

TRIBAL TAX CODE

ROSEBUD SIOUX TRIBE

Rosebud Reservation
South Dakota

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TRIBAL TAX CODE

ROSEBUD SIOUX TRIBE

Rosebud Reservation
South Dakota

CHAPTER 1: LEGISLATIVE FINDINGS AND PURPOSE

Sec. 101 *Sovereign Power to Tax*—The power to levy taxes and similar exactions is an inherent and essential part of the authority of any government. This power is therefore an aspect of the retained sovereignty of Indian tribes except where it has been limited or withdrawn by federal authority. The Rosebud Sioux Tribe is a sovereign Indian Tribe organized pursuant to the Act of June 18, 1934, 48 Stat. 948, as amended, and governed pursuant to a Constitution and By-Laws ratified on November 23, 1935, and approved by the Commissioner of Indian Affairs on December 20, 1935, as amended from time to time thereafter. Pursuant to the Constitution and By-Laws, the Rosebud Sioux Tribe. This Code is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Tribal Council in Article IV, Section 1(h) of the Tribal Constitution, which authorizes the Tribal Council to levy taxes upon members of the tribe and to levy taxes or license fees upon non-members doing business within the Reservation.

Sec. 102 *Benefits of Tribal Government*—Among the benefits provided by the tribal government to tribal members and to non-members residing or conducting business within the Rosebud Reservation are the following: the provision of governmental services, including sewer and water systems, police and fire protection, and a Tribal Court system of general jurisdiction; the promotion and regulation of economic activities within the Tribes's sovereign jurisdiction; and the protection of Reservation lands and resources.

Sec. 103 *Tribal Need for Governmental Revenue*—Without the exercise of the Tribe's sovereign authority to tax, as implemented by this Code, it is not possible for the Tribe to provide the governmental and other services essential to persons, both Indian and non-Indian, on the Reservation. Absent the enactment of tribal taxes, tribal members bear the financial burden of providing most governmental services through the expenditure of tribal income. The taxes levied under this Code will more equitably distribute the burden of financing tribal governmental services among all persons who engage in business activities within the Reservation or lease Indian lands, and who thus benefit from tribal governmental services.

CHAPTER 2: GENERAL PROVISIONS

Sec. 201 *Definitions*—The following definitions apply throughout this Code, except in any Chapter in which an inconsistent definition is expressly set forth:

- (1) "Business" means any activity engaged in by any person, or caused to be engaged in by any person, with the object of gain, benefit, or advantage, either direct or indirect.
- (2) "Commission" or "Tax Commission" means the Tribal Tax Commission of the Rosebud Sioux Tribe established pursuant to Chapter 3 of this Code.
- (3) "Department of Revenue" or "Department" means the Department of Revenue of the State of South Dakota.
- (4) "Indian" means an individual who is a member, either enrolled or eligible for enrollment, in any Indian tribal entity recognized by the United States. "Indian tribal entity" includes any Indian, Eskimo, or Aleut tribe, band, village, community, pueblo, or organization.

- (5) "Non-Indian" means any person other than an Indian.
- (6) "Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, association, society, political entity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise; provided, that the term does not include: (a) the government of the Rosebud Sioux Tribe and any governmental entities of the Tribe, and (b) any of the above listed forms of business entities that are wholly owned and operated by the Rosebud Sioux Tribe.
- (7) "Reservation" means the Rosebud Reservation, including all lands within the exterior boundaries of the Rosebud Reservation, regardless of ownership of such lands.
- (8) "SDCL" means the South Dakota Codified Laws, as amended.
- (9) "State" means the State of South Dakota.
- (10) "Tribal Council" or "Council" means the Rosebud Sioux Tribal Council, established pursuant to Article III of the Constitution and Bylaws of the Rosebud Sioux Tribe, as the governing body of the Tribe.
- (11) "Tribal member" or "member" means an individual Indian who is enrolled in the Rosebud Sioux Tribe.
- (12) "Tribal territory" means all lands under the taxing or civil regulatory jurisdiction of the Rosebud Sioux Tribe.
- (13) "Tribe" means the Rosebud Sioux Tribe.

Throughout this Code, words in the singular shall include the plural, and words in the plural shall include the singular. Words in one gender shall include all other genders.

Sec. 202 *Tribal Council to Determine All Tax Rates*--All tax rates not expressly set forth in this Code and all amendments to the tax rates set forth in this Code shall be set by the Tribal Council after consideration of the recommendation, if any, of the Tribal Tax Commission; provided, that as to any Chapter which provides for its amendment upon amendment of the laws of the State of South Dakota, the tax rates set forth in such Chapter shall be amended in accordance with such provision.

Sec. 203 *Effective Dates: Codifications of Existing Tax Ordinances and New Provisions*--Chapter 7, 8, 9, 10, 11 of this Code are codifications of existing tax ordinances previously enacted by the Rosebud Sioux Tribal Council and, where applicable, approved by the Secretary of the Interior. The effective dates of the taxes codified in those Chapters of this Code, except where otherwise expressly provided, are effective as of the date of enactment by the Tribal Council.

Sec. 204 *Sovereign Immunity*--The Rosebud Sioux Tribe, and all its constituent parts, including the Tribal Tax Commission established pursuant to this Code, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived by the Tribe or the United States. Nothing in this Code shall be construed as waiving the sovereign

immunity of the Rosebud Sioux Tribe or any of its constituent parts, including the Tribal Tax Commission, except that after exhaustion of administrative remedies as provided in Section 401, a taxpayer aggrieved by the decision of the Tax Commission on a petition for redetermination may petition the Tribal Court pursuant to Section 402, for review of the decision by the Tax Commission. Nothing in Chapter 5 of this Code, and no enforcement action taken pursuant to Chapter 5 of this Code, including without limitation the filing of suit by the Tax Commission for the collection of taxes, penalties, or interest, and for recovery of reasonable attorneys fees and expenses incurred in bringing such action, shall constitute a waiver of sovereign immunity, either as to any counterclaim, regardless of whether the asserted counterclaim arises out of the same transaction or occurrence, or in any other respect.

Sec. 205 *Tribal Tax Account Established--*

- (1) There is hereby authorized and directed to be established an account in some federally-insured financial banking institution or the Bureau of Indian Affairs to be known as the Rosebud Sioux Tribal Tax Account.
- (2) The Tribal Tax Account shall be in an interest-bearing account and the funds therein may be invested and reinvested as may be approved by the Tribal Council.
- (3) No monies shall be released or expended from the Tribal Tax Account, except upon written resolution of the Tribal Council appropriating a specific amount of the monies contained therein for the use of a particular department, agency, or program of the Tribe. Such appropriated amount shall be directly transferred to the account of the receiving department, agency, or program named in the appropriation resolution.
- (4) All tax monies, license fees, penalties, interest, service fees or charges, or other monies collected by the Tax Commission in the administration and enforcement of this Code shall be deposited in the Tribal Tax Account, except as provided in Subsection (5) of this Section.
- (5) The Tax Commission may establish one or more refund accounts in which a portion of the monies described in Subsection (4) of this Section may be deposited, and from which refunds to taxpayers who are lawfully determined by the Tax Commission or Tribal Court to be entitled thereto shall be paid.

Sec. 206 *Savings Clause*—In event that any provision of this Code shall be found or declared to be invalid, the remaining provisions of this Code shall be unaffected thereby, and shall remain in full force and effect.

CHAPTER 3: Tribal Tax Commission

Sec. 301 *Establishing Tax Commission*—There is hereby established the Tribal Tax Commission.

- (1) The Commission shall consist of five members, one of whom shall be designated by the Tribal Council as Chairman of the Commission; provided, that the Chairman of the Budget and Finance Committee of the Tribal Council may not be designated as Chairman of the Commission.

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(2) One member of the Tax Commission shall be the Chairman of the Budget and Finance Committee of the Tribal Council, who shall serve as liaison between the Commission and the Council. The Chairman of the Commission, the other three members of the Commission, and two alternate members of the Commission shall be appointed by the Tribal Council from a list of nominees recommended jointly by the President of the Tribe and the Budget and Finance Committee of the Tribal Council. The president and the Budget and Finance Committee, in recommending nominees, and the Council, in appointing such officials, shall choose members of the Rosebud Sioux Tribe who have appropriate education or business experience, and who are neither elected nor appointed officials of the Tribe, nor otherwise employed on the staff of the Tribe, provided, that non-members of the Tribe may be nominated and appointed when the President, Budget and Finance Committee, and Council determine that the non-members possess education, experience, or background which makes them uniquely qualified to serve. Initial appointments shall be made for the following terms: Chairman of the Commission--four years; one Commission member--three years; one Commission member--two years; one Commission member--one year; one alternate Commission member--three years; one alternate Commission member--one year. Thereafter, all appointments shall be for four-year terms, provided that if a permanent vacancy occurs because of removal or resignation or for any other reason, appointment of a replacement shall be for the remainder of the term of the person being replaced. The Chairman of the Budget and Finance Committee of the Tribal Council shall serve on the Tax Commission for a term concurrent with his term as chairman of the Budget and Finance Committee.

(3) The Revenue Director shall be a full-time paid employee of the Tribe, selected jointly by the President of the Tribe and the Budget and Finance Committee of the Tribal Council, with the approval of the Tribal Council. The Revenue Director shall be subject to the provisions of the Tribal Personnel and Policy Procedure Manual. The Tribal Council may assign the Revenue Director additional duties, to the extent that such additional duties do not conflict with the performance of his duties as Revenue Director.

(4) The Revenue Director shall have primary responsibility for day-to-day oversight of the operation of the Tribal Tax Commission and all employees and advisors of the Tax Commission, but shall not be a member of the Commission.

Sec. 302 Quorum and Voting Tax Commission Members.

(1) A quorum of the Tax Commission shall consist of three members.

(2) The Chairman or Acting Chairman of the Tax Commission shall not vote except when necessary to break a tie vote.

(3) Action by the Tax Commission shall be by majority vote

(4) In voting upon a petition for redetermination filed pursuant to Section 401, any abstention by a member of the Commission shall be counted as a vote to deny the petition.

Sec. 303 *Recusal of Tax Members*

- (1) For purposes of this Section, "immediate family" means brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half brother, half sister, or brother, sister, son, daughter, mother or father by adoption.
- (2) No member of the Tax Commission shall participate in any action or decision by the Commission directly involving his own tax liability, or the tax liability of a member of his immediate family, or the tax liability of any person, business or other entity of which he or a member of his immediate family is an employee, or in which he or a member of his immediate family has a substantial ownership interest, or with which he or a member of his immediate family has a substantial contractual relationship.
- (3) Nothing in this Section shall preclude a Commission member from participating in any action or decision by the Commission which:
 - (a) generally affects a class of taxpayers, regardless of whether the Commission member or a member of his immediate family is a member of the affected class;
 - (b) affects the Trosbud Sioux Tribe, a tribal enterprise, or a person or entity in a contractual relationship with the Tribe or a tribal enterprise, regardless of whether the Commission member is also a member of the Tribe.
- (4) A member of the Tax Commission may voluntarily recuse himself and decline to participate in any action or decision by the Commission when the member, in his own discretion, believes:
 - (a) that he cannot act fairly or without bias; or
 - (b) that there would be an appearance that he could not act fairly or without bias.

Sec. 304 *Temporary Members and Acting Chairman of the Tax Commission*—The Tax Commission shall select one of its members to serve as Vice Chairman. Whenever the Chairman of the Commission is unavailable because of his recusal or any other reason, the Vice Chairman shall serve as Acting Chairman of the Tax Commission. If the Vice Chairman is also unavailable, the Tax Commission shall provide by regulation for another of its members to serve as Acting Chairman. Alternate members of the Commission shall serve temporarily as members of the Commission only when necessary for the Commission to achieve a quorum of three members.

Sec. 305 *Rules of the Tax Commission*

- (1) The Commission shall promulgate and enforce such written rules and regulations as are necessary to carry out the orderly performance of its duties, including but not limited to rules and regulation relating to:
 - (a) internal operational procedures of the Commission and its staff;

- (b) interpretation and application of this Code as may be necessary to ascertain or compute the tax owed by any taxpayer;
- (c) the filing of any reports or returns required by, or necessary to implement, this Code; and
- (d) the conduct of inspections, investigations, hearings, enforcement actions, and other authorized activities of the Commission.

(2) Such rules shall provide for a hearing for all interested persons prior to a recommendation by the Commission to interested persons prior to a recommendation by the Commission to the Tribal Council that a tax be established or a tax rate be adjusted, unless the Commission determines that a fiscal emergency exists. Such rules shall provide for reasonable notice to interested persons of the hearing and their right to present oral or written testimony.

(3) No rule or regulation of the Tax Commission shall be of any force or effect until and unless copies of the rule or regulation have been filed for record in the office of the Secretary of the Tribe and in the office of the Clerk of the Tribal Court. The copies shall bear the signature of at least two Commission members, certifying that the rule or regulation was duly adopted by the Commission pursuant to this Code.

(4) The Tribal Court shall take judicial notice of all rules and regulation of the Tax Commission promulgated pursuant to this Code.

