

*STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION
As Amended Through Resolution No. 11 - 032 (March 21, 2011)*

TAXATION CODE

CONFEDERATED TRIBES
OF THE
UMATILLA INDIAN RESERVATION

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APPENDIX A. LEGISLATIVE HISTORY AND EDITORIAL CHANGES

TAXATION CODE

CHAPTER 1. UTILITY TAX CODE

SECTION 1.01. DEFINITIONS

- A. "Utility" means any legal entity whether publicly or privately owned performing or maintaining any of the following businesses or services or in selling any of the following commodities, or for hire, sale or consumption by other persons:
1. Railroad, including railroad car companies;
 2. Communication and data transmission, including, telegraph, telephone, cellular, wireless, satellite, mobile radio, paging;
 3. Broadcasting and transmission, including, television, cable television, radio;
 4. Electricity, including, generation, transmission, distribution;
 5. Gas, including, generation, transmission, distribution;
 6. Pipeline, including, transmission of natural gas, gas, diesel, oil, or any other similar commodities; or
 7. Any other similar system for transmitting or distributing services or commodities; but does not include roads or highways constructed or maintained by the United States, the Tribes, or the State of Oregon or a subdivision thereof.
- B. Property or an interest in property is "used for utility purposes" if it was granted, or is used, in connection with operation of a utility, as that term is defined herein.
- C. "Utility property" means all property, real and personal, tangible and intangible, used for utility purposes under any agreement conferring rights to use or possess lands on the Reservation, including but not limited to, a lease, right-of-way, use permit or joint venture or operating agreement with the United States or a beneficial owner of land. Utility property shall include all improvements placed on trust lands within the exterior boundaries of the Reservation pursuant to such an agreement.
- D. "Owner" means any person who owns any interest in utility property as grantee, lessee, permittee, assignee, sublessee, or transferee. In the case of parties to a joint venture or operating agreement, the Tribes shall determine whether a joint venture partner or an operator is an owner in light of the terms of the agreement on the basis of the parties' respective participation in and entitlement to income or profits, assets and management of the venture or operation.
- E. "Person" means any individual, whether Indian or non-Indian, or any organization, including, but not limited to sole proprietorships, partnerships, joint ventures, trusts, estates, unincorporated associations, corporations and governments, or any division, department or agency of any of the foregoing.
- F. "Taxes" includes the tax and any interest, penalties, or costs imposed or assessed pursuant to this Code.
- G. "Tribes" means the Confederated Tribes of the Umatilla Indian Reservation.
- H. "Private railroad cars" means all railroad cars that:
1. are not owned by a railroad company operating on the Reservation;

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2. are used for transporting persons or freight; and
 3. are not otherwise assessed the utility tax on the Reservation.
- I. "Railroad car company" means any person, other than a railroad company, engaged in operating, leasing, or furnishing private railroad cars, whether or not owned by that person, for the transportation of persons or freight over railroad lines located wholly or partially within the Reservation.
- J. "Reservation" means the Umatilla Indian Reservation and includes all lands located within the exterior boundaries of the Umatilla Indian Reservation, notwithstanding the issuance of any patent, and including rights-of-way through the Reservation.

[Hist: Adopted section 1.01: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96)]

SECTION 1.02. TAX COMMISSION

- A. There is hereby created a Tax Commission, which shall consist of four (4) members. One (1) member shall be a member of the Board of Trustees and three (3) members from the tribal membership each appointed by a two-thirds majority of those voting at a meeting of the Board of Trustees at which a quorum is present. The term for a member of the Tax Commission shall be for three (3) years, except for the member of the Board of Trustees whose appointment shall be reviewed on an annual basis by the Board of Trustees. The initial Commission shall have one member serving for a term of three (3) years, one member serving for a term of two (2) years, one member serving for a term of one (1) year, and one member serving from the Board of Trustees.
- B. To be eligible to hold the office of Tax Commissioner, a person must:
1. Be at least twenty-five (25) years of age,
 2. Have at least a high school education or its equivalent,
 3. Be of high moral character and integrity,
 4. Disclose any criminal conviction other than traffic offenses, so that the Board of Trustees can evaluate the situation on a case-by-case basis to determine an applicant's eligibility, and
 5. Be physically able to carry out the duties of office.
- C. On taking office each member of the Commission shall take an oath as follows: I, (state your name), do solemnly swear (or affirm) that I will administer justice and do equal right without respect to persons and will truly, faithfully, and impartially discharge and perform all the duties incumbent upon me as a member of the Tax Commission according to the best of my abilities.
- D. Compensation of the Commission members shall be fixed by the Board of Trustees. Commission members shall receive compensation only for those days they sit as members of the Commission, including meetings they are required to attend as members of the Commission. The rate of compensation for a Commission member may not be altered during his or her term of office.
- E. Members of the Commission may be suspended or removed for cause after written notice and an opportunity to be heard by the Board of Trustees. Good cause shall exist when any condition occurs or is discovered that would exclude a person from appointment. The decision by the Board of Trustees shall be final.

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- F. A member of the Commission shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned, in which he has personal bias or prejudice concerning any party, in which he or a member of his immediate family might be a witness or has any personal knowledge of disputed evidentiary facts concerning the proceeding, in which he or any member of his immediate family is a party or has any financial or other interest in the proceeding, has acted or is acting as an attorney in the proceeding, or in which he might otherwise appear to be biased or prejudiced.
- G. The Tax Commission has the following powers:
1. The discretionary authority to interpret the Code and to adopt rules and regulations to administer the Code, in a manner consistent with the Code;
 2. The authority to hear and determine in the first instance all challenges to the validity of the Code and its implementing rules and regulations; and
 3. The authority to hear and determine in the first instance all disputes concerning the assessment, levy or collection of taxes, penalties, or interest imposed pursuant to the Code and its implementing rules and regulations.

[Hist: Adopted section 1.02: Resolution No. 96-01 (17 Jan 96), Added section 1.02(G): Resolution No. 96-84 (19 Sept 96), Technical Amendment Resolution No. 96-94 (16 Oct 96)]

SECTION 1.03. TAX IMPOSED

- A. A tax of three percent (3%) of the value on each assessment date of all utility property is hereby imposed. This tax imposed by this Code shall be levied on the owner of utility property and shall not be billed and charged to utility customers as provided in section 1.24 of this Code.
- B. The provisions of this Code shall be construed to subject all utility property to the tax imposed in subsection (A) that is owned, leased, used, or during the period of construction for any legal entity that is performing or maintaining any of the businesses or services or in selling any of the commodities, or for hire, sale or consumption by other persons enumerated in section 1.01(A).
- C. The Tax Commission has the discretionary authority to set a minimum amount, based on the taxes due, for which the Tribes will levy a tax to an owner of utility property pursuant to this Code.

[Hist: Adopted section 1.03: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96), Technical Amendment Resolution No. 96-110 (18 Dec 96)]

SECTION 1.04. ASSESSMENT AND VALUATION

- A. The assessment date for each calendar year shall be January 1st of that year. Utility property shall be assessed annually as of the assessment date. The Tribes may assess unassessed utility property as of the date upon which it should have been assessed, and may redetermine incorrect or erroneous assessments.
- B. The value of utility property shall be presumed to be equal to the actual assessed and apportioned value determined by the State of Oregon or a subdivision thereof for the utility property located within the exterior boundaries of the Reservation. Depending upon how the most recent assessed value of the utility property was reported on the assessment roll of the State of Oregon, the presumed value shall be determined as follows:
1. The presumed value shall be the full value per linear mile (i.e. rate per mile) of the utility property based on the most recent Oregon assessment that was apportioned to

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the utility property located within the exterior boundaries of the Reservation multiplied by the number of miles of the utility property located on lands within the Reservation.

2. The presumed value for situs property, including the land and improvements thereon, shall be the full value of the utility property based on the most recent Oregon assessment that was apportioned to the utility property located within the exterior boundaries of the Reservation.
 3. The presumed value may be a combination of subsection (1) and (2), if the most recent Oregon assessment of the utility property was reported on the assessment roll of the State of Oregon on both a rate per mile basis and a situs location basis.
 4. If the most recent Oregon assessment for utility property located within the exterior boundaries of the Reservation is not apportioned to the Reservation on a rate per mile basis or situs location basis, the Tax Administrator has the discretionary authority to allocate by any reasonable method which reflects the value of the utility property to the Reservation. The presumed value shall be based on the most recent assessment determined by the State of Oregon pursuant to Oregon Revised Statutes and regulations made prior to the assessment date. The presumed value is nonappealable and shall be used unless a valid challenge is filed pursuant to section 1.14.
- C. The Tax Administrator has the discretionary authority to change the presumed value based upon an order of the Oregon Department of Revenue, Oregon Tax Court, Oregon Supreme Court, or any court of competent jurisdiction, unless the order is pending an appeal.
- D. The Tax Administrator has the authority to determine the presumed value for any utility property not assessed or reported on the assessment roll of the State of Oregon or a subdivision thereof.
- E. The presumed value of any utility property shall never be based on the disposal of properties through auction, liquidation or scrap sales unless as of the assessment date such disposal of the utility property is imminent, or has already taken place.
- F. During the pendency of a challenge to the presumed value pursuant to section 1.14, the value of the utility property may be determined by the Tax Commission, after a hearing, based on one or more of the following:
1. Cost Approach, including, historical cost less depreciation, reproduction cost new less depreciation, replacement cost new less depreciation,
 2. Income Approach,
 3. Market Approach, including the comparable sales method, stock and debt method,
 4. A settlement agreement pursuant to section 1.19.

[Hist: Adopted section 1.04: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution 96-94 (16 Oct 96)]

SECTION 1.05. PERSONS LIABLE FOR PAYMENT

- A. All owners of utility property are liable for payment of the entire tax assessed upon that interest.
- B. If an owner is an association, joint venture or partnership, the associates, participants or partners both limited and general, shall be jointly and severally liable for the entire tax assessed upon that property.

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- C. Each person liable for taxes pursuant to this code shall have the right of contribution from any other person liable for a share of the taxes paid proportionate to the share of such person in the utility property. The owners may, by agreement, alter the allocation by contribution of the tax liability among themselves; but no such agreement shall affect the liability to the Tribes of any person named in subsection (a) or (b) hereof.

[Hist: Adopted section 1.05: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96)]

SECTION 1.06. EXEMPTIONS

- A. The tax imposed by this Code shall not apply to:
1. The Confederated Tribes of the Umatilla Indian Reservation, any subdivision, agency or program of the Tribes or any enterprise or entity wholly owned by the Tribes,
 2. The United States or its subdivisions, agencies or departments except to the extent such taxes are authorized by federal law, or
 3. The State of Oregon or its subdivision, agencies or departments except to the extent such taxes are authorized by state law.
- B. If a utility property is owned in part by entities exempt and in part by entities not exempt, only the proportionate share owned by nonexempt entities shall be subject to tax.

[Hist: Adopted section 1.06: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96)]

SECTION 1.07. DECLARATIONS OF INTEREST

- A. On or before March 15th following each assessment date, each owner subject to tax pursuant to this Code must file with the Tribes a declaration of its interest in any utility property on such forms and containing such information as the Tribes may require. If the owner of the utility property is exempt under section 1.06, the declaration shall so state. The declaration may include a copy of the property tax return filed with the State of Oregon and shall state the value as most recently assessed by the State of Oregon.
- B. On or before March 15th following each assessment date, each owner subject to tax pursuant to this Code may file with the Tribes a request for an extension of time to declare its interests in any utility property on such forms and containing such information as the Tribes may require.
- C. The Tax Administrator has the discretionary authority to grant, approve, modify, or deny any request for an extension of time or due date to file a declaration of interest. For any extension request to be considered valid, it must meet all of the following:
1. The extension request must be in writing.
 2. The extension request must be postmarked or received on or before the due date for filing the declaration of interest including any extensions.
 3. The extension request must clearly state the reason that an extension of time is necessary to file the declaration of interest.
 4. The extension request must state the date that the declaration of interest will be filed with the Tribes.

