

Title 17 – Tax
Chapter 9 – Liquor Tax

Sec.

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Legislative History

Enacted:

Ord. 315 Enacting Title 17, Chapter 9 – Liquor Tax (5/30/12, BIA (6/5/12).

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17-09.010 Title.

This Chapter shall be known and cited as the “Swinomish Liquor Tax Code.”

[History] Ord. 315 (5/30/12).

17-09.020 Findings.

The Swinomish Indian Tribal Community finds that:

- (A) The power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management. It derives from the Tribe’s general authority, as sovereign, to control economic activity within its jurisdiction, and to defray the cost of providing governmental services by requiring contributions from persons or enterprises engaged in economic activities within that jurisdiction;

- (B) The use of alcohol within the Reservation and by minors has the potential to harm the health and welfare of the Tribe, its members, and other residents of the Reservation, and in particular minors.
- (C) Tax revenues are essential to the Tribe's ability to provide goods and services, and to finance government operations and economic development, for the safety, health and welfare of the Tribe, its members, and those who work on, live on, and visit the Reservation;
- (D) Among the benefits provided by the tribal government to tribal members and to non-members residing, visiting or conducting business upon the Reservation are the following: the provision of governmental services, including public sewage collection systems, water systems to provide safe drinking water and fire protection, tribal roads, solid waste collection, and social services and education programs; the maintenance of public health, safety, and law and order, including tribal police, fisheries enforcement, hazardous emergency response, environmental protection, comprehensive land use planning and regulation, and the provision of a Tribal Court system with general jurisdiction for the resolution of civil disputes and limited jurisdiction for the prosecution of criminal actions; the protection of Reservation lands and resources; the provision of public recreational amenities and facilities such as athletic fields, a gymnasium, meeting rooms, parks, and tribally owned tidelands; the support of cultural and religious events and activities; the promotion and regulation of Reservation businesses and economic development; and the provision of employment to both members and non-members of the Tribe;
- (E) The Tribe has been able to obtain numerous federal and state grants, low interest loans, and other programs that have, in part, financed the provision of public services and benefits to the Reservation community. The full cost of these needed and beneficial programs and services are not covered by the programs, themselves, however, and it is necessary for the Tribe to raise supplemental revenues locally to continue to provide these essential public services;
- (F) The entire Reservation community, both tribal members and non-members, whether visiting, residing, employed or otherwise doing business on the Reservation, benefits from these tribal governmental services and programs directly and because the tribal services and programs supplement or replace other governmental programs and relieve other units of government from the full burden of these programs;
- (G) It is appropriate, therefore, that a portion of the costs of these essential government services be borne by persons engaged in or benefiting from residential, business or recreational activities on the Reservation, who thereby benefit from governmental services provided by the Tribe; and

- (H) Additionally, the Tribe makes contributions to local fire and police agencies to defray a portion of the cost of fire protection, emergency medical services, and law enforcement assistance, where necessary, on the Reservation. Revenues are needed by the Tribe to fund such contributions.

[History] Ord. 315 (5/30/12).

17-09.030 Purpose.

In the public interest and for the welfare of the people of the Swinomish Indian Tribal Community, its employees, the residents of and visitors to Swinomish Indian country, the Senate, in the exercise of its authority under the Tribal Constitution, declares its purpose by the provisions of this Chapter to impose, collect and administer taxes the sale of spirits, beer and wine in Indian country.

[History] Ord. 315 (5/30/12).

17-09.040 Authority.

This Chapter is enacted pursuant to authority provided Article VI, Section 1(h), (k)(a) and (l) of the Swinomish Constitution, as amended, and pursuant to the inherent sovereign powers of the Swinomish Indian Tribal Community.

[History] Ord. 315 (5/30/12).

17-09.050 Jurisdiction.

- (A) **Application.** This Chapter shall apply to the full extent of the sovereign jurisdiction of the Swinomish Indian Tribal Community. Compliance with this Chapter is hereby made a condition of the use of any land, structure or other property in Swinomish Indian country.
- (B) **Application of Tax.** Sales subject to the Tribal taxes are those in which delivery and physical transfer of possession of the alcohol from the retail seller to the buyer occurs within Swinomish Indian country.
- (C) **Deemed to Consent.** Any person who resides, conducts business, engages in a business transaction, receives benefits from the Tribal government, including police, fire or emergency services, acts under Tribal authority, or enters the Swinomish Indian country under the jurisdiction of the Tribe, shall be deemed thereby to have consented to the following:
- (1) To be bound by the terms of this Chapter;
 - (2) To the exercise of jurisdiction by the Tribal Court over said person and any

alcohol and other property in the possession, custody and control of said person, in legal actions arising pursuant to this Chapter; and

- (3) To detention, service of summons and process, search and seizure and forfeiture of property in conjunction with legal actions arising pursuant to this Chapter.

[History] Ord. 315 (5/30/12).

17-09.060 Definitions.