Sec. 306 *Powers of the Tax Commission.*—The Tribal Tax Commission shall have the following powers:

- (1) To promulgate and enforce rules and regulations consistent with this Code as provided in Section 305.
- (2) To determine, levy, and collect all taxes authorized by this Code.
- (3) To employ and consult with such advisors regarding the setting of tax rates for all taxes authorized by this Code, and regarding the amendment of this Code.
- (4) To make recommendations to the Tribal Council regarding the setting of tax rates for all taxes authorized by this Code, and regarding the amendment of this Code.
- (5) To hear and rule upon a petition by any taxpayer for redetermination of any taxes levied pursuant to this Code, as provided in Section 401; but the Tax Commission shall have no power to alter tax rates established by the Tribal Council pursuant to this Code or to declare any portion of this Code void for any reason.
- (6) To publish and make available to the public standard forms, and to require by regulation the filing of any forms or reports necessary implementation of this Code.
- (7) To administer oath, conduct hearings, and, by subpoena, to compel the attendance of witnesses and the production of any books, records, papers, vouchers, accounts, documents, and financial statements of any taxpayer or any other person relating to the enforcement of this Code.

(8) To make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment facilities, tangible personal property, and the books, records, papers, vouchers, accounts, documents, and financial statements of any taxpayer, during normal business hours, or at any other time agreed to by the taxpayer, or at any time whatsoever pursuant to a search warrant issued by the Tribal Court.

(9) To examine, under oath, either orally or in writing, any taxpayer or agent, officer, or employee of any taxpayer, or any other witness with respect to any matter related to this Code.

(10) To enter into and to renew tax collection and enforcement agreements with the State of South Dakota, provided, that any such agreement shall have an effective date no less than thirty days after its approval by the Commission unless the Tribal Council by resolution approves an earlier effective date, and provided further, that during the period between approval by the Commission and the effective date, such agreement may by resolution be vetoed by the Tribal Council, in which case the agreement shall have no effect.

(11) To delegate to an individual member of the Commission, to an individual member of the Tribal Council or to the Revenue Director or other members of the Commission staff or tribal staff, such of its functions as may be necessary to administer this Code efficiently, provided that the Commission may not delegate its powers to promulgate rules and regulation, to hear and rule upon petitions for determination of taxes, or to enter into tax collection agreements with the State of South Dakota.

(12) To adopt by regulation a schedule of fees and charges for services rendered relation to transcripts and the furnishing or certifying of copies of proceedings, files, and records. Such fees and charges shall be credited to miscellaneous receipts of the Commission and deposited in the Tribal Tax Account.

(13) To exercise all other authority delegated to or conferred upon it by law, or as may be reasonably necessary in the administration or enforcement of any provisions of this Code.

Sec. 307 *Tax Commission Employees and Expenses*

(1) The Tax Commission may employ such employees and incur such expenses as may be necessary for the proper discharge of its duties subject to the limitations and restrictions set out in this Section.

(2) The Tax Commission may utilize regular tribal staff in exercising the duties and responsibilities set out in this Code, and may delegate to the tribal staff by rule such of its functions as may be necessary to administer this Code efficiently, consistent with the limitations of Section 306 (11).

(3) The total amount disbursed by the Tax Commission in any one fiscal year for the payment of salaries, expenses, and incidentals shall not exceed the amount appropriated therefor by the Tribal Council, a line item proposed budget for the next fiscal year not later than August 15 each year.

Sec. 308 *Bonds*

- (1) The Tax Commission may require its members and each of its officials and employees who may handle tribal monies or revenues, or who are responsible therefor, to give a bond for the honest and faithful performance of their duties, in such amounts as may be fixed by the Commission.
- (2) The premiums on any bonds required of the Tax Commission members, officials, and its employees shall be paid from funds authorized in the Tax Commission budget.

Sec. 309 *Records of the Tax Commission*

- (1) The Tax Commission shall keep and maintain accurate, complete, and detailed records which reflect all taxes, penalties, and interest levied, due, and paid, and each and every official transaction, communication, or action of the Commission.
- (2) Such records shall be maintained at the Office of the Tax Commission and shall not be removed from that location without the consent of the Tax Commission by formal resolution.
- (3) Such records shall be subject to audit at any time upon the direction of the Tribal Council, and shall be audited not less than once each year by an independent auditor selected by the Tax Commission with the approval of the Tribal Council.
- (4) Any records of the Tax Commission, except the records of administrative appeals, which relate to the individual business or personal activities of a named particular taxpayer or taxpayers, shall not be opened to public inspection and shall be released only to the taxpayer involved, persons duly authorized by the taxpayer in writing to have access to such records, or upon the order of the Tribal Court for good cause shown.
- (5) Any records of the Tax Commission which do not relate to the individual business or personal activities of a named particular taxpayer or taxpayers, and any records of administrative appeals, shall be public records of the Tribe and shall be available for public inspection during regular business hours. Copies of such records may be obtained by payment of such copying cost as may be established by rule of the Commission, provided, that names and other identification of any taxpayer appearing in such records shall be rendered unreadable prior to release of such copies unless the provisions of Subsection (2) and (4) of this Section would allow release of such information.
- (6) Any disclosure of records or their contents in violation of this Section shall be punishable by all of the following sanctions that are applicable to the individual making of causing the disclosure:
 - (a) if the disclosure is by an elected or appointed tribal official and is intentional-permanent removal from office;

(b) if the disclosure is by an elected or appointed tribal official and is intentional--permanent removal from office;

(c) if the disclosure is by a member of the Tribe and is intentional--imprisonment for not more than six months or a fine of not more than \$500, or both such imprisonment and fine.

(d) if the disclosure is by a non-member of the Tribe and is intentional--temporary or permanent exclusion from the Reservation pursuant to the tribal Exclusion Ordinance, if any, and a civil penalty of not more than \$500, or both such exclusion and civil penalty;

(e) if the disclosure is inadvertent--civil penalty of at least \$25 but not more than \$250.

The Tribal Court shall determine the applicability of Subsections (a) through (e) to the individual making or causing the unauthorized disclosure, and shall impose the appropriate sanction or sanctions.

Sec. 310. *Compensation of Tax Commission Members*--Commission members and alternate Commission members shall be compensated and shall be reimbursed for official expenses at rates established by the Tribal Council. No compensation shall be paid when they are not performing official duties or actually attending a meeting of the Commission. Alternate Commission members shall not be compensated for attending Commission meetings unless their attendance is requested by the Commission or Revenue Director or they are actually serving as temporary members of the Commission pursuant to Section 304.

Sec. 311 *Temporary and Permanent Removal from Office--Replacement*

(1) Any Commission member and any alternate Commission member may be permanently removed from office on the same basis and under the same procedures that apply to removal of a member of the Tribal Council pursuant to Article VII of the Constitution and Bylaws of the Rosebud Sioux Tribe.

(2) The Revenue Director, any Commission member, or any alternate Commission member shall automatically be removed temporarily from office whenever such official has failed to pay when due any taxes owed by him or has failed to file as a taxpayer. The temporary removal shall remain in effect until the official has filed any returns, forms, and reports due, and has paid in full all taxes due, together with any penalties and interest due.

(3) Upon permanent removal of any such official, as provided in Subsection (1) of this Section, the Tribal Council shall appoint a replacement for the remainder of the official's term of office, as provided in Subsection (2) of this Section.

CHAPTER 4: APPEALS

Sec. 401 *Petitions for Redetermination by Tax Commission*

- (1) If any taxpayer, having paid the taxes levied pursuant to this Code and any applicable penalties and interest, feels aggrieved thereby or discovers that the taxes were incorrectly calculated, he may, within one year after the due date of such return and payment, apply to the Tax Commission by petition in writing for a redetermination of the amount of tax so paid. The petition for redetermination shall set forth the facts and arguments supporting the petition and the amount by which the tax should be reduced. Any refund of taxes that were due more than one year prior to the filing of the petition is forever barred.
- (2) Upon receipt of a petition for redetermination, the Tax Commission shall give notice and an opportunity to be heard to the taxpayer seeking redetermination.
- (3) The Commission may redetermine taxes based on correction of tax computation, or corrections to the classification of property or income; but the Tax Commission shall have no power to alter tax rates established pursuant to this Code or to declare any portion of this Code void for any reason.
- (4) Refunds ordered by the Commission as a result of any redetermination shall bear simple interest at the rate of 10% per year from the date of the overpayment to the date of refund; provided, that no interest shall be paid on a refund when the Commission determines that the refund is for an overpayment that resulted from the negligence of the taxpayer.

Sec. 402 *Review by Tribal Court*

- (1) Within 30 days after notice of any decision by the Tax Commission on a petition for redetermination, any taxpayer aggrieved thereby may petition the Rosebud Sioux Tribal Court for review of the decision by the Tax Commission.
- (2) Upon such review, which shall be by the Court sitting without jury, no new or additional evidence may be introduced, but the matter shall be heard on the record established before the Tax Commission as certified by the Commission.
- (3) Before making such petition to the Tribal Court, the full amount of taxes, interest, penalties, and any other charges determined to be due by the Tax Commission must be deposited with the Commission or an undertaking filed in such amount and with such sureties as the Commission shall require, sufficient to satisfy any taxes, interest and penalties, and any charges incident to the appeal.
- (4) The Tribal Court shall uphold all factual findings by the Commission unless the Court determines that such findings are not supported by substantial evidence in the record established before the Tax Commission, the Court shall give proper weight to the Commission's interpretation of this Code and any regulations promulgated thereunder.

(5) The determination of the Tribal Court is final, and no further appeal shall be allowed.

(6) In no event is the Court authorized to alter tax rates established pursuant to this Code, to enjoin the collection of any taxes pursuant to this Code, or to award or order the payment of damages or to fashion any remedy except to order a refund of the amount of taxes, penalties, interest, or other charges in controversy, plus interest on the refund as provided in Subsection (7) of this Section, unless an additional remedy is specifically provided by this Code.

(7) Refunds ordered by the Court shall bear simple interest at the rate of 10% per year from the date of the overpayment to the date of the refund; provided, that no interest shall be paid on a refund when the Court determines that the refund is for an overpayment that resulted from the negligence of the taxpayer.

CHAPTER 5: ENFORCEMENT

Sec. 501 *Suit to Collect Taxes, Penalties, and Interest*—The Tax Commission is hereby authorized to bring any necessary actions in the Tribal Court or any other appropriate court of the collection of any taxes, penalties, or interest assessed and unpaid, and for recovery of reasonable attorneys fees and expenses incurred in bringing such action. Such actions shall be civil in nature and all penalties, interest, attorneys fees, and expenses shall be in the form of civil damages, unless otherwise expressly provided in this Code. Any civil remedies, including but not limited to garnishment, attachment, and execution, shall be available for the collection of any monies due the Tribe. The Tax Commission may request the tribal attorney to bring such actions when the approval of the Tribal Council has been previously obtained. In all other cases, the Tax Commission shall be represented in the Tribal Court by the Tribal Prosecutor or Assistant Prosecutor.

Sec. 502 *Injunctions*—In addition to all other remedies provided for in this Chapter, the Tax Commission is authorized to bring an action in the Tribal Court or any other appropriate court to enjoin the beginning or operation of any unlicensed business, activity, or function when tribal law requires a license to be issued for such business, activity, or function willfully fails to comply with any provision of this Code or any of the rules and regulations which the Tax Commission is authorized by this Code promulgate.

Sec. 503. *Seizure of Property*—In addition to all other remedies provided for in this Chapter, whenever the Tax Commission determines that taxes, interest, or penalties are owed by a taxpayer and are delinquent, and that delay may prejudice the recovery of such overdue taxes, interest, or penalties, the Commission may apply to the Tribal Court for issuance of a distress warrant authorizing the seizure of any personal property and real property located within the Reservation and belonging to the taxpayer, except exempt property as listed in Section 506. Such application for a distress warrant may be made without notice to the delinquent taxpayer. The Tribal Court shall forthwith issue the distress warrant unless the Court finds (a) that there is no basis whatsoever for the determination by the Commission that delay may prejudice the recovery of such overdue taxes, interest, or penalties. Seizure pursuant to the distress warrant may be carried out by a member, employee, or agent of the Tax Commission, when accompanied by a law enforcement officer of the Tribe or the Bureau of Indian Affairs. Within ten days of such seizure, the Tax Commission shall cause an action to be filed in the Tribal Court or other court of competent jurisdiction against such property alleging the

nonpayment of tax or other lawful reason for such seizure and forfeiture. Upon proof, the Court shall order such property forfeited for non-payment of taxes and title thereto vested in the Rosebud Sioux Tribe. Any person claiming ownership, the right to possession, or other interest in such seized property may intervene in such court action and raise any defenses that he may have, and any such person shall be served with process if he is known prior to the beginning of the action. Any such person may redeem seized property at any time prior to the entry of a final judgment of forfeiture by depositing with the court all taxes, penalties, interest, attorney's fees and expenses and other fees or charges assessed against or owed by the taxpayer.

Sec. 504 *Inventory of Seized Property*--Whenever any authorized person shall seize any property pursuant to this Chapter, he shall inventory and appraise such property and leave a copy thereof with the person from whom it is seized, or if such person cannot be found, at the place from which such property is seized, and deliver a copy of the inventory to the Tax Commission and the Tribal Prosecutor.

