

TITLE 3. BUSINESS AND PROFESSION

ARTICLE I

BUSINESS LICENSES

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TITLE 3. BUSINESS AND PROFESSION

ARTICLE I

BUSINESS LICENSES

[NOTE: Except as otherwise noted, the provisions of Article I, Title 3 were enacted on May 18, 2005 by Res. No. 20-2005.]

CHAPTER 1. DEFINITIONS AND CONSTRUCTION

Sec. 3-1101. Purposes.

The primary purposes of this Article are:

(a) to protect the health and welfare of the members by insuring that businesses which occupy Tribally owned land are operated in a manner which is consistent with the land assignment and are conducted in a manner which does not harm the Tribe's land ownership interest or the quiet enjoyment of land assignments by all residents of the Settlement;

(b) to establish a fee for conducting business upon Tribal land assignments, so that the Tribal government receives economic benefit from the use of the communally owned lands; and

(c) to protect the health and welfare of the members by insuring that non-occupants who enter the Settlement to engage in businesses are reputable.

Sec. 3-1102. Definitions.

Unless the context requires otherwise or a different definition is provided for a particular Chapter or Section, as used in this Article:

(a) "Applicant" means a person applying for a business license.

(b) "Business" includes occupant businesses and non-occupant businesses, as defined in this Article.

(c) "Business license" includes occupant business licenses and non-occupant business licenses, as defined in this Article.

(d) "Member" means an enrolled member of the Sac & Fox Tribe of the Mississippi in Iowa.

(e) "Non-occupant business" means a person, other than an occupant business, which provides or holds itself out to provide any goods or services for hire or compensation upon the Settlement; except that occupant business shall not include a person who is employed for wages or salary, or a person seeking such employment for himself or herself;

(f) "Non-occupant business license" means the license required by this Article for a non-occupant business.

(g) “Person” means any individual, firm, partnership, joint venture, association, corporation, municipal corporation, trust, business trust, receiver or any group or combination acting as a unit and the plural as well as the singular in number, but does not include the Tribe or any agency or department of the Tribe.

(h) “Occupant”, solely for purposes of this Article, means a person who:

- (1) has a mailing or street address for business mail which is on the Settlement;
- (2) holds any non-residential land assignment;
- (3) uses any portion of a Tribal land assignment as an office, place of distribution, sales or sample room or place, warehouse or other place of business.

(i) “Occupant business” means an occupant of the Settlement which provides or holds itself out to provide, to others either on or off the Settlement, any goods or services for hire or compensation; except that occupant business shall not include:

- (1) the Tribe or any department or subdivision thereof;
- (2) a person who is employed for wages or salary, or a person seeking such employment for himself or herself.

(j) “Occupant business license” means the license required by this Article for an occupant business.

(k) “Tax Director” means the Tax Director of the Sac & Fox Tribe of the Mississippi in Iowa, or any duly authorized and appointed assistants, deputies or agents of said Tax Director charged with the administration or enforcement of this Article.

(l) “Tribal Council” means the duly elected Council members of the Sac & Fox Tribe of the Mississippi in Iowa.

(m) “Tribal Court” means the Sac & Fox Tribe of the Mississippi in Iowa Court.

CHAPTER 2. REQUIREMENTS FOR LICENSE

Sec. 3-1201. Business License Required.

(a) A business may not provide or hold itself out as providing any goods or services for hire or profit, except as stated in subsection (b) unless the business is a business operated by the Tribe or has a current business license issued by the Tribe.

(b) A business may engage in the following activities without a business license

- (1) services for which a Tribal gaming license is required and obtained, unless that same business also provides services to the Tribe, a Tribal business, or to Tribal members, in which case a license is required;

- (2) services for which any other license issued under current or future Tribal Code provisions is required and obtained; or
- (3) production of home-based crafts by a Tribal member.

Sec. 3-1202. Requirements for Obtaining a Business License.