(A) For the purposes of this Chapter, the following words and phrases have the following meanings, unless explicitly stated otherwise:

- (1) **“Alcohol”** means spirits, beer, strong beer and wine.
- (2) **“Essential government services”** mean services such as Tribal administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development.
- (3) **“Reservation”** means all lands and waters within the exterior boundaries of the Swinomish Indian Reservation.
- (4) **“Retail Selling Price”** means the total amount of consideration received by the seller, exclusive of the taxes collected under this Chapter.
- (5) **“Senate”** means the Swinomish Indian Senate.
- (6) **“Spirits”** means any beverage containing alcohol that is obtained by distillation, including wines with more than 24 percent alcohol by volume.
- (7) **“Spirits Liter Tax”** means a tax is based on the volume of the spirits being sold in the original package.
- (8) **“Swinomish Indian Country,”** consistent with the meaning given in 18 U.S.C. § 1151, means:
 - (a) All land within the limits of the Swinomish Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights of way running through the Reservation; and
 - (b) All Indian allotments or other lands held in trust for a Swinomish Tribal member or the Tribe, or otherwise subject to a restriction against alienation imposed by the United States, the Indian titles to which have not been extinguished, including rights of way running through the same.

- (9) **“Tribal Court”** means the Swinomish Tribal Court.
- (10) **“Tribal member”** means an enrolled member of the Swinomish Indian Tribal Community.
- (11) **“Tribe”** or **“Tribal”** means or refers to the Swinomish Indian Tribal Community, a Federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, which is composed of members tracing their ancestry to the aboriginal Swinomish, Samish, Kikiallus, and Lower Skagit bands of Indians.

(B) All other words and phrases shall have their ordinary and customary meanings.

[History] Ord. 315 (5/30/12).

17-09.070 Tax Imposed Upon Spirits Sold in Original Containers.

- (A) **Tribal Spirits Sales Tax.** There is levied and collected a tribal tax upon each sale of spirits in the original package to a consumer at the rate of twenty and one-half percent (20.5%) of the selling price.
- (B) **Tribal Spirits Liter Tax.** There is levied and collected a tribal tax upon each sale of spirits in the original package to a consumer at the rate \$3.7708 per liter.

[History] Ord. 315 (5/30/12).

17-09.080 Tax Imposed Upon Sale of Beer and Wine.

- (A) There is levied and collected a tribal tax upon each sale of beer or wine in the original package to a consumer in an amount equal to one hundred percent (100%) of the state and local retail sales taxes on beer and wine.
- (B) Should there be any future increase or decrease in the state and local retail sales taxes, the Tribal retail sales tax shall increase or decrease by no less than one hundred percent (100%) of the increase or decrease in the combined state and local tax rates.

[History] Ord. 315 (5/30/12).

17-09.090 Credit Allowed.

There shall be allowed a credit against the taxes due under this Chapter for any liquor tax lawfully owed and paid another jurisdiction with respect to the same sale.

[History] Ord. 315 (5/30/12).

17-09.100 Taxes Separate from Sales Price.

- (A) The taxes required by this Chapter to be collected by the seller may be stated separately from the selling price (a) in any sales invoice or other instrument of sale; or (b) on in the shelf price or price list made available to customers.
- (B) Advertised prices or shelf prices will be considered not to include the spirits taxes unless they clearly identify the amount of spirits taxes included in the listed price.
- (C) The spirits sales tax and the spirits liter tax can be combined into one “Spirits Taxes” amount.
- (D) The use of the term “tax included” will not suffice for the requirement to itemize the spirits taxes.

[History] Ord. 315 (5/30/12).

17-09.110 Payment and Collection of Taxes.

The taxes imposed under this Chapter must be paid by the buyer to the seller, and each seller must collect from the buyer the full amount of the taxes payable in respect to each taxable sale under this Chapter. Where a buyer has failed to pay to the seller the taxes imposed by this Chapter and the seller has not paid the amount of the tax to the Tribe, the Tribe may, in its discretion, proceed directly against the buyer for collection of the taxes.

[History] Ord. 315 (5/30/12).

17-09.120 Payment Due.

- (A) All revenues collected during any month from taxes due under this Chapter must be paid to the Tribe on or before the twenty-fifth day of the following month.
- (B) The seller shall maintain accurate written records of the retail sales, and shall make such records available for inspection by the Tribe’s Treasurer and/or third party auditor retained by the Tribe. Records shall be maintained for no less than three years after the audit.

[History] Ord. 315 (5/30/12).

17-09.130 Rules – Forms.

The Tribe may, in its discretion, adopt such rules and issue such forms as may necessary or desirable for the administration of this Chapter.

[History] Ord. 315 (5/30/12).

17-09.140 Severability.

If any provision of this Chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances, is not affected.

[History] Ord. 315 (5/30/12).

17-09.150 Repealer.

[Reserved]

17-09.160 Effective Date.

This Chapter shall be effective upon approval by the Secretary of the Interior or the Secretary's designee.

[History] Ord. 315 (5/30/12).