Sec. 505 *Public Sale of Forfeited Property*--

(1) Upon entry of a final order of forfeiture by the Court, the Tax Commission shall circulate an inventory of forfeited property to all divisions of the tribal government. Any agency of the tribal government may submit a request to the Tribal Council that such portion of the forfeited property as it can use be retained for the benefit of the Tribe. The Tribal Council shall determine which property will be retained and shall order the Tax Commission to conduct a public sale of the remainder, or to destroy any property which cannot be legally possessed.

(2) The property to be sold shall be sold at public auction at the headquarters of the Rosebud Sioux Tribe. Notice of such sale shall be posted in the tribal headquarters at least 20 days before the sale and published at least twice in a newspaper of general circulation in the vicinity of the Rosebud Reservation at least ten days before the sale. All funds received at the sale, in excess of the costs of the sale, shall be deposited in the Tribal Tax Account except as provided in Subsection (4) of this Section.

(3) The Tax Commission may conduct a sale at such times as it deems sufficient property has accumulated to make the sale profitable, and shall also conduct a sale upon direction of the Tribal Council.

(4) The seizure, forfeiture, and sale of any property which is not destroyed as contraband pursuant to Subsection (1) of this Section, shall reduce the liability for payment of taxes, penalties, interest and other fees and charges of the person from whom such property was seized, by the sale price, less costs of the sale and attorneys' fees and expenses incident to the forfeiture action, or in the case of property retained for the benefit of the Tribe, by the fair market value of such property, less attorneys' fees and expenses incident to the forfeiture action. Any excess shall be credited to the taxpayer's account, to be applied toward future tribal taxes, unless the taxpayer demonstrates to the Tax Commission by convincing evidence that no future taxes will be owed to the Tribe by the taxpayer, in which case such excess shall be refunded to the taxpayer.

Sec. 506 *Exempt Property*--The following property shall be exempt from garnishment, attachment, execution, and sale for the payment of taxes, penalties, and interest due the Rosebud Sioux Tribe:

- (1) Three-fourths of the net wages earned per week by the person or an amount equivalent to 40 times the federal minimum hourly wage per week, whichever is greater.
- (2) One automobile of fair market value equity not exceeding \$2,000.
- (3) Tools, equipment, utensils, or books necessary to the conduct of the person's business but not including stock or inventory.
- (4) Trust or restricted title to any lands held in trust by the United States or subject to restrictions against alienation imposed by the United States, but not including lease hold or other possessory interests in such property.
- (5) Any dwelling used as the actual residence of the taxpayer including up to five acres of land upon which such dwelling is located, regardless of whether such dwelling is owned or leased by the taxpayer.
- (6) Household goods, furniture, wearing apparel, personal effects, and up to two firearms, but not including televisions, radios, phonographs, tape and video recorders, more than two firearms, works of art and other recreational or luxury items.
- (7) One horse, one bridle, and one saddle.
- (8) All implements of husbandry used upon a homestead.
- (9) All ceremonial or religious items.

Sec. 507 *Enforcement of Subpoenas*--Upon the failure of any person to comply with a subpoena issued by the Tax Commission pursuant to Section 306(7), the Commission shall apply to the Tribal Court for issuance of a show cause order. The show cause order shall be issued by the Tribal Court forthwith, without notice or hearing, unless the Court finds that the subpoena was not lawfully issued or that the subpoena was not properly served. The show caused order, which shall be promptly served, shall state that the person against whom the subpoena was issued shall comply with the subpoena within ten days or show cause why he should not be held in contempt of court.

Sec. 508 *Liens*

- (1) Any tax, interest or penalty due from any person shall be a lien in favor of the Rosebud Sioux Tribe upon all property, whether real or personal, belonging to the taxpayer, except real property held in trust by the United States or real property owned by an Indian and subject to federally imposed restrictions against alienation. In order to preserve the lien against subsequent mortgages, judgment creditors or purchasers for value, who do not have actual notice of the lien, the Tax Commission shall file with the Tribal Court, the Superintendent, Rosebud Agency, and the register of deeds of the county in which the property is located, a notice of the lien in such form as it shall elect.

(2) Upon payment of the tax, interest and penalty, the Tax Commission shall file forthwith with the Tribal Court, the Superintendent, Rosebud Agency, and the registrar of deeds in any county in which the lien was recorded, a notice of satisfaction of lien.

Sec. 509 *Exclusion of Non-Members from Rosebud Lands*--In addition to all other remedies provided for in this Chapter, the Tax Commission is authorized to request that an action be brought pursuant to the tribal Exclusion Ordinance, if any, to temporarily or permanently exclude from all or any portion of Rosebud lands, any non-member of the Rosebud Sioux Tribe who willfully fails to comply with any provision of this Code or any of the rules and regulation which the Tax Commission is authorized by this Code to promulgate, provided, that such action may not be brought against a person authorized by federal law to be present on such lands. As used in this Section, "Rosebud lands" means the Tribal Land Enterprise, or any other tribal entity, regardless of whether such lands are located inside or outside the Rosebud Reservation, and (2) allotments inside the Rosebud Reservation which are either held in trust by the United States for an individual Indian or Indians, or owned by an individual Indian or Indians and subject to restrictions upon alienation imposed by the United States; provided, that the term does not include public highways on such lands.

CHAPTER 6: Penalties and Interest

Sec. 601. *Imposition of Penalties and Interest Charges*.--The following civil penalties and interest charges are imposed with respect to all taxes levied pursuant to this Code:

(1) Penalty for late filing of any form or return: 5% of net tax due, per month or portion thereof, up to a maximum of 25% of net tax due, but not less than \$25, in addition to any other penalties and any interest charges imposed pursuant to this Chapter.

(2) Penalty for late payment or underpayment of any tax: 1% of net tax due, per month or portion thereof, up to a maximum of 25% of net tax due, in addition to any other penalties and any interest charges imposed pursuant to this Chapter.

(3) Penalty for willful failure to file any form of return or to pay any tax when due, or will full filing of a frivolous form or return: 25% of net tax due or \$250, whichever is greater, in addition to any other penalties and any interest charges imposed pursuant to this Chapter.

(4) Penalty for will full misrepresentation which results in underpayment of any tax, or any other act of fraud: 50% of net tax due or \$500, whichever is greater, in addition to any other penalties and any interest charges imposed pursuant to this Chapter.

(5) Interest on all late payments and underpayments: 1-1/2% of net tax due per month or any portion thereof.

(6) Attorneys' fees and costs incident to any administrative or judicial proceeding brought to enforce the provisions of this Code.

Sec. 602. *Waiver of Penalties*.--For good cause, the Tax Commission may waive any penalties imposed pursuant to Section 601, except the penalty for willful misrepresentation or fraud contained in Section 601(4), but shall not waive interest charges pursuant to Section 601(5).

CHAPTER 7: RETAIL SALES AND SERVICE TAX

Sec. 701 *Definitions*--The definitions in Section 201 apply to this Chapter. In addition, in this Chapter, except where the context clearly indicates a different meaning:

- (1) "Gross receipts" means the amount received in money, credits, property, or other money's worth in consideration of sales at retail within the Rosebud Reservation, without any deduction on account of the cost of the property sold, the cost of materials used, the cost of labor or services purchased, amounts paid for interest or discounts, or any other expenses whatsoever, no shall any deduction be allowed for losses. Discount for any purpose allowed and taken on sales shall not be included as gross receipts, nor shall the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. On all sales of retailers, valued in money, when such sales are made under conditional sales contract, or under other forms of sale wherein the payment of the principal sum thereunder be extended over a period longer than sixty days from the date of sale thereof, only such portion of the sale amount thereof shall be accounted, for the purpose of imposition of tax imposed by this Chapter, as has actually been received in cash by the retailer during each quarterly period as defined herein;
- (2) "Relief agency" means the Tribe, State any county, city and county, city, or district thereof, or any agency engaged in actual relief work;
- (3) "Retail sale" or "Sale at retail" means the sale of either tangible personal property or services, or both tangible personal property and services to the consumer or user thereof, or to any person for any purpose other than for resale; the sale of natural or artificial gas, electric energy, water, and communication service to consumers or users; and the sale of tickets or admissions to places of amusement or athletic contests;
- (4) "Retailer" includes every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or the furnishing of gas, electricity, water, and communication service, and tickets or admissions to places of amusement and athletic events as provided in this Chapter. "Retailer" also includes every person subject to the tax imposed by Sections 706 and 708. The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as engaging in the business of selling such tangible personal property at retail does not constitute such person a retailer;
- (5) "Sale" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;
- (6) "Agricultural purposes" means the producing, raising or growing and harvesting of food or fiber upon agricultural land, including dairy products, livestock and crops. The services of custom harvesters, chemical applicators, fertilizer spreaders and cultivators are considered agricultural purposes.

Sec. 702 *Tax on Sale of Tangible Property*--There is hereby imposed a tax upon the privilege of engaging in business as a retailer, a tax of 4% upon the gross receipts of all sales of tangible personal property consisting of goods, wares, or merchandise, except as taxed by Section 705 and except as otherwise provided in this Chapter, sold at retail within the Reservation to consumers or users.

Sec. 703 *Tax on Sales of Sectional Homes--Sectional Homes Defined.*--Sales of sectional homes are subject to sales tax, which shall be based upon the fair market value of the raw materials used to construct each home. For the purpose of this section, "Sectional homes" means any home pre-built in whole or in part for the purpose of permanent placement on a foundation. Mobile homes as defined in subdivision (1) of SDCL 34-34A-1 are not sectional.

Sec. 704 *Materials Incorporated in Construction Work--Restriction on Application of Rate Increase*--No tax increase imposed after March 9, 1984 may be levied on materials incorporated in construction work pursuant to construction contracts bid or entered into on or before the effective date of the tax increase.

Sec. 705 *Tax on Sale of Farm Machinery and Irrigation Equipment*--There is hereby imposed a tax of 3% on the gross receipts from the sale or resale of farm machinery and attachment units other than replacement parts; or irrigation equipment used exclusively for agricultural purposes by licensed Reservation retailers; provided, however, that whenever any trade-in or exchange of used farm machinery is involved in the transaction, the tax shall only be due and collected on the cash difference.

Sec. 706 *Tax on Receipts from Business Services*--There is hereby imposed a tax at the same rate as that imposed upon sales of tangible personal property within the Reservation upon the gross receipts of any person from the engaging or continuing in the practice, within the Reservation, of any business in which a service is rendered. Any service as defined in Section 707 shall be taxable, unless the service is specifically exempt from the provisions of this Chapter.

Sec. 707 *Services Subject to Taxation*--"Service" means all activities engaged in for other persons for a fee, retainer, commission, or other monetary charge, which activities involve predominantly the performance of a service as distinguished from selling property. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. For the purposes of this Chapter, services rendered by an employee for his employer are not taxable.

Sec. 708 *Tax on Receipts from Specific Enumerated Businesses and Services*--There is imposed a tax at the rate of 3% upon the gross receipts of any person from engaging in the business of leasing farm machinery or irrigation equipment used for agricultural purposes and 4% upon the gross receipts of any person from engaging or continuing in any of the following businesses or services within the Reservation: abstracters; accountants; architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing; dry cleaning; dyeing; exterminators; garage and service stations; garment alteration; cleaning and pressing; janitorial services and supplies; specialty cleaners; laundry; linen and towel supply; membership or entrance fees for the use of a facility or for the right to purchase tangible personal property or services; photography; photo developing and enlarging; tire recapping; welding and all repair services; cable television; and rentals of tangible personal property except leases of tangible personal property between one telephone company and another

telephone company, motor vehicles as defined by SDCL 32-5-1 leased under a single contract for more than twenty-eight days and mobile homes; provided, however, that the specific enumeration of businesses and professions made in this section does not, in any way, limit the scope and effect of Section 706.

Sec. 709 Coin Operated Washers and Dryers--License in Lieu of Tax--Failure to Pay Fee--Interest--Collection--The annual license fee for each coin operated washer and dryer within the Reservation is \$10.00. However, in municipalities having a population of one thousand persons or less, the annual license fee is \$8.00. The license fee is in lieu of any sales or gross receipts taxes from the operation or ownership of coin operated washers and dryers. Any person who fails to pay the fee prescribed on or before December thirty-first of the year prior to the year for which the fee is due is subject to the interest and penalty charges set forth in Chapter 6.

Sec. 710 Services Enumerated in Standard Industrial Classification Manual Subject to Tax-- The following services enumerated in the Standard Industrial Classification Manual, 1972, as prepared by the statistical policy division of the Office of Management and Budget, Office of the President of the United States, are specifically subject to the tax levied by this Chapter: metal mining services (group no. 108); anthracite mining services (industry no. 1112); bituminous coal and lignite mining services (industry no. 1213); nonmetallic minerals (except fuels) services (group no. 148); service industries for the printing trade (group no. 279); coating, engraving and allied services (group no. 347); communication, electric and gas services (division E); hotels, motels, and tourist courts (group no. 701); rooming and boarding houses (group no. 702); camps and trailering parks (group no. 703); personal services (major group 72); business services (major group 75); miscellaneous repair services (major group 76); amusement and recreation services, (major group 79); legal services (major group 81); landscape and horticultural services (group no. 078); engineering, architectural, and surveying services (group no. 891); and accounting, auditing, and bookkeeping services (group no. 893). In addition, the following services are also specifically subject to the tax levied in this Chapter: livestock slaughtering services; dog grooming services; abstractor's services; collection agent's services; real estate agent's services; all appraiser's services; funeral services and crematories (group no. 726) except that purchases of goods or services with money advanced as an accommodation are retail purchases and not includable in gross receipts for funeral services and fees paid or donated for religious ceremonies are not includable in gross receipts for funeral services; and loan broker's services. The services enumerated in this section shall not be construed as a comprehensive list of taxable services but rather as a representative list of services intended to be taxable under this Chapter.

