

**Title 17 – Tax**  
**Chapter 4 – Tobacco Tax**

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**Legislative History**

**Enacted:**

- Ord. 316 Amending Ordinance Number 313 (Codified at STC Title 17, Chapter 4, Section .090) (5/30/12), BIA (6/5/12).
- Ord. 313 Amending Ordinance Numbers 240 and 180 (Codified at STC Title 17, Chapter 4, Section .090) (05/01/12), BIA (5/15/2012)
- Ord. 306 Amending STC Title 17, Chapter 4 and Ordinance No. 259 and 273 (3/6/12), BIA (3/9/12).
- Ord. 273 Amending STC Title 17 and Chapter 4 of Ordinance No. 259 (5/11/10), BIA (5/21/10).
- Ord. 259 Tobacco Tax (06/06/07), BIA (06/07/07)

**Repealed or Superseded:**

- Ord. 140 Tobacco Ordinance Repealing Amended Ord. 29 (5/5/00), BIA (6/16/00).

Amended Ord. 29 Tobacco Ordinance Superseding any Previous Tobacco Ordinance (10/3/78), BIA (11/6/78).

Res. 78-07-525 Temporarily Amending Ord. 29 (7/7/78).

Ord. 29 Tobacco Ordinance (4/14/72), BIA (1/5/73).

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**17-04.010 Title.**

This Chapter shall be known and referred to as the “Swinomish Tobacco Tax Code.”

[History] Ord. 180 (9/30/03); Ord. 140 (5/5/00).

**17-04.020 Purpose and Scope.**

The Senate makes the following findings:

- (A) The levying of taxes, regulation of the conduct of persons within the Reservation, and regulation of the conduct of trade within the Reservation for the purpose of safeguarding and promoting the peace, safety, health, morals, and general welfare of the Tribe and its members are essential incidents of sovereignty.
- (B) The use of tobacco products within the Reservation and by minors has the potential to harm the health and welfare of the Tribe, Tribal members and minors.
- (C) Revenues from the adoption and enforcement of this Ordinance and Ordinance No. 258 are necessary for the Tribe to provide essential governmental services and to finance economic development for the benefit of the Tribe and its members, and others who live or work on, or who may visit, the Reservation.
- (D) Strict regulation of the sale of tobacco products within the Reservation as provided in this Ordinance and active enforcement of this Ordinance are necessary to reduce the risk of harm to the health and welfare of the Tribe and Tribal members associated with the use of tobacco products, particularly by minors; to ensure the proper assessment and collection of tax revenues that are necessary for essential governmental services; and thereby to safeguard and promote the health and general welfare of the Tribe and its members.
- (E) Increasing the mechanisms for ensuring compliance with this Ordinance to include criminal sanctions as well as civil remedies will facilitate active enforcement of the Ordinance.
- (F) The Tribe entered a contract with the State of Washington on October 3, 2003 regarding the sale of cigarettes within the Reservation and the levying of taxes thereupon (“Contract”), in consideration for which the Tribe agreed to certain undertakings concerning compliance with, and enforcement and administration of, the

Contract.

- (G) Compliance with, and enforcement and administration of, the Contract by the Tribe are vital to the health and general welfare of the Tribe and its members.
- (H) Strict regulation of the sale of tobacco products within the Reservation as provided in this Ordinance and active enforcement of this Ordinance will continue to satisfy Tribal obligations under the Contract.
- (I) Strict regulation of the sale of tobacco products within the Reservation as provided in this Ordinance and active enforcement of this Ordinance can best be accomplished by allowing only retail establishments wholly owned and operated by the Tribe to engage in the sale of cigarettes and tobacco products.
- (J) The need for Tribal resources to enforce and assure compliance with this Ordinance and the Contract will be less, and the Tribe's ability to ensure and demonstrate compliance with this Ordinance and the Contract will be greater, if only retail establishments wholly owned and operated by the Tribe are allowed to engage in the sale of cigarettes and tobacco products.

