

## Chapter 26. Sales and Use Taxes

### Legislative History.

This chapter of the law and order code is enacted in anticipation of the legislature of the State of Nevada enacting provisions of the Nevada Revised Statutes which allow Tribes to retain a credit of the Sales and Use Taxes collected by the Tribe rather than remitting a general Sales and Use Tax on each transaction that occurs within the exterior boundary of this Tribe's Territory.

Given the sluggish nature, and devastating condition, of our agricultural economy, and the exemption from Federal Income Tax of certain individual sales transactions on individual Indian and tribal trust property, certain transactions by certain persons within this Tribe's Territory are exempt for the application of this chapter, namely all sales, within the exterior boundaries of our Tribe's Territory by Indians, with regard to domestic animals such as horses, sheep, goats, cows, calves, steers, ay alfalfa, straw and all other agricultural products.

### GENERAL PROVISIONS AND DEFINITIONS

#### Sec. 1. Short Title.

This Chapter is known and may be cited as the Fort McDermitt Sales and Tax Use.

#### Sec. 2. Construction; Operation of Definitions.

Except where the context otherwise requires, the definition given in section 10 through 95, inclusive, govern the construction of this Chapter.

#### Sec. 3. "Business".

"Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

#### Sec. 4. "Gross Receipts".

1. "Gross Receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:
  - a. The cost of the property sold. However, in accordance with such rules and regulations as the tribal council may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.
  - b. The cost of the materials used, labor or service costs, interest paid, losses or any other expense.
  - c. The cost of transportation of the property prior to its sale to the purchaser.

2. The total amount of the sale or lease or rental price includes all of the following:
  - a. Any services that are a part of the sale.
  - b. All receipts, cash, credits and property of any kind.
  - c. Any amount for which credit is allowed by the seller to the purchaser.
3. "Gross Receipts" does not include any of the following:
  - a. Cash discounts allowed and taken on sales.
  - b. Sale price of property returned by customers when the full sale price is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is refunded.
  - c. The price received for labor or services used installing or applying the property sold.
  - d. The amount of any tax (not including, however, any manufacturers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.
4. For the purpose of the sales tax, if the retailers establish to the satisfaction of the tribal council that the sales tax has been added to the total amount of the sales price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

Sec. 5. "In the Jurisdiction of the Tribe".

"In the Jurisdiction of the Tribe" means within the exterior boundaries of Fort McDermitt Indian Country and includes all territory within these limits whether held in fee or trust.

Sec. 6. "Occasional Sale".

1. "Occasional Sale" includes:
  - a. A sale of property not held or used by a seller in the course of an activity for which he is required to hold a seller's permit, provided such sale is not one of a series of sales sufficient in number, scope and character to constitute an activity requiring the holding of a seller's permit.
  - b. Any transfer of all or substantially all the property held or used by a person in the course of such activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer.
2. For purposes of this section, stockholders, bondholders, partners or other person holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the property of such corporation or other entity.

Sec. 7. "Person".

"Person" includes any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit, including the Tribe.

Sec. 8. “Purchase”.

1. “Purchase” means any transfer, exchange or barter conditional or otherwise, in any manner or by any means whatsoever, of tangible, of tangible personal property for a consideration.
2. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price is a purchase.
3. A transfer for a consideration of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of any publication, is also a purchase.

Sec. 9. “Retail Sale”; “Sale at Retail”.

1. “Retail sale” or “sale at retail” means a sale for any purpose other than resale in the regular course of business of tangible personal property.
2. The delivery in the Tribe’s territory of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in the Tribe’s Territory, is a retail sale in the Tribe’s Territory by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

Sec. 10. “Retailer”.

1. “Retailer” includes:
  - a. Every seller who makes any retail sale or sales of tangible personal property, and every person engaged in the business of making retail sales at auction of tangible property owned by the person or others.
  - b. Every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption.
  - c. Every person making more than two retail sales of tangible personal property during any 12-month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy.
2. When the Tribal Council determines that it is necessary for the efficient administration of this Chapter to regard any salesman, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the Tribal Council may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purpose of this Chapter.
3. A licensed optometrist or physician and surgeon is a consumer of, and shall not be considered, a retailer within the provisions of this Chapter, with respect to the ophthalmic materials used or furnished by him in the performance of his professional

services in the diagnoses, treatment or correction of condition of the human eye, including the adaptation of lenses or frames for the aid thereof.