*Sec. 711 Tax on Oil and Gas Field Service--*There is imposed, at the rate of 2%, an excise tax on the gross receipts of any person engaging in oil and gas field service (group no. 138) as enumerated in the standard Industrial Classification Manual, 1972, as prepared by the statistical policy division of the Office of Management and Budget, Office of the President of the United States.

*Sec. 712 Rented Property Used or Delivered Within the Reservation--*The tax imposed upon persons engaging or continuing in the business of renting tangible personal property applies if the rented property is used within the Reservation or is delivered to the lessee or sublessee within the Reservation.

*Sec. 713 Tax on Utility Services--*There is hereby imposed a tax of 4% upon the gross receipts from sales, furnishing, or service of gas, electricity, and water, including the gross receipts from such sales by any municipal corporation furnishing gas, and electricity, to the public in its proprietary capacity, except as otherwise provided in this Chapter, when sold at retail within the Reservation to consumers or users.

Sec. 714 *Tax on Utility Services*--There is hereby imposed on amounts paid for local telephone services, toll telephone services and teletypewriter services, a tax of 4% of the amount so paid, the taxes imposed by this section shall be paid by the person paying for the services. If a bill is rendered the taxpayer for local telephone service or toll telephone service, the amount on which the tax with respect to such services shall be based shall be the sum of all charges for such services included in the bill; except that if a person who renders the bill groups individual items for purposes of rendering the bill and computing the tax, then the amount on which the tax for each such group shall be based shall be the sum of all items within that group, and the tax on the remaining items not included in any such group shall be based on the charge for each item separately. If the tax imposed by this section with respect to toll telephone service is paid by inserting coins in coin operated telephones, the tax shall be computed to the nearest multiple of five cents, except that, where the tax is midway between multiples of five cents, the next higher multiple shall apply. The tax so paid shall be remitted at the same time as the sales tax imposed by this Chapter.

Sec. 715 *Tax on Room or Parking Site Rentals to Transient Guests*--There is hereby imposed a tax at the same rate as that imposed upon sales of tangible personal property within the Reservation upon the gross receipts from rentals of rooms or parking sites by lodging establishments or campgrounds received from transient guests. Lodging establishment shall mean any building, structure, property or premise kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished in two or more rental units to transient guests. Campgrounds shall mean any property or premise kept, used, maintained, advertised or held out to the public to be a place where sites are available for the placing of tents, campers, trailers, mobile homes or other mobile accommodations in two or more rental units to transient guests. Transient guest means any person who resides in a lodging establishment or campground less than twenty-eight as otherwise provided in this Chapter.

Sec. 716 *Tax on Admissions to Amusements and Athletic Events*--There is imposed a tax of 4% upon the gross receipts from all sales of tickets or admissions to places of amusement and athletic events, except as otherwise provided in this Chapter.

Sec. 717 *Tax on Vending Machine Receipts*--There is hereby imposed a tax of 3% upon the gross receipts reported from the operation of all vending machines.

Sec. 718 *Exemption of Cigarette Sales*--Section 716 and 717 do not apply to gross receipts derived from the sale of cigarettes through vending machines.

Sec. 719 *Amusement Device Tax*--There is imposed upon owners and operators a special amusement excise tax of 3% of the gross receipts from the operation of any mechanical or electronic amusement device.

Sec. 720 *Constitutional and Statutory Exemptions from Taxation*--There are hereby specifically exempted from the provisions of this Chapter and from computation of the amount of tax imposed by it, the gross receipts from sales of tangible personal property which the Tribe is prohibited from taxing under the Constitution or laws of the United States or under the Constitution and Bylaws of the Rosebud Sioux Tribe.

Sec. 721 *Exemption of Property Sold for Lease*--Gross receipts from the sale of tangible personal property to a person who intends to lease the property to persons within the Reservation and actually does so are exempted from the provisions of this Chapter and the tax imposed by it.

Sec. 722 *Exempt Sales to States, Municipalities, Charities and Indian Tribes*--There are hereby specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, the gross receipts from sales of tangible personal property and the sale, furnishing or service of electrical energy, natural and artificial gas and communication service to the United States, to the state of South Dakota or to any other state of the United States or the District of Columbia, to public or municipal corporations of the state of South Dakota or of any other state of the United States or the District of Columbia, to any nonprofit charitable organization which devotes its resources exclusively to the relief of the poor, distressed or underprivileged, and has been recognized as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, or to any Indian tribe.

Sec. 723 *Exemption of Sales Otherwise Taxed*--There are hereby specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, gross receipts from the sale of gasoline, motor fuel, and special fuel subject to tax under SDCL Chapter 10-48 or Tribal law, and cigarettes already taxed or exempt under the laws of the Tribe.

Sec. 724 *Exemption of Goods and Services Furnished to Meet Warranty Obligation Without Charge*--There are hereby specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, the gross receipts from furnishing goods or services to the purchaser or his successor in interest of tangible personal property to fulfill a warranty obligation of the manufacturer to the extent that such goods or services are not charged to such purchaser or his successor in interest.

Sec. 725 *Services Specifically Exempt from Tax*--The following services enumerated in the Standard Industrial Classification Manual, 1972, as prepared by the statistical policy division of the Office of Management and Budget, Office of the President of the United States are exempt from the provisions of this Chapter: health service (major group 80); educational services (major group 82); social services (major group 83); agricultural services (major group 07); forestry services (group no. 085); radio and television broadcasting (group no. 483); railroad transportation (major group 40); local and suburban passenger transportation (major group 411); taxicabs (group 412); intercity and rural highway passenger transportation (group 413); passenger transportation charger service (group 414); school buses (group 415); establishments primarily engaged in trucking, local and long distance (group 421); farm product warehousing and storage (industry no. 4221); establishment primarily engaged in transportation on rivers and canals (group 444); establishment primarily engaged in air transportation, certified carriers (group 451); establishments primarily engaged in air transportation, noncertified carriers (group 452); pipe lines, except natural gas (major group 46); freight forwarding (group 471); arrangement of transportation (group 472); rental of railroad cars (group 474); water supply (industry no. 4941); sewerage systems (industry no. 4952); and refuse systems (industry no. 4953). The following are also specifically exempt from the provisions of this Chapter: financial services including loan origination fees, late payment charges, nonsufficient fund check charges, stop payment charges, safe deposit box rent, exchange charges, commission on travelers checks, and charges for administration of trusts; interest charges, and "points" charged on loans; commissions earned or service fees paid by an insurance company to an agent or representative for the sale of a policy; stock and commodity brokers service; services of brokers and agents licensed under SDCL Title 47; the sale of trading stamps; veterinarians services; construction services (division C); rentals of motor vehicles as defined by SDCL 32-5-1 leased under a single contract for more than twenty-eight days; advertising services; services provided by any corporation to another corporation which is centrally assessed having identical ownership and services provided by any corporation to a wholly owned subsidiary which is centrally assessed; newspaper sales and subscriptions and motion picture rentals; bill collection services or collection agent's service, if the debt was incurred outside the Reservation and the client does not reside within the Reservation.

Sec. 726 *Exemption of Engineering, Architectural and Surveying Services*--There are specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by Sections 706 and 708, the gross receipts from engineering, architectural and surveying services (group no. 891, Standard Industrial Classification Manual, 1972, as prepared by the statistical policy division of the Office of Management and Budget, Office of the President of the United States) rendered for a project entirely outside the Reservation.

Sec. 727 *Exemption of Services Used Entirely Outside Reservation*--The tax imposed by this Chapter upon persons performing services does not apply to transactions if the beneficial use of the service occurs entirely outside the Reservation.

Sec. 728 *Exemption of Receipts Used for Civic and Non-profit Associations and Purposes*--There are specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, the gross receipts from the following:

- (1) Sales of tickets or admissions to the grounds and grandstand attractions of tribal, state, county, district, regional and local fairs and pow-wows;
- (2) Admissions to nonprofit historic sites and repertory theater performances operated by nonprofit organizations;
- (3) Admissions to community operated celebrations and shows sponsored by a chamber of commerce or other similar nonprofit organization if the Tribe, or the county, city or town in which the activity takes place, officially sponsors the activity and no charge is made to the operators of the celebration or show for the use of tribal, county, city or town facilities or services;
- (4) Admissions to events or receipts from activities sponsored and operated by colleges or elementary or high schools or related clubs or supporting organizations approved or supervised by a school or college when the entire net proceeds are spent for educational purposes and any associations of them and receipts from tangible personal property sold at such event. However, receipts from tangible personal property sold at such events or activities are included in the measure of sales tax at the time of purchase by the college or school or related club or supporting organization;
- (5) Religious, benevolent, fraternal or charitable activities, where the entire amount of such receipts after deducting all costs directly related to the conduct of such activities is expended for religious, benevolent, fraternal or charitable purposes, and the receipts are not the result of engaging in business for more than three consecutive days. However, receipts from tangible personal property or services purchased for use in the activity are included in the measure of sales tax.

Sec. 729 *Exemption of Membership Organizations*--Membership organizations, major group 86, as enumerated in the Standard Industrial Classification Manual, 1972, as prepared by the statistical policy division of the Office of Management and Budget, Office of the President of the United States, are exempt from the tax imposed by this Chapter on receipts from sales of services by them and their membership fees. This exemption does not apply to the tax imposed upon the gross receipts of sales of tangible personal property by such organizations. This section does not exempt the gross receipts of a retailer which are the result of sales to organizations in major group 86 or exempt such organizations from payment of use tax on goods and services used in the conduct of their activities.

Sec. 730 *Exemption of Sales to Educational Institutions and Hospitals--Purchases for Members or Employees Taxable--Motor Vehicle Registration Fee--Quarterly Reports by Exempt Institutions*--There are specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, the gross receipt from sales of tangible personal property and the gross receipts from sales, furnishing or service of electrical energy, natural and artificial gas, water and communication service to and for use by religious education institutions, private education institutions currently recognized as exempt under Section 501 (c)(3) of the Internal Revenue Code as in effect on January 1, 1983 and nonprofit, charitable hospitals when purchases are made by authorized officials, payment made from the institution funds and title to the property for the personal use of officials, members or employees of such institutions or to sales to or purchases of tangible personal property used in the operation of a taxable retail business. The exemption provided in this section does not, in any manner, relieve the institution from the payment of any additional and further license fee imposed on the registration of motor vehicles. All institutions claiming this exemption shall, at the end of each quarter of each calendar year, file with the Tax Commission a list of all purchases on which exemption was claimed, fully itemized, showing name and address of vendors, description of property purchased, purchase price and brief explanation of use or intended use.

Sec. 731 *Exemption of Drugs, Medicines and Medical Devices Prescribed for Human Use.* There are specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, nutritional supplements (as defined by rule adopted by the Department of Revenue of the State of South Dakota) if dispensed by a chiropractor, all drugs and medicines as those terms are defined by SDCL 36-11-2, and medical devices as that term is defined below to the extent used by humans, when such drugs, medicines or medical devices are prescribed by prescription, dispensed or administered by a physician, chiropractor, optometrist, dentist or podiatrist. "Medical device" as used in this section and Section 825 means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, which is:

- (1) Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, detection or prevention of illness or disease, or in the prevention of death; or
- (2) Intended to affect the structure or any function of the human body; or
- (3) Intended for use to assist in the mobility of persons.

Sec. 732 *Ink and Newsprint Exempt When Used to Produce Shoppers' Guides--Shoppers' Guides Defined.* Ink and newsprint when used in the production of shoppers' guides are hereby exempt from the tax imposed under this Chapter. For the purposes of this section the term "shoppers' guide" includes advertising publications whose advertisements are solicited from the general public and whose publications are for free distribution to the general public and are published regularly at least once a month, consisting of printed sheets containing advertising, bearing a date of issue, and devoted to advertising of general interest.

Sec. 733 *Exemption of Ostomy Care Supplies.* The gross receipts from furnishing devices and supplies designed or intended for ostomy care and management are specifically exempt from the provisions of this Chapter and from the computation of the amount of tax imposed by it. These devices and supplies include collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies designed for use of ostomates.

Sec. 734 *Packaging and Container Materials as Tax-Exempt Raw Material.* Containers, labels, cartons, packing cases, wrapping paper, twine, glue, bags, bottles, shipping cases, wrapping film, strapping, rope, tape, cans, lids, boxes, pads, dividers, stockinettes, casings and similiar articles and receptacles used or consumed by manufacturers, processors or fabricators are raw material within the meaning of Section 815 and are not subject to sales or use tax.

Sec. 735 *Packaging and Container Materials Sold to Retailers Exempt.* There are specifically exempted from the provisions of this Chapter, and from the computation of tax imposed by it, gross receipts from the sale of paper and plastic bags, wrapping paper, twine, tape and similiar articles sold to retailers as wrappers or containers to hold other tangible personal property sold by the retailer and subject to sales or use tax and the articles are supplied free by the retailers as a convenience to the customer.