[History] Ord. 259 (06/06/07); Ord. 240 (09/07/05); Ord. 180 (9/30/03); Ord. 140 (5/5/00).

**17-04.030 Authority.**

This Chapter is enacted pursuant to authority provided by the following provisions of the Swinomish Constitution and By-Laws: Article VI, Sections 1(h), (k), and (l) of the Swinomish Constitution, as most recently amended on October 22, 1985.

[History] Ord. 180 (9/30/03); Ord. 140 (5/5/00).

**17-04.040 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 cigarette and tobacco taxes are those in which delivery and physical transfer of possession of the cigarettes or tobacco from the retail seller to the buyer occurs within Swinomish Indian country. "Delivery and physical transfer of possession" within Swinomish Indian country does not include mail order type sales, including internet, catalog, and telephone sales, unless the cigarettes or tobacco are delivered to the buyer 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 cigarettes, tobacco products 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. 259 (06/06/07); Ord. 240 (09/07/05); Ord. 180 (9/30/03).

#### **17-04.050 Definitions.**

For purposes of this Chapter, the following definitions shall apply:

- (A) **“Auditor”** means the auditor selected pursuant to Part VII of the Contract.
- (B) **“Carton”** or **“Carton of Cigarettes”** means, unless otherwise indicated, a carton of two hundred (200) cigarettes.
- (C) **“Cigarette”** means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.
- (D) **“Cigarette Seller”** means a person or entity that sells cigarettes within Swinomish Indian Country.
- (E) **“Contract”** means the current contract in effect between the State of Washington and the Swinomish Tribe concerning cigarette sales and taxes.
- (F) **“Department”** means the Washington State Department of Revenue.
- (G) **“Essential Government Services”** includes, but is not limited to:
  - (1) government services to provide and maintain infrastructure such as sidewalks, roads, and utilities;
  - (2) services such as fire protection and law enforcement;

- (3) the costs of administering the Tribal cigarette tax stamp program under this Contract, including all deductions and exemptions similar to those available to retailers, wholesalers and others under state law;
  - (4) Tribal administration activities such as tax functions, contracting for health benefits, economic development, natural resources, and the provision of job services;
  - (5) distribution of moneys related to trust funds, education, general assistance;
  - (6) such activities as land and building acquisitions, and building development and construction;
  - (7) activities such as child care, youth care, and elder care, the provision of recreation opportunities and services;
  - (8) the provision of spiritual care; and
  - (9) cultural programs.
- (H) **“Manager”** means the general manager of the Tribe or an individual designated by the general manager.
- (I) **“Member”** means an enrolled member of the Swinomish Indian Tribal Community.
- (J) **“Non-Indian”** means an individual who is neither a Tribal member nor a nonmember Indian.
- (K) **“Non-Member Indian”** means an enrolled member of a federally recognized Indian Tribe other than the Swinomish Indian Tribal Community.
- (L) **“Owner”** or **“Owners”** means the person or persons who own(s) all or part of a Tribal member business.
- (M) **“Person”** means any natural person, corporation, trust, unincorporated association, general or limited partnership, limited liability company or other legal entity.
- (N) **“Reservation”** means all lands and waters within the exterior boundaries of the Swinomish Indian Reservation, including the area recognized as the Swinomish Indian Reservation by the United States Department of the Interior.
- (O) **“Retail Sales Tax”** means the retail sales tax or taxes enacted by this Chapter on cigarettes and tobacco products sold and on the purchase of cigarettes and tobacco products by retail buyers.