Sec. 11. “Sale”.

1. “Sale” means and includes any transfer of title or possession, exchange, barer, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration.
2. “Transfer of possession,” “lease,” or “rental” includes only transactions found by the Tribal Council to be in lieu of a transfer or title, exchange or barter.
3. “Sale” includes:
  - a. The producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish either direct or indirectly, the materials used in the producing, fabricating, processing, printing or imprinting.
  - b. The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others.
  - c. The furnishing, preparing, or serving for a consideration of food, meal or drinks.
  - d. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.
  - e. A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of any publication.

Sec. 12. “Sales Price”.

1. “Sales price” means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:
  - a. The cost of the property sold.
  - b. The cost of materials use, labor or service cost, interest charged, losses, or any other expenses.
  - c. The amount of any tax (not including, however, any manufacturer’s or importer’s excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

Sec. 13. “Seller”.

“Seller” includes every person engaged in the business of selling tangible personal property of any kind, the gross receipts from the retail sale of which are required to be included in the measure of the sales tax.

Sec. 14. “Storage”.

“Storage” includes any keeping or retention in the Tribe’s territory for any purpose except sale in the regular course of business or subsequent use solely outside this Tribe’s Territory of tangible personal property purchased from a retailer.

Sec. 15. “Storage” and “use”; Exclusion.

“Storage” and “use” do not include the keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the Tribe’s Territory for use thereafter solely outside the Tribe’s Territory, or for the purpose of being processed, fabricated or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the Tribe’s Territory and thereafter used solely outside the Tribe’s Territory.

Sec. 16. “Tangible Personal Property”.

“Tangible personal property” means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.

Sec. 17. “Tribal Council”.

“Tribal Council” means the Tribal Council of the Fort McDermitt Paiute-Shoshone Tribe of Nevada and Oregon.

Sec. 18. “Taxpayer”.

“Tax payer” means any person liable for tax under this Chapter.

SALES TAX: IMPOSITION AND RATE

Sec. 19. Imposition and Rate of Sales Tax.

For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the Tribe’s Territory.

Sec. 20. Effective Date.

This Chapter shall be effective June 1, 1989, even if it is approved by the federal government, in accordance with the Tribe’s Constitution, Article VI, Section 4, prior to that date.

Sec. 21. Exemption from Sales Tax.

All sales by Indians within this Tribe’s Territory exempt from the imposition of Federal and State Income Tax shall be exempt from the coverage of this Chapter. For example, the sale of domestic or other stock or agricultural products grazed, raised or grown on individual Indian or tribal trust property is exempt from the imposition of a sales tax.

Sec. 22. Method of Collection of Sales Tax.

The tax hereby imposed shall be collected by the retailer from the consumer insofar as it can be done.

Sec. 23. Assumption, absorption of tax by Retailer; Unlawful Advertising.

1. It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.
2. Any person convicted of violating any provision of this section shall be deemed guilty of an offense and upon conviction shall be sentenced to a maximum period of confinement, labor or probation not to exceed one year and pay a maximum fine of \$1,000.00 or both.
3. Irrespective of any criminal punishment or fine, the court may assess a civil penalty not to exceed \$5,000.00 or any violation of this section.

Sec. 24. Separate Display of Tax from List, other Price.

The Tribal Council may, by amendment to this Chapter, provide that the amount collected by the retailer from the consumer in reimbursement of the tax be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale.

Sec. 25. Civil Actions.

The Tribe may bring a civil action against any person to enforce compliance with this Chapter. Such action shall be brought in Tribal Court in accordance with tribal law. The Tribal Court shall have exclusive jurisdiction over any action arising from the imposition of the sales and uses taxes.

Sec. 26. Power to Adopt Regulations.

The Tribal Council shall have the power to adopt any regulations which are necessary to the efficient administration of the Tribe's sales tax as long as such regulations are not in conflict with the provision of this Chapter.