Sec. 736 *Exemption of Hospital Meals Paid for by Public Entity.* There are specifically exempted from the provisions of this Chapter and the computation of the amount fo tax imposed by it, the gross receipts from the sale of meals to inpatients of hospitals if such meals are paid for, by law or by contract, by the United States, the Rosebud Sioux Tribe, the State of South Dakota or a political subdivision, including, but not limited to, meals provided to Medicare, Medicaid, Campus, Indian Health Service or County Poor Relief patients:

Sec. 737 *Exemption of Seed Used for Agricultural Purposes.* There are hereby specifically exempted from the provision of this Chapter and from the computation of the amount of tax imposed by it, gross receipts from the sale of seed legumes, seed grasses and seed grains, when twenty-five pounds or more are sold in a single sale to be used exclusively for agricultural purposes.

Sec. 738 *Exemption of Cattle Semen Used for Agricultural Purposes.* There are hereby specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, gross receipts from the sale of cattle semen for the artificial insemination of domestic animals whenever the vendee has made the purchases exclusively for agricultural purposes.

Sec. 739 *Exemption of Commercial Fertilizer Used for Agricultural Purposes.* There are hereby specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, gross receipts from the sale of commercial fertilizers, either liquid or solid, when five hundred pounds or more are sold in a single sale to be used excusively for agricultural purposes.

Sec. 740 *Exemption of Pesticides Used for Agricultural Purposes.* There are hereby specificaly exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, gross receipts from the sale of insecticides, herbicides, pesticides, rodenticides and fumigants to be used exclusively by the purchaser for agricultural purposes.

Sec. 741 *Exemption of Exchange of Agricultural Products.* There are hereby specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it, gross receipts from the exchange of processed agricultural products for unprocessed agricultural products, of kind required for such processing when such exchange is between the producer and processor, and, provided such processed articles are for consumption by the producer's family, household or employees.

Sec. 742 *Exemption of Livestock and Poultry Sales Other Than Ultimate Retail Sale.* No gross receipts from sales of livestock or live poultry, when such sales are a part of a series of transactions incident to producing a finished product intended to be offered for an ultimate retail sale, shall be taxable under this Chapter, except that an ultimate retail sale interrupting the series of transactions with an intended final use or consumption shall be taxable.

Sec. 743 *Exemption of Fuel Used for Agricultural or Railroad Purposes.* Motor fuel, including kerosene, tractor fuel, liquefied petroleum gas, natural and artificial gas, diesel fuels and distillate, when used for agricultural or railroad purposes, is exempt from taxes imposed under this Chapter. For the purposes of this section, agricultural purposes does not include the lighting, or heating of a farm residence or residences. For the purposes of this section, railroad purposes includes only locomotives or track motor cars being operated on railroad tracks in road service within the Reservation.

Sec. 744 *Power Charges for Irrigation Pumps Exempt.* There are hereby specifically exempted from the provisions of this Chapter and from the amount of tax imposed by it, gross receipts from the sale of electricity used to power irrigation pumps and the gross receipts from the horsepower charge on electric motors powering irrigation pumps whenever the purchaser has made the purchase exclusively for agricultural purposes.

Sec. 745 *Exemption of Wood Products Used in Creating Energy for Industrial Purposes.* There are hereby specifically exempted from the provisions of this Chapter and from the computation of tax imposed by it, gross receipts from the sale of wood products used in creating power, light, heat or steam for manufacturing or industrial purposes.

Sec. 746 *Exemption of Bulk Water for Domestic Use.* There are specifically exempted from the provisions of this Chapter and from the computation of tax imposed by it, the gross receipts from the sales of bulk water delivered for domestic use.

Sec. 747 *Exemptions Applied to Taxable Services.* The exemptions from sales relative to sales of tangible personal property shall apply to services included in Section 706 and 708.

Sec. 748 *Exemption of Payments Between Members of Controlled Group-Expenses of Officers of Group.* Payments made by one member of a controlled group to another member of a controlled group which represents an allocation, reimbursement or charge for salary, travel and related central office expenses for the executive officers of the controlled group may not be considered as payments for management services so long as the executive officers provide no services to other members of the controlled group beyond the execution of such duties as they may have as officers of other members of the controlled group.

Sec. 749 *"Controlled Group" Defined.* For the purposes of this Chapter, a controlled group consists of such corporations or other entities which are eligible to file a consolidated federal income tax return under the Internal Revenue Code as in effect on January 1, 1983, or entitled to only a single surtax exemption for federal corporate income tax purposes under the Internal Revenue Code as in effect on January 1, 1983.

Sec. 750 *"Executive Officer" Defined.* For purposes of this Chapter, "executive officer" shall include every officer who participates or has authority to participate, other than in the capacity of a director, in the major policy-making functions of the controlled group; regardless of whether the officers' title contains a designation of assistant. The chairman of the board, the president, every vice-

president, the controller, the secretary and the treasurer of a corporation are assumed to be executive officers unless the officer is excluded from participation in major policy-making functions and does not actually participate therein. However, no controlled group may have more than six executive officers.

Sec. 751 *Tax Additional to Other Occupation and Privilege Taxes.* The taxes imposed under this Chapter shall be in addition to all occupation or privilege taxes imposed by the Rosebud Sioux Tribe unless otherwise specifically exempted by this Chapter.

Sec. 752 *Addition of Tax to Price of Product or Service.* Retailers may add the tax imposed by this Chapter to the price of their product or service as provided by law. If no provision is made, the average equivalent of the tax may be added. Any person or retailer subject to taxation under this Chapter may add the tax under this Chapter, or the average equivalent thereof, to his price or charge.

Sec. 753 *Schedule for Collection of Tax from Consumer.* Except when a section in this Chapter expressly provides for a rate other than 4%, the schedule for collection of the tax imposed by this Chapter is:

| | |
|------------------|-------|
| \$.01 to \$.12 | None |
| .13 to .37 | \$.01 |
| .38 to .62 | .02 |
| .63 to .87 | .03 |
| .88 to 1.12 | .04 |
| 1.13 to 1.37 | .05 |
| 1.38 to 1.62 | .06 |
| 1.63 to 1.87 | .07 |
| 1.88 to 2.12 | .08 |

and on each additional dollar or fraction thereof an increment in tax according to this schedule.

The rate prescribed herein is applicable to all excise or use taxes whose rates are fixed to or determined by the rate prescribed in a section in this Chapter, except when such section expressly provides for a rate other than 4%.

Sec. 754 *Application for Retailer Permit--Contents and Execution.* Every retailer or person engaging in a business within the Reservation whose receipts are subject to sales tax shall file with the Tax Commission, an application for a sales tax permit or permits. Every application for such a permit shall be made upon a form prescribed by the Commission and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the Commission may require. The application shall be signed by the owner, if a natural person; in the case of an association or partnership, by a member or partner thereof; or in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority. The applicant must have a sales tax permit for each place of business.

Sec. 755 *Issuance of Retailer Permit--Limited to Person and Place Designated--Display in Place of Business--Effective Until Canceled or Revoked.* The Tax Commission shall grant and issue

to each applicant a sales tax permit for each place of business within the Reservation. A permit is not assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued. Permits issued shall be valid and effective without further payment of fees until canceled or revoked. Compliance with the permit requirements in this Chapter in no way waives the requirements of Chapter 12 regarding tribal business licenses or the requirements of federal law regarding Indian trader licenses and permits.

Sec. 756 *Refusal of Permit to Delinquent Taxpayer--Bond to Secure Payment of Tax.* The Tax Commission may, at its discretion, refuse to issue a permit to any person who is delinquent in payment of any taxes levied by the Rosebud Sioux Tribe. It may also, in its discretion, require an applicant to furnish a bond to the Tribe, or other adequate security, as security for payment of any sales tax that may become due, or require a bond or security as a condition precedent to remaining in business as a retailer.

Sec. 757 *(Effective Through June 30, 1986) Bimonthly Return and Remittance--Extension of Time--Delinquency.* On or before the last day of the month following each two-month period, every person who is the holder of a sales tax permit, or is a retailer whose receipts are subject to sales tax within the Reservation during the two-month period, shall make a return and remittance to the Tax Commission on forms prescribed and furnished by the Commission. The Tax Commission may grant an extension of not more than five days for filing a return and remittance. Unless an extension is granted, penalties and interest pursuant to Chapter 6 of this Code shall be paid if a return or remittance is not made on time.

(Effective July 1, 1986). On or before the last day of the month following each two-month period, every person who is the holder of a sales tax permit, or is a retailer whose receipts are subject to sales tax within the Reservation during the two-month period, shall make a return and remittance to Tax Commission on forms prescribed and furnished by the Commission. The Tax Commission may grant an extension of not more than five days for filing a return and remittance. Unless an extension is granted, penalties and interest pursuant to Chapter 6 of this Code shall be paid if a return or remittance is not made on time. In addition to the above requirements any person whose tax liability exceeds six hundred dollars in any two month period shall file returns and make remittance on a monthly basis for the next twelve months. Monthly reports and remittances are due on the last day of the following month.

Sec. 758 *Returns Filed on Other Than Quarterly Basis.* The Tax Commission, at its discretion, may require or allow some or all returns and remittances to be filed on a monthly, semi-annual or annual basis and the return and remittance is due the last day of the month following the reporting period.

Sec. 759 *Deduction Allowed for Sales Refunds.* Refunds made by a retailer during the reporting period shall be allowed as a deduction in case the retailer included the receipts, for which a refund is made, in the net taxable sales or has previously paid the sales tax.

Sec. 760 *Deduction Allowed Attorneys and Accountants for Amounts Spent on Behalf of Clients.* In determining the amount of tax due under this Chapter, attorneys licensed pursuant to SDCL Chapter 16-16 and accountants licensed pursuant to SDCL Chapter 36-20A may deduct from gross receipts amounts which represent charges to clients for tangible personal property or services pur-

chased by the attorney or accountant on behalf of a client. However, the sale of the property or service to the attorney or accountant is not a sale for resale if this deduction is taken. This deduction may only be taken if the amount to be deducted represents an expense specifically incurred for a particular client and the amount is itemized and separately billed as a reimbursable expense by the attorney or accountant.

Sec. 761 *Credit for Taxes Paid on Worthless Accounts--Tax Paid If Account Collected.* Taxes Paid on gross receipts represented by accounts found to be worthless and actually charged off for income tax purposes, may be credited upon a subsequent payment of the tax herein provided; if such accounts are thereafter collected by the retailer, a tax shall be paid upon the amount so collected.

Sec. 762 *Cash Basis Reporting and Payment.* Notwithstanding other provisions of this Chapter, the Tax Commission shall allow retailers to report and pay taxes measured by gross receipts upon a cash basis if:

- (1) The retailer has not changed his basis in the previous calendar year;
- (2) The retailer's records are kept in a manner which may be audited to determine whether sales tax is paid upon all taxable sales;
- (3) The retailer has made a written request to the Commission for authority to pay tax on the cash basis; and
- (4) Authority to pay tax on the cash basis applies only to sales made after the authority is granted.

Sec. 763 *Accrual Basis Reporting and Payment.* If the Tax Commission has granted a retailer the authority to report and pay sales tax on the cash basis and a retailer requests in writing for the authority to report and pay sales tax upon the accrual basis, the Commission may grant such authority if assessment and collection of taxes are not jeopardized.

Sec. 764 *Receipt Not Issued for Taxes Remitted.* The Tax Commission shall not be required to issue receipts for sales tax remitted to the Commission.

Sec. 765 *Correction of Incorrect Return by Tax Commission-Appeal.* If the Tax Commission has reason to believe that a return is incorrect, after notice to the person and a hearing there on, it shall correct the return to its best judgment and information. A return so corrected is prima facie correct. Appeals from the decision of the Tax Commission are governed by Chapter 4 of this Code, except as otherwise provided in Section 773.

Sec. 766 *Determination of Amount of Tax in Absence of Return--Notice to Person Failing to Make Return--Appeal.* If a person subject to tax fails to make a return as required, the Tax Commission, after notice to the person and a hearing thereon, shall determine the amount of the tax according to its best judgment and information. The amount so fixed is prima facie correct. Appeals from the decision of the Tax Commission are governed by Chapter 4 of this Code, except as otherwise provided in Section 773.

Sec. 767 *Revocation of Retailer's Permit for Failure to File Return or Pay Tax--Penalty for Continuation in Business.* Every person who is the holder of a sales tax permit and who has failed to file a return, or who has filed a return and has failed to pay the tax due the Tribe under this Chapter

on or before the fifteenth of the second month following the quarter, or any other reporting period authorized, shall no longer continue as a retailer and his sales tax permit is hereby revoked and canceled. Any person who shall continue in a taxable business after his permit has been revoked or canceled, as herein provided, shall:

- (1) if a member of the Tribe, be guilty of a crime, and upon conviction, be sentenced to labor for a period not to exceed six months, or to a fine not to exceed five hundred dollars, or both such imprisonment and fine, with costs; or
- (2) if a non-member of the Tribe, be assessed a civil penalty not to exceed five hundred dollars, or be temporarily or permanently excluded from the Reservation, or be both so assessed and so excluded, with costs.

Sec. 768 Reinstatement of Revoked Retailer's Permit--Fee. The sales tax permit of a retailer which has been canceled or revoked as provided in Section 767, shall not be reinstated by the Tax Commission until all the sales tax dues the Tribe, together with any interest and penalties, and a \$10.00 reinstatement fee has been paid.

