

TITLE XVI
(16)

TAX CODE

Ordinance No. 323-14

Standing Rock Sioux Tribal Code of Justice



Resolution No. 578-14

Approved
October 28, 2014

BY

Standing Rock Sioux Tribal Council

ORDINANCE NO. 323-14

NOW THEREFORE BE IT RESOLVED, that TITLE XVI – TAX CODE of the Tribal Code of Justice of the Standing Rock Sioux Tribe, be and the same is hereby amended as set forth in the attached TITLE XVI – TAX CODE;

[DOCUMENTS ATTACHED]

RESOLUTION NO. 578-14

WHEREAS, the Standing Rock Sioux Tribe is a unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Section 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1[c], 1[m], and Article V, are authorized to promote and protect the health, education and general welfare of the members of the Tribe, to engage in any business that will further the economic advancement of the Tribe and its members, and to propose and enact ordinances, provided they be posted for not less than ten [10] days prior to final adoption by the Tribal Council; and

WHEREAS, since 2012 the Standing Rock Sioux Tribe Tax Commission have put forth considerable time and effort in studying, updating and revising TITLE XVI – TAX CODE and by motion approved to send revised TITLE XVI – TAX CODE to the SRST Judicial Committee for posting; and

WHEREAS, on August 14, 2012 the Tribal Council posted, for 30 days, TITLE XVI – TAX CODE of the Standing Rock Sioux Tribal council Code of Justice; and

WHEREAS, on October 8, 2014 the Standing Rock Sioux Tribal Council approved of amended TITLE XVI – TAX CODE;

NOW THEREFORE BE IT RESOLVED, that pursuant to the power vested in the Standing Rock Sioux Tribal Council under Article IV of the Constitution of the Standing Rock Sioux Tribe, that TITLE XVI – TAX CODE of the Code of Justice of the Standing Rock Sioux Tribe, be and the same is hereby and replaced with the attached TITLE XVI – TAX CODE; and

BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION

We, the undersigned, Chairman and Secretary of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of 17 members, of whom 11, constituting a quorum, were present at a meeting duly and regularly called, noticed, convened and held on the 28th DAY OF OCTOBER, 2014, and that the foregoing resolution was duly adopted by the affirmative vote of 10 members, with 0 opposing, and with 1 not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED EXCEPT IN CASE OF A TIE.**

DATED THIS 28th DAY OF OCTOBER, 2014

ATTEST:


Adele White, Secretary
Standing Rock Sioux Tribe


Dave Archambault II, Chairman
Standing Rock Sioux Tribe

[OFFICIAL TRIBAL SEAL]

MEETING DATE: 10-28-2014
MOTION NO. 2

**STANDING ROCK SIOUX TRIBE
TITLE 16—TAX CODE**

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SECTION 1. PURPOSE, SCOPE, DEFINITIONS
TITLE 16 – TAXES

1. PURPOSE, SCOPE, DEFINITIONS

Section 16-101 Title

This Title shall be known as the Standing Rock Sioux Tribe Tax Code.

Section 16-102 Purposes

The purpose of this Title is to provide a mechanism for the Tribe, in the exercise of its sovereignty over members and non-members and entities doing business with the Tribe and its members and within reservation boundaries, to safeguard and protect the political integrity, economic security, health, safety, and welfare of the Tribe and its members.

Section 16-103 Disposition of Proceeds of Tax

The revenue received by the Tribe from the taxes and fees imposed by this Title will be used in the provision of essential tribal government services, including but not limited to:

- A. The provision of reservation-wide and district governmental services;
- B. Police and fire protection;
- C. Road construction, repair and maintenance;
- D. Operation of the Tribal Court;
- E. Drinking water, sewage, and waste removal services;
- F. Education, public health services, social services, and recreational services;
- G. Development of tribal or district enterprises;
- H. The promotion and regulation of economic activities on the Reservation;
- I. The protection and increase of Reservation land and resources;
- J. Enhancing the general well-being of the members of the Standing Rock Sioux Tribe.

SECTION 1. PURPOSE, SCOPE, DEFINITIONS

Section 16-104 Authority and Scope; Interpretation

- A. Authority and Scope: The Constitution of the Standing Rock Sioux Tribe provides the Tribe with the authority to “tax and regulate the activities of all persons on the Reservation as permitted by law; and to provide for the maintenance of law and order and the administration of justice by establishing appropriate courts on the Reservation and defining their duties and powers.” SRST Constitution Article IV, Section 1(n). The Tribe also has constitutionally delegated authority to “levy taxes or license fees upon non-members of the Tribe doing business within the Reservation.” SRST Constitution Article IV Section 1(p). This Title should be applied as liberally as possible to effectuate the sovereign authority of the Standing Rock Sioux Tribe over all its reservation lands as defined in the Constitution of the Standing Rock Sioux Tribe and the Act of March 2, 1889, § 3 (25 Stat. 888), notwithstanding the issuance of any patent, including all rights-of-way, waterways, watercourses and streams running through any part of the reservation, and to such other lands as may be hereafter added to the Reservation under any law of the United States.
- B. The provisions in Title should be interpreted as any reasonable person would interpret such meanings in the liberal application of the purpose of this Title. All words not defined herein should be interpreted in the ordinary and everyday sense.

Section 16-105 Inter-Governmental Agreements

16-105.1 Definitions

Terms as used in this subsection, unless the context otherwise requires, mean:

1. “Reservation or Standing Rock Sioux Reservation”, means The Standing Rock Sioux Reservation as defined in Article I of the Constitution of the Standing Rock Sioux Tribe.
2. “North Dakota Portion”, means that portion of the Reservation which is within the State of North Dakota.
3. “South Dakota Portion”, means that portion of the Reservation which is within the State of South Dakota.
4. “Tribal Tax”, means any tax imposed by this Tribe.

16-105.2 Findings

The Tribe finds that the public interest of the Tribe is best served by taking action to ensure that the Tribe receives its fair share of tax revenue generated

SECTION 1. PURPOSE, SCOPE, DEFINITIONS

on the Reservation. This includes creating various tribal taxes and, to save administrative costs, entering into agreements under which the States of North and South Dakota will collect the taxes, and remit them to the Tribe.

16-105.3 Tax Collection Agreements

- a. The Tribe may enter into agreements with appropriate agencies of North Dakota, or South Dakota, or both, under which the State or a State agency or official collects a tribal tax or taxes as contractor for the Tribe and remits the tax collected to the Tribe.
- b. A tax collection agreement may provide that a fixed percentage of the total annual tribal and state revenue collected from the North or South Dakota portion, as the case may be, under the taxes subject to agreement shall be remitted to the Tribe in lieu of the exact amount of the tribal taxes collected.
- c. A tax collection agreement may provide for retention by the State of a fixed percentage, not to exceed three percent (3%), of the tribal revenue collected as an administrative fee.

16-105.4 Approval by Tribal Council Required

No tax collection agreement shall be effective until it has been approved by the Tribal Council.

Section 16-106 Definitions

Unless defined elsewhere in this Title, the following definitions apply throughout this Title:

1. "Business", means any activity engaged in by any person, or caused to be engaged in by any person, with the object of gain, benefit, or advantage, either direct or indirect.
2. "Commission or Tax Commission", means the Standing Rock Tax Commission for South Dakota and the Standing Rock Tax Commission for North Dakota, acting either individually or jointly.
3. "Commissioner", means a member of either the Standing Rock Tax Commission for South Dakota or the Standing Rock Tax Commission for North Dakota.
4. "Department", means the Tax Department of the Standing Rock Sioux Tribe.
5. "Director or Tax Director", means either the South Dakota Director or the North Dakota Director of the Tax Department of the Standing Rock Sioux Tribe. When used in Chapter 5 of this Code, "Taxes on the South Dakota Portion of the

SECTION 1. PURPOSE, SCOPE, DEFINITIONS

Reservation,” and in Chapter 4 of this Code, “Business Licenses”, “Director” or “Tax Director” means the South Dakota Tax Director. When used in Chapter 6 of this Code, “Taxes on the North Dakota Portion of the Reservation,” and in Chapter 3 of this Code, “Reservation-Wide Taxes and Fees,” “Director” or “Tax Director” means the North Dakota Tax Director. When used in Chapter 2, “Tribal Tax Commissions,” “Director” or “Tax Director” refers to the Director for the corresponding state in which the pertinent action or activity is taking place. Each Tax Director shall have primary responsibility for day-to-day oversight of his/her respective geographical operation within the Tribal Tax Department and the respective geographical employees and advisors of the Tax Commission.

6. “Indian”, means an individual who is a member, either enrolled or eligible for enrollment, in any Indian tribe recognized by the United States. “Indian Tribe” includes any Indian, Eskimo, or Aleut Tribe, band, village, community, pueblo, or organization.
7. “Non-Indian”, means any person other than an Indian.
8. “NDCC”, means the North Dakota Century Code, as amended from time to time.
9. “Person”, means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, association, society, political entity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise; provided, that term does not include:
 - a. The government of the Standing Rock Sioux Tribe and any governmental entities of the Tribe; and
 - b. Any of the above listed forms of business entities that are wholly owned and operated by the Standing Rock Sioux Tribe.
10. “Reservation”, means that Standing Rock Sioux Reservation, including all lands within the exterior boundaries of the Standing Rock Sioux Reservation, regardless of ownership of such lands.
11. “SDCL”, means the South Dakota Codified Laws, as amended from time to time.
12. “State”, means either the State of North Dakota or the State of South Dakota.
13. “Tribal Council or Council”, means the Standing Rock Sioux Tribal Council, established pursuant to Article III, Section 1 of the Constitution and Bylaws of the Standing Rock Sioux Tribe, as the governing body of the Tribe.
14. “Tribal Member or Member”, means an individual Indian who is enrolled in the Standing Rock Sioux Tribe.
15. “Tribal Territory”, means all lands under the civil regulatory and tax jurisdiction of the Standing Rock Sioux Tribe.
16. “Tribe”, – means the Standing Rock Sioux Tribe.

SECTION 2. TRIBAL TAX COMMISSIONS

2. TRIBAL TAX COMMISSIONS**Section 16-201 General Provisions**

The Standing Rock Sioux Tribal Council finds that it is in the best interest of the Tribe to create two governmental sub-entities, one for the North Dakota Portion of the Reservation and one for the South Dakota Portion of the Reservation, to carry out the provisions of this Title.

Section 16-202 Establishing Two Tax Commissions – South Dakota and North Dakota

There is hereby established a Standing Rock Tax Commission for South Dakota and a Standing Rock Tax Commission for North Dakota.

16-202.1 South Dakota Tax Commission

The SRST Tax Commission for South Dakota consists of members from the districts of Bear Soldier, Kenel, Rock Creek, Running Antelope, and Wakpala. The SRST Tax Commission for South Dakota has authority to administer and govern all provisions of this Title that affect those districts and it has authority to act jointly with the SRST Tax Commission for North Dakota as prescribed elsewhere in this Title. The Tribal Council shall define the boundaries of each district and subject to the approval of the Secretary of the Interior may add or eliminate districts and may modify the boundaries of any district. If any district is eliminated, modified, or added by the Tribal Council, the district representation on the SRST Tax Commission for South Dakota shall change accordingly.

- a. The SRST South Dakota Tax Commission shall consist of six members, two of whom shall be designated by the Tax Commission as Vice-Chairman and Secretary of the Commission.
- b. The Chairman of the Commission shall be appointed by the Tribal Council from a list of nominees recommended jointly by the five (5) South Dakota districts. Each of the other five (5) members of the Commission shall be elected by their respective district at a district meeting.

16-202.2 North Dakota Tax Commission

The SRST Tax Commission for North Dakota consists of the districts of Fort Yates (Long Soldier), Cannon Ball, and Porcupine. The SRST Tax Commission for North Dakota has authority to administer and govern all

SECTION 2. TRIBAL TAX COMMISSIONS

provisions of this Title that affect those districts, and it has authority to act jointly with the SRST Tax Commission for South Dakota as prescribed elsewhere in this Title. The Tribal Council shall define the boundaries of each district and subject to the approval of the Secretary of the Interior may add or eliminate districts and may modify the boundaries of any district. If any district is eliminated, modified, or added by the Tribal Council, the district representation on the SRST Tax Commission for North Dakota shall change accordingly.

- a. The SRST North Dakota Tax Commission shall consist of five (5) members, one of whom shall be designated by the Tax Commission as Secretary of the Commission.
- b. The Chairman and Vice-Chairman of the Commission shall be appointed by the Tribal Council from a list of nominees recommended jointly by the three (3) North Dakota districts. Each of the other three (3) members of the Commission shall be elected by their respective district on the North Dakota portion of the Reservation.

Section 16-203 Member Appointments; Member Qualifications

- A. All appointed and elected members shall be for four (4) year terms, provided that if a permanent vacancy occurs because of removal or resignation or for any another reason, appointment of a replacement shall be for the remainder of the term of the person being replaced, by each respective district or Tribal Council, as applicable.
- B. Members of the Tax Commission must be an enrolled member of the Standing Rock Sioux Tribe, eighteen (18) years of age or older, must be a resident of the District from which he seeks office for thirty (30) days next preceding the date of appointment, must not have been convicted of a Tribal, Federal or State felony, must not be delinquent on a debt to the Tribe as set forth in Chapter 15-102(g), and must not have been dishonorably discharged from the Armed Forces.

Section 16-204 Tax Director

- A. When used in this Chapter, "Tax Director" refers to the Director for the corresponding state in which the pertinent action or activity is taking place. Each Tax Director shall be a full-time paid employee of the Tribe, recommended by the Tax Commission, with the approval of the Tribal Selection Committee. Each Tax Director shall be subject to the provisions of the Tribal Personnel Policy and Procedure Manual. The Tax Commission may assign each Tax Director additional duties, to the extent that such additional duties do not conflict with the performance of either Tax Director's normal duties.

SECTION 2. TRIBAL TAX COMMISSIONS

- B. Each Tax Director shall have primary responsibility for day-to-day oversight of his/her respective geographical operation within the Tribal Tax Department and the respective geographical employees and advisors of the Tax Commission , but shall not be a member of the Commission.

Section 16-205 Quorum and Voting by Tax Commission Members

- A. A quorum of the Tax Commission shall consist of three members.
- B. The Chairman or Acting Chairman of the Tax Commission shall not vote except when necessary to break a tie vote.
- C. Action by the Tax Commission shall be by majority vote.

Section 16-206 Recusal of Tax Commission Members

- A. For purposes of this section, “immediate family” means brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half-brother, half-sister, or brother, sister, son, daughter, mother or father by adoption.
- B. No member of the Tax Commission shall participate in any action, hearing, or decision concerning the determination, levy, collection, or distribution of any taxes, or the issuance, revocation, or enforcement of licenses authorized by this Code, if such action, hearing, or decision involves an individual or an entity in which the Commission member or a member of his/her immediate family is either an employee, has an ownership interest or substantial contractual interest, or is a party to the action.
- C. Nothing in this section shall preclude a Commission member from participating in any action or decision by the Commission which generally affects:
1. A class of taxpayers, regardless of whether the Commission member or a member of his immediately family is a member of the affected class;
 2. The Standing Rock Sioux Tribe, a tribal enterprise, or a person or entity in a contractual relationship with the tribe or a tribal enterprise, regardless of whether the Commission member is also a member of the Tribe.
- D. Unless required to recuse him or herself under Subsection B, a member of the Tax Commission may also voluntarily recuse himself and decline to participate in any action or decision by the Commission when the member, in his own discretion, believes:
1. That He cannot act fairly or without bias; or

SECTION 2. TRIBAL TAX COMMISSIONS

2. That there would be an appearance that he could not act fairly or without bias.

Section 16-207 Acting Chairman of the Tax Commission

Whenever the Chairman of the Commission is unavailable because of his recusal or any other reason, the Vice-Chairman shall serve as Acting Chairman of the Tax Commission. If the Vice-Chairman is also unavailable, the Secretary shall serve as Acting Chairman of the Tax Commission.

Section 16-208 Rules of the Tax Commission

- A. The Commission shall promulgate and enforce such written rules and regulations as are necessary to carry out the orderly performance of its duties, including but not limited to rules and regulations relating to:
 1. Internal operational procedure of the Commission and its staff;
 2. Interpretation and application of this Code as may be necessary to ascertain or compute the tax owed by any taxpayer;
 3. The filing of any reports or returns required by, or necessary to implement, this Code; and
 4. The conduct of inspections, investigations, hearings, enforcement actions, and other authorized activities of the Commission.
- B. Such rules shall provide for a hearing for all interested persons prior to a recommendation by the Commission to the Tribal Council that a tax be established or a tax rate be adjusted, unless the Commission determines that a fiscal emergency exists. Such rules shall provide for reasonable notice to interested persons of the hearing and their right to present oral or written testimony.
- C. No rule or regulation of the Tax Commission shall be of any force or effect until and unless copies of the rule or regulation have been filed for record in the Office of Secretary of the Tribe and in the Office of the Clerk of the Tribal Court. The copies shall bear the signature of at least two Commission members, certifying that the rule or regulation was duly adopted by the Commission pursuant to this Code.
- D. The Tribal Court shall take judicial notice of all rules and regulations of the Tax Commission promulgated pursuant to this Code.

SECTION 2. TRIBAL TAX COMMISSIONS

Section 16-209 Powers of the Tax Commission

The Tribal Tax Commission shall have the following powers:

- A. To promulgate and enforce rules and regulations consistent with this Code as provided in Section 16-208.
- B. To determine, levy, and collect all taxes authorized by this Code.
- C. To employ and consult with such advisors regarding its duties as it may deem necessary.
- D. To make recommendations to the Tribal Council regarding the setting of tax rates for all taxes authorized by this Code and regarding amendment of this Code.
- E. To hear and rule upon a petition by any taxpayer for re-determination of any taxes levied pursuant to this Code, as provided in Section 16-208; but the tax Director shall have no power to alter tax rates established by the Tribal Council pursuant to this Code or to declare any portion of this Code void for any reason.
- F. To publish and make available to the public standard forms, and to require by regulation the filing of any forms or reports necessary for implementation of this Code.
- G. To administer oaths, conduct hearings, and, by subpoena, to compel the attendance of witnesses and the production of any books, records, papers, vouchers, accounts, documents, and financial statements of any taxpayer or any other person relating to the enforcement of this Code.
- H. To make or cause to be made by its agents or employees, an examination or investigation of the places of business, equipment, facilities, tangible personal property, and the books, records, papers, vouchers, accounts, documents, and financial statements of any taxpayer, during normal business hours, or any other time agreed to by the taxpayer, or any time whatsoever pursuant to a search warrant issued by the Tribal Court.
- I. To examine, under oath, either orally or in writing, any taxpayer or agent, officer, or employee, of any taxpayer, or any other witness with respect to any matter related to this Code.
- J. To enter into and to renew tax collection and enforcement agreements with its respective State, provided, that any such agreement shall have an effective date no less than thirty (30) days after its approval by resolution of the Tribal Council unless the Tribal Council approves an earlier effective date.

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- K. To delegate to an individual member of the Commission, the Tax Director or other members of the Commission staff or tribal staff, including In-House Tribal Legal Department, such of its functions as may be necessary to administer this Code efficiently, provided that the Commission may not delegate its power to promulgate rules and regulations, to hear and rule upon petitions for redetermination of taxes, or to enter into tax collection agreements with its respective State.
- L. To adopt by regulation a schedule of fees and charges for services rendered in relation to transcripts and the furnishing or certifying of copies of proceedings, files, and records. Such fees and charges shall be credited to miscellaneous receipts of the Commission and deposited into the Tribal Tax Account.
- M. To exercise all other authority delegated to or conferred upon it by law, or as may be reasonably necessary in the administration or enforcement or any provisions of this Code.
- N. To adopt Policies and Procedures to carry out the provisions of this Section, including but not limited to: disbursement of tax dollars, establishing criteria on how tax dollars may be utilized and such other policies or procedures to insure the proper expenditure of tax dollars.

Section 16-210 Tax Commission Employees and Expenses

- A. The Tax Commission may employ such employees and incur such expenses as may be necessary for the proper discharge of its duties subject to the limitations and restrictions set out in this section.
- B. The Tax Commission may utilize the Tax Department staff in exercising the duties and responsibilities set out in this Code, and may delegate to the tax department staff by rule such of its functions as may be necessary to administer this Code efficiently, consistent with the limitation of Section 16-209(O).
- C. The total amount dispersed by the Tax Commission in any one fiscal year for the payment of salaries, expenses, and incidentals shall not exceed the amount appropriated therefore by the Tribal Council, a line item proposed budget for the next fiscal year not later than October First (1st) of each year.

Section 16-211 Bonds

- A. The Tax Commission may require its members and each of its officials and employees who may handle tribal monies or revenues, or who are responsible

SECTION 2. TRIBAL TAX COMMISSIONS

therefore, to give a bond for the honest and faithful performance of their duties, in such amounts as may be fixed by the Commission.

- B. The premiums on any bonds required of the Tax Commission members, officials and its employees shall be paid from funds authorized in the Tax Commission budget.

Section 16-212 Records of the Tax Commission and Tax Department

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

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2. if the disclosure is by a tribal employee and is intentional, termination of tribal employment;
3. if the disclosure is by a member of the Tribe and is intentional, imprisonment for not more than six months or a fine of not more than \$500.00 or both such imprisonment and fine;
4. If the disclosure is inadvertent, civil penalty of at least \$25.00 but not more than \$250.00. The Tribal Court shall determine the applicability to Subsection (A) through (D) to the individual making or causing the unauthorized disclosure, and shall impose the appropriate sanction or sanctions.

Section 16-213 Compensation of Tax Commission Members

Commission members and alternate Commission members shall be compensated and shall be reimbursed for official expenses at rates established by the Tax Commission and approved by the Tribal Council. No compensation shall be paid when they are not performing official duties or actually attending a meeting of the Commission.

Section 16-214 Removal of Tax Commission Members from Office

A tax commission member who is, during the term for which he/she is elected, convicted of a felony shall automatically forfeit his/her office. Any tax commission member who, during the term for which he/she is elected, is found guilty of neglect of duty, misconduct in office or an offense involving dishonesty by any Court, may be removed from the office. If the Commission member was originally elected by the District Council, then the District Council may remove the member by a vote of two-thirds ($\frac{2}{3}$) of the members of the District Council voting, provided such member is first given twenty (20) days' notice in writing by the Secretary of the District Council and a chance to be heard. If the Commission member was originally appointed by the Tribal Council, then the Tribal Council may remove the member by a vote of two-thirds ($\frac{2}{3}$) of the members of the Tribal Council voting, provided such member is first given twenty (20) days' notice in writing by the Secretary of the Tribal Council and a chance to be heard.

Failure of any Commission Member to attend three consecutive regularly scheduled and duly called Commission meetings, or failure to attend and give a written or oral report at three consecutive regularly scheduled and duly called District meetings shall constitute abandonment of his/her position on the Tax Commission, effective at the end of the third such Commission meeting. Prior to adjournment of each regular meeting of the Commission, the Secretary shall report whether any Member has failed to attend three consecutive regularly scheduled and duly called Commission meetings,

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or failed to attend and give a written or oral report at three consecutive regularly scheduled and duly called District meetings. If so, the Commission Chairperson shall declare that the absent Commission Member has abandoned their position on the Commission. No notice or hearing to the absent Member shall be required. Upon declaration of the abandoned Commission seat, the Commission Chairperson will undertake proceedings to begin the selection of an individual to complete the term of the vacant position.

Section 16-215 Definitions – “Abandonment”, “Neglect”, “Misconduct”, “Dishonesty”

Terms as used in this subsection, unless the context otherwise requires, mean:

1. Abandonment means failure to attend three consecutive regularly scheduled and duly called Commission meetings, or failure to attend and give a written or oral report at three consecutive regularly scheduled and duly called District meetings. A member’s attendance at any district meeting is shown by the member personally signing the attendance sheet at the meeting.
2. Neglect of Duty means the knowing omission or refusal, without sufficient excuse to perform a substantial duty of obligation of office; or habitual or repeated failure, without sufficient excuse, to perform the duties and obligations of office.
3. Misconduct in Office means repeated abusive or clearly incompetent performance of duties and obligations of office.
4. Offense Involving Dishonesty means acts which violate accepted standards of honesty with respect to any person, entity or organization of the district or the Tribe.

Section 16-216 Presentation of Alleged Charges

For Commission members who were originally elected by a District, any eligible member of the electing District 18 years of age or older, may initiate the procedures for charges against a Tax Commission member by serving such member, at least ten (10) days before a meeting of the District Council either in person or by registered or certified mail, return receipt requested, with a signed statement of the intent to present charges to the District Council at such meeting. The statement shall specify the charges with detailed particulars on which the alleged charges are based. The member making the charges shall furnish signed copies of the statement to the Chairman and Secretary of the District and copies to the Chairman and Secretary of the Tribal Council. Upon receipt of such a statement, the Chairman and Secretary of the District shall place the matter on the agenda of the meeting specified and shall notify the charged tax commission member.

SECTION 2. TRIBAL TAX COMMISSIONS

For Commission members who were originally appointed by Tribal Council, any member of the Tribal Council may initiate the procedures for charges against the appointed Tax Commission member by serving such member, at least ten (10) days before a meeting of the Tribal Council either in person or by registered or certified mail, return receipt requested, with a signed statement of the intent to present charges to the Tribal Council at such meeting. The statement shall specify the charges with detailed particulars on which the alleged charges are based. The Tribal Council member making the charges shall furnish signed copies of the statement to the Chairman and Secretary of the Tribal Council. Upon receipt of such a statement, the Chairman and Secretary of the Tribe shall place the matter on the agenda of the meeting specified and shall notify the charged Tax Commission member.

Section 16-217 Authorization of Charges and Suspension

- A. For Commission members who were originally elected by a District, at a meeting specified in the statement of alleged charges, any resident of the electing District, 18 years of age or older, making the charges shall move that the charges be authorized. If the motion is seconded and adopted by a majority vote of a quorum of the District Council, the charges stand authorized. Otherwise, the charges stand dismissed and any charges based on the particulars alleged in the statement shall not be renewed. For Commission members who were originally appointed by Tribal Council, at a meeting specified in the statement of alleged charges, any Tribal Council member making the charges shall move that the charges be authorized. If the motion is seconded and adopted by a majority vote of a quorum of the Tribal Council, the charges stand authorized. Otherwise, the charges stand dismissed and any charges based on the particulars alleged in the statement shall not be renewed.
- B. For Commission members who were originally elected by a District, in the discretion of the electing District Council, by two-thirds ($\frac{2}{3}$) vote of the members voting at the meeting where charges are authorized, a Tax Commission member may be suspended, until the authorized charges have been disposed of, but not to exceed twenty-one (21) calendar days. For Commission members who were originally appointed by Tribal Council, in the discretion of the Tribal Council, by two-thirds vote of the members voting at the meeting where charges are authorized, a Tax Commission member may be suspended, until the authorized charges have been disposed of, but not to exceed twenty-one (21) calendar days

Section 16-218 Notice of Authorized Charges

In the case of Commission members who were originally elected by a District, if the charges are authorized by the District Council, the Tax Commission member

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charged shall be given twenty (20) days' notice in writing, by the Secretary of the District Council, stating the time and place at which the authorized charges may be answered at a hearing. The hearing may be held at either a Regular or Special Meeting of the District Council. Upon receipt of the twenty (20) day notice, the member charged may, if he/she so desires, request the District Chairman in his/her discretion, (unless he/she is the officer charged) may set a new date for the hearing as requested. The District Secretary, or the person performing the office, shall notify the members of the district of the new date on which the hearing will be held.

In the case of Commission members who were originally appointed by Tribal Council, if the charges are authorized by the Tribal Council, the Tax Commission member charged shall be given a twenty (20) day notice in writing, by the Secretary of the Tribal Council, stating the time and place at which the authorized charges may be answered at a hearing. The hearing may be held at either a Regular or Special Meeting of the Tribal Council. Upon receipt of the twenty (20) day notice, the member charged may, if he/she so desires, request the Tribal Chairman in his/her discretion, (unless he/she is the officer charged) may set a new date for the hearing as requested. The Tribal Secretary, or the person performing the office, shall notify the members of the Tribal Council of the new date on which the hearing will be held.

Section 16-219 Hearing on Authorized Charges

- A. For Commission members who were originally elected by a District, the hearing shall be open to all members of the electing District. No other District business shall be taken up at the meeting until the hearing on the authorized charges is completed and a final decision is rendered. For Commission members who were originally appointed by the Tribal Council, the hearing shall be open to all members of the Tribe. No other Tribal Council business shall be taken up at the meeting until the hearing on the authorized charges is completed and a final decision is rendered.
- B. For Commission members who were originally elected by a District, the District Council shall hear all relevant evidence, either sworn oral testimony or documentary evidence, offered in support of or in opposition to the charges. For Commission members who were originally appointed by Tribal Council, the Tribal Council shall hear all relevant evidence, either sworn oral testimony or documentary evidence, offered in support of or in opposition to the charges. In all instances, the Tax Commission member charged shall have the right to cross-examine witnesses and to present his/her own witnesses and shall have the right to be represented by counsel at his/her own expense at the hearing.
- C. At the conclusion of all the arguments and evidence presented for and against the charges, the District Council (in the case of a District-elected Tax Commission member) or the Tribal Council (in the case of the Tribal-Council-

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appointed Tax Commission member) shall vote by secret ballot on the questions of whether the officer charged shall be removed from office.

- D. If, at the time and place set for the hearing to remove the Tax Commission member, a quorum cannot be obtained, the hearing to remove, shall be continued until the next regular or special meeting.

Section 16-220 Removal from Office

- A. No tax commission member shall be removed from office except by an affirmative vote of two thirds of the District Council (in the case of a District-elected Tax Commission member) or the Tribal Council (in the case of the Tribal-Council-appointed Tax Commission member) voting by secret ballot, at a meeting at which a quorum is present.
- B. If the necessary vote is obtained, the removal shall be effective immediately and the office shall be declared vacant. If the necessary vote is not obtained, the charges shall stand dismissed.
- C. Any Tax Commission member removed shall immediately turn over any records in their possession and cannot be considered to fill the vacant Tax Commission seat.

Section 16-221 Residency Requirement

Any tax commission member must maintain legal residency for thirty (30) consecutive days of the district of which he/she is representing during his/her term of office. Failure to maintain legal residency in the district for thirty (30) continuous days shall constitute ineligibility to serve as a member representing his/her district. Tax commission member will sign a Declaration of Residency in which residency requirements are specified.

Section 16-222 Grievances—Petitions for Redetermination

- A. Any person who has paid any taxes, penalties, interest levied pursuant to this Title and who believes that such taxes, penalties, or interest were wrongfully assessed or collected, may petition in writing for a hearing before a hearing panel within one hundred eighty (180) days after the due date of the return and payment. The petition must be filed with the Tax Department and must set forth the facts and arguments supporting the taxpayer's appeal and the amount by which the taxes, penalties, and/or interest should be reduced. Any

SECTION 2. TRIBAL TAX COMMISSIONS

redetermination of taxes that were due more than one hundred eighty (180) days prior to the filing of the petition is forever barred.

- B. If a written petition for determination is received within the prescribed period of time, a hearing before a hearing panel will be held in accordance with Section 16-223. The hearing panel may redetermine taxes based on a correction of tax computations, or corrections to the classification of property or income; but it cannot alter tax rates established pursuant to this Title nor can it declare any portion of this Title void for any reason.
- C. For purposes of hearing and deciding petitions for redetermination, a “hearing panel” is the respective Tax Commission that has authority over the area in which the taxpayer’s business is located, i.e. either North Dakota or South Dakota.

Section 16-223 Grievances—Appeal to Hearing Panel

- A. All hearings to redetermine the payment of any taxes, penalties or interest levied pursuant to this Title shall be held before a hearing panel. Any Commission member who may have an actual or perceived conflict of interest in the matter shall recuse himself or herself from the proceedings.
- B. The following shall apply to all hearings under Section 16-223:
 - 1. The Tax Department shall provide the taxpayer and every member of the Commission with written notice of the hearing, by certified or registered mail with return receipt requested, at least ten (10) working days prior to the hearing date. The written notice shall include the date, time and location of the hearing.
 - 2. The Tax Department shall be represented by the Director or an attorney. The taxpayer may be represented by an attorney at his or her own expense.
 - 3. The Tax Department representative and the taxpayer shall each have the right.
 - i. To attend the hearing;
 - ii. To call witnesses;
 - iii. To cross examine adverse witnesses; and
 - iv. To introduce evidence.
 - 4. The order of the hearing shall proceed as follows:
 - i. The taxpayer shall first have the opportunity to present evidence in support of his or her petition for redetermination.

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- ii. The Tax Department shall then present evidence in support of its levy of taxes, penalties, and/or interest due.
 - iii. The taxpayer shall be given an opportunity for rebuttal of the Tax Department's presentation of evidence.
 5. The Chairman of the hearing panel, with advice from the In-House Tribal Attorney, shall preside at the hearing, including maintaining order and ruling on the admissibility of evidence. Any evidence deemed relevant and reliable by the chairman may be admitted without regard to formal rules of evidence. The hearing shall be recorded and all evidence received shall be included in the record.
 6. After presentment of the evidence, the hearing panel shall deliberate and by majority vote shall decide whether to uphold or reverse the Director's determination of taxes, penalties, and/or interest due.
 7. Within five (5) working days, the hearing panel, with advice from the In-House Tribal Attorney, shall issue a written decision making findings of fact and conclusions of law in support of its decision.
 8. The hearing panel's decision shall be sent to the taxpayer by certified or registered mail with return receipt requested, within five (5) working days of the issuance of the decision.
 9. The taxpayer shall have fifteen (15) calendar days after receipt to appeal to the Tribal Court the hearing panel's written decision. The appeal shall be based upon the record before the hearing panel and may only be reversed upon a finding by the Tribal Court that the panel acted in an arbitrary and capricious manner.
 10. All costs and fees incurred by the hearing panel in connection with an appeal to Tribal Court shall be paid by the taxpayer if the panel's decision is upheld.
 11. All attorneys appearing at a redetermination hearing shall conform to all applicable standards of professional conduct required of such attorney, including any promulgated by the Tribe.
- C. If no appeal is filed in Tribal Court within the fifteen (15) day timeframe allowed in subsection (9) herein, the hearing panel's decision shall be final.

Section 16-224 Grievances—Appeal to Tribal Court

- A. A determination may be appealed to the Tribal Court, and/or the Standing Rock Supreme Court.

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- B. In no event is the Court authorized to alter tax rates established pursuant to this Title, or to award or order the payment of damages or to fashion any remedy except to order a refund of the amount of taxes, penalties, interest or any other charges in controversy, plus interest on the refund as provided in Section 16-226 of this Title, unless an additional remedy is specifically provided by this Title.

Section 16-225 Grievances—Exhaustion of Administrative Remedies

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

- A. Upon a final decision or an administrative appeal pursuant to Section 16-223 of this Title;
- B. If the hearing panel shall fail to schedule and hold a hearing on the merits of the administrative appeal within thirty (30) days after receipt of a written request for a hearing unless a delay is required or approved by the taxpayer; or
- C. If the hearing panel shall fail to issue a written decision on said appeal within thirty (30) days of the hearing on the merits of the taxpayer's administrative appeal.

Section 16-226 Refunds to Taxpayers

Refunds ordered by the hearing panel or the Tribal Court as a result of any redetermination shall bear simple interest at the rate of five percent (5%) per year from the date of overpayment to the date of refund; provided that no interest shall be paid on a refund when the hearing panel or Court determines that the refund is for an overpayment that resulted from the negligence of the taxpayer.

SECTION 3. RESERVATION-WIDE TAXES AND FEES

3. RESERVATION-WIDE TAXES AND FEES**Section 16-301 Privilege of Doing Business Tax**

16-301.1 Tax

All persons, except tribal members of the Standing Rock Sioux Tribe, shall pay taxes for the privilege of doing business on the Standing Rock Indian Reservation by the leasing or permitting of Indian lands as follows:

- a. Twenty-five cent (\$.25) Per acre on grazing land, including seven dollar (\$7.00) per head for non-Indian owned livestock grazing on all Range Units.
- b. Fifty cent (\$.50) Per acre on Farm Pasture lands, including seven dollar (\$7.00) per head for non-Indian owned livestock grazing on Farm Pasture lands.

The seven dollar (\$7.00) per head Privilege Tax referenced in subsections (a) and (b) above, shall be applied to Livestock Lease Contracts where the non-Indian Lessor maintains ownership of the livestock, until the final purchase price is paid; or, where the Indian Lessee obtains ownership of the offspring of the leased livestock, and the non-Indian maintains ownership of the leased livestock.

16-301.2 Payment

The tax shall be paid to the Standing Rock Sioux Tribe.

16-301.3 Grazing Land in Range Units

The tax for doing business on grazing lands in range units shall become effective as of November 1, 1977. Such tax shall be due and payable on or before November 1 of each year commencing November 1, 1977. Taxes not paid by November 1 of each year shall become delinquent and a penalty of 3% per month shall be charged upon delinquent taxes. Taxes delinquent for a period of three (3) months or more shall constitute cause of cancellation of the permit covering the grazing lands. The Tribal Finance Officer shall report all taxes delinquent for six (6) months or more to the Superintendent who shall take all action necessary to cancel the permit. The provisions of this section shall be a part of every permit and lease of Indian land on the Standing Rock Reservation, whether or not set out therein, and shall be included in all advertisements of Indian lands for permitting and leasing.

SECTION 3. RESERVATION-WIDE TAXES AND FEES

16-301.4 Leased Lands

The tax for doing business on leased lands shall become effective as of November 1, 1977. Such tax shall be due and payable on or before November First (1st) of each year commencing November 1, 1977. Taxes not paid by November First (1st) of each year, shall become delinquent and a penalty of three percent (3%) per month shall be charged upon delinquent taxes. Taxes delinquent for a period of three (3) months or more shall constitute cause for the cancellation of the lease covering the lands. The Tribal Finance Officer shall report all taxes delinquent for six (6) months or more to the Superintendent, who shall take all necessary action to cancel the lease. This provision shall be a part of every lease on Indian land on the Standing Rock Indian Reservation whether or not set out therein, and shall be included in all advertisements of Indian lands for lease.

16-301.5 Delinquent Taxes

The Secretary of the Interior or his duly authorized representative shall not approve any lease or permit to a lessee or permittee who is delinquent in any taxes due to the Tribe or until such lessee or permittee shall furnish satisfactory proof that he is not delinquent in his tribal taxes.

SECTION 4. BUSINESS LICENSES

4. BUSINESS LICENSES**Section 16-401 Findings**

The Tribal Council finds as follows:

- A. Numerous persons transact business within the Reservation with the Tribe or Tribal Members;
- B. Persons who transact business within the Reservation with the Tribe or tribal members enter into consensual relationships through commercial dealings, contracts, leases, or other arrangements, thereby consenting to the civil jurisdiction of the Tribe in connection with such relationships;
- C. The regulation of persons who enter into consensual business relationships with the Tribe or Tribal members arises in connection with the sovereign authority of the Tribe to set conditions on entry, preserve self-government or control internal relations;
- D. Persons who have transacted business within the Reservation with the Tribe and tribal members have not been subject to determinations of suitability;
- E. Persons have engaged in unfair or unscrupulous business practices within the Reservation and have taken advantage of the Tribe or tribal members thereby threatening the economic security of the Tribe;
- F. Persons who engage in unfair or unscrupulous business practices within the Reservation may gain an unfair competitive advantage against persons who do not engage in such practices;
- G. The Tribe provides a wide variety of services to all persons within the Reservation, including law enforcement, fire protection, other emergency services, water services and highway maintenance; and
- H. The requirement of a business license to conduct business within the Reservation with the Tribe or tribal members is necessary to protect the economic security of the Tribe.

Section 16-402 Authority

16-402.1 Tribal Constitution

Tribal Constitution—The Tribal Council enacts this Section pursuant to the following authority conferred under the Tribal Constitution:

SECTION 4. BUSINESS LICENSES

- a. "To promote and protect the health, education and general welfare of the members of the Tribe, and to administer charity and such other services as may contribute to the social and economic advancement of the Tribe and its members" Article IV, Section 1(c);
- b. "To levy taxes or license fees upon members of the Tribe." Article IV, Section 1(d);
- c. "To authorize or direct subordinate boards, committees or tribal officials to administer the affairs of the Tribe and to carry out the directives of Tribal Council provided that no tribal land or other tribal property may be alienated, encumbered or leased without express authority of the Tribal Council by resolution covering each transaction." Article IV. Section 1(h);
- d. "To tax and regulate the activities of all persons on the Reservation as permitted by law; and to provide for the maintenance of law and order and the administration of justice by establishing appropriate courts on the Reservation and defining their duties and powers." Article IV, Section 1(n);
- e. "To safeguard and promote the peace, safety, morals, physical and general welfare of members of the Tribe." Article IV, Section 1(o); and
- f. "To levy taxes or license fees upon non-members of the Tribe doing business within the Reservation." Article IV, Section 1(p).

16-402.2 Tribal Sovereignty

The Tribal Council enacts this Section pursuant to the inherent sovereign authority of the Tribe to regulate the activities of persons within the Reservation, as follows:

- a. The Tribe possesses broad inherent sovereign authority to govern "both their members and their territory." *Plains Commerce Bank v. Long Family Land and Cattle Company, Inc.*, 128 S.Ct. 2709, 2718 (2008).
- b. The Tribe possesses the authority to regulate the conduct of nonmembers within the Reservation, even on nonmember owned fee land, as follows:
 - b(1) First, the Tribe "may regulate through taxation, licensing, or other means, the activities of nonmembers who enter into consensual relationships with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements," *Montana v. United States*, 50 US 555, 565-66 (1981). Express consent is not required under this exception, as a nonmember may enter into a consensual relationship with the Tribe or its members, either expressly or by his actions." 128 S.Ct. at 2724.
 - b(2) Second, the Tribe "may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its

SECTION 4. BUSINESS LICENSES

reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Id.*

- c. Federal Delegation. The Tribal Council enacts this Section pursuant to federally delegated authority, where applicable.

Section 16-403 Purpose

The purposes of this Section are as follows:

- A. To exercise the authority of, or conferred upon the Tribe to regulate and license persons who transact business within the Reservation with the Tribe or tribal members;
- B. To regulate the conduct of persons within the Reservation who enter into consensual relationships, either expressly or through conduct with the Tribe or tribal members through commercial dealings, contracts, leases or other arrangements;
- C. To regulate the conduct of persons within the Reservation where such conduct threatens or has some direct effect on the political integrity, economic security, or the health or welfare of the Tribe, including protecting against persons who seek to engage in unfair or unscrupulous business practices, thereby preserving the economic security of the Tribe;
- D. To help protect persons who engage in business within the Reservation from unfair competition caused by those who engage in unfair or unscrupulous business practices;
- E. To develop a database of persons who conduct business within the Reservation with the Tribe or tribal members, which will allow the Tribe to conduct an analysis and determine the unmet needs of the Tribe and tribal members;
- F. To ensure that the provisions of this Section do not impermissibly discriminate, either facially or as applied; and
- G. To ensure that persons who are denied a business license or have a business license revoked are afforded sufficient procedures to challenge such action.

