

**TITLE 23**

**TRIBAL TAX ACT**

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**TITLE 23**

**TRIBAL TAX ACT**

**CHAPTER 1. – PURPOSE, SCOPE, DEFINITIONS**

**SECTION 1.1      TITLE**

This law shall be known as the “FLANDREAU SANTEE SIOUX TRIBAL TAX ACT”.

**SECTION 1.2      PURPOSES**

The purposes of this Title are:

- (a) To enhance the general well-being of the members of the Flandreau Santee Sioux Tribe;
- (b) To promote the economic growth of the Flandreau Santee Sioux Tribe;
- (c) To provide capital for the Tribal Government for essential governmental functions;
- (d) To expand governmental capacity of the Flandreau Santee Sioux Tribe to meet the needs of its members and others for governmental services;
- (e) To provide increased consumer services to the members of the Flandreau Santee Sioux Tribe and others;
- (f) To support capital improvements of the tribal facilities; and
- (g) To educate members of the Flandreau Santee Sioux Tribe.

**SECTION 1.3      DISPOSITION OF PROCEEDS OF TAX**

The money received by the Tribal Treasurer from the tax imposed by this Title shall be used in the provision of essential tribal government services, including but not limited to, the following:

- (a) Enhancing the general well-being of the members of the Flandreau Santee Sioux Tribe;
- (b) Police and fire protection;
- (c) Road construction, repair and maintenance;
- (d) Operation of the Tribal Court;
- (e) Water, sewage and garbage disposal;

- (f) Education;
- (g) Public health;
- (h) Development of tribal or other district enterprises;
- (i) Recreation;
- (j) Social services;
- (k) Land purchase.

**SECTION 1.4        SCOPE**

- (a) This Title shall apply to the full extent of the sovereign jurisdiction of the Flandreau Santee Sioux Tribe in Indian Country.
- (b) Compliance with this Title is hereby made a condition of the use of any land or premises within the Flandreau Santee Sioux Tribe reservation and in Indian Country.
- (c) Any person who resides within the jurisdiction of the Flandreau Santee Sioux Tribe; conducts business or engages in a business transaction with the Flandreau Santee Sioux Tribe or its members or in Indian Country; receives benefits from the Flandreau Santee Sioux Tribal government, including police, fire or emergency services; acts under Flandreau Santee Sioux Tribal authority, or enters the Flandreau Santee Sioux Reservation or onto any trust or fee land owned by the Tribe shall be deemed thereby to have consented to the following:
  - (1) To be bound by the terms of this Title;
  - (2) To the exercise of civil jurisdiction by the Flandreau Santee Sioux Tribal Court over said person in legal actions arising pursuant to this Title; and
  - (3) To detainment, service of summons and process, and search and seizure, in conjunction with legal actions arising pursuant to this Title.

**SECTION 1.5        DEFINITIONS**

Words used in this Title, unless the context otherwise plainly requires shall mean:

- (a) “Tribe” means the Flandreau Santee Sioux Tribe, a federally recognized Indian tribe.
- (b) “Cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

- (c) “Essential governmental services” include, but are not limited to government services to provide and maintain infrastructure such as sidewalks, roads, and utilities; services such as fire protection and law enforcement; the costs of administering the tribal cigarette tax stamp program, including all deductions and exemptions similar to those available to retailers, wholesalers, and others under state law, further including transportation vehicles and related costs; Tribal administration activities such as tax functions, contracting for health benefits, economic development, natural resources, and the provision of job services; and distribution of moneys related to trust funds, education, general assistance, such activities as land and building acquisitions, and building development and construction.
- (d) “Food and beverages” means any raw, cooked, or processed edible substance used or intended for use in whole or in part for human consumption.
- (e) “Gross Receipts” means the amount received in money, credits, property, or other money’s worth in consideration of sales at retail transacted upon any lands that are within the jurisdiction of the Flandreau Santee Sioux Tribe without any deduction on account of the cost of materials used, the cost of labor or services purchased, amounts paid for interest or discounts, or any other expenses whatsoever, nor shall any deductions be allowed for losses. Discounts 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 in cash or credit. On all sales of a retail business, valued in money, when such sales are made under conditional sales contract or under other forms of sales wherein the payment of the principal sum thereunder be extended over a period longer than sixty (60) days from the date of sale thereof that only such portion of this sale amount thereof shall be accounted, for the purpose of tax under this Title.
- (f) “Major Brands” means those brands of cigarettes manufactured and sold nationally by non-native commercial enterprises and businesses.
- (g) “Manager” means a person employed to manage a retail business.
- (h) “Native Brands” means those brands of cigarettes or tobacco products manufactured and sold wholesale by other Indian tribes or their enterprises and are subject to the tribal cigarette tax.
- (i) “Person” means any individual, firm, co-partnership, joint venture, association, corporation, municipal corporation, estate, trust, business trust, receiver, the Tribe, the State and its political subdivisions, or any group or combination acting as a unit, and the plural as well as the singular in number.
- (j) “Reservation” shall mean such territory as may now be held or hereafter acquired by or for the Flandreau Santee Sioux Tribe under any law.

- (k) “Retail Business” means any activity wherein tangible goods, wares, merchandise, propane, fuel, electrical power and telephone are sold at retail with the object of gain, benefit or advantage, either direct or indirect.
- (l) “Retail Sale” means the sale of tangible personal property to the consumer or user thereof; or to any person for any purpose other than for resale.
- (m) “Retailer” includes every person engaged in the business of selling tangible goods, wares, 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 Title. The isolated or occasional sale or 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.
- (n) “Sale” means any transfer, exchange or barter, conditional or otherwise, in any manner whatsoever, for a consideration.
- (o) “Services” means all activities engaged in for other persons for a fee, retainer, commission, or other monetary charge, which activities involve predominately the performance of a service as distinguished from selling property.
- (p) “State” means the State of South Dakota.
- (q) “State Cigarette Tax” means the state tax imposed on each cigarette, which is expressed in cents per cigarette.
- (r) “Tax Collection Agreement” means the Cigarette Tax Collection Agreement between the Flandreau Santee Sioux Tribe and the State of South Dakota entered into on June 5, 1987, including any subsequent amendments thereto, regarding the sale and taxation of cigarettes within the boundaries of the Flandreau Santee Sioux Reservation.
- (s) “Tobacco products” means cigars and other smoking tobacco, snuff and other chewing tobaccos, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. As applied here and unless otherwise indicated, “tobacco products” does not mean Native Brands or Major Brands cigarettes.
- (t) “Tribal cigarette tax” means the tax or taxes enacted as a provision of Flandreau Santee Sioux Tribal law on the units of cigarettes and tobacco products sold and on the purchase of cigarettes by retail buyers.



## **CHAPTER 2. – TRIBAL TAX COMMISSION**

### **SECTION 2.1      CREATION OF TAX COMMISSION**

- (a) For the purposes of carrying out the policy and purpose, as set forth in Section 1.2 of this Title, the Flandreau Santee Sioux Tribal Tax Commission (Tax Commission) is hereby established within the Government of the Flandreau Santee Sioux Tribe which shall be an agency of the Flandreau Santee Sioux Tribe subordinate to the Executive Committee, possessing all powers, duties, rights, functions hereinafter defined by this Act or which hereinafter be conferred upon it.
- (b) The Commission shall report monthly to the Executive Committee concerning the Tax Commission and its duties. The Commission shall report to the General Council pursuant to the regular meeting schedule set forth within the Constitution and Bylaws of the Tribe.