- (P) **“Retail Cigarette Selling Price”** means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, which price includes the Tribal cigarette tax.
- (Q) **“Retail Tobacco Products Selling Price”** means the ordinary, customary, or usual price paid by the consumer for each package or container of tobacco products.
- (R) **“Self-Certified Tribal Wholesaler”** means a wholesaler who is a Federally recognized Indian Tribe or a member of such a Tribe, who is not required to be licensed under any state law.
- (S) **“Self-Certified Wholesaler”** means an out-of-state wholesaler who is not a self-certified tribal wholesaler.
- (T) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
- (U) **“State”** means the State of Washington.
- (V) **“Swinomish Indian Country,”** consistent with the meaning given in 18 U.S.C. § 1151 means:
- (1) 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
  - (2) 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.
- (W) **“Tobacco Products”** means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, which tobacco has been prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking and any other product, regardless of form, that contains tobacco and is intended for human consumption or placement in the oral or nasal cavity or absorption into the human body by any other means.. “Tobacco product” does not include cigarettes.
- (X) **“Tobacco Products Seller”** means a person or entity that sells tobacco products within Swinomish Indian country.

- (Y) **"Tribal Cigarette Tax"** means the tax or taxes enacted as a provision of Tribal law on the cigarettes sold, used, consumed, handled, possessed or distributed.
- (Z) **"Tribal Member Business"** means a commercial or industrial enterprise that is owned in whole or in part by a member of the Swinomish Tribe, that is not wholly owned by the Swinomish Tribe, and that is providing services or wholesale or retail goods in Swinomish Indian Country.
- (AA) **"Tribal Retailer"** means a cigarette or tobacco products seller wholly owned by the Swinomish Tribe and located in Swinomish Indian Country.
- (BB) **"Tribal Tax Stamp"** means the stamp or stamps that indicate the Swinomish Tribal cigarette tax imposed under this Chapter and the Contract is paid or that identify those cigarettes with respect to which no tax is imposed.
- (CC) **"Tribal Tobacco Products Tax"** means the tax or taxes enacted as a provision of Tribal law on the tobacco products sold, used, consumed, handled, possessed or distributed.
- (DD) **"Tribe"** or **"Tribal"** means or refers to the Swinomish Indian Tribal Community, a Federally recognized Indian Tribe reorganized 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.
- (EE) **"Wholesaler"** means every person who purchases, sells, or distributes cigarettes for the purpose of resale only.

[History] Ord. 306 (3/6/12); Ord. 273 (5/11/10); Ord. 259 (06/06/07); Ord. 240 (09/07/05); Ord. 180 (9/30/03); Ord. 140 (5/5/00).

#### **17-04.060 Tax Imposed Upon Cigarettes.**

- (A) **Tribal Cigarette Tax.** There is levied and there shall be collected as provided in this Chapter, a tax upon the sale, use, consumption, handling, possession or distribution of all cigarettes, in an amount equal to the rate of \$0.15125 per cigarette (\$3.025 per 20 cigarette pack).
- (B) **Retail Sales Tax.** An additional retail sales tax is imposed upon the sale of all cigarettes sold by a tribal retailer within the Reservation in the amount equal to one hundred (100) percent of the state and local retail sales taxes.
- (C) Should there be any future increase or decrease in the state and local retail sales taxes, the Tribal retail sales tax on cigarettes shall increase or decrease by no less than one hundred (100) percent of the increase or decrease in the combined state and local tax rates.

- (D) The moneys collected under this Section shall be used exclusively for essential government services and shall not be used to subsidize tribal cigarette and food retailers.

[History] Ord. 306 (3/6/12); Ord 273 (5/11/10); Ord. 259 (06/06/07); Ord. 240 (09/07/05); Ord. 236 (06/27/05); Ord. 180 (9/30/03).