Section 16-404 Definitions

For the purposes of this Section, the below terms are defined. When not inconsistent with the context, words used in the present include the future; words in the

SECTION 4. BUSINESS LICENSES

singular include the plural; words in the plural include the singular; and the word "shall" or "must" is mandatory, while the word "may" is permissive.

1. "Applicant", means a person who has taken any action required under Section 16.414.
2. "Business", means the conduct of any trade, profession or other activity involving the sale of goods or services to the Tribe or a tribal member within the Reservation.
3. "Business License", means a license issued by the Commission, which authorizes a person to conduct business subject to the provisions of this Section.
4. "Business License Division", means the Business License Division of the Department.
5. "Commission", means the Standing Rock Tax Commission for North Dakota and the Standing Rock Tax Commission for South Dakota.
6. "Department", means the Standing Rock Tax Department.
7. "Director", means the Tax Director as described in Title 16, Sections 16.106(5).
8. "Isolated Sale" means:
 - a. A single sale of property or services by any person, including any engaged in business, during a calendar year; or
 - b. The following infrequent sales of property or services by person who does not regularly engage in the business of selling such property or services:
 - i. The sale of property at a garage, yard or similar sale;
 - ii. The sale of property or services for charitable fundraising purposes; or
 - iii. Similar sales as prescribed by the Commission through regulation.
9. "Licensee" means a person who has been issued a valid Business license.
10. "Local District" means each district recognized under Article III, Section 2 of the Tribal Constitution.
11. "Nonmember" means any person other than a tribal member.
12. "Nonprofit" means a nonprofit charitable organization which devotes its resources exclusively to the relief of the poor, distressed or underprivileged and has been recognized as an exempt organization under § 501(c)(3) of the Internal Revenue Code; or similar organizations as prescribed by the Commission through regulation.

SECTION 4. BUSINESS LICENSES

13. "Person" means any natural person, including a tribal member or nonmember; any firm, limited partnership, limited liability partnership, co- partnership, partnership, joint venture, association, corporation, subchapter S corporation, Limited Liability Company, estate, business trust, receiver, or any other group or combination acting as a unit in the plural as well as the singular, excluding the Tribe.
14. "Reservation" means the Standing Rock Reservation as defined Article I of the Tribal Constitution.
15. "Seasonal Gathering" means a regularly scheduled community event, which is sponsored or organized by the Tribe, including Pow Wows, rodeos, etc.
16. "Tribal Constitution" means the Constitution of the Tribe, approved April 24, 1959, with subsequent amendments
17. "Tribal Council" means the governing body of the Tribe as set forth in Article III, Section 1 of the Tribal Constitution.
18. "Tribal Court" means the Standing Rock Tribal Court.
19. "Tribal Member" means an enrolled member of the Tribe.
20. "Tribe" means the Standing Rock Sioux Tribe, a sovereign nation, along with its agencies, divisions, programs, Local Districts, enterprises, and any corporation which is wholly owned by the Tribe and is chartered by the Tribe or the federal government under Section 17 of the Indian Reorganization Act.
21. "Working Days" means Monday through Friday.

Section 16-405 Regulations and Delegation

- A. The Commission has the authority to promulgate and adopt such regulations as are necessary to implement this Section pursuant to and in accordance with the requirements of Section 16.208.
- B. Consistent with the authority granted under Section 16.204(B) to "have primary responsibility for day-to-day oversight of the operation of the Department and all employees and advisers of the Commission," the Director may delegate responsibilities and duties under this Ordinance within the Department, including to the Business License Division.

Section 16-406 Business License Required

Except as otherwise provided in this Ordinance, (1) any person who engages in, or intends to engage in, business activities on Indian trust lands within the Standing

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Rock Sioux Reservation, or (2) any person who engages in or intends to engage in business activities with the Tribe as defined in this Section, or (3) any person who is a member of the Tribe and engages in or intends to engage in business activities within the Standing Rock Sioux Reservation, shall obtain a Business license from the Department prior to engaging in business.

Section 16-407 Eligibility for License

A person is eligible to obtain a business license if he or she has complied with the application procedures contained in Section 16.414 and:

- A. The applicant has not had a business license issued by SRST or any other taxing jurisdiction revoked within the two (2) year period prior to the date of the application;
- B. The applicant (if an individual), or any officers, directors, majority or controlling owners, members or partners (if an entity applicant), within the five (5) year period prior to the date of the application:
 - 1. Has not been found by a final judgment of a court of competent jurisdiction to have engaged in unfair or unscrupulous business practices, including, but not limited to, fraud, misrepresentation, tortuous interference with a contractual relationship, conversion, etc.;
 - 2. Has not been convicted of any felony offense involving fraud, misrepresentation, conversion or dishonesty; or
 - 3. Has not been found by a final judgment of a court of competent jurisdiction to have undertaken activities on the Reservation that present a danger to the political integrity, economic security, health, safety, or welfare of the Tribe;
- C. The applicant has not been found by a final judgment of a court of competent jurisdiction to have failed to comply with any law, statute, code, ordinance, regulation, or administrative order relating to employment or labor relations within the five (5) year period prior to the date of application.
- D. The applicant is not delinquent or has not failed to pay taxes or fees required under Tribal Code, Title 16 within two (2) years prior to the date of the application;
- E. The applicant, including any officers, directors, majority or controlling owners, members or partners if an entity is an applicant, is not delinquent on a debt owed to the Tribe as defined in Title 15, Section 15-102(g) of the Tribal Code, or has entered into a repayment agreement and is current on such repayment agreement; or

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- F. The applicant has provided information in connection with a Business license application that is materially true and has stated all material facts required to be stated therein that are necessary to make the statements therein not misleading.

Section 16-408 Business License Exemptions

No Business license shall be required:

- A. For leasing or permitting of tribal lands for agriculture or grazing purposes: provided the person who leases or obtains a permit for those lands has paid the Privilege of Doing Business Tax under Title 16, Chapter 3;
- B. For the Tribe and its political subdivisions, a state or the federal government and their respective agencies and departments;
- C. For any religious entity, including any traditional religious practitioner;
- D. For any educational institutional or school club engaged in any fundraising activities for use exclusively for educational purposes;
- E. For any person providing services to the Tribe or a tribal member within the Reservation solely in the capacity of an employee; or
- F. For an isolated sale of goods or services within the Reservation.

Section 16-409 Business License Fee

- A. Except as provided in this Section 16.409(C) and (D) below, every applicant shall remit to the Commission an annual Business license fee in the amount of One Hundred Dollars (\$100.00).
- B. The Business license fee shall be paid no later than the fifteenth (15th) day of January of each year and shall not be reduced or prorated.
- C. The Business license fee shall be waived for any Reservation-based nonprofit organizations; provided such nonprofit shall be subject to all other provisions of this Ordinance.
- D. The Business license fee shall be waived for any tribal member engaged in the production and sale of traditional arts and crafts, including the sale of such products at a Seasonal Gathering, in recognition of the cultural aspect of such activities; provided such shall be subject to all other provisions of this Ordinance.

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- E. The fees generated under this Section shall be used exclusively to fund the regulatory program embodied in this Section in recognition of the benefits derived from this Section by all persons who seek to engage in business within the Reservation, including offsetting against all expenses and costs related to the administration of this Section.

Section 16-410 Duration of License

- A. Each Business license shall be for a term not to exceed one (1) year and shall automatically expire on December 31st.
- B. Any Business license issued on or after January 1st of any given year shall be effective through December 31st of that year.

Section 16-411 Display of License

Each licensee shall post the Business license in a conspicuous manner at its primary business location.

Section 16-412 No Assignment or Agency

- A. A Business license shall not be assigned or transferred except with the prior written approval of the Business License Division. Any unauthorized attempted assignment or assignment of a Business license shall automatically void the Business license.
- B. A Business license shall not create an agency relationship between the Tribe and the licensee or any other person, and no licensee shall represent that such relationship exists by virtue of such Business license. A Business license shall not be construed to mean that the licensee is a representative of, or is acting on behalf of, the Tribe or tribal members.

Section 16-413 Failure to Obtain Business License

- A. The Tribe shall conduct business only with a person who has in place a valid Business license, subject to the exemptions contained in Section 16.408 and the provisions of Section 16.414(C).
- B. To facilitate compliance with Section 16.413(A), the Business License Division and the Tribe, including its agencies, divisions, programs, Local Districts,

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enterprises, and entities shall exchange name and contact information regarding all persons with whom they conduct business, including all vendors.

- C. The Business License Division, in consultation with the In-House Tribal Attorney, may initiate legal action in the Tribal Court to prevent any person from engaging in business until a Business license has been obtained and all other requirements of this Ordinance have been complied with.

Section 16-414 Application Procedures

- A. The Business License Division shall develop a Business license application and any other forms deemed necessary or convenient for the administration of this Section. All persons required to obtain a Business license shall:
1. Complete and sign the Business license application and all other forms required by the Business License Division in connection with administration of this Section;
 2. Upon request, submit to the Business License Division all information and documentation which the Director has deemed reasonably necessary to determine eligibility for a Business license; and
 3. Remit the Business annual license fee as required under Section 16.409(A). If an application is subsequently denied, the license fee will be returned to the applicant.
- B. All licensees whose license expires on December 31st of the current year as provided in Section 16-410 that intend to engage in business during the following calendar year shall complete and submit a Business License Renewal Form, and other required forms to the Business License Division no later than two weeks after the expiration of their current license.
- C. Subject to the provisions of this Ordinance, any licensee that complies with this Section in connection with renewal of a Business License may continue to engage in business during pendency of such application.
- D. Every affiliate, sub-entity, division, or company of a larger company that is doing business or intends to do business on the Reservation, regardless of its business structure, form, or title, must apply for and hold its own Business license in order to engage in business on the Standing Rock Reservation

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Section 16-415 Determinations by Director

16-415.1 Applications

The Director is empowered to review all Business license applications and related information and make a determination of whether an applicant is eligible for a Business license under the provisions of this Ordinance.

- a. Determination of Approval. If the Director determines that an applicant is eligible for a Business license pursuant to Section 16.407, the Director shall issue the License and provide the following information about the applicant to the Commission at its next regular meeting:
 - a(1) A copy of the Business license application;
 - a(2) Any other submissions provided by the applicant under Section 16.414(A); and
 - a(3) Any other information deemed relevant by the Director.
- b. Determination of Denial. If the Director makes the determination that an applicant is not eligible for a Business license in accordance with Section 16.407, the Director shall provide the applicant, by certified or registered mail with return receipt requested, with written notice of denial of a Business license, which shall state:
 - b(1) That the Director has denied the license application;
 - b(2) The specific facts and reasons for the denial; and
 - b(3) That the applicant has the right to a hearing to contest the denial by filing with the Tax Department a written statement of grounds for the contest in accordance with 16.415.1(c).
- c. Written Statement of Grounds for Contest. The written statement of grounds for contesting the denial shall set forth the specific facts and reasons for contesting the Director's written notice of denial and shall be served on the Director by personal delivery or by certified or registered mail with return receipt requested not more than thirty (30) calendar days after the date the applicant received the Director's written notice of denial. Notwithstanding any other provision of this Section, any applicant that fails to timely file the written statement of grounds waives the right of review by the Commission panel under Section 16.216(a) and the Tribal Court under Section 16.416(B)(15).
- d. Failure to Contest. If the applicant does not contest the recommendation of denial in accordance with 16.415.1(b), the Director shall forward to the Commission the following:
 - d(1) The written notice of denial of a Business license referenced in Section 16.415.1(b);
 - d(2) All submissions provided by the applicant under Section 16.414(A);

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- d(3) An express statement that applicant failed to request a hearing as required under in Section 16.415(c); and
- d(4) Any other information deemed relevant by the Director.

16-415.2 Revocation

The Director is empowered to conduct investigations and to collect information to determine whether a licensee has engaged in conduct for which a Business license may be revoked. The Director shall determine whether a Business license should be revoked under the provisions of this Ordinance. If a license is revoked by the Director, such revocation is made pending the final outcome of a hearing and any other allowable appeal processes contained in this Section, including the right to a hearing before the Tax Commission in Section 16.416(A) and the right to a court hearing in Section 16.416(B)(15).

- a. Determination of Revocation. If the Director determines that a Business license should be revoked, the Director shall provide the licensee, by certified or registered mail with return receipt requested, with written notice of revocation of a Business license, which shall state:
 - a(1) That the Director has revoked the license, subject to the outcome of any appeals and hearings that the licensee may avail itself of pursuant to this Section;
 - a(2) The specific facts and reasons for the revocation; and
 - a(3) That the licensee has the right to a hearing to contest the revocation by filing with the Tax Department a written statement of grounds for the contest in accordance with 16.415.2(b).
- b. Written Statement of Grounds for Contest. The written statement of grounds for the contest of the license revocation shall set forth the specific facts and reasons for contesting the Director's written notice of revocation and shall be served on the Director by personal delivery or by certified or registered mail with return receipt requested not more than thirty (30) calendar days after the date the licensee received the Director's written notice of revocation. Notwithstanding any other provision of this Section, any licensee that fails to timely file the written statement of grounds for contest pursuant to this Section waives the right of review by the hearing panel under Section 16.416(A) and the Tribal Court under Section 16.416(B)(15).
- c. Failure to Contest. If a licensee does not request a hearing to contest the revocation in accordance with Section 16.416-2(b), the Director shall forward to the Commission the following:
 - c(1) The written notice of revocation of a Business license referenced in Section 16.415.2(a);

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- c(2) A written statement that licensee failed to request a hearing as required under Section 16.415.2(b); and
- c(3) Any other information deemed relevant by the Director.

Section 16-416 Appeal Hearings Before Tax Commission

- A. All hearings to contest the Director's denial or revocation of a Business license shall be held before a combined hearing panel comprised of the SRST Tax Commission for North Dakota and the SRST Tax Commission for South Dakota. In order to have a duly called hearing panel there must be at least four (4) Commission members present. Any Commission member who may have an actual or perceived conflict of interest in the matter shall recuse himself or herself from the proceedings. The Chairperson for the hearing will alternate each hearing between the SRST Tax Commission for North Dakota and the SRST Tax Commission for South Dakota, with a member of South Dakota SRST Tax Commission presiding at the first hearing. If there is no Commission member from the scheduled Commission available to preside at a hearing, the provision on alternating the Chairperson designation shall not apply.
- B. The following shall apply to all hearings under Section 16.416(A):
 - 1. The Tax Department shall provide the applicant or licensee and every member of both Commissions with written notice of the hearing, by certified or registered mail with return receipt requested, at least ten (10) working days prior to the hearing date. The written notice shall include the date, time and location of the hearing.
 - 2. The Tax Department shall be represented by the Director or an attorney. The applicant or licensee may be represented by an attorney at his or her own expense.
 - 3. The Tax Department representative and the applicant or licensee shall each have the right.
 - i. To attend the hearing;
 - ii. To call witnesses;
 - iii. To cross examine adverse witnesses; and
 - iv. To introduce evidence.
 - 4. The order of the hearing shall proceed as follows:
 - i. The applicant or licensee shall first have the opportunity to present evidence in support of issuance or retention of the Business license.

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- ii. The Tax Department shall then present evidence in support of its determination of denial or revocation of the Business license.
 - iii. The taxpayer shall be given an opportunity for rebuttal of the Tax Department's presentation of evidence.
5. The Chairman of the Commission, with advice from the In-House Tribal Attorney, shall preside at the hearing, including maintaining order and ruling on the admissibility of evidence. Any evidence deemed relevant and reliable by the chairman may be admitted without regard to formal rules of evidence. The hearing shall be recorded and all evidence received shall be included in the record.
6. After presentment of the evidence, the Commission shall deliberate and by majority vote shall decide whether to uphold or reverse the Director's determination that the license be denied or revoked.
7. Within five (5) working days, the Commission, with advice from the In-House Tribal Attorney, shall issue a written decision making findings of fact and conclusions of law in support of its decision.
8. The Commission's decision shall be sent to the applicant or licensee by certified or registered mail with return receipt requested, within five (5) working days of the issuance of the Commission's written decision.
9. The applicant or licensee shall have fifteen (15) calendar days after receipt to appeal to the Tribal Court the Commission's written decision denying or revoking a Business license. The appeal shall be based upon the record before the Commission and may only be reversed upon a finding by the Tribal Court that the Commission acted in an arbitrary and capricious manner.
10. All costs and fees incurred by the Commission in connection with an appeal to Tribal Court shall be paid by the applicant if the denial is upheld or by the licensee if the revocation is upheld.
11. All attorneys appearing at a license denial or revocation hearing shall conform to all applicable standards of professional conduct required of such attorney, including any promulgated by the Tribe.
12. If no appeal is filed in Tribal Court within the fifteen (15) day timeframe allowed in subsection (9) herein, the Commission's decision shall be final.

Section 16-417 Grounds for License Denial or Revocation**16-417.1 Denial**

The Director may deny a Business license if:

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- a. The applicant has failed to comply with the application procedures contained in Section 16.414;
- b. The applicant has had a Business license revoked within the two (2) year period prior to the date of the application;
- c. The applicant (if an individual), or any officers, directors, majority or controlling owners, members or partners (if an entity applicant), within the five (5) year period prior to the date of the application:
 - c(1) Has been found by a final judgment of a court of competent jurisdiction to have engaged in unfair or unscrupulous business practices, including, but not limited to, fraud, misrepresentation, tortuous interference with a contractual relationship, conversion, etc.;
 - c(2) Has been convicted of any misdemeanor offense involving dishonesty, or any felony; or
 - c(3) Has been found by a final judgment of a court of competent jurisdiction to have undertaken activities on the Reservation that present a danger to the political integrity, economic security, health, safety, or welfare of the Tribe.
- d. The applicant has been found by a final judgment of a court of competent jurisdiction to have failed to comply with any law, statute, code, ordinance, regulation, or administrative order relating to employment or labor relations within the five (5) year period prior to the date of application.
- e. The applicant is delinquent or has failed to pay taxes or fees required under Tribal Code, Title 16 within two (2) years prior to the date of the application;
- f. The applicant, including any officers, directors, majority or controlling owners, members or partners if an entity is an applicant, is delinquent on a debt owed to the Tribe as defined in Title 15, Section 15-102(g) of the Tribal Code and has not entered into a repayment agreement, or entered a repayment agreement but has defaulted under the same within two (2) years prior to the date of the application; or
- g. The applicant has provided information in connection with a Business license application that is materially untrue or that failed to state any material fact required to be stated therein or that is necessary to make the statements therein not misleading.
- h. If the SRST Tribal Council declare by written resolution that a business or its owner(s) is prohibited from doing business on the Reservation or has been banished from the Reservation.

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16-417.2 Revocation

The Director may revoke a Business license if:

- a. The licensee has violated any provision of this Ordinance; or
- b. The licensee has engaged in conduct for which a Business license could be denied under Section 16.417.1.

Section 16-418 Enforcement and Remedies

- A. In addition to revocation of a business license, the Tax Department, in consultation with Legal Counsel, is authorized to bring an action in SRST Court to enforce any provision of this Section against any person who violates a provision of this Section, or rules, regulations, or orders promulgated thereto.
- B. Civil remedies may include but are not limited to:
 1. Assessment of a civil fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) per violation, which may also be imposed for each day the violation continues;
 2. Restitution;
 3. Enjoining the continued operation of any business, activity, or function found to be in violation of this Section; and
 4. Assessment of court costs and attorney's fees incurred in bringing the enforcement action against the licensee.
- C. In addition to the remedies available for the enforcement of this Section, the Tax Department, in consultation with Legal Counsel, is authorized to impose any other penalty authorized in the Standing Rock Sioux Tribal Law and Order Code.
- D. The Director shall consider the following factors in deciding whether to bring an action, and the Tribal Court shall consider the following in determining an appropriate penalty:
 4. The good or bad faith of the violator;
 5. The injury to the public or Tribe resulting from the violation;
 6. The benefits derived by the violator from the violation;
 7. The violator's ability to pay;
 8. The costs of enforcement; and
 9. The need to deter similar behavior by the violator and others.
- E. All fines collected pursuant to this section, except those collected for restitution, shall be subject to disposition in accordance with Section 16.409(E).

SECTION 4. BUSINESS LICENSES**Section 16-419 No Waiver of Sovereign Immunity**

- A. Except as provided in Section 16-416, nothing in this Chapter shall be construed as a waiver of sovereign immunity..
- B. Notwithstanding any provision of this Ordinance, the Tribe has not waived its sovereign immunity to permit any action for damages, and the Tribal Court shall not be authorized to award or order the payment of damages by the Tribe.

Section 16-420 Consent to Jurisdiction

- A. No provision of this Ordinance is intended or shall be construed to limit the inherent sovereign authority of the Tribe; rather the same is hereby confirmed to the fullest extent provided for under the Tribal Constitution and federal law.
- B. Without limiting the foregoing, every applicant is deemed to have expressly consented to the exclusive jurisdiction of the Tribal Court over all matters relating to or arising in connection with this Ordinance or the Business license.

Section 16-421 Tribe Businesses

The Tribe is exempt from the provisions of this Ordinance. Nonetheless, in the event the Tax Department receives a written complaint regarding a business practice of the Tribe, the Business License Division may refer the complaint for resolution to the individual with day-to-day oversight of such enterprise. If the complaint remains unresolved, the Business License Division may refer the complaint for resolution to the next highest level in the chain of command within the Tribe.

Section 16-422 Severability

In the event any Section or provision of this Ordinance is held invalid, the remaining Sections or provisions shall continue in full force or effect.

SECTION 5. TAXES ON THE SOUTH DAKOTA PORTION OF THE RESERVATION

5. TAXES ON THE SOUTH DAKOTA PORTION OF THE RESERVATION**Section 16-501 Sales Tax**

16-501.1 Definition of Terms

Terms used in this Section mean:

1. "Department," the South Dakota Department of Revenue and Regulation;
2. "Business," a business that has purchased and is installing tangible personal property in the form of equipment or machinery for direct use in a manufacturing, fabricating, or processing business, which is subject to sales or use tax;
3. "Indian," an individual who is a member, either enrolled or eligible for enrollment, of any Indian tribe recognized by the United States or any entity or organization composed of, majority owned by, or controlled by individual Indians or an Indian tribe.
4. "Project," the purchase and installation of equipment or machinery;
5. "Project cost," the amount paid in money for a project;
6. "Reservation" or Standing Rock Sioux Reservation," all lands within the Standing Rock Sioux Reservation as defined in Article 1 of the Constitution of the Standing Rock Sioux Tribe.
7. "Secretary," the Secretary of the South Dakota Department of Revenue and Regulation.
8. "South Dakota Portion of the Reservation," that portion of the Standing Rock Sioux Reservation within the state of South Dakota.

16-501.2 Gross Receipts Not to Include Late Charge Fees

For purposes of the tax imposed by this Section, gross receipts do not include any fees or other interest imposed by a retailer for late charges on overdue accounts, no account, or nonsufficient funds checks.

16-501.3 Gross Receipts Not to Include Refunded Sale Price of Property

For purposes of the tax imposed by this Section, the sale price of property returned by customers are not gross receipts if the full sale price thereof is refunded either in cash or by credit.

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16-501.4 Gross Receipts Not to Include Credit or Trade-In Value of Certain Personal Property

For purposes of the tax imposed by this Section, if any tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this Section, and the tangible personal property taken in trade is subject to the sales tax imposed by this Section when sold, the credit or trade-in value allowed by the retailer may not be included as gross receipts.

16-501.5 Computation of Tax to Third Decimal Place

In computing the tax to be remitted under this Section as the result of any transaction, the tax amount shall be carried to the third decimal place. Amounts of tax less than one-half (.5) of one cent (\$0.01) shall be disregarded and amounts of tax of one-half cent or more shall be considered an additional cent.

16-501.6 Lease or Rental Defined—Exclusions

For the purposes of the tax imposed by this Section, the term, lease or rental, means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. Lease or rental does not include:

- a. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payment;
- b. A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars (\$100.00) or one percent (1%) of the total required payments; or
- c. Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision, an operator shall do more than maintain, inspect or set-up the tangible personal property.

SECTION 5. TAXES ON THE SOUTH DAKOTA PORTION OF THE RESERVATION

16-501.7 Exemption for Gross Receipts Pursuant to Contract Requiring Retailer to Display Products or Signage—Exception

There are hereby exempted from the provision of this Section and the tax imposed by it, gross receipts received by a retailer from a manufacturer, wholesaler, or distributor pursuant to a written contract between the retailer and manufacturer, wholesaler, or distributor that requires the retailer to display the manufacturer, wholesaler, or distributor's product or signage in a specified manner or location. Any discount or deferred payment received by a retailer from a distributor, wholesaler, or manufacturer for purchasing a product for sale at retail does not constitute gross receipts subject to the tax imposed by this Section.

16-501.8 Certain Nontaxable Portions of Bundled Telecommunications Transactions Subject to Tax

In the case of a bundled transaction that includes any of the following: telecommunications services, ancillary services, internet access, or audio or video programming services and the charges are attributable to retail sales that are taxable and retail sales that are nontaxable, the portion of the price attributable to the nontaxable retail sales is subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records kept in the regular course of business.

16-501.9 Entire Gross Receipts from Sale of Bundled Transactions Subject to Tax

Except for the provisions of 16.501.8, the tax imposed by this Section applies to the entire gross receipts resulting from the sale of bundled transactions.

16-501.10 Bundled Transaction Defined

For the purposes of this Section, the term, bundled transaction, means the retail sale of two or more distinct and identifiable products sold for one nonitemized price.

16-501.11 Distinct and Identifiable Products—Exclusions

For the purposes of this Section, the phrase, distinct and identifiable products, does not include:

SECTION 5. TAXES ON THE SOUTH DAKOTA PORTION OF THE RESERVATION

- a. Packaging, including containers, boxes, sacks, bags, bottles, wrapping, labels, tags, and instruction guides, that accompany the retail sale of the products and are incidental or immaterial to the retail sale;
- b. A product provided free of charge with the required purchase of another product, if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; or
- c. Items included in gross receipts.

16-501.12 One Nonitemized Price—Exclusions

For the purposes of this Section, the phrase, one nonitemized price, does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice or rates and services, rate card, or price list.

16-501.13 Bundled Transaction—Exclusions

For the purposes of this Section, the term, bundled transaction, does not include:

- a. A transaction that includes the retail sale of real property of services to real property;
- b. A transaction that includes the retail sale of any products in which the gross receipts varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction;
- c. A transaction that includes the retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;
- d. A transaction that includes the retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;
- e. A transaction that includes the retail sale of taxable products and nontaxable products and the purchase price or gross receipts of the taxable products is de minimis; or
- f. A transaction that includes the retail sale of exempt tangible personal property and taxable tangible personal property where:

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- f(1)The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, or prosthetic devices, or over-the-counter drugs or medical supplies; and
- f(2)The retailer's purchase price or gross receipts of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or gross receipts of the bundled tangible personal property. No retailer may use a combination of the purchase price and gross receipts of the tangible personal property when making the fifty percent (50%) determination for a transaction.

16-501.14 De Minimis Defined

For the purposes of 16.501.13, the term, de minimis, means the retailer's purchase price or gross receipts of the taxable products is ten percent (10%) or less of the total purchase price or gross receipts of the bundled products. A retailer shall use either the purchase price or the gross receipts of the products to determine if the taxable products are de minimis. No retailer may use a combination of the purchase price and gross receipts of the products to determine if the taxable products are de minimis. A retailer shall use the full term of a service contract to determine if the taxable products are de minimis.

16-501.15 Gross Receipts Defined

For the purposes of this Section, the term, gross receipts, means the total amount or consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- a. The retailer's cost of the property or service sold;
- b. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer; and
- c. Charges by the retailer for any services necessary to complete the sale whether or not separately stated, including delivery charges.

16-501.16 Conditions Under Which Gross Receipts Include Consideration Retailer Received from Third Parties

Gross receipts, as defined in 16.501.15, includes consideration received by the retailer from third parties if:

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- a. The retailer actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
- b. The retailer has an obligation to pass the price reduction or discount through to the purchaser;
- c. The amount of the consideration attributable to the sale is fixed and determined by the retailer at the time of the sale of the item to the purchaser; and
- d. One of the following criteria is met:
 - d(1) The purchaser presents a coupon, certificate, or other documentation to the retailer to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any retailer to whom the coupon, certificate, or documentation is presented;
 - d(2) The purchaser identifies himself or herself to the retailer as a member of a group or organization entitled to a price reduction or discount (a preferred customer card that is available to any patron does not constitute membership in such a group); or
 - d(3) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

For the purposes of this section, the purchaser is the end consumer.

16-501.17 Exclusions From Definition of Gross Receipts

Gross receipts, as defined in 16.501.14, do not include:

- a. Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a retailer and taken by a purchaser on a sale;
- b. Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill or sale, or similar document given to the purchaser; and
- c. Any taxes legally imposed directly on the consumers that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

16-501.18 Tax on Sale of Tangible Property

There is hereby imposed a tax upon the privilege of engaging in business as a retailer, a tax of four percent (4%) upon the gross receipts of all sales to, or by,

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Indians of tangible personal property consisting of goods, wares, or merchandise, except as otherwise provided in this Section, sold at retail in the South Dakota portion of the Reservation to consumers or users.

16-501.19 Tax on Sales of Sectional Homes—Sectional Homes Defined

Sales of sectional homes are subject to sales tax, which shall be based upon the fair market value of the raw materials used to construct each home.

For the purpose of this section, the term, sectional homes, means any home pre-built in whole or in part for the purpose of permanent placement on a foundation. Mobile homes as defined in Subdivision 32-3-1(8) and manufactured homes as defined in Subdivision 32-3-1(6) of the South Dakota Codified Laws are not sectional homes.

16-501.20 Materials Incorporated in Construction Work—Restriction on Application of Rate Increase

No tax increase may be levied on materials incorporated in construction work pursuant to construction contracts bid or entered into on or before the effective date of the tax increase.

16-501.21 Conditional or Installment Sales—Actual Cash Receipts Subject to Tax

For purposes of the tax imposed by this Section, on any sale made under a conditional sales contract, or under other forms of sale wherein the payment of the principal sum is extended over a period longer than sixty (60) days from the date of sale, only the portion of the sale amount that has actually been received in cash by the retailer during each reporting period is subject to the tax imposed by this Section.

16-501.22 Exemption of Certain Parts, Repairs, or Maintenance on Agricultural or Irrigation Equipment

There are exempted from the provisions of this Section and the tax imposed by it, gross receipts from the sale of the following:

- a. Parts or repairs on machinery or equipment which are clearly identifiable as used primarily for agricultural purposes, including irrigation equipment, if the part replaces a farm machinery or irrigation equipment part assigned a specific

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or generic part number by the manufacturer of the farm machinery or irrigation equipment; and

- b. Maintenance items and maintenance services used on machinery or equipment which are clearly identifiable as used primarily for agricultural purposes, including irrigation equipment.

16-501.23 Exemption for Gross Receipts from Sale, Resale, or Lease of Farm Machinery, Attachment Units, and Irrigation Equipment

There are exempted from the provisions of this Section and from the tax imposed by it, gross receipts from the sale, resale, or leasing of farm machinery, attachment units, and irrigation equipment used exclusively for agricultural purposes. The term, farm machinery, includes all-terrain vehicles of three or more wheels used exclusively by the purchaser for agricultural purposes on agricultural land. The purchaser shall sign and deliver to the seller a statement that the all-terrain vehicle will be used exclusively for agricultural purposes.

16-501.24 Tax on Receipts from Business Services

There is hereby imposed a tax at the same rate as that imposed upon sales of tangible personal property on the South Dakota portion of the Reservation upon the gross receipts of any Indian engaging or continuing the practice of any business in which a service is rendered. Any service as defined by 16.501.25 shall be taxable, unless the service is specifically exempt from the provisions of this Section.

16-501.25 Services Subject to Taxation

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

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16-501.26 Certain Purchases Considered for Resale Purposes

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

16-501.27 Tax on Receipts from Specific Enumerated Businesses and Services

There is imposed a tax at the rate of four percent (4%) upon the gross receipts of any Indian engaging or continuing in any of the following businesses or services in this reservation: abstractors; accountants; architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing; dry cleaning; dyeing; exterminators; garage and service stations; garment alteration; cleaning and pressing; janitorial services and supplies; specialty cleaners; laundry; linen and towel supply; membership or entrance fees for the use of a facility or for the right to purchase tangible personal property or services; photography; photo developing and enlarging; tire recapping; welding and all repair services, except farm machinery, farm attachment units, or irrigation equipment repair services; cable television; and rentals of tangible personal property except leases of tangible personal property between one telephone company and another telephone company, motor vehicles as defined by in South Dakota Codified Laws 32-5-1 leased under a single contract for more than twenty-eight (28) days and mobile homes. However, the specific enumeration of businesses and professions made in this section does not, in any way, limit the scope and effect of 16.501.25.

16-501.28 Coin Operated Washers and Dryers—License in Lieu of Tax—Failure to Pay Fee as Misdemeanor—Interest—Collection

The annual license fee for each coin operated washer and dryer on the Reservation is ten dollars (\$10.00). The license fee is in lieu of any sales or gross receipts taxes from the operation or ownership of coin operated washers and dryers.

16-501.29 Services Enumerated in Standard Industrial Classification Manual Subject to Tax—Other Services Subject to Tax

The following services enumerated in the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, are specifically subject to the tax levied by this Section: metal mining services (group no 108); coal

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mining (major group 12); nonmetallic minerals (except fuels) services (group no. 148); service industries for the printing trade (group no. 279); coating, engraving and allied services (group no. 347); communication, electric and gas services (division E except group nos. 483, 494 and 495); hotels, motels, and tourist courts (group no. 701); rooming and boarding houses (group no. 702); camps and recreational vehicle parks (group no. 703); personal services (major group 72); business services (major group 73); automotive repair, services, and parking (major group 75); miscellaneous repair services (major group 76), except farm machinery, farm attachment units, or irrigation equipment repair services; amusement and recreation services (major group 79); legal services (major group 81); landscape and horticultural services (group no. 078); engineering, accounting, research, management, and related services (major group 87, except industry no. 8733); title abstract offices (group no. 654); consumer credit reporting agencies, mercantile reporting agencies, and adjustment and collection agencies (group no. 732); real estate agents and managers (group no. 653); funeral service and crematories (group no. 726), except that purchases of goods or services with money advanced as an accommodation are retail purchases and are not includable in gross receipts for funeral services and fees paid or donated for religious ceremonies are not includable in gross receipts for funeral services; loan brokers (industry no. 6163); repair shops and related services, not elsewhere classified (industry no. 7699) but only locksmiths and locksmith shops; and floor laying and other floor work not elsewhere classified (industry No. 1752). In addition, the following services are also specifically subject to the tax levied by this Section: livestock slaughtering services; dog grooming services; airplane, helicopter, balloon, dirigible and blimp rides for amusement or sightseeing; the collection and disposal of solid waste; and all appraiser's services. The services enumerated in this section may not be construed as a comprehensive list of taxable services but rather as a representative list of services intended to be taxable under this Section.

16-501.30 Tax on Oil and Gas Field Services

There is imposed, at the rate of four percent (4%), an excise tax on the gross receipts of any Indian engaging in oil and gas field services (group no. 138) as enumerated in the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President.

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16-501.31 Chemicals Purchase for Use by Lawn and Garden Services
Considered Purchases for Resale

Chemicals purchased for use by lawn and garden services (industry no. 0782) as enumerated in the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, and used in such services shall be considered as purchases for resale.

16-501.32 Exemptions for Charitable Organization Devoted Exclusively to
Relief or Poor, Distressed or Underprivileged

Any nonprofit charitable organization which devotes its resources exclusively to the relief of the poor, distressed or underprivileged and has been recognized as an exempt organization under § 501(c)(3) of the Internal Revenue Code is specifically exempted from the license fee provided in 16.501.28 and any sales, use or gross receipts taxes imposed on the operation or ownership of coin operated washers and dryers placed and used in living accommodations provided by such organization to the poor, distressed or underprivileged.

16-501.33 Tax on Utility Services

There is hereby imposed a tax of four percent (4%) upon the gross receipts from sales, furnishing, or service of gas, electricity, and water, including the gross receipts from such sales by any municipal corporation furnishing gas, and electricity, to the public in its proprietary capacity, except as otherwise provided in this Section, when sold by Indians on the South Dakota portion of the Reservation to consumers or users.

16-501.34 Reserved

16-501.35 Tax on Telecommunication Services—Exemptions

Except as provided in 16.501.36 there is hereby imposed a tax of four percent (4%) upon the gross receipts of any Indian from providing any telecommunication service that originates or terminates on the South Dakota portion of the Reservation and this is billed or charged to a service address on the South Dakota portion of the Reservation, or that both originates and

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terminates on the South Dakota portion of the Reservation. However, the tax imposed by this section does not apply to:

- a. Any eight hundred or eight hundred type service unless the service both originates and terminates on the South Dakota portion of the Reservation;
- b. Any sale of a telecommunication service to a provider of telecommunication services, including access service, for use in providing any telecommunication service; or
- c. Any sale of interstate telecommunication service provided to a call center that has been certified by the Tribe or the State of South Dakota to meet the criterion established in 16.501.37, and the call center has provided to the telecommunications service provider an exemption certificate issued indicating that it meets the criterion.

If a call center uses an exemption certificate to purchase services not meeting the criterion established in 16.501.37, the call center is liable for the applicable tax, penalty, and interest.

For the purposes of the section, the term, telecommunication service, is the transmission of signs, signals, writings, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, electromagnetic means.

16-501.36 Tax on Certain Mobile Telecommunications Services

There is hereby imposed a tax of four percent (4%) upon the gross receipts of mobile telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that originate and terminate on the South Dakota portion of the Reservation and are billed to a customer with a place of primary use on the South Dakota portion of the Reservation or are deemed to have originated or been received on the South Dakota portion of the Reservation and to be billed or charged to a service address on the South Dakota portion of the Reservation if the customer's place of primary use is located on the South Dakota portion of the Reservation regardless of where the service actually originates or terminates. Notwithstanding any other provision of this Section and for purposes of the tax imposed by this section, the tax imposed upon mobile telecommunication services shall be administered in accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000.

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16-501.37 “Call Center” Defined—Exclusions

As used in 16.501.33, the term, call center, means any physical location where telephone calls are placed, or received, for the purpose of making sales, marketing, customer service, or technical support. The term does not include:

- a. Any location where telephone calls are primarily placed to, or received from, the same taxpayer, or affiliates of the same taxpayer, that owns or operates the location; or
- b. Any insurance, real estate, or brokerage company.

16-501.38 Tax on Room or Parking Site Rentals to Transient Guests

There is hereby imposed a tax at the same rate as that imposed upon sales of tangible personal property on the South Dakota portion of the Reservation upon the gross receipts by Indians from rentals of rooms or parking sites by lodging establishments or campgrounds received from transient guests. A lodging establishment is any building, structure, property or premise kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished to transient guests. A campground is any property or premise kept, used, maintained, advertised or held out to the public to be a place where sites are available for the placing of tents, campers, trailers, mobile homes or other mobile accommodations to transient guests. A transient guest is any person who resides in a lodging establishment or campground less than twenty-eight (28) consecutive days. The provisions of this section do not apply to the casual or occasional rental of a sleeping accommodation or camping site. For the purposes of this section, casual or occasional is the rental of a sleeping accommodation or camping site by any establishment or campground for ten (10) or less days in a calendar year. Any establishment or campground which has a permit or license issued under this Section, is not offering the rental of sleeping accommodations or camping sites on a casual or occasional basis.

16-501.39 Exemption for Lodging House or Hotel Membership Fees

There are hereby exempted from the provisions of this Section and the computation of the tax imposed by it, gross receipts from membership fees paid to any lodging house and hotel membership organization operated for the benefit of its members. However, this exemption does not apply to any membership fee that represents payment for tangible personal property and services provided by the membership organization.

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16-501.40 Tax on Admissions to Amusements and Athletic Contests or Events

There is imposed a tax of four percent (4%) upon the gross receipts of any Indian from all sales of tickets or admissions to places of amusement and athletic contests or events, except as otherwise provided in this Section.

16-501.41 Exemption of Cigarette Sales

Section 16.501.40, does not apply to gross receipts derived from the sale of cigarettes through vending machines.

16-501.42 Constitutional and Statutory Exemptions from Taxation

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, the gross receipts from sales of tangible personal property which the Tribe is prohibited from taxing under the Constitution or laws of the United States or under the Constitution or laws of the Tribe.

16-501.43 Exemption of Property Sold for Lease

Gross receipts from the sale of tangible personal property to a person who intends to lease the property to persons on the South Dakota portion of the Reservation and actually does so are exempted from the provisions of this Section and the tax imposed by it.

16-501.44 Exempt Sales to States, Municipalities, Charities and Indian Tribes

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, the gross receipts from sales of tangible personal property and the sale, furnishing or service of electrical energy, natural and artificial gas and communication service to the United States, to the State of South Dakota or to any other state of the United States or the District of Columbia if the other state provides a reciprocal exemption for South Dakota, to public or municipal corporations of the State of South Dakota or of any other state of the United States or the District of Columbia if the other state provides a reciprocal exemption to South Dakota public or municipal corporations, to any nonprofit charitable organization which devotes its resources exclusively to the relief of the poor, distressed or

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underprivileged, and has been recognized as a exempt organization under §501(c)(3) of the Internal Revenue Code, or to an Indian tribe, any subdivision, department, agency or institution thereof, including any District of the Standing Rock Sioux Tribe, or any corporation chartered and owned by the Standing Rock Sioux Tribe.

16-501.45 Exemption of Freeport Merchandise and Stocks of Merchandise Brought as Foreign or Domestic Merchandise into Foreign Trade Zone—Stocks of Merchandise Defined—Application

There is exempted from the provisions of this Section and from the computation of the tax imposed by it, freeport merchandise and stocks of merchandise brought as foreign or domestic merchandise into a foreign trade zone. For the purposes of this section, stocks of merchandise is personal property which is held primarily for sale and not subject to annual depreciation. However, the exemption only applies if written evidence of the contract of sale is retained, and such contract indicates that the merchandise is to be shipped in international commerce to a point outside the United States not to be returned to a point within the United States.

16-501.46 Exemption of Sales Otherwise Taxes

There are specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of gasoline, motor fuel, and special fuel subject to tax under chapter 10-47B of the South Dakota Codified Laws.

16-501.47 Exemption of Goods and Services Furnished to Meet Warranty Obligation without Charge

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, the gross receipts from furnishing goods or services to the purchaser or his successor in interest of tangible personal property to fulfill a warranty obligation of the manufacturer to the extent that such goods or services are not charged to such purchaser or his successor in interest.

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16-501.48 Exemption of Gross Receipts from Sale of Motor Vehicles
Exempt from Excise Tax—Exception

There are specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of motor vehicles exempt from the motor vehicle excise, with the exception of farm vehicles as described in South Dakota Codified Laws §32-5-1.3, which shall be subject to the tax imposed by this Section.