An applicant must:

- (a) submit a completed application for a business license;
- (b) pay the applicable application fee;
- (c) provide any supplemental information reasonably requested by the Tax Director;
- (d) establish that applicant will not be engaged in activity barred under section 3-1204;
- (e) be found fit, by the Tax Director, to hold a business license.

Sec. 3-1203. Application for Business License.

(a) The Tax Director shall, within 30 days of enactment of this Article, create an application for business license form. That form shall be constructed so that, when properly completed by the applicant, the applicant's responses will provide the Tax Director with:

- (1) applicant's name, name under which it will be doing business on the Settlement, address, and phone number;
- (2) the name, address, and phone number of any person not included in subsection 1 who holds more than a 10% interest in the applicant or more than 10% of the shares of stock in the corporation;
- (3) if applicable, the jurisdiction of incorporation and date of incorporation;
- (4) information sufficient to determine whether applicant or any person identified in subsection 2 has: had a prior license revoked or denied; any outstanding Tribal Court judgments; or ever been convicted of any felony or crime involving dishonesty or false statement;
- (5) applicant's designation of the business classification, fee category and licensing fee, listed in section 3-1206, which applicant believes should apply to its activities;
- (6) a brief description of the nature, scope, and number of employees of applicant's intended on-Settlement business activity;
- (7) if applicant is wholly owned by more than one member, the name and ownership interest (expressed in percentages which must total 100%) of each member;
- (8) if applicant will be an occupant business, the name of the person holding the land assignment; the date the assignment was made;

(9) any other information which the Tax Director, in his discretion, believes should be provided by all applicants for business licenses.

(b) The application form shall include a provision that applicant expressly enters into a consensual relationship with the Tribe, sufficient to establish Tribal Court jurisdiction over applicant for applicant's business activities.

(c) The application form may be modified or revised from time to time in the Tax Director's discretion.

(d) The Tax Director may create supplemental application forms, applicable to some license applications, as deemed appropriate by the Tax Director.

Sec. 3-1204. Prohibition on Specified Business Activity.

A business may not perform, and a business license shall not be issued, when an applicant seeks to conduct any of the following:

- (a) dealing in objects of antiquity;
- (b) the manufacture, sale, gift, transportation, drinking or storage of intoxicating liquors or beverages;
- (c) activity which will harm the Tribe's land ownership interests;
- (d) activity which will create significant adverse impact upon residents of the Settlement or members.

Sec. 3-1205. Duty or Authority to Deny Licenses to Certain Persons.

(a) The Tax Director shall deny a business license to any person who is excluded from the Settlement or who employs any person who is excluded from the Settlement;

(b) The Tax Director shall have discretionary authority to deny a business license to any applicant where a person who holds more than a 10% interest in the applicant or more than 10% of the shares of stock in the corporation:

- (1) had a prior license revoked;
- (2) had a prior application for license denied;
- (3) has not paid a Tribal Court judgment which stemmed from a business transaction;
- (4) has been convicted of a crime which involved dishonesty or false statement, regardless of the punishment;
- (5) is dishonest or untrustworthy in business matters.

Sec. 3-1206. License Application Fee.

(a) The current annual fee to apply for a license is:

<u>Major Business Classifications</u>	<u>Amount – Member and Occupant</u>	<u>Amount – Member & Non-Occupant</u>	<u>Amount – Non-member & Occupant</u>	<u>Amount – non member & non-Occupant</u>
Retail Trade	\$25.00	\$50.00	\$75.00	\$100.00
Wholesale Trade	\$50.00	\$75.00	\$100.00	\$125.00
Manufacturing	\$50.00	\$75.00	\$100.00	\$125.00
Transportation off Settlement	\$50.00	\$75.00	\$100.00	\$125.00
Services	\$50.00	\$75.00	\$100.00	\$125.00
Finance, Insurance and Real Estate	\$75.00	\$125.00	\$175.00	\$225.00
Agricultural	\$50.00	\$75.00	\$125.00	\$200.00
Communication, Gas and Utility Service	\$75.00	\$100.00	\$125.00	\$150.00
Mining	\$100.00	\$150.00	\$500.00	\$500.00
Construction	\$50.00	\$100.00	\$150.00	\$200.00

(b) The license application fee is non-refundable.