### **SECTION 2.2      COMPOSITION OF TAX COMMISSION**

The members of the Tax Commission shall consist of all members of the Executive Committee and two at-large members appointed by the Executive Committee. The officers of the Commission shall be a Chairman, a Vice-Chairman and a Secretary and shall be appointed by the Executive Committee.

### **SECTION 2.3      GENERAL POWERS OF THE TAX COMMISSION**

The Tax Commission shall generally be charged with the administration and enforcement of all tribal tax laws. Incidental to the administration or enforcement of the tribal tax laws, the Tax Commission shall have the power to:

- (a) Assess and collect taxes as are imposed by appropriate legislation of the Executive Committee and to bring actions on behalf of the Tribe in courts of competent jurisdiction for the collection of tribal taxes, penalties and interest, and the enforcement of the tribal tax laws;
- (b) Administer oaths, conduct hearings and by subpoena, to compel the attendance of witnesses and the production of any books, records, and papers of any taxpayer relating to the enforcement of the tribal tax laws;
- (c) 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, upon reasonable notice, during normal business hours, and at any other time agreed to by said taxpayer, or at any time pursuant to a search warrant signed by the Tribal Court;

- (d) Examine, under oath, either orally or in writing any taxpayer or agent, officer, or employee of any taxpayer, or any other witness in respect to any matter relative to the tribal tax laws;
- (e) Exercise all other authority delegated or conferred upon it by law, or as may be reasonably necessary in the administration or enforcement of any tribal tax laws;
- (f) Report and account to the Executive Committee at least twice a year regarding the collection of all tribal taxes. The Executive Committee shall establish the dates on which such accounting shall take place and may require more frequent accounting if it considers them necessary.

**SECTION 2.4 SUITS AGAINST THE TAX COMMISSION**

The Tax Commission, as a governmental agency of the Flandreau Santee Sioux Tribe, its commissioners, agents and employees is immune from any suit at law or in equity while performing their lawful duties within the scope of the authority delegated to them; however, any taxpayer or other person against whom has been assessed taxes, penalties, or interest, or who has underpaid any taxes, penalties or interest may bring an action in a Court of competent jurisdiction after exhaustion of administrative remedies, for the recovery of any taxes, penalties, or interest paid under written protest.

**SECTION 2.5 LIMITATIONS ON SUITS AGAINST THE TAX COMMISSION**

Any suit against the Tax commission authorized by Section 2.4 shall be commenced by filing a petition in a Court of competent jurisdiction within thirty (30) days after the date of exhaustion of their administrative remedies.

**SECTION 2.6 RULE MAKING AUTHORITY**

- (a) The Tax Commission shall have the authority to prescribe, promulgate and enforce written rules and regulations not inconsistent with this Title to provide for its internal operational procedures; or to interpret or apply any tribal laws as may be necessary to ascertain or compute the tax owned by any taxpayer, or for the filing of any tribal tax laws, or as shall be reasonably necessary for the efficient performance of its duties, or as may be required or permitted by law.
- (b) The Tax Commission shall have the authority by rule to adopt and promulgate a schedule of fees and charges for services rendered relating to transcripts and certificates of records; for transcripts for appeal and other services involving the furnishing of copies of proceedings, files, and records, and, in the case of transcripts of records on appeal, the Commission may prescribe a reasonable charge therefore to be paid by the party demanding the record.

**SECTION 2.7 FORMS**

The Tax Commission may prepare and make available to the public such standard forms as are or may be necessary to carry out its functions and which are not otherwise provided for by this Title.

**SECTION 2.8      TAX STAMPS AND LICENSES**

- (a) The Tax Commission shall provide for the form, size, color, and identifying characteristics of all licenses, permits, tax stamps, tags, receipts, or other documents or things evidencing receipt of any license or payment of any tax or fee administered by the Tax Commission or otherwise showing the compliance with the tax laws of the Flandreau Santee Sioux Tribe.
- (b) Such stamps or licenses shall contain at least the following information:
  - (1) The words: “Flandreau Santee Sioux Tribe”;
  - (2) The words “Tax Commission”;
  - (3) The monetary amount for which the tax or license was issued;
  - (4) Wording which indicates the type of tax imposed;
  - (5) If the instrument is a license, permit, or receipt, wording indicating the type of license, permit or receipt, its effective dates, and the name and address of the taxpayer to whom issued.
  - (6) If the tax stamps are to be affixed to cigarettes, they shall have a serial number or some other discrete numerical identification.
  - (7) Stamps shall be affixed so that the stamps may not be removed from the package without destroying the stamp and shall be affixed so that they may be readily viewed by inspection.
- (c) The Tax Commission shall provide for the manufacture, delivery, storage and safeguarding of such stamps, licenses, permits, tags, receipts, or other documents and shall safeguard such instruments against theft and counterfeiting.
- (d) When the Tax Commission deems it necessary to do so, it may allow the use of metering devices in lieu of paper stamps under such rules and regulations as it shall prescribe.
- (e) The Tax Commission may require Native Brand cigarette wholesalers to be responsible for affixing tax stamps to the smallest container of tribally manufactured cigarettes.
- (f) Any person who, without authorization of the Tax Commission, falsely, or fraudulently forges, embezzles, steals, knowingly converts, knowingly misapplies or permits to be misapplied or counterfeits any stamps, tags, licenses, or other

instrument evidencing payment of taxes prescribed for use in this Title or who shall use, pass, tender as true, or otherwise be in possession of any unauthorized, false, altered, forged counterfeited, or previously used instrument for the purpose of evading the payment of taxes imposed by this Title shall incur a civil penalty in the amount of \$5,000.00. Each such counterfeited, embezzled, stolen, converted, misapplied, or forged stamp or other instrument shall constitute a separate violation.

## **SECTION 2.9            TAX COMMISSION FINANCIAL RECORDS**

- (a) The Tax Commission shall keep and maintain accurate, complete, and detailed records which reflect all taxes, penalties, and interest levied, due, and paid, all licenses issued, and each and every official transaction, communication, or action of the Commission;
- (b) Such records shall be maintained at the tribal building and shall not be moved from said building absent the consent of the Executive Committee by resolution;
- (c) Such records shall be subject to audit at any time upon the direction of the Executive Committee, and shall be audited not less than once each year by a certified public accountant, selected by the Tax Commission;
- (d) Any record of the Tax Commission (except the record of an official decision and opinion rendered upon an administrative appeal), which relates to the individual's business or personal activities of a named particular taxpayer shall not be open to public inspection and shall be released only to the taxpayer involved, tribal officials who have a legitimate official need for such records, or upon order of the Tribal Court for good cause shown;
- (e) Any record of the Tax Commission which does not relate to the individual business or personal activities of a named taxpayer or taxpayers, and all decisions or opinions rendered upon an administrative appeal, 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 record shall be rendered unreadable prior to the issuance of such copy unless the provisions of subsection (d) above would allow release of such information;
- (f) There shall be established and kept such financial record books as may be necessary under generally accepted accounting practices to adequately account for all funds and monies received by the tribal treasurer on behalf of the Tribe.