16-501.49 Services Specifically Exempt from Tax

The following services enumerated in the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, are exempt from the provisions of this Section: health services (major group 80); educational services (major group 82) except schools and educational services not elsewhere classified (industry no. 8299); social services (major groups 83); agricultural services (major group 07) except veterinarian services (group no. 074) and animal specialty services, except veterinary (industry no. 0752); forestry services (group no. 085); radio and television broadcasting (group no. 483); railroad transportation (major group 40); local and suburban passenger transportation (group no. 411) except limousine services; school buses (group No. 415); trucking and courier services, except air (group no. 421) except collection and disposal of solid waste; farm product warehousing and storage (industry no. 4221); establishments primarily engaged in transportation on rivers and canals (group no. 444); establishments primarily engaged in air transportation, certified carriers (group no. 451); establishments primarily engaged in air transportation, noncertified carriers (group no. 452) except chartered flights (industry no. 4522) and airplane, helicopter, balloon, dirigible and blimp rides for amusement or sightseeing; pipe lines, except natural gas (major group 46); arrangement of passenger transportation (group no. 472); arrangement of transportation of freight and cargo (group no. 473); rental of railroad cars (group no. 474); water supply (industry no. 4941); sewerage systems (industry no. 4952); security brokers, dealers and flotation companies (group no. 621); commodity contracts brokers and dealers (group no. 622); credit counseling services provided by individual and family social services (industry no. 8322); construction services (division C) except industry no. 1752 and locksmiths and locksmith shops; consumer credit reporting agencies, mercantile reporting agencies, and adjustment and collection agencies (group no. 732), if the debt was incurred out-of-state and the client does not reside within the state. The following are also specifically exempt from the provisions of this Section: financial services of institutions subject to tax under SDCL chapter 10-43 including loan origination fees, late payment charges, nonsufficient fund check charges, stop payment charges, safe deposit box

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rent, exchange charges, commission on travelers checks, charges for administration of trusts, interest charges, and "points" charged on loans; commissions earned or service fees paid by an insurance company to an agent or representative for the sale of a policy; services of brokers and agents; the sale of trading stamps; rentals of motor vehicles leased under a single contract for more than twenty-eight (28) days; advertising services; services provided by any corporation to another corporation which is centrally assessed having identical ownership and services provided by any corporation to a wholly owned subsidiary which is centrally assessed; continuing education programs, tutoring, vocational counseling, except rehabilitation counseling; and motion picture rentals to a commercially operated theater primarily engaged in the exhibition of motion pictures.

16-501.50 Exemption of Engineering, Architectural and Surveying Services

There are specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed, the gross receipts from engineering, architectural and surveying services (group no. 871, Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President) rendered for a project entirely outside the South Dakota portion of the Reservation.

16-501.51 Certain Services Provided to Rural Water System by Wholly Owned Cooperative or Nonprofit Corporation Exempt from Tax

There are specifically exempted from the provisions of this Section and from the computation of the tax imposed by it, gross receipts from management, billing, bookkeeping, administrative, and related services provided to a rural water system by any cooperative or nonprofit corporation which is wholly owned by the water systems receiving such services.

16-501.52 Exemption of Certain Sales Commissions

Unless otherwise specifically subject to tax, the gross receipts resulting from fees or commissions received for rendering a service which provides for the sale of tangible personal property or services is exempt from the tax imposed by this Section.

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16-501.53 Exemption for Credit Services by Credit Bureaus to Certain Financial Institution

There are specifically exempted from the provision of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of credit services by credit bureaus to financial institutions, which financial institutions are paying taxes pursuant to the provisions of South Dakota Codified Laws chapter 10-43.

16-501.54 Exemption for Gross Receipts of Person Officiating Amateur Sporting Event—Exception

There are exempted from the provisions of this Section and from the computation of the tax imposed by it, gross receipts of any person officiating an amateur sporting event. However, this exemption does not apply to any person officiating any sporting event sponsored and operated by any elementary, secondary, or postsecondary school.

16-501.55 Exemption of Receipts Used for Civic and Nonprofit Associations and Purposes

There are specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, the gross receipts from the following:

- a. Sales of tickets or admissions to the grounds and grandstand attractions of tribal, state, county, district, regional, and local fairs including pow-wows;
- b. Admissions to nonprofit historic sites and repertory theater performances operated by Indian tribes or nonprofit organizations;
- c. Admissions to community operated celebrations and shows sponsored by a chamber of commerce or other similar nonprofit organization if the county or municipality in which the activity takes place officially sponsors the activity and no charge is made to the operators of the celebration or show for the use of county, city, town or Tribal facilities or services;
- d. Admissions to events or receipts from activities sponsored and operated by colleges or vocational schools or elementary or high schools or related clubs or supporting organizations approved or supervised by a school or college when the entire net proceeds are spent for educational purposes and any associations of them and receipts from tangible personal property sold at such events. However, receipts from tangible personal property sold at such events

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or activities are included in the measure of sales tax at the time of purchase by the college or school or related club or supporting organization;

- e. Religious, benevolent, fraternal, youth association or charitable activities, including any bingo or lottery, where the entire amount of such receipts after deducting all costs directly related to the conduct of such activities is expended for religious, benevolent, fraternal, youth association or charitable purposes and, except for any bingo or lottery, the receipts are not the result of engaging in business for more than three (3) consecutive days. However, receipts from tangible personal property or services purchased for use in the activity are included in the measure of sales tax;
- f. Any charge or entry fee made to persons for engaging in participatory events limited to tournaments, contests and league activities. However, receipts from tangible personal property or services purchased for use in tournaments, contests and league activities shall be included in the measure of the tax imposed by this Section;
- g. Admissions to events or receipts from activities sponsored and operated by tribal, county or municipal historical societies. However, receipts from tangible personal property or services purchased for use in the activity are included in the measure of sales tax;
- h. Religious, benevolent, fraternal, youth association or charitable activities conducted at county fairs, or tribal gatherings if the entire amount of such receipts after deducting all costs directly related to the conduct of such activities is expended for religious, benevolent, fraternal, youth association or charitable purposes, and the receipts are not the result of engaging in business for more than five (5) consecutive days. However, receipts from tangible personal property or services purchased for use in the activity are included in the measure of sales tax;
- i. Admissions to circus performances sponsored or operated by tribal, religious, benevolent, fraternal or youth associations, if the entire amount of the receipts after deducting all costs directly related to the conduct of the circus performances is expended for religious, benevolent, fraternal, youth associations or charitable purposes;
- j. Admissions to events or receipts from activities sponsored and operated by tribal, religious, benevolent, or charitable organizations for a period not to exceed thirty (30) days in any calendar year, if the entire amount of the receipts after deducting all costs directly related to the conduct of the event or activity is expended for the benefit of homeless persons.

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16-501.56 Exemption of Membership Organizations

Membership organizations, major group 86, as enumerated in the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, are exempt from the tax imposed by this Section on receipts from sales of services by them and their membership fees. This exemption does not apply to the tax imposed upon the gross receipts of sales of tangible personal property by such organizations. This section does not exempt the gross receipts of a retailer which are the result of sales to organizations in major group 86 or exempt such organizations from payment of use tax on goods and services used in the conduct of their activities.

16-501.57 Exemption of Fair Market Value of Personal Property or Service Given Without Charge to Exempt Organization

There are specifically exempted from the provisions of this Section and the computation of the tax imposed by it, the fair market value of any tangible personal property or service given without charge to an institution, organization or group exempt from the tax imposed by this Section.

16-501.58 Exemption of Lottery Tickets

There are specifically exempted from the provisions of this Section and from the computation of the tax imposed by it, the gross receipts from the sale of lottery tickets made as part of a lottery operated by the State of South Dakota on the Reservation.

16-501.59 Exemption of Gross Receipts from Library Copying Charges

There are specifically exempted from the provisions of this Section and the computation of the tax imposed by it, gross receipts from library copying charges.

16-501.60 Exemption of Sales to Educational Institutions and Hospitals—Purchased for Members or Employees Taxable—Motor Vehicle Registration Fee—Lists Maintained by Exempt Institutions

There are specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, the gross receipts from sales of tangible personal property and the gross receipts from sales,

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furnishing, or service of electrical energy, natural and artificial gas, water, and communication service to and for use by Tribal educational institutions, religious educational institutions, private educational institutions currently recognized as exempt under Section 501(c)(3) of the Internal Revenue Code as in effect on January 1, 1983, Tribal or IHS hospitals or clinics and nonprofit, charitable hospitals when purchases are made by authorized officials, payment made from the institution funds and title to the property retained in the name of such institution.

This exemption does not extend to sales to or purchases of tangible personal property for the personal use of officials, members or employees of such institutions or to sales to or purchases of tangible personal property used in the operation of a taxable retail business.

The exemption provided in this section does not, in any manner, relieve the institution from the payment of the additional and further license fee imposed on the registration of motor vehicles.

All institutions claiming this exemption shall prepare and maintain a list of all purchases on which exemption was claimed, fully itemized, showing name and address of vendors, description of property purchased, date or dates of purchase, purchase price and brief explanation of use or intended use.

16-501.61 Ink and Newsprint Exempt When Used to Produce Shoppers' Guides—Shoppers' Guides Defined

Ink and newsprint when used in the production of shoppers' guides are hereby exempt from the tax imposed under this Section.

For the purposes of this section the term, shoppers' guide, includes for numerous advertisers advertising publications whose advertisements are solicited from the general public and whose publications are for free distribution to the general public and are published regularly at least once a month, consisting of printed sheets containing advertising, bearing a date of issue, and devoted to advertising or general interest.

16-501.62 Packaging and Container Materials as Tax Exempt Raw Material

Containers, labels, cartons, packing cases, wrapping paper, twine, glue, bags, bottles, shipping cases, wrapping film, strapping, rope, tape, cans, lids, boxes, pads, dividers, stockinettes, casings, and similar articles and receptacles used or consumed by manufacturers, processors, or fabricators are raw material and are not subject to sales or use tax.

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16-501.63 Packaging and Container Materials Sold to Retailers Exempt

There are specifically exempted from the provisions of this Section, and from the computation of tax imposed by it, gross receipts from the sale of paper and plastic bags, wrapping paper, twine, tape, and similar articles sold to retailers licensed under this Section if the retailer uses the articles as wrappers or containers to hold other tangible personal property sold by the retailer and subject to sales or use tax and the articles are supplied free by the retailer as a convenience to the customer.

16-501.64 Exemption of Hospital Meals Paid for by Public Entity

There are specifically exempted from the provisions of this Section and the computation of the amount of tax imposed by it, the gross receipts from the sale of meals to inpatients of hospitals if such meals are paid for, by law or by contract, by the United States, the State of South Dakota or a political subdivision therefore, the Tribe or a political subdivision thereof, including, but not limited to, meals provided to Medicare, Medicaid, Champus, Indian Health Service or county poor relief patients.

16-501.65 Exemption of Authorized Purchases Made with Food Stamps

There are hereby specifically exempted from the tax imposed by this Section the gross receipts resulting from authorized purchases made with food stamps under the provision of the Food Stamp Act of 1977 (P.L. 95-113).

16-501.66 Exemption of Authorized Purchases of Food

There are hereby specifically exempted from the tax imposed by this Section the gross receipts resulting from authorized purchases of food made under Section 17 (c) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(c)).

16-501.67 Exemption of Certain Insulin Sales

There are specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of insulin, to the extent used by humans, that is not sold by prescription.

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16-501.68 Exemption of Certain Drugs

There are specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of drugs as defined by the Tribe, or by rule promulgated by the South Dakota Secretary of Revenue to the extent used by humans, if the drugs are prescribed by prescription, dispensed, or administered by a physician, chiropractor, optometrist, dentist, podiatrist, or audiologist.

16-501.69 Exemption of Certain Durable Medical Equipment and Prosthetic Devices

There are specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of durable medical equipment, mobility enhancing equipment, and prosthetic devices as defined by the Tribe or by rule promulgated by the South Dakota Secretary of Revenue, to the equipment, and prosthetic devices are prescribed by prescription by a physician, chiropractor, optometrist, dentist, podiatrist, or audiologist.

16-501.70 Exemption of Certain Medical Devices

There are specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of any medical device, as that term is defined in this section, to the extent used by humans, if the medical device is prescribed by prescription by a physician, chiropractor, optometrist, dentist, podiatrist, or audiologist. The term, medical device, means any instrument, apparatus, implement, contrivance, or other similar or related article, including a component, part, or accessory, that is prescribed for use on a single patient and that is:

- a. Recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them;
- b. Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, detection, or prevention of disease, of the human body; or
- c. Intended to affect the structure or any function of the human body, and that does not achieve any of its primary intended purposes through chemical action within or on the human body and that is not dependent upon being metabolized for the achievement of any of its primary intended purposes.

A medical device is not durable medical equipment, mobility enhancing equipment, or a prosthetic device.

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16-501.71 Exemption of Seed Used for Agricultural Purposes

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of seed legumes, seed grasses, and seed grains, when twenty-five pounds or more are sold in a single sale to be used exclusively for agricultural purposes.

16-501.72 Exemption of Commercial Fertilizer Used for Agricultural Purposes

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of commercial fertilizers, either liquid or solid, when five hundred pounds or more are sold in a single sale to be used exclusively for agricultural purposes.

16-501.73 Exemption of Pesticides and Products or Substances Used in Conjunction with Application of Pesticides Used for Agricultural Purposes

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of pesticides, as defined in South Dakota Codified Laws § 38-20A, to be used exclusively by the purchaser for agricultural purposes. Any product or substance to be used in conjunction with the application or use of pesticides for agricultural purposes is also exempt. The products or substances include adjuvants, surfactants, ammonium sulfate, inoculants, drift retardants, water conditioners, seed treatments, foam markers, and foam dyes. Equipment, other than farm machinery, attachment units, and irrigation equipment used exclusively for agricultural purposes for the application of pesticides and related products and substances is not exempt.

16-501.74 Exemption of Gross Receipts from Rental of Devices Used to Apply Agricultural Fertilizers and Pesticides

There are specifically exempted from the tax imposed by this Section, gross receipts from the rental of devices primarily used to apply fertilizers and pesticides, as defined in South Dakota Codified Laws § 38-20A, for agricultural

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purposes, if sales tax or use tax was paid upon the original purchase of the device.

16-501.75 Exemption of Gross Receipts from Rental of Agricultural Devices Owned by Conservation District

There are specifically exempted from the provisions of this Section and from the computation of the tax imposed by it, gross receipts from the rental of devices used primarily for agricultural purposes if such devices are owned by a conservation district.

16-501.76 Exemption of Sales of Livestock, Poultry, Ostriches, Emus, or Rheas Other Than Ultimate Retail Sale

No gross receipts from sales of livestock or live poultry, ostriches, emus, or rheas, if such sales are a part of a series of transactions incident to producing a finished product intended to be offered for an ultimate retail sale, are taxable under this Section, except that an ultimate retail sale interrupting the series of transactions with an intended final use or consumption is taxable.

16-501.77 Exemption of Gross Receipts From Sale of Live Gamebirds by Producer to Certain Nonprofit Organizations

There are hereby specifically exempted from the provisions of this Section and the computation of the tax imposed by it, gross receipts from the sale of live gamebirds sold by the producer to nonprofit organizations which release such birds or to commercial hunting operators who charge fees to hunt such birds.

16-501.78 Exemption of Gross Receipts from Sales of Certain Animals

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of live cattle, buffalo, sheep, goats, swine, poultry, ostriches, emus, rheas, and domesticated fur-bearing animals defined in SDCL 40-35, used or to be used as breeding or production stock, and horses and other animals within the family equidae. The term, poultry, does not include any fowl other than domestic fowl kept and raised for the market or the production of eggs for human consumption.

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16-501.79 Exemption of Gross Receipts from Sale of Feed for Certain Animals

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of feed for cattle, buffalo, sheep, goats, swine, pheasants, partridges, quail, poultry, ostriches, emus, rheas, and domesticated furbearing animals defined in SDCL 40-35, if such feed is used by farmers or ranchers who are regularly engaged in the business of raising and feeding such animals, or producing milk for sale for human consumption, and horses and other animals within the family equidae. The term, poultry, does not include any fowl other than domestic fowl kept and raised for the market or the production of eggs for human consumption.

16-501.80 Exemption for Sale of Certain Live Nondomestic Animals

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of any live nondomestic animal if the animal is to be used by a farmer or rancher who is regularly engaged in the breeding and raising of such animals.

16-501.81 Exemption for Sale of Feed for Certain Nondomestic Animals

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of feed for any nondomestic animal if the feed is to be used by a farmer or rancher who is regularly engaged in the breeding and raising of such animals.

16-501.82 Exemption for Sale of Swine or Cattle Semen

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of swine semen and cattle semen to be used for agricultural purposes.

16-501.83 Exemption of Fuel Used for Agricultural or Railroad Purposes

Motor fuel, including kerosene, tractor fuel, liquefied petroleum gas, natural and artificial gas, diesel fuels and distillate, when used for agricultural or railroad purposes, is exempt from excise taxes imposed under this Section.

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For the purposes of this section, agricultural purposes include hay grinding but does not include the lighting or heating of any farm residence.

For the purposes of this section, railroad purposes includes only locomotives or track motor cars being operated on railroad tracks in road service on the South Dakota portion of the Reservation.

16-501.84 Power Charges for Irrigation Pumps Exempt

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

16-501.85 Exemption of Bulk Water for Domestic Use

There are specifically exempted from the provisions of this Section and from the computation of tax imposed by it, the gross receipts from the sales of bulk water which are delivered for domestic use.

16-501.86 Exemptions Applied to Taxable Services

The exemptions from sales tax relative to sales of tangible personal property shall apply to services included in 16.501.24 and 13.501.27.

16-501.87 Exemption of Payments Between Members of Controlled Group—Exception

Payments made by one member of the controlled group to another member of a controlled group which represent an allocation, reimbursement, or charge for services provided by or rendered by the members of the controlled group are specifically exempted from the provisions of this Section and the computation of the tax imposed by it. The exemption provided in this section does not apply to the lease of tangible personal property unless the sales or use tax has been paid on the property by the lessor.

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16-501.88 Exemption of Payments Between Members of Controlled Group—Reimbursement for Third-Party Services to Group

Payments made by one member of a controlled group to another member of a controlled group which represent an allocation, reimbursement or charge for third-party services rendered to the controlled group and upon which a sales or use tax has been paid may not be considered as gross receipts under this Section.

16-501.89 “Controlled Group” Defined

For the purposes of this Section, a controlled group consists of any corporations or other entities eligible to file a consolidated federal income tax return under the Internal Revenue Code as in effect on January 1, 2002, or entitled to only a single surtax exemption for federal corporate income tax purposes under the Internal Revenue Code as in effect on January 1, 2002, and includes a controlled group of corporations as defined at 26 U.S.C. § 1563 as in effect on January 1, 2002. A controlled group also consists of any subchapter S corporation, limited liability company, limited liability partnership, general partnership or limited partnership with at least eighty percent (80%) common ownership as if the entity was converted to or taxed as a subchapter C corporation under the Internal Revenue Code as in effect on January 1, 2002.

16-501.90 Exemption of Gross Receipts from Sale of Services Rendered—“Related Corporation” Defined

There are specifically exempted from the provisions of this Section and the computation of the tax imposed by it, gross receipts from the sale of services rendered by a related corporation as defined in South Dakota Codified Laws subdivision 10-43-1(11) for use by a financial institution as defined in subdivision 10-43-1(4) or an any service rendered by a financial institution as defined in South Dakota Codified Laws subdivision 10-43-1(4) for use by a related corporation as defined in South Dakota Codified Laws subdivision 10-43-1(11). For the purposes at this section, the term, related corporation, includes a corporation which together with the financial institution is part of a controlled group of corporations as defined in 26 U.S.C. § 1563 as in effect on January 1, 1989, except that the eighty percent (80%) ownership requirements set forth in 26 U.S.C. § 1563(a)(2)(A) for a brother-sister controlled group are reduced to fifty-one percent (51%). The exemption provided in this section does not apply to the lease of tangible personal property unless the sales or use tax has been paid on the property by the lessor.

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16-501.91 Exemption of Gross Receipts from Sale of Certain Replacement Parts

There are exempted from the provisions of this Section and from the computation of the tax imposed by it, the gross receipts from the sale of replacement parts that are sold to retailers and which will be installed in tangible personal property that will ultimately be for resale.

16-501.92 Addition of Tax to Price of Product or Service

Retailers may add the tax imposed by this Section to the price of their product or service as provided by law. If no provision is made, the average equivalent of the tax may be added. Any person or retailer subject to taxation under this Section may add the tax under this Section, or the average equivalent thereof, to his price or charge.

16-501.93 Application for Retailer Permit—Contents and Execution

Every retailer or person engaging in a business whose receipts are subject to tax under this Section shall obtain a valid retailer permit issued by the Tribe, unless such person obtains a valid retailer permit from the State of South Dakota. Each application for a tribal permit shall be made on a form prescribed by the Tribe and shall set forth the name under which the applicant transacts or intends to transact business, the location of each business, and other information as the Tribe may require. The applicant shall have a permit for each place of business.

16-501.94 Issuance of Retailer Permit—Limited to Person and Place Designated—Display in Place of Business—Effective Until Canceled or Revoked

The Tribe shall grant and issue to each eligible applicant a permit for each place of business within the Reservation. A permit is not assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The permit shall at all times be conspicuously displayed at the place for which issued. Each permit is valid and effective without further payment of fees until canceled or revoked.

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16-501.95 Refusal of Permit to Delinquent Taxpayer—Bond to Secure Payment of Tax

The Tribe may, in its discretion, refuse to issue a permit to any person who is delinquent in payment of taxes levied by the Tribe under this Section. The Tribe may also, in its discretion, require an applicant to furnish a bond, or other adequate security, as security for payment of any sales tax that may become due, or require a bond or security as a condition precedent to remaining in business as a retailer.

16-501.96 Credit for Timely Filing of Return and Remittance of Tax on Monthly Basis

Any person required to file a return and remit the tax imposed by this Section on a monthly basis and who timely files the return and pays the tax is allowed, as compensation for the expense of collecting and paying the tax monthly, a credit equal to one and one-half percent (1½%) of the gross amount of the tax due. However, the credit may not exceed seventy dollars (\$70.00) per month.

16-501.97 Filing Return and remitting Tax—Time for Filing and Remittance—Extension—Penalty for Untimely Return or Remittance

Any person who holds a license issued pursuant to this Section or who is a person whose receipts are subject to the tax imposed by this Section shall, except as otherwise provided in this section, file a return, and pay any tax due, to the Department of Revenue and Regulation, as contractor for the Tribe, on or before the twentieth (20th) day of the month following each monthly period. The return shall be filed on forms prescribed and furnished by the Tribe or the Department.

If the person remits the tax by electronic transfer to the state, the person shall file the return by electronic means on or before the twenty-third (23rd) day of the month following each monthly period and remit the tax on or before the second to the last day of the month following each monthly period.

The Secretary, as contractor for the Tribe, may require or allow a person to file a return, and pay any tax due, on a basis other than monthly. The return and remittance is due the last day of the month following the reporting period, or at a time otherwise determined by the Secretary.

The Secretary, as contractor for the Tribe, may grant an extension of not more than five (5) days for filing a return and remittance. However, the Secretary may grant an extension for remitting the tax to a qualified business as provided

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in South Dakota codified Laws § 10-45-99 to 10-45-107, inclusive for six (6) months.

Unless an extension is granted, penalty or interest, as set forth in South Dakota Codified Laws under § 10-59-6 shall be paid if a return or remittance is not made on time.

16-501.98 Deduction Allowed for Sales Refunds

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

16-501.99 Deduction Allowed Attorneys and Accountants for Amounts Spent on Behalf of Clients

In determining the amount of tax due under this Section, attorneys and accountants may deduct from gross receipts amounts which represent charges to clients for tangible personal property or services purchased by the attorney or accountant on behalf of a client. However, the sale of the property or service to the attorney or accountant is not a sale for resale if this deduction is taken. This deduction may only be taken if the amount to be deducted represents an expense specifically incurred for a particular client and the amount is itemized and separately billed as a reimbursable expense by the attorney or accountant.

16-501.100 Bad Debts—Deduction from Amount upon which Tax is Calculated—Return Deduction Allowed—Credit or Refund

For purposes of this Section, a bad debt means the same as the term is defined as 26 U.S.C. § 166 as of January 1, 2005, and is any portion of the purchase price of a transaction that a seller has reported as taxable and for which the seller or any party related to the seller within the meaning of section 267 or 707 of the Internal Revenue Code (related party), as of January 1, 2003, or any disregarded entity for federal income tax purposes that is owned by the seller or a related party, has written off as uncollectible for federal income tax purposes. In computing the amount of tax due, a seller may deduct bad debts from the total amount upon which the tax is calculated for any return. Any deduction taken or refund paid which is attributed to bad debts may not include interest. Bad debts include worthless checks, worthless credit card payments, and uncollectible credit accounts. Bad debts do not include financing charges or interest, sales or use taxes charged on the purchase

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price, uncollectible amounts on property that remain the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any debt, debts sold, or assigned to unrelated their parties for collection, and repossessed property. No bad debt deduction may be claimed by any person that has purchased accounts receivable for collection unless the person is a successor that has acquired the entire business of the seller that incurred the bad debt, the person is a related party, or the person is a disregarded entity for federal income tax purposes that is owned by the seller or a related party.

A bad debt may be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this section, a claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return. If a deduction is taken for a bad debt and the seller subsequently collects the debt in whole or in part, the tax on the amount so collected shall be paid and reported on the next return due after the collection.

If a seller's amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, the seller may obtain a credit or refund of tax on any amount of bad debt as provided in South Dakota Codified Laws Chapter 10-59. However, a credit or refund under this paragraph may not include interest.

16-501.101 Cash Basis Reporting and Payment

Notwithstanding other provisions of this Section, the Tribe shall allow retailers to report and pay sales tax measured by gross receipts upon a cash basis if:

- a. The retailer has not changed his basis in the previous calendar year;
- b. The retailer's records are kept in a manner which may be audited to determine whether sales tax is paid upon all taxable sales;
- c. The retailer has made a written request to the Tribe or the South Dakota Department of Revenue and Regulation for authority to pay tax on the cash basis; and
- d. Authority to pay tax on the cash basis applies only to sales made after the authority is granted.

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16-501.102 Accrual Basis Reporting and Payment

If the Tribe has granted a retailer the authority to report and pay sales tax on the cash basis and a retailer requests in writing for the authority to report and pay sales tax upon the accrual basis, the Tribe may grant such authority if assessment and collection of taxes are not jeopardized.

16-501.103 Receipts not Issued for Taxes Remitted

The Tribe, and the South Dakota Department of Revenue, as contractor for the Tribe, shall not be required to issue receipts for sales tax remitted to the Department of Revenue and Regulation.

16-501.104 Revocation of Retailer's License for Failure to File Return or Pay Tax

Every person who is the holder of a sales tax license and who has failed to file a return, or who has filed a return and has failed to pay the tax due the Tribe under this law on or before the fifteenth of the second month following the quarter, or any other reporting period authorized, shall no longer continue as a retailer and his sales tax license is hereby revoked and cancelled.

16-501.105 Reinstatement of Revoked Retailer's License—Fee

The license of a retailer which has been cancelled or revoked as provided in Section 16.501.104, shall not be reinstated by the Tribe until all the sales tax due the Tribe and a ten dollar (\$10.00) reinstatement fee has been paid.

16-501.106 Records Preserved by Persons Subject to Tax

Every person subject to tax under this Section shall keep records and books of all receipts and sales, together with invoices, bills of lading, copies of bills of sale, and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be subject to inspection by duly authorized Tribal representatives to determine the amount of tax due. Such books and records shall be preserved for a period of the three (3) years unless the Tribe, in writing, authorizes their destruction or disposal at an earlier date.

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16-501.107 Violations as Criminal Offenses—Classification

Any person who:

- a. Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by this Section is guilty of a Class A misdemeanor;
- b. Fails to pay tax due under this Section within sixty (60) days from the date the tax becomes due is guilty of a Class A misdemeanor;
- c. Fails to keep the records and books required by this Section or refuses to exhibit these records to the duly authorized representative for the Tribe for the purpose of examination is guilty of a Class B misdemeanor;
- d. Fails to file a return required by this Section within sixty (60) days from the date the return is due is guilty of a Class B misdemeanor;
- e. Engages in business as a retailer under this Section without obtaining a sales tax license is guilty of a Class B misdemeanor;
- f. Engages in business as a retailer under this Section after his sales tax license has been revoked is guilty of a Class A misdemeanor.
- g. Violates either subdivision (b) or subdivision (d) two or more times in any twelve (12) month period is guilty of a Class A misdemeanor;
- h. Engages in business as a retailer under this Section without obtaining a sales tax license after having been notified in writing by the Tribe that the person is a retailer subject to the provisions of the sales and use tax laws is guilty of a Class A misdemeanor. It is not a violation of this subdivision if the person engaging in business as a retailer files an application for a sales tax license and meets all lawful prerequisites for obtaining such license within three (3) days from receipt of written notice from the Tribe.

For purposes of this section, the term, person, includes corporate officers having control, supervision of or charged with the responsibility for making tax returns or payments.

16-501.108 Personal Liability of Officers of Corporation Failing to File Returns or Pay Tax—Security in Lieu of Liability

If a corporation subject to tax under this Section fails for any reason to file the required returns or to pay the tax due, any of its officers having control, or supervision of, or charged with the responsibility for making such returns and payments shall be personally liable for such failure. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected as provided by law.

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If the corporate officers elect not to be personally liable for the failure to file the required return or to pay the tax due, the corporation shall provide the Tribe with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section shall be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise tax rate.

16-501.109 Materials Used by Floor Laying as Purchases for Resale

Carpet, floor covering, tacks, glue, and other materials purchased for us by floor laying and other floor work not elsewhere classified (industry no. 1752) as enumerated in the Standard Industrial Classification Manual of 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, and used for such work are purchases for resale.

16-501.110 Exemption Certification—Responsibilities of Seller Taking Certificate—Responsibilities of Purchaser—Violation as Misdemeanor—Retention of Certificate—Rules and Forms

A seller, who possesses an exemption certificate from a purchaser of tangible personal property or services which indicates the items or services being purchased are exempt, may rely on the exemption certificate and not charge sales tax to the provider of the exemption certificate until the provider of the exemption certificate gives notice that the items or services being purchased are no longer exempt by filing a new exemption certificate with the seller.

The exemption certificate shall be signed by the purchaser, provide the purchaser's name, address, and valid Tribal or state tax license number, if applicable, and shall describe the types of tangible personal property and services being purchased exempt by the purchaser. However, any person filing an electronic exemption certificate is not required to sign the exemption certificate.

The purchaser claiming the protection of an exemption certificate is responsible for assuring that the goods and services delivered thereafter are of a type covered by the exemption certificate. If there are items covered under the exemption certificate which are not being purchased exempt, it is the responsibility of the purchaser when ordering goods from a seller to indicate if any of the items purchased are not exempt, and the appropriate sales tax shall be charged on the portion of the sale that is not exempt. A seller of property or services which are generally described under the exemption certificate is not responsible for the collection of the tax unless otherwise directed by the purchaser.

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If the purchaser later determines there is any tax due and owing, the purchaser shall remit the tax owed by the purchaser to the state, as contractor for the Tribe. If the purchaser makes an exempt purchase and later determines that the goods or services purchased are not exempt, the purchaser shall report the transaction and pay the use tax on the next filing of the purchaser's return.

The seller shall retain the exemption certificate for a period of three years from the date it is filed by the purchaser and provide the exemption certificate of the department upon request.

16-501.111 Time for Presenting Exemption Certificate or Proving Transaction Not Subject to Tax by Other Means

If the seller has not obtained an exemption certificate or all relevant data elements for exemption certificates, the seller may, within one hundred twenty (120) days subsequent to a request for substantiation, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser. Any exemption certificate presented after one hundred twenty (120) days need not be considered by the department.

16-501.112 Exemption of Large Boats Subject to Excise Tax

Any large boat as defined by South Dakota codified Laws § 32-3A-2 is hereby exempted from sales tax if subject to the tax imposed by South Dakota Codified Laws § 32-3A-50.

16-501.113 Exemption of Gaming Proceeds

There are specifically exempted from the provisions of this Section and from the computation of the tax imposed by it, gross proceeds of gaming allowed by the Tribe's Gaming Ordinance and the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et. seq.

16-501.114 Exemption of Natural Gas Transportation Services by Pipeline

The provision of natural gas transportation services by a pipeline is exempted from the provisions of this Section and from the computation of the tax imposed by this Section.

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16-501.115 Exemption for the Sale of Credit Card Processing Services

There are specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of credit card processing services to retailers.

16-501.116 Passenger Transportation Gross Receipts Tax Imposed

There is imposed a tax of four percent (4%) on the gross receipts from the transportation of passengers. The tax imposed by this section shall apply to any transportation of passengers if the passenger boards and exits the mode of transportation within the South Dakota portion of the Reservation.

16-501.117 Inapplicability of Tax

The tax imposed by Section 16.501.116 does not apply to any transportation service which the Tribe is prohibited from taxing by federal law or the United States Constitution.

16-501.118 Gross Receipts from Charge of Interest Exempted

There are exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, the gross receipts from the charge of interest as defined in South Dakota Codified Laws § 54-3-1.

16-501.119 Pawnbrokers not Eligible for Exemption

The provisions of Section 16.501.118 do not apply to the gross receipts from interest paid any pawnbroker. For the purposes of this section, a pawnbroker means any person who is engaged in the business of lending money and who accepts the possession of tangible personal property as security for the loan.

16-501.120 Fee or Commission not Subject to Tax

Any fee or commission received by a retailer for arranging or assisting in the arrangement of a loan for a customer to pay for tangible personal property sold by such retailer does not constitute gross receipts subject to the tax imposed by this Section.

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16-501.121 Temporary Vendor to Maintain Inventory Records

A temporary vendor shall maintain, for a minimum of three years, inventory records, including a beginning inventory of merchandise. The vendor shall provide such records for immediate inspection and review to any agent or representative of the Tribe or the Department of Revenue and Regulation upon request.

16-501.122 Temporary Vendor to Maintain Sales Receipts—Requests for Inspection

A temporary vendor shall maintain daily sales receipts, such as cash register tapes, hand written receipts, credit card receipts, or other receipts, for a minimum of three years. The vendor shall provide such receipts for immediate inspection and review to any agent or representative of the Tribe or the Department of Revenue and Regulation upon request.

16-501.123 Temporary Vendor to Furnish List of Suppliers

A temporary vendor shall maintain for a minimum of three years, a complete list of suppliers, including names and addresses. The vendor shall provide for immediate inspection and review of such list to any agent or representative of the Tribe or the South Dakota Department of Revenue and Regulation upon request.

16-501.124 Review and Audit of Temporary Vendors

A temporary vendor operating on the South Dakota portion of the Reservation may be subjected to reviews and audits without notice.

16-501.125 Failure to Maintain Records—Revocation of Temporary License

The Tribe or the Secretary shall revoke the temporary license of any person that fails to comply with the provisions of 16.501.121 to 16.501.124, inclusive.

16-501.126 Exemption for Gross Receipts from Certain Rodeo Services

There are exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts resulting from

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services performed for rodeos by promoters, stock contractors, stock handlers, announcers, judges, and clowns.

16-501.127 Admissions to Rodeos and Related Activities Taxable

Notwithstanding the provisions of 16.501.55, admissions to rodeos and rodeo related activities and events are subject to the tax imposed by 16.501.40.

16-501.128 Allowable Deductions for Auctioneers

In determining the amount of tax due under this Section, auctioneers may deduct from gross receipts amounts which represent direct expense charges for clients for tangible personal property or services purchased by the auctioneer on behalf of a client. However, the sale of the property or service to the auctioneer is not a sale for resale if this deduction is taken. This deduction may only be taken if the amount to be deducted represents an expense specifically incurred for a particular client and the amount is itemized and paid from the client's auction proceeds by the auctioneer or closing agent. The deduction shall be disallowed if the auctioneer receives any profit or remuneration directly or indirectly from the client's expense.

16-501.129 Auction Clerk to File Return and Remit Sales Tax—
Responsibilities of Auctioneer—Records

All auction sales and consignment sales of tangible personal property and services are sales at retail. The auction clerk shall file the return and remit the tax imposed by this Section on the gross receipts from each auction after applying the deductions provided by 16.501.128. However, the auctioneer is responsible for the payment of the tax imposed by this Section if the auction clerk is an employee of the auctioneer or if the auction clerk does not have a permit as required by this Section. In addition to any other information required to be kept by this Section, each auction clerk shall keep records that identify the owner of the property sold at auction and the auctioneer who conducts the sale of such property.

16-501.130 Exemption for Gross Receipts from International Sale of
Agricultural and Industrial Equipment

There are hereby exempted from the provisions of this Section and the computation of the tax imposed by it, gross receipts resulting from the sale of agricultural and industrial production equipment in international commerce if,

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under the terms of the sales agreement, physical delivery of the goods takes place on the South Dakota portion of the Reservation. However, the exemption only applies if written evidence of the contract of sale is retained, and such contract indicates that the goods are to be shipped in international commerce to a point outside the United States not to be returned to a point within the United States.

16-501.131 Mailing Service—Gross Receipts

There are hereby exempted from the provisions of this Section and the computation of the tax imposed by it, the gross receipts received by a mailing service for the cost of United States postage paid by such mailing service if the cost of postage is listed by the mailing service as a separate line item on the customer's bill and the cost of the postage is not greater than the cost of the postage to the mailing service.

For the purposes of this section, a mailing service is any business that uses the United States Postal Service to deliver items for another customer of the mail service, in which said mailing service has no financial interest.

16-501.132 Materials Purchased by Locksmiths are Purchases for Resale

Locks, lock parts, other materials purchased for use by locksmiths as classified in repair shops and related services, not elsewhere classified (industry no. 7699) as enumerated in the Standard Industrial Classification Manual of 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, and used for such work are purchases for resale.

16-501.133 Tax on Gross Receipts of Professional Employer Organization—Deduction Available

The gross receipts of a professional employer organization are specifically subject to the tax imposed by this Section. However, a professional employer organization may deduct from its taxable gross receipts its actual disbursements, including appropriate reserves, for the wages, salaries, payroll taxes, payroll deductions, workers' compensation costs, insurance premiums, welfare benefits, retirement benefits, and other employee benefits of its co-employees.

16-501.134 "Professional Employer Organization" Defined

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For the purposes of 16.501.133, the term, professional employer organization, means a firm which:

- a. Enters into a contractual agreement with a client company to create a co-employment relationship for the provision of payroll, benefits, and other human resources functions;
- b. Covers at least seventy-five percent (75%) of the client company's full-time or full-time equivalent employees domiciled on the South Dakota portion of the Reservation; and
- c. Maintains separate books and records of account for each client company.

16-501.135 Temporary Help Services Not Subject to § 16.501.133

The provisions of 16.501.133 and 16.501.134 do not apply to the providing of temporary help services or to any other arrangement whereby a firm temporarily assigns employees of the firm to support or supplement a client company's regular work force in special situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments, or projects.

16-501.136 Extension for Remitting Sales and Use Tax on Manufacturing Equipment

Any manufacturing, fabricating, or processing business may apply for and obtain an extension for remitting the sales and use tax imposed and due under the provisions of this Section for equipment or machinery that will be for direct use in a manufacturing, fabricating, or processing business. The extension shall end after six (6) months.

16-501.137 Requirements for Extension

The extension pertains only to equipment and machinery purchased and installed after July 1, 2001. No extension may be made unless:

- a. The project cost exceeds twenty thousand dollars (\$20,000.00); and
- b. The business applying for the extension obtains a permit from the Tribe or the Secretary as set forth in 16.501.139.

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16-501.138 Extension Applies to Full Costs and Installation Fees

The amount of the tax extension shall apply to one hundred percent (100%) of the equipment and machinery costs and installation fees.

16-501.139 Application for Extension Permit—Permit Nontransferable

Any business desiring an extension shall apply for a permit from the Tribe or the Secretary at least thirty (30) days prior to commencement of the project. The application for a permit shall be submitted on a form prescribed by the Tribe or the Secretary. A separate application shall be made and submitted for each project. Upon approval of the application, the Tribe or the Secretary shall issue a permit entitling the applicant to an extension. The permit or extension is not assignable or transferable.

16-501.140 Form and Documentation Requirements

Any extension shall be submitted on forms prescribed by the Tribe or the Secretary and shall be supported by such documentation as the Tribe or the Secretary may require. The Tribe or the Secretary may deny any extension where the business has failed to provide information or documentation requested or considered necessary by the Tribe or the Secretary to determine the validity of the extension.

16-501.141 Right to Hearing on Denial of Extension Request

Any business aggrieved by the denial in whole or in part of an extension may within thirty (30) days after service of the notice of a denial demand and receive a hearing, upon notice, before the Tribal Tax Commission or the Secretary, as the case may be.

16-501.142 Sourcing of Sales and Services

For purposes of the tax imposed by this Section, a retailer shall source sales of tangible personal property and services to the location where the tangible personal property or service is received.

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16-501.143 Exemption for Sale of Coins, Currency, or Bullion

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of coins, currency, or bullion. For the purposes of this section, the term, "bullion", means any bar, ingot, or commemorative medallion of gold, silver, platinum, palladium, or a combination of these metals where the value of the metal depends on its content and not the form. For the purposes of this section, the terms, "coins" and "currency", mean any coins or currency made of gold, silver, or other metal or paper which is or has been used as legal tender.

Section 16-502 Use Tax

16-502.1 Definition of Terms

Terms, as used in this Section, mean:

1. "Business," any activity engaged in by any person or caused to be engaged in by such person with the object of gain, benefit or advantage either direct or indirect;
2. "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. The term, "candy", does not include any preparation containing flour and does not require refrigeration;
3. "Delivery charges," charges by the retailer for preparation and delivery to a location designated by the purchaser of tangible personal property or services including transportation, shipping, postage, handling, crating, and packing;
4. "Fair market value," the price at which a willing seller and willing buyer will trade. Fair market value shall be determined at the time of purchase.
5. "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for its taste or nutritional value. The term, food, does not include alcoholic beverages, tobacco, or prepared food;
6. "Included in the measure of tax," the tangible personal property or the service was purchased from a licensed retailer and that retailer has included the tax in the amount received from the sale;
7. "Indian," an individual who is a member, either enrolled or eligible for enrollment, of any Indian tribe recognized by the United States or any entity or organization composed of, majority owned by, or controlled by individual Indians or an Indian tribe.