(c) Where an applicant seeks to engage in business in multiple business categories for which there are different fees, the applicant shall pay only the highest application fee.

(d) Although a partnership, joint venture, corporation, or similar entity is not a member, it shall be entitled to pay the application fee for members if all of its shares or other ownership interests are held by members. To qualify for the reduced fee for entities wholly owned by members, the applicant must establish that the entity is wholly owned by members.

(e) To qualify for the reduced fee for members, applicant must establish membership.

(f) The Tribal Council and the Tax Director shall review the license fees at least once every two years to determine whether modification of the license application fees should be made, such that:

(1) The license application fee charged to non-members who are also non-occupants remains approximately equal to the costs to the Tribe for licensing and regulating such businesses;

(2) The license application fee charged to non-members who are also occupants remains set at an amount which:

(i) approximately equals the costs to the Tribe for licensing and regulating such businesses; and

(ii) reasonably compensates the Tribe for the use of the Tribally owned and assigned land;

(3) Consistent with the Tribe's policy of encouraging members to engage in business activities, the application fee for members shall be approximately half of the fee for non-members.

Sec. 3-1207. License Application Fee – Exemption for Nonprofit Organizations.

No license requirement or charge shall be imposed upon an organization whose sole activities are raising funds for charitable, scientific, educational, or religious purposes; nor shall any fee be charged to any school, athletic or educational organization, that may charge fees for admission to sporting events, social dances, or similar activities, provided, that receipts from such activities do not accrue to the personal benefit of any individual, corporation or group, other than to fund charitable, scientific, educational, or religious activities.

CHAPTER 3. LICENSE ADMINISTRATION

Sec. 3-1301. Enforcement and Administration Responsibility.

The Tax Director is hereby charged with the day-to-day administration of the provisions of this Article. The Tax Director shall perform the following administrative services when appropriate: collect and record fees; maintain records and files; issue and receive application forms; notify applicants of acceptance or rejection as determined by the Tax Director; issue licenses; issue duplicate licenses upon submission of a written request by the licensee attesting to loss of or failure to receive the original and payment by the licensee of the established fee; notify licensees of renewal dates at least thirty (30) days before the expiration date of their licenses; compile and maintain a current register of licensees; answer routine inquiries; maintain files relating to individual licensees; and provide inspection, enforcement, and investigative services regarding all licenses issued.

Sec. 3-1302. Disposition of Funds.

License application fees payable under this Article shall be credited to a general account of the Tribe to be used in the provision of Tribal governmental services, as determined by the Sac & Fox Tribe of the Mississippi in Iowa Tribal Council.

Sec. 3-1303. Expiration and Renewal of License.

Licenses will be renewed annually on the fifteenth (15th) day of January next succeeding its issue, if Licensee has submitted a request for license renewal and annual application fee and the Tax Director determines that the licensee is fit to continue under such license. If the license is not renewed on or before January 15th, the license shall lapse. In addition to annual application fees required for the reinstatement of the lapsed license, the Tax Director shall impose a delayed renewal penalty that shall be paid if a license has lapsed for more than sixty (60) days prior to renewal, in the amount equal to 25% of the annual license application fee.

Sec. 3-1304. Assignment or Transfer of License.