## **SECTION 2.10            TAX FUND ACCOUNT**

- (a) There is hereby authorized and directed to be established an account in a federally insured financial banking institution to be known as the Flandreau Santee Sioux Tribe Tax Fund Account;

- (b) The Tax Fund Account may be an interest-bearing account and the funds therein may be invested or reinvested as may be approved by the Executive Committee;
- (c) Monies expended shall relate to the purpose of this legislation and for such tribal governmental services as set forth herein;
- (d) All tax monies, licenses, fees, penalties, interest, service fees or charges or other monies collected by the Tax Commission in the administration and enforcement of this Act, except as otherwise specifically authorized by law, shall be deposited in the Tax Fund Account.

**SECTION 2.11      TAX COMMISSION APPROPRIATIONS, EXPENSES AND PERSONNEL**

- (a) There is hereby authorized to be appropriated such sums, as may be necessary to carry out the provisions of this Act, and such monies as may be appropriated shall be available until expended;
- (b) The Tax Commission may employ such personnel, fix the compensation of such personnel and incur such expenses as may be necessary to enable it to carry out its functions and duties subject to the limitations and restrictions herein set out, subject to the Executive Committee approval.

**SECTION 2.12      BONDS**

The Tax Commission may require each of its employees who shall be required to handle public monies, revenue or tax stamps, or who shall be responsible therefore to give bonds for the honest and faithful performance of their duties, in such amounts as may be fixed by the Commission.

## **CHAPTER 3. – TRIBAL TAXES**

### **SUBCHAPTER I. TRIBAL RETAIL SALES AND SERVICE TAX**

#### **SECTION 3.1 TAX ON SALE OF TANGIBLE PERSONAL PROPERTY, FOOD AND BEVERAGES**

- (a) There is hereby imposed a tax of eight percent (8%) upon the gross receipts of a retail business from all sales of tangible personal property consisting of goods, wares, or merchandise; except as otherwise provided in this Subchapter, sold at retail to consumers or users within the Flandreau Santee Sioux Reservation and within Indian Country subject to the jurisdiction of the Tribe.
- (b) There is hereby imposed a tax of eight percent (8%) on each sale of food and beverages sold retail or by any of the restaurants, delis, bars or cocktail lounges to consumers or users within the Flandreau Santee Sioux Reservation and within Indian Country subject to the jurisdiction of the Tribe.
- (c) The tax imposed by this Section shall not apply to the following items and transactions:
  - (1) the retail value of foods and beverages given to customers, guests, contractors or employees without charge as "complementary;"
  - (2) cigarettes and tobacco products sold for use or consumption within the Reservation; and
  - (3) products sold from vending machines.

#### **SECTION 3.2 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 engaging or continuing in the practice, within the Reservation, of any business in which a service is rendered. Any service as defined in Section 3.5 shall be taxable, unless the service is specifically exempt from the provisions of this Subchapter.

#### **SECTION 3.3 SERVICES SUBJECT TO TAXATION**

Services engaged in by other persons for a fee, retainer, commission, or other monetary charge, which activities involve predominately the performance of a service as distinguished from selling property, are taxable. In determining what a service is, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. For the purpose of this Subchapter, services rendered by an employee for his employer are not taxable.

### **SECTION 3.4 CERTAIN PURCHASES CONSIDERED FOR RESALE PURPOSES**

Services purchased by an engineer, architect or surveyor on behalf of a client in the performance of a contract for such client shall be considered purchases for resale purposes.

### **SECTION 3.5 SERVICES ENUMERATED IN STANDARD INDUSTRIAL CLASSIFICATION MANUAL SUBJECT TO TAX**

The following services enumerated in the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, are specifically subject to the tax levied by this Title: metal mining services (group no. 108); coal mining (major group 12); 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 except group nos. 483, 494 and 495); hotels, motels, and tourist courts (group no. 701); rooming and boarding houses (group no. 702); camps and recreational vehicle parks (group no. 703); personal services (major group 72); business services (major group 73); automotive repair, services, and parking (major group 75); miscellaneous repair services (major group 76), except farm machinery, farm attachment units, or irrigation equipment repair services; amusement and recreation services (major group 79); legal services (major group 81); landscape and horticultural services (group no. 078); engineering, accounting, research, management, and related services (major group 87, except industry no. 8733); title abstract offices (group no. 654); consumer credit reporting agencies, mercantile reporting agencies, and adjustment and collection agencies (group no. 732); real estate agents and managers (group no. 653); funeral service and crematories (group no. 726), except that purchases of goods or services with money advanced as an accommodation are retail purchases and are 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; loan brokers (industry no. 6163); repair shops and related services, not elsewhere classified (industry no. 7699) but only locksmiths and locksmith shops; and floor laying and other floor work not elsewhere classified (industry no. 1752). In addition, the following services are also specifically subject to the tax levied by this Subchapter: livestock slaughtering services; dog grooming services; airplane, helicopter, balloon, dirigible and blimp rides for amusement or sightseeing; the collection and disposal of solid waste; and all appraiser's services. The services enumerated in this section may not be construed as a comprehensive list of taxable services but rather as a representative list of services intended to be taxable under this Subchapter.

### **SECTION 3.6 TAX ON UTILITY SERVICES**

There is hereby imposed a tax of 6% 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 Subchapter, when sold at retail within the Reservation to consumers or users.

**SECTION 3.7            TAX ON TELEPHONE AND COMMUNICATION SERVICES**

There is hereby imposed on amounts paid for local and long distance telephone services, land-based and cellular phone and data services, a tax of 6% 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 to the taxpayer, 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 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.

**SECTION 3.8            TAX ON ROOM OR PARKING SITE RENTALS TO TRANSIENT GUESTS**

There is hereby imposed a tax at the rate of ten percent (10%) per room or space upon 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 consecutive days.

**SECTION 3.9            TAX ON CIGARETTES AND OTHER TOBACCO PRODUCTS**

- (a) Non-FSST Manufactured Native Brands Cigarettes: There is hereby levied upon the sale of Native Brands cigarettes and Native Brands tobacco products at retail outlets to consumers within the Flandreau Santee Sioux Reservation and within Indian Country subject to the jurisdiction of the Tribe a tax (“Tribal cigarette tax”) equal to the following: for cigarettes, two dollars and fifty cents (\$2.50) per pack; for snuff and other chewing tobaccos, ten percent (10%) of the gross receipts; for cigars, twenty percent (20%) of the gross receipts; and for pipe tobaccos, thirty percent (30%) of the gross receipts. This is only for tobacco products that are not manufactured by, or at the direction of, the Flandreau Santee Sioux Tribe.
  
- (b) FSST Manufactured Native Brands Cigarettes: There is hereby levied upon the sale of Native Brands cigarettes and Native Brands tobacco products at retail outlets to consumers within the Flandreau Santee Sioux Reservation and within Indian Country subject to the jurisdiction of the Tribe a tax (“Tribal cigarette tax”) equal to the following: for cigarettes, two dollars and ninety cents (\$2.90) per pack; for snuff and other chewing tobaccos, ten percent (10%) of the gross receipts; for cigars, twenty percent (20%) of the gross receipts; and for pipe tobaccos, thirty percent (30%) of the gross receipts. This is only for tobacco



products that are manufactured by, or at the direction of, the Flandreau Santee Sioux Tribe.

