

Title 17
Chapter 7 – Fuel Sales Tax

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Legislative History

Enacted:

Fuel Sales Tax, Ord. 237 (07/13/05), BIA (07/26/05).

17-07.010 Authority.

The Swinomish Senate’s authority to adopt the ordinance codified in this title is found in the Swinomish Tribal Constitution, Art. VI, Sec. 1(k) and (l) and Sec. 4, and in the inherent sovereignty of the Swinomish Tribe to regulate its own territory and activities within that territory.

[History] Ord. Ord. 237 (07/13/05).

17-07.020 Purpose.

The Swinomish Senate finds that regulation of the sale of motor vehicle fuels is essential to the health and welfare of the Swinomish Tribe and its members. The Swinomish Senate further finds that 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 Swinomish Tribe, its members, and those who work on, live on, and visit the Tribe’s Indian country.

The Swinomish Tribal Senate finds that there are substantial unmet needs in funding for road construction and maintenance, transportation services, public safety, infrastructure, and

governmental programs that serve Tribal members, employees, customers, and other residents of and visitors to Indian country.

In particular, due to an increase in visits to Indian country by non-member Indians and non-Indians for the purposes of enjoying the Tribe's cultural and enterprises attractions and employment with the Tribe, the Swinomish Senate finds that there are new and increased unmet needs for infrastructure development and improvement, including road construction and maintenance, transportation services, sidewalks, lighting, signage, water, and wastewater treatment. The Swinomish Tribal Senate finds that fuel tax collection is an important element of a plan to fill those unmet needs.

Therefore, in the public interest and for the welfare of the people of the Swinomish Tribe, its employees, the residents of and visitors to Indian country, the Swinomish Tribal Senate, in the exercise of its authority under the Tribal Constitution, declares its purpose by the provisions of this chapter to regulate the sale of motor vehicle fuel and to impose, collect and administer taxes on the retail sale of motor vehicle fuel.

[History] Ord. Ord. 237 (07/13/05).

17-07.030 Scope.

- (A) **Application.** This chapter shall apply to the full extent of the sovereign jurisdiction of the Swinomish Tribe in Indian country.
- (B) Compliance with this chapter is hereby made a condition of the use of any land or premises in 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 Indian country under the jurisdiction of the Swinomish Tribe, shall be deemed to have consented to the following:
 - (1) To be bound by the terms of this chapter;
 - (2) To the exercise of civil jurisdiction by the Court over said person in legal actions arising under this chapter; and
 - (3) To detainment, service of summons and process, and search and seizure, in conjunction with legal actions arising under this chapter.

[History] Ord. Ord. 237 (07/13/05).

17-07.040 Definitions.

The following definitions apply throughout this chapter unless otherwise specified or the context clearly indicates otherwise:

- (A) **“Court”** means the Swinomish Tribal Court, and includes the Swinomish Tribal Court of Appeals.
- (B) **“Essential Government Services”** means 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.
- (C) **“Fuel Manufacturing”** means:
 - (1) The blending of motor vehicle fuel to which federally-required detergents and other additives have not been added, with those federally-required detergents and other additives to render the fuel suitable for use in a motor vehicle;
 - (2) The blending of motor vehicle fuel with soy-based additives, denatured alcohol or other similar additives in industry-recommended quantities for the purpose of improving performance, environmental or other aspects of the fuel or of increasing the octane of the resulting product;
 - (3) The blending of number 2 diesel fuel with premium diesel additives in industry-recommended quantities for the purpose of improving performance, environmental, or other aspects of the fuel;
 - (4) The blending of diesel fuel with soy-based or other additives to improve the lubricity or performance of the resulting product; or
 - (5) Other similar processes by which motor vehicle fuels and other ingredients are blended to create a new, improved, or different product.
- (D) **“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, the Indian titles to which have not been extinguished, including rights of way running through the same.

