

SHIVWITS BAND OF PAIUTES



TAX CODE

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CHAPTER 1: GENERAL

1.01 TITLE

This Code shall be known as the “Shivwits Band Tax Code.”

1.02 AUTHORITY

This Code is promulgated pursuant to the inherent sovereign authority of the Shivwits Band of Paiutes, and Article XII, Section 3 of the Bylaws of the Shivwits Band of Southern Paiutes; and Article VIII, Sections 2(c), 2(d), and 2(j) of the Constitution of the Paiute Indian Tribe of Utah; and the Paiute Restoration Act, 76 U.S.C. 762(b), and the Indian Reorganization Act, 25 U.S.C. 461 *et seq.*, and, Shivwits Band Council Resolution 2017-0-1.

1.03 PURPOSE

The purpose of this Code is to promote economic growth of the Shivwits Band; to provide increased services to residents of the Shivwits Band; to provide funds for Band government activities; and, to regulate commercial activities within the Shivwits Band Reservation.

1.04 POLICY

The policy for enacting this Code is to raise revenue in order to effectively regulate and provide public services for the Shivwits Band and its members.

1.05 APPLICABILITY

This Code is applicable to the sale of: tobacco, fuel, and general consumer sales by a retailer. This Code also applies to the sales, furnishing, or service of telecommunications, gas, electricity, and water. This Code also applies to professional services, including medical and legal services.

1.06 SEVERABILITY

It is hereby declared that the provisions of this Code are severable, and if any provision of this Code is declared unconstitutional, unenforceable, or otherwise invalid by judgment or decree of a court of competent jurisdiction, such invalidity shall not affect

any of the remaining provisions of this Code and the application of such provisions to other person or circumstances shall remain valid.

1.07 EFFECTIVE DATE

This Code became effective upon the passage of Shivwits Band Council Resolution 2017-0-1 approving such Code on January 16, 2017.

1.08 REPEAL OF INCONSISTENCIES

Any Resolution or Ordinance which conflicts in any way with provisions of this Code is hereby repealed to the extent such Resolution or Ordinance is inconsistent with, conflicts with, or is contrary to the purpose of this Code. This Code supersedes Resolution 2013-03.

1.09 AMENDMENT

The Shivwits Band Tax Code may be amended by Resolution of the Shivwits Band Council, provided the following notice and comment process is followed. Notice of proposed amendments to this Code shall be published in a manner reasonably calculated to inform those actually affected by the proposed amendments. The proposed amendments shall be made available to the public at the Shivwits Band headquarters. After publication of the notice of proposed amendments, the public shall have a thirty (30) day period in which to submit written comments. The Shivwits Band Council may choose to hold a public comment hearing. After the notice and comment period, amendments to this Code may be enacted by majority vote of the Shivwits Band Council.

1.10 NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Code is, or shall be construed as a waiver of the Shivwits Band's sovereign immunity from suit, or the sovereign immunity pertaining to any of the Band's political subdivisions or commercial entities.

1.11 DEFINITIONS

The following terms, whenever used or referred to in this Code, shall have the following meanings, unless a different meaning clearly appears from the context:

- A. **“Bylaws”** means the Bylaws of the Shivwits Band Council.
- B. **“Shivwits Band Council” or “Council”** means the governing body of the Shivwits Band of Paiute Indians of Utah.
- C. **“Cigarette”** means any roll for smoking made wholly or in part of tobacco, regardless of size or shape or whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or

cover of which is made of non-tobacco paper or any other substance or material except tobacco.

- D. **“Constitution”** means the Paiute Indian Tribe of Utah Constitution.
- E. **“Consumer”** means any person, regardless of the race of the person, who consensually purchases, receives or comes into possession of a Band Tobacco product from a Band Retailer located within the exterior boundaries of the Reservation.
- F. **“Distributor”** shall mean the Shivwits Band Tobacco Distributorship, and any non-tribal tobacco distributorship designated pursuant to Section 3.01 D., and any entity distributing tobacco products of any kind to the Shivwits Band Reservation that is not a manufacturer of such product.
- G. **“License Fee”** means the fee that is required when applying for a tribal license under this Tax Code as set forth by the Tax Commission annually.
- H. **“Moist Snuff”** means any product containing finely cut, ground or powdered tobacco, other than dry snuff, intended to be placed in the oral cavity.
- I. **“Retailer”** means any person selling tobacco or providing goods or services on the Shivwits Band Reservation.
- J. **“Person”** means any individual, company, government agency, sole proprietorship, firm, partnership, corporation, or association to which this Tax Code can be applied.
- K. **“Sale”** means all sales, barter, trades, exchanges, or other transfers of ownership for value of Band Tobacco from a Band Distributor or Retailer to any consumer or person no matter how characterized, including the transfer of actual or constructive possession and right to use such tobacco for value received from a Distributor or Retailer to any person.
- L. **“Tax Administrator”** means the person authorized to carry out the administrative day to day activities and all other duties and obligations stated in this Tobacco Code.
- M. **“Tax Commission”** means the five (5) person body created herein to carry out the duties and obligations of this Tax Code.
- N. **“Tobacco Products”** means and shall include cigarettes, cigars, smoking tobacco, snuff, chewing tobacco and all other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking.