**17-04.070 Tax Imposed Upon Tobacco Products.**

- (A) **Tribal Tobacco Products Tax.** There is levied a tax upon the sale, use, consumption, handling, possession or distribution of all tobacco products, in the amount of five and one half percent (5.5%) of the retail tobacco products selling price of the tobacco products sold.
- (B) **Tribal Tobacco Products Retail Sales Tax.** There is levied a retail sales tax upon the sale of all tobacco products in the amount equal to one hundred (100) percent of the state and local retail sales taxes.
- (C) Should there be any future increase or decrease in the state and local retail sales taxes, the Tribal retail sales tax on cigarettes shall increase or decrease by no less than one hundred (100) percent of the increase or decrease in the combined state and local tax rates.
- (D) The moneys collected under this Section shall be used exclusively for essential government services and shall not be used to subsidize tribal cigarette and food retailers.

[History] Ord. 306 (3/6/12); Ord. 259 (06/06/07); Ord. 240 (09/07/05); Ord. 180 (9/30/03); Ord. 140 (5/5/00).

**17-04.080 Collection and Remittance to Tribe of Taxes.**

- (A) The amount of all cigarette taxes imposed by Section 17-04.060, and the amount of all tobacco product taxes imposed by Section 17-04.070, shall be collected from the purchaser of any and all cigarettes and tobacco products and shall be remitted to the Tribe; provided, however, that the retail sales tax shall not be collected from Tribal members who are exempt from such taxes pursuant to Section 17-04.090.
  - (1) The retail cigarette selling price for all cigarettes sold within Swinomish Indian country must include the Tribal cigarette tax.
- (B) All persons, including Tribal retailers, shall pay to the Tribe all cigarette retail sales taxes and all Tribal tobacco products and tobacco products retail sales taxes for all

sales made during each calendar month. Such payment shall be made to the Tribe on the twentieth (20th) day of the month immediately following such calendar month of sales.

- (C) The amount of all tobacco products taxes, cigarette retail sales taxes, and tobacco product retail sales taxes received by a Tribal retailer in connection with the sale of any cigarettes and tobacco products shall be retained by the Tribal retailer in a separate account for payment to the Tribe in accordance with this Section.
- (D) The Tribally authorized distributors of stamps shall only disseminate stamps to wholesalers, upon payment of the applicable Tribal cigarette tax by the wholesaler. Either the Tribally authorized distributors of stamps or the wholesalers shall remit the collected taxes to the Tribe.

[History] Ord. 259 (06/06/07); Ord. 240 (09/07/05).

**17-04.090 Penalty for Resale.**

Tribal members who purchase cigarettes or tobacco products shall not resell the cigarettes or tobacco products. Each such resale of a package of cigarettes or tobacco products in violation of this Subsection shall be a civil offense punishable by the following:

- (A) A fine of fifty dollars (\$50) per sale;
- (B) Costs of enforcement, including court costs; and/or
- (C) A sum of money equal in value to the benefit the violator obtained by violating the terms of this Chapter.

[History] Ord. 316 (5/30/12); Ord. 313 (5/1/12); Ord. 259 (06/06/07); Ord. 240 (09/07/05); Ord. 180 (9/30/03).

**17-04.100 Tribal Tax Stamps - Cigarettes.**

- (A) All cigarettes sold by Tribal retailers shall bear a Tribal tax stamp.
- (B) In order to enforce collection of the tax hereby levied, the Tribe shall design and have printed stamps that have a serial number or other discrete identification so that stamps may be traced to the wholesaler.
- (C) The Tribe shall contract with a bank or other stamp vender to distribute the Tribal tax stamps or the Tribe may serve as the stamp vender; Provided that the Tribe has entered into a memorandum of agreement with the State consistent with Part V of the Contract. The stamp vender shall distribute stamps to wholesalers, upon payment of the applicable Tribal cigarette tax by the wholesaler, and remit the collected taxes to

the Tribe.

- (D) Wholesalers shall be responsible for affixing the Tribal tax stamps to the smallest container or package that will be handled, sold, used, consumed, or distributed, to permit the Tribe and the State to readily ascertain by inspection, whether or not such tax has been paid. Stamps shall be affixed so that the stamps may not be removed from the package or container without destroying the stamp. In the case of cigarettes contained in individual packages, as distinguished from cartons or larger containers, the stamps shall be affixed securely on each individual package.
- (E) The Tribe may enter into agreements with wholesalers to reimburse the wholesaler for the cost of affixing the Tribal tax stamp.