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- D. Any person subject to this Code that files an extension request to file the declaration of interest will be notified in writing as to the status of their request. The decision of the Tax Administrator will become final and nonappealable, if it is not appealed to the Tax Commission within twenty (20) days from the date of the notice. The determination of the Tax Commission shall be final, and no appeal may be taken from the determination.
- E. Any person required by this Code to file a declaration of interest with the Tribes, who has not filed such a statement within the time fixed or as extended, is delinquent.
- F. A declaration of interest may be filed with the Tribes on a “preliminary” or “draft” basis, if the necessary information with ordinary prudence could not have been obtained and is outside the control of the taxpayer. However, when the final information is available, an amended declaration of interest with the final information must be filed with the Tribes.
 - 1. Any person that files a declaration of interest on a “preliminary” or “draft” basis must request an extension of time. Any request for an extension of time must be made pursuant to subsection (C) of this section.
 - 2. Any declaration of interest filed on “preliminary” or “draft” basis must clearly identify all “preliminary” or “draft” information.
- G. If a declaration of interest is filed on a “preliminary” or “draft” basis and the information with ordinary prudence could have been obtained or if the information was within the control of the taxpayer, the filing date is determined when the amended declaration of interest is filed. If the amended declaration of interest is filed after the time fixed, excluding any extension for such a statement, the Tax Administrator has the discretionary authority to determine if the amended declaration of interest was filed timely or delinquent.
- H. If the Tax Administrator determines that a declaration of interest is delinquent, the taxpayer will be notified in writing. The decision of the Tax Administrator will become final and nonappealable, if it is not appealed to the Tax Commission within Thirty (30) days from the date of the notice. The determination of the Tax Commission shall be final and no appeal may be taken from the determination.
- I. If a person fails to file a declaration of interest or furnish any information required pursuant to this Code, the Tribes shall inform themselves as best it may as to the matters necessary to be known in order to administer the Taxation Code with respect to the property of that person.
- J. A delinquent taxpayer who files the declaration of interest after the time fixed or as extended for such a statement, shall be subject to a late filing penalty of one percent (1.0%) of the assessed value of the property as placed on the assessment roll of the Tribes for the year of delinquency. No late filing penalty shall be less than \$25.00 or more than \$5,000.
- K. A delinquent taxpayer who fails to file the declaration of interest with the Tribes, shall be assessed a non-filing penalty of two percent (2.0%) of the assessed value of the property as placed on the assessment roll of the Tribes for the year of delinquency. No non-filing penalty shall be less than \$50.00 or more than \$10,000.
- L. The Tribes shall send any delinquent taxpayer against whom a late filing penalty or non-filing penalty is imposed a notice of its intention to impose the penalty. The notice shall be by mailed to the taxpayer at the last know address. The notice shall contain the amount of the penalty and the basis for its imposition.
- M. Any appeal of the late filing penalty or the non-filing penalty must be filed in writing within thirty (30) days from the date of the notice with the Tax Commission. Failure of the taxpayer to file a timely appeal with the Tax Commission will constitute a forfeiture of all appeal rights and the late filing penalty or non-filing penalty will become final and nonappealable.

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- N. If a late filing penalty or non-filing penalty is imposed, the Tax Commission may waive the penalty if the taxpayer can show that by “good and sufficient cause”, the filing of the declaration of interest could not be made as otherwise required. The determination of the Tax Commission shall be final, and no appeal may be taken from the determination.
- O. “Good and sufficient cause” is an extraordinary circumstance beyond the control of the taxpayer, or the taxpayer’s agent or representative, which causes a late filing.
1. Extraordinary circumstances include but are not limited to the following:
 - a. Illness, absence or disability which substantially impairs a taxpayer’s ability to make a timely application. The substantial impairment must have existed for a considerable time prior to the filing deadline, and must have been of such a nature that a reasonable and prudent taxpayer could not have been expected to conform to the deadline.
 - b. Delayed receipt of information or documentation outside the control of the taxpayer necessary for filing a timely return, unless the taxpayer with ordinary prudence could have obtain the required information in a timely manner.
 - c. Reasonable and prudent reliance by the taxpayer on misinformation provided by the Tribes.
 2. Extraordinary circumstances generally do not include, but are not limited to the following:
 - a. A lack of knowledge regarding any of the provisions of the Taxation Code or the Tax Commission Administrative Rules.
 - b. Delayed receipt of information or documentation does not excuse the taxpayer from filing the declaration of interest with the information that is available or filing the declaration of interest on a “preliminary” or “draft” basis pending the receipt of the actual information.
 - c. The taxpayer’s inadvertence or oversight.
 - d. Financial hardship.
 - e. Reliance on information provided by an appraiser, attorney, real estate agent or broker, taxpayer representative or agent, certified public accountant, etc.

[Hist: Adopted section 1.07: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96), Technical Amendment Resolution No. 96-110 (18 Dec 96)]

SECTION 1.08. NOTICE OF ASSESSMENT AND PAYMENT OF TAX

- A. The Tribes shall, by May 15th of year, mail to each owner a notice of the assessed value of the utility property and the tax due. The notice shall be based on the presumed value established as provided in section 1.04 unless a different value has been finally established by the Tax Commission. The notice shall be mailed to the address specified in the most recent declaration filed pursuant to section 1.07, or, if no declaration has been filed, to the owner’s last known address. Failure to send or receive notice shall not relieve the owner of the obligation to timely pay the tax due.
- B. A notice of assessed value of the utility property and the tax due will not be mailed to a taxpayer where the taxes have not been levied pursuant to section 1.03(C).

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- C. The tax due shall be paid in two, equal semi-annual installments, with one-half (1/2) being due by June 15th following the assessment date, and one-half (1/2) being due November 15th following the assessment date. If the tax due is less than two hundred and fifty dollars (\$250.00), the tax shall be paid in one annual installment being due November 15th following the assessment date.
- D. The tax shall be paid by check made payable to the Confederated Tribes of the Umatilla Indian Reservation and mailed or delivered to the Tribes at P.O. Box 638, Pendleton, Oregon 97801. Payment is timely if postmarked or actually delivered on or prior to the due date.

[Hist: Adopted section 1.08: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96)]

SECTION 1.09. PENALTIES AND INTEREST FOR LATE PAYMENT

- A. A penalty of five percent (5%) shall be charged on any taxes not paid when due, and interest at one and one-half percent (1 1/2%) per month compounded daily shall be charged on the unpaid balance from the tax payment and penalty due date until the date of payment.
- B. Any person failing to pay taxes when due shall also be liable for a penalty equal to any extraordinary administrative costs, including attorney's fees and other litigation costs, incurred in collecting the unpaid amount. Interest at one and one-half percent (1 1/2%) per month compounded daily shall also be assessed against any unpaid administrative costs, attorney's fees or any other litigation costs associated with collection of taxes due.
- C. The penalties and interest shall be assessed and collected as a tax imposed pursuant to this Code.

[Hist: Adopted section 1.09: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96)]

SECTION 1.10. LIEN OF TAXES

- A. Taxes assessed shall be a lien against the utility property subject to the tax. Such lien shall arise in favor of the Tribes as of the assessment date, without notice or demand, and shall be prior and superior to all other liens and encumbrances.
- B. The lien shall continue until the full amount of the lien is paid to the Tribes, only then is the lien released by the Tribes. Partial payment of the taxes shall reduce the amount of the lien by the amount paid.
- C. The Tribes may foreclose upon the utility property subject to a lien by filing a civil action in the Umatilla Tribal Court for that purpose. In the event of such a foreclosure, the utility property shall be sold in a commercially reasonable manner and the proceeds applied first to the expenses for the foreclosure, then to the liability for costs, penalties, interest and tax, in that order. Any remaining balance shall be remitted to the owners of the utility property in proportion to their ownership interest.
- D. The Tribes may release liens as part of a settlement of the taxes due or where the payment of the tax is adequately protected by other security or by a surety bond.

[Hist: Adopted section 1.10: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96)]

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SECTION 1.11. CIVIL ACTIONS, SEIZURE AND SALE OF PROPERTY TO SATISFY TAXES, PENALTIES AND INTEREST

In any case of failure of a person liable for taxes pursuant to this Code to pay the taxes, penalties or interest when due, the amount of such taxes, penalties and interest may be recovered in a civil action in the Umatilla Tribal Court pursuant to this Code and the Financial Responsibility Code of the Tribes, or in any other court of competent jurisdiction.

[Hist: Adopted section 1.11: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution 96-94 (16 Oct 96)]

SECTION 1.12. SEIZURE AND SALE OF PROPERTY TO SATISFY TAXES AND COSTS: PROCEDURE

- A. If the person assessed with taxes pursuant to this Code neglects or refuses to pay the taxes when due, the Tax Commission may seize, seal, or lock enough of the property on the Reservation of the person so neglecting or refusing to pay to satisfy the taxes and costs. The Tax Commission shall take appropriate action to ensure that creditors holding prior perfected security interests are adequately protected.
- B. The Tax Commission shall then post a notice of the seizure with a description of the property, in at least three (3) public places on the Reservation and in such public places off the Reservation as it deems appropriate, publish the notice in a newspaper of general circulation in Umatilla County; and shall, at the expiration of five (5) days from the date of posting or publication, whichever occurs last, proceed to sell at public auction at the time and place mentioned in the notice, to the highest bidder, for lawful money of the United States, a sufficient quantity of the property to pay the taxes and expenses incurred, together with any penalties, late charges, and interest accrued.
- C. Upon payment of the purchase money, the Tax Commission shall deliver to the purchaser the property sold, a certificate of the sale, a statement of the amount of taxes or assessment and the expenses thereon for which the property was sold, whereupon the title of the property so sold shall vest absolutely in the purchaser, subject to the period for redemption provided for in this Code.
- D. The Tax Commission may not enter the taxpayer's private business or personal premises for the purpose of seizing property of the taxpayer without first obtaining a distress warrant from the Tribal Court or any other court of competent jurisdiction authorizing such entry.
- E. The taxpayer shall have thirty (30) days after the sale in which to redeem the property sold, by paying the full purchase price and interest, plus all costs associated with the sale to the Tax Commission.
- F. Any taxpayer whose property is seized pursuant to this Code shall have the right to petition the Umatilla Tribal Court challenging the legality of the seizure. Upon a proper showing by the taxpayer, the Umatilla Tribal Court may order temporary, preliminary and/or permanent injunctive relief, preventing the sale of such property until such time as the merits of the taxpayer's petition is heard and determined. A preliminary hearing shall be held within ten (10) days of the filing of the taxpayer's petition, at which time the Umatilla Tribal Court shall determine whether preliminary injunctive relief is warranted.

[Hist: Adopted section 1.12: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96)]

SECTION 1.13. REFUND OF EXCESS TAX PAYMENTS

- A. Any person who believes that it has overpaid pursuant to this Code may apply to the Tax Commission for a refund on or before December 30th following the assessment date. Failure

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to make a timely application for a refund of overpayment of taxes shall result in the irrevocable and nonappealable waiver of such rights to claim a refund of overpayment of taxes. Any tax paid which, after a hearing pursuant to section 1.15 is found to be in excess of that required to be paid, shall be refunded to the person paying the tax, or credited against taxes due from the taxpayer.

