribal government and tribal treaty protection activities. The Lummi Indian Business Council therefore enacts the following tax on compensation earned by

treaty fisheries employees.

### **30.12.020 Definitions**

The following terms used in this code shall have the following respective meaning unless otherwise required by the context.

(a) "Compensation" means the gross salaries, wages, or other sums paid for personal services of whatever kind and in whatever form paid by an employer, including without limitation, the United States of America and the Lummi Indian Business Council, to an employee; including any amounts that might be deducted or withheld by the employer for payment to others on the employee's behalf; excluding any amount paid by the employer as a contribution to the employee's medical, dental, or optical, accident or health plans or employer contributions to an employee's qualified pension plan when such amounts are not paid directly to the employee.

(b) "Contract employee" means a person who is not subject to federal tax requirements pursuant to the provisions of Public Law 100-647 and who is doing business and under contract, either explicit or implied, with a separate treaty fisheries employer for 1) a period exceeding seven days or 2) personal services valued at one thousand dollars (\$1,000.00) or greater in any calendar quarter, or provides substantially all of the contract employee's operating requirements, such as equipment, office space, telephone or secretarial services, or other items and assistance relevant and necessary to the contract employees fulfillment of his obligations to the employer. The term shall not apply to contractors or professional consultants who provide essentially all of their own resources to accomplish a task without specific direction from an employer, irrespective of their being compensated on a lump sum, hourly, or other basis, and who are otherwise subject to the tribal business licensing and business taxing requirements.

(c) "Doing business" means engaging in any occupation which consists, in whole or in part, in the rendering of personal services by an employee to an employer or the receipt of personal services by an employer from an

employee in exchange for compensation.

(d) “Employee” or “Treaty Fisheries Employee” means any person receiving compensation for personal services provided to a treaty fisheries employer who, under the usual common law rules applicable to the employer-employee relationship, has the status of an employee or contract employee and whose compensation or any part of that compensation is not subject to federal taxation pursuant to the provisions of Public Law 100-647.

(e) “Employer” or “Treaty Fisheries Employer” means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture club, company, joint stock company, business trust, tribal, federal, state, or other local government, or agency thereof private or municipal corporation, association, society, or any group of individuals acting as a unit whether mutual, cooperative, fraternal, non-profit or otherwise who maintains a place of doing business within the exterior boundaries of the Lummi Indian Reservation and who has one or more employees earning compensation that is not subject to federal taxation pursuant to Public Law 100-647.

(f) “Exempt Compensation” means compensation earned by a treaty fisheries employee which is exempt from federal taxation pursuant to Public Law 100-647.

(g) “Person” means an individual or natural person, whether or not such individual is a member of the Lummi Indian Tribe.

(h) “Public Law 100-647” means Subtitle E - Indian Fishing Rights of the Congressional Act of November 10, 1988, wherein the federal tax treatment of income derived by Indians from exercise of fishing rights secured by treaty is clarified.

(i) “Qualified Pension Plan” has the same meaning as given to it by the U.S. Internal Revenue Service except that it shall also include an employee’s Individual Retirement Plan, as defined by the Internal Revenue Service.

### **30.12.030 Imposition of Tax**

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There is imposed on and there shall be collected from each treaty fisheries employee of a treaty fisheries employer a tax equal to two percent (2%) of that portion of the exempt compensation earned by the employee.

### **30.12.040 Payroll Deductions**

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Each Treaty fisheries employer shall, unless otherwise prohibited by law, deduct from the exempt compensation of each of its treaty fisheries employees at regular pay periods an amount computed by multiplying the amount of exempt compensation earned during such pay period by two percent (2%) all for the purpose of paying over such deducted amounts to the tribe.

### **30.12.050 Report by Employer**

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Each treaty fisheries employer shall by April 30 of every year file with the tribe a statement listing all treaty fisheries employees of such employer during the quarter year January 1 to March 31, together with a statement of the total exempt compensation paid to such treaty fisheries employees during that quarter and together with such other information regarding the employees and the employer as the tribe shall require. A statement containing the same information relevant to succeeding periods shall be filed by July 31 for the period April 1 to June 30, by October 31 for the period July 1 to September 30, and by January 31 for the period October 1 to December 31. This statement shall be made on the proper form as made available by the tribe and signed by the person responsible to conduct the reservation employer’s official business attesting to the accuracy of the statement.