[History] Ord. 259 (06/06/07); Ord. 240 (09/07/05); Ord. 180 (9/30/03).

**17-04.110 Possession of Unstamped Cigarettes.**

- (A) No Tribal retailer shall possess unstamped cigarettes within Swinomish Indian country.
- (B) No person shall possess unstamped cigarettes within Swinomish Indian Country with intent to engage in a retail sale of such cigarettes.

[History] Ord. 259 (06/06/07); Ord. 240 (09/07/05); Ord. 180 (9/30/03).

**17-04.120 Purchase from Wholesalers.**

Tribal retailers shall only purchase cigarettes for resale from:

- (A) Wholesalers licensed with the State of Washington;
- (B) Self-certified wholesalers not licensed with the State of Washington; Provided that the Tribe has entered into a memorandum of agreement with the State consistent with Part VI (2) of the Contract;
- (C) Self-certified tribal wholesalers not licensed with the State of Washington; Provided that the Tribe has entered into a memorandum of agreement with the State consistent with Part VI (3) of the Contract; or
- (D) The Tribe serving as a wholesaler; Provided that the Tribe has entered into a memorandum of agreement with the State consistent with Part VI (4) of the Contract.

[History] Ord. 240 (09/07/05); Ord. 180 (9/30/03).

**17-04.130 Records of Tribal Retailers.**

All persons, including Tribal retailers, who are liable for collecting taxes under this Chapter shall maintain accurate written records of the purchase, inventory, and retail sales of cigarettes and tobacco products, records to verify that Tribal cigarette and sales taxes were included in the price of the cigarettes and were remitted to the Tribe for deposit into Tribal accounts, and shall make such records available for inspection by the Tribe and by the auditor as selected under Section 17-04.150(B). Records shall be maintained for no less than three (3) years after an audit is completed pursuant to Section 17-04.150 and is accepted by the State and the Tribe.

[History] Ord. 259 (06/06/07); Ord. 240 (09/07/05); Ord. 180 (9/30/03).

#### **17-04.140 Reports of Sales.**

All Tribal retailers shall submit to the general manager monthly reports of all sales of cigarette and tobacco products sold within Swinomish Indian country. Tribal retailers shall also submit to the general manager monthly reports of all purchases of cigarettes and tobacco products. The monthly reports of sales and purchases shall be made on forms obtained from the general manager, together with copies of all invoices for such purchases. Monthly reports shall be submitted at the same time and for the same periods that taxes are required to be paid pursuant to Section 17-04.080.

[History] Ord. 259 (06/06/07); Ord. 240 (09/07/05); Ord. 180 (9/30/03); Ord. 140 (5/5/00).

#### **17-04.150 Audit Process.**

(A) **Policy.** The Tribe wishes to create a verification process intended to:

- (1) reconcile data from all sources that make up the stamping, selling, and taxing activities under the Contract; and
- (2) verify compliance with the retail sales tax levied on cigarettes and tobacco products and with the Tribal tobacco products tax.

(B) **Selection of Auditor.** The Tribe shall contract with an independent third party auditor that is a certified public accountant in good standing. The Tribe shall be allowed to freely communicate with the auditor.

(C) **Review of Records.** The auditor shall review at a minimum the records specified below:

(1) **Tribal Retailers.**

- (a) Financial statements or purchase invoices relating to purchases of cigarettes from licensed wholesalers, other wholesalers noted under a memorandum of agreement under Part VI of the

Contract or from any other person;

(b) Financial statements or invoices relating to sales of cigarettes and tobacco products, cigarette and tobacco products inventory,

(c) Records to verify whether Tribal cigarette, tobacco products and retail sales taxes were remitted to the Tribe for deposit into Tribal accounts, and

(d) Records to verify that the total retail price to the retail consumer included the applicable Tribal taxes.