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8. "Prepared food," any food sold in a heated state or heated by the seller; two or more food ingredients mixed or combined by the seller for sale as a single item, or food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food. Prepared food does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, part 401.11 of its Food code as of January 1, 2003, so as to prevent food borne illnesses;
9. "Purchase," any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. A transaction, whereby the possession of property is transferred but the seller retains the title as security for the payment of the price, is a purchase.
10. "Purchase price," shall have the same meaning as gross receipt defined in Section 16-501 et seq.
11. "Retailer," any person performing services in the South Dakota portion of the Reservation or engaged in the business of selling tangible personal property for use, storage or other consumption within the meaning of this Section. However, if it is necessary for the efficient administration of this Section to regard any salesmen, representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property sold by them irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the secretary of revenue and regulation may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this Section;
12. "Retailer maintaining a place of business on the South Dakota portion of the Reservation," any retailer having or maintaining within the South Dakota portion of the Standing Rock Sioux Reservation, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agents operating within the South Dakota portion of the Reservation under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily;
13. "Secretary," the secretary of the South Dakota Department of Revenue and Regulation or any duly authorized and appointed assistant, deputies, or agents of the secretary;
14. "Soft drinks," any nonalcoholic beverages that contain natural or artificial sweeteners. The term, soft drinks, does not include any beverage that contains

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milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume;

15. "Storage," any keeping or retention for use or other consumption for any purpose except sale in the regular course of business;
16. "Tangible personal property," personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses if furnished or delivered to consumers or users within the South Dakota portion of the Reservation. The term includes electricity, water, gas, steam, and prewritten computer software;
17. "Use," the exercise of right or power over tangible personal property incidental to the ownership of that property, except that it does not include the sale of that property in the regular course of business. Use also includes the use of the types of services, the gross receipts from the sale of which are to be included in the measure of the tax imposed by Section 16-501 et seq. and any amendments thereto and the delivery or causing delivery into the South Dakota portion of the Reservation of tangible personal property intended to advertise products or services or promote or facilitate sales to residents of the South Dakota portion of the Reservation.

16-502.2 "Lease" or "Rental" Defined—Exclusions

For the purpose of the tax imposed by this Section, the term, lease or rental, means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. Lease or rental does not include:

- a. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
- b. A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars (\$100.00) or one percent (1%) of the total required payments; or
- c. Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision, an operator shall do more than maintain, inspect, or set-up the tangible personal property.

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16-502.3 Tax on Tangible Personal Property Purchased for Use in State–Rate Based on Purchase Price

An excise tax is hereby imposed on the privilege of the use, storage, and consumption by Indians on the South Dakota portion of the Reservation of tangible personal property purchased for use on the South Dakota portion of the Reservation at the same rate of percent of the purchase price of said property as is imposed pursuant to Section 16.501 et seq. or any subsequent amendment to that Section.

16-502.4 Tax Imposed on Use of Services—Exemptions—“Related Corporation” Defined

For the privilege of using services in the South Dakota portion of the Reservation, except those types of services exempted by 16.502.49, there is imposed on the Indian using the service an excise tax equal to four percent (4%) of the value of the services at the time they are rendered. However, this tax may not be imposed on any service rendered by a related corporation as defined in South Dakota Codified Laws subdivision 10-43-1(11) for use by a financial institution as defined in South Dakota Codified Laws subdivision 10-43-1(4) or on any service rendered by a financial institution as defined in South Dakota codified Laws subdivision 10-43-1(4) for use by a related corporation as defined in South Dakota Codified Laws subdivision 10-43-1(11). For the purposes of this, the term related corporation includes a corporation which together with the financial institution is part of a controlled group of corporations as defined in 26 U.S.C. § 1563 as in effect on January 1, 1989, except that the eight percent (8%) ownership requirements set forth in 26 U.S.C. § 563 (a)(2)(A) for a brother-sister controlled group are reduced to fifty-one percent (51%) . For the purpose of this Section, services rendered by an employee for the use of his employer are not taxable.

16-502.5 Tax on Use of Rented Property

An excise tax is imposed upon the privilege of the use of rented tangible personal property by Indians on the South Dakota portion of the Reservation at the rate of four percent (4%) of the rental payments upon the property.

16-502.6 Exemption of Use of Property Leased

The use, storage, or consumption of tangible personal property actually leased to persons on the South Dakota portion of the Reservation is exempted from the provisions of this Section and the tax imposed by it.

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16-502.7 Certain Purchases Considered for Resale Purposes

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

16-502.8 Chemicals Purchased for Use by Lawn and Garden Services Considered Purchased for Resale

Chemicals purchased for use by lawn and garden services (industry no. 0782) as enumerated in the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, and used in such services shall be considered as purchases for resale.

16-502.9 Materials Purchased for Floor Laying Service Considered Purchase for Resale

Carpet, floor covering, tacks, glue, and other materials purchased for use by floor laying and other floor work not elsewhere classified (industry no. 1752) as enumerated in the Standard Industrial Classification Manual of 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, and used for such work are purchases for resale.

16-502.10 Exemption for Gross Receipts Pursuant to Contract Requirement Retailer to Display Products or Signage—Exception

There are hereby exempted from the provisions of this Section and the tax imposed by it, gross receipts received by a retailer from a manufacturer, wholesaler, or distributor pursuant to a written contract between the retailer and manufacturer, wholesaler, or distributor that requires the retailer to display the manufacturer, wholesaler, or distributor's product or signage in a specified manner or location. Any discount or deferred payment received by a retailer from a distributor, wholesaler, or manufacturer for purchasing a product for sale at retail does not constitute gross receipts subject to the tax imposed by this Section.

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16-502.11 Tax on Tangible Personal Property not Purchased for Use in State—Rate Based on Fair Market Value—Property More Than Seven Years Old

An excise tax is imposed on the privilege of the use, storage or consumption by Indians on the South Dakota portion of the Reservation of tangible personal property not originally purchased for use on the South Dakota portion of the Reservation, but thereafter used, store or consumed in on the South Dakota portion of the Reservation, at the same rate of percent of the fair market value of said property at the time it is brought onto the south Dakota portion of the reservation as is imposed by section 16.501.18. The use, storage, or consumption of tangible personal property more than seven years old at the time it is brought onto the South Dakota portion of the Reservation by the person who purchased such property for use elsewhere is exempt from the tax imposed herein.

16-502.12 Tax Imposed on Person Using Property

The tax set forth in Section 16.501.11, is hereby imposed upon every Indian using, storing, or otherwise consuming such property within the South Dakota portion of the Reservation until such tax has been paid directly to a retailer, the Tribe, or the Secretary of Revenue and Regulation as contractor for the Tribe.

16-502.13 Contractors and Subcontractors Taxed on Property Used in Performance of Contract—Fabrication Costs Excluded

If a contractor or subcontractor uses tangible personal property in the performance of his contract or to fulfill contract or subcontract obligations, whether the title to the property is in the name of the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of the property would be subject to pay the sales or use tax, the contractor or subcontractor shall pay a tax at the rate prescribed by Section 16.501.18, measured by the purchase price or fair market value of the property, whichever is greater, unless the property has been previously subjected to a sales or use tax, in this state and the tax due thereon has been paid. However, if the contractor or subcontractor fabricates tangible personal property for use in the performance of his contract, fair market value excludes the value of the contractor's or subcontractor's fabrication costs.

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16-502.14 Sectional Homes Not Vehicles—Contractors Taxed on Materials Used in Construction—Sectional Homes Defined

If a sectional home is permanently affixed to real property, it is not a vehicle and shall be classified as real property. A contractor who erects such a home shall hold a sales tax or use tax license and pay use tax based upon the fair market value of the raw materials used to construct and erect the home.

For the purpose of this section, the term, sectional home, means any home pre-built in part or in whole for the purpose of permanent placement on a foundation. Mobile homes and manufactured homes are not sectional homes.

16-502.15 Materials Incorporated in Construction Work—Restriction on Application of Rate Increase

No tax increase may be levied on materials incorporated in construction work pursuant to construction contracts bid or entered into on or before the effective date of the tax increase.

16-502.16 Value of Molds and Dies

The value of molds and dies produced in connection with the fabrication or manufacture of other tangible personal property is limited to the cost of materials incorporated in the molds or dies to the extent the cost of such materials have not previously been subjected to sales or use tax.

16-502.17 Exemption of Materials Becoming Part of Out-of-State Signage or Advertising

Notwithstanding the provisions of Section 16.502.13, the use on the South Dakota portion of the Reservation of tangible personal property that becomes an integral and component part of a final product manufactured by a business classified in signs and advertising specialties, (industry no. 3993) in the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, that is installed by such manufacturer outside of the South Dakota portion of the Reservation is exempt from the tax imposed by this Section.

16-502.18 Exemption of Property and Services Subject to Sales Tax

The use in the South Dakota portion of the Reservation of tangible personal property or services, the gross receipts from the sale of such are to be

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included in the measure of the tax imposed by Section 501 et seq., and any amendments made or which may hereafter be made thereto, is hereby specifically exempted from the tax imposed by this Section.

16-502.19 Credit for Sales or Use Tax Paid to Another Tribe or State—
Reciprocity Required

The amount of any use tax imposed with respect to tangible personal property or services shall be reduced by the amount of any sales or use tax previously paid by the taxpayer with respect to the property on account of liability to another tribe or state or political subdivisions of another tribe or state. Provided, however, no credit shall be given under this section where taxes paid on tangible personal property or services in another tribe or state or political subdivision does not reciprocally grant a credit for taxes paid on similar tangible personal property.

16-502.20 Exemptions for Credit Services by Credit Bureaus to Certain
Financial Institutions

There are specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, the use of credit services provided by credit bureaus to financial institutions.

16-502.21 Constitutional Exemptions from Tax—Property of Public
Agencies

Tangible personal property, the storage, use, or other consumption of which the Tribe is prohibited from taxing under the Constitution or laws of the United States of America, under the Constitution of the Tribe, or tangible personal property sold to the United States, any Indian tribe, the State of South Dakota, or any public or municipal corporation of the state which is for the use, storage, or consumption of such public corporations is hereby specifically exempt from the tax imposed by this Section.

16-502.22 Exemption of Property Brought in for Personal Use of
Nonresident

The use in the South Dakota portion of the Reservation of all articles of tangible personal property brought into the South Dakota portion of the Reservation by a nonresident individual thereof for his or her personal use or

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enjoyment while within the South Dakota portion of the Reservation, is hereby specifically exempted from the tax imposed by this Section.

16-502.23 Exemption of Raw Material, Parts and Newsprint for
Manufacture of Products to be Sold at Retail

The use on the South Dakota portion of the Reservation of tangible personal property including containers, labels and shipping case thereof which is intended shall, by means of fabrication, compounding or manufacture become a part of other tangible personal property intended to be sold ultimately at retail within or without the South Dakota portion of the Reservation, is hereby specifically exempted from the tax imposed by this Section. The term tangible personal property shall be construed to include without limiting the meaning of said term, raw material and newspaper print.

16-502.24 Ink and Newsprint Used to Produce Shoppers' Guides
Exempt—Shoppers' Guides Defined

Ink and newsprint when used in the production of shoppers' guides are hereby exempt from the tax imposed under this Section.

For the purposes of this section the term, shoppers' guide, includes advertising publications whose advertisements are solicited from the general public and whose publications are for free distribution to the general public and are published regularly at least once a month, consisting of printed sheets containing advertising, bearing a date of issue, and devoted to advertising of general interest.

16-502.25 Brokers' and Agents' Services Exempt from Tax

The tax imposed by this Section shall not apply to services of licensed brokers and agents.

16-502.26 Packaging and Container Materials as Tax Exempt Raw
Material

Containers, labels, cartons, packing cases, wrapping paper, twine, glue, bags, bottles, shipping cases, wrapping film, strapping, rope, tape, cans, lids, boxes, pads, dividers, stockinettes, casings, and similar articles and receptacles used or consumed by manufacturers, processors, or fabricators are raw material and are not subject to sales or use tax.

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16-502.27 Packaging and Container Materials Sold to Retailers Exempt

There are specifically exempted from the provisions of this Section, and from the computation of tax imposed by it, gross receipts from the sale of paper and plastic bags, wrapping paper, twine, tape, and similar articles sold to retailers if the retailer uses the articles as wrappers or containers to hold other tangible personal property sold by the retailer and subject to sales or use tax and the articles are supplied free by the retailer as a convenience to the customer.

16-502.28 Exemption of Certain Sales Commissions

Unless otherwise specifically subject to tax, the gross receipts resulting from fees or commissions received for rendering a service which provides for the sale of tangible personal property or services is exempt from the tax imposed by this Section.

16-502.29 Exemption of Gross Receipts from Sale of Certain Replacement Parts

There are exempted from the provisions of this Section and from the computation of the tax imposed by it, the gross receipts from the sale of replacement parts that are sold to retailers and which will be installed in tangible personal property that will ultimately be for resale.

16-502.30 Exemption of Motor Vehicles Exempt From Excise Tax—
Exception

The use on the South Dakota portion of the Reservation of motor vehicles exempt from the motor vehicle excise tax pursuant to South Dakota Codified Laws § 32-5B-2 is specifically exempted from the tax imposed by this Section, with the exception of farm vehicles as described in South Dakota Codified Laws § 32-5-1.3, which shall be subject to the tax imposed by this Section.

16-502.31 Exemption of Commodities Otherwise Taxed

The use in this state of gasoline, motor fuel, and special fuel subject to tax under South Dakota Codified Laws Chapter 10-47B is specifically exempted from the tax imposed by this Section.

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16-502.32 Exemption of Property of Educational Institutions and Hospitals—Use of Property by Individuals Taxable—Registration of Motor Vehicles—Quarterly Report by Exempt Institution

The gross receipts from sales of tangible personal property and the gross receipts from sales, furnishing or service of electrical energy, natural and artificial gas, water and communication service to and for use by Tribal educational institutions, religious educational institutions and private educational institutions currently recognized as exempt under Section 501(c)(3) of the Internal Revenue Code as in effect on January 1, 1983, Tribal or IHS hospitals or clinics and nonprofit, charitable hospitals when purchases are made by authorized officials, payment made from the institution's funds and title to the property retained in the name of the institutions, are specifically exempted from the tax imposed by this Section.

This exemption does not extend to sales to or purchases of tangible personal property for the personal use of officials, members, or employees of such institutions or to sales to or purchases of tangible personal property used in the operation of a taxable retail business. The exemption provided in this Section does not, in any manner, relieve the institution from the payment of the additional and further license fee imposed on the registration of motor vehicles. All institutions claiming this exemption shall, at the end of each quarter of each calendar year, file with the Department of Revenue and Regulation, as contractor for the Tribe a list of all purchases on which exemption was claimed, fully itemized, showing name and address of vendors, description of property purchased, purchase price, and brief explanation of use or intended use.

16-502.33 Exemption of Insulin for Human Use

The use of insulin, to the extent used by humans, that is not sold by prescription is specifically exempt from the tax imposed by this Section.

16-502.34 Exemption of Authorized Purchases Made with Food Stamps

There are hereby specifically exempted from the tax imposed by this Section the gross receipts resulting from authorize purchases made with food stamps under the provision of the Food Stamp Act of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 2001.

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16-502.35 Exemption of Authorized Purchases of Food

There are hereby specifically exemption from the tax imposed by this Section the gross receipts resulting from authorized purchases of food made under Section 17 (c) of the Child Nutrition Act of 1966 (42 U.S.C. § 1786(c)).

16-502.36 Exemption of Fair Market Value of Personal Property or Service Given Without Charge to Exempt Organization

There are specifically exempted from the provisions of this Section and the computation of the tax imposed by it, the fair market value of any tangible personal property or service given without charge to an institution, organization, or group exempt from the tax imposed by this Section.

16-502.37 Exemption of Prescribed Drugs Used by Humans

The use of drugs as defined by the Tribe or by the rule promulgated by the Secretary of Revenue to the extent used by humans, if the drugs are prescribed by prescription, dispensed, or administered by a physician, chiropractor, optometrist, dentist, podiatrist, or audiologist, is specifically exempt from the tax imposed by this Section.

16-502.38 Exemption of Prescribed Medical Equipment or Prosthetic Devices Used by Humans

The use of durable medical equipment, mobility enhancing equipment, and prosthetic devices as defined by the Tribe or by the rule promulgated by the Secretary of Revenue to the extent used by humans, if the durable medical equipment, mobility enhancing equipment, and prosthetic devices are prescribed by proscription by a physician, chiropractor, optometrist, dentist, podiatrist, or audiologist, is specifically exempt from the tax imposed by this Section.

16-502.39 Exemption of Prescribed Medical Devices Used by Humans

There are specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, the use of any medical device, as that terms is defined in this section, to the extent used by humans, if the medical device is prescribed by prescription by a physician, chiropractor, optometrist, dentist, podiatrist, or audiologist. The term, medical device, means any instrument, apparatus, implement, contrivance, or other similar or related

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article, including a component, part, or accessory, that is prescribed for use on a single patient and that is:

- a. Recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them;
- b. Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, detection, or prevention of disease, of the human body; or
- c. Intended to affect the structure or any function of the human body, and that does not achieve any of its primary intended purposes through chemical action within or on the human body and that is not dependent upon being metabolized for the achievement of any of its primary intended purposes.

A medical device is not durable medical equipment, mobility enhancing equipment or a prosthetic device.

16-502.40 Exemption of Livestock, Poultry, Ostriches, Emus, or Rheas Used in Producing Taxable Final Product

No gross receipts from sales of livestock or live poultry, ostriches, emus, or rheas, if such sales are a part of a series of transactions incident to producing a finished product intended to be offered for an ultimate retail sale, shall be taxable under this Section, except that an ultimate retail sale interrupting the series of transactions with an intended final use of consumption shall be taxable.

16-502.41 Exemption of Gross Receipts From Sale of Live Gamebirds by Producer to Certain Nonprofit Organizations

There are specifically exempted from the provisions of this Section and the computation of the tax imposed by it, gross receipts from the sale of live game birds sold by the producer to nonprofit organizations which release such birds or to commercial hunting operators who charge fees to hunt such birds.

16-502.42 Exemption of Gross Receipts from Sales of Certain Animals

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of live cattle, buffalo, sheep, goats, swine, poultry, ostriches, emus, rheas, and domesticated fur-bearing animals defined in South Dakota Codified Laws Chapter 40-35, used or to be used as breeding or production stock, and horses and other animals within the family equidae. The term, poultry, does

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not include any fowl other than domestic fowl kept and raised for the market or the production of eggs for human consumption.

16-502.43 Exemption of Gross Receipts from Sale of Feed for Certain Animals

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of feed for cattle, buffalo, sheep, goats, swine, pheasants, partridges, quail, poultry, ostriches, emus, rheas, and domesticated fur-bearing animals defined in South Dakota Codified Laws Chapter 40-35, if such feed is used by farmers or ranchers who are regularly engaged in the business of raising and feeding such animals, or producing milk for sale for human consumption, and horses and other animals within the family equidae. The term, poultry, does not include any fowl other than domestic fowl kept and raised for the market or the production of eggs for human consumption.

16-502.44 Exemption for Sale of Certain Live Nondomestic Animals

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of any live nondomestic animal, if the animal is to be used by a farmer or rancher who is regularly engaged in the breeding and raising of such animals.

16-502.45 Exemption for Sale of Feed for Certain Live Nondomestic Animals

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of feed for any nondomestic animal, if the feed is to be used by a farmer or rancher who is regularly engaged in the breeding and raising of such animals.

16-502.46 Exemption for Sale of Swine or Cattle Semen

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of swine semen and cattle semen to be used for agricultural purposes.

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16-502.47 Exemption of Motor Fuel Used for Agricultural Purposes

Motor fuel, including kerosene, tractor fuel, natural and artificial gas, liquefied petroleum gas, and distillate, when used for agricultural purposes, is exempt from excise taxes imposed under this Section.

For the purposes of this Section, agricultural purposes includes hay grinding but does not include the lighting or heating of any farm residence.

16-502.48 Power for Irrigation Pumps Exempt From Tax

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

16-502.49 Exemption of Goods and Services Furnished to Meet Warranty Obligation, Services Enumerated in Standing Industrial Classification Manual and Power changes for Irrigation Pumps Exempt

The use of the types of services specifically exempt, under 16.501.47, 16.501.49 and 16.501.84, from the tax imposed by Section 16-501 et seq. is exempt from the tax imposed by this Section.

16-502.50 Exemption of Freeport Merchandise and Stocks of Merchandise Brought as Foreign or Domestic Merchandise into Foreign Trade Zone—Stocks of Merchandise Defined—Application

There is exempted from the provisions of this Section and from the computation of the tax imposed by it, free port merchandise and stocks of merchandise brought as foreign or domestic merchandise into a foreign trade zone. For the purposes of this section, stocks of merchandise is personal property which is held primarily for sale and not subject to annual depreciation. However, the exemption only applies if written evidence of the contract of sale is retained, and such contract indicates that the merchandise is to be shipped in international commerce to a point outside the United States not to be returned to a point within the United States.

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16-502.51 Exemption of Pesticides and Related Products Used for Agricultural Purposes

The use of pesticides as defined in South Dakota codified Laws § 38-20A-1 to be used exclusively for agricultural purposes is specifically exempted from the tax imposed by this Section. Any product or substance to be used in conjunction with the application or use of pesticides for agricultural purposes is also exempt. These products or substances include adjuvants, surfactants, ammonium sulfate, inoculants, drift retardants, water conditioners, seed treatments, foam markers, and foam dyes. Equipment, other than farm machinery, attachment units, and irrigation equipment used exclusively for agricultural purposes, for the application of pesticides and related products and substances is not exempt.

16-502.52 Exemption of Use of Certain Parts, Repairs, or Maintenance on Agricultural or Irrigation Equipment

There are exempted from the provisions of this Section and the tax imposed by it, the use of the following:

- a. Parts or repairs on machinery or equipment which are clearly identifiable as used primarily for agricultural purposes, including irrigation equipment, if the part replaces a farm machinery or irrigation equipment part assigned a specific or generic part number by the manufacturer of the farm machinery or irrigation equipment; and
- b. Maintenance items and maintenance services used on machinery or equipment which are clearly identifiable as used primarily for agricultural purposes, including irrigation equipment.

16-502.53 Exemption for Gross Receipts from Sale, Resale, or Lease of Farm Machinery, Attachment Units, and Irrigation Equipment

There are exempted from the provisions of this Section and from the tax imposed by it, gross receipts from the sale, resale, or lease of farm machinery, attachment units, and irrigation equipment used exclusively for agricultural purposes. The term, farm machinery, includes all-terrain vehicles of three or more wheels used exclusively by the purchaser for agricultural purposes on agricultural land. The purchaser shall sign and deliver to the seller a statement that the all-terrain vehicle will be used exclusively for agricultural purposes.

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16-502.54 Exemption of Rental of Devices Used to Apply Agricultural Fertilizers and Pesticides

There is specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, the rental of devices primarily used to apply fertilizers and pesticides, as defined in South Dakota codified Laws §38-20A-1, for agricultural purposes.

16-502.55 Delivery as Prima Facie Evidence of Evidence of Sale for Use in State

For the purpose of the proper administration of this Section and to prevent the evasion of the tax, evidence that tangible personal property was sold by any person for delivery to the South Dakota portion of the Reservation shall be prima facie evidence that such tangible personal property was sold for use in the South Dakota portion of the Reservation.

16-502.56 Use of Service in State Prima Facie Evidence of Taxability

For the purposes of proper administration of this Section and to prevent evasion of tax, evidence that a service is used on the South Dakota portion of the Reservation shall be prima facie evidence that the service is subject to tax.

16-502.57 Money Paid as Evidence of Value of Service—Reasonable Value Governs

In determining the amount of tax due on the use of a service it is presumed, in the absence of preponderant evidence of another value, that the value means the total amount of money or the reasonable value of other consideration paid for the service exclusive of any type of time-price differential. However, in an exchange in which the amount paid does not represent the value of the service purchased, the tax shall be imposed on the reasonable value of the service purchased.

16-502.58 List of Sales Property or Services to Residents—Cost

Any person selling property or services to residents on the South Dakota portion of the Reservation, where the property is delivered or the beneficial use of the service occurs on the South Dakota portion of the Reservation, shall provide a list of such sales to the Secretary of Revenue and Regulation, as contractor for the Tribe. The list shall include the names and addresses of the

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purchasers and the amount of the sale. The Secretary of Revenue and Regulation shall pay to any person furnishing a list under this section an amount equal to the reasonable cost of reproducing the list.

16-502.59 Manner of Collection of Tax

The tax herein imposed shall be collected in the manner provided by 16.502.63 and 16.502.72.

16-502.60 Collection of Tax by Retailer Maintaining Place of Business on Reservation—Receipt Given to Purchaser—Agents and Places of Business Listed with Secretary

Any retailer maintaining a place of business on the South Dakota portion of the Reservation, and making sales of tangible personal property or services for storage, use or other consumption on the South Dakota portion of the Reservation, not exempted under the provisions of this Section shall, at the time of making such sale, collect the tax imposed by this Section from the purchaser, and give to the purchaser a receipt therefore in the manner and form prescribed by the Tribe or the Secretary of Revenue and Regulation. Such retailer shall list with the Secretary of Revenue and Regulation the name and address of all his agents operating in this state, and the location of any and all his distribution or sales houses or offices or other places of business on the South Dakota portion of the Reservation.

16-502.61 Semiannual Report of Sales by Retailer Maintaining Place of Business on the South Dakota Portion of the Reservation—Contents

Every retailer maintaining a place of business on the South Dakota portion of the Reservation and making sales of tangible personal property for storage, use, or other consumption, shall, twice annually furnish the Secretary of Revenue and Regulation, as contractor for the Tribe, with a list, covering the six (6) month period just preceding the submission of such list, which shall contain the names and addresses of all persons who have made purchases of tangible personal property from said retailer for use, storage, or consumption, and which list shall contain the total amount of the purchase price of all such personal property so purchased during said period by such persons. Said list required to be submitted as above stated need not contain any information on the sale of tangible personal property when exempt under this Section.

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16-502.62 Permit for Collection of Tax by Retailer not Maintaining Place of Business on Reservation—Security for Collection and Payment—Cancellation of Permit

The Tribe may, upon application, authorize the collection of the tax imposed by this Section by any retailer not maintaining a place of business within the South Dakota portion of the Reservation, who, to the satisfaction of the Tribe furnishes adequate security to ensure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax in such manner, and subject to such requirements as the Tribe may prescribe. If so authorized, the retailer shall collect the tax upon all tangible personal property sold to his knowledge for use, storage or other consumption within the South Dakota portion of the Reservation, in the same manner and subject to the same requirements as a retailer maintaining a place of business within the South Dakota portion of the Reservation. Such authority and permit may be cancelled when, at any time, the Tribe considers the security inadequate, or that such tax can more effectively be collected from the person using such property on the South Dakota portion of the Reservation.

16-502.63 Collection and Remittance of Tax by Retailer

The tax upon the use, storage or other consumption of all tangible personal property which is sold by a retailer maintaining a place of business on the South Dakota portion of the Reservation, or by such other retailer as the Tribe shall authorize pursuant to 16.502.62, shall be collected by such retailer and remitted to the Department of Revenue and Regulation, as contractor for the Tribe.

16-502.64 Surety Bond Filed by Retailer

The Tribe or the Secretary of Revenue and Regulation as contractor for the Tribe may authorize any person subject to such tax, and any retailer required or authorized to collect such tax, to file a bond issued by a surety company authorized to transact business on the South Dakota portion of the Reservation and approved by the Tribe or the Secretary of Revenue and Regulation, in such amount as the Tribe or the Secretary may fix, to secure the payment of any tax or penalties due or which may become due from such person.

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16-502.65 Securities Deposited by Retailer in Lieu of Bond

In lieu of such bond, securities approved by the Tribe or the Secretary of Revenue and Regulation, in such amount as may prescribe, may be deposited, which securities shall be kept in the custody of the Tribe or the Secretary of Revenue and Regulation and may be sold at public or private sale, without notice to the depositor thereof, if it becomes necessary to do so in order to recover any tax or penalties due. Upon any such sale, the surplus, if any, above the amounts due under this Section shall be returned to the person who deposited the securities.

16-502.66 Tax Collect as Debt of Retailer

The tax required to be collected by any retailer and any tax collected by any retailer pursuant to this Section, shall constitute a debt owed by the retailer to the Tribe

16-502.67 Payment of Tax Collected by Retailer

Every retailer required or authorized, to collect the tax herein imposed, shall pay to the Secretary of Revenue and Regulation, as contractor for the Tribe the amount of such tax.

16-502.68 Report by Retailer Collection Tax—Filing—Contents—Payment

The retailer shall file with the Secretary of Revenue and Regulation, as contractor for the Tribe a return for the preceding reporting period in such form as may be prescribed by the Secretary of Revenue and Regulation showing the sales price of any or all tangible personal property or services sold by the retailer during such preceding reporting period, the use, storage or consumption of which is subject to the tax imposed by this Section, and such other information as the Secretary of Revenue and Regulation may deem necessary, Returns shall be accompanied by a remittance of the amount of such tax for the period covered by the return.

16-502.69 Retailer's Returns and Payments on Other than Quarterly Basis—Extension of Time

The Secretary of Revenue and Regulation, as contractor for the Tribe, may require returns and payment of such amounts to be made other than by the quarter. The Secretary of Revenue and Regulation may, upon request and a

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proper showing of the necessity therefore, grant an extension of not more than five (5) days for making any return and payment.

16-502.70 Execution of Retailers' Returns

Returns shall be signed by the retailer or his duly authorized agent, and must be certified by him to be correct.

16-502.71 Amounts of Tax Paid on Conditional Sales or Installment Contract Receipts

Where tangible personal property is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part hereof, is extended over a period longer than sixty (60) days from the date of the sale thereof, the retailer may collect and remit for each month that portion of the tax equal to the rate of tax as provided for in this Section of that portion of the purchase price actually received during such month.

16-502.72 Direct Payment of Tax by User

The tax upon the use, storage or consumption of all tangible personal property not paid pursuant to 16.502.63, shall be paid to the Secretary of Revenue and Regulation, as contractor for the Tribe, directly by any person using such property within the South Dakota portion of the Reservation, pursuant to the provisions of 16.502.73.

16-502.73 Liability of User for Tax—Returns and Payments

Any person who uses, stores or otherwise consumes any property or services subject to tax hereunder upon which the tax herein imposed has not been paid, either to a retailer or direct to the Secretary of Revenue and Regulation, as contractor for the Tribe, as herein provided, is liable therefore, and shall on or before the time specified in sections 16.502.67 and 16.502.68 pay the tax herein imposed upon all such property used by him during the preceding month in such manner and accompanied by such returns as the Tribe or the Secretary of Revenue and Regulation shall prescribe. All of the provisions of Sections 16.502.67 to 16.502.71, inclusive, with reference to such returns and payments are applicable to the returns and payments herein required.

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16-502.74 Credit for Sales or Use Tax Paid to Another Tribe or State—
Reciprocal Grant of Credit Required

The amount of use tax imposed with respect to tangible personal property in the form of equipment brought into the South Dakota portion of the Reservation on a permanent basis for direct use in a manufacturing, fabricating, or processing business shall be reduced by the amount of any sales or use tax previously paid by the taxpayer with respect to the property on account of liability to another Indian tribe, state, or the political subdivision of another tribe or state to the extent that such tax equals or exceeds the rate of the tax under this Section. If the sales or use tax of the other tribe or state is less than the tax under this Section, the taxpayer shall be subject to the payment of the balance to the Tribe. No credit shall be given under this Section for taxes paid on tangible personal property subject to the credit of this Section in another tribe or state or political subdivisions if that tribe or state does not reciprocally grant a credit for taxes paid on similar tangible personal property.

16-502.75 False or Fraudulent Return in Attempt to Evade Tax as
Misdemeanor

Any person required to make, render, sign, or certify any return or supplementary return who makes any false or fraudulent return in attempt to defeat or evade the tax imposed by this Section is guilty of a Class A misdemeanor.

16-502.76 Failure to File Return as Misdemeanor

Any retailer or other person failing or refusing to furnish any return by this Section required to be made or failing or refusing to furnish a supplemental return or other data required by the Department or by the Secretary of Revenue and Regulation is guilty of a Class B misdemeanor.

16-502.77 Records Maintained by Retailers and Users—Examination and
Investigations by Secretary—Access to Records

Every retailer required or authorized to collect taxes imposed by this Section and every person using, storing or otherwise consuming on the South Dakota portion of the Reservation tangible personal property purchased, shall keep such records, receipts, invoices, and other pertinent papers. The Tribe and any of its duly authorized agents are hereby authorized to examine the books, papers, records, and equipment of any person either selling tangible personal

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property or liable for the tax imposed by this Section, and investigate the character of the business of any such person in order to verify the accuracy of any return made, or if such return was made by such person, to ascertain and determine the amount due under the provisions of this Section. Any such books, papers, and records shall be made available for such examination upon reasonable notice when the Tribe shall deem it advisable and shall so order.

16-502.78 Revocation of Retailer's Sales Tax Permit on Failure to Comply—Revocation of Corporate Authority to do Business

If any retailer maintaining a place of business on the South Dakota portion of the Reservation, who is authorized to collect the tax imposed pursuant to this Section, fails to comply with any of the provisions of this Section, the Tribe or the Secretary of Revenue and Regulation may, upon notice and hearing, by order revoke the permit, if any, issued to such retailer.

16-502.79 Notice and Hearing on Revocation of Permit or Authority to do Business

No order authorized in Section 16.502.77, shall be made until the retailer is given an opportunity to be heard and show cause why such order should not be made, and shall be given a ten (10) day notice of the time, place and purpose of such hearing. Such notice shall be served in the manner provided for service of summons in civil actions.

16-502.80 Restoration of Revoked Sales Tax Permit

The Tribe and the Secretary of Revenue and Regulation shall also have the discretion to restore such licenses after such revocation.

16-502.81 Personal Liability of Officers of Corporation Failing to File Returns Or Pay Tax—Security in Lieu of Liability—Bonded Municipal Officials Exempt

If a corporation subject to tax under this Section fails for any reason to file the required returns or to pay the tax due, any of its officers having control, or supervision of, or charged with the responsibility for making such returns and payments shall be personally liable for such failure. The sum due for such a liability may be assessed and collected as provided by law.

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If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation shall provide the Tribe with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section shall be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise tax rate.

16-502.82 Floor Laying Service Subject to Tax

The following service enumerated in the Standard Industrial Classification Manual of 1987 as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, is subject to the tax levied by this Section: industry no. 1752 floor laying and other floor work, not elsewhere classified.

16-502.83 Exemption of Large Boats Subject to Excise Tax

Any large boat as defined by South Dakota codified Laws § 32-3A-2 is hereby exempted from the tax imposed by this Section if subject to the tax imposed by South Dakota Codified Laws § 32-3A-50.

16-502.84 Exemption of Gaming Proceeds

There are specifically exempted from the provisions of this Section and from the computation of the tax imposed by it gross proceeds of gaming allowed by the Tribe's Gaming Ordinance and the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et sec.

16-502.85 Exemption of Natural Gas Transportation Services by Pipeline

The provision of natural gas transportation services by a pipeline is exempt from the provisions of this Section and from the computation of the tax imposed by this Section.

16-502.86 Exemption for the Use of Credit Card Processing Services

There are specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, the use of credit card processing services by retailers.

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16-502.87 Passenger Transportation Tax Imposed

There is imposed a tax of four percent (4%) on the privilege of the use of any transportation of passengers. The tax imposed by this section shall apply to any transportation of passengers if the passenger boards and exits the mode of transportation within the South Dakota portion of the Reservation.

16-502.88 Inapplicability of Tax

The tax imposed by Section 16.502.86, does not apply to any transportation service which the Tribe is prohibited from taxing by federal law or the United States Constitution.

16-502.89 Gross Receipts from Charge of Interest Exempted

There are exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, the gross receipts from the charge of interest as defined in South Dakota Codified Laws § 54-3-1.

16-502.90 Exemption for Use of Certain Rodeo Services

There are exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, the use of services provided by promoters, stock contractors, stock handlers, announcers, judges, and clowns.

16-502.91 Exemption of Repair Shops, Locksmith Shops, and Lock Parts

The following services enumerated in the Standard Industrial Classification Manual of 1987 as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, are subject to the tax levied by this Section: repair shops and related services, not elsewhere classified (industry no. 7699) but only locksmiths, locksmith shops, and lock parts made to individual order.

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16-502.92 Exemptions

There are hereby exempted from the provisions of this Section and the computation of the tax imposed by it, the use of United States postage.

16-502.93 Auction Clerk to File Return and Remit Sales Tax—
Responsibilities of Auctioneer—Records

All auction sales and consignment sales of tangible personal property and services are sales at retail. The auction clerk shall file the return and remit the tax imposed by this Section on the gross receipts from each auction after applying the deductions provided by Section 16.501.128. However, the auctioneer is responsible for the payment of the tax imposed by this Section if the auction clerk is an employee of the auctioneer or if the auction clerk does not have a permit as required by this Section. In addition to any other information required to be kept by this Section, each auction clerk shall keep records that identify the owner of the property sold at auction and the auctioneer who conducts the sale of such property.

16-502.94 Issuance of Direct Payment Permits to Certain Retailers—
Application Procedure— “Direct Payment Permit” Defined—
Liability for Sales Tax on Sale to Permit Holder

The Secretary of Revenue and Regulation, as contractor for the Tribe may authorize a retailer to use a direct payment permit if the retailer purchases goods or services subject to the tax imposed by Section 16-501 et seq. Applicants for a direct payment permit shall apply in writing to the secretary. For purposes of this section, the term, direct payment permit, means a permit issued by the Department, as contractor for the Tribe that allows a holder of the permit to accrue and pay the taxes imposed by South Dakota codified Laws Chapter 10-45, directly to the Department. A retailer that makes a sale to a direct payment permit holder has no liability for sales tax on such sale if the retailer has written evidence of the sale. Such written evidence shall clearly indicate the name of the buyer, the product or service purchased, and the amount of the purchase.

16-502.95 Exemption for Lodging House or Hotel Membership Fees

There are hereby exempted from the provisions of this Section and the computation of the tax imposed by it, gross receipts from membership fees paid to any lodging house and hotel membership organization operated for the benefit of its members. However, this exemption does not apply to any

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membership fee that represents payment for tangible personal property and services provided by the membership organization.

16-502.96 Tax on Use of Certain Mobile Telecommunication Services

There is hereby imposed a tax of four percent (4%) upon the privilege of the use of mobile telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that originate and terminate on the South Dakota portion of the Reservation and are billed to a customer with a place of primary use on the South Dakota portion of the Reservation. Notwithstanding any other provision of this Section and for purposes of the tax imposed by this section, the tax imposed upon mobile telecommunication services shall be administered in accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000.

16-502.97 Exemption for Sale of Coins, Currency, or Bullion

There are hereby specifically exempted from the provisions of this Section and from the computation of the amount of tax imposed by it, gross receipts from the sale of coins, currency, or bullion. For the purposes of this section, term, "bullion", means any bar, ingot, or commemorative medallion of gold, silver, platinum, palladium, or a combination of these metals where the value of the metal depends on its content and not the form. For the purposes of this section, terms, "coins" and "currency", mean any coins or currency made of gold, silver, or other metal or paper which is or has been used as legal tender.

Section 16-503 Cigarette Tax**16-503.1 Definitions**

Words used in this Section, unless the context otherwise plainly required, shall mean:

1. "Dealer or Retailer", Any person other than a distributor or wholesaler, as defined herein, who is engaged in this state, in the business of selling cigarettes at retail;
2. "Distributor", Any person engaged in the business of producing or manufacturing cigarettes, or importing onto the Reservation cigarettes, at least seventy-five percent (75%) of which are purchased directly from the manufacturers thereof;
3. "Wholesaler", Any person who purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers or to other persons for the purpose of bona fide resale to retail dealers and any person who services retail outlets,

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including vending machine routes operated by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of a warehousing facility for the storage and distribution of cigarettes;

4. "Licensed Distributor or Licensed Wholesaler", A distributor or wholesaler licensed under the provisions of this Section;
5. "Person", Any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed;
6. "Sale or Sell", shall include or apply to gifts, exchanges, and barter;
7. "Indian, Non-Indian, Reservation, Standing Rock Sioux Reservation, and South Dakota Portion of the Reservation", shall be as defined in Sections 16.106 and 16-501.1.

16-503.2 Number of Cigarettes in a Package

All cigarettes sold in the South Dakota portion of the Reservation shall be put up in packages containing twenty or twenty-five cigarettes each except for those cigarettes offered by manufacturers for gratis distribution as samples. Manufacturers, through their sales representatives or agents, may distribute, within the South Dakota portion of the Reservation, sample cigarettes in any package size or quantity.

16-503.3 Tax Imposed on Cigarettes Held for Sale

A tax is imposed at the following rates on all cigarettes held on the South Dakota portion of the Reservation for sale to or by Indians:

- a. Class A, on cigarettes weighing not more than three (3) pounds per thousand (1000), seventy-six and one-half (76.5) mills on each cigarette.
- b. Class B, on cigarettes weighing more than three (3) pounds per thousand (1000), seventy-six and one-half (76.5) mills on each cigarette.

16-503.4 Stamps as Evidence of Payment

The tax imposed by this Section shall be paid to the Department of Revenue of the State of South Dakota, as contractor for the Tribe, in such manner as it prescribes. The payment of the tax imposed by this Section shall be evidenced by the affixing of South Dakota cigarette tax stamps or by the impression of an imprint by suitable metering machines approved by the Secretary of Revenue

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of South Dakota, to the packages containing the cigarettes in accordance with Chapter 10-50 of the South Dakota Code. Provided, that for cigarettes offered by manufacturers for gratis distribution as samples, such stamps are not required to be affixed to sample packages if the manufacturer of the cigarette reports and pays the tax directly to the Department of Revenue as contractor for the Tribe.

16-503.5 Fractional Part of a Cent

No stamps evidencing payment of the tax prescribed in this Section shall be in a denomination of less than one cent (\$0.01) and whenever the tax at the rate therein prescribed shall be a specified amount plus a fractional part of one cent, the package or carton shall be stamped for the next full cent.

16-503.6 Stamped or Imprinted Cigarettes Not Subject to Further Tax

Any cigarette on which a tax has been paid, such payment being evidenced by the affixing of a stamp or imprint, shall not be subject to a further tax under this Section.

16-503.7 Incidence of Tax

The incidence of the tax levied by this Section is hereby declared to be on the vendee, user, consumer, or possessor of cigarettes and when said tax is paid by any other person such payment shall be considered as an advance payment and shall thereafter be added to the price of the cigarettes and recovered from the ultimate consumer or user. In making a sale of cigarettes a distributor may separately state and show upon the invoice covering such sale the amount of tax on the cigarettes sold. The provisions of this section shall in no way affect the method of collection of such tax.

16-503.8 License Required of Distributors and Wholesalers

- a. Each person, except a retailer, engaging in the business of selling cigarettes in the South Dakota portion of the Reservation, including any distributor of wholesaler, shall secure a license therefore from the Tribe, and shall pay to the Tribe one hundred fifty dollars (\$150.00) per year for such license, unless he has a valid license from the Secretary of Revenue of South Dakota in accordance with Chapter 10-50 of the South Dakota Code.