Sec. 769 Records Preserved by Persons Subject to Tax--Inspection by Commission. Every person subject to tax under this Chapter shall keep records and books of all receipts and sales, together with invoices, bills of lading, copies of bills of sale, and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times business hours of the day, or as otherwise provided in Section 306(8), be subject to inspection by the Tax Commission or its duly authorized agents and employees to determine the amount of tax due. Such books and records shall be preserved for a period of three years unless the Tax Commission, in writing, authorizes their destruction or disposal at an earlier date.

Sec. 770 Personal Liability of Officers of Corporation Failing to File Returns or Pay Tax--Security in Lieu of Liability--Bonded Municipal Officials Exempt. If a corporation subject to tax under this Chapter fails for any reason to file the required returns or to pay the tax due, any of its officers having control, or supervision of, or charged with the responsibility for making such returns and payments shall be personally liable for such failure. The dissolution of a corporation shall not discharge an officer's liability may be assessed and collected as provided by law. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation shall provide the Tax Commission with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section shall be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not apply to elected or appointed officials of a municipality if they are bonded pursuant to SDCL §§ 9-14-6 and 9-14-6.1.

Sec. 771 Retail Sales and Service Tax Collection Agreement with State. The Tax Commission, pursuant to Section 306(10), may enter into an agreement with the Department of Revenue of the State of South Dakota for the collection of the taxes, issuance of sales tax permits and licenses, supervision of the keeping of records and filing of reports, and the collection of fees required by this Chapter on behalf of the Tribe by the Department. Such agreement may provide that the collection of taxes, issuance of permits and licenses, supervision of the keeping of records and filing of reports, and collection of fees shall be substantially in the same manner as conducted by the State of South Dakota under SDCL 10-45 and other applicable State law. The agreement may also provide for the retention by the Department of a collection fee not to exceed 1% of the total taxes collected pursuant

to such agreement, and for the retention by the State of an additional portion of such taxes collected, in lieu of the collection of taxes under SDCL 10-45 on activities within the Reservation, as agreed upon by the Tax Commission and the Department. So long as such an agreement remains in effect, the collection of taxes, issuance of permits and licenses, supervision of the keeping of records and filing of reports, and collection of fees pursuant of such agreement shall, notwithstanding any other provision of this Chapter, constitute the manner of such collections, issuances and supervision required by this Chapter, except as provided in Section 773; provided, that any reports, applications or other filing filed with the Department pursuant to this section shall also be filed with the Tax Commission.

Sec. 772 Amendments to Retail Sales and Service Tax Laws.

(1) Except as provided in Subsection (2), any changes by the Legislature of the State of South Dakota to SDCL 10-45 shall constitute an amendment to this Chapter unless the Rosebud Sioux Tribal Council disapproves the same no later than thirty days prior to its effective date. In the case of an emergency enactment by the South Dakota Legislature amending SDCL 10-45, the enactment shall constitute an amendment to this Chapter unless the Rosebud Sioux Tribal Council disapproves the same no later than thirty days following the enactment by the South Dakota Legislature and approval thereof, which thirty-day limit shall begin to run from the date a certified letter is received by the Tax Commission from the Department of Revenue notifying the Tribe of the emergency enactment. The Tax Commission shall promptly notify the Tribal Council of all changes in State law affecting this Chapter. The Commission shall forward any changes which have been approved to the Superintendent of the Rosebud Agency for consideration by the Secretary of the Interior. If the Tribal Council disapproves a change made in SDCL-10-45 or disapproves any such emergency enactment, the Tax Commission shall notify the Department of Revenue, in writing, within ten days of the disapproval.

(2) Changes in State law shall have no effect on the appeal and enforcement procedures contained in this Code, or on the interest or penalty provisions of this Code, except as provided in Subsections (1) and (2) of Section 773.

Sec. 773 Enforcement, Penalties, and Appeals--Application of State and Tribal Law. So long as the collection agreement provided for in Section 771 remains in effect:

(1) Appeals by any taxpayer from whom the State is collecting the taxes imposed by this Chapter pursuant to such collection agreement shall be filed with the State in accordance with the procedures contained in SDCL 10-45 and other applicable State law in effect at the time of the appeal, which laws are incorporated herein by reference as tribal law.

(2) Enforcement actions for violation of this Chapter brought by the State pursuant to such collection agreement shall be in accordance with SDCL 10-45 and other applicable State law in effect at the time of the enforcement action, including State law regarding enforcement procedures, interest, and penalties, which laws are incorporated herein by reference as tribal law.

(3) Enforcement actions for violation of this Chapter brought by the Tax Commission pursuant to such collection agreement shall be in accordance with this Code and other applicable Tribal law regarding enforcement procedures, interest, and penalties.

CHAPTER 8: USE TAX

Sec. 801 *Definitions.* The definition in Section 201 apply to this Chapter. In addition, in this Chapter, unless the context otherwise plainly requires:

(1) "Storage" means and includes any keeping or retention within the Reservation for use or other consumption within the Reservation for any purpose except sale in the regular course of business.

(2) "Use" means and includes the exercise of right or power over tangible personal property incidental to the ownership of that property, except that it shall not include the sale of the property in the regular course of business. "Use" shall also include the use of the types of services, the gross receipts from the sale of which are to be included in the measure of the tax imposed by Chapter 7 of this Code, and any amendments thereto.

(3) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. A transaction, whereby the possession of a property is transferred but the seller retains the title as security for the payment of the price shall be deemed a purchase.

(4) "Purchase price" or "sale price" means the total amount for which personal property is sold, including any services that are part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses or any other expense whatsoever, provided that cash discounts allowed and taken on sales shall not be included.

(5) "Tangible personal property" means tangible goods, wares, merchandise, gas and electricity when furnished or delivered to consumers or users within the Reservation.

(6) "Retailer" means and includes every person performing services within the Reservation or engaged in the business of selling tangible personal property for use, storage or other consumption within the meaning of this Chapter. However, if in the opinion of the Tax Commission, it is necessary for the efficient administration of this Chapter to regard any salesmen, representative, truckers, peddlers or canvassers as agents of the dealers, distributors, supervisors, employees or person 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, employers or persons, the Tax Commission may so regard them and may regard the dealers, distributors, supervisors, employers or persons as retailers for purposes of this Chapter.

(7) "Retailer maintaining a place of business within the Reservation" or any like term shall mean and include any retailer having or maintaining within the Rosebud Reservation, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agents operating within the Reservation under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily or whether such retailer or subsidiary is admitted to do business within the Reservation pursuant to the laws of the United States or the Rosebud Sioux Tribe.

(8) "Within the Reservation" means within the exterior boundaries of the Rosebud Reservation and includes all territory within such boundaries regardless of ownership.

(9) "Included in the measure of tax" means that the tangible personal property or the service was purchased from a retailer licensed under Chapter 7 of this Code and that retailer has included the tax in the amount received from the sale.

(10) For the purpose of this Chapter and Chapter 7 of this Code, "fair market value" means the price at which a willing seller and willing buyer will trade. Fair Market value shall be determined at the time of purchase. If a public corporation is supplying tangible personal property that will be used in the performance of a contract, fair market value shall be determined pursuant to SDCL 5-18-5.1.

Sec. 802 Tax on Tangible Personal Property Purchased for Use Within Reservation--Rate Based on Purchas Price. An excise tax is hereby imposed on the privilege of the use, storage, and consumption within the Reservaton of tangible personal property purchased on or after July 1, 1939, for use within the Reservation at the same rate of percent of the purchase price of said property as is imposed by Sections 702 and 705 or amendment which may here after be made thereto.

Sec. 803 Tax Imposed on Use of Services--Exemption. For the privilege of using services within the Reservation, except those types of services exempted by Section 829, there is imposed on the person using the service an excise tax equal to 4% of the value of the services at the time they are rendered. However, this tax may not be imposed on any service rendered by a related corporation as defined in subdivision (13) of SDCL 10-43-1 for use by a financial institution as defined in subdivision (12) of SDCL 10-43-1. For the purpose of this Chapter, services rendered by an employee for the use of his employer are not taxable.

Sec. 804 Tax on Use of Rented Property. An excise tax is imposed upon the privilege of the use of rented tangible personal property within the Reservation at the rate of 4% of the rental payments upon the property.

Sec. 805 Exemption of Use of Property Leased. The use, storage or consumption of tangible personal property actually leased to persons within the Reservation is exempted from the provisions of this Chapter and the tax imposed by it.

Sec. 806 Tax on Tangible Personal Property Not Purchased for Use Within Reservation--Rate Based on Fair Market Value. An excise tax is imposed on the privilege of the use, storage and consumption within the Reservation of tangible personal property which is seven or less years old not originally purchased for use within the Reservation, but thereafter used, stored, and consumed within the Reservation, at the same rate of percent of the fair market value of said property as is imposed by Sections 702 and 705.

Sec. 807 Tax Imposed on Person Using Property. In addition, said tax is hereby imposed upon every person using, storing, or otherwise consuming such property within the Reservation until such tax has been paid directly to a retailer or the Tax Commission as hereinafter provided.

Sec. 808 Contractors and Subcontractors Taxes on Property Used in Performance of Contract--Fabrication Costs Excluded. If a contractor or subcontractor uses tangible personal property in the

performance of his contract or to fulfill contract or subcontract obligations, whether the titleholder of such property would be subject to pay the sales or use tax, such contractor or subcontractor shall pay a tax at the rate prescribed by Section 702, measured by the purchase price or fair market value of such property, whichever is greater, unless such property has been previously subjected to a sales or use tax within the Reservation and the tax due thereon has been paid. However, if the contractor or subcontractor fabricates tangible personal property for use in the performance of his contract, fair market value excludes the value of the contractor's or subcontractor's fabrication costs.

Sec. 809 *Sectional Homes Not Vehicles--Contractors Taxed on Materials Used in Construction--Sectional Homes Defined.* When a sectional home is permanently affixed to real property, it is not a vehicle subject to registration under SDCL Chapter 32-3, and shall be classified as real property. A contractor who erects such a home must hold a sales tax or use tax license and pay use tax based upon the fair market value of the raw materials used to construct and erect the home. For the purpose of this section, "sectional home" means any home pre-built in part or in whole for the purpose of permanent placement on a foundation. A mobile home as defined by subdivision (1) of SDCL 34-34A-1 is not a sectional home.

Sec. 810 *Materials Incorporated in Construction Work--Restriction on Application of Rate Increase.* No tax increase imposed after March 9, 1984 may be levied on materials incorporated in construction work pursuant to construction contracts bid or entered into on or before the effective date of the tax increase.

Sec. 811 *Exemption of Property and Service Subject to Sales Tax.* The use within the Reservation of tangible personal property or services, the gross receipts from the sale of which are to be included in the measure of the tax imposed by Chapter 7 of this Code, and any amendments made or which may hereafter be made thereto, is hereby specifically exempted from the tax imposed by this Chapter.

Sec. 812 *Credit for Sales or Use Tax Paid to Another Taxing Jurisdiction--Reciprocity Required.* The amount of any use tax imposed with respect to tangible personal property or services shall be reduced by the amount of any sales or use tax previously paid by the taxpayer with respect to the property on account of liability to another taxing jurisdiction. Provided, however, no credit shall be given under this section where taxes are paid on tangible personal property or services in another taxing jurisdiction which does not reciprocally grant a credit for taxes paid to the Tribe on similar tangible personal property.

Sec. 813 *Constitutional Exemptions from Tax--Property of Public Agencies--Railroad Operating Property.* Tangible personal property, the storage, use or other consumption of which the Tribe is prohibited from taxing under the Constitution or laws of the United States of America or under the Constitution and Bylaws of the Rosebud Sioux Tribe, or tangible personal property sold to the United States, the state of South Dakota, any public or municipal corporation of the State, or the Rosebud Sioux Tribe or any tribal entity which is for the use, storage, or consumption of such public corporations or which is sold to, used or to be used as or in operating or maintaining any type of railroad company property which is classified by SDCL 10-28-1 as "operating property," is hereby specifically exempt from the tax imposed by this Chapter, provided, however, the exemption as to railroad operating property shall be limited to one-half of such imposed by this Chapter.

Sec. 814 *Exemption of Property Brought in for Personal Use of Nonresident.* The use within the Reservation of all articles of tangible personal property brought onto the Reservation by a non-resident individual thereof for his or her personal use or enjoyment while within the Reservation is hereby specifically exempted from the tax imposed by this Chapter.

Sec. 815 *Exemption of Raw Material, Parts and Newsprint for Manufacture of Products to be Sold at Retail.* The use within the Reservation of tangible personal property including containers, labels and shipping cases thereof which is intended shall, by means of fabrication, compounding or manufacture become a part of other tangible personal property intended to be sold ultimately at retail within or without the Reservation, is hereby specifically exempted from the tax imposed by this Chapter. The term tangible personal property shall be construed to include without limiting the meaning of said term, raw material and newspaper print.

Sec. 816 *Ink and Newsprint Used to Produce Shoppers' Guides--Shoppers' Guides Defined.* Ink and newsprint when used in the production of shoppers' guides are hereby exempt from the tax imposed under this Chapter. For the purposes of this section the term "shoppers' guide" includes advertising publications whose advertisements are solicited from the general public and whose publications are for free distribution to the general public and are published regularly at least once a month, consisting of printed sheets contained advertising, bearing a date of issue, and devoted to advertising of general interest.