### **30.12.060 Payment by Employer**

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Each treaty fisheries employer subject to the payroll deduction provision of this code shall accompany the filing of the statement required herein with a payment of the amount of tax due. If for any reason an employer fails to submit the required statement within the required reporting period he shall not be relieved of his obligation to submit the taxes due under this code on or before the due date provided herein.

### **30.12.070 Report and Payment by Treaty Fisheries Employee**

Each treaty fisheries employee who is subject to the tax levied by this code but whose employer is not subject to the payroll deduction requirements of this code shall submit to the tribe a statement showing the total compensation paid by the treaty fisheries employers to the treaty fisheries employee during the preceding calendar quarter and pay to the tribe the amount of tax due for the preceding quarter year. The required statement shall be filed and the required tax paid on or before the same dates as are required of employers under this code.

### **30.12.080 Tax Held in Trust; Non-Payment of the Tax**

(a) The tax required by this code, to be collected by the treaty fisheries employer, shall be deemed to be held in trust by the employer for the use and benefit of the tribe until paid to the tribe. An employer's failure to deduct the tax levied by this code from each of its treaty fisheries employee's compensation shall not relieve the employer from its obligation to remit the tax to the tribe, unless the employer is specifically prohibited by law from making the required deductions. If the employer fails to remit to the tribe the tax collected from treaty fisheries employees under this code or fails to deduct the required tax from an employee's compensation the employer shall be personally liable to the tribe for the amount of the tax not paid to the tribe.

(b) If an employee has properly paid the tax due under this code, through a payroll deduction or otherwise, to a treaty fisheries employer, but the employer has failed to pay the taxes collected from the employee to the tribe, the employee shall not be held responsible for the employer's non-payment to the tribe of the taxes paid by the employee. However, the employee shall be held responsible for any taxes due the tribe that were collected by the employer but were subsequently rebated to the employee by the employer.

(c) Where an employee has failed to pay to the employer the tax imposed by this code and the employer has not paid the amount of the

tax to the tribe, the tribe may, in its discretion, proceed directly against the employee for collection of the tax.

### **30.12.090 Cost of Collection Actions**

In any action brought to enforce the provisions of this code or to collect any sums due, the tribe shall be entitled to its actual costs and reasonable attorney fees incurred in bringing the action. Any judgment entered shall bear interest at the rate of twelve percent (12%) per year until paid.

### **30.12.100 Interest on Late Payments**

If any sum payable under this code is not paid to the tribe by the date specified, there shall be added to the unpaid sum, interest at the rate of twelve percent (12%) per year.

### **30.12.110 Employees of Treaty Fishermen Exempted**

Each employee of a commercial fisherman subject to the tribe's tax on treaty fishing income shall be exempt from the provisions of this code if the employee's compensation is based solely on the value of fish caught and sold to fish buyers licensed by the tribe and if the tribal tax imposed on the sales of such fish is properly deducted from the employee's income.

### **30.12.120 Tax in Addition to Other Tribal Payroll Taxes**

The tax imposed by this code is in addition to any other taxes imposed by the tribe.

### **30.12.130 Effective Dates**

This code shall become effective on January 1, 1993, and shall expire at midnight December 31, 1993, unless, after review by the council prior to that date, the code is extended for a period to be specified by subsequent action of the council.

[Editor's Note: This tax was extended by Resolution 93-208 (12/16/93), Resolution 95-75 (7/14/95), Resolution 96-157 (12/17/96), Resolution 97-173 (12/20/97), Resolution 98-161 (12/14/98), Resolution 99-114 (12/7/99), Resolution 2000-27 (11/21/00), Resolution 2001-142 (12/4/01), Resolution 2002-153 (12/16/02), and Resolution 2003-163

(12/8/03)]

**30.12.140 Severability**

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If any paragraph, section, or provision of this code shall be declared invalid for any reason, that paragraph, section, or provision shall be severed from the remainder of this code and the validity of the remainder of this code shall not be affected by such decision.

**30.12.150 Codification**

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The provisions of this code are deemed to be a part of the Tribal Revenue Code and shall be renumbered so as to be consistent with that code.

Title30pub08