- B. An application for a refund of overpayment of taxes to the Tax Commission is limited to only the correction of clerical and reporting errors.
- C. All appeals or challenges contesting the validity of the Code, implementing rules and regulations, or the presumed value must be filed pursuant to section 1.14.

[Hist: Adopted section 1.13: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96), Technical Amendment Resolution No. 96-110 (18 Dec 96)]

SECTION 1.14. CHALLENGES TO THE PRESUMED VALUE

- A. Any owner of utility property may file an appeal or challenge contesting the validity of the Code, implementing rules and regulations, or the presumed value established as provided in section 1.04. The appeal or challenge shall state in detail the basis for the appeal and why the presumed value is not accurate, what the correct presumed value is, and why a correction is warranted. It shall have attached to it as an exhibit any orders that change the presumed value as published by the State of Oregon including any order of the Oregon Department of Revenue, Oregon Tax Court, Oregon Supreme Court, or any court of competent jurisdiction, appraisals or other information upon which the owner intends to rely. The appeal or challenge shall be filed with the Tax Commission and a copy shall be served on the Tribes. The only valid challenge allowed to the presumed value is:
 - 1. The presumed value has been ordered changed by the Oregon Department of Revenue, Oregon Tax Court, Oregon Supreme Court, or any other court of competent jurisdiction,
 - 2. The presumed value is currently pending an appeal before the Oregon Department of Revenue, Oregon Tax Court, Oregon Supreme Court, or any other court of competent jurisdiction,
 - 3. The presumed value is incorrect as a result of a clerical error, or
 - 4. The presumed value was determined pursuant to section 1.04(d).
- B. Any appeal or challenge contesting the validity of the Code, implementing rules and regulations, or the presumed value must be filed within thirty (30) days from the notice of the assessed value of the utility property and the taxes due statement. Failure to file a timely appeal or challenge shall result in the irrevocable and nonappealable waiver by the owner of said utility property of the right to appeal or challenge any taxes imposed by this Code. The filing of an appeal with any court shall not relieve the aggrieved party from the responsibility of filing an appeal with the Tax Commission within the time required by this provision.
- C. During the pendency of a challenge proceeding the tax shall be paid and collected based on the presumed value established as provided by section 1.04. If the final presumed value assessed by the Tax Commission is greater than the original assessed presumed value, any further tax due shall be paid within thirty (30) days of the decision or appeal. If the final presumed value assessed by the Tax Commission is less than the original assessed presumed value the Commission shall order a refund of any overpayment or permit the owner to deduct it from future payments.

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- D. If the owner of utility property fails to pay any taxes imposed by this Code when due, the failure to make timely payment of taxes shall result in the irrevocable and nonappealable waiver by the owner of said utility property of the right to challenge said taxes.

[Hist: Adopted section 1.14: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96), Technical Amendment Resolution No. 96-110 (18 Dec 96)]

SECTION 1.15. HEARING ON APPLICATION FOR REFUND OR CHALLENGE TO PRESUMED VALUE ASSESSMENT

- A. As soon as practical after receiving an application under section 1.13 or an appeal or challenge under section 1.14, the Tax Commission shall review the application or appeal for adequacy and completeness. If additional information is required, the Commission shall so inform the petitioner in writing and provide thirty (30) days for the petitioner to provide the information. When the application or appeal is adequate and complete the Commission shall schedule a hearing. In the case of a challenge under section 1.13, the hearing shall not be less than three (3) months after the date the challenge was served on the Tribes. The petitioner shall be given not less than twenty-one (21) days notice of the hearing date. Failure to provide any of the requested information within thirty (30) days may result in the dismissal of the application or appeal.
- B. Failure to file any application or appeal when due shall result in the irrevocable and nonappealable waiver of the right to appeal or challenge any taxes imposed by this Code. An application or appeal is deemed to be filed:
1. On the date the application or appeal was actually received by the Commission, or
 2. On the date shown by the post-office cancellation mark stamped upon the envelope, if the application or appeal was transmitted through the United States mail.
- C. Any application or appeal lost in transmission through the United States mail, shall be deemed filed on the date it was mailed if the appealing party:
1. Can establish by competent evidence satisfactory to the Commission that the application or appeal was deposited on or before the date due for filing in the United States mail and addressed correctly to the Commission.
 2. Files with the Commission a duplicate of the lost application or appeal within thirty (30) days after written notification is given by the Commission of its failure to receive such complaint, but in no case later than ninety (90) days after the date the complaint was otherwise required to be filed.
- D. The Commission shall make the final determination in a written order on all applications and appeals, subject to appeal to the Umatilla Tribal Court. The written order is to include a concise statement of the facts found by the Commission and the conclusions of law reached by the Commission. All orders shall be issued in writing, and may be issued verbally on the record at the hearing.
- E. The Commission shall permit no appeal, challenge or review regarding taxes imposed by this Code until such time as the applicant makes the full tax payment when due.
- F. The purpose of the hearing is enable the Commission to gather information necessary to develop a complete record to issue a written order as to the disposition of the appeal. The Commission shall conduct the hearing in an orderly and expeditious proceeding, giving the petitioner the opportunity to present all the facts, information, testimony and any legal arguments regarding any issues under appeal. The hearing shall be an informational gathering process for the Commission and not a contested case hearing process. The hearing can also be used as a forum for the participants to confer and settle their disagreements.

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- G. At the hearing the petitioner shall have the right to present oral and written testimony of witnesses under oath, and to be represented by counsel at its own expense. The Commission shall have the power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents, and other evidence. The Umatilla Tribal Court shall enforce any subpoena issued by the Commission in the same manner as the Court enforces its own subpoenas. The ordinary rules of evidence shall not apply in any hearing, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfair if admitted, shall be excluded or may be admitted by the Commission only under special conditions or stipulations.
- H. The petitioner shall provide a written copy to the Commission of all factual data, information, documents, exhibits, appraisal reports, and any legal arguments that will be presented or discussed at the hearing. All required information must be actually received by the Commission at least five (5) working days or post marked at least ten (10) days prior to the hearing. Failure to comply with this requirement may result in the Commission excluding any information.
- I. The Chair of the Board of Trustees may appoint a representative to represent the interest of the Tribes and present the case for the Tribes at the hearing. The staff member or representative shall have all the same rights at the hearing as the petitioner. The Tribes may employ an outside appraiser to assist it.
- J. The hearing shall be on the record, with all testimony taken under oath, and a permanent record made by tape recorder. Participants to a hearing may submit a written request for a copy of the tape of the proceeding and shall pay reasonable costs. No written transcripts will be provided.
- K. If the Commission determines that the petitioner has proven by clear and convincing evidence that the petitioner is entitled to a refund or correction of the assessment, or both, it shall order the appropriate relief. If the Commission determines that the Tribes have proven by clear and convincing evidence that a greater assessment is required, it shall order an increase in the assessment. Otherwise, it shall deny all relief.
- L. The Commission may resolve an appeal without holding a hearing when no additional information beyond that already contained in the record is necessary to determine the disposition of the application or appeal. For example, a hearing would not be required in such cases as:
1. A stipulation agreement were all facts have been resolved.
 2. A case were an application or appeal is being dismissed for failure to file on a timely basis.
 3. A case were an application or appeal is being dismissed for failure to pay the taxes imposed by this Code on a timely basis.
 4. A case where the participants to the appeal have requested that a decision be made without a hearing.
- M. The hearing shall be held at the administrative offices of the Confederated Tribes of the Umatilla Indian Reservation at Mission, Oregon, or may, at the discretion of the Commission, be held at a different location as designated by the Commission. The hearing may be adjourned and continued from time to time and place to place as ordered by the Commission. Only if it is efficient and cost effective to the Tribes and the nature of the appeal is such that a telephone hearing would be practical, will a telephone hearing be scheduled. Generally, complex appeals involving legal issues, large number of documents, and many witness will be held in person.

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- N. When a petitioner fails to appear for a hearing the application or appeal shall be dismissed, unless an emergency exists or when a postponement would best serve the interest of the Tribes. An emergency is an extraordinary circumstance beyond the control of the petitioner.
1. "Appear" means to appear in person, by an authorized representative, or through a witness, on the date and at the time and place prescribed by the Commission.
 2. For the purpose of a telephone hearing, a petitioner "appears" by being available at the telephone number provided to the Commission by that petitioner on the date and at the time prescribed by the Commission.
- O. Postponement of a hearing may be granted when an emergency exists or when a postponement would best serve the interests of the Tribes.
1. An emergency is an extraordinary circumstance beyond the control of the petitioner requesting the postponement. A general reference to a scheduling conflict is not adequate. A postponement decision shall be based on the specific circumstances involved.
 2. The failure to retain a representative or witness in a timely manner is generally not considered to be a circumstance beyond the control of the petitioner.
 3. The request for a postponement must be made in writing and actually received fifteen (15) days prior to the hearing. The request shall state in detail the basis for which the postponement of the hearing is being requested. The Commission shall review and grant, modify, or deny all requests for a postponement of a hearing. All decisions regarding a postponement of a hearing will be issued in writing.
- P. A petitioner who files an appeal with the Commission may withdraw the appeal at any time prior to the issuance of the final decision. Generally, a petitioner wishing to withdraw must notify the Commission in writing of the intent to withdraw. However, during the course of the hearing, a petitioner may verbally withdraw an appeal by so informing the Commission on the record. The Commission will issue a final order dismissing the appeal.
- Q. The Commission may issue a preliminary ruling. The preliminary ruling may be used when the appeal involves two or more issues, and the decision on one issue must be made before the other issue or issues can be considered. A Preliminary ruling is nonappealable. Any issue or issues resolved in the preliminary ruling will be incorporated into the final order and, if appropriate, will be appealable at that time.
- R. A settlement agreement that resolves the appeal shall be part of the final stipulated order issued by the Commission. A stipulation order is conclusive in all matters for the tax years covered by the order and is nonappealable and binding on all parties, except upon a showing of fraud, malfeasance, misrepresentation or concealment of a material fact.
- S. The Commission within the time allowed to appeal to the Umatilla Tribal Court from an order may:
1. Amend the order.
 2. Rescind the order. A new order shall be issued, but may be issued after the time for an appeal of the original order to the Tribal Court.
- T. Any party aggrieved by an amended order or a new order shall have thirty (30) days from the date of the amended or new order in which to appeal to the Tribal Court as provided by in section 1.16.

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- U. If an appeal has been taken from the original order to the Tribal Court, the amended or new order shall replace the original order. The plaintiff shall have an additional thirty (30) days from the date of the amended or new order in which to amend the complaint to conform to the amended or new order.
- V. The Commission may at any time correct an order that has not been appealed to the Tribal Court to remedy a clerical error which does not alter the rights or obligations determined in the original order. The issuing of a corrected order shall not extend the time for an appeal of the original order to the Tribal Court.
- W. Nothing contained in this section shall preclude the informal disposition of a controversy by stipulation, agreed settlement, consent orders or default, through the holding of an informal conference.