- (c) The Tax Commission may impose, eliminate, raise or lower the tax on Native Brands cigarettes and other tobacco products whenever it considers it necessary to do so.
- (d) Revenue derived from the tax imposed by Section shall be used for essential government services of the Flandreau Santee Sioux Tribe. No portion of the tax levied on Native Brands or other tobacco products shall be remitted to the State of South Dakota. The tribal cigarette taxes collected pursuant to this Subchapter shall be remitted to the Tribe according to a schedule established by the Tax Commission.
- (e) No sale of cigarettes or any tobacco product shall be made to any person under the age of 18 years old within the boundaries of the Flandreau Santee Sioux Reservation.
- (f) The Tribe shall continue to adhere to the tax sharing scheme contained in the Tax Collection Agreement with respect to the collection and sharing of the State Cigarette Tax on Major Brands cigarettes, so long as it remains in effect. Should the Tax Collection Agreement no longer be in effect, any tax imposed on Major Brands shall be remitted to Tribe.

### **SECTION 3.10 EXEMPT SALES**

There are hereby specifically exempted from the provisions of this Subchapter, and from the computation of the amount of tax imposed by it, all taxes which this Tribe is prohibited from taxing under the Constitution and the laws of the United States or under the Constitution and by-Laws of the Tribe.

### **SECTION 3.11 EXEMPT SALES TO STATES, MUNICIPALITIES, CHARITIES AND INDIAN TRIBES**

There are hereby specifically exempted from the provisions of this Subchapter 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 any other State of the United States or the District of Columbia, to any non-profit charitable organization which devotes its resources exclusively to the relief of the poor, distressed or under privileged, and has been recognized as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, or to any Indian Tribe.

### **SECTION 3.12 SERVICES SPECIFICALLY EXEMPT FROM TAX**

- (a) The following services enumerated in the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President are exempt from the provisions

of this Subchapter: health services (major group 80); educational services (major group 82) except schools and educational services not elsewhere classified (industry no. 8299); social services (major group 83); agricultural services (major group 07) except veterinarian services (group no. 074) and animal specialty services, except veterinary (industry no. 0752); forestry services (group no. 085); radio and television broadcasting (group no. 483); railroad transportation (major group 40); local and suburban passenger transportation (group no. 411) except limousine services; school buses (group no. 415); trucking and courier services, except air (group no. 421) except collection and disposal of solid waste; farm product warehousing and storage (industry no. 4221); establishments primarily engaged in transportation on rivers and canals (group no. 444); establishments primarily engaged in air transportation, certified carriers (group no. 451); establishments primarily engaged in air transportation, noncertified carriers (group no. 452) except chartered flights (industry no. 4522) and airplane, helicopter, balloon, dirigible, and blimp rides for amusement or sightseeing; pipe lines, except natural gas (major group 46); arrangement of passenger transportation (group no. 472); arrangement of transportation of freight and cargo (group no. 473); rental of railroad cars (group no. 474); water supply (industry no. 4941); sewerage systems (industry no. 4952); security brokers, dealers and flotation companies (group no. 621); commodity contracts brokers and dealers (group no. 622); credit counseling services provided by individual and family social services (industry no. 8322); construction services (division C) except industry no. 1752 and locksmiths and locksmith shops; consumer credit reporting agencies, mercantile reporting agencies, and adjustment and collection agencies (group no. 732), if the debt was incurred out-of-state and the client does not reside within the state.

- (b) The following are also specifically exempt from the provisions of this Subchapter: financial services of institutions subject to tax under SDCL Chapter, 10-43 including loan origination fees, late payment charges, nonsufficient fund check charges, stop payment charges, safe deposit box rent, exchange charges, commission on travelers checks, 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; services of brokers and agents licensed under SDCL Chapter 47; the sale of trading stamps; rentals of motor vehicles as defined by SDCL Chapter § 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; continuing education programs; tutoring; vocational counseling, except rehabilitation counseling; and motion picture rentals to a commercially operated theater primarily engaged in the exhibition of motion pictures.

**SECTION 3.13      EXEMPTION OF RECEIPTS USED FOR CIVIC AND NON-PROFIT ASSOCIATIONS AND PURPOSES**

- (a) There are specifically exempted from the provisions of this Subchapter 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 non-profit historic sites and theater performance operated by non-profit organizations;
  - (3) Admissions to community operated celebrations and shows sponsored by a Chamber of Commerce or other similar non-profit 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 deduction 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 the use in the activity are included in the measure of sales tax.

**SECTION 3.14      DEDUCTION ALLOWED FOR SALES REFUNDS**

Sales 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.

## **SUBCHAPTER II. TRIBAL USE TAX**

### **SECTION 3.15      SHORT TITLE**

The provisions of this Subchapter shall be known and may be cited as the Flandreau Santee Sioux Tribal Use Tax Act.

### **SECTION 3.16      IMPOSITION TAX OF USE**

- (a) There is hereby levied and imposed upon the use, storage, and consumption within the Reservation of tangible personal property or services purchased for use within the Reservation a tax at the same rate of percent of the purchase price of said property or services as is imposed pursuant to Sections 3.1 through 3.6, inclusive, of Subchapter I of Chapter 3 of this Title.
- (b) There is hereby levied and imposed upon the use, storage, and consumption within the Reservation of tangible personal property not originally purchased for use within the Reservation, but thereafter used, stored or consumed within the Reservation, a tax at the same rate of percent of the fair market value of the property at the time it is brought into the Reservation as is imposed pursuant to Section 3.1 of Subchapter I of Chapter 3 of this Title
- (c) The use, storage or consumption within the Reservation of tangible personal property or services that neither the sale of which nor the gross receipts from the sale of which would be taxable under Subchapter I of Chapter 3 of this Title if such sale had taken place within the Reservation are not subject to the tax imposed by this section.
- (d) The legal incidence of the tax imposed by this Section is on the person using, storing or consuming within the Reservation the tangible personal property or services so used, stored or consumed.
- (e) Tax imposed by this Section shall be due and payable by the consumer or user of the tangible personal property or services at the time of the first such use, storage or consumption, and such tax shall be paid but once, at the time and in the manner provided by the Tribal Tax Commission.

### **SECTION 3.17      EXEMPTION OF PROPERTY AND SERVICES SUBJECT TO TRIBAL SALES TAX**

The use, storage or consumption 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 Sections 3.1 through 3.6, inclusive, of Subchapter I of Chapter 3 of this Title, is exempted from the tax imposed by this Subchapter.

**SECTION 3.18      EXEMPTION OF PROPERTY FOR PERSONAL USE OF NON-RESIDENT**

The use or consumption within the Reservation of tangible personal property brought into the Reservation by a nonresident individual thereof for his or her personal use or enjoyment while within the Reservation, is exempted from the tax imposed by this Subchapter.