(2) **Tribe.** Records such as account records and contract invoices necessary to verify that all revenues from the Tribal cigarette tax and the retail sales tax on cigarettes were used to fund essential government services described in Part XII (8) of the Contract; and

(3) **Self-Certified Out-Of-State Wholesaler, Self-Certified Tribal Wholesaler, or Tribe as Own Wholesaler.** Records noted as subject to audit in a memorandum of agreement under Part VI of the Contract.

(D) **Period Under Review.** To verify the requirements of the Contract, the auditor may review records for all years during the current appropriate audit cycle. Records relating to the period before the effective date of the Tribal cigarette and tobacco products tax are not open to review under this Section.

(E) **Audit Cycle.** The audit cycle shall be no more frequent than once every four (4) years, unless otherwise specified below.

(1) **Initial Review.** The first required review must cover the period starting on the effective date of the tax and ending one (1) year thereafter. The auditor must provide its findings by six (6) months after the first review period. The second required review must cover the one-year (1) period starting two (2) years after the effective date of the tax.

(2) **Use of Tribal Cigarette Tax Revenue.** The auditor will review records of the Tribe on an annual basis, consistent with the Tribe's fiscal year, to verify that all revenues from the Tribal cigarette tax and the retail sales tax on cigarettes were used to fund essential government services.

(F) **Format of Report.** The Auditor shall submit its findings in final written reports to the Tribe, with a copy to the Department. The report must indicate what types of records were examined for each person or entity audited, what periods were reviewed, and must include a statement regarding verification of the specific requirement listed in Part VII (4) and (5) of the Contract. In addition, if a statistical sampling process

was used, the report must indicate the sampling method used.

- (G) **Tribal Retailers.** The auditor shall be responsible for reviewing the records of Tribal retailers to verify that only stamped cigarettes are sold, that cigarettes are only purchased from licensed wholesalers or from wholesalers specified in memoranda of agreement under Part VI of the Contract, that exempt sales are not made to nonmembers, that the retail selling price included the applicable Tribal taxes, and that the cigarette and retail cigarette and tobacco product sales taxes are remitted to the Tribe for deposit into Tribal accounts.
- (H) **Essential Government Services.** The auditor shall be responsible for reviewing the relevant records of the Tribe to verify that revenues from the Tribal cigarette tax and the retail sales tax on cigarettes were used for essential government services.

[History] Ord. 259 (06/06/07); Ord. 240 (09/07/05); Ord. 180 (9/30/03).

#### **17-04.160 Civil Penalties and Forfeiture.**

- (A) In addition to any other civil or criminal fine, forfeiture or other penalty that may be provided in any other section of the Swinomish Tribal Code, any person found by the Tribal Court to have violated any provision of this Chapter shall be subject to any or all of the following civil penalties:
  - (1) a fine in an amount not less than fifty dollars (\$50.00) or more than \$5,000.00 per violation; provided that for the purpose of assessing a fine, each day that the person is in violation of this Chapter is a separate violation;
  - (2) forfeiture as contraband of all cigarettes in the person's possession, custody or control that do not bear a Tribal tax stamp or that are otherwise in the person's possession, custody or control in violation of this Chapter;
  - (3) forfeiture of any property as otherwise provided in the Swinomish Tribal Code.
- (B) In addition to any civil or criminal fine, forfeiture or other penalty, any person found to have violated any provision of this Chapter shall be required to pay any unpaid cigarette and tobacco product taxes and any unpaid Tribal cigarette or tobacco products retail sales taxes, plus interest from the date such tax payment was due at a rate of eighteen percent (18%) per year compounded monthly.
- (C) In addition to any other civil or criminal fine, forfeiture or other penalty, and in addition to payment of all unpaid cigarette taxes and all unpaid Tribal cigarette retail sales taxes, any person found to have possessed within Swinomish Indian Country cigarettes that do not bear a Tribal tax stamp shall pay statutory damages to the Tribe in the amount of all Tribal cigarette taxes that would have been paid by a wholesaler

if the person who was in possession of the unstamped cigarettes had obtained those cigarettes as stamped cigarettes in compliance with this Chapter and the Contract.