Sec. 817 *Brokers' and Agents' Services Exempt from Tax.* The tax imposed by this Chapter shall not apply to services of brokers and agents licensed under SDCL Title 47

Sec. 818 *Packaging and Container Materials as Tax Exempt Raw Material.* Containers, labels, cartons, packing cases, wrapping paper, twine, glue, bags, bottles, shopping cases, wrapping film, strapping, rope, tape, cans, lids, boxes, pads, dividers, stockinettes, casings and similiar articles and receptacles used or consumed by manufacturers, processors or fabricators are raw materials within the meanings of Section 815 and are not subject to sales or use tax.

Sec. 819 *Packaging and Container Materials Sold to Retailers Exempt.* There are specifically exempted from the provisions of this Chapter, and from the computation of tax imposed by it, gross receipts from the sale of paper and plastic bags, wrapping paper, twine, tape and similiar articles sold to retailers as wrappers or containers to hold other tangible personal property sold by the retailer and subject to sales or use tax and the articles are supplied free by the retailer as a convenience to the customer.

CHAPTER 9: CIGARETTE TAX

Sec. 901 *DEFINITIONS.* The definitions in Section 201 apply to this Chapter. In addition, in this Chapter, unless the context otherwise plainly requires:

- (1) "Dealer" or "retailer" means any person other than a distributor or a wholesaler, as defined herein, who is engaged within the Reservation in the business of selling cigarettes at retail;
- (2) "Distributor" means any person engaged within the Reservation in the business of producing or manufacturing cigarettes or importing into the Reservation cigarettes, at least 75% of which are purchased directly from manufacturers thereof;
- (3) "Wholesaler" means any person who purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purposes of bona fide resale to retail dealers or to other persons for the purpose of bona fide resale to retail dealers and any person who services retail outlets, including, but not limited to, the maintenance of a warehousing facility for the storage and distribution of cigarettes;
- (4) "~~Licensed distributor~~" or "~~licensed wholesaler~~" means a distributor or wholesaler licensed under the provisions of this Chapter; and
- (5) "Sale" or "sell" shall also include or apply to gifts, exchanges and barter.

Sec. 903 *Unlawful Sales* It shall be unlawful for any distributor to sell, and for any other person to sell, offer for sale, display for sale or possess with intent to sell, any cigarette within the Reservation unless the tax imposed thereon by this Chapter has been paid and such cigarette or the package containing such cigarette has been stamped to evidence such payment pursuant to regulation issued by the Tax Commission or as otherwise provided in this Chapter. So long as the agreement referred to in Section 917 remains in effect, stamps of the State evidencing payment of the tax imposed by Section 902 shall constitute the stamps required by this Section. Any person who shall violate the provisions of this Section shall be subject to a civil penalty of not more than \$100 for the first offense and for each subsequent offense shall be subject to a civil penalty of not less than \$50 nor more than \$500.

Sec. 904 *Impact of Tax Borne by Consumer--Separate Statement on Invoice--Method of Collection Unaffected.* The impact of the tax levied by this Chapter is hereby declared to be on the vendee, user, consumer or possessor of cigarettes within the Reservation and when this tax is paid by any other person such payment shall be considered as an advance payment and shall thereafter be added to the price of the cigarettes and recovered from the ultimate consumer or user. In making a sale of cigarettes within the Reservation, a distributor may separately state and show upon the invoice covering such sale the amount of tax on the cigarettes sold. The provisions of this Section shall in no way affect the method of collection of such tax on cigarettes.

Sec. 905 *License Required of Distributors and Wholesalers.* Each person, except a retailer, engaging in the business of selling cigarettes within the Reservation, including any distributor or wholesaler, shall secure license from the Tax Commission, pursuant to regulations issued by it, or

as otherwise provided by this Chapter. Each license issued under this section shall be prominently displayed on the premises covered by such license. Any person who shall violate the provisions of this section shall be subject of a civil penalty of not less than \$25.00 nor more than \$200.00, and all cigarettes in his possession shall be seized and forfeited to the Tribe. Compliance with this section in no way waives the requirements of Chapter 12 regarding tribal business licenses.

Sec. 906 *License Agreement* The agreement referred to in Section 917 may also provide for the issuance of the license required by Section 905 and the collection of fees therefor on behalf of the Tribe by the State. This agreement may provide that the issuance of such licenses and collection of fees therefor shall be substantially in the same manner as conducted by the State with respect to state licenses to sell cigarettes under SDCL Chapter 10-50. Such agreement may further provide for the payment of a fee by the Tribe to the State for the issuance of such licenses and the collection of such license fees. So long as such agreement with the State remains in effect, a license issued by the State of South Dakota in accordance with such agreement shall constitute the license required by Section 905.

Sec. 907 *Preservation of Records.* Every person subject to the payment of the tax levied by Section 902 shall keep such records and file such reports as the Tax Commission may prescribe by regulation, or as otherwise provided by this Chapter.

Sec. 908 *Resale of Stamp Prohibited--Penalties for Use or Possession of Counterfeit Stamp--Reuse of Stamp--Penalty.* No distributor shall sell or transfer any stamps issued under the provision of this Chapter. Any person who shall fraudulently make or utter or shall forge or counterfeit any stamp prescribed under this Chapter, or who shall cause or procure the same to be done, or who shall willfully utter, publish, pass or render as true, any false, altered, forged or counterfeited stamp, or who shall knowingly possess any such false, altered, forged or counterfeited stamp, or who shall use more than once any stamp provided for and required by this Chapter, for the purpose of evading the tax thereby imposed, shall: (1) if a member of the Tribe, be guilty of a crime and, upon conviction, be sentenced to labor for a period not to exceed six months, or to a fine not to exceed five hundred dollars, or both such imprisonment and fine, with costs; or (2) if a non-member of the Tribe, be assessed to a civil penalty not to exceed five hundred dollars plus costs, or be temporarily or permanently excluded from the Reservation, or be both so assessed and so excluded.

Sec. 909 *Records and Reports Agreement.* The agreement referred to in Section 917 may provide for the keeping of records and filing of reports under the supervision of the State on behalf of the Tribe in accordance with SDCL Chapter 10-50. Copies of all reports filed with the State of South Dakota pursuant to such agreement shall also be filed with the Tax Commission. So long as such agreement with the State remains in effect, the records and reports required by the State shall constitute the records and reports required by this Chapter.

Sec. 910 *Display or Possession of Unstamped Cigarettes as Evidence of Intent to Sell.* The display or possession, except in original unopened shipping package, container or case, of cigarettes by any dealers unless fully stamped as required by this Chapter shall constitute prima facie evidence of possession with intent to sell the same.

Sec. 911 *Enforcement Powers of Tax Commission Personnel--Arrest--Complaint--Seizure of Counterfeit license or Stamp.* The Tax Commission and its duly authorized agents and employees are charged with the duty of enforcing the provisions of this Chapter and are given the power of peace

officers and authorized and empowered to arrest any Tribal member who is a violator of the provisions of this Chapter, to enter complaint before any court of competent jurisdiction, and to seize without formal warrant and use as evidence any forged, counterfeited, spurious, or altered license or stamp found in possession of any person in violation of this Chapter.

Sec. 912 *Unstamped Cigarettes as Contraband--Seizure Without Warrant.* Any cigarettes found at any place within the Reservation without stamps affixed thereto as required by this Chapter, unless such cigarettes shall be in the possession of a licensed distributor or wholesaler in the original unopened shipping package or unless they shall be in a course of transit found outside the Reservation and consigned to a licensed distributor or a licensed wholesaler, are declared to be contraband goods and may be seized by the Tax Commission, its agents, or employees, or by any peace officer of the Tribe when directed by the Tax Commission to do so, without a warrant.

Sec. 913 *Forfeiture of Contraband Cigarettes--Sale by Tax Commission--Proceeds of Sale--Purchaser to Pay Tax.* Any cigarettes seized under the provisions of this Chapter shall be confiscated and forfeited to the Tribe and the Tax Commission shall sell such confiscated property to a licensed dealer or distributor to the best advantage to the Tribe. The proceeds from such sale shall be forthwith remitted to the Tax Commission as part of the income from the enforcement of this Chapter. Such sales by the Tribe shall not relieve the purchaser from paying the tax and stamping the articles so sold to him, as in this Chapter otherwise provided.

Sec. 914 *Confiscation of Unstamped Cigarettes Not Required If No Intentional Evasion.* Nothing in Section 911 or 912 shall be construed to require the Tax Commission to confiscate unstamped cigarettes when it shall have reason to believe that the owner thereof is not willfully or intentionally evading the tax imposed by this Chapter.

Sec. 915 *Act of Agent as Act of Principal.* For the purpose of this Chapter, the act or omission of any officer, agent or other person acting for or employed by any person, corporation, association or partnership within the scope of his office, agency or employment shall be deemed to be the act or omission of such person, corporation, association or partnership as well as his own.

Sec. 916 *Examination of Distributions, Wholesalers' and Dealers' Records by Revenue Agents--Inspection of Premises.* The Tax Commission and its authorized employees or agents may examine the books, papers and records of any distributor, wholesaler or dealer within the Reservation for the purpose of determining whether the tax imposed by this Chapter has been fully paid, and may investigate and examine the stock of cigarettes in or upon any premises where such cigarettes are possessed, stored or sold, for the purpose of determining whether the provisions of this Chapter are being obeyed. The Tax Commission or its employees or agents shall have the right and authority to make such inspections and examinations at any time during ordinary business hours or as otherwise provided in Section 306, and it or they shall have the further authority to inspect at such times the premises and all desks, safes, vaults and other fixtures and furniture contained in or upon such premises for the purpose of ascertaining whether cigarettes are held or possessed in violation of this Chapter.

Sec. 917 *Cigarette Tax Collection Agreement with State.* The Tax Commission, pursuant to Section 306(10), may enter into an agreement with the Department of Revenue of the State to provide for the collection of tax imposed by Section 902 of this Chapter on behalf of the Tribe by such Department and for the affixing of stamps of the State evidencing the payment of such tax. Such agreement may provide that the collection of the tax and the affixing of stamps shall be substantially

in the same manner as conducted by the State with respect to state cigarette taxes under SDCL Chapter 10-50. The agreement also may provide for the retention by the State of a collection fee not to exceed 1% of the total taxes collected pursuant to such agreement, and for the retention by the State of an additional portion of such taxes collected, in lieu of the collection of taxes under SDCL 10-50 on activities within the Reservation, as agreed upon the Tax Commission and the Department. So long as such agreement remains in effect, stamps of the State evidencing payment of the tax imposed by Section 902 of this Chapter shall constitute the stamps required by Section 903 of this Chapter.

CHAPTER 10: CONTRACTORS EXCISE TAX

Sec. 1001 *Definitions.* The definitions in Section 201 apply to this Chapter.

Sec. 1002 *Excise Tax Upon Gross Receipts of All Utilities Contractors.* There is hereby imposed an excise tax of 1-1/2% upon the gross receipts of both the prime contractors and subcontractors engaged in contracts for realty improvements within the Reservation performed for utility companies. Utility companies included: railroad companies, telephone companies, telegraph companies, electric, heating, water and gas companies, rural electric companies, rural water systems; also included are municipal utilities which offer electric, light, heat, power and telephone services. Waste water treatment facilities and sewer systems are not utility companies.

Sec. 1003 *Excise Tax Upon Gross Receipts of All Other Prime Contractors.* A 2% contractors excise tax is imposed on the total gross receipts of prime contractors engaged in contracts for realty improvements within the Reservation except for those qualifying contractors taxed pursuant to Section 1002. Except as provided in Section 1002 and 1006, subcontractors' gross receipts will not be subject to the contractors excise tax.

Sec. 1004 *Effective Date of Tax.* This Chapter is effective on May 1, 1984, and applies to:

- (1) All realty improvement contracts bid after April 30, 1984;
- (2) All realty improvement contracts under which construction commences after April 30, 1984, if there is no bid;
- (3) Receipts from sales of real property pursuant to Section 1010 if the contract to sell the property is executed after April 30, 1984.

Sec. 1005 *Contractors Subject to Tax.* Contractors engaged in contracts for realty improvements include without limitation those enumerated in the Standard Industrial Classification Manual of 1972 as prepared by the statistical policy division of the Office of Management and Budget, Office of the President: building construction -- general contractors and operative builders (major group 15); construction other than building construction--general contractors (major group 16); construction-special trade contracts (major group 17).

Sec. 1006 *Subcontractors*. For the purpose of this Chapter, a subcontractor is a person contracting with a prime contractor to perform all or part of a realty improvement the prime contractor has contracted to perform. A prime contractor subject to the tax imposed by Section 1003 shall issue a certificate to a subcontractor showing the prime contractor's valid contractors' excise tax license number. The form shall be prescribed by the Tax Commission. Any subcontractor who fails to obtain a certificate and a record of project designations is considered a prime contractor and is subject to tax imposed by Section 1003 unless it is subject to the tax imposed by Section 1002. Any person not a prime contractor who provides a certificate is liable for tax equal to the amount of tax the person accepting the certificate would have been liable for if the certificate had been issued. The tax is due at the time the person accepting the certificate would have been required to pay the tax. In addition to any tax and interest due, persons providing certificates, who are not prime contractors, are liable for a civil penalty of ten percent of the tax. The United States, the Rosebud Sioux Tribe, the State of South Dakota, or any other state, or any public or municipal corporation within the Rosebud Reservation may not issue a certificate.