**SECTION 3.19      CONSTITUTIONAL EXEMPTIONS**

Any use, storage or consumption within the Reservation of tangible person property or services, which the Tribe is prohibited from taxing under the Constitution and laws of the United States or the Constitution and Bylaws and laws of the Tribe, is exempted from the tax imposed by this Subchapter.

**SECTION 3.20      CREDIT FOR SALES OR USE TAX PAID TO ANOTHER JURISDICTION**

The amount of any tax imposed by this Subchapter 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 or services on account of liability to another tribe or state or their political subdivisions. However, no credit may be given under this section where taxes paid on tangible personal property or services to another tribe, state or their political subdivisions if that tribe or state does not reciprocally grant a credit for taxes paid on similar tangible personal property or services.

**SUBCHAPTER III. TRIBAL MOTOR VEHICLE FUEL TAX**

**SECTION 3.21      SHORT TITLE**

The provisions of this Subchapter shall be known and may be cited as the Flandreau Santee Sioux Tribal Motor Vehicle Fuel Tax Act.

**SECTION 3.22      FINDINGS**

- (a) The tribe is the sole retail seller of motor vehicle fuel on the Reservation, selling fuel at the convenience store the Tribe owns and operates d/b/a the First American Mart.
- (b) The Tribe has determined to institute a program at its on-Reservation convenience store to sell only motor vehicle fuel that the Tribe has blended with ethanol and/or other fuel additives, in order to promote and enhance the air quality of the Reservation and the surrounding community, and thereby to protect and promote the health and welfare of Tribal members and others within the Reservation and the surrounding community.
- (c) Air pollution prevention, reduction and elimination within and near the Reservation are a primary responsibility of the Tribe. The Tribe creates priorities and strategies for the development of its land and resources to conserve and

protect the Reservation's environment, including the air quality, as well as the productive use, capacity, and management of the Tribe's lands and resources.

- (d) The Tribe has a strong interest in achieving concrete solutions to promote and protect the air quality of the Reservation and the surrounding community in order to protect the public health and welfare within and near the Reservation.
- (e) The Tribe has a strong interest in reducing greenhouse gas emissions and the adverse consequences of global climate change with which they are linked by the strong consensus of climate scientists. Climate change adversely impacts public health and welfare world-wide, and directly adversely impacts the Reservation, the surrounding community and the entire United States. Indigenous peoples in all regions of the world already are suffering disproportionate adverse impacts as a direct consequence of climate change, and indigenous peoples are especially vulnerable because of their dependence upon and close relationship with their traditional land, the environment and its resources.
- (f) Due to the amount and complexity of air pollution brought by industrial development and the use of motor vehicles, and the ease with which motor vehicles and air pollutants cross boundary lines between jurisdictions, the federal government encourages the development of local and regional air pollution prevention and control programs by using the best available technology to improve and maintain air quality in the region.
- (g) The Tribe has a strong interest in establishing air quality protection programs consistent with federal policies and laws, including the Federal Clean Air Act and the Energy Policy Act of 2005, and that help attain and maintain federal air quality standards, including through increasing the amount of cleaner fuel sold and used within the Reservation and the surrounding area and throughout the United States.
- (h) The retail sale by the Tribe of cleaner motor vehicle fuel, through blending with ethanol and/or other fuel additives, and the use of such fuel in motor vehicles operated within and near the Reservation, significantly benefits the Reservation and surrounding environment through reductions in vehicle exhaust emissions of ozone-forming and toxic air pollutants, including reductions of greenhouse gas emissions, reductions of emissions and formation of particulate matter, and increases in fuel efficiency and prolonged engine life.
- (i) The Tribe has a strong interest in regulating, taxing and realizing the full economic benefit from the retail sale by the Tribe within the Reservation of cleaner motor vehicle fuel that the Tribe has blended with ethanol and/or other fuel additives.
- (j) Both revenues from the Tribe's gaming operations, and from the generation and retention by the Tribe of tax revenues from the sale by the Tribe of cleaner blended gasoline and diesel motor vehicle fuel, are essential to the Tribe's ability

to protect the health and welfare of the Tribe and its members, to foster and maintain a strong Tribal government by which the Tribe and its members may exercise their right of self-determination, to provide needed governmental programs and services to Tribal members, to achieve self-sufficiency and to provide employment to Tribal members and members of the surrounding community.

- (k) The Tribe's on-Reservation convenience store is owned and operated by the Tribe as a department and integral part of the Tribe's class III gaming operations conducted pursuant to and in accordance with the Indian Gaming Regulatory Act.
- (l) The Indian Gaming Regulatory Act prohibits "a State or any of its political subdivisions" from "impos[ing] any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in class III [gaming] activity." The Act authorizes "the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity" only where agreed upon between the Tribe and the State and included in a Tribal-State Gaming Compact governing the gaming activities that is in effect.
- (m) Federal law more generally pre-empts authority of the State to regulate or tax the Tribe and its members within the Reservation.
- (n) Federal law more generally also pre-empts the authority of the State to regulate or tax non-members of the Tribe engaged in commercial transactions with the Tribe or its members within the Reservation, whenever the balance of the State's interests in such tax or regulation do not outweigh the Tribe's and federal government's interests with respect to such commercial activity, or where the State's exercise impermissibly discriminates against the Tribe in comparison to similarly situated sovereigns.
- (o) Federal law more generally also pre-empts the ability of the State to discriminate against the Tribe in comparison to similarly situated sovereigns with respect to the incidences of the operations of Tribal laws and programs as may occur off the reservation and within the State.

### **SECTION 3.23      DEFINITIONS**

As used in this Subchapter, unless the context otherwise requires, the following terms shall have the following meaning:

- (a) "Consumer" means any person to whom motor vehicle fuel is sold and delivered within the Reservation;
- (b) "Ethanol" means a motor vehicle fuel component with a purity of at least 99% exclusive of any added denaturants, denatured in conformity with one of the methods approved by the United States Department of the Treasury, Alcohol and

Tobacco Tax and Trade Bureau, in accordance with the regulations contained in 27 C.F.R. Part 19, Subpart X

- (c) “Fuel additive” means a product that has been formulated and produced to enhance the performance or quality of motor vehicle fuel and that is registered with the United States Environmental Protection Agency in accordance with the regulations contained in 40 C.F.R. Part 79;
- (d) “Fuel supply tank: means any tank or other receptacle in which or by which motor vehicle fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains motor vehicle fuel or such fuel is delivered into it;
- (e) “Gasoline” means any flammable liquid hydrocarbon used primarily as fuel for the propulsion of motor vehicles, motorboats or aircraft;
- (f) “Motor vehicle” means any self-propelled vehicle utilizing motor vehicle fuel as the means of propulsion that is designed for operation, or that is used or may be used on the highways, in whole or in part of the purpose of transporting persons or property and includes any connected trailer or semitrailer;
- (g) “Motor vehicle fuel” means all combustible liquids suitable for the generation of power for the propulsion of motor vehicles including, but not limited to, gasoline, diesel engine fuel, biodiesel, blended biodiesel, kerosene, ethanol and any other flammable liquid, by whatsoever name the liquid may be known or sold, the chief use of which is as a fuel for the propulsion of motor vehicles, but excluding liquefied petroleum gas, compressed or liquefied natural gas and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet-type engines;
- (h) “Receipts” means sale and delivery to a consumer in the fuel supply tank of a motor vehicle.