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- b. Licenses under this section shall be obtained and may be revoked in accordance with the procedures set forth Section 16-401 et seq. of this Title. However, such licenses shall expire one year from the date of issue unless renewed by payment of additional license fee provided for in Subsection (a) of this section.

16-503.9 Seizure and Forfeiture of Unstamped Cigarettes

- a. Any cigarettes found at any place within the South Dakota portion of the Reservation without stamps affixed thereto as required by Section 16.503.4, unless such cigarettes shall be in the possession of a distributor or wholesaler in the original unopened shipping package or unless they are in a course of transit from within the Reservation and consigned to a distributor or wholesaler are declared to be contraband goods and may be seized by tribal law enforcement officers without a warrant.
- b. Any cigarettes seized under Subsection (a) shall be confiscated and forfeited to the Tribe, and may be sold by the Tribe. Such sale shall not relieve the purchaser from paying the tax and stamping the cigarettes sold to him.
- c. Nothing in this section shall be construed to require the Tribe to confiscate unstamped cigarettes when the Tribe shall have reason to believe that the owner thereof is not willfully or intentionally evading the tax imposed by this Section.

16-503.10 Acts of Agents

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

16-503.11 Reports and Records

- a. On or before the fifteenth (15th) day of each month each distributor or wholesaler who has affixed South Dakota stamps in accordance with Section 16.503.4, shall render to the Secretary of Revenue of South Dakota as contractor for the Tribe a verified report of all sales on such forms, and providing such information, as is prescribed by him.
- b. Each distributor, wholesaler and dealer shall keep complete and accurate records of all cigarettes manufactured, produced, purchased or sold. Such

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records shall be of such kind and such form as the Secretary of Revenue may prescribe and shall be safely preserved for three (3) years in such manner as to ensure permanency and accessibility for inspection by the Tribe's authorized agents.

- c. The Tribe's authorized agents may examine the books, papers, and Records of any distributor, wholesaler or dealer for the purpose of determining whether the tax imposed by this Section has been fully paid, and may investigate and examine the stock of cigarettes in or upon any premises where such cigarettes are possessed, stored, or sold, for the purpose of determining whether the provisions of this Section are being obeyed. The inspectors shall have the right and authority to make such inspections and examinations at any time during ordinary business hours, and he or they shall have the further authority to inspect at such times and the premises and all desks, safes, vaults, and other fixtures and furniture contained in or upon such premises for the purpose of ascertaining whether cigarettes are hold or possessed in violation of this Section.

16-503.12 Penalties and Interest

Penalties of five percent (5%) shall be charged on all taxes not paid when due and interest shall be charged on the unpaid amount of all taxes under this Section not paid when due at a rate of one-and-one-half percent (1 ½%) per month from the date of delinquency until payment.

16-503.13 Civil Action for Tax, Penalties and Interest

In any case of failure of any taxpayer to pay taxes imposed by this Section or penalties or interest due under this Section, the amount of such tax, penalty or interest may be recovered in a civil action brought by the Tribe in tribal court pursuant to Title II of this Code, or in any other court of competent jurisdiction. In any such action the Tribe shall be entitled to recover its reasonable costs of bringing suit, including attorneys' fees.

16-503.14 Criminal Sanctions

- a. Any Indian who sells, offers for sale, displays for sale or possesses with intent to sell, to or by Indians any cigarettes which do not bear stamps as required by this Section, is guilty of a Class B misdemeanor. The display or possession, except in original unopened shipping package, container or case, of cigarettes by any dealers unless fully stamped as required by this Section

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shall constitute prima facie evidence of possession with intent to sell the same.

- b. Any Indian who forges a counterfeit of any stamp or who uses a counterfeit stamp or who knowingly possesses a counterfeited stamp to evade the tax imposed by this Section, is guilty of a Class A misdemeanor.
- c. Any Indian who fails to make the reports or prescribe the records required by Section 16.503.11, is guilty of a Class B misdemeanor.

16-503.15 Construction of this Section

This Section is not intended to impose tax burdens on transactions involving Indians which do not exist in transaction involving non-Indian; nor is it intended to impose tax burdens on transactions within the South Dakota portion of the Reservation which do not exist in transactions occurring in South Dakota but not on the Reservation. Accordingly, this Section should be construed, where possible, to be consistent with corresponding provisions of the South Dakota cigarette tax.

16-503.16 Tobacco Tax

In addition to the tax imposed by Section 16-503.3, there is imposed, whether or not a sale occurs, tax upon all tobacco products in this state and upon any person engaged in business as a licensed distributor or licensed wholesaler thereof, at the rate of thirty-five percent (35%) of the wholesale purchase price of such tobacco products. Such tax shall be imposed at the time the distributor or wholesaler rings or causes to be brought into the Reservation tobacco products for sale; makes, manufactures, or fabricates tobacco products in this Reservation for sale in the Reservation; or ships or transports tobacco products to dealers on this Reservation to be sold by those dealers. For the purposes of this Section, wholesale purchase price is the price for which a manufacture sells tobacco products to a licensed distributor or licensed wholesaler exclusive of any discount or other reduction.

Section 16-504 Realty Improvement Contractors' Excise Tax**16-504.1 Definitions**

The following words, terms and phrases, when used in this Section, have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

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1. "Contractors", include prime and subcontractors engaged in realty Improvement contracts and include without limitation those enumerated in the Standard Industrial Classification Manual of 1987 as prepared by the statistical policy division of the Office of Management and Budget, Office of the President of the United States.
2. "Gross Receipts", means the amount received directly or indirectly In money, credits, property or other money's worth in consideration of the performance of realty improvement contracts within this state, without any deduction on account of the cost of the property sold, the cost of materials used, the cost of services or labor purchased, amounts paid for interest or discounts or any other expenses whatsoever, nor may any deduction be allowed for losses. Gross receipts include those materials furnished to the prime contractor or subcontractor by the owner or the lessee of the realty improvement. For the purposes of measuring the tax imposed by this Section, gross receipts include the greater of the cost or fair market value of materials used by a contractor or subcontractor in the performance or a contract regardless of whether the contractor subcontractor owns or furnishes the materials.
3. "Gross Receipts from Utility Contracts", means the amount received Directly or indirectly in money credits, property or other money's worth in consideration of the performance of realty improvement contracts within this state, without any deduction on account of the cost of the property sold, the cost or materials used, the cost of services or labor purchased, amounts paid for interest or discounts or any other expenses whatsoever, nor may any deduction be allowed for losses, but do not include materials furnished to the prime contractor or subcontractor by the owner or the lessee of the realty improvement.
4. "Indian", means an individual who is a member, either enrolled or eligible For enrollment, of any Indian tribe recognized by the United States or an organization composed exclusively thereof and organized under the Constitution of the Standing Rock Sioux Tribe.

16-504.2 Tax Imposed on Receipts from Realty Improvements Contracts
with Utilities

There is imposed an excise tax of two percent (2%) upon the gross receipts as defined by Section 16.504.1(3) of both the prime contractors and subcontractors engaged in contracts for realty improvements within the South Dakota portion of the Reservation performed for utility companies. Utility companies include: railroad companies, telephone companies, telegraph companies, electric, heating, water and gas companies, rural electric

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companies, rural water systems; also included are municipal utilities which offer electric, light, heat, power and telephone services. Waste water treatment facilities and sewer systems are not utility companies.

16-504.3 Tax Imposed on Prime Contractor's Receipts from Realty Improvement Contracts

There is imposed an excise tax upon the gross receipts of all prime contractors engaged in realty improvement contracts within the South Dakota portion of the Reservation, except those contractors qualifying as being taxed pursuant to Section 16.504.2, at the rate of two percent (2%).

16-504.4 Effective Date of Tax

This Section became effective on January 1, 1991, and applies to:

- a. All realty improvement contracts bid after December 31, 1990;
- b. All realty improvement contracts under which construction commences after January 1, 1991, if there is no bid;
- c. Receipts from sales of real property pursuant to Section 16.504.11, if the contract to sell the property is executed after January 1, 1991.

The amendment to this Section, including but not limited to Section 16.504.2, which changed the rate of the tax from one and one half percent (1½%) to two percent (2%), are effective January 1, 2004.

16-504.5 Tax Measured by Gross Receipts Upon Accrual Basis

The Tribe, through the South Dakota Department of Revenue and Regulation as contractor for the Tribe, shall allow contractors to report and pay contractor's excise tax measured by gross receipts upon an accrual basis if:

- a. The contractor has not changed his basis in the previous calendar year;
- b. The contractor's records are kept in a manner which may be audited to determine whether contractor's excise tax and use tax are paid for all realty improvement contracts;
- c. The contractor has made a written request to the South Dakota Department of Revenue and Regulation as contractor for the Tribe for authority to pay tax on the accrual basis; and
- d. Authority to pay tax on the accrual basis applies only to realty improvement contracts commencing after the authority is granted.

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16-504.6 Payment of Tax on Cash Basis

If the Tribe, through the South Dakota Department of Revenue and Regulation as contractor for the Tribe, has granted a contractor the authority to report and pay contractor's excise tax on the accrual basis and the contractor requests in writing for the authority to report and pay the tax on the cash basis, the Tribe, through the South Dakota Department of Revenue and Regulation as contractor for the Tribe, may grant such authority if assessment and collection of taxes are not jeopardized.

16-504.7 Taxes on Receipts of Worthless Accounts

Taxes paid on gross receipts represented by accounts found to be worthless and actually charged off for income tax purposes, may be credited upon a subsequent payment of the tax. If such accounts are thereafter collected by the contractor, the tax shall be paid upon the amount so collected.

16-504.8 Prime Contractors and Subcontractors Subject to Tax

- a. Prime contractors and subcontractors engaged in realty improvements contracts include without limitation those enumerated in the Standard Industrial Classification Manual of 1987 as prepared by the statistical policy division of the officer of management and budget, office of the President: construction (division c).
- b. Industries exempt from tax. The following services enumerated in the Standard Industrial Classification Manual of 1987 as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, are exempt from the provisions of this Section: Industry no 1752, floor laying and other floor work, not elsewhere classified; and Industry no. 7699, repair shops and related services, not elsewhere classified but only locksmiths and locksmith shops.

16-504.9 Subcontractors

For the purpose of this Section, a subcontractor is a person contracting with a prime contractor to perform all or part of a realty improvement the prime contractor has contracted to perform. For highway construction projects, a subcontractor includes any person contracting with a prime contractor to perform any of the following services as part of the project: traffic control, striping, flagging, operation of pilot cars, signing, landscaping, seeding,

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sodding, mulching and erosion control. A prime contractor shall issue a certificate to a subcontractor showing the prime contractor's valid contractors' excise tax license number. The form shall be prescribed by the South Dakota Department of Revenue and Regulation as contractor for the Tribe. Any subcontractor who fails to retain a certificate and a record of project designations is considered a prime contractor and is subject to tax under this Section. Any person not a prime contractor who provides a certificate is liable for tax equal to the amount of tax the person accepting the certificate would have been liable for if the certificate had not been issued. The tax is due at the time the person accepting the certificate would have been required to pay the tax. In addition to any tax or interest due, persons who are not prime contractors providing certificates are liable for penalty of ten percent (10%) of the tax. The United States, the Standing Rock Sioux Tribe, the state of South Dakota, or any other state or public or Municipal Corporation in this state may not issue a certificate.

16-504.10 Prime Contractor—Definition

For the purpose of this Section, a prime contractor is a person entering into a realty improvement contract or a contract for construction services as enumerated in division C of the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, with the United States and its instrumentalities, the Standing Rock Sioux Tribe and its subdivisions, the state of South Dakota and its subdivisions, or any other state or public corporation, or person. If a contractor engages in services not specifically listed in division C of the Standard Industrial Classification Manual, 1987, then the services must entail the construction, building, installation, or repair of a fixture to realty before the gross receipts are subject to the tax imposed by this Section. Operative builders, industry number 1531, as enumerated in the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, are prime contractors regardless of whether they perform construction work themselves or contract with other contractors. A person who is not primarily in the business of making realty improvements and regularly employs persons for the purpose of repairing, maintaining or making realty improvements for his own use and who repairs, maintains or make a realty improvement for his own use with his regular employees is not a prime contractor and is not liable for the tax herein.

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16-504.11 Improvement Without Contract

If any person, except for a person making an isolated or occasional realty improvement and who does not hold himself out as engaging in the business of making realty improvements, make a realty improvement without a realty improvement contract and subsequently sells the property containing the realty improvement or the realty improvement at any time subsequent to the commencement of the project and within four years of its completion, the gross receipts from the sale of the realty improvement shall be subject to the excise tax imposed on the gross receipts of contractors engaged in realty improvement contracts. In determining the gross receipts from the sale of such realty improvements when land or land and improvements completed four years prior to the sale are included in the sale, land and such improvements shall be valued at cost or fair market value, whichever is greater, and the portion of the gross receipts attributable to land or land and improvements completed four years prior to sale shall be deducted from the sale price.

16-504.12 Tax Imposed on Improvements Built for Lease

There is imposed a tax at the rate provided in Section 16.504.3, on the fair market value of the improvement upon any person who builds a building for his use or lease to others, with a value of over one hundred thousand dollars (\$100.00). If the realty improvement becomes subject to tax under Section 16.504.10, credit for tax due under that section is given for any tax paid under this section. The tax imposed by this Section is due the next reporting date after the improvement is used or leased. The tax imposed by this section does not apply to the United States, the Standing Rock Sioux Tribe and its subdivisions, the state of South Dakota and its subdivisions, or public or municipal corporations in the state of South Dakota.

16-504.13 Administration of Tax

As to licensing and reports, the tax imposed by this Section shall be administered in the same manner as the tax imposed by Section 16-501 et seq. of this Title.

16-504.14 Report and Payment of Tax

- a. The tax imposed shall be reported and paid pursuant upon the receipts received under the contract during the period.

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- b. Filing of returns. Any person who is the holder of a contractor's excise tax license or is a contractor whose receipts are subject to contractor's excise tax during the periods specified by this section shall make a return and remittance to the South Dakota Department of Revenue and Regulation as contractor for the Tribe, on forms prescribed and furnished by the Department in the following manner:
- b(1) Any person whose tax liability is one thousand dollars (\$1,000.00) or more annually, shall file the return and remit the tax on or before the twentieth (20th) day of the month following each monthly period;
 - b(2) Any person whose tax liability is less than one thousand dollars (\$1,000.00) annually, shall file the return and remit the tax on or before the last day of the month following each two-month period;
 - b(3) Any person whose tax liability is one thousand dollars (\$1,000.00) or more annually and who remits the tax by electronic transfer to the state, shall file the return by electronic means on or before the twenty-third (23rd) day of the month following each monthly period and remit the tax on or before the second to the last day of the month following each monthly period.

The Tribe, through the South Dakota Secretary of Revenue and Regulation as its contractor, may grant an extension of not more than five (5) days for filing a return and remittance. Unless an extension is granted, the person with the tax liability shall pay a penalty or interest if a return or remittance is not made on time.

- c. Schedule of filing returns and remittance. The Tribe, through the South Dakota Secretary of Revenue and Regulation as contractor for the Tribe, may require or allow a return and remittance to be filed on a monthly, bimonthly, semiannual, or annual basis. The return and remittance is due the last day of the month following the reporting period. For any person issued a temporary or seasonal contractor's excise tax license, the return and remittance may be required at a time determined by the South Dakota Secretary of Revenue and Regulation as contractor for the Tribe.

16-504.15 Contractors May List Excise and Use Taxes as Separate Line Item

A contractor may list the contractor's excise tax and any use tax imposed under Section 16-502 et seq. of this Title as a separate line item on all contracts and bills, both for public and private entities. The line item for excise and use taxes is a part of the contractor's total bill and is collectible for all entities, both public and private. A contractor may list the contractor's excise tax and any use tax imposed under Section 16-502 et seq. of this Title as a

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separate line item on all contracts and bills, both for public and private entities. The line item for excise and use taxes is a part of the contractor's total bill and is collectible for all entities, both public and private.

16-504.16 Contractor to Post Excise Tax License Number

A contractor shall post his excise tax license number assigned pursuant to this Section with the building permit for a realty improvement project.

16-504.17 When Building Permit Not Required

The provisions of Section 16.504.16 do not require a building permit if the political subdivision where the realty improvement is located does not require a building permit.

16-504.18 Personal Liability of Officers of Corporation

If a corporation subject to tax under this Section fails for any reason to file the required returns or to pay the tax due, any of its officers having control, or supervision of, or charged with the responsibility for making such returns and payments shall be personally liable for such failure. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected as provided by law.

If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation shall provide the South Dakota Department of Revenue and Regulation as contractor for the Tribe with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section shall be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not apply to elected or appointed officials of a municipality if they are bonded pursuant to SDCL 9-14-6 and SDCL 9-14-6.1.

16-504.19 Penalties for Violation of Section

Any person who:

- a. Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by this Section is guilty of a Class A misdemeanor;

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- b. Fails to pay tax due under this Section within thirty (30) days from the date the tax becomes due is guilty of a Class B misdemeanor;
- c. Fails to keep the records and books required herein or refuses to exhibit these records to the Tribe or its agents for the purpose of examination is guilty of a Class B misdemeanor;
- d. Fails to file a return required by this Section within thirty (30) days from the date the return is due is guilty of a Class B misdemeanor;
- e. Engages in business under this Section without obtaining a contractor's excise tax license is guilty of a Class B misdemeanor;
- f. Engages in business under this Section after his contractor's excise tax license has been revoked by the Secretary of Revenue is guilty of a Class A misdemeanor;
- g. Violates either subdivision (b) of Subdivision (d) of this section two or more times in any twelve (12) month period is guilty of a Class A misdemeanor;
- h. Engages in business under this Section without obtaining a Contractor's excise tax license after having been notified in writing by the Secretary of Revenue and Regulation that the person is a contractor subject to the provisions of the contractors' excise tax laws is guilty of a Class A misdemeanor. It is not a violation of this subdivision if the person engaging in business files an application for a contractor's excise tax license and meets all lawful prerequisites for obtaining such license within three (3) days from receipt of written notice from the Secretary.

For purpose of this section "person" includes corporate officers having control, supervision of or charged with the responsibility for making tax returns or payments.

16-504.20 Contractor's Excise Tax License Required

Every contractor or person engaging in a business in the South Dakota portion of the Reservation whose receipts are subject to tax under this Section shall file with the South Dakota Department of Revenue and Regulation as contractor for the Tribe, an application for a contractor's excise tax license. Every application shall be made upon a form prescribed by the South Dakota Department of Revenue and Regulation as contractor for the Tribe and shall set forth the name under which the applicant transact or intends to transact business, the location of his place or places of business, and such other information as the Tribe or the South Dakota Department of Revenue and Regulation as contractor for the Tribe, may require. The application shall be signed by the owner, if a natural person; in the case of an association of partnership, by a member or partner thereof; or in the case of a corporation, by

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an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority.

16-504.21 Issuance of License—Assignment Prohibited

The Tribe, through the South Dakota Department of Revenue and Regulation as contractor for the Tribe, shall grant and issue to each applicant a contractor's excise tax license. A license is not assignable and shall be valid only for the person in whose name it is issued. Any license issued is valid and effective without further payment of fees until canceled or revoked.

16-504.22 Refusal to Issue License for Failure to Pay Tax Bond

The Tribe, through the South Dakota Department of Revenue and Regulation as contractor for the Tribe, may refuse to issue a license to any person who is delinquent in payment of contractor's excise tax or use tax. The Tribe, through the South Dakota Department of Revenue and Regulation as contractor for the Tribe, may also require an applicant to furnish bond, or other adequate security, as security for payment of any contractor's excise tax and use tax that may become due, or require a bond or security as a condition precedent to continuing in business as a contractor.

16-504.23 Enforcement and Administration

The Standing Rock Tax Commission is hereby charged with enforcement and administration of the provisions of this Section.

Section 16-505 Motor Fuels Tax**16-505.1 Definition of Terms**

Terms used in this Section mean:

1. "ASTM", the American Society for Testing and Materials, a private organization that utilizes committees of industry representatives and regulators to develop product quality standards and test methods to be used by industries, regulatory agencies, and purchasing agents;
2. "Aviation gasoline", a motor fuel that is formulated and produced specifically for use in aircraft;

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3. "Biodiesel blend", a blended special fuel containing a minimum of two percent (2%) by volume of biodiesel. "Biodiesel", means a renewable, biodegradable, mono alkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets American Society For Testing and Materials Specification D 6751-02 for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels as in effect on December 31, 2002;
4. "Blender", a person engaged in the activity of making blends or purchasing ethyl alcohol for resale to other blenders. A licensed blender may purchase denatured ethyl alcohol untaxed if the alcohol has not previously been blended with gasoline. A person need not be a blender to import or export an ethanol blend or purchase a fuel invoiced as a ten percent (10%) ethanol blend, M85 or E85 from a licensed supplier if the ethyl alcohol and the gasoline are both loaded over a terminal rack, or purchased as a blended product from a licensed blender. A person need not be a blender to mix two or more substances which have previously been subject to the fuel excise tax imposed by this Section, or two or more substances which have not been subject to the fuel excise tax imposed by this Section, if the mixed product does not result in producing a motor fuel or special fuel;
5. "Blends", one or more petroleum product, mixed with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, as airplane, or a motorboat. The term does not include those blends that occur in the process of refining by the original refiner of crude petroleum or by the blending of products known as lubricating oil and greases. The term does not apply to fuel additives which have been subject to sale or use tax, or to dye;
6. "Book transfer", a transaction in which a product is transferred from one supplier or out-of-state supplier or position-holder to another, if:
 - a. The transaction includes a transfer from the person who holds the inventory position for motor fuel or special fuel in the terminal as indicated in the records of the terminal operator; and
 - b. The transfer is completed within the terminal at the time of the removal from the terminal for delivery to a customer of the transferee. The bill of lading issued by the terminal operator shall indicate the transferee as the supplier or shipper;
7. "Bulk container" or "bulk cargo area", any tank, vessel, or container used to store or transport fuel. This term does not include a supply tank which is mounted on a motor vehicle and connected to the engine of that motor vehicle;

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8. "Bulk plant", a motor fuel or special fuel storage facility, other than a terminal, that is primarily used for redistribution of motor fuel or special fuel by a transport truck, tank wagon, or rail car;
9. "Compressed natural gas", natural gas which has been compressed, but not to a liquid state, for use as a motor vehicle fuel and which for purposes of taxation as a motor vehicle fuel, shall be converted to equivalent liquid gallons of gasoline at the rate of one hundred twenty cubic feet of natural gas as its natural service delivery line pressure to equal one volumetric gross gallon of gasoline;
10. "Compressed natural gas vendor", a person engaged in the business of selling compressed natural gas for use in the engine fuel supply tanks of motor vehicles and is regulated by the South Dakota Public Utilities Commission;
11. "Consignee", the first person to hold title to fuel after it is withdrawn at a terminal rack or bulk plant and delivered into a bulk cargo area of a transport truck or railcar. The name of the consignee shall be identified and prominently displayed on the bill of lading;
12. "Destination", the State, Reservation or other place for which a motor vehicle, railcar, or barge is destined for off-loading of motor fuel or special fuel from its bulk cargo area by the consignee into storage facilities for consumption or resale. If title of the fuel passes from the consignee to another party prior to off-loading, the destination is the State, Reservation or other place where title passes. The destination shall be identified and prominently displayed on the bill of lading. If the destination is not prominently displayed on the bill of lading, it is presumed that the South Dakota portion of the Reservation is the destination;
13. "Ethanol blend", a blended motor fuel, commonly referred to as gasohol, containing a minimum of ten percent (10%) by volume of ethyl alcohol of at least ninety-nine percent (99%) purity derived from cereal grain which is blended exclusively with a product commonly or commercially known or sold as gasoline. The blending of casing head or natural gasoline is not permitted in an ethanol blend fuel product in quantities larger than required to denature the ethyl alcohol;
14. "E85", a petroleum product that is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline that typically contains eighty-five percent (85%) ethanol by volume, but at a minimum must contain seventy-five percent (75%) ethanol by volume. For the purposes of this Section, the energy content of E85 is considered to be eighty-two thousand BTUs per gallon. E85 produced for use as a motor fuel shall comply with ASTM specification D 5798-99;
15. "Ethanol producer", any person who for the purpose of making ethanol blend engages in the business of producing ethyl alcohol for sale, use, or distribution;
16. "Export", with respect to:

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- a. A seller, when the seller's motor fuel or special fuel is delivered to a location outside the South Dakota portion of the Reservation and outside South Dakota by or for the seller; and
 - b. A purchaser, when the purchaser's motor fuel or special fuel is delivered to a location outside the South Dakota portion of the Reservation and outside South Dakota by or for the purchaser;
17. "Exporter", any person, who purchases or owns motor fuel or special fuel in the South Dakota port of the Reservation and transports or delivers or causes the fuel to be transported or delivered to a state other than South Dakota or another country by any means other than pipeline;
18. "Gallon", for purposes of fuel taxation, a United States gallon measured on a gross volume basis. Temperature adjusted or net gallons of measurement are not acceptable as units of measurement for taxation purposes unless used for the calculation of liquid petroleum gas or compressed natural gas;
19. "Gasoline", a fuel product commonly or commercially known or sold as gasoline or reformulated gasoline, which has not been blended with alcohol, naphtha, or any other fuel products such as casing head, absorption, drip, or natural gasoline's;
20. "Heating fuel", a special fuel that is burned in a boiler furnace, or stove for heating or industrial processing purposes;
21. "Highway construction work", all work which is performed in any capacity to propel vehicles, machinery, or equipment within the right-of-way in the construction, reconstruction, repair, or maintenance of public highways;
22. "Highway contractor", any person engaged in the activity of highway construction work. The term does not include any person who only owns and operates motor vehicles within the right-of-way hauling gravel or concrete and does not own or operate off-road machinery in the highway construction work;
23. "Import", with respect to:
- a. A seller, when the seller's motor fuel or special fuel is delivered into the South Dakota portion of the Reservation or into South Dakota from a location outside the Reservation and outside the State of South Dakota by or for the seller; and
 - b. A purchaser, when the purchaser's motor fuel or special fuel is delivered into the South Dakota portion of the Reservation or into South Dakota from outside the Reservation and outside the State of South Dakota by or for the purchaser;
24. "Importer", any person who purchases or owns motor fuel or special fuel in a state other than South Dakota or another country and transports or delivers or

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causes the fuel to be transported or delivered into the South Dakota portion of the Reservation by any means other than pipeline;

25. "Jet fuel", a special fuel that is formulated and produced specifically for use in jet aircraft;
26. "Liquid", any substance that is liquid in excess of sixty (60) degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute;
27. "Liquid petroleum gas", liquid petroleum gas (LPG) when used as a motor vehicle fuel shall be converted for purposes of taxation to equivalent liquid gross gallons using the conversion factor of 4.24 pounds per gallon of liquid at sixty (60) degrees Fahrenheit;
28. "Liquid petroleum gas user", a person who uses liquid petroleum gas in the engine fuel supply tank of a motor vehicle and wishes to purchase liquid petroleum gas in bulk into a storage tank which has a delivery hose attached thereto on a tax unpaid basis;
29. "Liquid petroleum gas vendor", a person engaged in the business of selling liquid petroleum gas, wholesale or retail, for use in the engine fuel supply tank of a motor vehicle in this state or has the capability of selling liquid petroleum gas for use in the engine fuel supply tank of a motor vehicle. The term applies to any vendor who uses LPG in a motor vehicle;
30. "M85", motor fuel containing eighty-five percent (85%) or more by volume of methyl alcohol;
31. "Marketer", any person who is engaged in business as a wholesale distributor or retail dealer;
32. "Motor fuel", includes:
 - a. All products commonly or commercially known or sold as gasoline, ethyl alcohol, methyl alcohol, and all gasoline blends. These products may include in some quantity casinghead, absorption, natural gasoline, benzol, benzene, naphtha, except that flashing above one hundred (100) degrees Fahrenheit, and Tagliabue closed cup test, which is sold and used only as cleaner's or painter's solvent;
 - b. Any liquid prepared, advertised, offered for sale, or sold for use as commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products "American Society of Testing Material Designation D-86) shows not less than ten percent (10%) distilled (recovered) below three hundred forty-seven (347) degrees Fahrenheit

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and not less than ninety-five percent (95%) distilled (recovered) below four hundred sixty-four (464) degrees Fahrenheit; and

- c. The term does not include liquefied gases which would not exist as liquids at a temperature of sixty (60) degrees Fahrenheit and a pressure of fourteen and seven-tenths (14.07) pounds per square inch absolute; nor does it include compounds or blends of fuels which are prepared and used strictly as racing fuels in motor vehicles operated solely off of public highways in organized racing events;
33. "Motor vehicle", includes all vehicles that are required to be registered and licensed by a jurisdiction and are designed for use upon the public roads and highways. Terrigators and spray coupes that are not designed for use upon the public roads and highways are not included in this definition;
34. "Nonhighway agricultural use", fuel used off the public highways and roads for producing, raising, or growing, and harvesting of food or fiber upon agricultural land, including dairy products, livestock, and crops. The services of custom harvesters, chemical applicators, fertilizer spreaders, hay grinders, and cultivators are considered agricultural purposes;
35. "Nonhighway commercial use", fuel used off the public highways and roads for business purposes other than a non-highway agricultural use. Recreational vehicles including snowmobiles, go-carts, golf carts, bumper boats, and similar vehicles are not included in this definition;
36. "Out-of-state supplier", any person who does not meet the geographic jurisdictional connections to either the South Dakota portion of the Reservation or the State of South Dakota required of a supplier, and is registered under Section 4101 of the Internal Revenue Code;
37. "Person", a natural person, a partnership, a limited partnership, a joint venture, a firm, an association, a corporation, a cooperative, a representative appointed by a court, South Dakota an any political subdivision of the State, or any other entity, group, or syndicate;
38. "Public highways or roads", any way or place of whatever nature, including waterways and snowmobile trails, which are open to the use of the public as a matter of right for the purpose of vehicular, snowmobile, or watercraft travel, even if the way or place is temporarily closed for the purpose of construction, reconstruction, maintenance, or repair.
39. "Petroex number", a string of alpha or numeric characters that are used to communicate transactional information between a transporter consignee and a supplier;
40. "Qualified motor vehicle", a motor vehicle used, designed, or maintained for transportation of persons or property and:

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- a. Having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand (26,000) pounds;
 - b. Having three (3) or more axles regardless of weight; or
 - c. Is used in combination when the weight of such combination exceeds twenty-six thousand (26,000) pounds gross vehicle weight. The term does not include recreational vehicles used for pleasure;
41. "Racing fuel", a motor or special fuel that is specifically produced for use in race cars. The term does not include E85 or M85;
42. "Rack", a dock, a platform, or an open bay with metered pipes, hoses or both that is used for delivering motor fuel or special fuel from a refinery or terminal into the cargo area of a motor vehicle, rail car, marine vessel, or aircraft for subsequent transfer or use into the engine fuel supply tank of a locomotive or any self-propelled vehicle. The term includes a pipe, series of pipes, or pipeline used to withdraw motor fuel or special fuel from one pipeline system to another pipeline system or storage facility, if the fuel withdrawn is committed for sale or use in the South Dakota portion of the Reservation;
43. "Retail dealer", a person who sells or distributes motor fuel or special fuel to the end user within the South Dakota portion of the Reservation;
44. "Reservation", means all lands within the Standing Rock Sioux Reservation;
45. "Sale", the title of fuel passed from the seller to the buyer for a consideration;
46. "Special fuel", all combustible gases and liquids that are:
- a. Suitable for the generation of power in an internal combustion engine or motor; or
 - b. Used exclusively for heating, industrial, or farm purposes other than for the operation of a motor vehicle.
- The term includes diesel fuel, fuel oil, heating fuel, all special fuel blends, and all kerosene products except K-1. The term does not include motor fuel, liquid petroleum gas, and compressed natural gas, natural gas which is not compressed natural gas, compounds or blends of fuels which are prepared and used strictly as racing fuels in motor vehicles operated solely off of public highways in organized racing events. The term, "special use fuel", is synonymous with the term, "special fuel";
47. "Supplier or shipper", a person that imports or acquires upon import into the South Dakota portion of the Reservation or South Dakota motor fuel or special fuel by pipeline or marine vessel from a state other than South Dakota, a territory, or possession of the United States into a terminal within the South Dakota portion of this Reservation, or that imports motor fuel or special fuel into

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the South Dakota portion of this Reservation from a foreign country or that produces, manufactures, or refines motor fuel or special fuel, except ethyl alcohol, within the South Dakota portion of this Reservation, or that owns motor fuel or special fuel in the pipeline and terminal distribution system in the South Dakota portion of this Reservation and makes sales or authorizes removal of motor fuel or special fuel from a terminal in the South Dakota portion of this Reservation at the rack or is the receiving exchange partner in a two party exchange or the final transferee in a book transfer, and is subject to the general taxing or police jurisdiction of the Tribe or State of South Dakota, or is required to be registered under Section 4101 of the Internal Revenue Code for transactions in taxable fuels in the bulk distribution system. The person need not be required to be registered under Section 4101 of the Internal Revenue Code if operating as a railroad company or utility company. A terminal operator may not be considered a supplier merely because the terminal operator handles motor fuel or special fuel consigned to it within a terminal. The name of the supplier or shipper shall be identified and prominently displayed on the bill of lading;

48. "Tank wagon", a vehicle designed to transport motor fuel or special fuel in bulk, in lots of four thousand two hundred gallons or less;
49. "Terminal", a fuel refinery or storage and distribution facility that is supplied by pipeline a marine vessel, from which motor fuel or special fuel may be removed at a rack and that has been registered as a qualified terminal by the Internal Revenue Service for receipt of taxable fuels free of federal fuel taxes;
50. "Terminal operator", the person who by ownership or contractual agreement is charged with the responsibility and physical control over the operation of the terminal;
51. "Transfer in bulk into or within a terminal" includes the following:
 - a. A marine barge movement of fuel from a refinery or terminal to a terminal;
 - b. Pipeline movements of fuel from a refinery or terminal to terminal;
 - c. Book transfers of product within a terminal between suppliers, out-of-state suppliers, or position holders before completion of the removal of the fuel across the terminal rack;
 - d. Two-party exchanges between licensed suppliers and out-of-state suppliers or position holders;
52. "Transmix", the buffer between two different products in a pipeline shipment, or a mix of two different products within a refinery or terminal that results in an off-grade mixture;
53. "Transporter or carrier", any person who engages in the activity of interstate or intrastate movement of fuel by transport truck, rail car, or by any other means in

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quantities of over four thousand two hundred (4,200) gallons. The term does not include persons who transport fuel by pipeline or barge. The name of the transporter or carrier shall be identified and prominently displayed on the bill of lading;

54. "Transport truck", a vehicle, combination of vehicles, or railcar designed to transport motor fuel or special fuel in bulk, in lots greater than four thousand two hundred (4,200) gallons;
55. "Two-party exchange", a transaction in which a product is transferred from one supplier or position holder to another in exchange for other product, sometimes located at a different location, if:
 - a. The transaction includes a transfer from the person who holds the original inventory position for motor fuel or special fuel in the terminal as indicated in the records of the terminal operator; and
 - b. The exchange transaction is completed before removal from the terminal by the receiving exchange partner. The bill of lading issued by the terminal operator shall indicate the receiving exchange partner as the supplier or shipper;
56. "Wholesale distributor", any person who purchases motor fuel or special fuel from a supplier or another wholesale distributor, or removes the fuel from a terminal at the rack, for subsequent sale to another wholesale distributor or retail dealer.

16-505.2 Fuel Excise Tax Rates

The fuel excise tax rates for the tax imposed by this Section are as follows:

- a. Motor fuel (except ethanol blends, E85 and M85 blends, and aviation gasoline) -- \$.22 per gallon;
- b. Special fuel (except jet fuel) -- \$.20 per gallon;
- c. Ethanol blends -- \$.20 per gallon;
- d. Aviation gasoline -- \$.06 per gallon;
- e. Jet fuel -- \$.04 per gallon;
- f. E85 and M85 -- \$.10 per gallon;
- g. E85 and M85 used in aircraft -- \$.04 per gallon;
- h. Liquid petroleum gas -- \$.20 per gallon;
- i. Compressed natural gas -- \$.10 per gallon.

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16-505.3 Imposition of the Excise Tax

A fuel excise tax at the rates set out in Section 16.505.2 is imposed on:

- a. All motor fuel and special fuel removed from a terminal on the South Dakota portion of the Reservation at the rack or used at the terminal, except that the tax is not imposed if the fuel is withdrawn from a terminal for export by a person or entity specifically licensed to export fuel to the place indicated as the destination on the bill of lading issued by the terminal operator for the fuel. This tax is not imposed if the fuel removed is ethyl alcohol which has been removed by a licensed blender or supplier, for resale over a terminal rack, is invoiced separately from gasoline, and is not sold as an ethanol blend;
- b. All motor fuel and special fuel, except unblended ethyl alcohol, that is imported into the South Dakota portion of the Reservation in the bulk cargo area of any motor vehicle, vessel rail car, or trailer by any means other than through a terminal located within the South Dakota portion of the Reservation upon its entry into the South Dakota portion of the Reservation;
- c. All special fuel used in the South Dakota portion of the Reservation in the engine fuel supply tank of qualified motor vehicles involved in interstate commerce;
- d. Ethyl alcohol and other substances blended with motor fuel or undyed special fuel unless the ethyl alcohol or other substance has previously been taxed by the provisions of this Section. The tax imposed shall be at the rate indicated in Section 16.505.2 of the dominant motor fuel or undyed special fuel with which the substance is blended unless the substance is ethyl or methyl alcohol blended by a licensed blender to create an ethanol, E85, or M85 blend in which case it shall be at the ethanol, E85 or M85 blend rate as indicated in Section 16.505.2;
- e. Unblended ethyl alcohol sold by an ethanol producer, supplier, importer, or blender unless the sale is made to a licensed supplier for resale, to a licensed blender, or to a licensed exporter for export to place other than either the South Dakota portion of the Reservation or South Dakota;
- f. All motor fuel or special fuel which has been removed from a terminal in the South Dakota portion of the Reservation at the rack by a licensed exporter for which the bill of lading issued for the fuel by the terminal operator indicates a destination other than the South Dakota portion of the Reservation or South Dakota, and the fuel is later diverted by the exporter to a destination within the Reservation or within South Dakota for off-loading or is transferred or sold to another person within the Reservation or within South Dakota prior to off-loading in any other destination outside South Dakota. This tax is not imposed if the fuel is ethyl alcohol, the exporter is also licensed as a blender or supplier, and the product is purchased and invoiced separately from gasoline and not as an ethanol blend;

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- g. Liquid petroleum gas and compressed natural gas sold or used by licensed vendors in the South Dakota portion of the Reservation for use in motor vehicles unless liquid petroleum gas is sold to a licensed liquid petroleum gas user;
- h. Liquid petroleum gas used in the engine fuel supply tank of a motor vehicle owned or operated by a liquid petroleum user which is used on the public highways or roads within the South Dakota portion of the Reservation;
- i. All motor fuel, special fuel and liquid petroleum gas used in the engine fuel supply tank of self-propelled machinery, equipment or vehicles used in highway construction or repair work done in the South Dakota portion of the Reservation within the right-of-way, unless the self-propelled machinery, equipment, and vehicles are owned or used by the Tribe or an agency, entity, contractor or subcontractor working on behalf of the Tribe.

16-505.4 Exemptions From Fuel Excise Tax

The following are exempt from fuel excise tax imposed by this Section:

- a. Motor fuel or undyed special fuel brought into the South Dakota portion of the Reservation by the Tribe, the federal government or defense fuel supply center for consumption in any Tribal or federal governmental motor vehicle, machinery, equipment, or aircraft.
- b. Motor fuel or undyed special fuel imported into the South Dakota portion of the Reservation by the Tribe, the federal government or defense fuel supply center for consumption in any Tribal or federal governmental motor vehicle, machinery, equipment, or aircraft;
- c. Special fuel that has been dyed in accordance with this Section. The tax liability is reestablished if the dyed special fuel is used in the engine fuel supply tank of self-propelled machinery and equipment for use in highway construction or repair work within the right-of-way within the South Dakota portion of the Reservation except for any highway construction done by the Tribe or any agency or entity, contractor, or subcontractor by or on behalf of the Tribe;
- d. Transmix removed from a terminal on the South Dakota portion of the Reservation or in South Dakota at the rack by the terminal operator and transferred to another terminal, or to a licensed supplier for refinement and re-introduction into the pipeline system;
- e. Undyed special fuel removed from a terminal on the South Dakota portion of the Reservation or in South Dakota at the rack and delivered directly into a railroad locomotive if the railroad company is also the supplier. Undyed special

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fuel transported from the terminal to the locomotive fueling site by truck or railcar is not exempt from the tax;

- f. Motor fuel or undyed special fuel removed from a terminal on the South Dakota portion of the Reservation or in South Dakota by an electrical power company or cooperative and directly used for the generation of electricity. Motor fuel or undyed diesel fuel transported from the terminal to an electrical generation plant by truck or railcar is not exempt from the tax; or
- g. Motor fuel or special fuel transfers in bulk into or within a terminal. The subsequent removal of the fuel from the terminal is not exempt from tax.

16-505.5 Dye Added to Exempted Special Fuel

Special fuel exempted under subdivision Section 16.505.4(c) shall have dye added to it at or before the time of withdrawal or refinery rack. At the option of the supplier, the dye added may be either:

- a. Dye required to be added pursuant to United States Environmental Protection Agency requirements; or
- b. Dye with specifications and amounts as required by the Internal Revenue Service.

16-505.6 Remittance of Excise Tax

The fuel excise tax imposed by this Section and which is not otherwise exempt shall be remitted to South Dakota as contractor for the Tribe as follows:

- a. By the supplier who owns title to the fuel immediately before it is removed from a terminal on the South Dakota portion of the Reservation or within South Dakota at the rack or used at the terminal. If a two party exchange has taken place, the receiving exchange partner shall remit the tax upon the subsequent removal of the fuel from the terminal. If a book transfer has taken place, the transferee shall remit the tax upon the subsequent removal of the fuel from the terminal. If the destination is not clearly indicated on the face of the bill of lading, Tribal taxes shall be remitted by the supplier;
- b. By the importer, unless the importer demonstrates that the fuel was acquired by the importer from a supplier located outside the South Dakota portion of the Reservation and outside the State of South Dakota licensed in as an out-of-state supplier with the State of South Dakota. This may be evidenced with a bill of lading indicating the Reservation or South Dakota as the destination and an invoice indicating that the Tribe's or South Dakota's tax was charged by the out-of-state supplier. An importer is not responsible for payment of the tax if the tax is being paid to South Dakota, as contractor for the Tribe, by another

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- jurisdiction with whom the Tribe or South Dakota has entered into an interstate precollection agreement;
- c. By the out-of-state supplier who owns title to the fuel immediately before it is removed from a terminal located outside the South Dakota portion of the Reservation or outside south Dakota if the bill-of-lading issued for the fuel by the terminal operator indicates either the South Dakota portion of the Reservation or South Dakota as the destination state unless the fuel is removed by the Tribe, the federal government or defense fuel supply center. If a two party exchange has taken place, the receiving exchange partner shall remit the tax upon the subsequent removal of the fuel from the terminal. If a book transfer has taken place, the transferee shall remit the tax upon the subsequent removal of the fuel from the terminal;
 - d. By the blender with regard to ethyl alcohol and other substances blended with fuel or undyed special fuel;
 - e. By the selling ethanol producer, supplier, importer, or blender with regard to unblended ethyl alcohol;
 - f. By the exporter who diverts the fuel to a destination within the South Dakota portion of the Reservation. The party who withdrew the fuel from the terminal at the rack shall pay the tax if the fuel is transferred or sold to another person within the South Dakota portion of the Reservation prior to off-loading in any destination outside the Reservation.
 - g. By the liquid petroleum gas vendor or compressed natural gas vendor;
 - h. By the liquid petroleum user, with payment of this tax due on a semi-annual calendar basis. The tax is due on the last day of the month following the end of the semi-annual period. If the last day of the month falls on a Sunday or holiday, the tax is due on the next working day.