[Hist: Adopted section 1.15: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96), Technical Amendment Resolution No. 96-110 (18 Dec 96)]

SECTION 1.16. APPEALS TO THE UMATILLA TRIBAL COURT

- A. The Umatilla Tribal Court (Tribal Court) shall have exclusive jurisdiction to hear appeals from final decisions pursuant to section 1.15. The Tribal Court shall be the sole, exclusive and final judicial authority for the hearing and determination of all questions of law and fact arising pursuant to the Taxation Code. All proceedings before the Tribal Court shall be original, independent proceedings and shall be tried without a jury and de novo.
- B. No person shall appeal to the Tribal Court on any matter arising pursuant to this Code, unless the person first exhausts the administrative remedies provided before the Tax Commission.
- C. Any aggrieved party to the appeal may file an appeal of any final decision under section 1.15 within thirty (30) days from the date of the decision by filing a notice of appeal to the Tribal Court with the Tax Commission, and serving a copy on the Tribes. Thereafter the Tax Commission shall promptly file the full record of the proceeding, including the notice of appeal, with the Tribal Court. The filing of an appeal with any other court shall not relieve the aggrieved party from the responsibility of filing an appeal with the Tribal Court within the time required by this provision.
- D. The Tribal Court shall hear the appeal in the same manner as it hears appeals of civil cases from the tribal administrative agencies in which a petition for review is granted. In all appeals, the Tribal Court shall give proper deference to the administrative expertise of the Commission. The Tribal Court shall not set aside, modify or remand any determination by the Commission unless it finds that the determination is arbitrary and capricious, or contrary to law. The Tribal Court shall issue a written decision, including a concise statement of the facts found by the court and the conclusions of law reached by the court, on all appeals. All decisions by the Tribal Court shall be final.
- E. In the case of any proceeding to set aside an order or determination of the Tax Commission, the issues of fact and law shall be restricted to those raised by the parties in the appeal to the Tax Commission. If the Tribal Court finds that other issues are important to a full determination of the controversy, it shall remand the whole matter to the Tax Commission for further determination and the issuance of a new order, unless the parties to the appeal and the Tax Commission stipulate to the determination of such other issues without the appeal being remanded to the Tax Commission. Any remand order by the Tribal Court shall not be appealable.
- F. In all proceedings before the Tribal Court, clear and convincing evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation.

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- G. Except as provided by section 1.16(H), all proceedings and decisions before the Tribal Court shall be open and available to the public.
- H. In any proceeding regarding confidential information involving trade secrets or other confidential business records, upon a motion of a party to the suit, the Tribal Court may make such protective orders as may be necessary to protect the confidentiality of such records. In determining whether such protective orders should be issued, the court shall weigh the harm suffered by the disclosing party against any benefit received by the public as a result of the disclosure.
- I. The Tribal Court shall cause a copy of each of its written decisions to be delivered to the Tax Commission. The Tax Commission, after consultation with the judge, shall determine whether a decision is of general public interest. The decisions determined to be of general public interest shall be published and made available to the general public upon request.
- J. The Tribal Court shall permit no appeal, challenge or review regarding any taxes imposed by this Code until such time as the appellant makes the full tax payment when due. Failure to make the full payment of taxes when due shall result in the irrevocable waiver of the right to appeal, challenge or review regarding any taxes imposed by this Code.
- K. The Tribal Court may, in its discretion, award costs and attorneys' fees to the Tribes against any appellant whose appeal was frivolous, malicious, or in bad faith. Such fees shall be assessed and collected as a tax imposed pursuant to this Code.

[Hist: Adopted section 1.16: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96), Technical Amendment Resolution No. 96-94]

SECTION 1.17. FINALITY OF THE TAX COMMISSION OR TRIBAL COURT

Any final finding or determination of the Tax Commission pursuant to sections 1.13 to 1.15 which is not timely appealed, and any final determination of the Tribal Court in proceedings pursuant to section 1.16 and section 1.12, shall be final and binding in any other proceeding against or by the same person before the Tax Commission or the Tribal Court. In all proceedings before the Tax Commission, Tribal Court or any court of competent jurisdiction, the presumed value established as provided in section 1.04 shall be treated as conclusive unless it has been challenged pursuant to section 1.14, and the Tax Commission has established a different value.

[Hist: Adopted section 1.17: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96)]

SECTION 1.18. ENFORCEMENT AND RECORD KEEPING

- A. The Tax Commission may require each owner to keep such records as may be necessary to determine ownership and value of utility property subject to tax pursuant to this Code. Such records shall be retained for at least six (6) years beyond the date of payment of the tax to which they relate, or if no payment is due, for six (6) years beyond the due date of the declaration of interest to which the records relate.
- B. The Tax Commission may, for the purpose of preparing for a challenge proceeding pursuant to this Code or otherwise implementing or enforcing the provision of this Code, inspect the property, examine and require the production of pertinent records, books, information, or evidence, and require the presence and testimony under oath of any person within the jurisdiction of the Tribes.
- C. If an owner or other person fails upon request to testify, or to provide information or documents, the Tax Commission may seek and obtain a subpoena or order from the Umatilla Tribal Court or any other court of competent jurisdiction compelling the testimony or production of the information or documents.

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[Hist: Adopted section 1.18: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96)]

SECTION 1.19. SETTLEMENT OF TAXES DUE

- A. If at any time the Tribes in good faith are in doubt of the liability of the owner for the payment of taxes, it may compromise the liability by entering in writing with the owner an agreement that adequately protects the interest of the Tribes.
- B. If entered into after any court acquires jurisdiction of the matter, a settlement agreement shall be part of a stipulated order or judgment disposing of the case.
- C. As a condition for entering into a settlement agreement, the Tribes may require a provision of secrecy or non-disclosure regarding any or all of the terms of the settlement agreement.
- D. A settlement agreement is conclusive as to the liability or non-liability for payment of taxes relating to only the periods referred to in the agreement, except upon a showing of fraud, malfeasance, misrepresentation or concealment of a material fact.

[Hist: Adopted section 1.19: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96)]

SECTION 1.20. ASSIGNMENT OR TRANSFER OF UTILITY PROPERTY

- A. No sale or transfer of utility property or any part thereof shall affect the lien of any taxes imposed pursuant to this Code.
- B. If there is an assignment or transfer of the ownership of any utility property, any taxes imposed pursuant to this Code shall be levied against the person who acquires the ownership of said utility property.
- C. Utility property which is subject to taxation pursuant to this Code on assessment date of January 1, shall remain taxable and any taxes levied thereon for the ensuing tax year shall become due and payable notwithstanding any subsequent transfer of the utility property.
- D. No consent to the assignment or transfer of any utility property shall be granted by the Tribes unless all unpaid taxes due have been paid, or that payment has been adequately secured.

[Hist: Adopted section 1.20: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96), Technical Amendment Resolution No. 96-110 (18 Dec 96)]

SECTION 1.21. CIVIL PENALTIES FOR EVASION OR INTERFERENCE WITH TAX

- A. Any owner underassessed by reason of incomplete or incorrect information provided through negligence or intentional disregard of this Code or rules and regulation issued pursuant to this Code (but without the intent to defraud) shall be assessed a penalty of twenty-five percent (25%) of the presumed value, but not less than two hundred and fifty dollars (\$250.00) and not more than ten thousand dollars (\$10,000.00).
- B. Any owner underassessed as a result of its fraud shall be assessed a penalty of fifty percent (50%) of the presumed value, but not less than five hundred dollars (\$500.00) and not more than twenty thousand dollars (\$20,000.00).
- C. Any person who assists an owner in fraud resulting in an underassessment shall be subject to a penalty of twenty-five percent (25%) of the presumed value, but not less than two hundred and fifty dollars (\$250.00) and not more than ten thousand dollars (\$10,000.00).

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- D. Any person who removes from the Reservation any property upon which there is a lien for taxes pursuant to this Code shall be subject to a penalty equal to the amount of the lien.
- E. Any liability arising pursuant to this Code shall be assessed and collected as a tax.
- F. Any person who violates the provisions of this Code may be excluded from the Umatilla Indian Reservation or may have its right to do business on the Reservation suspended or revoked by an order of the Board of Trustees.

[Hist: Adopted section 1.21: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96)]

SECTION 1.22. CRIMINAL OFFENSES

[Hist: Adopted section 1.22: Resolution No. 96-01 (17 Jan 96), Deleted section 1.22: Technical Amendment Resolution No. 96-94 (16 Oct 96)]

SECTION 1.23. PROHIBITION OF SUITS

No suits for the purpose of restraining the assessment or collection of the taxes imposed pursuant to this Code shall be maintained in any court by any person, whether or not such person is the person against whom such taxes were assessed. The remedies provided in section 1.13 to 1.15 shall be exclusive.

[Hist: Adopted section 1.23: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96)]

SECTION 1.24. PROHIBITION AGAINST DISCRIMINATION

- A. The tax imposed by this Code shall be considered an embedded operating cost and may not be assessed to or passed on to any class of customers or users in a different manner than ad valorem taxes assessed by the State of Oregon or its political subdivisions. Any attempt to charge members of the Tribes or any other customer on tribal or trust lands a higher charge or fee because of this tax or to separately identify this tax on the customer's bill shall be considered discrimination and shall be null and void.
- B. Before any utility company attempts to pass through any of its operating costs to tribal members or any consumer within the exterior boundaries of the Reservation, the utility company must apply first to the appropriate Federal and/or State agency, department, regulatory board, commission, etc. for approval to do so.
- C. The Umatilla Tribal Court shall have jurisdiction to enjoin any company who threatens or attempts to levy a charge or fee that is discriminatory and the Tribal Court may award any consumer, or the Tribes, in addition to cost and reasonable attorneys fees, a penalty equal to three (3) times the charge or the fee the company attempted or threatened to assess. For this purpose, the Tribes may seek an injunction on behalf of their members and may recover its costs, attorneys fees and the penalty set forth herein and shall have standing for this purpose.
- D. The Tribes are not a municipality, political subdivision, or similar entity; they are a sovereign nation.
- E. Should any court of competent jurisdiction rule that section 1.24 may not be enforced and that a higher charge or fee may be charged to members of the Tribes or other consumers on tribal or trust lands as a result of the tax imposed by this Code, and such ruling is sustained on appeal, there shall be exempted from the imposition of the tax pursuant to section 1.03 all utility property that is exclusively for the purpose of providing service to persons within the exterior boundaries of the Reservation.

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[Hist: Adopted section 1.24: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96)]

SECTION 1.25. USE OF THE TAX PROCEEDS

- A. All taxes collected pursuant to this Code shall be deposited into the Tribes' General Fund and shall be used to support the Tribes' government and programs that benefit members of the Tribes, Reservation residents and/or persons doing business on the Reservation.
- B. The Tax Administrator shall notify the Tribes' Executive Director and Budget Officer of any taxes paid under protest or paid pending an appeal. The Executive Director shall recommend to the Board of Trustees an amount of taxes paid which should be set aside in a separate reserve account to pay any refunds that are determined to be due to a taxpayer.
- C. Refund interest shall be ordinary interest and not compounded and accrues only on the tax principal overpayment. The refund interest is calculated as:
 - 1. No refund interest is allowed if the overpayment of taxes are paid within ninety (90) days.
 - 2. Refund interest is computed starting on the ninety-first (91st) day until the overpayment of taxes are paid.
 - 3. The refund interest rate is based on the average monthly rate for the 3 month US Treasury bills (Secondary Market) for the month in which the overpayment of taxes occurred. The 3 month US Treasury bills (Secondary Market) interest rate is published by the Board of Governors of the Federal Reserve System in the Federal Reserve Bulletin.
 - 4. Example of the Refund Calculation:

	Original Amount of Taxes Paid	Corrected Tax Amount	Overpayment of Taxes
Taxes	\$ 10,000.00	\$ 8,500.00	\$ 1,500.00
Interest Refund			\$ 18.49
Total Refund: Taxes and Interest			\$ 1,518.49

Interest Refund Calculation:

$$(\$1,500 * (5.00\% \div 365) * (180-90)) = \$ 18.49$$

Assume: Total number of days before the overpayment of taxes was paid 180.
 Assume: 3 month US Treasury Bill interest rate is 5%.