- O. **“Tax Stamp”** means the stamp or indicia of taxation affixed to the tobacco product which is officially approved by the Shivwits Band.
- P. **“Tribal Court”** means the tribal judiciary established pursuant to Article VI of the Paiute Indian Tribe of Utah Constitution. If there is no such court operating, the Shivwits Band Council shall establish a Band Court to adjudicate the matter according to Paiute Tribal and Shivwits Band laws.
- Q. **“Tribal Enterprise”** or **“Band Enterprise”** means any Band majority-owned entity with the main purpose of providing economic opportunity and profit for the Band and its members.

CHAPTER 2: TAX COMMISSION

2.01 CREATION OF COMMISSION

There is hereby created a Tax Commission. The Commission shall regulate the distribution and sale of tobacco products on the Shivwits Band Reservation and the other activities contemplated by this Code. The Commission is hereby delegated authority, and charged with the responsibility to administer and enforce this Code.

- A. The Commission shall consist of five (5) members appointed by the Shivwits Band Council.
- B. Appointments to the Commission shall be for four (4) years. Terms of office shall be staggered.
- C. The Shivwits Band Council shall act as the Tax Commission until the Band can reasonably accommodate a full Commission as determined by the Shivwits Band Council.
- D. To be eligible to hold the office of Tax Commissioner, an individual must be an enrolled Shivwits Band member, should have appropriate education or business experience, and must not be employed on the staff of the Band. In exceptional circumstances non-members of the Band may be nominated and appointed when the Council determines that the non-members possess education, experience, or background which makes them uniquely qualified to serve, and no qualified Band members are available, but nonmembers of the Band may not be appointed if such appointment would result in the majority of Tax Commissioners not being Band members; Band members must always constitute a majority of the Commission.
- E. Initial appointments shall be made for the following terms: Chairman of the Commission-- four years; one Commission member-- three years; one

Commission member-- two years; one Commission member-- one year. Thereafter, all appointments shall be for four-year terms, provided that if a permanent vacancy occurs because of removal or resignation or for any other reason, appointment of a replacement shall be for the remainder of the term of the person being replaced.

- F. The Shivwits Band Council appoints Tax Commission members by Resolution.
- G. The Shivwits Band Council may remove any member of the Tax Commission at any time for any reason by Resolution.

2.02 QUORUM AND VOTING 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.

2.03 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 procedures 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 Band 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 the Secretary of the Band. 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.

2.04 POWERS OF THE TAX COMMISSION

The Tax Commission shall have the following powers:

- A. To promulgate and enforce rules and regulations consistent with this Code.
- B. To determine, levy, and collect all taxes authorized by this Code;
- C. To employ and consult with such advisors regarding the setting of tax rates for all taxes authorized by this Code, and regarding the amendment of this Code;
- D. To make recommendations to the Band Council regarding the setting of tax rates for all taxes authorized by this Code, and regarding the amendment of this Code;
- E. To hear and rule upon a petition by any taxpayer for redetermination of any taxes levied pursuant to this Code; but the Tax Commission shall have no power to alter tax rates established by the Band 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 implementation of this Code;
- G. To administer oath, 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 place 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 at any other item agreed to by the taxpayer; or at any time whatsoever pursuant to a search warrant issued by the Band or 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 the State of Utah, provided, that any such agreement shall have an effective date no less than thirty days after its approval by the Commission unless the Band Council by resolution approves an earlier effective date, and provided further, that during the period between approval by the Commission and the effective date, such agreement may by resolution be vetoed by the Band Council, in which case the agreement shall have no effect; and provided further that any such agreement must be presented by the Commission to the Council at a regular Council meeting prior to approval by the Commission.
- K. To delegate to an individual member of the Commission, to an individual member of the Band Council or Commission staff such of its functions as may be necessary to administer this Code efficiently, provided that the Commission may not delegate its powers to promulgate rules and regulation, to hear and rule upon petitions for redetermination of taxes, or to enter into tax collection agreements with the State of Utah;
- L. To adopt by regulation a schedule of fees and charges for services rendered 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 in the Tribal tax account; and,
- 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 of any provisions of this Code.

2.05 TAX ADMINISTRATOR

- A. The Tax Commission shall employ a Tax Administrator to oversee the day to day operations of the Tax Department.
- B. The Tax Administrator must have the following qualifications:
 - 1. A bachelor's degree in Business, Finance, or Accounting, or at least five (5) years of job experience in the field of tax or finance.
 - 2. Have not been found guilty of a misdemeanor or felony involving a crime of dishonesty by a tribal, state, or federal court.

3. The Tax Administrator must pass a background check to Council's satisfaction.
 4. The Council has make exception to the foregoing requirements by Resolution.
- C. If the Council is serving as the initial Tax Commission, having a Tax Administrator is not necessary. If the Council is acting as the Tax Commission, the Council shall fulfill the duties of the Tax Administrator.

2.06 TAX ADMINISTRATOR DUTIES

- A. To maintain an office and provide reasonable hours of operation for applicants;
- B. To process license applications, petitions, and other documents related to this Code;
- C. To maintain a Band tax account;
- D. To process tax payments received; and
- E. Anything in addition that is necessary for the Tax Department to run efficiently, as directed by the Tax Commission.