16-505.7 Time and Method for Remittance of Taxes

- a. Due date for remittance of excise taxes. All tax required to be remitted by Section 16.505.6, is due and payable on or before the last day of the calendar month which follows the month in which the tax was imposed. If the last day of the month falls on a Sunday or legal holiday, the tax is due and payable on the next working day.
- b. Delayed payment of tax by wholesale distributor or retail dealer. A wholesale distributor or retail dealer who purchases fuel from a licensed supplier or out-of-state supplier may delay the payment of an amount equal to the tax required to be paid by the supplier or out-of-state supplier on the fuel removed from a terminal at the rack by the wholesale distributor or retail dealer or their shipper until the twenty-eighth (28th) day of the month, except the month of

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February, which is due on the twenty-seventh (27th) day of the month, on which the tax is due and payable by the supplier. The supplier or out-of-state supplier may not require payment prior to that date.

- c. Method of tax remittance by supplier of motor fuel or special fuel. Any supplier or out-of-state supplier required to remit the tax on motor fuel or special fuel shall remit the fuel taxes due by electronic fund transfer or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the South Dakota Department of Revenue and Regulation as contractor for the Tribe. The transfer or payment shall be made on or before the date the tax is due.

16-505.8 Reductions and Credits to Amount of Taxes Due

- a. Percentage allowed to be retained to off-set administrative expenses of timely reporting: Any supplier or out-of-state supplier who properly remits tax under this Section shall be allowed to retain an amount not to exceed two and one-fourth percent (2¼%) of the tax required to be paid on each gallon of fuel to the State of South Dakota as contractor for the Tribe. The amount to be retained is to help off-set the administrative expenses of timely reporting and payment of tax.
- b. Distribution of amount retained for administrative expenses: The amount that the supplier is permitted to retain under Section 16.505.8, shall be distributed by the supplier or out-of-state supplier as follows:
 - b(1) One-third ($\frac{1}{3}$) retained by the supplier or out-of-state supplier to help off-set the administrative expense of timely reporting and remitting of tax;
 - b(2) Two-thirds ($\frac{2}{3}$) to the wholesale distributor, retail dealer, or end user who withdraws fuel from the terminal at the rack to help off-set the cost of fuel lost due to shrinkage caused by evaporation or temperature change.
- c. Retention of administrative expenses not allowed for late reporting or remittance of tax: If a monthly report is file or the amount due is remitted later than the time required by this Section, the supplier, out-of-state supplier, or importer may retain one of the amounts authorized by Section 16.505.8(a) and Section 16.505.8(e).
- d. Percentage supplier is allowed to retain if payment is late from wholesale distributor, retail dealer or end user: If the purchasing wholesale distributor, retail dealer or end user pays the amount authorized to be delayed by Section 16.505.7(b) to the supplier later than allowed by this Section the supplier may retain the entire two and one-fourth percent (2¼%) allowed by Section 16.505.8(a).

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- e. Amount importer is allowed to retain for timely remittance: A licensed importer may retain an amount equal to two-thirds ($\frac{2}{3}$) of the allowance provided for in Section 16.505.8(a) for the tax timely reported and remitted by the importer to South Dakota as contractor for the Tribe.
- f. Payment by exporter of administrative cost allowance on refunded tax or fuel diverted to a location outside South Dakota: An exporter of fuel shall pay to South Dakota as contractor to the Tribe an amount equal to two-thirds ($\frac{2}{3}$) of the allowance provided for in Section 16.505.8(a) or the entire amount allowed for in Section 16.505.8(e) on the tax that the exporter is entitled to be refunded for motor fuel or undyed special fuel exported from the South Dakota portion of the Reservation which was withdrawn from a bulk plant on the South Dakota portion of the Reservation or from a terminal in the South Dakota portion of the Reservation for which a bill of lading was issued with a Reservation destination which was later diverted to a location outside of the State of South Dakota.
- g. Percent of remitted tax liquid petroleum vendor is allowed to retain: Any liquid petroleum vendor who properly remits tax under this Section may retain an amount equal to the percentage of tax remitted as follows:
 - g(1) Two percent (2%) of the first twenty-five thousand gallons taxed each month;
 - g(2) One percent (1%) on the gallons taxes in excess of twenty-five thousand (25,000) each month;
 - g(3) The maximum amount retained each month shall be five hundred dollars (\$500.00).

16-505.9 Liability of Corporations for Filing and Payment of Taxes—
Corporate Officers' Liability

A corporation subject to the taxes imposed by this Section and its corporate officers are jointly and severally liable for the filing of reports or returns and the payment of tax, penalty, and interest due. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. An officer subject to personal liability is not discharged from that liability upon vacating the office. An officer may be discharged from future liability upon notifying the secretary in writing. The sum due for such a liability may be assessed and collected as provided by law.

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16-505.10 Required Taxes Belong to the Tribe

The tax required to be paid by this Section belongs to the Tribe. The legal incidence of the tax falls upon the consumer of the fuel for the privilege of operating vehicles on the roads and highways within the Reservation. A licensee, as a fiduciary of the Tribe, shall hold the month in trust for the Tribe and for payment to the South Dakota Department of Revenue and Regulation as contractor for the Tribe as provided in this Section from the time the liability arises until it is paid to the South Dakota Department of Revenue and Regulation as contractor for the Tribe.

16-505.11 Bills of Lading and Documentation for Transporting Fuel

Any person operating a refinery, terminal, or bulk plant, or transporting motor fuel or special fuel in any vehicle, rail car, or vessel, or taking delivery of motor fuel or special fuel including but not limited to a wholesale distributor, retail dealer, or end consumer in the South Dakota portion of the Reservation, shall comply with all provisions of South Dakota law applicable to preparation, possession and record-keeping related to bills-of-lading, drop load tickets, diversion tickets and any other documentation required to be prepared, possessed or retained as provided in South Dakota law in connection with all aspects of transporting or taking possession of motor fuel and special fuel.

16-505.12 Licenses Required

A person may not engage in business on the South Dakota portion of the Reservation as a supplier, terminal operator exporter, transporter, importer, blender, liquid petroleum gas vendor, compressed natural gas vendor, wholesale distributor or retail dealer, liquid petroleum gas user, ethanol producer, bulk plant operator, or interstate fuel user, unless that person holds an unrevoked license or permit issued by the South Dakota Department of Revenue and Regulation as contractor for the Tribe.

16-505.13 Display of License at Place of Business

Each license shall be preserved and displayed at the place of business for which it is issued in a location visible to the public.

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16-505.14 Monthly Reports

- a. Information required: For the purpose of determining the amount of motor fuel and special fuel tax due, each licensed supplier, out-of-state supplier, importer, terminal operator, bulk plant operator, exporter, transporter, and blender shall file with the South Dakota Department of Revenue and Regulation as contractor for the tribe, on forms prescribed and furnished by the Department, a monthly report containing the information reasonably necessary to determine the amount of fuel excise tax due. A copy of each such report shall also be filed with the Tribal Tax Director. Each report shall comply with all reporting requirements of South Dakota and Tribal law.
- b. Time for filing report: Any report required by Section 16.505.14 shall be filed with respect to information for the preceding calendar month on or before the last day of each month unless the last day of the month falls on a Sunday or legal holiday in which case it is due on the next working day.
- c. Final report by licensee: A licensee shall, upon the discontinuance, sale, or transfer of the business, or upon the cancellation or revocation of a license, make a report as required under this Section marked "Final Report". The licensee shall pay all motor fuel and special fuel taxes and penalties that may be due under this Section except as may otherwise be provided by law.

16-505.15 Refunds

- a. Tax refund to consumer for nonhighway use: Any motor fuel consumer may apply to and obtain a refund from the South Dakota Department of Revenue and Regulation as contractor for the Tribe, of fuel taxes imposed by the Tribe under this Section, for motor fuel purchased and used by consumers in motor vehicles, recreation vehicles, and farm equipment used for nonhighway agricultural purposes or used in motor vehicles or equipment for nonhighway commercial uses. The portion of this refund attributed to nonhighway use of motor vehicles shall be calculated by multiplying the motor vehicle's average miles per gallon during the claim period times the number of nonhighway miles the vehicle was operated. The average miles per gallon and nonhighway miles shall be supported by actual individual vehicle fuel disbursement records and odometer readings. The portion of this refund attributed to nonhighway machinery and equipment shall be supported by individual vehicle fuel disbursement records. For the purposes of this section, the refund applies to any purchases of motor fuel made after July 1, 1999.
- b. Refund for Tribal highway construction or maintenance projects: When any construction, reconstruction, or maintenance of a public road, highway, street, or airport is undertaken by the Tribe, or any political subdivision, agency, entity, contractor or subcontractor on behalf of the Tribe and where public

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funds of the United States, or the Tribe or any political subdivision, agency, entity, contractor or subcontractor of the Tribe are directly used for the purchasing of motor vehicle fuel to be used in publicly owned vehicles for such construction, reconstruction, or maintenance, such motor vehicle fuel is subject to a refund of the tax paid on the fuel as provided for in this Section and under the same terms and conditions.

- c. Other refunds, credits and incentive payments: To the extent that any person or entity including the Tribe has paid motor fuel or special fuel taxes due under this Section under circumstances where such person or entity would be entitled to a tax refund, tax credit, or production incentive payment, had such taxes been paid to the State of South Dakota under South Dakota law, then such person or entity may apply to and receive from the State of South Dakota as contractor for the Tribe, a refund or credit or incentive payment for such taxes paid on the same terms and conditions as such is available to persons or entities paying such taxes to South Dakota.
- d. Refund of taxes on motor fuel or undyed special fuel judicially found to be unlawful: A consumer of motor fuel or undyed special fuel may apply to the South Dakota Department of Revenue and Regulation as contractor for the Tribe, and obtain a refund of fuel taxes imposed and paid, if a court of competent jurisdiction, in a final decision from which no further appeal can be taken, finds the imposition of the tax to be unlawful. If applicable, the claim shall be supported by fuel purchase invoices, odometer readings, log books and calculated on an average mile per gallon basis.

16-505.16 Procedures for Making a Tax Refund Claim

Required information for tax refund claim:

- a. The claim for refund of fuel taxes which is allowed under this Section shall contain the following information:
 - a(1) The name and mailing address of the refund claimant;
 - a(2) The refund claimant license number assigned by the South Dakota Department of Revenue and Regulation as contractor for the Tribe, to the claimant;
 - a(3) The claim period during which fuel was purchased and used;
 - a(4) If applicable, a listing of the licensed motor vehicles owned or operated by the claimant during the claim period;
 - a(5) If applicable, information concerning the miles driven and fuel consumed by the vehicles listed in subdivision (d) of this section;

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- a(6) If the claimant is the user of the fuel, a summary of fuel purchased during the claim period;
 - a(7) If the claimant is the seller of the fuel, a summary of the refundable sales;
 - a(8) The claimant's signature verified under oath; and
 - a(9) Any other information which the Secretary of the South Dakota Department of Revenue and Regulation, as contractor for the Tribe, deems necessary for the administration of this section.
- b. Proof of tax payment required for tax refund: Motor fuel and special fuel tax refund claims of consumers shall be accompanied by proof that the Tribal fuel tax has been paid in accord with requirements established by the Secretary of the South Dakota Department of Revenue and Regulation as contractor for the Tribe and as applied by the Department to refunds or credits of State motor fuel an special fuels tax.
- c. Time limit to claim refund: Any claim for refund of motor fuel or special fuel tax shall be received by the South Dakota Department of Revenue and Regulation as contractor for the Tribe, within fifteen months of the date the fuel was originally purchased in order to be accepted for refund. Fuel purchased more than fifteen months from the date the claim is received is forever barred from refund eligibility. In the event that a refund is due because the tax was found by a court to be unlawful, the time for submitting a request for a refund shall not be subject to these time limits, but shall be as determined by the court.

16-505.17 License Revocation

If any person licensed pursuant to this Section fails to file a report or remit the tax payment when due, the Tribal Tax Director or the Secretary of the South Dakota Department of Revenue and Regulation as the Tribe's contractor, may immediately schedule a license revocation hearing. Upon revocation of the license the person shall cease any business activity authorized by the license. Written notice of the action on the license shall be given to the licensee and to all other license holders of record on the date of notification.

16-505.18 Sworn Statement in Lieu of Verification of Report Before a Notary Public

Any law which requires a sworn or verified report or return to be made by any person licensed pursuant to this Section, is satisfied if the person required to make the report or the person's authorized officer or agent, in lieu of

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verification before a notary public, shall sign a statement printed or written thereon in the following form: "I declare and affirm under the penalties of perjury that this report has been examined by me, and to the best of my knowledge and belief is in all things true and correct."

16-505.19 Record-Keeping

- a. Record keeping required of licensee: Each person issued a license pursuant to this Section shall keep and preserve for the current and the three preceding calendar years an accurate record of all sales receipts, disbursement records, sales/purchase invoices, bills-of-lading, diversion tickets, partial load tickets, alcohol denaturing records, monthly inventory and weekly pump meter readings and other pertinent records and papers considered necessary for the enforcement of this Section, including all ledgers and checking accounts.
- b. Additional records to be kept by liquid petroleum gas user or consumer refund claimant: In addition to the requirement set forth in Section 16.505.19(a), a liquid petroleum gas user or a consumer refund claimant shall keep individual vehicle and machinery consumption records, motor vehicle odometer readings, machinery hour readings, monthly consumption and odometer summaries, and individual vehicle and machinery off-road log books.
- c. Fuel transactions to be supported by sales/purchase invoice: Each fuel transaction occurring within the South Dakota portion of the Reservation or involving an importer within the South Dakota portion of the Reservation shall be supported by a sales/purchase invoice. All invoices shall be prepared on NCR (no carbon required) paper or with double-faced carbon so that the back of the invoice bears a carbon impression of the data that is on the face of the invoice. A copy of the invoice shall be maintained in the records of both the seller and the purchaser. The invoices shall be serially numbered and shall contain the following information:
 - c(1) The seller's name and address, which shall be machine-printed or rubber-stamped;
 - c(2) The seller's supplier's license number issued by the department if the fuel was sold at the pipeline or the seller's marketer's number if not sold at a pipeline;
 - c(3) The purchaser's name and address;
 - c(4) The date of sale and delivery of the fuel;
 - c(5) The number of gallons of fuel sold and delivered to the purchaser, the type of fuel and if diesel whether it is dyed or not;
 - c(6) The price charged per gallon of fuel;

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- c(7) If charged, the amount of fuel or sales tax. Fuel tax shall either be listed separately or as a statement by the marketer that the price per gallon required under subdivision c(6) of this section includes the Tribal fuel tax; and
- c(8) The total amount of the sales invoice.

16-505.20 Examination of Licensee

The Tribal Tax Director or the Secretary of the South Dakota Department of Revenue and Regulation as the Tribe's contractor may examine the records, books, papers, fuel and any other equipment of a person licensed pursuant to the provisions of this Section or refund claimant pertaining to fuel received, sold, or used to verify the truth and accuracy of any statement, claim, or report; or to ascertain whether the tax imposed by this Section has been paid; or to determine the financial responsibility of the licensee for the payment of the taxes imposed by this Section.

16-505.21 Enforcement and Administration

The Standing Rock Sioux Tribal Tax Commission is charged with enforcement and administration of the provisions of this Section.

16-505.22 Civil Action for Tax, Penalties and Interest

In any case of the failure of a taxpayer to pay taxes imposed by this Section, or penalties or interest due under this Section, the amount due may be recovered in a civil action brought by the Tribal Tax Commission in Tribal Court. In any such action, if the Tribe prevails in whole or in part, the Tribe shall be entitled to recover its reasonable costs of bringing suit, including attorney's fees.

16-505.23 Criminal Sanctions

- a. Any Indian who sells or uses fuel covered by this Section without paying the tax imposed by this Section shall be guilty of a class A misdemeanor.
- b. Any Indian who fails to make reports or provide records as required by this Section shall be guilty of a class B misdemeanor.

SECTION 5. TAXES ON THE SOUTH DAKOTA PORTION OF THE RESERVATION**16-505.24 Construction**

The provisions of this Section shall be construed, where possible, to be consistent with the corresponding provisions of South Dakota's motor fuels and special fuels tax.

16-505.25 Use of Fuels Tax Proceeds

The proceeds of the taxes imposed by this Section shall be used by the Tribe, as specified by the Tribal Council, to defray the costs of constructing, maintaining and improving roads on the Reservation, and to fund educational and other programs to improve highway safety including but not limited to promotion of seat belt use, driver training, and related substance abuse prevention and treatment programs. Recommendations on the specific allocation of these funds among these purposes may be provided to the Tribal Council through a public meeting or hearing called for such purpose.

Section 16-506 Gross Receipts Tax on Visitor-Related Businesses**16-506.1 Definitions**

Terms used in this Section mean:

1. "Lodging establishment", any building, structure, property, or premise kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are furnished to transient guests. The following constitute lodging establishments: bed and breakfast inns, boarding houses, bungalows, cabins, condominiums, cottages, dude ranches, guest houses, guest ranches, hostels, hotels, inns, lodges, motels, resorts, tourist homes, timeshare rentals, vacation home rentals, and villas;
2. "Campground", any property or premise kept, used, maintained, advertised, or held out the public to be a place where sites are available for placing of tents, campers, trailers, mobile homes, or other mobile accommodations to transient guests. Campgrounds include city, county, and state-owned campgrounds, as well as concessionaires or contractors who manage or operate publicly owned campgrounds. The following constitute campgrounds: campgrounds, camping cabins, camping resorts, commercial picnic grounds, organizational camps, park units, recreational vehicle parks, trailer parks, and youth camps;
3. "Visitor attraction", any business establishment that offers recreation, entertainment, or interpretation of natural or cultural history. The following constitute visitor attractions: aerial tramways, amusement parks, animal exhibits, animal shows, antique car exhibits, antique exhibits, arboreta, aquariums, batting

SECTION 5. TAXES ON THE SOUTH DAKOTA PORTION OF THE RESERVATION

cages, botanical gardens, bumper boats, bumper cars, bungee jumps, carnival rides, chuck wagon suppers, commercial playgrounds, go-cart raceways, gold mines, golf driving ranges, historic sites, human mazes, hunting preserves, miniature golf courses, museums, music shows, observation towers, outdoor dramas, pitch 'n putt golf courses, playhouses, racetracks, recreational gold mining, reptile exhibits, restorations, scenic railroads, shooting preserves, show case, ski areas, spectator events, water slides, wave pools, wax figure exhibits, and zoological gardens. A visitor attraction includes any business which is being conducted on the site of another visitor attraction;

4. "Recreational service", any business establishment that provides leisure or recreational experiences. The following constitute recreational services: aerial sightseeing tours, amusement rides, bath houses, carriage rides, climbing guides, day camps, fishing guides, fishing ponds, golf driving ranges, hunting guides, outfitters, pack trains, private beaches, river rafting, saddle horse rides, sightseeing guides, sightseeing tours, shooting galleries, shooting ranges, skeet ranges, ski instruction, ski lift tickets, ski trails, spas, trail rides, trap ranges, tour bus excursions, and youth camps;
5. "Recreational equipment rental", include all items rented for twenty-eight (28) days or less whose primary purpose is recreational use. Rental, under such circumstances, of the following constitute recreational equipment rentals: all-terrain vehicles, beach chairs, bicycles, bumper equipment, flotation devices, go carts, golf clubs, hunting dogs, hunting equipment, mopeds, motor coaches, motorcycles, pack animals, recreational courts and equipment, recreational gold mining equipment, recreational vehicles, recreational water equipment, rock climbing gear, roller blades, saddle horses, skis, snowboards, snowmobiles, snowmobile trailers, snowshoes, watercraft, and watercraft trailers;
6. "Spectator event", any organized activity meant for entertainment or education and open to the public. The following constitute spectator events: air shows, auto races, auto shows, balloon shows, boar races, car rallies, carnivals, circuses, concerts, dance festivals, draft horse contests, ethnic festivals, exhibitions, expositions, fairs, greyhound races, horse races, horse shows, monster truck shows, motorcycle expositions, motorcycle races, music festivals, rodeos, sporting events, stage performances, threshing bees, tractor pull contests, and water-skiing shows. A spectator event includes any business which is conducted on the site of another spectator event;
7. "Visitor intensive business", any antique shop, book store, candy store, flea market, gift shop, indigenous arts and crafts shop, jewelry, lapidary shop, leather goods shop, marina, novelty shop, pottery shop, rock shop, souvenir shop, and tee shirt shop if fifty percent (50%) or more of annual total receipts are derived from the sale of tangible personal property, during the months of June, July, August, and September. No postsecondary, college, and university book store is, however, included.

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16-506.2 Seasonal Tax on Certain Visitor-Intensive Businesses

There is hereby imposed a tax of one and one-half percent (1½%) on the gross receipts of any Indian from any lodging establishment, campground, motor vehicle rental, visitor attraction, recreational equipment rental, recreational service, spectator event, and visitor-intensive business. The tax imposed by this section on the gross receipts of any visitor-intensive business shall apply to the gross receipts received by such business during the months of June, July, August, and September. The tax imposed by this section is in addition to any other tax imposed by Sections 16-501 and 16-502. Tangible personal property, services, and admissions are subject to the tax imposed by this section only if subject to tax by Sections 16-501 and 16-502.

16-506.3 Application of Seasonal Tax on Lodging Establishments

The tax imposed by this Section on any lodging establishment applies only to the gross receipts from the rental of rooms by a lodging establishment.

16-506.4 Application of Seasonal Tax on Campgrounds

The tax imposed by this Section on any campground applies to the gross receipts from the rental of campground space.

16-506.5 Application of Seasonal Tax on Visitor Attractions

The tax imposed by this Section applies to the gross receipts from admission to a visitor attraction and from the sale of tangible personal property, services, parking, or transportation at a visitor attraction.

16-506.6 Application of Seasonal Tax on Spectator Events

The tax imposed by this Section applies to the gross receipts from admission to a spectator event and from the sale of tangible personal property, services, parking, or transportation at a spectator event.

SECTION 5. TAXES ON THE SOUTH DAKOTA PORTION OF THE RESERVATION**16-506.7 Nonprofit Organizations Exempt**

Gross receipts from the rental of rooms or sites at a lodging establishment or campground owned by nonprofit religious, educational, or youth organization are exempt from the tax imposed by this Section if rented to a member of such organization.

16-506.8 Receipts from Nonprofit Shooting Range Exempt

Gross receipts from the operation of a shooting range owned by any nonprofit organization are exempt from the tax imposed by this Section.

Section 16-507 Amusement Device Tax**16-507.1 Imposition of Tax—Rate**

There is imposed upon Indian owners and operators on the South Dakota portion of the Reservation a special amusement excise tax of four percent (4%) of the gross receipts from the operation of any mechanical or electronic amusement device, including jukeboxes, video games, pinball machines, arcades and other devices used for commercial purposes.

16-507.2 Registration of Devices

Every machine or device referred to in Sections 16.507.1 shall be registered with the Tribe or with the State of South Dakota by the owner or person in possession thereof before it is offered to the public or any person for use.

16-507.3 Older Devices Subject to Regulation

Any mechanical or electronic amusement device constructed before 1940 shall comply with the provisions of this Section except that no fee is due on the registration of such device.

16-507.4 Amusement Devices used at Government Sponsored Fairs

Any mechanical or electronic amusement device used exclusively at government sponsored fairs, including Tribal gatherings, shall comply with the provisions of this Section except that no fee shall be due. The special fair registration is valid for a period of thirty (30) days.

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16-507.5 Registration Fee

Such owner or operator shall pay to the South Dakota Department of Revenue and Regulation, as contractor for the Tribe, an annual registration fee of twelve dollars (\$12.00) per machine.

16-507.6 Collection and Administration

The tax and the registration fees imposed under this Section shall be collected by the South Dakota Department of Revenue and Regulation, as contractor for the Tribe, and administered by the Tribal Tax Commission.

16-507.7 Display of Registration

Every owner or operator is required to properly display his registration on each machine as prescribed by the Tribe or the South Dakota department of revenue and Regulation, and the failure to so display the prescribed indicia of registration constitutes prima facie evidence that the machine is not registered.

16-507.8 Device Without Registration Displayed as Contraband

Any machine or device which does not display the owner's registration as required by this Section is declared contraband and subject to confiscation by any law enforcement officer or agent of the Tribe or Bureau of Indian Affairs.

16-507.9 Judicial Order for Destruction or Sale of Confiscated Devices

If a machine or device is confiscated as provided in Section 16.507.8, an application shall be made to the Tribal Court for an order to show cause why the same should not be destroyed or sold. Upon a hearing duly noticed to any person whom the Tribal Tax Commission can reasonably ascertain may have an interest in the machine or device, the Tribal Court shall make a finding as to whether the machine or device did in fact fail to carry an indicia of registration. If the Tribal Court determines that the machine or device did not carry the prescribed indicia, the Tribal Court may order it destroyed or sold.

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16-507.10 Collection and Enforcement

All tax collection and enforcement provisions of Section 16-501, including penalty and interest, apply to this Section where applicable.

16-507.11 Classification of Violations

Failure to comply with the licensing, registration or tax payment requirements of this Section shall constitute a class B misdemeanor for the first offense and a Class A misdemeanor for any subsequent offense occurring within one year.

16-507.12 Exemption of Gaming Proceeds

There are specifically exempted from the provisions of this Section and from the computation of the tax imposed by it gross proceeds of gaming allowed pursuant to the Tribal Gaming Ordinance and the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq.

Section 16-508 Excise Tax on Farm Machinery, Farm Attachment Units, and Irrigation Equipment

16-508.1 Tax Imposed on Gross Receipts—Rate

There is hereby imposed an excise tax of four percent (4%) on the gross receipts from the sale, resale, or lease on the South Dakota portion of the Reservation of farm machinery, attachment units, and irrigation equipment used exclusively for agricultural purposes. However, if any trade-in or exchange of used farm machinery, attachment units, and irrigation equipment is involved in the transaction, the excise tax is only due and may only be collected on the cash difference.

16-508.2 Tax Imposed on Use, Storage, and Consumption of Farm Machinery, Purchased or Leased—Rate

An excise tax is hereby imposed on the privilege of the use, storage, and consumption on the South Dakota portion of the Reservation of farm machinery, attachment units, and irrigation equipment used exclusively for agricultural purposes purchased or leased for use on the South Dakota portion of the Reservation at the same rate of the purchase price of said property as imposed pursuant to Section 16.508.1.

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16-508.3 Tax Imposed on Use, Storage, and Consumption of Farm Machinery not Originally Purchased—Rate—Exemption

An excise tax is imposed at the same rate as imposed by Section 16.508.1 on the privilege of the use, storage, or consumption on the South Dakota portion of the Reservation of farm machinery, attachment units, and irrigation equipment used exclusively for agricultural purposes not originally purchased for use on the South Dakota portion of the Reservation, but thereafter used, stored or consumed on the South Dakota portion of the Reservation, at the same rate as provided in Section 16.508.1 and imposed on the fair market value of the property at the time it is brought on the South Dakota portion of the Reservation. However, if any trade-in or exchange of used farm machinery, attachment units, and irrigation equipment is involved in the transaction, the excise tax is only due and may only be collected on the cash difference. The use, storage, or consumption of farm machinery, attachment units, and irrigation equipment used exclusively for agricultural purposes that is more than seven years old at the time it is brought on the South Dakota portion of the Reservation by the person who purchase such property for use elsewhere is exempt from the tax imposed by this Section.

16-508.4 Farm Machinery Defined

For purposes of this Section “farm machinery” includes all-terrain vehicles of three or more wheels used exclusively by the purchaser for agricultural purposes on agricultural land. The purchaser shall sign and deliver to the seller a statement that the all-terrain vehicle will be used exclusively for agricultural purposes.

16-508.5 Farm Machinery and Attachments Sold at Public Auction

Farm machinery and attachment units, other than replacement parts, and irrigation equipment sold at public auction shall be taxes pursuant to Section 16.508.1, without regard to its intended use.

16-508.6 Filing of Return and Payment of Taxes Due

Any person who holds a license issued pursuant to this Section or who is a person whose receipts are subject to the tax imposed by this Section shall, except as otherwise provided in this section, file a return, and pay any tax due, to the South Dakota Department of Revenue and Regulation, as contractor for the Tribe, on or before the twentieth (20th) day of the month following each

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monthly period. The return shall be filed on forms prescribed and furnished by the Tribe or the Department of Revenue and Regulation.

The Secretary of the South Dakota Department of Revenue and Regulation, as contractor for the Tribe, may require or allow a person to file a return, and pay any tax due, on a basis other than monthly and the return and remittance is due the last day of the month following the reporting period, or at time otherwise determined by the Secretary.

The Secretary of Revenue and Regulation, as contractor for the Tribe, may grant an extension for filing a return and remittance for a period not to exceed the period permitted under state law. Unless an extension is granted, penalty or interest, in an amount equal to the provided in South Dakota codified Laws §10-59-6, shall be paid to the Department of Revenue and Regulation, as contractor for the Tribe, if a return or remittance is not made on time.

16-508.7 Rental of Fertilizer and Pesticides Devices Exempt

There are exempted from the tax imposed by this Section, gross receipts from the rental of devices primarily used to apply fertilizers and pesticides for agricultural purposes, if the tax imposed by this Section was paid upon the original purchase of the device.

16-508.8 Prohibited Acts—Misdemeanor or Felony

Any person who:

- a. Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by this Section is guilty of a Class A misdemeanor;
- b. Fails to pay tax due under this Section within thirty (30) days from the date the tax becomes due is guilty of a Class A misdemeanor;
- c. Fails to keep the records and books required by this Section or refuses to exhibit these records to the duly authorized representative of the Tribe, for the purpose of examination is guilty of a Class B misdemeanor;
- d. Fails to file a return required by this Section within thirty (30) days from the date the return is due is guilty of a Class A misdemeanor; or
- e. Willfully violates any rule of the Tribe for the administration and enforcement of the provisions of this Section is guilty of a Class A misdemeanor.

For purposes of this section, the term “person” includes an officer, member, member-manager, partner, general partner, or limited partner of an entity who has control or supervision of, or is charged with the responsibility for, making tax returns or payments pursuant to this Section.

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16-508.9 Credit for Sales, Use, or Gross Receipts Tax Paid to another Jurisdiction—Reciprocity

The amount of any use tax imposed with respect to the sale or lease of farm machinery, attachment units, and irrigation equipment shall be reduced by the amount of any sales, use, or gross receipts tax previously paid by the taxpayer with respect to the property on account of liability to another tribe, state or its political subdivisions. If the sales, use, or gross receipts tax of the other tribe, state, or political subdivision is less than the tax under this Section, the taxpayer is liable for the payment of the balance to the Tribe. However, no credit may be given under this section if such other tribe, state, or political subdivision does not reciprocally grant a credit for taxes paid on similar tangible personal property.

Section 16-509 Contractor's Excise Tax on New or Expanded Power Production Facilities

16-509.1 Certain Power Production Facilities Using Renewable Resources

Any commercial power production facility, utilizing renewable resources, such as sun, wind, geothermal, or biomass, that begins generating electricity after December 31, 2013, and produces more than ten megawatts of electricity as measured by nameplate rating, and is owned by a natural person, corporation, nonprofit or for profit business organization, tribal entity, irrigation district, drainage district, or other political subdivision or agency of the tribe authorized to carry on the business of developing, transmitting, utilizing, or distributing electric power is subject to the provisions of this Section for any new or expanded facility.

16-509.2 Definitions

Terms used in this Section mean:

1. "New or expanded facility," a new commercial power production facility as defined in Section 16-509.1 or an addition to an existing commercial power production facility, the construction or installation of which is subject to contractors' excise tax pursuant to Section 16-504 of this Title.
2. "Project," the installation or construction of generation capacity of a new or expanded facility, excluding any associated transmission facilities.

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3. "Project cost," the amount of money incurred and paid after January 1, 2014, for a project.

16-509.3 Rate of Tax on New or Expanded Power Production Facilities

Notwithstanding the rate of taxation imposed by Section 16-504 of this Title, the tax imposed under Section 16-504 on a new or expanded facility shall be imposed at a rate of one percent (1%), and remitted to the state by the holder of the permit issued pursuant to Section 16-509.5.

16-509.4 Filing of Tax Return—Payment of Taxes Due

The owner shall file a tax return on or before December thirty-first (31st) of each year reporting the project costs subject to tax under Section 16-504 of this Title incurred during the previous twelve (12) months. The tax due from such return shall be paid in four equal annual payments with the first payment due no later than December thirty-first (31st) following the filing of the tax return. Each subsequent annual payment shall be made no later than December thirty-first (31st) following the last payment.

16-509.5 Permit Required for New or Expanded Facility Tax Rate—Application

A person may pay the contractor's excise tax pursuant to Section 16-509.3 if the person applies for and obtains a permit from the Director at least thirty (30) days prior to commencement of the project. The application for a permit shall be submitted on a form prescribed by the Director. A separate application shall be made and submitted for each project. Upon approval of the application, the Director shall issue a permit to the applicant. The permit is not assignable or transferable.

16-509.6 Hearing Available on Denial of Permit

Any person aggrieved by the denial of a permit, may within thirty (30) days after service of the notice of a denial by the Director, demand and is entitled to a hearing, upon notice. The hearing shall be conducted pursuant to Section 16-222-16-225.

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16-509.7 Promulgation of Rules—Scope of Rules

The Commission may promulgate rules concerning:

- a. Permitting, including the permit application;
- b. The filing of returns and payment of the tax;
- c. Determining the application of the tax and exemptions;
- d. Taxpayer and owner record-keeping requirements; and
- e. Determining auditing methods.

16-509.8 Department's Remedy if Tax Collection Jeopardized—Lien—
Distress Warrant

If the Director finds that the assessment or collection of the tax required to be paid under this Section is in jeopardy, the Director may immediately make an assessment of the estimated tax, penalty, or interest and demand payment from the owner. If the payment is not made, a lien may be filed on the owner's real and personal property located within the Reservation and a distress warrant issued.

16-509.9 Records to be Kept by Taxpayer—Inspection—Retention of
Records

Each person subject to tax or responsible for payment of tax under this Section shall keep records and books of all receipts and sales, together with invoices, bills of lading, copies of bills of sale, and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be subject to inspection by the Director or the Director's duly authorized agents and employees to determine the amount of tax due. Such books and records shall be preserved for a period of three years unless the Director, in writing, authorized their destruction or disposal at an earlier date.

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6. TAXES ON THE NORTH DAKOTA PORTION OF THE RESERVATION**Section 16-601 Sales Tax**

16-601.1 Definitions

Reserved.

16-601.2 Sales Tax Imposed

Reserved.

16-601.3 Sales Tax on Alcoholic Beverages and Tobacco Products

Reserved.

16-601.4 Sales Tax on Sales Through Vending Machines

Reserved.

16-601.5 Sales Tax Rate on Natural Gas Sales

Reserved.

16-601.6 Surcharge on Rental Motor Vehicles

Reserved.

16-601.7 Exemptions (Effective After June 30, 2002)

Reserved.

16-601.8 Credit or Refund for Taxes Paid on Worthless Accounts and
Repossessions

Reserved.

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- 16-601.9 Credit to Relief Agency and Local Governmental Units
Reserved.
- 16-601.10 Sales Tax to be Added to Purchase Price and be a Debt.
Reserved.
- 16-601.11 Sales Tax on Alcoholic Beverages may be Included in Purchase Price
Reserved.
- 16-601.12 Unlawful Act
Reserved.
- 16-601.13 Records Required—Sales for Resale Exempt
Reserved.
- 16-601.14 Return of Gross Receipts
Reserved.
- 16-601.15 Payment of Tax—Bond—Creation of Lien
Reserved.
- 16-601.16 Deduction to Reimburse Retailer for Administrative Expenses
Reserved.
- 16-601.17 Lien of Tax—Collection—Action Authorized
Reserved.

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16-601.18 Permits—Application Fee for Reissuance

Reserved.

16-601.19 Tax Director may Authorize Direct Payment of Sales and Use Tax

Reserved.

16-601.20 Failure to File Return—Incorrect Return

Reserved.

16-601.21 Extensions of Time to Perform Sales Tax Audits

Reserved.

16-601.22 Governor and Manager Liability

Reserved.

16-601.23 Appeals

Reserved.

16-601.24 Service of Notice

Reserved.

16-601.25 Penalties—Offenses

Reserved.

16-601.26 Corporate Officer Liability

Reserved.

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16-601.27 Tax Director to Administer Section

Reserved.

16-601.28 Tax, Penalties, and Other Charges Paid to Tax Director—
Disposition

Reserved.

16-601.29 General Powers

Reserved.

16-601.30 Tax Director May Appoint Agents and Employees—
Compensation—Bond

Reserved.

16-601.31 Information Deemed Confidential—Certain Releases of
Information Authorized

Reserved.

16-601.32 Correction of Errors

Reserved.

16-601.33 Payment of Refund

Reserved.

16-601.34 Allocation of Revenue

Reserved.

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16-601.35 (This Section Intentionally Left Blank.)

16-601.36 Disposition of Excess Tax Collections
Reserved.

16-601.37 (This Section Intentionally Left Blank.)

16-601.38 Construction of the Section
Reserved.

Section 16-602 Use Tax

16-602.1 Definitions
Reserved.

16-602.2 Use Tax Imposed (Effective After June 30, 2002)
Reserved.

16-602.3 Use Tax on Alcoholic Beverages and Tobacco Products
Reserved.

16-602.4 Use Tax on Contractors
Reserved.

16-602.5 Exemptions
Reserved.

SECTION 6. TAXES ON THE NORTH DAKOTA PORTION OF THE RESERVATION

16-602.6 Use Tax Exemption for Food and Food Products

Reserved.

16-602.7 Reduced Rate and Exemption for Power Plant Construction and Production Equipment

Reserved.

16-602.8 Evidence of Use

Reserved.

16-602.9 Payment of Tax

Reserved.

16-602.10 Collection of Use Tax

Reserved.

16-602.11 Deduction to Reimburse Retailer for Administrative Expenses

Reserved.

16-602.12 Unlawful Advertising

Reserved.

16-602.13 Records Required

Reserved.

16-602.14 Revocation of Permit and Authority to do Business

Reserved.

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- 16-602.15 Articles Taxed Elsewhere
Reserved.
- 16-602.16 Unlawful Sale or Soliciting
Reserved.
- 16-602.17 Provisions of Sales Tax Law Applicable
Reserved.
- 16-602.18 Contractor's Performance Bonds for Payment of Use Tax
Reserved.
- 16-602.19 Penalties—Offenses
Reserved.
- 16-602.20 Corporate Officer Liability
Reserved.
- 16-602.21 Governor and Manager Liability
Reserved.
- 16-602.22 Lien of Tax—Collection—Action authorized
Reserved.
- 16-602.23 Disposition of Excess Tax Collections
Reserved.

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Section 16-603 Motor Vehicle Excise Tax

16-603.1 Definitions

1. "Motor Vehicle", shall include every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and every trailer and semitrailer, but not including housetrailer, or mobile homes.
2. "Person", includes any individual, firm, partnership, joint venture, association, corporation, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.
3. "Purchase Price", means the total amount paid for the motor vehicle whether received in money or otherwise; provided, however, that when a motor vehicle or other tangible personal property is taken in trade as a credit or as part payment on a motor vehicle taxable under this Section, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in. "Purchase Price" in those instances where the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration, shall also include the average value of similar motor vehicles. "Purchase Price" in those instances where a motor vehicle is manufactured by a person who owns and operates it on the public roads of the Reservation shall mean the manufactured cost of such motor vehicle and manufactured cost shall mean the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured costs shall mean the reasonable value of the completed motor vehicle.
4. "Purchaser", shall mean any person owning or in possession of a motor vehicle and operating it on the public roads of the Reservation.
5. "Sale, Sells, Selling, Purchase, Purchased, or Acquired", shall include any transfer of title or ownership of a motor vehicle by way of gift, exchange or barter, or by any other manner or by any other means whatsoever for or without consideration.
6. "Semitrailer", shall include every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another motor vehicle, except that it shall not include a "housetrailer" or "mobile home".
7. "Trailer", shall include every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle, except that it shall not include a "housetrailer" or "mobile home".

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8. "Use", shall mean the exercise by any person of any right or power over a motor vehicle incident to the ownership or possession of such a vehicle, except that it shall not include the sale or holding for sale of such a vehicle in the regular course of business.
9. "Vehicle", shall include every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or animal power or used exclusively upon stationary rails or tracks.

16-603.2 Tax Imposed

There is hereby imposed an excise tax at the rate of four percent (4%) on the purchase price of any motor vehicle purchased or acquired by or for an Indian within the North Dakota portion for the Standing Rock Sioux Reservation.

16-603.3 Exemption

There are specifically exempted from the provisions of this Section and from computation of the amount of tax imposed by it the following:

- a. Motor vehicles acquired by disabled veterans under the provisions of Pub.L. 79-663 {38 U.S.C. 1901} and any passenger motor vehicle or pickup truck not exceeding ten thousand pounds {4535.92 kilograms} gross weight subsequently purchased or acquired by such a disabled veteran; provided, that this exemption shall be allowed only with respect to one such motor vehicle owned by such a disabled veteran at any one time.
- b. Any motor vehicle owned by or in possession of the federal, state or tribal government or a political subdivision thereof.
- c. Motor carrier vehicles in excess of twenty thousand pounds {9071.85 kilograms} gross weight, whether owned or leased, engaged in interstate commerce but only to the extent their revenue from interstate hauling bears to their total revenue for the preceding operating year.
- d. Any motor vehicle transferred without consideration to or from a person within thirty (30) days prior to his entering into the armed services of the United States or within thirty (30) days after discharge there from or while serving in the armed services of the United States; provided the person certifies that the transfer is made only by reason of entering into, serving in, or being discharged from the armed services of the United States.
- e. Motor vehicles acquired by inheritance from, or by bequest of, a decedent who owned it; the transfer of motor vehicles which were previously titled or licensed in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more of the joint tenants; the transfer

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of motor vehicles by way of gift between a husband and wife, parent and child, or brothers and sisters, and the transfer of a motor vehicle to reflect a new name of the owner caused by a business reorganization but the ownership of which business organization remains in the same person or persons as prior to the reorganization.