[Hist: Adopted section 1.25: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96), Technical Amendment Resolution No. 96-110 (18 Dec 96)]

SECTION 1.26. SEVERABILITY

If any provision of this Code or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

[Hist: Adopted section 1.26: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96)]

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SECTION 1.27. EFFECTIVE DATE

This Code shall be effective beginning on the date of approval of this Code by the Board of Trustees. The taxes for the year during which this Code is approved shall be assessed as provided herein, but shall be prorated by the number of days during the year that this Code was in effect. The Tribes may send out notices for such taxes at any time. The first installment of such taxes shall be due on the date under section 1.08 or thirty (30) days after the notice is mailed, whichever date is later. The second installment shall be due on the due date under section 1.08 or thirty (30) days after the notice is mailed, whichever date is later.

[Hist: Adopted section 1.27: Resolution No. 96-01 (17 Jan 96), Technical Amendment Resolution No. 96-94 (16 Oct 96)]

CHAPTER 2. TRANSIENT LODGING TAX

SECTION 2.01. DEFINITIONS

For the purpose of this Code, unless otherwise required by the context, the terms used herein shall have the following meaning:

- A. "Gross receipts from the rental of transient lodging" does not include the tax imposed or collected from paying guests pursuant to this section, the furnishing, preparing, or serving for a consideration of food, meals, or drinks, and the cost of personal services performed by the business, except for such services related to the cleaning and preparing the room for occupancy,
- B. "Transient Lodging" shall mean the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, condominium, townhome, or other lodging, unless the occupancy is for a period of more than 30 days,
- C. "Tax Commission" shall mean the Tax Commission established pursuant to the Utility Tax Code adopted by the Board of Trustees by Resolution 96-01.

SECTION 2.02. TAX IMPOSED

The Tax Commission shall impose a tax on the gross receipts from the rental of transient lodging on the Reservation upon all person in the business of providing such lodging.

SECTION 2.03. TAX RATE

The tax rate shall be at a rate of seven percent (7%) of the gross receipts from the rental of transient lodging on the Reservation.

SECTION 2.04. COLLECTION OF TAX

The tax imposed pursuant to section 2.03 shall be collected from the paying guests and shall be shown as addition to the charge for the rental of transient lodging. The person providing the transient lodging is liable to the Tribe for the tax whether or not it is actually collected from the paying guest.

SECTION 2.05. SCHEDULE OF REPORTING AND PAYMENT OF TAXES

- A. The taxes imposed by this chapter are payable to the Tax Commission monthly and are due on or before the last day of the month next succeeding the month of collection.
- B. On or before the last day of the month following each reporting period, a return for the preceding period must be filed with the Tax Commission on such form as the Tax Commission may prescribe.

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- C. Returns must be signed by the person required to file the return or by such person's authorized agent but need not be verified by oath.

SECTION 2.06. PERIODS FOR RETURNS

- A. The reporting and payment period of a taxpayer whose taxable gross receipts do not exceed \$25,000 per month is a calendar quarter; otherwise, reporting and payment shall be made as provided in section 2.05.
- B. The Tax Commission, if it deems this action necessary in order to insure payment to, or to facilitate the collection by the Tribe of the amount of taxes, may require returns and payment of the amount of taxes for periods other than calendar months or quarters.

SECTION 2.07. REGULATIONS OF TAX COMMISSION

The Tax Commission shall make all necessary and convenient rules, including:

- A. Prescribing the form of reports and claims made by taxpayers.
- B. Any other necessary rules and regulations.

[Hist. Adopted Resolution No. 96-22 (6 Mar. 96)]

CHAPTER 3. TOBACCO CODE

SECTION 3.01. TITLE

This code shall be known as the Tobacco Code of the Confederated Tribes of the Umatilla Indian Reservation.

SECTION 3.02. PURPOSE

The purpose of this Code shall be to provide for the regulation of the sale of tobacco products by Indians within the boundaries of the Umatilla Indian Reservation.

SECTION 3.03. DEFINITIONS

As used in this Code, the following words or phrases shall have the following definitions:

- A. "Board" or "Board of Trustees" shall mean the governing body of the Confederated Tribes of the Umatilla Indian Reservation.
- B. "Indian Owned" shall mean any outlet owned by one or more Indians engaged in the sale of tobacco products.
- C. "Operator" shall mean any Indian licensed by the Tribe to operate a tobacco outlet.
- D. "Outlet" shall mean any store, shop, building or place where tobacco products are sold within the boundaries of the Umatilla Indian Reservation, and shall include a cigarette vending machine.
- E. "Tobacco Products" shall include cigarettes, cigars, smoking tobacco, snuff, chewing tobacco and all other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking.
- F. "Tribe" or "Tribal" shall mean or refer to the Confederated Tribes of the Umatilla Indian Reservation.

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SECTION 3.04. TOBACCO SALES – LICENSE FEE

- A. Any Indian that shall engage in the sale of tobacco products shall first obtain a license for such sales, provided, any Indian owned outlet engaging in such sales prior to the adoption of this Code shall obtain a license within thirty (30) days from the date of its adoption by the Board of Trustees.
- B. A tobacco sales license shall be valid for a period of one (1) year from the date of its issuance and shall expire automatically without notice on the expiration date stated in the license.
- C. No tobacco sales license issued shall be transferable.
- D. The Board of Trustees shall establish a fee for the issuance of a tobacco sales license which shall be collected prior to the issuance of the license.

SECTION 3.05. TOBACCO SALES – APPLICATION AND RENEWAL

- A. Application for a tobacco sales license shall be on a form approved by the Board of Trustees which shall be fully completed by the applicant or a duly authorized representative. The application shall state the name and address of the applicant, the location of the proposed tobacco outlet, the beginning date for which the license is requested, a description of any other retail or commercial business conducted or to be conducted by the applicant at the location of the proposed tobacco outlet, such other information as the Board may require, and shall be signed by the applicant under oath.
- B. The Board of Trustees shall have the authority to approve or deny, or delegate to a tribal employee or committee the authority to approve or deny, all tobacco sales license applications.
- C. Upon the denial of any application for a tobacco sales license, the applicant shall have the right to a hearing before the Board of Trustees at its next regularly scheduled meeting. Findings and decisions by the Board based on the hearing shall be final and conclusive.
- D. Prior to or upon the expiration of any tobacco sales license, the operator may apply for renewal of a license by filing a renewal application with the Board. Renewal applications shall be subject to all conditions and requirements applicable to an initial application including a fee for the issuance of a renewal license.
- E. In the event an operator wishes to operate a tobacco outlet under the continual coverage of a tobacco sales license, it shall be the responsibility of said operator to submit to the Board its renewal application within thirty (30) days from the expiration date of the tobacco sales license.

SECTION 3.06. TOBACCO SALES LICENSE CRITERIA

- A. No application for the tobacco sales license shall be granted unless:
 - 1. The applicant has paid the required license fee and submitted a completed application form,
 - 2. The applicant shall be at least 21 years of age,
 - 3. The applicant is determined to be of good moral character,
 - 4. The location proposed for the tobacco outlet complies with all applicable tribal building codes and zoning codes,

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5. It is determined that there is adequate demand for a tobacco outlet at the proposed location, and
 6. The applicant is engaged in or proposed to engage in retail or commercial business at such location other than the sale of tobacco products, unless the proposed tobacco outlet is a cigarette vending machine.
- B. The conditions described in this section are not exclusive and the Board or its authorized representative may impose any other conditions which it deems necessary to safeguard and promote the safety, health and general welfare of members of the Tribe.

SECTION 3.07. CIGARETTE TAX

No cigarette shall be sold which does not bear a revenue stamp of the State of Oregon or such revenue stamp as may hereafter be established by the Tribe.

SECTION 3.08. TRADER'S LICENSE

If under applicable federal law the applicant is required to obtain a federal Indian trader's license, the applicant shall apply for such trader's license within 30 days after receipt of a tobacco sales license. Failure of the operator to apply for, obtain or maintain a federal Indian trader's license shall be grounds for immediate revocation of the tobacco sales license.

SECTION 3.09. TRIBAL SOVEREIGN IMMUNITY

No operator shall attempt or be authorized to waive the sovereign immunity of the Tribe from suit.

SECTION 3.10. OPERATING WITHOUT A LICENSE

It shall be unlawful for any Indian to engage in the business of selling or distributing tobacco products within the boundaries of the Umatilla Indian Reservation without having in effect a valid tobacco sales license issued pursuant to this Code.

SECTION 3.11. RULEMAKING AUTHORITY

The Board of Trustees shall have the authority to prescribe such rules and regulations as they deem necessary to carry out the purpose of this Code and to facilitate its operation.

SECTION 3.12. RESISTING ARREST OR HINDERING ENFORCEMENT

No one subject to the provisions of this Code shall forcibly resist lawful arrest or interfere with or hinder any officer authorized by the Board in the investigation of any violation of this Code or in making any lawful search, examination or service in the performance of his duties to that end.

SECTION 3.13. PENALTIES

- A. The Umatilla Tribal Court shall have jurisdiction of all violations of this Code committed within the boundaries of the Umatilla Indian Reservation. Prosecution of any violation of this Code shall be initiated by the Tribal Attorney.
- B. The Umatilla Tribal Court shall have the authority to issue an order directing tribal law enforcement personnel to seize all tobacco products from any tobacco outlet being operated in violation of this Code.
- C. Within three days of such seizure, after adequate notice to the operator of the outlet, a hearing shall be held in Tribal Court at which time such operator shall be given an opportunity to present evidence in defense of his activities.

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- D. In the event the Tribal Court shall by a preponderance of the evidence determine that an operator of a tobacco outlet was in violation of this Code, the Tribal Court may punish such operator by any, all, or any combination of the following:
1. A fine not to exceed \$500.00;
 2. Imprisonment not to exceed six (6) months;
 3. Suspension or revocation of a tobacco sales license;
 4. Forfeiture of any or all tobacco products in violator's possession.

SECTION 3.14. NON-APPLICATION TO TRIBE

The provisions of this Code requiring a tobacco sales license shall not apply to any sales of tobacco products by the Tribe or one of its businesses or enterprises.

SECTION 3.15. NON-INDIANS

The Tribe and the Oregon Department of Revenue will cooperate in the enforcement of Oregon cigarette tax laws with respect to sales of cigarettes by non-Indians on the reservation.

[Hist: Resolution No. 79-52 (19 Sept 79); Resolution No. 96-99 (6 Nov 96)]

CHAPTER 4. MOTOR FUELS TAX CODE

SECTION 4.01. TITLE

This Code shall be known as the Motor Fuels Tax Code of the Confederated Tribes of the Umatilla Indian Reservation.

SECTION 4.02. PURPOSE

The purpose of this Code shall be to provide for the regulation and taxation of motor fuels.

SECTION 4.03. DEFINITIONS

For the purpose of this Code, unless otherwise required by context, the terms used herein shall have the following meanings:

- A. "Fuel" or "Motor Fuels" means flammable hydrocarbon liquid, including blended gasoline of any type and diesel fuel, used primarily in internal combustion engines for the generation of power for the propulsion of motor vehicles.
- B. "Gallon" means the quantity of fuel that fills a standard United States gallon liquid measurement.
- C. "Retail Facility" or "Outlet" means any store, shop, building or place of business where any amount of fuel is delivered and/or received by any method for the purpose of sale, resale, use, distribution, or giving away by any retainer within the Reservation.
- D. "Retailer", "Seller" or "Operator" means any person who sells, resells, uses, distribution, or gives away any amount of fuel from any retail facility generally dispensing such fuel into the fuel supply tanks of motor vehicles.
- E. "Sale" or "Sell" means the transfer of ownership, title, or possession to another person in exchange for a consideration and includes the transfer or possession on consignment basis.