2.07 RECUSAL OF TAX COMMISSION MEMBERS AND TAX ADMINISTRATOR

- A. No member of the Tax Commission or the Tax Administrator shall participate in any action or decision by the Commission or Administrator directly involving his own tax liability, or the tax liability of a member of his immediate family, or the tax liability of any person, business or other entity of which he or a member of his immediate family is an employee, or in which he or a member of his immediate family has a substantial ownership interest, or with which he or a member of his immediate family has a substantial contractual relationship.
- B. For purposes of this Section, "immediate family" means brother; sister; son, daughter; mother; father; husband, wife, stepbrother; stepsister; half brother; half sister; or brother; sister; son; daughter; mother or father by adoption.
- C. Nothing in this Section shall preclude a Commission member or Tax Administrator from participating in any action or decision by the Commission or Administrator which:

1. Generally affects a class of taxpayers, regardless of whether the Commission member or Tax Administrator or a member of his immediate family is a member of the affected class;
 2. Affects the Shivwits Band, a Band enterprise, or a person or entity in a contractual relationship with the Band or a tribal enterprise, regardless of whether the Tax Administrator or Commission member is also a member of the Band.
- D. A member of the Tax Commission or Tax Administrator may 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
 2. That there would be an appearance that he could not act fairly or without bias.

CHAPTER 3: CIGARETTE AND TOBACCO TAX

3.01 SHIVWITS BAND TOBACCO DISTRIBUTORSHIP

- A. There shall be a Shivwits Band Tobacco Distributorship (hereinafter "Distributorship") with the exclusive authority to buy, import, export, transport, manufacture, sell, and deliver tobacco products, or other products to retailers of tobacco products within the Shivwits Band Reservation.
- B. The Distributorship has authority to import, export, transport, manufacture, sell, and deliver tobacco products to other Bands of the Paiute Indian Tribe, and to other federally recognized tribes.
- C. No tobacco products destined for retail sale on the Reservation may enter the Reservation, except through the physical facilities of the Distributorship.
- D. The Distributorship shall be a Shivwits Band enterprise, unless the Shivwits Band Council determines that it is more economically feasible to designate an alternative or additional off-Reservation distribution center to act as a Shivwits Band Tobacco Distributorship. Every Distributor designated under this Section shall enter a consensual agreement with the Tax Commission regulating its Distributorship activities.

3.02 BAND TOBACCO STAMP

Under the direction of the Shivwits Band Council, the Shivwits Band may produce, or cause to be produced a Band Tobacco Stamp, and establish a system for the fixation of the Shivwits Band Tobacco Stamp to all tobacco products distributed and sold on the Reservation. The Shivwits Band Council may elect to use the tobacco stamp of another Band of the Paiute Tribe for temporary purposes by Resolution of the Band Council, and may also elect to permit another Band of the Paiute Tribe to use the Shivwits Band Tobacco Stamp by Resolution of the Band Council.

3.03 BAND RETAILER

The Shivwits Band or any political or economic subdivision of the Band may act as a Retailer within the Reservation to sell tobacco. Any Shivwits Band tobacco retail shop shall be a Shivwits Band enterprise.

3.04 TAX IMPOSED

- A. A Cigarette Tax is imposed on the sale of cigarettes within the Shivwits Band Reservation. The tax is ten cents (\$ 0.10) for each package of cigarettes containing twenty (20) cigarettes. When a package contains more or less than twenty (20) cigarettes, the tax on each cigarette is equal to 1/20th of the tax on the package containing twenty (20) cigarettes.
- B. A Tobacco Tax is imposed on the sale of all other Tobacco Products on the Reservation. The tax is five (5) percent (5%) of the wholesale price paid by the wholesaler.
- C. A Tobacco Tax is imposed on the sale of Moist Snuff at a rate of twenty-five cents (\$0.25) per ounce, or any portion thereof, based upon the net weight of the package listed by the manufacturer on the package. When a package contains more or less than one (1) ounce, the tax on the package shall be proportional to the weight of the package.
- D. The Tobacco Tax is imposed on the Distributor.

3.05 TOBACCO RETAIL LICENSE REQUIRED

- A. It shall be unlawful for any person to act as a Retailer on the Shivwits Reservation or within the jurisdiction of the Band, unless such Retailer obtains a Tobacco Retail License issued by the Tax Commission pursuant to Chapter 5 of this Code.
- B. A Tobacco Retail License shall be valid for a period of one (1) year from the date of its issuance and shall expire automatically without notice on the expiration date stated in the license.

- C. No Tobacco Retail License shall be transferable.

3.06 PROHIBITED ACTS

- A. No Retailer shall offer tobacco products for sale, advertise tobacco products, or otherwise do business related to the sale of tobacco products via the internet.
- B. No minor shall have access to tobacco products on the Reservation. Minor shall mean any person under 21 years of age. The Tax Commission and Tax Administrator shall undertake measures to make sure no minor has access to or uses tobacco products on the Reservation. The Council has authority to change the definition of 'minor' at any time by Resolution.

3.07 RETURNS

The Distributor selling the taxable item(s) shall pay the tax imposed under this Chapter and shall on a quarterly basis complete a return for the preceding quarter on a form prescribed by the Tax Commission showing the entire amount of gross receipts from sales of goods or merchandise. The Tax Commission shall periodically require Retailers to submit returns according to rules and regulations it may promulgate. The Return shall be submitted on or before the twentieth day of the month following the end of the preceding quarter.