**SECTION 3.24      IMPOSITON OF MOTOR VEHICLE FUEL TAX**

- (a) There is hereby levied and imposed upon the receipt of motor vehicle fuel within the Reservation a tax at the rate of twenty-two cents (\$0.22) per gallon of motor vehicle fuel so received.
- (b) The legal incidence of the tax imposed by this Section is on the consumer of the first receipt of the motor vehicle fuel and such tax shall be paid but once.
- (c) The tax imposed by this Section shall be included in the retail price of motor vehicle fuel sold and delivered by the Tribe and shall be paid by the consumer to whom the fuel is sold and delivered and by whom the fuel is received.



**SECTION 3.25      EXEMPTIONS**

- (a) The sale and delivery to and receipt of motor vehicle fuel by the United States government or any agency thereof, and including all officials and employees engaged in official businesses and utilizing vehicles bearing official U.S. government license plates, are exempted from the tax imposed by this Subchapter.
- (b) The sale and delivery to and receipt of motor vehicle fuel by the South Dakota State government or any agency thereof, and including all officials and employees engaged in official businesses and utilizing vehicles bearing official State government license plates, is exempted from the tax imposed by this Subchapter; provided, that such exemption is conditioned upon the determination and declaration by the Tribal Tax Commission, from time to time, that the State of South Dakota currently extends a similar exemption to the Tribe, its agencies and officials and employees.
- (c) Any sale, delivery and receipt of motor vehicle fuel, which the Tribe is prohibited from taxing under the Constitution and laws of the United States or the Constitution and Bylaws and laws of the Tribe, is exempted from the tax imposed by this Subchapter.

**SECTION 3.26      NON-APPLICATION OF STATE MOTOR VEHICLE FUEL TAX**

- (a) To the fullest extent provided by applicable federal law, no State tax shall be permitted to be collected or emitted on the purchase by or delivery to the Tribe within the Reservation of any gasoline, diesel engine fuel, ethanol, fuel additive or other component of reformulated gasoline or diesel motor vehicle fuel for retail sale by the Tribe.
- (b) To the fullest extent provided by applicable federal law, unless agreed between the Tribe and the State and expressly provided in a Tribal-State Gaming Compact entered into and approved by the Secretary of the Interior, pursuant to and in accordance with the Indian Gaming Regulatory Act, no State tax shall be permitted to be collected or remitted with on, with respect to or measured by, the sale by the Tribe and delivery to and receipt by any person of motor vehicle fuel within the Reservation.

## **CHAPTER 4. – PAYMENT AND NON-PAYMENT OF TAXES**

### **SECTION 4.1      APPLICATION FOR RETAILER PERMIT—CONTENTS AND EXECUTION**

Every retailer or person engaging in a business within the Reservation whose receipts are subject to taxation pursuant to this Title 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 or 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.

### **SECTION 4.2      ISSUANCE OF RETAILER PERMIT—LIMITED TO PERSON AND PLACE DESIGNATED—DISPLAY IN PLACE OF BUSINESS—EFFECTIVE UNTIL CANCELLED 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 of 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 Section shall not waive the requirements of Federal Law Regarding Indian Trader Licenses and Permits.

### **SECTION 4.3      RECEIPTS NOT ISSUED FOR TAXES REMITTED**

The Tax Commission shall not be required to issue receipts for taxes remitted.

### **SECTION 4.4      REINSTATEMENT OF REVOKED RETAILER'S PERMIT—FEE**

A tax permit which has been canceled or revoked for violation of this Title, shall not be reinstated by the Tax Commission until all the sales tax due the Tribe, together with any interest and penalties, and a \$50.00 reinstatement fee has been paid.

### **SECTION 4.5      RECORDS PRESERVED BY PERSONS SUBJECT TO TAX INSPECTION BY COMMISSION**

Every person subject to tax under this Title 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 documents shall at all times during business hours 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.

**SECTION 4.6            COLLECTION, REPORTING AND REMITTANCE OF TAX BY MANAGER**

- (a) The Manager shall be responsible for the collection of the tax imposed by this Title. The taxes collected pursuant to this Title shall be remitted by the manager to the Tribal Treasurer. It shall be the responsibility of the Manager to collect the tribal cigarette tax from every purchaser of Native Brands cigarettes.
- (b) On or before the fifteenth (15<sup>th</sup>) day of every other month, each Manager shall render to the tribal Treasurer a verified report of all sales, services, and/or gross receipts for the preceding two months of the business managed by him. The report shall include the amount of tax imposed by this Title collected by the business during the reporting period.

**SECTION 4.7            TRIBAL BUSINESS MANAGER’S AUTHORITY**

- (a) Without the express consent of the Tribe pursuant to appropriate action of the Executive Committee, a manager employed by the Tribe or one of its political subdivisions shall not be authorized to waive the sovereign immunity of the Tribe from suit; nor shall such a manager be authorized to create any liability on behalf of the Tribe or to utilize tribal credit. Any such written consent and action by the Executive Committee shall specify in detail the scope of a manager’s authority. Such authority shall be limited by the Executive Committee in duration and scope.
- (b) Any action taken by a manager pursuant to authority vested in him/her by the Executive Committee under this section shall be in writing, shall be related to a specific and expressly identified transaction, and shall be limited to the particular transaction. Any written statement of a manager relating to the sovereign immunity shall be approved by the Executive Committee before it shall have any binding effect on the Tribe.

**SECTION 4.8            INTEREST**

All taxes, fees, or other charges, of the Flandreau Santee Sioux Tribe not paid when due shall bear simple interest at the rate of twenty percent (20%) per annum from the date said taxes or fees become due until the date paid.

**SECTION 4.9            COLLECTION OF TAXES**

The Tax Commission is hereby authorized to bring any necessary action in any Court of competent jurisdiction for the collection of any taxes, penalties or interest assessed and unpaid. Such action shall be a civil action. 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 bring any necessary action for the collection of any taxes, penalties or interest assessed and unpaid with the approval of the Executive Committee.

#### **SECTION 4.10      OTHER REMEDIES**

- (a) In addition to the remedies available for the collection of monies, the Tax Commission is authorized to bring an action in any Court of competent jurisdiction to enjoin the continuation of any operation of any business, activity or function when tribal law requires a tax to be paid.
- (b) Every person who shall fail to pay the tax imposed by this Title shall forfeit any license and any and all rights to conduct business on the Flandreau Santee Sioux Tribal Reservation.
- (c) Any person violating any provision of this Title may, upon a determination of guilt of an offense, be subject to a fine not to exceed \$5,000.00 at the discretion of the Court.
- (d) In addition to any other remedies provided in this Title, every person who shall fail to pay the tax imposed by this Title shall be liable for the full amount of tax owed plus interest of the rate provided for the unpaid tax as set forth and, the willful failure to pay over the taxes imposed by this Title shall make the person liable for an additional penalty of twenty percent (20%) of the taxes due plus interest.
- (e) In addition to the remedies available for the collection of monies, the Tax Commission is authorized to impose any other penalty authorized in the Flandreau Santee Sioux Tribal Law and Order Code.
- (f) The following enforcement and penalties apply to the taxation of cigarette and other tobacco products:
  - (1) Sale of tobacco products or cigarettes in violation of this Title shall be subject to a civil fine of no less than \$500.00 and no more than \$5,000 per day. In the case of a continuing violation, each day in which the seller is in violation of this Title shall constitute a separate violation.