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- F. “Person” means any individual, whether Indian or non-Indian, or any other organization, including, but not limited to sole proprietorships, partnerships, joint ventures, trusts, estates, unincorporated associations, corporations, and governments, or any division, department or agency of any of the foregoing.
- G. “Reservation” means the Umatilla Indian Reservation and is defined as Indian country as defined by 25 U.S.C. section 1903(10) and 18 U.S.C. section 1151, which includes all trust land whether within the original reservation or subsequently acquired, all Indian Allotments, and all lands located within the exterior boundaries of the Umatilla Indian Reservation notwithstanding the issuance of any patent, and including rights-of-way.

SECTION 4.04. TAX IMPOSED

For the privilege of distributing or retailing any amount of fuel on the Reservation impose a tax on each gallon of fuel, or fraction thereof, at a rate of tax pursuant to section 4.06 of this chapter.

SECTION 4.05. TAXABLE UNIT

The unit of fuel on which the tribal fuel tax is imposed is the gallon, with the tax computed to the nearest mill on all amounts of fuel.

SECTION 4.06. RATE OF TAX

- A. The tribal fuel tax rate shall be equivalent to the State of Oregon’s license tax for motor vehicle fuel and fuel pursuant to the Oregon Revised Statutes, chapter 319, which is computed on a cents per gallon for the first sale, use or distribution of such motor vehicle fuel or fuel.
- B. A tribal fuel tax credit is allowed to any person, who at the time of purchase presents the retailer with a valid Oregon “Weight Receipt and Tax Identifier” (Weight Receipt) to purchase fuel exempt of the Oregon fuel (i.e. diesel) tax.
- C. A tribal fuel tax credit is allowed for any amount of fuel used solely and exclusively for the propulsion and operation of a farm tractor or other farm machinery and equipment designed primarily for agricultural off-road use.

SECTION 4.07. MOTOR FUELS LICENSE

- A. Any person that engages in the sale of motor fuels shall first obtain a motor fuels license for such sales and shall obtain a license within thirty (30) days from the date of its adoption by the Board of Trustees.
- B. Any person proposing to engage in the sale of motor fuels must first obtain a motor fuels license for such sales and shall apply to obtain the motor fuels license at least thirty (30) days prior to operation.
- C. A motor fuels license must be secured and maintained for each calendar year or fraction thereof, ending on December 31st, during which a person seeks to operate as a licensee.
- D. No motor fuels license issued shall be transferable.
- E. The motor fuels license fee is one hundred dollars (\$100.00), which shall be collected prior to the issuance or renewal of the license.

SECTION 4.08. MOTOR FUELS LICENSE – APPLICATION AND RENEWAL

- A. Application for a motor fuels license shall be on such forms and containing such information as the Tribes may require. The motor fuels license application shall be fully completed by the applicant or a duly authorized representative. The application shall state the name and

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address of the applicant, the location of the fuel outlet, the beginning date for which the license is requested, a description of any other retail or commercial business conducted or to be conducted by the applicant at the location of the fuel outlet, and all other information as may be required, and shall be signed by the applicant under oath.

- B. If a person fails to provide or furnish any information required by the motor fuels license application, the Tribes shall inform themselves as best it may as to the matters necessary to be known with respect to the motor fuels license application of that person.
- C. The Tax Administrator shall have the authority to approve or deny motor fuel license applications.
- D. Any appeal or challenge of a denial of a motor fuels license by the Tax Administrator must be filed within thirty (30) days from the date of the notice of denial with the Tax Commission. Failure to file a timely appeal shall result in the irrevocable and nonappealable waiver by the applicant of a motor fuels license of the right to appeal or challenge the determination of the Tax Administrator. The filing of an appeal with any court shall not relieve the applicant from the responsibility of filing an appeal with the Tax Commission within the time required by this provision.
- E. Prior to or upon the expiration of any motor fuels license, the operator may apply for renewal of a license by filing a renewal application with the Tax Administrator. Renewal applications shall be subject to all conditions and requirements applicable to an initial application and must include the one hundred-dollar (\$100.00) renewal license fee.

SECTION 4.09. MOTOR FUELS LICENSE CRITERIA

- A. No application for the motor fuels license shall be granted unless:
 - 1. The applicant has paid the required license fee and submitted a completed application form;
 - 2. The applicant is at least 21 years of age;
 - 3. The applicant is determined to be of good moral character;
 - 4. The location proposed for the fuel outlet complies with all applicable tribal ordinances, laws, and statutes, including all building and zoning codes;
 - 5. The applicant is in compliance with all applicable tribal ordinances, laws, and statutes including taxation, and the tribal employment rights;
 - 6. The applicant is in compliance with all provision of the Motor Fuels Tax Agreement.
- B. The conditions described in this section are not exclusive and the Board of Trustees or its authorized representative may impose any other conditions that it deems necessary to safeguard and promote the safety, health and general welfare of the Reservation.

SECTION 4.10. FUEL SALES

No fuel within the Reservation shall be sold, used, or distributed that does not comply with all provisions of this code.

SECTION 4.11. TRADER'S LICENSE

If under applicable federal law the applicant is required to obtain a federal Indian trader's license, the applicant shall apply for such trader's license within 30 days after receipt of a motor fuel license.

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Failure of the operator to apply for, obtain or maintain a federal Indian trader's license shall be grounds for immediate revocation of the motor fuel license.

SECTION 4.12. TRIBAL SOVEREIGN IMMUNITY

Nothing in this Code shall be construed as a wavier of sovereign immunity by the Confederated Tribes of the Umatilla Indian Reservation or as a waiver of its 11th Amendment sovereign immunity.

SECTION 4.13. OPERATING WITHOUT A LICENSE

It shall be unlawful for any person to engage in the business of selling or distributing motor fuels within the boundaries of the Umatilla Indian Reservation without having a valid motor fuels license issued pursuant to this Code.

SECTION 4.14. RULEMAKING AUTHORITY

The Board of Trustees shall delegate to the Tax Commission the authority to prescribe such rules and regulations, as they deem necessary for the implementation and administration of the provisions of this Code.

SECTION 4.15. RESISTING ARREST OR HINDERING ENFORCEMENT

No one subject to the provisions of this Code shall forcibly resist lawful arrest or interfere with or hinder any officer authorized by the Board in the investigation of any violation of this Code or in making any lawful search, examination or service in the performance of his duties to that end.

SECTION 4.16. PENALTIES

- A. The Umatilla Tribal Court shall have jurisdiction of all violations of this Code committed within the boundaries of the Umatilla Indian Reservation. Prosecution of any violation of this Code shall be initiated by the Tribal Attorney.
- B. The Umatilla Tribal Court shall have the authority to issue an order directing tribal law enforcement personnel to seize all motor fuel products from any outlet being operated in violation of this Code.
- C. Within three days of such seizure, after adequate notice to the operator of the outlet, a hearing shall be held in Tribal Court at which time such operator shall be given an opportunity to present evidence in defense of his activities.
- D. In the event the Tribal Court shall by a preponderance of the evidence determine that an operator of a motor fuel outlet was in violation of this Code, the Tribal Court may punish such operator by any, all, or any combination of the following:
 - 1. A fine not to exceed \$5000.00;
 - 2. Suspension or revocation of the motor fuels license;
 - 3. Forfeiture of any or all motor fuel products in violator's possession.

SECTION 4.17. RETAILER NOTICE REQUIREMENT

All retailers shall keep posted at all times on all fuel pumps or other fuel dispensing apparatus at any and all retail facilities located within the Reservation, a notice reading substantially as follows depending on the appropriate applicability:

- A. "THE PRICE PER GALLON INCLUDES ALL APPLICABLE FEDERAL, TRIBAL, AND STATE TAXES."

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- B. "THE PRICE PER GALLON INCLUDES ALL APPLICABLE FEDERAL TAXES, BUT EXCLUDES ALL APPLICABLE TRIBAL AND STATE TAXES."

SECTION 4.18. MOTOR FUELS TAX AGREEMENT

The Tribes and the State of Oregon, acting through the Department of Transportation shall cooperate to administer and enforce the provisions of the Motor Fuels Tax Agreement.

SECTION 4.19. SEVERABILITY

If any provision of this Code or its application to any person or circumstance, is held invalid by a final judgement of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

SECTION 4.20. EFFECTIVE DATE

This Code shall be effective beginning on the date of approval by the Board of Trustees.

CHAPTER 5. LIQUOR TAX CODE

SECTION 5.01. DEFINITIONS

- A. "Liquor" shall have the same definition as set forth in section 1.03(A)(3) in the Liquor Code.
- B. "Liquor Tax" shall be the tax imposed pursuant to section 5.02 of this Code and at the tax rate imposed in section 5.03 of this Code.
- C. "Wildhorse Chief Operating Officer" shall have the same definition as set forth in section 1.03(A)(5) of the Liquor Code.
- D. "Wildhorse Resort & Casino" shall have the same definition as set forth in section 1.03(A)(4) of the Liquor Code.

SECTION 5.02. LIQUOR TAX IMPOSED

The Tax Commission shall impose a tax on gross sales of liquor at the Wildhorse Resort & Casino.

SECTION 5.03. LIQUOR TAX RATE

The tax rate shall be at a rate of five percent (5%) of the gross sales of liquor at the Wildhorse Resort & Casino.

SECTION 5.04. SCHEDULE OF REPORTING AND PAYMENT OF LIQUOR TAX

- A. The liquor tax imposed by this chapter shall be reported and paid on a monthly schedule.
- B. On the 25th day of the month following the month liquor is first sold at Wildhorse Resort & Casino, and on the same date such month thereafter, the Wildhorse Chief Operating Officer shall report on the gross sales of liquor at each Wildhorse enterprise where liquor is sold for the preceding month. The Tax Commission shall develop the form for Wildhorse compliance with this monthly reporting requirement. The report shall be submitted to the Tax Administrator.
- C. On the same day as the report described in paragraph (B), above, Wildhorse shall submit its tax payment for the preceding month. The tax payment shall be submitted to the Tax Administrator.

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SECTION 5.05. SUBSTANCE ABUSE EDUCATION, PREVENTION, TREATMENT AND ENFORCEMENT FUND (“SUBSTANCE ABUSE FUND”)

- A. The Treasurer shall establish and maintain the Substance Abuse Fund.
- B. The liquor tax collected pursuant to this chapter shall be deposited into the Substance Abuse Fund.
- C. The Substance Abuse Fund shall be dedicated to Tribal programs providing substance abuse education, prevention, treatment or enforcement services. The Board of Trustees shall allocate and budget such funds pursuant to its tribal budgeting process, provided that the liquor tax collected in a calendar year shall not be budgeted for use or expenditure until the following calendar year.

SECTION 5.06. TAX COMMISSION REGULATIONS

The Tax Commission is authorized to:

- A. Prepare the reporting forms necessary for the reporting and collection of the liquor tax.
- B. To promulgate any rules or regulations determined necessary to facilitate the reporting, payment, collection and enforcement of the liquor tax imposed in this chapter.

SECTION 5.07. EFFECTIVE DATE

The liquor tax imposed pursuant to this chapter shall be effective and enforceable upon the date liquor is first served at Wildhorse Resort & Casino.