- (D) In addition to any other civil or criminal fine, forfeiture or other penalty, and in addition to payment of all unpaid cigarette taxes and all unpaid Tribal cigarette retail sales taxes, any person found to have sold cigarettes without collecting or remitting to the Tribe the taxes imposed by Section 17-04.060 (B) shall pay statutory damages to the Tribe in the amount of all Tribal taxes imposed by Section 17-04.060 (B) on such cigarettes that were not collected or that were not remitted to the Tribe.
- (E) In addition to any other civil or criminal fine, forfeiture or other penalty, and in addition to payment of all unpaid tobacco product taxes and all unpaid Tribal tobacco products retail sales taxes, any person found to have sold tobacco products without collecting or remitting to the Tribe the taxes imposed by Sections 17-04.070(A) or 17-04.070(B), or both, shall pay statutory damages to the Tribe in the amount of all Tribal taxes imposed by Sections 17-04.070(A) or 17-04.070(B), or both, on such tobacco products that were not collected or that were not remitted to the Tribe.
- (F) Cigarettes that do not bear a Tribal tax stamp are contraband for purposes of the Swinomish Tribal Code.

[History] Ord. 259 (06/06/07); Ord. 240 (09/07/05); Ord. 180 (9/30/03); Ord. 140 (5/5/00).

**17-04.170 Civil Enforcement.**

- (A) The provisions and remedies in this Chapter may be enforced by the Tribe through civil proceedings against:
  - (1) any person who has violated or is violating any provision of this Chapter;
  - (2) any person who owns in whole or in part any Tribal member business in Swinomish Indian Country that has violated or is violating any provision of this Chapter or at which any person employed at the Tribal member business has violated or is violating any provision of this Chapter;
  - (3) the property of any person identified in Subsection (A)(1) or (2) of this Section; or
  - (4) as otherwise may be provided in the Swinomish Tribal Code.
- (B) In addition to relief provided by any other provision of this Chapter or the Swinomish Tribal Code, this Chapter may be enforced through declaratory and injunctive relief requiring:
  - (1) any person to come into compliance with, or to cease non-compliance with, this Chapter;

- (2) any person who owns in whole or in part a Tribal member business in Swinomish Indian Country to assure that the Tribal member business and/or persons employed at the Tribal member business come into compliance with, or cease non-compliance with, this Chapter.

[History] Ord. 259 (06/06/07); Ord. 240 (09/07/05).

**17-04.180 Duties and Liabilities of an Owner of a Tribal Member Business.**

- (A) Each owner of a Tribal member business shall comply, and shall assure that the Tribal member business and all persons employed at the Tribal member business comply, at all times with all provisions of this Chapter.
- (B) Each owner of a Tribal member business is responsible for any violation of, or non-compliance with, any provision of this Chapter by the Tribal member business or by any person employed at the Tribal member business, and is jointly and severally liable for any civil fine, forfeiture or other penalty imposed as a result of any such violation or non-compliance by the Tribal member business or by any person employed at the Tribal member business.

[History] Ord. 259 (06/06/07); Ord. 240 (09/07/05).