3.08 PAYMENT

The Distributor shall transmit the return, together with a remittance for the amount of tax if not previously paid by purchase of the Band tobacco stamp, to the Tax Commission on or before the twentieth day of the month following the end of the preceding quarter. The return shall be signed by the person or her duly authorized agent and, if applicable, the person and/or firm preparing the return.

3.09 RECORDS REQUIRED

- A. Each Distributor and Retailer shall maintain and keep for a period of three years, records of all transactions by which the Retailer sells, delivers or otherwise disposes of Tobacco within the jurisdiction of the Band, together with invoices, bills of lading and other pertinent records as may reasonably be required by the Tax Commission. All books, invoices, and other records shall be open to examination at any time by the Tax Commission and her/his duly authorized agents and shall be made available within the jurisdiction of the Band for such examination upon reasonable notice to investigate for the purpose of determining the amount due under the provisions of this Tax Code.

- B. If in the normal conduct of a Retailer's business the Retailer's records are maintained and kept at an office outside the jurisdiction of the Band, it shall be sufficient compliance with this subsection if the records are made available for examination by the Tax Commission at the office outside the jurisdiction of the Band, but such examination shall be at the Retailers expense.
- C. Each Retailer within the jurisdiction of the Band shall maintain and keep for a period of three years records of all wholesale purchases for retail sale or otherwise acquired by the retailer, together with delivery tickets, invoices, and bills of lading, and such other records as the Tax Commission shall require.

CHAPTER 4: SALES TAX

4.01 TAX IMPOSED

The Shivwits Band hereby imposes a tax on sales transactions on the Reservation. The levy which is imposed under this Chapter is limited to a tax at the rate of two percent (2%) of:

- A. All retail sales of goods or merchandise by persons or firms trading or conducting business on the Shivwits Band Reservation;
- B. All admission charges made by persons or firms presenting attractions on the Shivwits Band Reservation, except for admission charges by attractions which are presented by a nonprofit organization; and,
- C. All medical and professional services, unless specifically exempted by Resolution of the Band Council.

The Shivwits Band and its economic enterprises are exempt from this tax.

4.02 BUSINESS LICENSE REQUIRED

- A. It shall be unlawful for any person to act as a Retailer of any item within the jurisdiction of the Band, unless such Retailer obtains a Business License issued by the Tax Commission pursuant to Chapter 5 of this Code.
 - 1. This Chapter shall not apply to Tribal members who are conducting activities related to Shivwits Band cultural or religious practice.

- B. A Business License shall be valid for a period of one (1) year from the date of its issuance and shall expire automatically without notice on the expiration date stated in the license.
- C. No Business License shall be transferable.

4.03 EXEMPTIONS

The following sales shall not be subject to the Band Sales Tax:

- A. Sales by Band members of their own arts and crafts, agricultural, forest or other products produced or processed by the Band member making such sale;
- B. Sales of gasoline or other motor fuel;
- C. Sales of any article that would not be subject to the Utah retail sales tax if such articles were sold off the Shivwits Band Reservation and within the State of Utah.
- D. Sales by Band members for food and beverage at Band events or gatherings; and
- E. Sales by the Band or any of its economic enterprises or Band corporations.

4.04 RETURNS

The Retailer or person selling the taxable item(s) shall collect the tax imposed under this Chapter and shall on a quarterly basis complete a return for the preceding quarter on a form prescribed by the Tax Commission showing the entire amount of gross receipts from retail sales of goods or merchandise.

4.05 PAYMENT

The Retailer or person selling the taxable item(s) shall transmit the return, together with a remittance for the amount of tax, to the Tax Commission on or before the first day of the month following the end of the preceding quarter. The return shall be signed by the person or her duly authorized agent and, if applicable, the person and/or firm preparing the return.

CHAPTER 5: LICENSE PROCEDURES

5.01 LICENSES REQUIRED

These procedures apply to all licenses required under this Code including, but not limited to, the Tobacco Retail License, Fuel Retail License, and Business License.

5.02 PROCEDURE FOR ALL LICENSE APPLICATIONS AND RENEWALS

- A. Application for all licenses shall be on a form approved by the Tax Commission, which shall be fully completed by the applicant or a duly authorized representative. The application shall be submitted to the Tax Administrator with the required license fee. The application shall include the following:
1. The name and address of the applicant;
 2. The location of the place of business;
 3. The beginning date for which the license is requested;
 4. A description of any other retail or commercial business conducted or to be conducted by the applicant at the location of the proposed business;
 5. Applicant's agreement to follow and be bound by Shivwits Band laws;
 6. Such other information as the Tax Commission may require; and
 7. A signature by the applicant under oath.
- B. The Tax Administrator shall review the license application and grant or deny such license pursuant to the requirements established by the Tax Commission and this Code are satisfied.
- C. Upon denial of any application for a license, the application may request a hearing before the Tax Commission no later than seven (7) days after receipt of the Tax Administrator's decision.
- D. The Tax Commission shall provide reasonable notice to the applicant of the hearing date, time and location, as well as the procedures to be followed. If the Commission upholds its decision to deny the license, the applicant may appeal the decision to the Band or Tribal Court, but only on the grounds that the decision was arbitrary and capricious or a violation of Tribal Constitutional rights. Such appeal must be filed with the Band or Tribal Court in writing on or before the thirtieth (30) day following receipt of the Commission's written decision and follow all procedures set forth in Chapter 6 of this Code.