#### **SECTION 4.11      SEIZURE OF PROPERTY**

The Tax Commission personnel may, after notice and a hearing, seize the property of any person or business owing taxes, which are more than one hundred twenty (120) days past due; provided that such persons may redeem said property at any time prior to the entry of final judgment of forfeiture by depositing with the Court an amount equal to all taxes, penalties, and interest assessed or owing;

#### **SECTION 4.12      INVENTORY OF SEIZED PROPERTY**

Whenever any authorized person representing the Tax Commission shall seize any property pursuant to Section 4.11 of this Title, he shall inventory and appraise such property and leave a copy thereof with the person from whom the property was seized, and deliver a copy of said inventory to the Tax Commission and the Tribal Attorney.

### **SECTION 4.13 PUBLIC SALE OF FORFEITED PROPERTY**

- (a) Upon a final order of forfeiture entered by a Court of competent jurisdiction under Section 4.11, the Tax Commission shall circulate an inventory of said property to all divisions of the Tribal Government. Any agency of the Tribal Government may submit a request to the Executive Committee that such portion of said property as they can use be retained for the benefit of the Tribe. The Executive Committee shall determine which property will be retained and shall order the Tax Commission to conduct a public sale of the remainder, until the tax amount due and owing is satisfied and paid.
- (b) The property to be sold at public auction at the tribal headquarters of the Flandreau Santee Sioux Tribe. Such sale shall not be held until at least twenty (20) days' notice of such is provided and such notice shall be posted in the tribal headquarters building and published at least twice in a newspaper of general circulation in the area not less than ten (10) days prior to said sale. All funds received at said sale after payment of the cost of said sale shall be deposited in the Tax Fund Account.
- (c) The Tax Commission may conduct such sales at such times as it deems sufficient property has accumulated to satisfy the tax amount due and owing;
- (d) The seizure, forfeiture and sale of any other property shall reduce the tax liability of the person from whom such property was seized until the debt is satisfied; where the debt is satisfied and there remains a surplus of seized property, the property shall be returned to the person or business from whom it was seized.

### **SECTION 4.14 EXEMPT PROPERTY**

The following property shall be exempt from garnishment, attachment and sale for the payment of taxes, penalties and interest due the Flandreau Santee Sioux Tribe:

- (a) Three-fourths (3/4) of the net wages earned per week by the person or an amount equivalent to forty (40) times the federal minimum hourly wages per week, whichever is greater;
- (b) One automobile of fair market value equity or not exceeding one thousand dollars (\$1,000.00);
- (c) Actual 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 leasehold and other possessory interests in such property;
- (d) Any dwelling used as the actual residence of the taxpayer including up to five acres of land upon which such dwelling is located whether such dwelling is owned or leased by the taxpayer;

- (e) Household goods, furniture, wearing apparel, personal effects with a value not in excess of two thousand dollars (\$2,000.00) but not including televisions, radios, phonographs, tape recorders, more than two firearms, works of art, and other recreational or luxury items;
- (f) All implements of husbandry used upon the homestead;
- (g) All ceremonial or religious items.

**SECTION 4.15 EXCLUSION FROM THE TERRITORY AND JURISDICTION OF THE FLANDREAU SANTEE SIOUX TRIBE**

Any natural person or any corporation, partnership, association, company, firm, joint venture, estate, business trust or trust or other person or entity who violates any provision of this Title for the purpose of evading payment of taxes imposed by this Title, in addition to any civil penalties or the civil penalties of seizure and forfeiture imposed by this Title, may be expelled from the Reservation of the Flandreau Santee Sioux Tribe and/or excluded from carrying on any business within the jurisdiction of the Tribe for a period not to exceed five (5) years, by order of the tribal court, after notice and a hearing. Any order of exclusion or expulsion not suspended, shall by operation of law cancel all permits, licenses, and other authority of the person to carry on any business within the tribal jurisdiction during its terms.

**SECTION 4.16 CANCELLATION OF LICENSES AND LEASES UPON EXCLUSION**

Whenever any person or business is expelled and excluded from the Reservation of the Flandreau Santee Sioux Tribe and the order of expulsion or exclusion is not suspended, and such person or business holds a lease to realty for other than residential purposes within the jurisdiction of the Flandreau Santee Sioux Tribe, said lease and license may be canceled by the lessor or the Executive Committee, as the case may be, within sixty (60) days of the order of exclusion at lessor's, or the Executive Committee's option and subject to applicable federal law and regulations pertaining to the cancellation of leases of real property. The lease cancellation may be effectuated in the manner prescribed by 25 CFR Part 162, "Leases and Permits."

**SECTION 4.17 FALSE REPORT WITH INTENT TO EVADE TAX**

Any manager required to make a report under this Title who makes any false or fraudulent report in attempting to defeat or evade the tax imposed by this Title shall be guilty of an offense and shall, upon conviction, be fined an amount not to exceed \$5,000.00 at the discretion of the Court.

**SECTION 4.18 REFERRALS FOR FEDERAL PROSECUTION**

It shall be the duty of all members of the Tax Commission, any police officer, and the Tribal Attorney, upon receiving reliable information that probable cause may exist to believe that any person has violated this Title, to report the facts and circumstances known to him to the appropriate federal officials and to request that a federal investigation be commenced to determine whether any federal criminal law has been violated.

## **CHAPTER 5. – GRIEVANCES AND APPEALS OF TAX DECISIONS**

### **SECTION 5.1      PETITIONS FOR REDETERMINATION BY TAX COMMISSION**

- (a) If any taxpayer, having paid the taxes levied pursuant to this Title and any applicable penalties and interest feels aggrieved thereby or discovers that the taxes were incorrectly calculated, he may, within one (1) 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 (1) year prior to the filing of the petition is forever barred.
- (b) Upon receipt for determination, the Tax Commission shall give notice and an opportunity to be heard to the taxpayer seeking redetermination.
- (c) The Tax Commission may redetermine taxes based on correction of tax computations, 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 Title or to declare any portion of this Title void for any reason;
- (d) Refunds ordered by the Commission as a result of any redetermination shall bear simple interest at the rate of five percent (5%) per year from the date of 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.

### **SECTION 5.2      REVIEW BY TRIBAL COURT**

- (a) Within thirty (30) days after notice of any decision by the Tax Commission on a petition for redetermination, any taxpayer aggrieved thereby may petition the Flandreau Santee Sioux Tribal Court for review of the decision by the Tax Commission.
- (b) Upon such review, which shall be by the Court sitting without jury, the matter shall be heard on the record established before the Tax Commission as certified by the Commission.
- (c) 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 tribal court 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.
- (d) The Tribal Court shall uphold all factual findings by the Commission unless the Court determines that such substantial evidence in the record established before the Tax Commission.