- (E) **“Motor Vehicle Fuel”** shall include all fuels normally sold for use in a motor vehicle, including gasoline and diesel products.
- (F) **“Non-Indian”** means an individual who is neither a Tribal member nor a non-member Indian.
- (G) **“Non-Member Indian”** means an enrolled member of a federally recognized Indian Tribe other than the Swinomish Tribe.
- (H) **“Person”** means and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity.
- (I) **“Swinomish Indian Reservation”** or **“Reservation”** means the area recognized as the Swinomish Indian Reservation by the United States Department of the Interior.
- (J) **“State”** means the state of Washington.
- (K) **“State Motor Vehicle Fuel Tax”** means the Washington State motor vehicle fuel tax.
- (L) **“Tribal Senate”** means the Swinomish Tribal Senate.
- (M) **“Tribal Member”** means an enrolled member of the Swinomish Tribe.
- (N) **“Tribal Retailer”** means a fuel retailer wholly owned by the Swinomish Tribe and located in Indian country.
- (O) **“Tribe”** or **“Tribal”** means or refers to the Swinomish Tribe.

[History] Ord. Ord. 237 (07/13/05).

17-07.050 Fuel Manufacturing and Sales.

The Swinomish Tribe, by and through the Swinomish Development Authority, is authorized to engage in fuel manufacturing in Indian country and to make sales of the resulting products to the ultimate consumer from a location within Indian country. All such sales shall be made at or above fair market price.

[History] Ord. Ord. 237 (07/13/05).

17-07.060 Fuel Tax – Levy – Sales to Non-Indians and Non-Member Indians.

- (A) Effective immediately, the Tribe shall impose taxes, as provided in this section, on all sales by Tribal retailers of motor vehicle fuel to non-Indian and non-member Indian purchasers within Indian country.
- (B) The Tribal tax rate shall be as follows:
 - (1) For motor vehicle fuel manufactured off-reservation and resold to the ultimate consumer from a location in Indian country, the Tribal tax shall be the amount of any credit or exemption the Tribe obtains from the State tax.
 - (2) For motor vehicle fuel manufactured by the Tribe on-reservation and sold to the ultimate consumer from a location in Indian country, the Tribal tax shall be equal to one hundred percent (100%) the State motor vehicle fuel tax then in effect, rounded to the nearest cent. The tax rate shall be automatically adjusted in accordance with this subsection upon any change in the State motor vehicle fuel tax rate.
- C. Sales of motor vehicle fuel shall not be subject to a general Tribal sales tax levy under other provision of Tribal law.

[History] Ord. Ord. 237 (07/13/05).

17-07.070 Fuel Tax – Collection and Payment of.

Every person engaged in retail sales of motor vehicle fuel in Indian country who is liable for collecting the Tribal fuel tax levy or Tribal member fuel tax levy, shall maintain accurate written records of the purchase and retail sales of motor vehicle fuel, and shall make such records available for inspection by the Tribal finance officer and/or third party auditor retained by the Tribe. Records shall be maintained for no less than three years after the audit is accepted by the appropriate federal oversight agency.

[History] Ord. Ord. 237 (07/13/05).

17-07.080 Fuel Tax – Use of Tribal Levy.

Tribal motor vehicle fuel tax revenue shall be used only for planning, construction and maintenance of roads and transit services; government services to provide and maintain infrastructure such as sidewalks, signs, and utilities; fire protection and law enforcement; and other essential government services.

[History] Ord. Ord. 237 (07/13/05).

17-07.090 Fuel Sales – Permitted.

Tribal retailers are the only retail businesses authorized to sell motor vehicle fuel within Indian country.

[History] Ord. Ord. 237 (07/13/05).

17-07.100 Short Title.

This act shall be known and cited as the Swinomish Fuel Sales and Tax Code.

[History] Ord. Ord. 237 (07/13/05).

17-07.110 Repealer.

[Reserved].

[History] Ord. Ord. 237 (07/13/05).

17-07.120 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. Ord. 237 (07/13/05).

17-07.130 Effective Date.

This Chapter shall become effective after is has been submitted to the Secretary of the Interior for certification.

[History] Ord. Ord. 237 (07/13/05).