- E. An operator may apply for renewal of a license by filing a renewal application with the Tax Administrator not less than thirty (30) days prior to the license expiration date. Renewal applications shall be subject to all conditions and requirements applicable to an initial application, including a fee for the issuance of a renewal license, and any additional conditions and requirements deemed necessary by the Tax Administrator.

5.03 CONDITIONS FOR APPLICATION AND APPROVAL OF LICENSE

No application for a Band license shall be granted unless:

- A. The applicant has paid the required License Fee as may be changed from time to time by Resolution of the Shivwits Band Council;
- B. The applicant has submitted a completed application form;
- C. The applicant is at least eighteen (18) years of age;
- D. The proposed location for the business complies with all applicable building codes and zoning codes;
- E. The Applicant consents to be bound by Shivwits Band laws;
- F. The Commission determines that there is adequate demand for the product at the proposed location; and,
- G. The Commission determines that the applicant is of good moral character.

The conditions described in this Section are not exclusive and the Council may impose any other conditions which it deems necessary to safeguard and promote the safety, health and general welfare of members of the Tribes.

5.04 OPERATING WITHOUT A LICENSE

No person shall engage in the business of selling any item, services, or products on Shivwits Band lands without having the required license, if applicable, issued pursuant to this Code.

5.05 REVOCATION OF LICENSE

- A. Failure of a retailer or person to abide by any provision of this Code and any conditions set forth herein or imposed by Council may result in revocation of the license by the Council, as well as the assessment of civil penalties in accordance with this Code.

- B. Prior to revocation of a license, the retailer or person shall have the right to a hearing before the Council.

CHAPTER 6: ENFORCEMENT

6.01 PETITIONS FOR REDETERMINATION BY TAX ADMINISTRATOR

- A. Any taxpayer, having paid the taxes levied pursuant to this Code and any applicable penalties and interest, feels aggrieved thereby or discovers that the taxes were incorrectly calculated, may, within one (1) year after the due date of such return and payment, apply to the Tax Administrator by petition in writing for a redetermination of the amount of tax so paid. The petition for redetermination shall set forth the facts and arguments supporting the petition and the amount by which the tax should be reduced. Any refund of taxes that were due more than one (1) year prior to the filing of the petition is forever barred.
- B. Upon receipt of a petition for redetermination, the Tax Administrator shall give notice and an opportunity to be heard to the taxpayer seeking redetermination.
- C. The Tax Administrator may re-determine taxes based on correction of tax computation, or corrections to the classification of property or income but the Tax Administrator shall have no power to alter tax rates established pursuant to this Code or to declare any portion of this Code void for any reason.
- D. Refunds ordered by the Tax Administrator as a result of any redetermination shall bear simple interest at the rate of 3% per year from the date of the overpayment to the date of refund; provided, that no interest shall be paid on a refund when the Tax Administrator determines that the refund is for an overpayment that resulted from the negligence of the taxpayer.

6.02 REVIEW BY TAX COMMISSION

- A. Upon the denial of any petition for redetermination, the applicant may request a hearing before the Commission by submitting a written request to the Commission not later than seven (7) days after receipt of the Tax Administrator's decision.
- B. The Tax Commission shall provide reasonable notice to the applicant of the hearing date, time and location, as well as the procedures to be followed. If the Commission upholds the Tax Administrator's decision to deny the license, the applicant may appeal the decision to the Band Council, but only on the grounds that the decision was arbitrary and

capricious or a violation of Tribal Constitutional rights. Such appeal must be filed with the Band Council in writing on or before the thirtieth (30) day following receipt of the Commission's written decision.

6.03 FINAL REVIEW

- A. Within 30 days after notice of any decision by the Band Council on a petition for redetermination or application for Tribal license, any petitioner aggrieved thereby may petition for review of the decision by the Band or Tribal Court.
 - 1. All judicial remedies described herein and under this Tax Code shall be sought from the Shivwits Band Court first. If no Band Court exists, then relief can be sought from the Paiute Tribal Court. If no Tribal Court exists, then relief can be sought from a Court the Band Council designates by Resolution. The Band Council may elect to sit as the final judicial review panel or may appoint the Paiute Tribal Council as the final judicial review forum, or may establish an ad hoc Band Court. References to Band or Tribal Court herein and under this Court shall be interpreted according to this Subsection.
- B. Upon such review, which shall be by the Court sitting without jury, no new or additional evidence may be introduced, but the matter shall be heard on the record established before the Tax Commission as certified by the Commission.
- C. Before making such petition to the Court, the full amount of taxes, interest, penalties, and any other charges determined to be due by the Tax Commission must be deposited with the Commission or an undertaking filed in such amount and with such sureties as the Commission shall require, sufficient to satisfy any taxes, interest and penalties, and any charges incident to the appeal.
- D. The Court shall uphold all factual findings by the Commission unless the Court determines that such findings are not supported by substantial evidence in the record established before the Tax Commission, the Court shall give proper weight to the Commission's interpretation of this Code and any regulations promulgated thereunder.
- E. The Court may reverse the Shivwits Band Council's decision only on the grounds that the decision was arbitrary and capricious or a violation of Tribal Constitutional rights. The determination of the Court is final, and no further appeal shall be allowed.