- f. Motor vehicle transferred between a lessee and lessor; provided, that the lessee has been in continuous possession of such vehicle for a period at one year or longer.
- g. Any motor vehicle in the possession of and used as a bus exclusively by a nonprofit senior citizens or handicapped persons corporation; provided, that such bus shall not be used for commercial activities.
- h. Any motor vehicle which does not exceed ten thousand pounds {4535.92 kilograms} gross weight and which is acquired by a permanently physically disabled, licensed driver who is restricted to operating only motor vehicles equipped with special controls to compensate for the disability, or by permanently physically disabled individuals who have either surrendered or who have been denied a driver's license because of a permanent physical disability, provided the individuals obtain from the state highway commissioner or his authorized representative a statement that the individual has such a restricted driver's license or has either surrendered or has not been issued a driver's license because of a permanent physical disability; a copy of the statement shall be attached to the application for registration of the title to the motor vehicle for which the exemption from tax under this Section is claimed. Any motor vehicle acquired subject to this exemption must be disposed of either by transfer to another permanently physically disabled person or by a trade in on another exempt sale or by a transfer involving a sale subject to sales or use tax before another motor vehicle can be acquired subject to the benefits of this exemption clause.
- i. Any motor vehicle assembled by a person other than a manufacturer of motor vehicles for his own use.
- j. Motor vehicles acquired by any tribal, BIA, parochial or private nonprofit school to be used for the transportation of students; provided, that to qualify a school must normally maintain a regular faculty and curriculum and must have a regularly organized body of students in attendance, and provided that the vehicles are not to be used for commercial activities.

16-603.4 Returns

The tax imposed by this Section shall be paid to the Registrar of the North Dakota Department of Motor Vehicles, or the State Tax Director, on behalf of the Tribe.

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Section 16-604 Tobacco Products Tax

16-604.1 Definitions

As used in this Section, unless the context or subject matter otherwise requires:

1. "Chewing tobacco", means any leaf tobacco that is intended to be placed in the mouth.
2. "Cigar", means any roll of tobacco wrapped in tobacco.
3. "Cigarette" means any roll for smoking made wholly or in part of tobacco or processed tobacco and encased in any material except tobacco. "Cigarette" also means any product of a cigarette-making machine.
4. "Cigarette-making machine" means a machine used for commercial purposes to process tobacco into a roll or tube, formed or made from any material other than tobacco, at a production rate of more than five rolls or tubes per minute.
5. "Consumer" means any person who has title to or possession of cigarettes, cigars, pipe tobacco, or other tobacco products in storage, for use or other consumption on the North Dakota portion of the Reservation.
6. "Dealer" includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products, or any product of a cigarette-making machine.
7. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products, or importing onto the North Dakota portion of the Reservation cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.
8. "Licensed dealer", means a dealer licensed under the provisions of this Section.
9. "Licensed distributor", means a distributor licensed under the provisions of this Section.
10. "Other tobacco products", means snuff and chewing tobacco.
11. "Person", means any individual, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed, that is subject to the taxing authority of the Standing Rock Sioux Tribe.
12. "Pipe tobacco" means any processed tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

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13. "Reservation" means those areas within the exterior boundaries of the North Dakota portion of the Standing Rock Sioux Reservation.
14. "Sale" or "sell", applies to gifts, exchanges, and barter.
15. "Snuff", means any finely cut, ground, or powdered tobacco that is intended to be placed in the mouth.
16. "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, or other tobacco products for use or consumption on the North Dakota portion of the Reservation.
17. "Tax Commission" means the Standing Rock Tax Commission, its employees, assistants, authorized agents or representatives.
18. "Use", means the exercise of any right or power incidental to the ownership or possession of cigarettes, cigars, pipe tobacco, or other tobacco products.

16-604.2 Distributors and Dealers to be Licensed

Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, or tobacco on the North Dakota portion of the Reservation, including any distributor or dealer, must secure a license from the Tax Commission before engaging or continuing to engage in business. A separate application and license is required for each distributor at each out let or place of business within the North Dakota portion of the Reservation, and a separate dealer's license is required for each retail outlet when a person owns or control more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, or tobacco. No retailer will be granted a distributor's license except a retailer who, in the usual course of business, performed a distributor's or wholesaler's function for at least one year prior to filing the license application. The application prescribed by the Tax Commission must include the name and address of the applicant, the address and place of business, the type of business, and other information as required for the proper administration of this Section. Each application for a wholesale or distributor's outlet license must be accompanied by a fee of twenty-five dollars (\$25.00) and a surety bond approved by the Tax Commission. Each application for a dealer's outlet license must be accompanied by a fee of fifteen dollars (\$15.00). A reinstatement fee of fifty dollars (\$50.00) is required in addition to the annual license fee for each license renewal applied for after June thirtieth (30th). The total reinstatement fee may not exceed five hundred dollars (\$500.00) for any one licensee in any fiscal year. A distributor's license does not authorize the holder to make retail sales. Each license issued must be prominently displayed on the premises covered by the license.

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16-604.3 License

Each license issued under the provisions of this Section is valid until the first (1st) day of July subsequent to the date of issuance unless sooner revoked by the Tax Commission or unless the business with respect to which such license was issued is transferred, in either of which cases the holder of the license shall return it immediately to the Tax Commission. The license issued is annual and runs from July first (1st) of each year to June thirtieth (30th) of the following year.

16-604.4 Revocation of License—Penalty

The Tax Commission may revoke the license of any dealer or distributor for failure to comply with any of the provisions of this Section, or any of the rules or regulation prescribed by the Tax Commission. When a license has been legally revoked no license may be issued again to the licensee for a period of one year thereafter. A person may not sell any cigarettes, cigarette papers, snuff, cigars, or tobacco after that person's license has been revoked as provided in this Section.

16-604.5 Unlawful to Sell Without License

A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, or tobacco on the North Dakota portion of the Reservation at wholesale or at retail unless a license has been issued to that dealer or distributor as prescribed by this Section, and a person may not sell, offer for sale, or possess with the intent to sell, any cigarettes, cigarette papers, snuff, cigars, or tobacco without such license.

16-604.6 Sale of Imported Cigarettes—When Prohibited

A dealer or distributor or other person may not sell or distribute on the North Dakota portion of the Reservation any tobacco product previously exported from the United States.

16-604.7 Sale of Noncompliant Tobacco Products

A dealer, distributor, or other person may not knowingly sell or distribute on the North Dakota portion of the Reservation any tobacco product manufactured by a tobacco product manufacturer not in compliance with subsection 2 of section 51-25-02 of the North Dakota Century Code.

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16-604.8 Use of Cigarette-Making Machines—When Allowed

A person may not maintain or operate on the North Dakota portion of the Reservation a cigarette-making machine unless that person:

- a. Has a valid federal permit as a tobacco product manufacturer issued under 26 U.S.C. 5713; or
- b. Uses the machine exclusively for personal purposes. A cigarette-making machine may be considered used exclusively for personal purposes only if the product resulting from the operation of the machine is consumed by the individual who owns the machine or by other persons whose consumption of the product is incidental to the owner's personal use of the machine.

16-604.9 Certain Cigarette-Making Machines—Registration Requirements

The following requirements apply to any cigarette-making machine:

- a. A person may not maintain or operate a cigarette-making machine on the North Dakota portion of the Reservation unless the machine has been registered with the Tax Commission in the form and manner as prescribed by the Tax Commission. The person registering a machine under this section shall certify under penalties of perjury that all statements in the registration and in any attachments to the registration are true, accurate, and complete.
- b. The registration expires three years from the date the machine is registered with the Tax Commission and must be renewed as provided under subsection a.
- c. The person registering the machine shall attach to the registration a copy of a valid federal permit issued to the person under 26 U.S.C. 5713 or an affidavit indicating that the machine will be used exclusively for personal purposes as described in section 16-604.8.
- d. The registration required under this section immediately terminates if the federal permit is declared invalid, surrendered, or revoked, or any statement in the affidavit ceases to be true, correct, or complete.

16-604.10 Cigarettes—Amount of Tax

There are levied and assessed, and there must be collected and paid to the Commission, upon all cigarettes sold on the North Dakota portion of the

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Reservation, the following excise taxes, payment thereof to be made prior to the time of the sale and delivery thereof.

- a. Class A. On cigarettes weighing not more than three pounds [1360.78 grams] per thousand, five mills on each such cigarette.
- b. Class B. On cigarettes weighing more than three pounds [1360.78 grams] per thousand, five and one-half mills on each such cigarette.

16-604.11 Cigarette-Making Machines—Requirements

A person operating or maintaining a cigarette-making machine who is a tobacco product manufacturer under Public Law 112-141 [126 Stat. 914; 26 U.S.C. 5702 et seq.] shall:

- a. Maintain on the machine, in good working order, a tamper-proof counting device that records the number of all rolls or tubes processed on the machine.
- b. Provide the Tax Commission access to the machine and its counting device at all reasonable times for verification and other tax administration purposes.
- c. Pay any taxes required under this chapter.
- d. Comply with the provisions of chapter 51-25 of the North Dakota Century Code pertaining to all cigarettes produced by the machine.
- e. Comply with the ignition propensity requirements under chapter 18-13 of the North Dakota Century Code with respect to all cigarettes produced by the machine.

Use only federal tax-paid roll-your-own tobacco or tobacco exempt from federal tax under 26 U.S.C. 5704(b).

16-604.12 Packaging—Presumption from Possession

Cigarettes must be packaged as follows:

- a. All cigarettes sold or distributed on the North Dakota portion of the Reservation must be in packages containing twenty or more cigarettes each.
- b. Each package of cigarettes displayed, exhibited, stored, or possessed in original cartons or containers upon the premises where consumer sales are made is conclusively presumed to be for sale to consumers.
- c. All packages of roll-your own tobacco sold or distributed on the North Dakota portion of the Reservation must be in packages containing at least 0.60 ounces [17 grams] of tobacco.

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16-604.13 Records to be Kept by Distributors and Reports Made—Penalty

Distributors subject to tax under this Section shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products made by them, and must be punished for failure so to do, as follows:

- a. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products shall keep and preserve for one year all invoices of cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products purchased by the distributor and shall permit the Tax Commission to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the Tax Commission in determining the amount of the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products as a distributor shall keep a record of all sales made within the North Dakota portion of the Reservation showing the name and address of the purchaser and the date of sale. For sales of other tobacco products, the records must also include the net weight in ounces, as listed by the manufacturer.
- b. On or before the fifteenth day of each month, each licensed distributor, on such form as the Tax Commission shall prescribe, shall report to the Tax Commission all purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products made from or to any persons either within or without the North Dakota portion of the Reservation during the preceding month. For sales of other tobacco products, each licensed distributor shall also report to the Tax Commission the net weight in ounces, as listed by the manufacturer. The tax levied by this chapter is payable monthly and must be remitted to the Tax Commission by each licensed distributor on or before the fifteenth day of the month following the monthly period.
- c. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The Tax Commission, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the Tax Commission and disposed of in the same manner as are other receipts under this chapter.

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16-604.14 Warehouse—Record of deliveries and shipments

Records of all deliveries of shipments of cigarettes and snuff from a licensed public warehouse to persons within the North Dakota portion of the Reservation must be kept by the warehouse and be available to the Tax Commission for inspection. They must show the name and address of the consignee, the date, the quantity of cigarettes, snuff, cigars, or other tobacco products delivered, and such other information as the Tax Commission may require. These records must be preserved for one year from the date of delivery of the cigarettes, snuff, cigars, or other tobacco products.

16-604.15 Examination and correction of returns—Collection of taxes

- a. As soon as practicable after any return required by this chapter is filed, the Tax Commission shall examine the return and correct it, if necessary, according to the Tax Commission's best judgment and information. The return, with the Tax Commission's corrections, if any, is prima facie correct and is prima facie evidence of the correctness of the amount of tax due, as shown therein. Proof of any such correction by the Tax Commission may be made at any hearing before the Tax Commission or in any legal proceeding by a copy of the pertinent record of the Tax Commission under the certificate of the custodian of the original official record. Such a certified copy must, without further proof, be admitted into evidence before the Tax Commission or in any legal proceeding and is prima facie proof of the correctness of the amount of tax due, as shown therein. If the Tax Commission finds that any amount of tax is due under this chapter from any person and is unpaid, the Tax Commission shall notify such person of the deficiency, stating that the Tax Commission proposes to assess the amount due with interest and penalties as hereinafter provided. If a deficiency disclosed by the Tax Commission's examination cannot be allocated by the Tax Commission to a particular month or months, the Tax Commission shall notify such person of the deficiency, stating the Tax Commission's intention to assess the amount due for a given period without allocating it to any particular month or months, with the penalty provided in the case of other corrected returns. If any person making any return dies or becomes incompetent at any time before the Tax Commission issues notice that the Tax Commission proposes to assess an amount due, that notice must be issued to the administrator, executor, or other legal representative, as such, of that person.
- b. If, within fifteen days after mailing of notice of the proposed assessment, the person to whom such notice is sent or that person's legal representative shall file a written protest to said proposed assessment and request a hearing thereon, the Tax Commission shall give notice to such person or legal representative of the time and place fixed for the hearing.

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- c. The Tax Commission may recover the amount of any tax due and unpaid, interest, and any penalty in a civil action.

16-604.16 Corporate Officer Liability

- a. If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, the president, vice president, secretary, or treasurer, jointly or severally, having control or supervision of, or charged with the responsibility for making such returns and payments, is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter for the assessment and collection of other liabilities.
- b. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the Tax Commission a bond or undertaking executed by a surety company authorized to do business on the North Dakota portion of the Reservation. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual tobacco products tax liability of the corporation.

16-604.17 Governor and Manager Liability

- a. If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governors, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payments, are personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's, manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.
- b. If the governors, managers, or members elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the Tax Commission a bond or undertaking executed by a surety company authorized to do business on the North Dakota portion of the Reservation. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual tobacco products tax liability of the limited liability company.

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16-604.18 Lien of tax—Collection—Action Authorized

- a. When a taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the tax, the amount, including any interest, penalty, or addition to the tax, together with the costs that may accrue in addition to the tax, is a lien in favor of the Standing Rock Sioux Tribe upon all property and rights to property, whether real or personal, belonging to the taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivors to the extent of the deceased taxpayer's interest therein, which interest is determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein.
- b. The lien attaches at the time the tax becomes due and payable and continues until the liability for the amount is satisfied. For the purposes of this section, the words "due" and "due and payable" mean the first instant at which the tax becomes due.
- c. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated on the North Dakota portion of the Reservation, prior to the effective date of a lien in favor of the Standing Rock Sioux Tribe, as authorized under this section, takes free of, or has priority over, the lien.

16-604.19 General Partner in a Limited Liability Limited Partnership Liability

- a. If a limited liability limited partnership taxable under this chapter fails for any reason to file the required returns or to pay the tax due, the general partners, jointly or severally, charged with the responsibility for the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
- b. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post with the Tax Commission a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual tax liability of the limited liability limited partnership.

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16-604.20 Procedure in Case of Seizure—Determination—Judgment

The procedure in case of seizure of cigarettes, equipment, or any other product taxed pursuant to this chapter must be as follows:

- a. Upon the seizure of any cigarettes and within two days thereafter, the officer making such seizure shall deliver an inventory of the property seized to the person from whom such seizure was made, if known, and shall file a copy thereof with the Tax Commission.
- b. Within ten days after the date of the service of such inventory, the person from whom the seizure was made, or any other person claiming an interest in the property seized, may file a demand for a judicial determination of the question as to whether such property was, or lawfully is, subject to seizure and forfeiture. Thereupon the Tax Commission, within thirty days, shall institute an action in the Tribal Court with jurisdiction over the location where such seizure was made to determine the issue of forfeiture. Such action must be brought in the name of the Standing Rock Sioux Tribe and must be prosecuted by a representative designated by the Tax Commission. The Tribal Court shall hear such action as a court case and shall try and determine the issues of law and fact involved.
- c. In case a judgment of forfeiture is entered, the Tax Commission, unless the judgment is stayed pending an appeal as authorized under Standing Rock Tribal Court Rules of Procedure, as soon as convenient, shall destroy the forfeited property.
- d. In case a demand for a judicial determination is made and no action is commenced as provided in this section, such property must be released by the Tax Commission and redelivered to the person entitled thereto.
- e. In the event that no demand for judicial determination is made, the seized property must be deemed forfeited to the Standing Rock Sioux Tribe by operation of law, and the Tax Commission shall destroy the same.
- f. In case of the seizure of an automobile, truck, boat, airplane, conveyance, vehicle, or other means of transportation pursuant to the provisions of this chapter, the officer making the seizure shall file an inventory, and upon a demand for a judicial determination as provided in this section, the Tax Commission, within thirty days thereafter, shall commence an action in the Tribal Court with jurisdiction over the location where such seizure was made to declare a forfeiture of such vehicle or other means of transportation, and such action must be heard and determined as other forfeiture actions instituted under this chapter.
- g. Whenever the Tax Commission is satisfied that any person from whom property is seized was acting in good faith and without intent to evade the

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revenue provisions of this chapter, the Tax Commission shall release the property seized without further legal proceedings.

16-604.21 Hearing—Appeals from Decision of the Tax Commission

Except as provided in section 16-1020, any person aggrieved because of any action or decision of the Tax Commission under the provisions of this Section has the right to a hearing by the Tax Commission and has the right to appeal from the decision of the Tax Commission on such hearing to the Standing Rock Sioux Tribal Court.

16-604.22 Tax Commission to Administer Section

In administering this Section, the Tax Commission and authorized agents of the Tax Commission shall exercise the following powers:

- a. The Tax Commission and authorized agents of the Tax Commission shall enforce the provisions of this Section, including through filing actions in Standing Rock Sioux Tribal Court.
- b. The Tax Commission may prescribe rules and regulations not inconsistent with the provisions of this Section for its detailed and efficient administration.

16-604.23 Peace Officers May be Called

In the enforcement of this chapter, the Tax Commission may call to the Tax Commission's assistance, any peace officer, and may appoint such additional assistants as may be required to carry out the provisions of this chapter.

16-604.24 Cigars and Pipe Tobacco—Excise Tax on Wholesale Purchase Price—Other Tobacco Products—Excise Tax on Weight—Penalty—Reports—Collection—Allocation of Revenue

- a. There is hereby levied and assessed upon all cigars and pipe tobacco sold on the North Dakota portion of the Reservation an excise tax at the rate of twenty-eight percent (28%) of the wholesale purchase price at which such cigars and pipe tobacco are purchased by distributors. For the purpose of this section, the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars or pipe tobacco to a distributor exclusive of any discount or other reduction.

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- b. There is levied and assessed upon all other tobacco products sold on the North Dakota portion of the Reservation an excise tax at the following rates:
- b(1) Upon each can or package of snuff, sixty cents (\$0.60) per ounce and a proportionate tax at the like rate on all fractional parts of an ounce.
 - b(2) On chewing tobacco, sixteen cents (\$0.16) per ounce and a proportionate tax at the like rate on all fractional parts of an ounce.
- For purposes of this subsection, the tax on other tobacco products is computed on the net weight as listed by the manufacture.
- c. The proceeds of the taxes imposed under this section, together with such forms of returns and in accordance with such rules and regulations as the Tax Director may prescribe, shall be remitted to the North Dakota Tax Commission, by the distributor on a calendar quarterly basis on or before the fifteenth day of the month following the quarterly period for which paid. The Tax Commission shall, however, have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with remittance shall be filed before the fifteenth day of the month following the month for which the returns are filed.
- d. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent (5%) of the amount of tax due or five dollars (\$5.00), whichever is greater, plus interest of one percent (1%) of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The Tax Commission, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the Tax Commission and disposed of in the same manner as are other receipts under this Section.
- e. All moneys received by the Tax Commission under the provisions of this section shall be transmitted to the Standing Rock Sioux Tribe at the end of each month.

16-604.25 Deduction to Reimburse Licensed Distributor for Administrative Expenses

- a. A licensed distributor who pays the tax due under this Section within the time limitations prescribed may deduct and retain one and one-half percent (1½%) of the tax due to reimburse the distributor for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information requested by the Tax Commission.
- b. The total deduction allowed by this section may not exceed one hundred dollars (\$100.00) per month for each licensed distributor.

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16-604.26 Cigars, Pipe Tobacco and Other Tobacco Products—Excise Tax Payable by Dealers—Reports—Penalties—Collection—Allocation of Revenue

- a. There is levied and assessed upon all cigars and pipe tobacco purchased outside of North Dakota and brought onto the North Dakota portion of the Reservation by a dealer for the purpose of sale at retail, an excise tax at the rate of twenty-eight percent (28%) of the wholesale purchase price, and upon all other tobacco products purchased outside of North Dakota and brought onto the North Dakota portion of the Reservation by a dealer for the purpose of sale at retail, an excise tax at the rates indicated in Section 16.604.24, at the time the products were brought onto the North Dakota portion of the Reservation. For the purpose of this section, the term “wholesale purchase price” means the established price for which a manufacturer sells cigars or pipe tobacco to a distributor exclusive of any discount or other reduction. However, the dealer may elect to report and remit the tax on the cost price of the products to the dealer rather than on the wholesale purchase price. The proceeds of the tax, together with the forms of return and in accordance with any rules and regulations the Tax Commission may prescribe, must be remitted to the Tax Commission by the dealer on a monthly basis on or before the fifteenth day of the month following the monthly period for which it is paid. The Tax Commission shall have the authority to place any dealer on an annual remittance basis when in the judgment of the Tax Commission the operations of the dealer merit that remittance period. In addition, the Tax Commission shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.
- b. If cigars, pipe tobacco, or other tobacco products have been subjected already to a tax by any state in respect to their sale in an amount less than the tax imposed by this section, the provision of this section apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in a state is twenty percent (20%) of the wholesale purchase price or more, then no tax is due on the article. The provision of this subsection apply only if the state allows a tax credit with respect to the excise tax on cigars, pipe tobacco, or other tobacco products imposed by this Section which is substantially similar in effect to the credit allowed by this subsection.
- c. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section is subject to a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, plus one percent of the tax for each month of delay or fraction thereof excepting the month within which the return was required to be filed or the tax became due. The Tax Commission, if satisfied that the delay was excusable, may waive all or any

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part of the penalty. The penalty must be paid to the Tax Commission and disposed of in the same manner as are other receipts under this chapter.

- d. All moneys received by the Tax Commission under the provisions of this Section must be transmitted to the Standing Rock Sioux Tribe at the end of each month.

16-604.27 Consumer's use tax—Cigarettes—Reports—Remittances

- a. A tax is hereby imposed upon the use or storage by consumers of cigarettes on the North Dakota portion of the Reservation, and upon such consumers, at the following rates:
 - a(1) On cigarettes weighing not more than three pounds [1360.78 grams] per thousand, five mills on each such cigarette.
 - a(2) On cigarettes weighing more than three pounds [1360.78 grams] per thousand, five and one-half mills on each such cigarette.
- b. This tax does not apply if the tax imposed by section 16-1010 has been paid.
- c. On or before the tenth day of each calendar quarter, every consumer who during the preceding calendar quarter has acquired title or possession of cigarettes for use or storage on the North Dakota portion of the Reservation, upon which cigarettes the tax imposed by section 16-1010 has not been paid, shall file a return with the Tax Commission showing the quantity of cigarettes so acquired. The return must be made upon a form furnished and prescribed by the Tax Commission and must contain such other information as the Tax Commission may require. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.
- d. As soon as practicable after any return is filed, the Tax Commission shall examine the return and correct it, if necessary, according to the Tax Commission's best judgment and information.
- e. In case any consumer required to pay the tax levied by this section fails to file a return or remit the tax as herein required, the Tax Commission has the authority to make an assessment of tax against the consumer according to the Tax Commission's best judgment and information.
- f. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests thereto, hearings thereon, interest and penalties, and collections of taxes are applicable to consumers under this section in like manner as though set out in full herein.

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16-604.28 Consumer's Use Tax—Cigars, Pipe Tobacco, and Other Tobacco Products—Reports—Remittances

- a. A tax is imposed upon the use or storage by consumers of cigars, pipe tobacco, and other tobacco products in this state, and upon those consumers, at the rates indicated in section 16-604.24.
- b. This tax does not apply if the tax imposed by section 16-604.24 or 16-604.26 has been paid.
- c. On or before the tenth day of each calendar quarter, every consumer who, during the preceding calendar quarter, has acquired title to or possession of cigars, pipe tobacco, or other tobacco products for use or storage on the North Dakota portion of the Reservation, upon which products the tax imposed by either section 16-604.24 or 16-604.26 has not been paid, shall file a return with the Tax Commission showing the quantity of such products so acquired. For sales of other tobacco products, the return must also include the net weight in ounces, as listed by the manufacturer. The return must be made upon a form furnished and prescribed by the Tax Commission and must contain such other information as the Tax Commission may require. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.
- d. As soon as practicable after any return is filed, the Tax Commission shall examine the return and correct it, if necessary, according to the Tax Commission's best judgment and information.
- e. If any consumer required to pay the tax levied by this section fails to file a return or remit the tax as required, the Tax Commission shall make an assessment of tax against the consumer according to the Tax Commission's best judgment and information.
- f. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests, hearings, interest and penalties, and collections of taxes apply to consumers under this section.

16-604.29 Correction of Errors

- a. If it appears that as a result of a mistake an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount becomes due under this chapter, and the amount must be credited or refunded to such person or firm by the Tax Commission.
- b. Whenever a distributor destroys cigarettes, cigars, pipe tobacco, or other tobacco products accidentally, or intentionally, because of staleness or other unfitness for sale, a credit or refund must be given to the wholesaler under the terms and conditions prescribed by the Tax Commission.

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16-604.30 Issuance of Credit or Refund

Whenever by any provisions of this chapter a credit or refund is authorized, the Tax Commission shall issue a credit applicable to future obligations under this chapter or issue a refund to the named payee.

16-604.31 Separate and Additional Tax on the Sale of Cigarettes—
Collection—Allocation of Revenue—Tax Avoidance Prohibited

There is hereby levied and assessed and there shall be collected by the Tax Commission, upon all cigarettes sold on the North Dakota portion of the Reservation, an additional tax, separate and apart from all other taxes, of seventeen mills on each cigarette, to be collected as existing taxes on cigarettes sold are, or hereafter may be, collected, by use of appropriate stamps and under similar accounting procedures. No person, firm, corporation, or limited liability company shall transport or bring or cause to be shipped onto the North Dakota portion of the Reservation any cigarettes as provided herein, other than for delivery to wholesalers on the North Dakota portion of the Reservation, without first paying the tax thereon to the Tax Commission.

16-604.32 Penalties for Violation of Section

Except as other provided in this Section:

- a. Any person who violates any provision of this Section is guilty of a Class A misdemeanor.
- b. All cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products in the possession of the person who violates any provision of this chapter, or in the place business of the person may be confiscated by the Tax Commission as provided in section 16-604.20 and forfeited to the Standing Rock Sioux Tribe. Any cigarette-making machine that is maintained or operated in violation of sections 16-604.8, 16-604.9, or 16-604.11 must be confiscated by the Tax Commission and forfeited to the Standing Rock Sioux Tribe

Section 16-605 Motor Vehicle Fuels Tax

16-605.1 Definitions

As used in this Section, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack

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moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.

2. "Common carrier" or "contract carrier" means a person involved in the movement of motor vehicle fuel from a terminal or movement of motor vehicle fuel imported onto the North Dakota portion of the Reservation, who is not an owner of the motor vehicle fuel.
3. "Consumer" means a user of motor vehicle fuel, including any person purchasing motor vehicle fuel on the North Dakota portion of the Reservation for use in a licensed motor vehicle; any person importing motor vehicle fuel onto the North Dakota portion of the Reservation or purchasing motor vehicle fuel on the North Dakota portion of the Reservation for use as heating fuel or for an agricultural, industrial, or railroad purpose; or any person purchasing motor vehicle fuel on the North Dakota portion of the Reservation for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing motor vehicle fuel for resale.
4. "Destination state" means any state, territory, foreign country, or sovereign nation to which motor vehicle fuel is directed for delivery into a storage facility, receptacle, container, or any type of transportation equipment, for purposes of resale or use.
5. "Distributor" means a person, other than a retailer, who acquires motor vehicle fuel from a supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
6. "Export" means the delivery of motor vehicle fuel across the boundaries of the North Dakota portion of the Reservation from a place of origin within the North Dakota portion of the Reservation by or for a refiner, supplier, or distributor.
7. "Exporter" means a refiner, supplier, or distributor who exports motor vehicle fuel off of the North Dakota portion of the Reservation in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
8. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
9. "Gross volume" means measurement in United States gallons [liters] without temperature or barometric adjustments.
10. "Import" means the delivery of motor vehicle fuel across the boundaries of the North Dakota portion of the Reservation from a place of origin outside of the North Dakota portion of the Reservation by a refiner, supplier, distributor, or consumer.

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11. "Importer" means a refiner, supplier, distributor, or consumer who imports motor vehicle fuel onto the North Dakota portion of the Reservation in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.

12. "Industrial purpose" means:

- a. A manufacturing, warehousing, or loading dock operation;
- b. Construction;
- c. Sand and gravel processing;
- d. Well drilling, well testing, or well servicing;
- e. Maintenance of business premises, golf courses, or cemeteries;
- f. A commercial or contract painting operation;
- g. Electrical services;
- h. A refrigeration unit on a truck;
- i. A power-take-off unit; and
- j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for railroad purpose, or fuel used to operate a licensed motor vehicle.

13. "Interstate motor carrier" means any person importing motor vehicle fuel onto the North Dakota portion of the Reservation in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and; having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; or is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the lessor, renter, or some other person has been designated as the interstate motor carrier.

14. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.

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15. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the motor vehicle fuels defined in this Section, but does not include aircraft.
16. "Motor vehicle fuel" means all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classifications or uses, and any liquid which, when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (American Society for Testing Materials Designation D-86), shows not less than ten percent (10%) distilled (recovered) below three hundred forty-seven (347) degrees Fahrenheit [175 degrees Celsius] and not less than ninety-five percent (95%) distilled (recovered) below four hundred sixty-four (464) degrees Fahrenheit [240 degrees Celsius] but does not include aviation fuel or fuel used as a component of or additive to another product when the use is not intended to result in combustion. It includes agriculturally derived alcohol blended with gasoline, used in a pure state, or if blended with another agriculturally derived liquid..
17. "Person", means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business, trust, receiver, or any other group or combination acting as a unit.
18. "Physical inventory reading" means a measurement of motor vehicle fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
19. "Position holder" means a person holding an inventory position of motor vehicle fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns motor vehicle fuel in a terminal.
20. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
21. "Rack" means a mechanism used to dispense motor vehicle fuel from a terminal.
22. "Refiner" means a person who produces, manufactures, or refines motor vehicle fuel on the North Dakota portion of the Reservation or a person who produces alcohol or alcohol derivative substances on the North Dakota portion of the Reservation for blending with motor vehicle fuel..
23. "Reservation" means those areas within the exterior boundaries of the North Dakota portion of the Standing Rock Sioux Reservation.

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24. "Retail location" means a site at which motor vehicle fuel is dispensed through a pump from an underground or aboveground storage tank into the supply tank of a motor vehicle.
25. "Retailer" means a person who acquires motor vehicle fuel from a supplier or distributor for resale to a consumer at a retail location.
26. "Sale" means, with respect to motor vehicle fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
27. "Supplier" means a refiner who distributes motor vehicle fuel from a terminal within the North Dakota portion of the Reservation, or a person who acquires motor vehicle fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal or a person who acquires motor vehicle fuel by truck or railcar for storage at and distribution from a terminal within the North Dakota portion of the Reservation.
28. "Tax Commission" means the Standing Rock Tax Commission, its employees, assistants, authorized agents or representatives.
29. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
30. "Terminal" means a motor vehicle fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the motor vehicle fuel may be removed from the rack.
31. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
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32. "Wholesale distribution", means the sale of motor vehicle fuel by a supplier or distributor.

16-605.2 Tax Imposed on Motor Vehicle Fuels

- a. Except as otherwise provided in this Section, a tax of twenty-three cents (\$0.23) per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used on the North Dakota portion of the Reservation.
- b. A refiner, supplier, or distributor shall remit the tax imposed by this section on motor vehicle fuel used, on the wholesale distribution of motor vehicle fuel to a retailer, and on direct sales of motor vehicle fuel to a consumer.

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- c. The tax imposed by this section does not apply on a sale by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by the distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
- d. The person required to remit the tax imposed by this section shall pass the tax on to the consumer. A retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.
- e. The person required to remit the tax imposed by this section shall pay the tax to the Tax Commission, by the twenty-fifth (5th) day of the calendar month after the month during which the motor vehicle fuel was sold or used by the person. When the twenty-fifth (25th) day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.

16-605.3 Refund of Tax for Fuel Used for Industrial Purpose

Any consumer who buys or uses any motor vehicle fuel for an industrial purpose on which the motor vehicle fuel tax has been paid may file a claim with the Tax Commission for a refund under this Section.

16-605.4 Refund of Tax for Fuel Used for Agricultural Purpose

Any consumer who buys or uses any motor vehicle fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a claim with the Tax Commission for a refund under this Section.

16-605.5 Form of Claim for Refund

A refund claim must be on a form furnished by the Tax Commission and must have a written declaration by the claimant that it is made under the penalties of perjury. The Tax Commission may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return. The refund claim must indicate that the motor vehicle fuel was used or is to be used by the claimant other than in a licensed motor vehicle, the purpose or type of project for which the motor vehicle fuel was used, and such other information as the Tax Commission requires. The original invoices or sales tickets proving the

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purchase of motor vehicle fuel on which the refund is claimed must be attached to the refund claim. The invoices or sales tickets must include the seller's name and address, the date the fuel was purchased, the type of product, the number of gallons [liters] of motor vehicle fuel purchased, and the name of the claimant. If the original invoices or sales tickets are lost, the claimant may substitute duplicate invoices or sales tickets plus a separate affidavit on forms prescribed by the Tax Commission. A certified history of purchases detailing required information may be accepted by the Tax Commission in lieu of original sales invoices or sales tickets. A supplier, distributor, or retailer is prohibited from preparing a refund claim for the consumer.

16-605.6 Claim for Refund—Limitation on Filing

For all motor vehicle fuel purchases during a calendar year, a refund claim must be filed on or after January first and before July first of the next year following the year during which the purchase was made, or the claim for refund is barred unless the Tax Commission grants an extension of time for cause. However, any claim for refund may be filed in the calendar year of motor vehicle fuel purchase when:

- a. The business is being discontinued;
- b. No further purchases subject to fuel tax refund will be made in the remainder of the calendar year; or
- c. The claim for refund exceeds four hundred dollars (\$400.00).

No claim for refund may be made or approved unless the amount of the claim is in excess of five dollars (\$5.00).

16-605.7 Refund to Prevent Taxation by Multiple Jurisdictions

Any person to whom motor vehicle fuel is sold on which the tax imposed by this section has been paid, who thereafter removes the fuel from within the North Dakota portion of the Reservation for sale or resale in a state which requires payment of a tax upon the use of the fuel in that state, must be granted a refund of the tax that was paid under this section. The refund may be granted only upon application to the Tax Commission in the manner prescribed by the Tax Commission and must include proof that fuel for sale or resale in a state was reported to the taxing agency of that state, or in the case of a consumer, proof of payment of the tax imposed by the state. A claim for refund under this section must be made within one year from the date the fuel was removed to a state for sale, resale, or use in a state.

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16-605.8 Refund of Tax on Tax-Exempt Sales

When a person purchasing motor vehicle fuel for resale purposes pays the tax imposed by this section and later makes a sale of the fuel to an agency of the United States government, Standing Rock Tribal Government, or State of North Dakota, the person may apply to the Tax Commission for a refund of the tax.

16-605.9 Tax Commission to Examine and Pay Claims

Within thirty days of the receipt of a claim for a refund of tax, the Tax Commission shall examine the claim and, if there are no apparent discrepancies, shall prepare an abstract showing the claim number and the name, address, and the amount due each claimant.

16-605.10 Refund to State, Tribe or Political Subdivision

When any construction, reconstruction, or maintenance of a public road, highway, street, or airport is undertaken by the Standing Rock Tribal Government, State of North Dakota, or any political subdivision of the State of North Dakota and public funds of the United States, Tribal Government, State of North Dakota, or any political subdivision of the State of North Dakota are directly used for the purchasing of motor vehicle fuel to be used in publicly owned vehicles for such construction, reconstruction, or maintenance, such motor vehicle fuel is subject to a refund of the tax paid on the fuel as provided for in this section and under the same terms and conditions.

16-605.11 Assignment of refund claims

A consumer eligible for a motor vehicle fuel tax refund under this section, who purchased the fuel on open account, may assign the refund to the seller by attaching an assignment agreement, on a form prescribed by the Tax Commission, to the refund claim submitted in accordance with section 16-1405. If an assignment of a refund is made, the refund check issued shall be made payable to both the claimant and the assignee.

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16-605.12 Credit for taxes paid on worthless accounts and refunds

Taxes paid on motor vehicle fuel represented by accounts found to be worthless, and actually charged off for income tax purposes, may be taken as a credit against subsequent taxes due provided the accounts charged off included the cost of the fuel as well as the taxes due. If the worthless account is subsequently collected, the tax must be remitted on the amount collected. If in any case the credit or any part of it cannot be utilized because of a discontinuance of a business or for other valid reason, the amount may be refunded.

16-605.13 Refiner, Supplier, Distributor, Importer, Exporter, Terminal Operator and Retailer Required to Secure License

- a. A person may not engage in business on the North Dakota portion of the Reservation as a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer of motor vehicle fuel unless that person holds an unrevoked license issued by the Tax Commission.
- b. The person shall file an application for a license with the Tax Commission providing such information as required by the Tax Commission and on a form or in a format as required by the Tax Commission. The information must include:
 - b(1) The name under which the person intends to transact business on the North Dakota portion of the Reservation;
 - b(2) The physical location of each place of business to be covered by the license and the mailing address of the location to which forms and correspondence are to be directed;
 - b(3) If a partnership, the name and address of each of the persons constituting the partnership;
 - b(4) If a North Dakota-registered corporation, the corporate name, the date of incorporation, and the names and addresses of the directors and corporate officers;
 - b(5) If a foreign corporation, the corporate name, the state and the date of incorporation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established;
 - b(6) If a North Dakota-registered limited liability company, the limited liability company name, the date of formation, and the names and addresses of the governors and managers;

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- b(7) If a foreign limited liability company, the limited liability company name, the state and date of formation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established;
- b(8) Any other information the Tax Commission may require.

The application must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury. For an individual, partnership, or unincorporated association, the application must be signed by the owner. For a corporation, the application must be signed by an authorized officer. For a limited liability company, the application must be signed by an authorized manager

16-605.14 Bond or Letter of Credit Required

As a condition precedent to the issuance of a single or multiple license, a supplier, distributor, or importer shall furnish a surety bond, a cash bond, or an approved letter of credit as security to guarantee the payment of the motor vehicle fuel tax liabilities imposed by this section. A refiner, terminal operator, or an exporter who is not also licensed as a supplier or distributor is exempt from this requirement.

- a. The surety bond, cash bond, or letter of credit must be in an amount prescribed by the Tax Commission but not less than one thousand dollars.
- b. The surety bond, cash bond, or letter of credit is subject to approval by the Tax Commission.
- c. After a single or multiple license has been in effect for five or more years, the Tax Commission may review the person's records and may waive the requirement for a security. The requirement for a security may be reinstated at the discretion of the Tax Commission.
- d. A surety bond or letter of credit provided as security must be kept in the custody of the Tax Commission and may be used by the Tax Commission, without notice to the principal, if it becomes necessary to cover the motor vehicle fuel tax, penalties, and interest due.
- e. Money deposited with the Tax Commission as a cash bond must be made in the form of a cashier's check or bank money order payable to the Tax Commission. The money received must be credited by the Tax Commission into a special fund known as the motor fuel tax security trust fund. The money deposited may be used by the Tax Commission, without notice to the depositor, if it becomes necessary to cover tax, penalties, and interest due. When in the Tax Commission's judgment it is no longer necessary to require

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the deposit to be maintained, the Tax Commission shall pay the unused money to the depositor.

16-605.15 Qualification for Exporter License

As a condition precedent to the issuance of a license to an exporter, the exporter shall furnish proof that the exporter has a valid unrevoked license required by the jurisdiction of import.

16-605.16 Qualification for Importer License

As a condition precedent to the issuance of a license to an importer, the importer shall furnish proof that the importer has a valid unrevoked license required by the jurisdiction of export. An importer must also qualify for and apply for a license on the North Dakota portion of the Reservation as a refiner, supplier, or distributor.

16-605.17 Application for License—Issuance of License—Denial of License

- a. Upon receipt and approval of an application for a license, and the required security, the Tax Commission shall issue a license which shall be valid until it is suspended, revoked for cause, or otherwise canceled. The license is not transferable.
- b. A multiple license must be issued to a person who applies and qualifies for more than one type of license.
- c. The Tax Commission may refuse to issue a license to a person who has not provided the required security, who failed to provide the information requested on the application, who previously held a license which was revoked by the Tax Commission, who is a subterfuge for the real party in interest who previously held a license that was revoked by the Tax Commission, or upon other sufficient cause being shown. The Tax Commission shall grant the person the right to a hearing with the Tax Commission. Written notice of the hearing must be served on the person at least ten days prior to the date established for the hearing.

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16-605.18 Revocation of license—Hearing to Show Cause—
Reinstatement

- a. The Tax Commission may revoke a license for reasonable cause. Before revoking a license, the Tax Commission shall grant a hearing to allow the person to show cause why the license should not be revoked. Written notice of a hearing must be served on the person at least ten days prior to the date established for the hearing.
- b. Before a new license may be issued to a person who is obligated to remit the tax imposed by this section and whose license was revoked, the person shall pay to the Tax Commission the amount of any delinquent tax, penalties, and interest remaining unpaid and must file with the Tax Commission a surety bond upon which the person is the principal. The bond must be in an amount determined by the Tax Commission but not less than one thousand dollars. The bond must be payable to the Tax Commission and be conditioned upon the timely filing of correct tax reports and timely payment of the full amount of the tax due as required under this section. If the person fails to file the required report or to timely pay the full amount of tax due, the Tax Commission may require an increase in the amount of the surety bond conditioned to secure at all times the payment of any tax due to the Standing Rock Sioux Tribe under this section.