Any license issued by the Tax Director is valid only for the person in whose name the license is issued, and is not assignable or transferable except under the following circumstances:

(a) In the case of death, bankruptcy, receivership, or incompetency of the licensee, or if for any other reason whatsoever the business of the licensee shall pass to another by operation of law, the Tax

Director may in his/her discretion transfer the license for the remainder of the calendar year, to the executor, administrator, trustee, receiver, or person upon whom the license has devolved;

(b) Any executor, administrator, trustee, receiver or other person to whom the licensed business has passed, shall, upon application to the Tax Director, be entitled to an assignment or transfer of such license for the remainder of the year, upon payment of a transfer fee of \$10.00.

CHAPTER 4. VIOLATIONS

Sec. 3-1401. Engaging in Business Without a License.

The Tax Director may issue an order for a violation of this Article, if there is probable cause to believe a person who did not hold a license under this Article engaged in business for which a license is required by this Article. The order may require such person to cease and desist from business activities without a license required by this Article. The order may impose a civil penalty, up to the greater of \$1,000.00 or twenty percent of the gross income derived by such person from the business activities for which licensure was required.

Sec. 3-1402. Suspension or Revocation of License.

(a) The Tax Director shall have the authority to issue an order summarily suspending, without hearing or prior notice, a license when the Tax Director believes that the licensee's activities pose a clear and immediate danger to the health and safety of persons within the jurisdiction of the Tribe. A licensee may appeal such order to the Tribal Court, for the limited purpose of determining whether there were grounds for suspending the license without a prior hearing. Such appeal shall be heard on an expedited basis.

(b) The Tax Director shall have the authority to issue an order suspending or revoking a license issued under this Article after a hearing where the Tax Director determines that the license holder:

- (1) made a material misstatement on the license application;
- (2) has engaged in any activity barred by section 3-1204 or has otherwise engaged in business related activities which violate any applicable Tribal, federal, or state laws;
- (3) has not paid a Tribal Court judgment which stemmed from a business transaction;
- (4) has been convicted of a crime which involved dishonesty or false statement, regardless of the punishment;
- (5) is dishonest or untrustworthy in business matters.
- (6) does not have a right to the use of the land on which the business is conducted; or
- (7) ceases to act in the capacity for which the license was issued.

(c) Where pre-suspension notice and opportunity to be heard are required, the Tax Director shall provide that notice, in writing, by personal delivery or by mail addressed to the licensee's last known address, at least ten days before hearing. The notice shall state the reason or reasons for the suspension or revocation, and specify the date, time, and place for a hearing before the Tax Director.

Sec. 3-1403. Violations; Civil Penalties.

(a) The Tax Director shall have the authority to issue an order imposing civil penalty against any licensee if there is probable cause to believe the licensee:

- (1) made a material misstatement on the license application;
- (2) engaged in any activity barred by section 3-1204 or otherwise engaged in business related activities which violate any applicable Tribal, federal, or state laws;
- (3) continued to conduct business after a license was suspended or revoked;
- (4) continued to conduct business without a license after being ordered to cease and desist;

(b) The amount of the civil penalty shall be not more than \$5,000.00 per violation. Each separate business transaction shall be a separate violation. In determining the amount of the penalty, the Tax Director shall give due consideration to the size of the business, the gravity of the violation, the licensee's good faith, and the history of previous violations.

Sec. 3-1404. Abatement of Proceedings.

No disciplinary proceeding or action by the Tax Director is barred or abated by the expiration, transfer, surrender, renewal continuance, or extension of any license issued pursuant to the provisions of this Article.

Sec. 3-1405. Review of Orders of Violations and Orders Imposing Civil Penalties.

(a) Any order issued by the Tax Director must be in writing. The order shall constitute an appealable agency action under Title 2, Article 4 of this code, and, except as otherwise provided in this Article, subsequent review shall be governed by Title 2, Article 4, chapters 5 and 6.

(b) After an order assessing a civil penalty has become final, Tax Director may institute a civil action in Tribal Court to recover any civil penalty assessed. In such collection action, the validity and appropriateness of the Tax Director's order imposing the civil penalty shall not be subject to judicial review.