- F. In no event is the Court authorized to alter tax rates established pursuant to this Code, to enjoin the collection of any taxes pursuant to this Code, 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 other charges in controversy, plus interest on the refund as provided in 10.01 of this Section, unless an additional remedy is specifically provided by this Code.
- G. Refunds ordered by the Court shall bear simple interest at the rate of 3% per year from the date of the overpayment to the date of the refund; provided that no interest shall be paid on a refund when the Court determines that the refund is for an overpayment that resulted from the negligence of the taxpayer.
- H. All decisions by the Court are final.

6.04 SUIT TO COLLECT TAXES, PENALTIES, AND INTEREST

The Tax Commission is hereby authorized to bring any necessary actions in the Court or any other appropriate court of competent jurisdiction for the collection of any taxes, penalties, or interest assessed and unpaid, and for recovery of reasonable attorneys' fees and expenses incurred in bringing such action. Such actions shall be civil in nature and all penalties, interest, attorney's fees, and expenses shall be in the form of civil damages, unless otherwise expressly provided in this Code. Any civil remedies, including but not limited to garnishment, attachment, and execution, shall be available for the collection of any monies due the Band. The Tax Commission may request the Band attorney to bring such actions when the approval of the Shivwits Band Council has been previously obtained. In all other cases, the Tax Commission shall be represented in the Court by the Band attorney. The Tax Commission may elect to use the Administrative Enforcement procedure in Section 6.08 below to collect taxes, penalties, or interest.

6.05 INJUNCTIONS

In addition to all other remedies provided for in this Code, the Tax Commission is authorized to bring an action in the Court or any other appropriate court of competent jurisdiction to enjoin the operation of any unlicensed business, activity, or function when Band law requires a license to be issued for such business, activity, or function willfully fails to comply with any provision of this Code or any of the rules and regulations which the Tax Commission is authorized by this Code promulgate.

6.06 SEIZURE OF PROPERTY

- A. In addition to all other remedies provided for in this Chapter, whenever the Tax Commission determines that taxes, interest, or penalties are owed by a taxpayer and are delinquent, and that delay may prejudice the recovery of such overdue taxes, interest, or penalties, the Commission

may apply to the Tribal Court for issuance of a distress warrant authorizing the seizure of any personal property and real property located within the Reservation and belonging to the taxpayer. Such application for a distress warrant may be made without notice to the delinquent taxpayer.

- B. The Court shall issue the distress warrant unless the Court finds that there is no basis whatsoever for the determination by the Commission that delay may prejudice the recovery of such overdue taxes, interest, or penalties. Seizure pursuant to the distress warrant may be carried out by a member; employee, or agent of the Tax Commission, when accompanied by a law enforcement officer of the Band or the Bureau of Indian Affairs.
- C. Within ten days of such seizure, the Tax Commission shall cause an action to be filed in the Tribal Court or other court of competent jurisdiction against such property alleging the nonpayment of tax or other lawful reason for such seizure and forfeiture. Upon proof, the Court shall order such property forfeited for non-payment of taxes and title thereto vested in the Shivwits Band. Any person claiming ownership, the right to possession, or other interest in such seized property may intervene in such court action and raise any defenses that he may have, and any such person shall be served with process if he is known prior to the beginning of the action. Any such person may redeem seized property at any time prior to the entry of a final judgment of forfeiture by depositing with the court all taxes, penalties, interest, attorney's fees and expenses and other fees or charges assessed against or owed by the taxpayer.
- D. Whenever any authorized person shall seize any property pursuant to this Chapter; he shall inventory and appraise such property and leave a copy thereof with the person from whom it is seized, or if such person cannot be found, at the place from which such property is seized, and deliver a copy of the inventory to the Tax Commission and the Tribal attorney.

6.07 CIVIL PENALTIES

The Tax Administrator, the Tax Commission, the Band Council or the Band or Tribal Court may assess civil penalties for violation of this Code. The civil penalty shall be in the form of a fine not to exceed five thousand dollars (\$5,000) per day, per violation.

6.08 ADMINISTRATIVE ENFORCEMENT

The Tax Administrator shall issue a Notice of Violation for any violation of this Code. The Notice shall be served by U.S. Mail or any method reasonably calculated to provide notice if not address is available. The recipient of the Notice of Violation shall have ten calendar days to request an Administrative Hearing with the Tax Administrator. The Administrative Hearing shall be scheduled promptly. If the Tax Administrator does not reach informal resolution on the Notice of Violation, he or she shall inform the Tax

Commission. The Tax Commission shall allow the recipient of the Notice of Violation at least ten calendar days to submit written points, authorities, and evidence regarding the violation, and shall promptly thereafter issue a written Record of Decision addressing the violation. The Record of Decision shall contain findings of fact and conclusions of law, and an Administrative Order with any fine or conditions imposed by the Tax Commission. The Tax Commission's Record of Decision may be appealed to the Band Council in writing within ten calendar days of the date of service. The Band Council shall review and decide the appeal from the Record of Decision. The Band Council's decision shall be final.