16-605.19 Monthly Report by Refiner, Supplier, Distributor, Importer,
Exporter, or Retailer Required

- a. A refiner, supplier, distributor, importer, exporter or retailer shall file a monthly report with the Tax Commission no later than the twenty-fifth (25th) day of each calendar month covering motor vehicle fuel sold and used during the preceding calendar month. When the twenty-fifth (25th) day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States Postal Service or other postal carrier service before midnight of the due date.
- b. The report to the Tax Commission must be on a form prescribed and furnished by the Tax Commission. The Tax Commission may require that all or part of the report be submitted in an electronic format approved by the Tax Commission, provided the person required to file the report is able to use an electronic format. The report must contain the information as required by the Tax Commission, including:
 - b(1) A detailed schedule of motor vehicle fuel refined, purchased, imported, and exported;

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- b(2) A detailed schedule of motor vehicle fuel sold to a person eligible to purchase the motor vehicle fuel without the tax imposed by this section;
 - b(3) A detailed schedule of motor vehicle fuel sold tax-paid for resale, including a list of persons who purchased the motor vehicle fuel for resale;
 - b(4) The total number of gallons of motor vehicle fuel sold and used subject to the tax imposed by this section;
 - b(5) The number of gallons of motor vehicle fuel sold tax-exempt to a qualified consumer;
 - b(6) The number of gallons of motor vehicle fuel in physical inventory at the beginning of the calendar month, the number of gallons in physical inventory at the close of the calendar month, and any gains or losses experienced;
- c. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury;
 - d. The Tax Commission may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return

16-605.20 Report by Terminal Operator Required

- a. A terminal operator shall file a monthly report with the Tax Commission no later than the twenty-fifth day of each calendar month covering motor vehicle fuel received into and removed from the terminal during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
- b. The report to the Tax Commission must be on a form prescribed and furnished by the Tax Commission or in a format approved by the Tax Commission. The Tax Commission may require that all or part of the report be submitted in an electronic format approved by the Tax Commission, provided the person required to file the report is able to use an electronic format. The report must contain such information as required by the Tax Commission and may include:
 - b(1) A detailed schedule of motor vehicle fuel received into the terminal for or on behalf of the position holder.

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- b(2) A detailed schedule of motor vehicle fuel removed from the terminal by or on behalf of a position holder.
- b(3) The number of gallons of motor vehicle fuel in inventory at the beginning of the calendar month and the number of gallons in inventory at the close of the calendar month for each position holder.
- c. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made under penalties of perjury.
- d. The Tax Commission may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, which have the same validity and consequence as the actual signature and written declaration for a paper return.

16-605.21 Common or contract carrier—License required—Records required—Diverted loads—Tax Commission to audit records

- a. A common or contract carrier shall obtain a license issued by the Tax Commission. The application for a license must be made on a form prescribed by the Tax Commission and contain the information required by the Tax Commission.
- b. A common or contract carrier transporting motor vehicle fuel in a vehicle, railcar, or vessel onto the North Dakota portion of the Reservation from a state or country shall ensure that a bill of lading indicating the North Dakota portion of the Reservation as the destination has been issued by the terminal or bulk plant from which the fuel was removed. If a bill of lading issued by the terminal or bulk plant indicates a destination other than the North Dakota portion of the Reservation, the transporter shall issue a diversion ticket indicating the North Dakota portion of the Reservation as the destination. If a bill of lading was not issued by the terminal or bulk plant, the transporter shall issue a bill of lading for each shipment indicating the North Dakota portion of the Reservation as the destination. A copy of a diversion ticket and bill of lading prepared by the transporter shall be mailed, faxed, or electronically transmitted to the Tax Commission before the fuel enters the North Dakota portion of the Reservation.
- c. A common or contract carrier transporting motor vehicle fuel on the North Dakota portion of the Reservation shall provide a copy of the bill of lading accompanying the shipment, along with any drop load tickets and diversion tickets issued for the delivered fuel to the refiner, supplier, distributor, importer, retailer, or consumer to whom delivery of the shipment was made.
- d. A refiner, supplier, distributor, importer, retailer, or consumer may not knowingly accept delivery of motor vehicle fuel into storage facilities on the North Dakota portion of the Reservation if that delivery is not accompanied by

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a bill of lading or diversion ticket issued by the terminal operator, bulk plant operator, or transporter, which specifically indicates the North Dakota portion of the Reservation as the destination of the motor vehicle fuel.

- e. If a common or contract carrier unloads only a portion of a shipment at a location or if the load is loaded at a location other than what is indicated in the bill of lading or diversion ticket, the transporter shall issue a drop load ticket. If the fuel is dropped at more than one location, the drop load ticket must identify the name and address of all locations and the type of fuel and gallonage dropped. A copy of the ticket must be maintained on board and a copy must accompany the bill of lading that is provided to the refiner, supplier, distributor, importer, retailer, or consumer taking delivery of the fuel.
- f. A diversion ticket must include the following information:
 - f(1) The transporter's name and address.
 - f(2) The date and time of issuance.
 - f(3) The diversion ticket number.
 - f(4) The name and address of the consignee indicated on the original bill of lading.
 - f(5) The destination as stated on the original bill of lading.
 - f(6) The original bill of lading number.
 - f(7) The location diverted to, including the address to which the fuel was diverted and the destination.
 - f(8) The number of gallons of fuel being diverted.
 - f(9) The type of fuel being diverted.
 - f(10) Any other information required by the Tax Commission.
- g. A drop load ticket must include the following:
 - g(1) The transporter's name and address.
 - g(2) The date and time of issuance.
 - g(3) The partial load ticket number.
 - g(4) The name and address of the consignee indicated on the original bill of lading.
 - g(5) The destination on the original bill of lading or as shown on the diversion ticket, if issued.
 - g(6) The original bill of lading number and, if available, the diversion ticket number.
 - g(7) The number of gallons off-loaded at each location.

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- g(8) The type of fuel off-loaded at each location.
- g(9) Any other information required by the Tax Commission.
- h. Except as otherwise provided in this section, the Tax Commission may audit the records of the common or contract carrier, whether or not licensed by the Tax Commission, and may impose such penalties as authorized by this section.

16-605.22 Tax Commission to Audit Report and Assess Tax

- a. The Tax Commission, or an authorized representative, may audit the records, books, and papers, and examine fuel and any equipment used to store, transport, or dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal operator, retailer, or common or contract carrier. For a person required to file a report, the examination and audit shall be done no later than three years after the due date of the report or three years after the report was filed, whichever period expires later. The Tax Commission is authorized to make assessments of tax, plus penalty and interest, or to issue credits or refunds as determined on the basis of the examination and audit.
- b. If it is determined upon audit that the tax due was twenty-five percent (25%) or more above the amount reported on a report, the tax may be assessed, or a proceeding in Tribal Court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the report, or six years after the report was filed, whichever period expires later.
- c. Except as otherwise provided in this section, the Tax Commission may audit any consumer's claim for a refund of tax, and, not later than three years after the due date of the claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the Tax Commission shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as required by the Tax Commission of fuel purchases, payment of the tax, use of the fuel for a purpose entitling the claimant to a refund, and use of the fuel other than in a licensed motor vehicle.
- d. If a person gives false or fraudulent information in a tax report or in a claim for refund, or if the failure by a person to file a tax report is due to the fraudulent intent or the willful attempt of the person in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed, or a proceeding in Tribal Court for the collection of the tax may be begun without such assessment, at any time.
- e. If, before the expiration of the time prescribed in this section for the assessment of tax, the Tax Commission and the person consent in writing to

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an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

- f. A determination of additional tax due issued to a person fixes the tax finally and irrevocably unless the person against whom it is assessed, within thirty (30) days after the giving of notice of the determination, protests the determination under rules adopted by the Tax Commission and in the manner provided by the Standing Rock Sioux Tribal Court.
- g. A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the person claiming the refund, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the Tax Commission and in the manner provided by the Standing Rock Sioux Tribal Court.

16-605.23 Determination if No Report is Filed

If a person fails, neglects, or refuses to file a motor vehicle fuel tax report when due, the Tax Commission shall, on the basis of available information, determine the tax liability for the period during which no report was filed, and to the tax thus the Tax Commission shall add the penalty and interest as provided in section 16-605.22.. An assessment made by the Tax Commission under this section or section 16-605.22 is presumed to be correct, and in any case when the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by fair preponderance of evidence that it is erroneous or excessive.

16-605.24 Corporate Officer Liability

- a. If a corporation holding a license issued under this section fails for any reason to file the required returns or to pay the tax due, the president, vice president, secretary, or treasurer, jointly or severally, having control or supervision of, or charged with the responsibility for making, such returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this section for the assessment and collection of other liabilities.
- b. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the Tax Commission a bond or undertaking

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executed by a surety company authorized to do business on the North Dakota portion of the Reservation. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual motor vehicle fuel tax liability of the corporation.

16-605.25 Governor and Manager Liability

- a. If a limited liability company holding a license issued under this section fails for any reason to file the required returns or to pay the taxes due under this section, the governors, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payments are personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's, manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this section.
- b. If the governors, managers, or members elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the Tax Commission a bond or undertaking executed by a surety company authorized to do business on the North Dakota portion of the Reservation. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual motor vehicle fuel tax liability of the limited liability company.

16-605.26 Lien of tax—Collection—Action Authorized

- a. When a taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the tax, the amount, including any interest, penalty, or addition to the tax, together with the costs that may accrue in addition to the tax, is a lien in favor of the Standing Rock Sioux Tribe upon all property and rights to property, whether real or personal, belonging to the taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivors to the extent of the deceased taxpayer's interest therein, which interest is determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein.
- b. The lien attaches at the time the tax becomes due and payable and continues until the liability for the amount is satisfied. For the purposes of this section, the words "due" and "due and payable" mean the first instant at which the tax becomes due.

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- c. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated on the North Dakota portion of the Reservation, prior to the effective date of a lien in favor of the Standing Rock Sioux Tribe, as authorized under this section, takes free of, or has priority over, the lien.

16-605.27 Liability of a general partner in a limited liability limited partnership

- a. If a limited liability limited partnership holding a license issued under this section fails for any reason to file the required returns or to pay the tax due under this section, the general partners, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this section.
- b. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post with the Tax Commission a bond or undertaking executed by a surety company authorized to do business on the North Dakota portion of the Reservation. The cash deposit, bond, or undertaking must be in an amount equal to the estimated motor fuel tax liability of the limited liability limited partnership.

16.605.28 Penalty and interest—Violations

- a. If a person fails to file the required report or to pay the full amount of the tax as required by this section, there is imposed a penalty of five dollars, or a sum equal to five percent of the tax due, whichever is greater, with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which the delinquency continues, excepting the month within which the report was required to be filed or the tax became due. If a person files a false or fraudulent report with intent to evade the tax imposed by this section, there is imposed a penalty equal to ten percent of the deficiency, with interest at the rate of two percent per month on the deficiency, for each calendar month or fraction of a month during which the deficiency continues. The Tax Commission, for good cause shown, may waive all or any part of the penalty or interest provided by this subsection.
- b. A person is guilty of a class A misdemeanor if:

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- b(1) The person refuses or knowingly or intentionally fails to make and file any report required by this section in the manner or within the time required; or
- b(2) The person knowingly or with intent to evade or aid in the evasion of the tax imposed by this section makes any false statement or conceals any material fact in any application, record, report, or claim for refund provided for in this section.

16-605.29 Bulk Delivery Sales

Bulk delivery sales of motor vehicle fuels are not subject to the tax imposed by this Section where:

- a. The bulk sale is to an Indian residing on the Standing Rock Sioux Reservation and the fuel is intended for use in non-licensed equipment for agricultural or industrial purpose; or
- b. The bulk sale is to the Tribe, for use in tribally-owned vehicles, whether licensed or unlicensed. If the tax is charged in error, refunds are available under this Section for the exempt portion of tax.

Bulk delivery sales of motor vehicle fuels to non-Indians are subject to the applicable North Dakota tax and not to the tax under this Section.

16-605.30 Tax Collection Allowance

The person required to remit the tax imposed by this Section shall retain two percent (2%) of the amount of tax due to cover the cost of collecting the tax and transmitting it to the Tax Commission. This provision does not apply to tax on excess inventory losses and does not apply to additional tax assessed during an audit.

16-605.31 Retention of Records—Subject to Inspection

A refiner, supplier, distributor, importer, exporter, terminal operator, and retailer shall maintain and retain records of all motor vehicle fuel refined, purchased, imported, or otherwise acquired; of all motor vehicle fuel exported, sold, distributed, and used; and of all inventory records, for a period of not less than three years. Inventory records include physical readings, metered readings of sales, delivery tickets, and delivery readings. The records are open to inspection by the Tax Commission during business hours.

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16-605.32 Inventory Gains—Losses

- a. A supplier or distributor shall take a physical inventory reading of all motor vehicle fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a monthly basis and shall report the physical readings, inventory gains, and inventory losses to the Tax Commission. The inventory reconciliation must include motor vehicle fuel at retail locations and motor vehicle fuel stored in a barrel, drum, or other receptacle.
- b. When sold or used by a supplier or distributor, a gain in motor vehicle fuel inventories is subject to the tax imposed by this section in the same manner as motor vehicle fuel purchased, imported, or otherwise acquired.
- c. A supplier or distributor who experiences an actual physical inventory loss due to shrinkage or evaporation is responsible for the tax imposed by this section on any such loss that is in excess of one-half of one percent of the motor vehicle fuel received during the period covered by the inventory reconciliation.
- d. For purposes of this section, it is presumed that all motor vehicle fuel received above the one-half of one percent allowance, except that gallonage shown as inventory based on physical inventory readings at the end of the time period covered by the inventory reconciliation, and other allowances provided in this section, has been sold, delivered, or used, and the supplier or distributor is liable for the amount of the motor vehicle fuel tax on each gallon [liter] of motor vehicle fuel not accounted for. For purposes of this section, motor vehicle fuel refined at a refinery on the North Dakota portion of the Reservation and placed in storage at the refinery, and motor vehicle fuel brought onto the North Dakota portion of the Reservation by pipeline and placed in storage at a pipeline terminal, is not deemed received until it is withdrawn from the refinery or terminal storage for sale or use on the North Dakota portion of the Reservation, or for shipment or delivery to destinations onto the North Dakota portion of the Reservation.
- e. The Tax Commission may allow a tax credit to a supplier or distributor for actual inventory losses due to a casualty loss, based on proof of the loss as required by the Tax Commission.

16-605.33 Sales of Motor Vehicle Fuels to Retail Outlets—Tax Imposed—
Credit for Losses

When a supplier or distributor in motor vehicle fuels makes a sale to a retail outlet, the supplier or distributor shall credit the retail outlet with one-half of one percent of the total motor vehicle fuel tax applied to the gallonage sold. This must appear on the face of the delivery invoice at the time of delivery of the motor vehicle fuel in consideration of evaporation and shrinkage losses

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and the retail outlet's cost of collection of the tax. On making payments to the Tax Commission as provided in this section, the supplier or distributor shall deduct the total credit allowance granted on sales to retail outlets in motor vehicle fuels under the provisions of this section, in addition to other deductions allowed, from the amount of tax due.

16-605.34 Transfer, Deposit and Distribution of Funds

Taxes, penalties, and interest collected under the provisions of this section must be transferred to the Standing Rock Sioux Tribe, except as provided in any Collection and Administration Agreement entered into between the Standing Rock Sioux Tribe and the State of North Dakota.

16-605.35 Administration—Assistance Authorized—Rules

The Tax Commission shall enforce the provisions of this section. The Tax Commission may employ assistance and conduct investigations as may be necessary for the efficient administration and enforcement of this section and may adopt and enforce reasonable rules relating to the administration and enforcement of this section.

16-605.36 Erroneously or Illegally Collected Taxes

If any taxes, penalties, or interest imposed by this section have been erroneously or illegally collected from any person, the Tax Commission may permit that person to take credit against a subsequent tax return for the amount of the erroneous or illegal overpayment. In the alternative, the Tax Commission may issue a refund to the person in the manner prescribed by the Tax Commission. Any credit or refund may not be approved or paid unless it is an amount which is in excess of five dollars.

Section 16-606 Special Fuels Tax**16-606.1 Definitions**

As used in this Section, unless the context otherwise requires:

1. "Agricultural purpose", means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part

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by internal combustion. It does not include fuel used to operate a licensed motor vehicle.

2. "Biodiesel, designated B100" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oil or animal fats that meets American society for testing materials specification D 6751.
3. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported onto the North Dakota portion of the Reservation, who is not an owner of the special fuel.
4. "Consumer", means a user of special fuel, including any person purchasing special fuel on the North Dakota portion of the Reservation for use in a licensed motor vehicle; any person importing special fuel onto the North Dakota portion of the Reservation or purchasing special fuel on the North Dakota portion of the Reservation for use as heating fuel or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel on the North Dakota portion of the Reservation for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing special fuel for resale
5. "Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.
6. "Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
7. "Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.
8. "Export" means the delivery of special fuel across the boundaries of the North Dakota portion of the Reservation from a place of origin within the North Dakota portion of the Reservation by or for a refiner, supplier, or distributor.
9. "Exporter" means a refiner, supplier, or distributor who exports special fuel off of the North Dakota portion of the Reservation in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
10. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
11. "Green diesel" means a fuel produced from nonfossil renewable resources, including agricultural or silvicultural plants, animal fats, residue, and waste generated from the production, processing, and marketing of agricultural

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products, silvicultural products, and other renewable resources, which meets applicable American society for testing and materials specifications.

12. "Gross volume" means measurement in United States gallons [liters] without temperature or barometric adjustments.
13. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
14. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
15. "Import" means the delivery of special fuel across the boundaries of the North Dakota portion of the Reservation from a place of origin outside of the North Dakota portion of the Reservation by a refiner, supplier, distributor, or consumer.
16. "Importer" means a refiner, supplier, distributor, or consumer who imports special fuel onto the North Dakota portion of the Reservation in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
17. "Industrial purpose" means:
 - a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;
 - f. A commercial or contract painting operation;
 - g. Electrical services;
 - h. A refrigeration unit on a truck;
 - i. A power-take-off unit; and
 - j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

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18. "Interstate motor carrier" means any person importing special fuel onto the North Dakota portion of the Reservation in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; or is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the Standing Rock Tribal Government has designated the lessor, renter, or some other person as the interstate motor carrier.
19. "Licensed motor vehicle", means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
20. "Motor vehicle", means a vehicle, engine, or machine movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this Section but does not include aircraft.
21. "Person", means every individual, partnership, firm, association, joint venture corporation, or limited liability company, estate, business, trust, receiver, or any other group or combination acting as a unit.
22. "Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
23. "Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.
24. "Public road or highway", means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
25. "Rack", means a mechanism used to dispense special fuel from a terminal.
26. "Railroad purpose", means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.

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27. "Refiner", means a person who produces, manufactures, or refines special fuels on the North Dakota portion of the Reservation.
28. "Reservation" means those areas within the exterior boundaries of the North Dakota portion of the Standing Rock Sioux Reservation.
29. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.
30. "Retailer", means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
31. "Sale", means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
32. "Special fuel", means all clear diesel fuel sold for use in a licensed motor vehicle on public roads.
33. "Supplier", means a refiner who distributes special fuel from a terminal within the North Dakota portion of the Reservation, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal within the North Dakota portion of the Reservation.
34. "Tax Commission" means the Standing Rock Tax Commission, its employees, assistants, authorized agents, or representatives
35. "Taxpayer", means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
36. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
37. "Terminal operator", means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by co-venturers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
38. "Wholesale distribution", means the sale of special fuel by a supplier or distributor.

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16-606.2 Tax Imposed

- a. Except as otherwise provided in this Section, an excise tax of twenty-three cents (\$0.23) per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used on the North Dakota portion of the Reservation.
- b. A refiner, supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.
- c. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
- d. The person required to remit the tax imposed by this section shall pass the tax on to the consumer.
- e. The person required to remit the tax imposed by this section shall pay the tax to the Tax Commission by the twenty-fifth (25th) day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth (25th) day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight (12:00 A.M.) of the due date.

16-606.3 Exemptions

- a. Special fuel commonly known as diesel fuel which is dyed for federal fuel tax exemption purposes is exempt from the special fuel tax imposed by section 16-606.2 at the time the fuel is sold to the consumer. Special fuel known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for use as heating fuel is exempt from the special fuel tax imposed by section 16-606.2.
- b. Special fuel, other than diesel fuel, is exempt from the special fuel tax imposed by section 16-606.2 at the time the fuel is sold to the consumer. Propane sold for use as heating fuel is exempt from the special fuel tax imposed by section 16-606.2 at the time the fuel is sold to the consumer. Special fuel, other than diesel fuel and propane, sold for use as heating fuel is exempt from the special fuel tax imposed by section 16-606.2 at the time the fuel is sold to the consumer.
- c. A consumer purchasing special fuel for a use in which it becomes an ingredient or a component part of tangible personal property intended to be sold ultimately at retail is exempt from the tax imposed by section 16-606.2.

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16-606.4 Tax Collection Allowance

The person required to remit the tax imposed by this section shall deduct one percent (1%) from the amount of tax due, up to a maximum of three hundred dollars (\$300.00) per month, to cover the cost of collecting the tax and remitting it to the Tax Commission. This provision does not apply to tax on excess inventory losses and does not apply to additional tax assessed during an audit.

16-606.5 Refund to Prevent Taxation by Multiple Jurisdictions

Any person to whom special fuel is sold on which the tax imposed by this section has been paid, who thereafter removes the fuel from within the North Dakota portion of the Reservation for sale or resale in a state or to a state that requires payment of a tax upon the use of the fuel in that state, must be granted a refund of the tax that was paid under this section. The refund may be granted only upon application to the Tax Commission in the manner prescribed by the Tax Commission and must include proof that fuel for sale or resale in a state was reported to the taxing agency of that state, or in the case of a consumer, proof of payment of the tax imposed by the state. A claim for refund under this section must be made within one year from the date the fuel was removed to a state for sale, resale, or use in that state.

16-606.6 Refund of tax on tax-exempt sales.

When a person purchasing special fuel for resale purposes pays the tax imposed by this section and later makes a sale of the fuel to an agency of the United States government, the person may apply to the Tax Commission for a refund of the tax.

16-606.7 Credit for taxes paid on worthless accounts and refunds.

Taxes paid on special fuels represented by accounts found to be worthless, and actually charged off for income tax purposes, may be taken as a credit against subsequent taxes due provided the accounts charged off included the cost of the fuel as well as the taxes due. If the worthless account is subsequently collected, the tax must be remitted on the amount collected. If in any case the credit or any part of it cannot be utilized because of a discontinuance of a business or for other valid reason, the amount may be refunded.

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16-606.8 Refiner, Supplier, Distributor, Importer, Exporter, Retailer and Terminal Operator Required to Secure License

- a. A person may not engage in business on the North Dakota portion of the Reservation as a refiner, supplier, distributor, importer, exporter, retailer, or terminal operator of special fuel unless that person holds an unrevoked license issued by the Tax Commission.
- b. The person shall file an application for a license with the Tax Commission providing such information as required by the Tax Commission, and on a form or in a format as required by the Tax Commission. The information must include:
 - b(1) The name under which the person intends to transact business on the North Dakota portion of the Reservation.
 - b(2) The physical location of each place of business to be covered by the license and the mailing address of the location to which forms and correspondence are to be directed.
 - b(3) If a partnership, the name and address of each of the persons constituting the partnership.
 - b(4) If a North Dakota-registered corporation, the corporate name, the date of incorporation, and the names and addresses of the directors and corporate officers.
 - b(5) If a foreign corporation, the corporate name, the state and the date of incorporation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
 - b(6) If a North Dakota-registered limited liability company, the limited liability company name, the date of formation, and the names and addresses of the governors and managers.
 - b(7) If a foreign limited liability company, the limited liability company name, the state and the date of formation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
 - b(8) Any other information the Tax Commission may require.

The application must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury. For an individual, partnership, or unincorporated association, the application must be signed by the owner. For a corporation, the application must be signed by an authorized officer. For

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a limited liability company, the application must be signed by an authorized manager.

- c. Based on the information provided in a special fuels retailer's license application and on the special fuels tax laws in effect at the time the application is filed, the Tax Commission may determine, on those conditions and terms as the Tax Commission deems reasonable and necessary, that a special fuels retailer license is not required:
- c(1) If there is a subsequent change in the special fuels tax laws that would require the person to obtain a license, the Tax Commission shall notify the person of the change and that a license application must be submitted. The person shall submit an application within thirty days of the notice provided in this subdivision. If the application is not filed, the Tax Commission may take the action necessary to enforce the license requirements of this section.
- c(2) If there is a subsequent change in the applicant's business practices that may require the person to obtain a retail license, the person must submit a revised license application. The Tax Commission shall review the revised application and make a redetermination as to whether a special fuels license is required.
- c(3) If the Tax Commission determines there was an omission or erroneous information provided in a license application and that a license would have been required under this section if correct and complete information had been provided, the Tax Commission shall assess tax, penalty, and interest from the date the license application was received. The tax must be assessed as provided in section 16-1520 and must be based on the best information available. Subsection 4 of section 16-1518 applies to the time period in which an assessment may be made under this subsection.

16-606.9 Bond or Letter of Credit Required

As a condition precedent to the issuance of a single or multiple license, a supplier, distributor, retailer, or importer shall furnish a surety bond, a cash bond, or an approved letter of credit as security to guarantee the payment of the special fuel taxes imposed by this section. A terminal operator or an exporter who is not also licensed as a supplier or distributor is exempt from this requirement.

- a. The surety bond, cash bond, or letter of credit must be in an amount prescribed by the Tax Commission but not less than one thousand dollars. If the Tax Commission requires a separate license for liquefied petroleum gases, a separate security is required for that license, and the surety bond,

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- cash bond, or letter of credit must be in an amount prescribed by the Tax Commission but not less than five hundred dollars.
- b. The surety bond, cash bond, or letter of credit is subject to approval by the Tax Commission.
 - c. After a single or multiple license has been in effect for five or more years, the Tax Commission may review the person's records and may waive the requirement for a security. The requirement for a security may be reinstated at the discretion of the Tax Commission.
 - d. A surety bond or letter of credit provided as security must be kept in the custody of the Tax Commission and may be used by the Tax Commission, without notice to the principal, if it becomes necessary to cover the special fuel tax, penalties, and interest due.
 - e. Money deposited with the Tax Commission as a cash bond must be made in the form of a cashier's check or bank money order payable to the Tax Commission. The money received must be credited by the Tax Commission into a special fund to be known as the motor fuel tax security trust fund. The money deposited may be used by the Tax Commission, without notice to the depositor, if it becomes necessary to cover tax, penalties, and interest due. When in the Tax Commission's judgment it is no longer necessary to require the deposit to be maintained, the Tax Commission shall pay the unused money to the depositor.

16-606.10 Qualification for Exporter License

As a condition precedent to the issuance of a license to an exporter, the exporter shall furnish proof that the exporter has a valid unrevoked license required by the jurisdiction of import.

16-606.11 Qualification for importer license

As a condition precedent to the issuance of a license to an importer, the importer shall furnish proof that the importer has a valid unrevoked license required by the jurisdiction of export. An importer must also qualify for and apply for a license on the North Dakota portion of the Reservation as a refiner, supplier, or distributor.

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16-606.12 Application for License—Issuance of License—Denial of License

- a. Upon receipt and approval of an application for a license, and the required security, the Tax Commission shall issue a license which is valid until it is suspended, revoked for cause, or otherwise canceled. The license is not transferable.
- b. A multiple license must be issued to a person who applies and qualifies for more than one type of license.
- c. The Tax Commission may refuse to issue a license to a person who has not provided the required security, who failed to provide the information requested on the application, who previously held a license which was revoked by the Tax Commission, who is a subterfuge for the real party in interest who previously held a license that was revoked by the Tax Commission, or upon other sufficient cause being shown. The Tax Commission shall grant the person the right to a hearing with the Tax Commission. Written notice of the hearing must be served on the person at least ten days prior to the date established for the hearing.

16-606.13 Revocation of License—Hearing to Show Cause—Reinstatement

- a. The Tax Commission may revoke a license for reasonable cause. Before revoking a license, the Tax Commission shall grant a hearing to allow the person to show cause why the license should not be revoked. Written notice of a hearing must be served on the person at least ten days prior to the date established for the hearing.
- b. Before a new license may be issued to a person who is obligated to remit the tax imposed by this section and whose license was revoked, the person shall pay to the Tax Commission the amount of any delinquent tax, penalties, and interest remaining unpaid and must file with the Tax Commission a surety bond upon which the person is the principal. The bond must be in an amount determined by the Tax Commission but not less than one thousand dollars. The bond must be payable to the Tax Commission and be conditioned upon the timely filing of required tax reports and the timely payment of the full amount of the tax due as required under this section. If the person fails to file the required report or to timely pay the full amount of the tax due, the Tax Commission may require an increase in the amount of the surety bond conditioned to secure at all times the payment of any tax due to the Standing Rock Sioux Tribe under this section.

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16-606.14 Retention of Records—Subject to Inspection

A refiner, supplier, distributor, importer, exporter, terminal operator, and retailer shall maintain and retain records of all special fuel refined, purchased, imported, or otherwise acquired; of all special fuel exported, sold, distributed, and used; and of all inventory records, for a period of not less than three years. Inventory records include physical readings, metered readings of sales, delivery tickets, and delivery readings. The records are open to inspection by the Tax Commission or by any agent or employee authorized by the Tax Commission during business hours.

16-606.15 Report by Refiner, Supplier, Distributor, Importer, Exporter, or Retailer Required

- a. A refiner, supplier, distributor, retailer, importer, or exporter shall file a monthly report with the Tax Commission no later than the twenty-fifth (25th) day of each calendar month covering special fuel sold and used during the preceding calendar month. When the twenty-fifth (25th) day of the calendar falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States Postal Service or other postal carrier service before midnight (12:00 A.M.) of the due date. The Tax Commission may require separate reports to be filed covering liquefied petroleum gases.

16-606.16 Report by Terminal Operator Required

- a. A terminal operator shall file a monthly report with the Tax Commission no later than the twenty-fifth day of each calendar month covering special fuel received into and removed from the terminal during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
- b. The report to the Tax Commission must be on a form prescribed and furnished by the Tax Commission or in a format approved by the Tax Commission. The Tax Commission may require that all or part of the report be submitted in an electronic format approved by the Tax Commission, provided the terminal operator is able to file the report in an electronic format. The report must contain such information as required by the Tax Commission and may include:

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- b(1) A detailed schedule of special fuel received into the terminal for or on behalf of the position holder.
- b(2) A detailed schedule of special fuel removed from the terminal by or on behalf of a position holder.
- b(3) The number of gallons of special fuel in inventory at the beginning of the calendar month and the number of gallons in inventory at the close of the calendar month for each position holder.
- c. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made under penalties of perjury. The Tax Commission may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

16-606.17 Common or Contract Carrier—License Required—Records Required—Diverted Loads—Commissioner to Audit Records

- a. A common or contract carrier shall obtain a license issued by the Tax Commission. The application for license must be made on a form prescribed by the Tax Commission and contain the information required by the Tax Commission.
- b. A common or contract carrier transporting special fuel in a vehicle, railcar, or vessel onto the North Dakota portion of the Reservation from a state or country shall ensure that a bill of lading indicating the North Dakota portion of the Reservation as the destination has been issued by the terminal or bulk plant from which the fuel was removed. If a bill of lading issued by the terminal or bulk plant indicates a destination other than the North Dakota portion of the Reservation, the transporter shall issue a diversion ticket indicating the North Dakota portion of the Reservation as the destination. If a bill of lading was not issued by the terminal or bulk plant, the transporter shall issue a bill of lading for each shipment indicating the North Dakota portion of the Reservation as the destination. A copy of a diversion ticket and bill of lading prepared by the transporter shall be mailed, faxed, or electronically transmitted to the Tax Commission before the fuel enters the North Dakota portion of the Reservation.
- c. A common or contract carrier transporting special fuel on the North Dakota portion of the Reservation shall provide a copy of the bill of lading accompanying the shipment, along with any drop load tickets and diversion tickets issued for the delivered fuel to the refiner, supplier, distributor, importer, retailer, or consumer to whom delivery of the shipment was made.

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- d. A refiner, supplier, distributor, importer, retailer, or consumer may not knowingly accept delivery of special fuel into storage facilities on the North Dakota portion of the Reservation if that delivery is not accompanied by a bill of lading or diversion ticket issued by the terminal operator, bulk plant operator, or transporter, which specifically indicates the North Dakota portion of the reservation as the destination of the special fuel.
- e. If a common or contract carrier unloads only a portion of a shipment at a location or if the load is loaded at a location other than what is indicated in the bill of lading or diversion ticket, the transporter shall issue a drop load ticket. If the fuel is dropped at more than one location, the drop load ticket must identify the name and address of all locations and the type of fuel and gallonage dropped. A copy of the ticket must be maintained on board and a copy must accompany the bill of lading that is provided to the refiner, supplier, distributor, importer, retailer, or consumer taking delivery of the fuel.
- f. A diversion ticket must include the following information:
 - f(1) The transporter's name and address.
 - f(2) The date and time of issuance.
 - f(3) The diversion ticket number.
 - f(4) The name and address of the consignee indicated on the original bill of lading.
 - f(5) The destination as stated on the original bill of lading.
 - f(6) The original bill of lading number.
 - f(7) The location diverted to, including the address to which the fuel was diverted and the destination.
 - f(8) The number of gallons of fuel being diverted.
 - f(9) The type of fuel being diverted.
 - f(10) Any other information required by the Tax Commission.
- g. A drop load ticket must include the following:
 - g(1) The transporter's name and address.
 - g(2) The date and time of issuance.
 - g(3) The partial load ticket number.
 - g(4) The name and address of the consignee indicated on the original bill of lading.
 - g(5) The destination on the original bill of lading as shown on the diversion ticket, if issued.

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- g(6) The original bill of lading number and, if available, the diversion ticket number.
- g(7) The number of gallons off-loaded at each location.
- g(8) The type of fuel off-loaded at each location.
- g(9) Any other information required by the Tax Commission.
- h. Except as otherwise provided in this section, the Tax Commission may audit the records of the common or contract carrier, whether or not licensed by the Tax Commission, and may impose such penalties as authorized by this section

16-606.18 Commissioner to Audit Report and Assess Tax

- a. The Tax Commission, or an authorized representative, may audit the records, books, and papers and examine fuel and any equipment used to store, transport, or dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal operator, retailer, or common or contract carrier. For a person required to file a report, the examination and audit must be done no later than three years after the due date of the report or three years after the report was filed, whichever period expires later. The Tax Commission is authorized to make assessments of tax, plus penalty and interest, or to issue credits or refunds as determined on the basis of the examination and audit.
- b. If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a report, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the return, or six years after the return was filed, whichever period expires later.
- c. Except as otherwise provided in this section, the Tax Commission may audit any consumer's claim for refund and, not later than three years after the due date of a claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the Tax Commission shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as required by the Tax Commission of fuel purchases, payment of the tax, use of the fuel for a purpose entitling the claimant to a refund, and use of the fuel other than in a licensed motor vehicle.
- d. If a person gives false or fraudulent information in a report or in a claim for refund, or if the failure by a person to file a tax report is due to the fraudulent intent or the willful attempt of the person in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without the assessment, at any time.

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- e. If before the expiration of the time prescribed in this section for the assessment of tax, the Tax Commission and the person consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
- f. A determination of additional tax due issued to a person fixes the tax finally and irrevocably unless the person against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the Tax Commission and in the manner provided by the Standing Rock Sioux Tribal Court.
- g. A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the person claiming the refund, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the Tax Commission and in the manner provided by the Standing Rock Sioux Tribal Court.

16-606.19 Penalty and Interest—Violations

- a. If a person fails to file the required report or to pay the full amount of the tax as required by this Section, there is imposed a penalty of five dollars (\$5.00) or a sum equal to five percent (5%) of the tax due, whichever is greater, with interest at the rate of one percent (1%) per month on the tax due, for each calendar month or fraction of a month during which the delinquency continues, excepting the month within which the tax became due. If a person files a false or fraudulent report with intent to evade the tax imposed by this Section, there is imposed a penalty equal to ten percent (10%) of the deficiency, with interest at the rate of two percent (2%) per month on the deficiency, for each calendar month or fraction of a month during which the deficiency continues.
- b. If a consumer fails to pay any tax due under this Section, the Tax Commission shall be imposed a penalty of five dollars (\$5.00) or a sum equal to five percent (5%) of the tax due, whichever is greater, together with interest at the rate of one percent (1%) per month on the tax due, for each calendar month or fraction of a month during which the delinquency continues, not including the month within which the tax became due. The Tax Commission, for good cause shown, may waive all or part of the penalty of the interest provided by this subsection. No refiner, supplier, distributor, importer, exporter, or retailer may be held liable for taxes due directly from a consumer.
- c. A person is guilty of a class A misdemeanor if:

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- c(1) The person refuses or knowingly or intentionally fails to make and file any report required by this section in the manner or within the time required; or
- c(2) The person knowingly or with intent to evade or aid in the evasion of the tax imposed by this section makes any false statement or conceals any material fact in any application, record, report, or claim for refund provided for in this section.

16-606.20 Determination if No Report is Filed

If a person fails, neglects, or refuses to file a special fuel tax report when due, the Tax Commission shall, on the basis of available information, determine the tax liability for the period during which no return was filed, and to the tax thus determined the Tax Commission shall add the penalty and interest as provided in section 16-1520. An assessment made by the Tax Commission under this section or section 16-1520 is presumed to be correct, and in any case when the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by fair preponderance of evidence that it is erroneous or excessive.

16-606.21 Corporate Officer Liability

- a. If a corporation holding a license issued under this Section fails for any reason to file the required returns or to pay the tax due, the president, vice president, secretary, or treasurer, jointly or severally, having control or supervision of, or charged with the responsibility for making such returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for each a liability may be assessed and collected under the provisions of this Section for the assessment and collection of other liabilities.
- b. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the Tax Commission a bond or undertaking executed by a surety company authorized to do business on the North Dakota portion of the Reservation. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual special fuel tax liability of the corporation.

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16-606.22 Governor and Manager Liability

- a. If a limited liability company holding a license issued under this Section fails for any reason to file the required returns or to pay the taxes due under this Section, the governors or managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payments are personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's, manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this section.
- b. If the governors or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the Tax Commission a bond or undertaking executed by a surety company authorized to do business on the North Dakota portion of the Reservation. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual special fuel tax liability of the limited liability company.

16-606.23 Bulk Delivery Sales

Bulk delivery sales of special fuels are not subject to the tax imposed by this Section where:

- a. The bulk sale is to an Indian residing on the Standing Rock Sioux Reservation and the fuel is intended for use in non-licensed equipment for agricultural or industrial purpose; or
- b. The bulk sale is to the Tribe, for use in tribally-owned vehicles, whether licensed or unlicensed. If the tax is charged in error, refunds are available under this Section for the exempt portion of tax.

Bulk delivery sales of special fuels to non-Indians are subject to the applicable North Dakota tax and not to the tax under this Section.

16-606.24 Lien of Tax—Collection—Action Authorized

- a. When a taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the tax, the amount, including any interest, penalty, or addition to the tax, together with the costs that may accrue in addition to the tax, is a lien in favor of the Standing Rock Sioux Tribe upon all property and rights to property, whether real or personal, belonging to the taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or

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otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivors to the extent of the deceased taxpayer's interest therein, which interest is determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein.

- b. The lien attaches at the time the tax becomes due and payable and continues until the liability for the amount is satisfied. For the purposes of this section, the words "due" and "due and payable" mean the first instant at which the tax becomes due.
- c. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated on the North Dakota portion of the Reservation, prior to the effective date of a lien in favor of the Standing Rock Sioux Tribe, as authorized under this section, takes free of, or has priority over, the lien.

16-606.25 Liability of a General Partner in a Limited Liability Limited Partnership

- a. If a limited liability limited partnership holding a license issued under this section fails for any reason to file the required returns or to pay the tax due under this section, the general partners, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this section.
- b. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post with the Tax Commission a bond or undertaking executed by a surety company authorized to do business on the North Dakota portion of the Reservation. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual special fuels tax liability of the limited liability limited partnership.

16-606.26 Transfer, Deposit, and Distribution of Funds

All taxes, penalties, and interest collected under this section must be transferred to the Standing Rock Sioux Tribe, except as provided in any Administration and Collection Agreement entered into between the Standing Rock Sioux Tribe and the State of North Dakota.

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16-606.27 Erroneously or Illegally Collected Taxes

If any taxes, penalties, or interest imposed by this section have been erroneously or illegally collected from any person, the Tax Commission may permit that person to take credit against a subsequent tax return for the amount of the erroneous or illegal overpayment. In the alternative, the Tax Commission may issue a refund to the person in the manner prescribed by the Tax Commission. Any credit or refund may not be approved or paid unless it is in an amount which is in excess of five dollars.

16-606.28 Inventory Gains—Losses

- a. A supplier or distributor shall take a physical inventory reading of all special fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a monthly basis and shall report the physical readings, inventory gains, and inventory losses to the Tax Commission. The inventory reconciliation must include special fuel at retail locations and special fuel stored in a barrel, drum, or other receptacle.
- b. When sold or used by a supplier or distributor, a gain in special fuel inventories is subject to the tax imposed by this section in the same manner as special fuel purchased, imported, or otherwise acquired.
- c. A supplier or distributor who experiences an actual physical inventory loss due to shrinkage or evaporation is responsible for the tax imposed by this section on any loss in excess of two percent (2%) of liquefied petroleum gases and one-half of one percent ($\frac{1}{2}\%$) of all other special fuel received during the period covered by the inventory reconciliation.
- d. For the purposes of this section, it is presumed that all special fuel received above these allowances, except that gallonage shown as actual inventory based on physical inventory readings at the end of the time period covered by the inventory reconciliation, and other allowances provided in this section, has been sold, delivered, or used, and the supplier or distributor is liable for the amount of the special fuel tax on each gallon [3.79 liters] of special fuel not accounted for. For purposes of this section, special fuel refined at a refinery on the North Dakota portion of the Reservation and placed in storage at the refinery, and special fuel brought onto the North Dakota portion of the Reservation by pipeline and placed in storage at a pipeline terminal, is not deemed received until it is withdrawn from the refinery or terminal storage for sale or use on the North Dakota portion of the Reservation, or for shipment or delivery to destinations onto the North Dakota portion of the Reservation.

SECTION 6. TAXES ON THE NORTH DAKOTA PORTION OF THE RESERVATION

- e. The Tax Commission may allow a tax credit to a supplier or distributor for actual inventory losses due to casualty loss subject to the discretion of the Tax Commission and based on proof of the loss as required by the Tax Commission.

16-606.29 Administration—Assistance Authorized—Rules

The Tax Commission shall enforce the provisions of this section. The Tax Commission may employ assistance and conduct investigations as may be necessary for the administration and enforcement of this section and may adopt and enforce reasonable rules relating to the administration and enforcement of this section.

SECTION 7. SEVERABILITY; EFFECTIVE DATE

7. SEVERABILITY; EFFECTIVE DATE

Section 16-701 Severability

In the event any section or provision of this Section is held invalid, the remaining sections or provisions shall continue in full force or effect.

Section 16-702 Effective Date

The effective date of this Title is _____ and shall remain in force until amended or rescinded by the Standing Rock Sioux Tribal Council.