**17-04.190 Criminal Offenses**

- (A) Any person who knowingly or recklessly violates STC 17-04.080, 17-04.110 or 17-04.130 is guilty of a criminal offense. The first violation is a Class B offense punishable in accordance with STC 4-12.020. A second or subsequent violation is a Class A offense punishable in accordance with STC 4-12.020.
- (B) Each owner, agent, manager, or other person charged with the responsibility of operating a Tribal member business who knowingly or recklessly operates such business in violation of STC 17-04.080, 17-04.110 or 17-04.130 is guilty of a criminal offense. The first violation is a Class B offense punishable in accordance with STC 4-12.020. A second or subsequent violation is a Class A offense punishable in accordance with STC 4-12.020.
- (C) For purposes of this Section:
  - (1) “Knowingly” means that the person had actual knowledge of a fact, facts, circumstances, or result which constitutes a violation of STC 17-04.080, 17-04.110 or 17-04.130. Actual knowledge may be inferred from the circumstances.

- (2) “Recklessly” means being aware of a substantial risk that a violation of STC 17-04.080, 17-04.110 or 17-04.130 will occur and disregarding the risk when such disregard is a gross deviation from the conduct of a reasonable person.

[History] Ord. 259 (06/06/07);

**17-04.200 Sovereign Immunity.**

The sovereign immunity of the Tribe is not in any way waived or limited by this Chapter, and nothing in this Chapter shall constitute or be construed as a waiver of the sovereign immunity of the Tribe. Such sovereign immunity shall extend to the Tribe, the Senate, the General Manager, all Tribal officials, employees, staff, and agents, as to all actions taken pursuant to this Chapter, or taken in, pursuant to, or concerning, the administration or enforcement of this Chapter, and as to all actions taken pursuant to any authority of any action, decision or order authorized by this Chapter.

[History] Ord. 259 (06/06/07);

**17-04.210 Effective Date.**

- (A) This Chapter shall become effective immediately upon approval of the Secretary of the Interior or his or her designee; provided, however, that the amendments to Ordinance No. 240 adopted in Ordinance No. 259 shall not apply to any person who, on the date of passage of Ordinance No. 259 by the Swinomish Senate, possesses a current and valid license issued under STC Title 15 Chapter 3 as it existed prior to the effective date of Ordinance No. 259; provided further, however, that as to such a person the amendments to Ordinance No. 240 in Ordinance No. 259 shall become effective on the first day after the expiration of such person’s license.
- (B) The tax rate of \$0.15125 per cigarette set forth in Section 17-04.060(A) shall become effective on May 01, 2010.
- (1) The additional tax imposed by the tax rate of \$0.15125 per cigarette must be collected, reported and paid to the Tribe for all cigarettes subject to this tax that are in the stock, possession, custody or control of any person subject to this tax as of midnight on April 30, 2010.
- (2) The additional tax imposed by this rate must be reported and paid to the Tribe for all cigarettes or cigarette stamps subject to this tax that are in the stock, possession, custody or control of any wholesaler subject to this tax as of midnight on April 30, 2010.
- (C) Nothing in any amendment of Ordinance No. 240 by Ordinance No. 259 shall terminate, diminish, or otherwise alter any duties imposed upon any person by Ordinance No. 240, including but not limited to a duty to maintain records, retain

records, produce records, allow inspection, submit reports and collect, retain and pay taxes.

- (D) Nothing in Ordinance No. 259 shall terminate, diminish, or otherwise alter any duties imposed upon any person by Ordinance No. 258, including but not limited to the duty to comply with STC 15-03.070.

[History] Ord. 273 (5/11/10); Ord. 259 (06/06/07); Ord. 240 (09/07/05); Ord. 236 (06/27/05); Ord. 180 (9/30/03).

**17-04.220 Repealer.**

This Chapter repeals and replaces Ordinances Nos. 236, 140, 180 and 240 and any prior tobacco ordinance enacted by the Senate.

[History] Ord. 259 (06/06/07); Ord. 240 (09/07/05); Ord. 180 (9/30/03); Ord. 140 (5/5/00).

**17-04.230 Severability.**

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of this Chapter, or the application of the provision to other persons or circumstances shall remain in effect.

[History] Ord. 259 (06/06/07); Ord. 240 (09/07/05); Ord. 180 (9/30/03); Ord. 140 (5/5/00).