CHAPTER 7: FUELS TAX

7.01 FUELS TAX IMPOSED

- A. There is imposed an excise tax on all motor fuel sold or used on the Shivwits Band Reservation.
- B. The rate shall be periodically reviewed, and shall be recommended by the Tax Commission and to be determined by the Band Council.
- C. The tax rate is fourteen and a half (14.5) cents (\$.145) per gallon, and shall be assessed and collected on each gallon of fuel sold or used on the Band's Reservation, and shall be deposited to a fund designated for pollution cleanup related to petroleum sales.
- D. The Shivwits Band shall be exempt from this tax.

7.02 ADDITION OF TAX TO SALES PRICE

The per gallon amount of the tax shall be added to the sales price of every gallon of motor fuel sold at retail on the Reservation and shall be collected from every consumer.

7.03 FUEL RETAIL LICENSE REQUIRED

- A. It shall be unlawful for any person to act as a Fuel Retailer within the jurisdiction of the Band, unless such Retailer obtains a Fuel Retail License issued by the Tax Commission pursuant to this Code.
- B. A Fuel Retail License shall be valid for a period of one (1) year from the date of its issuance and shall expire automatically without notice on the expiration date stated in the license.
- C. No Fuel Retail License shall be transferable.

- D. The Shivwits Band Corporation or economic enterprise, or any entity operating the Shivwits Band gas station shall obtain a fuel retail license from the Tax Commission.

7.04 EXEMPTIONS

The Shivwits Band and its political and economic subdivisions shall be exempt from paying this tax for fuel purchased and used. Shivwits Band members shall also be exempt from this tax.

7.05 MONTHLY RETURN AND PAYMENT OF TAX BY FUEL RETAILERS

- A. The tax shall be paid in the first instance by the licensed Retailer upon the invoiced gallonage of all motor fuel that is placed into any tank or other container for use, sale, or delivery, excluding transportation, to a retailer or consumer within the jurisdiction of the Band.
- B. Each Retailer shall, not later than the last day of each calendar month, file with the Tax Commission a monthly return which shall include a statement of the number of invoiced gallons of motor fuel sold to retailers or consumers within the jurisdiction of the Band during the preceding reporting period, as is prescribed by the Tax Commission and as may be necessary for the proper administration of this Chapter.
- C. Each Retailer shall pay the tax due at the same time as the filing due date of the tax return and the return and payment of the tax shall be considered filed with the Tax Commission on or before the last day of each month following the end of each reporting period; provided that the Retailer may in computing the tax due deduct two percent (2%) of the gross fuel tax for evaporation and loss; however, the maximum deduction allowed shall be five hundred dollars (\$500.00).

7.06 RETAILER CREDIT OR REFUND OF TAX PAID

The Tax Commission shall allow the Retailer a credit or refund of the tax paid on any motor fuel:

- A. Subject to motor fuel taxes imposed by the State of Utah;
- B. Placed in a tank used exclusively for residential heating; or
- C. Destroyed by accident or an act of nature while in possession the Retailer.

7.07 BAND RETAIL FUEL SALES

The fuels tax contemplated by this Chapter shall be collected from all persons and consumers, except those exempted in Section 7.04 above, by the Shivwits Band enterprise conducting fuel sales on the Reservation.

7.08 RECORDS REQUIRED

- A. Each Retailer shall maintain and keep for a period of three years, records of all transactions by which the Retailer sells, delivers or otherwise disposes of motor fuel within the jurisdiction of the Band, together with invoices, bills of lading and other pertinent records as may reasonably be required by the Tax Commission. All books, invoices, and other records shall be open to examination at any time by the Tax Commission and her/his duly authorized agents and shall be made available within the jurisdiction of the Band for such examination upon reasonable notice to investigate for the purpose of determining the amount due under the provisions of this Tax Code.
- B. If in the normal conduct of a Retailer's business the Retailer's records are maintained and kept at an office outside the jurisdiction of the Band, it shall be sufficient compliance with this subsection if the records are made available for examination by the Tax Commission at the office outside the jurisdiction of the Band, but such examination shall be at the Retailer's expense.
- C. Each retailer selling motor fuel at retail within the jurisdiction of the Band shall maintain and keep for a period of three years records of all motor fuel purchased or otherwise acquired by the retailer, together with delivery tickets, invoices, and bills of lading, and such other records as the Tax Commission shall require.

CHAPTER 8: UTILITY TAX

8.01 UTILITY TAX IMPOSED

- A. There is hereby imposed a tax of six percent (6%) upon the gross receipts from sales, furnishing, or service of telecommunications, 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 Chapter, when sold at retail within the Reservation to consumers or users. This tax shall not be passed on to consumers by the company.

- B. There is hereby imposed a tax of five percent (5%) of the value of all utility property on each annual assessment date.
- C. All distribution lines crossing the Reservation shall be taxed at the rate referenced in Section 8.01 B.