- (e) The determination of the Tribal Court is final and no further appeal shall be allowed.
- (f) In no event is the Court authorized to alter tax rates established pursuant to this Title, 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 any other charges in controversy, plus interest on the refund as provided in Section 5.1 of this Title, unless an additional remedy is specifically provided by this Title.
- (g) Refunds ordered by the Court shall bear simple interest at the rate of five percent (5%) per year from the overpayment to the date of 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.

**SECTION 5.3            EXHAUSTION OF ADMINISTRATIVE REMEDIES**

Administrative remedies shall be considered to be exhausted upon occurrence of one or more of the following conditions:

- (a) Upon a final decision or an administrative appeal pursuant to Section 5.1 of this Title;
- (b) If the Tax Commission shall fail to schedule and hold a hearing on the merits of the administrative appeal within sixty (60) days after receipt of a written request for a hearing unless a delay is required or approved by the taxpayer; or
- (c) If the Tax Commission shall fail to issue a written decision on said appeal within thirty (30) days of the hearing on the merits of the taxpayer's administrative appeal.

**SECTION 5.4            REFUNDS TO TAX PAYERS**

- (a) Whenever any taxpayer shall establish in any administrative or Court proceeding that they are entitled to a refund of any taxes, penalties, or interest previously paid, the Tax Commission shall immediately cause a certified copy of the order and transcript of any administrative action, or judgment of the court to be filed with the tribal treasurer; and
- (b) Upon receipt of such order and transcript, or judgment of the tribal Court, the tribal treasurer shall pay such refund from otherwise inappropriate money from the Tribal Treasury.



**CHAPTER 6. – INTERGOVERNMENTAL AGREEMENT; SEVERABILITY;  
EFFECTIVE DATE**

**SECTION 6.1      RETAIL SALES AND SERVICE TAX COLLECTION AGREEMENT  
WITH STATE**

The Flandreau Santee Sioux Tribe may enter into an agreement with the Department of Revenue of the State of South Dakota for the collection of 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 Title 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 for 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 Tribe 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 to such agreement shall, notwithstanding any other provisions of this Title, constitute the manner of such collections, issuances and supervision required by this Title; other filings with the Department pursuant to this Section shall also be filed with the Tax Commission.

**SECTION 6.2      SEVERABILITY**

If any clause, sentence, paragraph, section or part of this Title be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

**SECTION 6.3      EFFECTIVE DATE**

This Title shall become effective upon the approval of the Secretary of the Interior or his authorized representative.

**CHAPTER 7. – AD VALORUM TAXATION OF GOVERNMENTAL AND  
COMMERCIAL PROPERTY**

**SECTION 7.1            DECLARATION OF INTENT.**

It is hereby declared by the Executive Committee of the Flandreau Santee Sioux Tribe to be in the best interest of the Tribe to impose and levy an ad valorem tax uniformly on all governmental and commercial real property, including the buildings, facilities and other improvements thereon or be located thereon, owned, leased, developed, held or otherwise controlled by the Flandreau Santee Sioux Tribal Facilities Authority (the “Authority”) after the effective date of this ordinance. The Tribe has formed the Authority to receive by transfer or otherwise, own, hold, acquire, lease, develop and/or construct governmental and commercial property to be used by the Tribe and its members for commercial activities or otherwise providing services to the Tribe and/or its members.

**SECTION 7.2            RATE AND ASSESSMENT.**

Pursuant to its power as the sovereign governmental body for the Flandreau Santee Sioux Tribe, the Executive Committee hereby imposes an ad valorem tax by the Tribe on all real property, including the buildings, facilities and other improvements thereon, owned, leased, developed, held or otherwise controlled by the Authority. All such real property shall be assessed by the appropriate officer or department of the Commission and approved by the Executive Committee. With respect to new construction on such real property, such assessment shall not be less than the greater of the fair market value of such improved real property or actual cost of construction of such improved real property as completed. With respect to existing property which the Executive Committee determines to transfer to the Authority, such assessment shall be at the fair market value. All assessments after the initial assessments shall be based upon the fair market value of the property. All assessments shall be reviewed at least every two years by the Tax Commissioner, who shall make recommendations to the Executive Committee, which will make the final determination as to the reassessed fair market value of the property. Any affected person or entity may appeal the assessment to the Tax Commissioner and the Executive Committee. The annual amount of said tax shall not be less than \$27.629 per \$1,000.00 of assessed value.

**SECTION 7.3            REQUIRED TAX PAYMENTS.**

All taxes imposed by Section 7.2 shall be paid quarterly in advance, shall be due on the first business day of each such quarter and shall be payable as set forth elsewhere in this Chapter. All receipts of such tax shall be segregated into an account entitled Flandreau Santee Tribal Facilities Authority: Governmental/Commercial Accounts.

**SECTION 7.4            INITIAL TRANSFER AND LEASE OF TRIBAL REAL  
PROPERTY TO FLANDREAU SANTEE SIOUX TRIBAL  
FACILITIES AUTHORITY.**

The Executive Committee hereby leases and/or otherwise conveys to the Authority all real property, including any buildings, facilities and other improvements thereon, owned, leased, developed or otherwise held by the Flandreau Santee Sioux Tribe which provide clinical health

care services. The Tribe shall enter into a written agreement with the Authority relating to the lease and/or conveyance of such real property. The Executive Committee may from time to time transfer by lease to the Authority additional real property of the Tribe.

**SECTION 7.5 SAVINGS CLAUSE.**

If for any reason the ad valorem tax shall be deemed by any person, court or entity to be invalid or not applicable to any real property which is the subject of this section for any reason, the amount of the tax as calculated in Section 7.2 shall be levied retroactively as a sales or such other tax as the Executive Committee may determine. The date to which any alternative tax shall be retroactive shall be the first date on which the ad valorem tax would otherwise have been due. Notwithstanding any law, regulation, ruling, lease or contract to the contrary, all leases authorized under this Section shall be triple net to the Authority and the Tribe, and taxes levied hereunder shall be paid by the Authority or such other program or tenant occupying such premises. Any failure to remit such taxes in accordance with this Section shall automatically terminate the Authority's rights and privileges under such lease, and the lease shall become a fair market value lease subject to review and approval thereof by the Bureau of Indian Affairs pursuant to the provisions of 25 CFR 161.

**SECTION 7.6 OTHER PROVISIONS.**

All other provisions of this Chapter shall apply to the tax set forth in this Section 7.

**LEGISLATIVE HISTORY:**

**Originally Adopted June 21, 1964; Amended #94-51; Amended #10-148; Amended #11-35; Amended FSST Tax Comm'n Resolution #2012-1(Section 3.9(a) only, by Tax Comm'n pursuant to authority granted in Section 3.9(b)); Amended FSST Tax Comm'n Resolution #2013-1(Section 3.9(a) only, by Tax Comm'n pursuant to authority granted in Section 3.9(b)); Amended By Tribal Resolution #14-60 on September 26, 2014; Amended by Resolution 15-151 on December 2, 2015; Further Amended by Resolution 15-156 on December 10, 2015; Further Amended by Resolution 16-08 on January 28, 2016, Further Amended by Resolution 18-142 on October 3, 2018, and Finally Amended by Resolution 19-98 on December 17, 2019.**