CHAPTER 6. COYOTE BUSINESS PARK AD VALOREM TRIBAL PROPERTY TAX

SECTION 6.01. DEFINITIONS

- A. “Board” means the Board of Trustees, which is the governing body of the Confederated Tribes of the Umatilla Indian Reservation by authority of Article VI of the Tribes’ Constitution and By-Laws, adopted on November 4, 1949 and approved on December 7, 1949, as amended.
- B. “Chapter” means this Chapter 6 of the Tribal Tax Code, which Chapter imposes the Coyote Business Park Ad Valorem Tribal Property Tax.
- C. “Code” means the Tribal Tax Code.
- D. “Commercial or enterprise activities” means an activity financed and operated in a manner similar to a private business enterprise.
- E. “Coyote Business Park” means the parcels of land that have been designated as the Coyote Business Park North, South and East for development. [See Attached Map]
- F. “Essential governmental services” means services such as tribal administration, public facilities, fire, police, public health, education, sewer, water, cultural resource activities, environmental and land use, public transportation, and utility services.
- G. “Placed in service” means when the property is in a condition or state of readiness and available for a specifically assigned function.
- H. “Property” means all property, real and personal, tangible and intangible, used for business commercial or enterprise activities.

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- I. "Tax Administrator" mean the tax administrator for the Confederated of the Umatilla Indian Reservation.
- J. "Tax Commission" means the entity established in Chapter 1, Section 2 of the Code.
- K. "Taxpayer" means, but is not limited, to any person, sole proprietorship, partnership, joint venture, company, trust, estate, association, unincorporated association, corporation, and government, or any division, department, agency of any of the foregoing, that is subject to the Coyote Business Park Ad Valorem Tribal Property Tax established by this Chapter whether Indian or non-Indian.
- L. "Tax" or "Taxes" means the Coyote Business Park Ad Valorem Tribal property tax imposed by this Chapter, including any interest, penalties, or costs imposed or assessed pursuant to this Chapter
- M. "Tribes" means the Confederated Tribes of the Umatilla Indian Reservation.

SECTION 6.02. DECLARATION OF NECESSITY AND PURPOSE

- A. The Board has established the Tax pursuant to this Chapter based upon the following findings:
 - 1. that the welfare of the residents of the Umatilla Indian Reservation are acutely dependent upon the growth, development and expansion of employment and business opportunities within the Reservation boundaries;
 - 2. the Tribes need to develop a sufficient tax base to fund Essential Government Services and investments into infrastructure to attract, encourage and retain both public and private investment for business growth opportunities to improve the welfare to the residents of the Reservation;
 - 3. Coyote Business Park tenants need and will benefit by the proceeds from the Tax imposed by this Chapter to pay for buildings, structures, and infrastructure costs to serve Coyote and for operation and maintenance of the landscaping, lighting, streets, sidewalks and utilities serving the Coyote Business Park.
- B. All leases of Coyote Business Park lots shall include language recognizing the inherent sovereign power of the Tribes to regulate the tenants and activities at the Coyote Business Park, including the right to tax the business activities conducted and real and personal property located therein.

SECTION 6.03. TAX IMPOSED AND TAX RATE

- A. A tax of two percent (2%) of the total assessed value established as provided in Section 6.08 of this Chapter on each assessment date of all property is hereby imposed. The Tax imposed by this Chapter may be separately identified and billed to customers doing business with tenants at Coyote Business Park.
- B. The provisions of this Chapter shall be construed to subject all property to the tax imposed in subsection A that is owned, leased, and used, which as been placed in service except for the property subject to taxation pursuant to Chapter 1 of this Code imposing the Tribal Utility Tax.

SECTION 6.04. ASSESSMENT

The assessment date for each calendar year shall be January 1st of that year. Property shall be assessed annually as of the assessment date. The Tribes may assess unassessed property as of the

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date upon which it should have been assessed, and may redetermine incorrect or erroneous assessments.

SECTION 6.05. PERSON LIABLE FOR TAX PAYMENT

- A. The Tax Administrator shall make an annual assessment of any property that has situs in the Coyote Business Park, except as provided in subsection B of this section, that is used or held for future use by any Taxpayer conducting commercial business activities or services for hire, sale or consumption by other persons.
- B. Except as provided in subsection C of this section, the Tax Administrator shall assess to the property user or operator all property owned, leased, rented, chartered or otherwise held for or used by it in conducting a commercial business activity or service.
- C. Where any property owned, leased, rented, chartered or otherwise assigned by an owner, lessor, lessee or user whose property is otherwise subject to taxation by this Code that is leased, rented, chartered or otherwise assigned for the use or benefit of a Taxpayer which has or thereby has property subject to this Code, the Tax Administrator may assess the property to either the owner, lessor, lessee or user.

SECTION 6.06. EXEMPTIONS

- A. It is the intent of this Code that any exemptions are to be narrowly construed and must be specifically enumerated in this Section.
- B. The following property shall be exempt from the Tax imposed by this Chapter:
 - 1. Public roads and streets that are constructed or maintained by the United States, the Tribes, or the State of Oregon, which are for the beneficial use of the Coyote Business Park.
 - 2. Public sidewalks and trails that are constructed or maintained by the United States, the Tribes, or the State of Oregon, which are for the beneficial use of the Coyote Business Park.
 - 3. Lighting for the public roads and streets, sidewalks, and trails that are that are constructed or maintained by the United States, the Tribes, or the State of Oregon, which are for the beneficial use of the Coyote Business Park.
 - 4. The Tribes water and sewer system, which includes the potable water, fire suppression system, landscaping irrigation system, and the wastewater and sewage facilities and system.
 - 5. Public emergency facilities for fire and police services maintained by the United States, the Tribes, or the State of Oregon, which are for the beneficial use of the Coyote Business Park.
 - 6. Public parks, public sport and recreational facilities, and visitor and information centers maintained by the United States, the Tribes, or the State of Oregon, which are for the beneficial use of the Coyote Business Park.
 - 7. Property during construction.
 - 8. Inventory. Items of personal property, both intangible and tangible, consisting of inventory, including but not limited to materials, supplies, containers, good in process, finished goods and other personal property owned by or in possession of the Taxpayer, that are or will become part of the stock and trade of the Taxpayer held for sale in the ordinary course of business.

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9. Intangible person property consisting of the following items:
 - a. Cash and cash deposits, bonds, notes, claims, demands and all other evidence of indebtedness, secured or unsecured, including notes, bonds or certificates secured by mortgages.
 - b. All shares of stock in corporations, joint stock companies or associations.
 - c. Media constituting business records, files, records of accounts, title records, surveys, designs, credit references, and data contained therein. Media includes but is not limited to paper, film, punch cards, magnetic tape and disk storage.
 - d. Business goodwill.
 - e. Customer lists.
 - f. Contracts and contract rights.
 - g. Assembled labor force.
 - h. Trade secrets.
- C. Property owned by the following Governments shall be exempt from the Tax imposed by this Chapter:
 1. The Tribes, any subdivision, agency or program of the Tribes and enterprise or entity wholly owned by the Tribes that are performing an essential governmental service. Property used for business, commercial or enterprise activities are not exempt from taxation.
 2. The United States or its subdivision, agencies or departments except to the extent such taxes are authorized by federal law.
 3. The State of Oregon or its subdivisions, agencies or departments except to the extent such taxes are authorized by federal and state law.

SECTION 6.07. SCHEDULE OF REPORTING

- A. On or before March 15th following each assessment date, each Taxpayer subject to the Tax pursuant to this Chapter must file with the Tribes a declaration of its interest in any property on such forms and containing such information as the Tribes may require. If the Taxpayer, is exempt under Section 6.06, the declaration shall so state.
- B. On or before March 15th following each assessment date, each Taxpayer subject to tax pursuant to this Chapter may file with the Tribes a request for an extension of time to declare its interests in any property on such forms and containing such information as the Tribes may require.
- C. The Tax Administrator has the discretionary authority to grant, approve, modify, or deny any request for an extension of time or due date to file a declaration of interest. For any extension request to be considered valid, it must meet all of the following:
 1. The extension request must be in writing.
 2. The extension request must be postmarked or received on or before the due date for filing the declaration of interest including any extensions.
 3. The extension request must clearly state the reason that an extension of time is necessary to file the declaration of interest.

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4. The extension request must state the date that the declaration of interest will be filed with the Tribes.
- D. Any Taxpayer subject to this Chapter that files an extension request to file the declaration of interest will be notified in writing as to the status of their request. The decision of the Tax Administrator will become final and nonappealable, if it is not appealed to the Tax Commission within twenty (20) days from the date of the notice. The determination of the Tax Commission shall be final, and no appeal may be taken from the determination.
- E. Any Taxpayer required by this Chapter to file a declaration of interest with the Tribes, who has not filed such a statement within the time fixed or as extended, is delinquent.
- F. A declaration of interest may be filed with the Tribes on a “preliminary” or “draft” basis, if the necessary information with ordinary prudence could not have been obtained and is outside the control of the Taxpayer. However, when the final information is available, an amended declaration of interest with the final information must be filed with the Tribes.
 1. Any Taxpayer that files a declaration of interest on a “preliminary” or “draft” basis must request an extension of time. Any request for an extension of time must be made pursuant to subsection C of this section.
 2. Any declaration of interest filed on “preliminary” or “draft” basis must clearly identify all “preliminary” or “draft” information.
- G. If a declaration of interest is filed on a “preliminary” or “draft” basis and the information with ordinary prudence could have been obtained or if the information was within the control of the Taxpayer, the filing date is determined when the amended declaration of interest is filed. If the amended declaration of interest is filed after the time fixed, excluding any extension for such a statement, the Tax Administrator has the discretionary authority to determine if the amended declaration of interest was filed timely or delinquent.
- H. If the Tax Administrator determines that a declaration of interest is delinquent, the Taxpayer will be notified in writing. The decision of the Tax Administrator will become final and nonappealable, if it is not appealed to the Tax Commission within thirty (30) days from the date of the notice. The determination of the Tax Commission shall be final and no appeal may be taken from the determination.
- I. If a Taxpayer fails to file a declaration of interest or furnish any information required pursuant to this Code, the Tribes shall inform themselves as best it may as to the matters necessary to be known in order to administer this Chapter with respect to the property of that Taxpayer.
- J. A delinquent Taxpayer who files the declaration of interest after the time fixed or as extended for such a statement, shall be subject to a late filing penalty of one percent (1.0%) of the assessed value of the property as placed on the assessment roll of the Tribes for the year of delinquency. No late filing penalty shall be less than \$100.00 or more than \$5,000.
- K. A delinquent Taxpayer who fails to file the declaration of interest with the Tribes, shall be assessed a non-filing penalty of two percent (2.0%) of the assessed value of the property as placed on the assessment roll of the Tribes for the year of delinquency. No non-filing penalty shall be less than \$250.00 or more than \$10,000.
- L. The Tribes shall send any delinquent Taxpayer against whom a late filing penalty or non-filing penalty is imposed a notice of its intention to impose the penalty. The notice shall be by mailed to the Taxpayer at the last know address. The notice shall contain the amount of the penalty and the basis for its imposition.