8.02 ASSESSMENT AND VALUATION

- A. The assessment date for each calendar year shall be January 1 of that year. Utility property shall be assessed annually as of the assessment date. The Band may assess unassessed utility property as of the date upon which they should have been assessed, and may re-determine incorrect or erroneous assessments.
- B. The value of utility property shall be presumed to be equal to the full value per linear mile of the utility as assessed by the State of Utah under Title 11 of the Utah Code, multiplied by the number of miles of the utility located on trust land within the Reservation. The value of utility property not measured by linear mile shall be presumed to be equal to the full value of assessed by the State of Utah. For purposes of these presumptions the most recent state assessment made prior to the assessment date shall be used. Unless a presumed value is challenged, the tax shall be levied and collected upon the presumed value.
- C. If a presumption of value is challenged pursuant to Article 10 of this Code, the value of the utility property shall be determined by the Tax Commission, after a hearing, based on one or more of the following methods:
 - 1. Fair market value method. On the basis of the selling prices of comparable property (whether within or outside of the Reservation) which are sold by willing sellers to willing buyers.
 - 2. Present value of income method. By computing the capitalized value of the gross income to be received from the property less the reasonable expenses to be incurred in producing the income, over the remaining useful life of the property.
 - 3. Any other method which reasonably and accurately reflects the value of the utility property.

8.03 PERSONS LIABLE FOR PAYMENT

- A. All owners of utility property are liable for payment of the entire tax assessed upon that interest.
- B. If an owner is an association, joint venture or partnership, the associates, participants or partners both limited and general, shall be jointly and severally liable for the entire tax assessed upon that property.
- C. Each person liable for taxes under this Chapter shall have a right of contribution from any other person liable for a share of the taxes paid proportionate to the share of such person in the utility property. The owners may, by agreement, alter the allocation by contribution of the tax liability among themselves; but no such agreement shall affect the liability to the Band of any person named in subsection (a) and (b) of this subsection.

8.04 DECLARATION OF INTEREST

On or before the first day of the month following each assessment date, each owner subject to tax under this Chapter must file with the Band a declaration of its interest in any utility property on such forms and containing such information as the Band may require. The owner shall state if the utility property is exempt in the declaration. The declaration shall state the value per linear mile of the utility as most recently assessed by the State of Utah.

8.05 NOTICE AND PAYMENT OF TAX

- A. The Band shall, by July 1st of each year, mail to each owner notice of the assessed value of the utility property and the tax due. The notice shall be based on the presumed value established as provided herein unless a different value has been finally established by the Tax Commission. The notice shall be mailed to the address specified in the most recent declaration filed pursuant to this Chapter, or, if no declaration has been filed, to the owners last known address. Failure to send or receive notice, shall not relieve the owner of the obligation to timely pay the tax due.
- B. The tax due shall be paid by credit card, money order, or certified check payable to the Shivwits Band of the Paiute Tribe of Utah. Payment is timely if postmarked or actually delivered on or prior to the due date.

8.07 LIEN FOR TAXES

- A. Taxes assessed shall be a lien against the utility property subject to the tax. Such lien shall arise in favor of the Band as of the assessment date, without notice or demand, and shall be prior and superior to all other liens and encumbrances.

- B. The lien shall continue until the amount of the lien is paid to the Band or the lien is released by the Band. Partial payment of the taxes shall reduce the amount of the lien by the amount paid.
- C. The Band may foreclose upon the utility property subject to a lien by filing a civil action with the Tribal Court for that purpose. In the event of foreclosure, the utility property shall be sold in a commercially reasonable manner and the proceeds applied first to the expenses for the foreclosure, then to the liability for costs, penalties, interest and tax, in that order. Any remaining balance shall be remitted to the owners of the utility property in proportion to their ownership interest.
- D. The Band may release liens as part of a settlement of the taxes due or where the payment of the tax is adequately protected by other security or by a surety bond.

8.08 CONSENSUAL RELATIONSHIP

Any person who owns utility property within the Reservation and obtains a Tribal Business License, Trespass Permit, or Building Permit, in connection with constructing, accessing, or otherwise operating the utility property, shall be deemed to have consented to Band regulatory and adjudicatory jurisdiction.

CHAPTER 9: TRESPASSING

8.01 TRESPASS PERMIT REQUIREMENT

- A. The Shivwits Band Reservation has been set aside as the permanent homeland for the Shivwits Band. No person may use land or natural resource on the Reservation in a manner inconsistent with this purpose.
- B. The Shivwits Band Reservation is a ‘closed’ Reservation, as that term has been defined by the United States Supreme Court in *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989). The Reservation is closed to the general public, except as described herein.
- C. Entry onto the Reservation is restricted to: enrolled Band members; individuals eligible for membership in the Shivwits Band; relatives of Band members; members of other federally recognized tribes or bands; official federal agency employees; employees of the Shivwits Band or Paiute Tribe; patrons of businesses on the Reservation; and persons with bona fide property interests. Except for Band members and those specifically listed herein, no person may trespass on the Shivwits Reservation without express written permission from the Tax Commission. No portion of the Shivwits Band Reservation is ‘open’ as

that term has been defined by the United States Supreme Court in *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989).

- D. Any person not exempted by Section C above shall obtain a Trespass Permit from the Tax Commission prior to entering the Reservation.
- E. Grazing of livestock is not allowed on the Shivwits Reservation unless the Band Council has approved by Resolution and the Tax Commission has issued a Trespass Permit from grazing of particular animal units per month in a designated area.