Sec. 1007 *Prime Contractors*. For the purpose of this Chapter, a prime contractor is a person entering into a realty improvement contract with another person. Operative builders, industry number 1531, as enumerated in the Standard Industrial Classification Manual, 1972, as prepared by the statistical policy division of the Office of Management and Budget, Office of the President, are prime contractors regardless of whether they perform construction work themselves or contract with other contractors. ~~A person who is not primarily in the business of making realty improvements and regularly employs persons for the purpose of repairing, maintaining or making realty improvements for his own use and who repairs, maintains or makes a realty improvement for his own use with his regular employees is not a prime contractor and is not liable for the taxes herein.~~

Sec. 1008 *Total Contract Price as Basis of Tax--Purchased Materials*. The taxes imposed by this Chapter apply to the total contract price including all labor and materials. Materials include those purchased by the contractor and those purchased by the person who let the contract or his designee.

Sec. 1009 *Gross Receipts Defined--Materials Not Deductible*. For the purpose of this Chapter, the term "gross receipts" means the amount received directly or indirectly in money, credits, property or other money's worth in consideration of the performance of realty improvement contracts within the Reservation, without any deduction on account of the cost of the property sold, the cost of materials used, the cost of services or labor purchased, amount paid for interest or discounts or any other expenses whatsoever, nor may any deduction be allowed for losses. Gross receipts include those materials furnished to the prime contractor or subcontractor by the owner or the lessee of the realty improvement. For the purpose of measuring the taxes imposed by this Chapter, gross receipts include the greater of the cost or fair market value of materials used by a contractor or subcontractor in the performance of a contractor regardless of whether the contractor or subcontractor owns or furnishes the materials.

Sec. 1010 *Improvements Without Contract Taxable When Sold Within Four Years After Completion*. If any person, except for a person making an isolated or occasional realty improvement and who does not hold himself out as engaging in the business of making realty improvement within the Reservation without a realty improvement contract and subsequently sells the realty improvement or the property containing the realty improvement at any time subsequent to the commencement of the project and within four years of its completion, the gross receipts from the sale of the realty

improvement shall be subject to the excise tax imposed by Sections 1002 or 1003. In determining the gross receipts from the sale of such realty improvements when land or land and improvements completed four years prior to sale are included in the sale, land and such improvements shall be valued at cost or fair market value, which is greater, and the portion of the gross receipts attributable to land or land and improvements completed four years prior to sale shall be deducted from the sale price.

Sec. 1011 *Tax Imposed on Improvements Built for Lease--Credit Against Tax on Sale--Due Date--Exemptions.* There is imposed a tax at the rate provided in Section 1003, on the fair market value of the improvement, upon any person who builds a building for lease to himself or others with a value of over one hundred thousand dollars. If the realty improvement becomes subject to tax under Section 1010, credit for tax due under that section is given for any tax paid under this section. The tax imposed by this section is due the next reporting date after the improvement is first used or leased. The tax imposed by this section does not apply to the United States, the Rosebud Sioux Tribe, the State of South Dakota and its subdivision, or public, tribal or municipal corporations within the Reservation. This section applies only to improvements substantially completed after April 30, 1984.

Sec. 1012 *Report and Payment of Tax.* The tax imposed by this Chapter shall be reported and paid as provided in Sections 757 and 758 of this Code, upon the receipts received under the contract during the period.

Sec. 1013 *Enforcement and Administration.* The Tax Commission is hereby charged with enforcement and administration of the provisions of this Chapter. With respect to all permits, record-keeping, reports and enforcement, this Chapter shall be administered in the same manner as Chapter 7 of this Code, and the provisions thereof are incorporated herein.

Sec. 1014 *Contractors May List Excise and Use Taxes As Separate Line Item on Contracts and Bills.* A contractor may list the contractor's excise tax and any sales or use tax imposed under Chapter 7 and 8 of this Code as a separate line item on all contracts and bills, both for public and private entities. The line item for such taxes is a part of the contractor's total bill and is collectible from all entities, both public and private.

Sec. 1015 *Contractors Excise Tax Collection Agreement with State.* The Tax Commission, pursuant to Section 306(10), may enter into an agreement with the Department of Revenue of the State of South Dakota to provide for the collection of the taxes, issuance of permits, supervision of the keeping of records and filing of reports, and collection of fees required by this Chapter on behalf of the Tribe by the Department. Such agreement may provide that the collection of taxes, issuance of permits, supervision of the keeping of records and filing of reports, and collection of fees.

Sec. 1016 *Amendments to Contractors Excise Tax Laws.*

(1) Except as provided in Subsection (2), any change by the legislature of the State of South Dakota to SDCL 10-46A or SDCL 10-46B shall constitute an amendment to this Chapter, unless the Rosebud Sioux Tribal Council disapproves the same no later than thirty days prior to its effective date. In the case of an emergency enactment by the South Dakota Legislature amending SDCL 10-46A or 10-46B, the enactment shall constitute an amendment to this Chapter unless the Rosebud Sioux Tribal Council disapproves the same no later than thirty days following the approval thereof, which thirty day limit shall begin to run from the date a certified letter is received by the

Tax Commission for the Department of Revenue notifying the Triobe of the emergency enactment. The Tax Commission shall promptly notify the Tribal Council of all changes in State Law affecting this Chapter. The Commission shall forward any such changes which have been approved to the Superintendent of the Rosebud Agency for consideration by the Secretary of the Interior. If the Tribal Council disapproves a change made in SDCL 10-46A or 10-46B or disapproves any such emergency enactment the Tax Commission shall notify the Department of Revenue, in writing within ten days of the disapproval.

(2) Changes in State law shall have no effect on the appeal and enforcement procedures contained in this Code, or on the interest or penalty provisions of this Code, except as provided in Subsection (1) and (2) of Section 1017.

Sec. 1017 Enforcement, Penalties, and Appeals--Applicaiton of State and Tribal Law. So long as the collection agreement provided for in Section 1015 remains in effect:

(1) Appeals by any taxpayer from whom the State is collecting the taxes imposed by this Chapter pursuant to such collection agreement shall be filed with the State in accordance with the procedures contained in SDCL 10-46A and other applicable State law in effect at the time of the appeal, which laws are incorporated herein by reference as tribal law.

(2) Enforcement actions for violation of this Chapter, brought by the State pursuant to such collection agreement, shall be in accordance with SDCL 10-46A and 10-46B and other State law in effect at the time of the enforcement action, including State law regarding enforcement procedures, interest, and penalties, which laws are incorporated herein by reference as tribal law.

(3) Enforcement actions for violation of this Chapter, brought by the Tax Commission pursuant to such collection agreement, shall be in accordance with this Code and other applicable Tribal law regarding enforcement procedures, interest, and penalties.

Sec. 1101 Definitions--The definitions contained in Section 201 apply to this Chapter. In Addition, in this Chapter:

(1) "Agricultural use" means grazing, farming, or any related activity.

(2) "Indian lands" means all lands within the original boundaries of the Rosebud Reservation that are (a) owned by or held in trust for the Rosebud Sioux Tribe, (b) owned by or held in trust for the Tribal Land Enterprise of the Rosebud Sioux Tribe, or (c) allotment held in trust by the United States for an individual Indian or Indians, or owned by an individual Indian or Indians and subject to restriction upon alienation imposed by the United States.

(3) "Lessee" means the person or persons who have obtained any possessory interest in Indian lands, and the assignees and successors in interest of such a person or persons. This term does not apply to a sublessee where the lessee retains an interest in the leasehold.

Grazing land: 25 per acre

Farm land: 50 per acre

Sec. 1103 *Date Due.* The taxes imposed by this Chapter are due in advance, on or before November 1 of each year or on or before March 1 of each year, as billed by the Tax Commission, provided, that no interest or penalty shall be charged when payments are received by the Commission within thirty days after the due date. Failure of the lessee to receive a bill from the Tax Commission shall in no way relieve the lessee of his duty to pay the taxes imposed by this Chapter.

Sec. 1104 *Lessor Not Obligated to Pay Tax.* The incidence of the taxes imposed by this Chapter shall be upon the lessee, and the lessor and his interest in such Indian lands shall in no respect be liable for payment of the taxes.

Sec. 1105 *Payment of Taxes by Sublessees and Others.*

(1) Any sublessee or other person interested in any possessory interest upon which the taxes imposed by this Chapter are due and unpaid may file a return and pay on behalf of the lessee any taxes due in order to protect his rights in such possessory interest.

(2) Upon payment of such taxes, the payor shall be entitled to recover from the lessee the amount of such payment with interest thereon at the rate of 12% per annum.

(3) If the lessee shall make payment of the taxes due after they have been paid by some other person, the person making such payment on behalf of the lessee shall be entitled to a refund of the amount paid.

Sec. 1106 *Delinquency as Grounds for Cancellation of Lease.* Delinquency in the payment of any taxes imposed by this Chapter or any interest or penalties imposed pursuant to Section 601 for a period of six months shall be grounds for cancellation of the lessee's lease. Such cancellation shall not relieve the lessee or his obligation to pay any taxes, penalties, or interest, nor shall it relieve the lessee of any of his duties or obligations to the lessor.

CHAPTER 12: BUSINESS LICENSES

Sec. 1201 *Definitions.* The definitions in Section 201 apply to this Chapter. In addition, in this Chapter:

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

(2) "Engage in Business" means to commence, conduct, continue, or liquidate a business.

Sec. 1202 *License Required of All Businesses.* A tribal business license, as provided for in this Chapter, shall be required prior to engaging in any business within the Rosebud Reservation, provided, that as to any business being engaged in on the effective date of this Chapter, a business license shall be required within thirty days of the effective date. The tribal business license provided for in this Chapter is required of every business within the Reservation, whether temporary or permanent, and regardless of whether such business is required to obtain a federal trader's license or permit, or any other license or permit required by this Code or other tribal law.

Sec. 1203 *Application for Business License.* Application for tribal business license shall be made to the Tax Commission on such form as it shall prescribe prior to engaging in any business within the Reservation, or if engaged in such business on the effective date of this Chapter, within thirty days of the effective date. An application for annual renewal of a permanent tribal business license shall be filed with the Tax Commission prior to the expiration date of the license.

Sec. 1204 *Term of Licenses.* Permanent tribal business licenses shall be effective for a term of one year from the date of issuance, and may, upon application and payment of the annual license fee, be renewed annually except as provided in Section 1206. Temporary tribal business licenses shall be effective for a period of thirty days commencing with the date of issuance.

Sec. 1205 *License Fees.* The fees for permanent and temporary business licenses shall be established by the Tribal Council, after consideration of the recommendation of the Tax Commission.

Sec. 1206 *Denial of License or Renewal.* The Tax Commission shall deny any application or renewal application for a tribal business license if the applicant is, at the time of the application or renewal application, delinquent in the payment of any taxes, interest, or penalties provided for in this Code, or if the applicant is in any other respect in violation of tribal law. Any applicant whose application or renewal application is denied by the Commission may appeal pursuant to Chapter 4 of this Code in the same manner and under the same terms as provided for petitions for redetermination to the Tax Commission.

Sec. 1207 *Revocation of License.* If any business is more than sixty days delinquent in the payment of any taxes, interest, or penalties imposed by this Code, or is otherwise not in compliance with tribal law, the Tax Commission may, after notice and opportunity for hearing, revoke the tribal business license of such business. Appeal from a decision by the Tax Commission revoking a business license may be taken in the same manner and under the same terms as provided in Chapter 4 of this Code for petitions for redetermination.

Sec. 1208 *Reinstatement of License.* The Tax Commission may, upon application, reinstate a business license that has been revoked pursuant to Section 1207 upon the payment of all taxes, penalties, and interest owed by the business pursuant to this Code, provided the business is otherwise in compliance with tribal law, and provided further that the Commission may require as a condition of such reinstatement that the applicant furnish a bond to the Tribal, or other adequate security, as security for payment of any tribal taxes that may become due.

Sec. 1209 *Penalties and Enforcement.* Whenever any person engages in business without a valid tribal business license, as provided in this Chapter:

- (1) The Tax Commission may bring an action for an injunction pursuant to Section 502;
- (2) The Tax Commission may request that an Exclusion Action be brought pursuant to Section 509; and
- (3) (a) If the person is a member of the Tribe he shall be guilty of a crime, and on conviction thereof, shall be sentenced to not more than six months labor, or fined not more than five hundred dollars, or both such imprisonment and fine, plus costs; or

(b) if the person is a non-member of the Tribe, the Tribal Court in a civil action shall assess against him a civil penalty of not more than five hundred dollars, or shall permanently or temporarily exclude him from the Reservation, or shall impose both such civil penalty and exclusion, plus costs.

Sec. 1210 *License Not Transferable.* The license provided for in this Chapter is not transferable, and is valid only for the person in whose name it is issued and for transaction of business at the place designated therein.

Sec. 1211 *Posting of Licenses.* Each business shall post its tribal business license in a conspicuous location at its place of business.