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- M. Any appeal of the late filing penalty or the non-filing penalty must be filed in writing within thirty (30) days from the date of the notice with the Tax Commission. Failure of the Taxpayer to file a timely appeal with the Tax Commission will constitute a forfeiture of all appeal rights and the late filing penalty or non-filing penalty will become final and nonappealable.
- N. If a late filing penalty or non-filing penalty is imposed, the Tax Commission may waive the penalty if the Taxpayer can show that by “good and sufficient cause” the filing of the declaration of interest could not be made as otherwise required. The determination of the Tax Commission shall be final, and no appeal may be taken from the determination.
- O. “Good and sufficient cause” is an extraordinary circumstance beyond the control of the Taxpayer, or the Taxpayer’s agent or representative, which causes a late filing.
 - 1. Extraordinary circumstances include, but are not limited to, the following:
 - a. Illness, absence or disability which substantially impairs a Taxpayer’s ability to make a timely application. The substantial impairment must have existed for a considerable time prior to the filing deadline, and must have been of such a nature that a reasonable and prudent Taxpayer could not have been expected to conform to the deadline.
 - b. Delayed receipt of information or documentation outside the control of the Taxpayer necessary for filing a timely return, unless the Taxpayer with ordinary prudence could have obtain the required information in a timely manner.
 - c. Reasonable and prudent reliance by the Taxpayer on misinformation provided by the Tribes.
 - 2. Extraordinary circumstances generally do not include, but are not limited to the following:
 - a. A lack of knowledge regarding any of the provisions of the Tribal Taxation Code.
 - b. Delayed receipt of information or documentation does not excuse the Taxpayer from filing the declaration of interest with the information that is available or filing the declaration of interest on a “preliminary” or “draft” basis pending the receipt of the actual information.
 - c. The Taxpayer’s inadvertence or oversight.
 - d. Financial hardship.
 - e. Reliance on information provided by an appraiser, attorney, real estate agent or broker, Taxpayer representative or agent, certified public accountant, etc.

SECTION 6.08. CALCULATION OF THE ASSESSED VALUE OF PROPERTY

- A. The assessed value of the real property, including all buildings and structures, site development, roads, parking lots, and landscaping is based on the original cost, including any subsequent capitalized costs.
- B. The assessed value of the personal property, including any intangible property, is based on the original cost, including any subsequent capitalized costs, and using the following schedule (Original Cost x Assessment Percentage = Assessed Value):

Assessment Year Assessment Percentage

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Year 1:	100%
Year 2:	80%
Year 3:	60%
Year 4:	40%
Year 5:	20%
Year 6+:	10%

- C. The total assessed value is the combined total of the assessed values of the real and personal property as determined by subsections A and B of this section minus a five hundred thousand dollar (\$500,000) exemption allowance.

SECTION 6.09. NOTICE OF ASSESSMENT AND PAYMENT OF TAX

- A. The Tribes shall, by May 15th of year, mail to each Taxpayer a notice of the assessed value of the property and the tax due. The notice shall be based on the value established as provided in Section 6.04 of this Chapter unless a different value has been finally established by the Tax Commission. The notice shall be mailed to the address specified in the most recent declaration filed pursuant to Section 6.07, or, if no declaration has been filed, to the person's last known address. Failure to send or receive notice shall not relieve the person of the obligation to timely pay the tax due.
- B. The tax due shall be paid in two, equal semi-annual installments, with one-half (1/2) being due by June 15th following the assessment date, and one-half (1/2) being due November 15th following the assessment date. If the tax due is less than five thousand dollars (\$5,000.00), the tax shall be paid in one annual installment being due November 15th following the assessment date.
- C. The tax shall be paid by check made payable to the Confederated Tribes of the Umatilla Indian Reservation and mailed or delivered to the Tribes at P.O. Box 638, Pendleton, Oregon 97801. Payment is timely if postmarked or actually delivered on or prior to the due date.
- D. The Tax Administrator shall issue an annual statement to each Taxpayer by January 31st certifying the total amount of Coyote Business Park Ad Valorem Property Taxes paid on or before December 31st for taxes owed in the prior year.

SECTION 6.10. APPEALS

- A. Any person subject to the provisions of this Code may appeal or challenge contesting the validity of the Code, implementing rules and regulations, or the assessment established as provided in Section 4. The appeal or challenge shall state in detail the basis for the appeal and why the value is not accurate, what the correct value is, and why a correction is warranted. It shall have attached to it any appraisals or other information upon which the owner intends to rely. The appeal or challenge shall be filed with the Tax Commission and a copy shall be served on the Tribes.
- B. Any appeal or challenge contesting the validity of the Code, implementing rules and regulations, or the presumed value must be filed within thirty (30) days from the notice of the assessed value of the property and the taxes due statement. Failure to file a timely appeal or challenge shall result in the irrevocable and nonappealable waiver by the owner or user of said property of the right to appeal or challenge any taxes imposed by this Code. The filing of an appeal with any court shall not relieve the aggrieved party from the responsibility of filing an appeal with the Tax Commission within the time required by this provision.
- C. During the pendency of a challenge proceeding the tax shall be paid and collected based on the value established as provided by Section 6.04. If the final value assessed by the Tax Commission is greater than the original assessed value, any further tax due shall be paid within thirty (30) days of the decision or appeal. If the final value assessed by the Tax

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Commission is less than the original assessed presumed value the Tax Commission shall order a refund of any overpayment or permit the owner to deduct it from future payments.

- D. If the person fails to pay any taxes imposed by this Code when due, the failure to make timely payment of taxes shall result in the irrevocable and nonappealable waiver by the owner, property user or operator of said property of the right to challenge said taxes.
- E. The appeal procedures in Chapter 1, Sections 15-17 are to be followed to adjudicate any appeals under this Chapter.

SECTION 6.11. USE OF THE TAX PROCEEDS

- A. All Taxes collected pursuant to this Chapter shall be deposited into a special fund and shall be used to support the Tribes' programs and services that benefit the Coyote Business Park its tenants and/or persons and entities doing business on the Reservation at the Coyote Business Park. Uses of tax revenues may include, but are not limited to the following:
 - 1. Debt repayment and debt reserve funding requirements incurred to develop the Coyote Business Park.
 - 2. Matching funding support for grants to further develop the Coyote Business Park.
 - 3. Operating and maintenance costs associated with the Coyote Business Park such as landscaping, lighting, road maintenance, etc.
 - 4. Pledge as collateral or use for debt service payments, including associated swap derivatives payments, on Coyote Business Park buildings and infrastructure owned by the Tribes.
- B. The use of Tax revenues generated by this Chapter shall be allocated, budgeted and used in compliance with the Tribes Fiscal Management Policy and the Tribes annual budget.
- C. The Tax Administrator shall notify the Tribes' Executive Director of any taxes paid under protest or paid pending an appeal. The Executive Director shall recommend to the Board of Trustees an amount of taxes paid which should be set aside in a separate reserve account to pay any refunds that are determined to be due to a Taxpayer.
- D. Any interest paid as part of a refund of excess taxes shall follow the procedure in Chapter 1 Section 25(c) of this Code.

SECTION 6.12. CONFIDENTIAL INFORMATION

- A. Any information provided to the Tribes or the Tax Administrator pursuant to the provisions of this Chapter shall be considered the confidential records of the Tribes and shall not be disclosed to any other third party without the express written permission of the Taxpayer, except as follows:
 - 1. The Tribes may publish statistics or use any of the data that is based on the information provided to the Tribes or the Tax Administrator pursuant to this Chapter, if the statistics or information is so classified as to prevent the specific identification to a particular Taxpayer.
 - 2. To any reviewing authority to the extent the information being disclosed relates to an appeal brought by the Taxpayer.
 - 3. To respond to a court order requesting such information issued by a court of competent jurisdiction, provided that the Tax Administrator shall provide immediate notice to the Taxpayer regarding the court order to permit the Taxpayer an opportunity

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to take legal action before such court to protect the confidentiality of such information to the extent permitted by applicable law.

4. At the written request of the Oregon Department of Revenue, the Tribes may provide information that identifies an individual Taxpayer, a description of the property, and the total amount of Coyote Business Park Ad Valorem Property Taxes that were assessed and paid by the Taxpayer. The Tribes would be providing the Taxpayer information solely for the purpose of assisting the Oregon Department of Revenue in determining a Taxpayer's eligibility to claim the Reservation Enterprise Zone Tax Credit or any other applicable tax credits, deductions or other benefits. The Tribes will request that any Taxpayer information provided to the Oregon Department of Revenue be considered confidential and only disclosed to the extent permitted by applicable law.

SECTION 6.13. SEVERABILITY

If any provision of this Chapter or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

SECTION 6.14. EFFECTIVE DATE

This Chapter shall be effective on January 1, 2009.

APPENDIX A

LEGISLATIVE HISTORY

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TAXATION CODE

LEGISLATIVE HISTORY

In Resolution 96-01 (January 17, 1996), the Board of Trustees of the Confederated Tribes enacted a Utility Tax Code. In Resolution 96-22 (March 6, 1996) the Board enacted a Transient Lodging Tax Ordinance, and directed that it be combined with the Utility Tax in a Tribal Tax Code. The Board further amended the Tribal Taxation Code in Resolution 96-84 (September 18, 1996).

The Board enacted a revised Tribal Taxation Code in Resolution 96-94 (October 16, 1996). The Board enacted a second revised Tribal Taxation Code, containing substantial amendments, in Resolution 96-110 (December 18, 1996). No further amendments have been enacted.

Unfortunately, neither the revised Tribal Taxation Code, nor the second revised Tribal Taxation Code included within their texts the Transient Lodging Tax Ordinance that had been approved in Resolution 96-22.

In Resolution 79-52 (September 19, 1979), the Board of Trustees approved an agreement with the State of Oregon under which the State and the Confederated Tribes would cooperate in collecting cigarette taxes on the Umatilla Indian Reservation and in distributing the revenue collected. The agreement was signed by the Chairman of the Board of Trustees of the Confederated Tribes on September 28, 1979, and by the Director of the State Department of Revenue on April 4, 1980. Although the agreement called for the enactment of a Tribal Tobacco Ordinance, such an ordinance was apparently never enacted. Nevertheless, a draft ordinance was developed and the text distributed to the state and the Tribes. In Resolution 96-99 (November 6, 1996), the Board assumed that the draft ordinance had been enacted, and ordered that the ordinance be administered in a manner consistent with the Tribal Taxation Code. In its acceptance of the terms of the draft Tobacco Ordinance, Resolution 96-99 could be viewed as implicitly enacting the Tobacco Ordinance. Despite the delay in enacting a Tobacco Tax Ordinance, both parties have complied with all other aspects of the Tribal-State agreement throughout this period.

When the Taxation Code was published in the *Statutes of the Confederated Tribes of the Umatilla Indian Reservation, July 1999 Compilation*, the following editorial changes were made to the Code. These changes were approved by the Board of Trustees in Board Resolution No. 99-63 (July 28, 1999):

1. The name was changed from "Tribal Taxation Code" to "Taxation Code."
2. The text of the Transient Lodging Tax Ordinance was added to the Taxation Code as chapter 2, Transient Lodging Tax Code.
3. The text of the draft Tobacco Ordinance was added to the Taxation Code as chapter 3, Tobacco Code. By approving the inclusion of the Tobacco Ordinance in *Statutes of the Confederated Tribes of the Umatilla Indian Reservation, July 1999 Compilation*, the Board of Trustees is enacting the Tobacco Code as Tribal law. See Resolution 99-63 (July 28, 1999).

In Resolution No. 02-042 (April 29, 2002), the Board amended the Taxation Code by enacting a new chapter 4 of the Code, entitled "Motor Fuels Tax Code". In Resolution No. 06-010 (January 23, 2006) the Board amended the Taxation Code by enacting a new chapter 5 of the Code, entitled "Liquor Tax Code".

In Resolution No. 08-030 (April 7, 2008), the Board amended the Taxation Code by enacting a new chapter 6 of the Code, entitled "Coyote Business Park Ad Valorem Tribal Property Tax."

In Resolution No. 11-032 (March 21, 2011), the Board amended Chapter 6 of the Code to expand the authorized uses of revenues collected from the Coyote Business Park Ad Valorem Tribal Property Tax.